

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 9 SOLID WASTE
PART 2 SOLID WASTE MANAGEMENT GENERAL REQUIREMENTS

20.9.2.1 ISSUING AGENCY. New Mexico Environmental Improvement Board.
[20.9.2.1 NMAC - Rp, 20 NMAC 9.1.I.001, 08/02/07]

20.9.2.2 SCOPE. This part applies to the transportation, storage, transfer, processing, transformation, recycling, composting, nuisance abatement and disposal of solid waste.
[20.9.2.2 NMAC - Rp, 20 NMAC 9.1.I.002, 08/02/07]

20.9.2.3 STATUTORY AUTHORITY. NMSA 1978, Sections 74-1-1 to 74-1-15, NMSA 1978, Sections 74-9-1 to 74-9-43, and NMSA 1978 Sections 74-13-1 to 74-13-20.
[20.9.2.3 NMAC - Rp, 20 NMAC 9.1.I.003, 08/02/07]

20.9.2.4 DURATION. Permanent.
[20.9.2.4 NMAC - Rp, 20 NMAC 9.1.I.004, 08/02/07]

20.9.2.5 EFFECTIVE DATE. August 2, 2007, unless a later date is cited at the end of a section.
[20.9.2.5 NMAC - Rp, 20 NMAC 9.1.I.005, 08/02/07]

20.9.2.6 OBJECTIVE. The objective of Part 2 of Chapter 9 is to establish regulations in the following areas of solid waste management:

- A. general requirements;
- B. requirements for public entities;
- C. prohibited acts and exceptions;
- D. entry by the department; and
- E. procedures for exemptions, specific approvals, waivers for small municipal landfills and variances.

[20.9.2.6 NMAC - Rp, 20 NMAC 9.1.I.006, 08/02/07]

20.9.2.7 DEFINITIONS. Whenever a term used in 20.9.2 - 20.9.10 NMAC is defined in the Solid Waste Act, the term shall have the meaning given in the Solid Waste Act, unless otherwise defined in this part.

- A. Terms starting with the letter 'A' are defined as follows.
 - (1) "Act" means the Solid Waste Act, NMSA 1978, Sections 74-9-1, et seq.
 - (2) "Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with 20.9.6 NMAC.
 - (3) "Active portion" means that part of a facility that has received or is receiving wastes and that has not been closed in accordance with 20.9.6 NMAC.
 - (4) "Air curtain incinerator" means an incineration facility used for burning yard refuse that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs, controls emission of the combustion products, is not designed to burn more than ten tons of yard refuse per hour, and has obtained an air quality permit or registration.
 - (5) "Airport" means public use airports open to the public without prior permission and without restrictions within the physical capacities of available facilities, but does not include aero-club airports operated on a military installation.
 - (6) "Alluvial fan" means a low, outspread, relatively flat to gentle sloping mass of loose sediment, shaped like an open fan or a segment of a cone, deposited by a stream at a place where it issues from a narrow mountain valley upon a plain or broad valley.
 - (7) "Aquifer" means a geologic formation, group of formations, or portions of a formation capable of yielding ground water to wells or springs. The uppermost aquifer is the aquifer nearest the natural ground surface including lower aquifers that are hydraulically interconnected with this aquifer.
 - (8) "Areas susceptible to mass movement" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the landfill unit, because of natural or man-induced events, results in the down slope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, solifluction, block sliding, and rock fall.

(9) "Asbestos waste" means a solid waste that contains more than 1 percent asbestos:

- (a) "friable asbestos material" means any material containing more than 1 percent asbestos, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure;
- (b) "category I non-friable asbestos containing material" means asbestos containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos;
- (c) "category II non-friable asbestos containing material" means any material, excluding category I non-friable asbestos containing material, containing more than one percent asbestos, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand; and
- (d) "regulated asbestos waste" means friable asbestos material; category I non-friable asbestos containing material that has become friable; category I non-friable asbestos containing material that will be or has been subjected to sanding, grinding, cutting or abrading; or category II non-friable asbestos containing material that has a high probability of becoming or has become broken, crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of excavation, renovation, demolition, storage, transportation, or while exposed during disposal operations.

(10) "Ash" means the ash that results from the incineration or transformation of solid waste at a power generating facility or solid waste facility and includes both fly ash and bottom ash, and ash from the incineration of densified-refuse-derived fuel and refuse-derived fuel, but does not include residue from structure fires, fireplaces, air curtain incinerators, or small animal crematoria or ash generated by the combustion of yard waste for energy production, or fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels and wastes produced in conjunction with the combustion of fossil fuels that are necessarily associated with the production of energy and that traditionally have been and actually are mixed with and are disposed of or treated at the same time with fly ash, bottom ash, boiler slag or flue gas emission control wastes from coal combustion.

B. Terms starting with the letter 'B' are defined as follows.

(1) "Background" means, for purposes of 20.9.2 - 20.9.10 NMAC, the amount of ground water contaminants naturally occurring from undisturbed geologic sources or level of water contamination that the owner or operator establishes is from a source other than the responsible person's facility. This definition shall not prevent the secretary from requiring abatement of commingled plumes of pollution, shall not prevent the owner or operator from seeking contribution or other legal or equitable relief from other persons, and shall not preclude the secretary from exercising enforcement authority under any applicable statute, regulation or common law.

(2) "Biologicals" means preparations made from living organisms or their products, including vaccines, cultures, or other biological products intended for use in diagnosing, immunizing, or treating humans or animals or in research pertaining to these activities.

(3) "Biological conversion" means, as a form of transformation, the conversion of organic waste materials into an energy source by an aerobic or anaerobic process other than composting.

C. Terms starting with the letter 'C' are defined as follows.

(1) "Cell" means a confined area engineered for the disposal of solid waste.

(2) "Certified operator" means any individual who meets the experience and training requirements of 20.9.7 NMAC, has successfully completed the testing requirement of the department, and has been issued a New Mexico certificate.

(3) "Change in ownership" means the sale or other transfer of a partner's interest in a partnership, a change in controlling interest of a partnership, corporation, limited liability company or limited liability partnership or the sale or other transfer of a sole proprietorship.

(4) "Clean fill" means broken concrete, brick, rock, stone, glass, reclaimed asphalt pavement, or soil that is uncontaminated, meaning the fill has not been mixed with any waste other than the foregoing and has not been subjected to any known spill or release of chemical contaminants, including petroleum product, nor treated to remediate such contamination; reinforcement materials which are an integral part, such as rebar, may be included as clean fill; clean fill must be free of other solid waste, to include land clearing debris, construction and demolition debris, municipal solid waste, radioactive waste, hazardous waste or special waste.

(5) "Closed cell" means a cell at finished grade which has been covered with intermediate cover or final cover.

(6) "Collection center" means a facility managed for the collection and accumulation of solid waste with an operational rate of less than 240 cubic yards per day monthly average and that serves the general public.

(7) "Commercial hauler" means any person transporting solid waste for hire by whatever means for the purpose of transferring, processing, storing or disposing of the solid waste in a solid waste facility, except that

the term does not include an individual transporting solid waste generated on his residential or business premises for the purpose of disposing of it in a solid waste facility.

(8) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, excluding household and industrial solid wastes.

(9) "Commission" means the New Mexico water quality control commission.

(10) "Commission regulations" means the regulations of the New Mexico water quality control commission, including 20.6.1 NMAC and 20.6.2 NMAC.

(11) "Community" for purposes of preparation of a community impact assessment, means an area of human habitation within a four mile radius around a proposed landfill, transformation facility or existing landfill that is proposing a lateral or vertical expansion.

(12) "Compost" means organic material that has undergone a controlled process of biological decomposition and pathogen reduction, and has been stabilized to a degree that the final product is potentially beneficial to plant growth and can be used as a soil amendment, growing medium amendment or other similar uses. Compost does not include final product that contains sewage sludge that fails to meet the requirements of 40 CFR 503.

(13) "Composting" means the process by which biological decomposition of organic material is carried out under controlled conditions. The process stabilizes the organic fraction into a material which can be easily and safely stored, handled and used in an environmentally acceptable manner.

(14) "Composting facility" means a facility, other than a transformation facility, that is capable of providing biological stabilization of organic material.

(15) "Construction and demolition landfill" means a landfill that receives only construction and demolition debris in quantities equal to or less than 50 tons per day monthly average. Any landfill that receives more than 50 tons per day monthly average of construction and demolition debris waste in any month is defined as a municipal landfill.

(16) "Cooperative association" means a refuse disposal district created pursuant to the Refuse Disposal Act, NMSA 1978, Sections 4-52-1 through 4-52-15, or a sanitation district created pursuant to the Water and Sanitation District Act, NMSA 1978, Sections 73-21-1 through 73-21-54, a special district created pursuant to the Special District Procedures Act, NMSA 1978, Sections 4-53-1 through 4-53-11, a solid waste authority created pursuant to the Solid Waste Authority Act, NMSA 1978, Sections 74-10-1 through 74-10-100, or other such association created pursuant to the Joint Powers Act, NMSA 1978, Sections 11-1-1 through 11-1-7.

D. Terms starting with the letter 'D' are defined as follows.

(1) "Department" means the New Mexico environment department.

(2) "Discharge" means spilling, leaking, pumping, pouring, emitting, emptying, or dumping into water or in a location and manner where there is a reasonable probability that the discharged substance will reach surface or ground water.

(3) "Disease vectors" means any rodents, flies, mosquitoes, or other animals and insects, capable of transmitting disease to humans.

(4) "Displacement of a fault" means the relative movement of any two sides of a fault fracture measured in any direction.

(5) "Dispose or disposal" means causing, allowing, or maintaining the abandonment, discharge, deposit, placement, injection, dumping, burning, spilling, or leaking of any solid waste into or on any land or water.

(6) "Distillation" means a process by which components in a chemical mixture are purified or separated by the application and removal of heat and the separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

E. Terms starting with the letter 'E' are defined as follows.

(1) "Economically stressed household" means a household that reports at or less than 150 percent of the poverty level as set forth in the most recent federal department of health and human services poverty guidelines for a family of four.

(2) "Environmental justice" is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

F. Terms starting with the letter 'F' are defined as follows.

(1) "Fault" means a fracture or a zone of fractures in lithified rock or unconsolidated sediments along which material on one side has been displaced with respect to that on the other side.

(2) "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters that are inundated by the 100 year flood. The 100 year flood has a one percent chance of recurring in any given year or a flood of magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

G. Terms starting with the letter 'G' are defined as follows.

(1) "Gasification" means a thermal process for the generation of combustible gas from a solid waste material.

(2) "Generator" means any person, whose act or process produces solid waste or whose act first causes solid waste to become subject to regulation.

(3) "Geosynthetic" means the generic classification of all synthetic materials used in geotechnical applications, including the following classifications:

(a) "geocomposite" means a manufactured material using geotextiles, geogrids, geomembranes, or combinations thereof, in a laminated or composite form;

(b) "geogrid" means a deformed or non-deformed netlike polymeric material used to provide reinforcement to soil slopes;

(c) "geomembrane" means an essentially impermeable membrane used as an integral part of an engineered structure or system designed to limit the movement of liquid or gas in the system;

(d) "geonet" means a type of a geogrid that allows planar flow of liquids and serves as a drainage system;

(e) "geosynthetic clay liner (GCL)" means a layer of sodium bentonite which is held between or on carrier layers of geotextiles or a geomembrane; and

(f) "geotextile" means any permeable textile used as an integral part of an engineered structure or system to serve as a filter to prevent the movement of soil fines into drainage systems, to provide planar flow for drainage, or to serve as a cushion to protect geomembranes, or to provide structural support.

(4) "Ground water" means interstitial water which occurs in the earth's saturated zone and which is capable of entering a well in sufficient amounts to be utilized as a water supply.

(5) "Ground water scientist" means a scientist or engineer who has received a baccalaureate or post graduate degree in the natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certifications or completion of accredited university programs that enable that individual to make sound professional judgments regarding ground water monitoring, contaminant fate and transport, and corrective action.

H. Terms starting with the letter 'H' are defined as follows.

(1) "Hauler" means any person transporting solid waste.

(2) "Hazardous constituent" means any constituent listed in 40 CFR 258 Appendix I or II or Subsection A of 20.6.2.3103 NMAC, and any potential toxic pollutant listed in 20.6.2.7 NMAC.

(3) "Hazardous waste" means a hazardous waste as defined in 40 CFR 261.3.

(4) "Hot waste" means any waste which is on fire or smoldering when delivered to the solid waste facility.

(5) "Household waste" means any solid waste including garbage and trash, derived from households including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas.

I. Terms starting with the letter 'I' are defined as follows.

(1) "Impact" means a present or future effect on the environment or the health of residents of a community.

(2) "Incineration" means the reduction of combustible solid wastes by burning in an enclosed device under conditions of controlled airflow and temperature.

(3) "Incinerator" means an enclosed device using controlled flame combustion, the primary purpose of which is to thermally break down solid waste, including, but not limited to, rotary kiln, fluidized bed, and liquid injection incinerators, but does not include air curtain incinerators or small animal crematoria.

(4) "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not hazardous waste regulated under Subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from the following processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals, plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment, and water treatment. This term does not include mining waste or commercial solid waste.

(5) "Infectious waste" means a solid waste that carries a probable risk of transmitting disease to humans or animals, and includes the following which shall be considered infectious waste:

(a) cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stock of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines except for residue in emptied containers; and culture dishes, assemblies and devices used to conduct diagnostic tests or to transfer, inoculate, and mix cultures;

(b) human pathological wastes, including tissues, organs, and body parts that are removed during surgery, autopsy, other medical procedures, or laboratory procedures, but not including hair, or nails;

(c) human and body fluid waste, including:

(i) liquid waste human blood;

(ii) blood products;

(iii) items with human blood (caking, flaking, saturated or dripping);

(iv) items with human blood, including serum, plasma, and other blood components, which were used or intended for use in patient care, specimen testing, or the development of biological products or pharmaceuticals;

(v) intravenous bags that have been used for blood transfusions;

(vi) items, including dialysate, that have been in contact with the blood of patients undergoing hemodialysis at hospitals or independent treatment centers;

(vii) items contaminated by body fluids from persons at trauma scenes, during surgery, autopsy, other medical procedures, or laboratory procedures;

(viii) specimens of blood products, and their containers; and

(ix) other potentially infectious materials as defined by the U.S. department of labor occupational safety and health administration at 29 CFR 1910.1030(b), including the following body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

(d) contaminated animal carcasses, body parts, blood, blood products, secretions, excretions, and bedding of animals that were known to have been exposed to zoonotic infectious agents or non-zoonotic human pathogens, including during research (including research in veterinary schools and hospitals), production of biologicals, or testing of pharmaceuticals;

(e) biological wastes and waste contaminated with bloody excretions, exudates, or secretions from:

(i) humans who are isolated to protect others from rare diseases such as viral hemorrhagic fevers (Ebola, Lassa, Marburg) or other emerging infectious diseases whose biological wastes and waste contaminated with bloody excretions, exudates, or secretions are deemed infectious waste as described by advisory agencies such as the center for disease control (CDC);

(ii) isolated animals known or suspected to be infected with rare diseases such as bovine spongiform encephalopathy (BSE) or other emerging infectious diseases identified by an advisory agency;

(f) discarded sharps, used or unused (unless in original packaging), generated at a facility, that have, or are likely to have, come in contact with infectious agents while involved in human or animal patient care, treatment, or research, including hypodermic needles, syringes (with the attached needle), Pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, culture dishes, suture needles, slides, cover slips, and other broken or unbroken glass or plasticware, unless properly treated or otherwise specifically exempted;

(g) infectious waste does not include:

(i) wastes generated in a household (except for infectious wastes generated by home health care professionals);

(ii) human corpses, remains, and anatomical parts that are intended for interment or incineration as specified in Paragraphs (4) and (5) of Subsection E of 20.9.8.13 NMAC, or are donated and used for scientific or medical education, research, or treatment;

(iii) etiological agents being transported for purposes other than waste processing or disposal pursuant to the requirements of the United States department of transportation (49 CFR 171.1-190) and the New Mexico department of transportation and other applicable shipping requirements;

(iv) reusable or recyclable containers or other non-disposable materials, if they are cleaned and disinfected by a method approved by the secretary pursuant to NMSA 1978 74-9-3 P, or if there has been no direct contact between the surface of the container and materials identified as "infectious waste;"

(v) soiled diapers that do not contain materials identified as infectious waste;
(vi) body excretions such as feces and secretions such as nasal discharges, saliva, sputum, sweat, tears, urine, and vomitus unless visibly contaminated with blood or waste from a person or animal as described in Subparagraph (e) of Paragraph (5) of Subsection I of 20.9.2.7 NMAC; or

(vii) used or unused syringes that have not come into contact with human blood or other bodily fluids or infectious agents and do not have a needle attached.

J. Terms starting with the letter 'J'. [RESERVED]

K. Terms starting with the letter 'K'. [RESERVED]

L. Terms starting with the letter 'L' are defined as follows.

(1) "Landfill" means a solid waste facility that receives solid waste for disposal and includes the following categories and classifications:

(a) "category 1 landfill" means a landfill that closed between April 11, 1974 and May 14, 1989;
(b) "category 2 landfill" means a landfill that stopped receiving waste between May 14, 1989, and October 9, 1993

(c) "category 3 landfill" means a landfill that began operations before October 9, 1993 and continued to operate after October 9, 1993;

(d) "category 4 landfill" means a landfill that began operations after October 9, 1993;

(e) "category 5 landfill" means a landfill that began operations after the effective date of these regulations;

(f) "municipal landfill";

(g) "construction and demolition landfill";

(h) "special waste landfill"; and

(i) "monofill."

(2) "Lateral expansion" means a horizontal expansion of the permitted waste boundaries of a landfill.

(3) "Leachate" means the liquid that has passed through, or emerged from solid waste and contains soluble, suspended, or miscible materials removed from that solid waste.

(4) "Lift" means an accumulation of solid waste which is compacted into a cell and over which compacted cover is placed.

(5) "Liner" means a continuous layer constructed of natural or man-made materials beneath and on the sides of a surface impoundment, landfill, or landfill cell that restricts the downward and lateral movement of solid waste, gases or leachate.

(6) "Liquid waste" means any waste material that is determined to contain free liquids, defined by the Paint Filter Liquids Test, described in "Test Methods for Evaluating Solid Waste" referenced in Paragraph (5) of Subsection C of 20.9.8.11 NMAC.

(7) "Lithified earth material" means all rock, including metamorphic, igneous, and sedimentary.

(8) "Locked facility" means any solid waste facility which has permanently stopped receiving solid waste, but has not yet met the requirements of 20.9.6 NMAC.

(9) "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25 degrees C and atmospheric pressure.

M. Terms starting with the letter 'M' are defined as follows.

(1) "Manure" means an agricultural waste composed of excreta of animals, residual bedding materials, or other materials that have been used for sanitary or feeding purposes for such animals.

(2) "Maximum contaminant level" (MCL) means, the level that has been promulgated under Section 1412 of the Safe Drinking Water Act (42 U.S.C. Sections 300f, et seq.) at 40 CFR Part 141.

(3) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration as depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

(4) "Modify" means:

(a) to change material terms or any conditions of a permit, including:

(i) types of solid waste included in the permit;

(ii) except as provided in Items (v) and (vi) of Subparagraph (b) of Paragraph (4) of this subsection, to change pollution control systems or water, soil, or gas monitoring programs from those permitted;

(iii) any change in the fundamental design or method of operation of a solid waste facility from that permitted;

(iv) any lateral or vertical expansion beyond permitted waste boundaries;

- (v) any change in the facility boundary; or
- (vi) any change in the approved process or method for the treatment of infectious waste;

but

(b) "modify" does not include:

- (i) routine maintenance, repair, or replacement;
- (ii) an increase in the disposal rate or process rate, if such increase does not exceed the design capacity of the solid waste facility;
- (iii) a change in the hours of operation, unless such hours are specified in a permit condition;

- (iv) a change in the operating plan that is not the subject of a permit condition;
- (v) substitution, addition, or elimination of a construction material or operational process

that provides equivalent or greater environmental protection than the permitted design or process, if specifically approved in writing by the secretary under 20.9.2.13 NMAC;

(vi) installation of a gas collection and control system required by 40 CFR Part 60, Subparts Cc and WWW or 20.9.4.16 NMAC and 20.9.5.9 NMAC;

(vii) a permit transfer approved pursuant to 20.9.3.23 NMAC;

(viii) any approval granted under the provisions of 20.9.2.13;

(ix) temporary changes allowed by the secretary under Subsection C of 20.9.5.8 NMAC when there is an imminent danger to public health, welfare, or the environment;

(x) changes to comply with an order of the secretary approving or withdrawing approval of an infectious waste treatment method under Paragraph (4) of Subsection F of 20.9.8.13 NMAC and Subsection G of 20.9.8.13 NMAC;

(xi) changes to implement a remedy selected by the secretary under 20.9.9.16 NMAC;

(xii) changes to implement interim measures ordered by the secretary under Subsection F of 20.9.9.15 NMAC; or

(xiii) addition of a type of solid waste (except for a special waste) if the type is within the definition of construction and demolition debris, and there will be no adverse effect on health and the environment, unless the permit or 20.9.2 - 20.9.10 NMAC specifically excludes the type of waste.

(5) "Monofill" means a landfill or cell that receives only scrap tires or only asbestos waste.

(6) "Mulch" means a protective covering spread and left upon the ground to reduce evaporation, maintain even soil temperature, prevent erosion, or control weeds.

(7) "Municipal landfill" means a discrete area of land or an excavation that receives municipal solid waste and that is not a land application unit, surface impoundment, injection well or waste pile as these terms are defined in 40 CFR 257.2; "municipal landfill" may include a landfill that is designed to receive other types of RCRA Subtitle D waste such as construction and demolition debris, conditionally exempt small quantity generator waste, industrial solid waste, and special wastes as defined in Paragraph (13) of Subsection S of this section.

(8) "Municipal solid waste" means household solid waste, commercial solid waste, and industrial solid waste or petroleum contaminated soils that are not a special waste.

N. Terms starting with the letter 'N'. [RESERVED]

O. Terms starting with the letter 'O' are defined as follows.

(1) "Open burning" means the combustion of solid waste without:

- (a) control of combustion air to maintain adequate temperature for efficient combustion;
- (b) containment of the combustion reaction in an enclosed device to provide sufficient

residence time and mixing for complete combustion; and

(c) control of the emission of the combustion products.

(2) "Operator" means the person(s) responsible for the overall operation of all or any portion of a solid waste facility.

(3) "Owner" means the person(s) who owns all or part of a solid waste facility.

P. Terms starting with the letter 'P' are defined as follows.

(1) "Permitted waste boundary" means the outside boundary of the proposed cells over the expected life of a landfill as specified in the permit or registration.

(2) "Person" means any individual, partnership, company, corporation, firm, association, trust, estate, state or federal agency, government instrumentality or agency, institution, county, city, town, village, or municipal authority, or other legal entity however organized.

(3) "Petroleum waste" means those liquids and sludges that are accumulated as a result of exploration or production activities regulated under the New Mexico Oil and Gas Act.

(4) "Poor foundation conditions" means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a landfill.

(5) "Practical quantitation limit" or "PQL" means the lowest concentration of analytes in ground waters that can be reliably determined within specified limits of precision and accuracy under routine laboratory operating conditions.

(6) "Processing" means techniques to change the physical, chemical, biological, or pathological character or composition of solid waste, but does not include composting, transformation, grinding or chipping of yard refuse, compaction, or incineration.

(7) "Processing facility" means a facility where processing of solid waste occurs.

(8) "Putrescible" means organic material subject to decomposition by microorganisms.

(9) "Pyrolysis" means the process whereby solid waste is thermally decomposed in an oxygen-deficient atmosphere.

Q. Terms starting with the letter 'Q' are defined as follows. "Quasi-judicial proceeding" means a public hearing held after notice reasonably calculated to reach people interested in the subject matter of the proceeding that affords all people with a significant interest in the proceeding (parties) an opportunity to present their views as well as to cross-examine other parties. Other interested individuals also have an opportunity to state their views. Testimony is taken under oath or affirmation and is included in a record of proceedings. The planning and zoning commission or the governing body of the local government is required to make its decision based upon the testimony and evidence contained in the record of the hearing. The proceeding must consider whether the facility at issue would result in a disproportionate effect on the health or environment of a particular socioeconomic group or in an unreasonable concentration of regulated facilities.

R. Terms starting with the letter 'R' are defined as follows.

(1) "Radioactive waste" means:

(a) high-level radioactive waste or spent nuclear fuel as defined in Section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12));

(b) transuranic waste as defined in Section 11(ee) of the Atomic Energy Act of 1954, 42 U.S.C. 2014(ee);

(c) waste source material as defined in Section 11(z) of the Atomic Energy Act of 1954, 42 U.S.C. 2014(z);

(d) waste special nuclear material as defined in Section 11(aa) of the Atomic Energy Act of 1954, 42 U.S.C. 2014(aa);

(e) waste by-product material as defined in Section 11e of the Atomic Energy Act of 1954, 42 U.S.C. 2014(e);

(f) material the nuclear regulatory commission, consistent with existing law, classifies as low level radioactive waste; and

(g) waste radioactive material that requires licensure in accordance with the New Mexico radiation protection regulations, 20.3.3 NMAC.

(2) "RCRA" means the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq., as amended.

(3) "Recyclable materials" means materials that would otherwise become solid waste if not recycled and that can be collected, separated, processed, reclaimed or composted and placed in use in the form of raw materials, products or densified-refuse-derived fuels.

(4) "Recycling" means any process by which recyclable materials are collected, separated, processed, reclaimed or composted and reused or returned to use in the form of raw materials or products.

(5) "Recycling facility" means a facility that collects, transfers, or processes recyclable materials for recycling, but does not include a composting facility.

(6) "Regulated facility" means a facility that is:

(a) a solid waste facility permitted to construct, operate, or close pursuant to the Solid Waste Act, NMSA 1978, Sections 74-9-1, et. seq. and 20.9.2 - 20.9.10 NMAC, or pursuant to the laws or regulations of a neighboring state;

(b) a hazardous waste facility authorized to operate pursuant to interim status or permitted to construct, operate, or close pursuant to the Hazardous Waste Act, NMSA 1978, Sections 74-4-1, et. seq. and the New Mexico hazardous waste management regulations, 20.4.1 NMAC, or pursuant to the laws or regulations of a neighboring state, including all units or areas subject to corrective action requirements under the facility permit or order;

(c) a site listed on the National Priorities List pursuant 42 U.S.C. 9605 or a federal facility required to take response or remedial action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, et. seq.;

(d) a facility that has, or is required to obtain a Title V air quality permit, 42 U.S.C. 7661 et seq. and 20.7.2.70 NMAC.

(7) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a solid waste facility.

(8) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a solid waste facility.

S. Terms starting with the letter 'S' are defined as follows.

(1) "Saturated zone" means that part of the earth's crust in which all voids are filled with water.

(2) "Scavenging" means the uncontrolled removal of solid waste from a solid waste facility.

(3) "Secretary" means the secretary of the New Mexico environment department or her or his designee.

(4) "Seismic impact zone" means an area with a 10 percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in 250 years.

(5) "Septage" means the residual wastes and water periodically pumped from a liquid waste treatment unit or from a holding tank, as defined in 20.7.3.7 NMAC.

(6) "Sewage sludge" means solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes domestic septage, scum or solids removed in primary, secondary, or advanced wastewater treatment processes, and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

(7) "Sludge" means any solid, semi-solid, or liquid waste generated by a municipal, commercial, or industrial waste water treatment plant, water supply treatment plant, or air pollution control facility, but does not include treated effluent from a waste water treatment plant.

(8) "Small animal crematoria" means a multi-chambered facility designed for the purpose of cremating dead animals and animal parts with a charging capacity of less than five tons per day.

(9) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, construction, demolition and agricultural operations and from community activities, but does not include:

(a) drilling fluids, produced waters and other non-domestic wastes associated with the exploration, development or production, transportation, storage, treatment or refinement of crude oil, natural gas, carbon dioxide gas or geothermal energy, except for waste that has been authorized for disposal at a solid waste facility under provisions of 19.15.9.712 NMAC and has been delivered to a solid waste facility permitted to receive such waste;

(b) fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels and wastes produced in conjunction with the combustion of fossil fuels that are necessarily associated with the production of energy and that traditionally have been and actually are mixed with and are disposed of or treated at the same time with fly ash, bottom ash, boiler slag or flue gas emission control wastes from coal combustion;

(c) waste from the extraction, beneficiation and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore, coal, copper, molybdenum and other ores and minerals;

(d) agricultural waste, including, but not limited to, manures and crop residues converted to beneficial value added products such as energy products or building materials or returned to the soil as fertilizer or soil conditioner;

(e) cement kiln dust waste;

(f) sand and gravel;

(g) solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1342;

(h) source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, 42 U.S.C. Sections 2011, et seq., as amended;

(i) densified-refuse-derived fuel;

(j) any material regulated by Subtitle C or Subtitle I of RCRA (except petroleum contaminated soils);

(k) substances other than asbestos regulated by the Federal Toxic Substances Control Act, 15 U.S.C. Sections 2601, et seq., as amended;

(l) radioactive waste;

(m) whole or processed scrap tires that are stored or used in compliance with provisions of the New Mexico Tire Recycling rule, 20.9.20 NMAC, and applicable law;

(n) any recyclable material in transit or temporary storage;

(o) compost; or

(p) materials, other than those that are regulated as hazardous, toxic or special waste, that are retained as evidence in a criminal proceeding and that are required to be destroyed or managed in accordance with a court or administrative order.

(10) "Solid waste disposal area" means an area where solid waste has been disposed and includes all landfills, and areas where more than 120 cubic yards of solid waste have been disposed but does not include landfills and areas identified as solid waste management units in a hazardous waste facility permit or administrative order.

(11) "Solid waste facility" means any public or private system, facility, location, improvements on the land, structures or other appurtenances or methods used for processing, transformation, or disposal of solid waste, including landfill disposal facilities, transfer stations, resource recovery facilities, incinerators and other similar facilities not specified. Solid waste facility does not include:

(a) equipment or processing methods approved by order of the secretary to render infectious waste generated on site non-infectious;

(b) a facility that is permitted pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, Sections 74-4-1 through 74-4-14, as amended;

(c) a facility fueled by a densified-refuse-derived fuel as long as that facility accepts no other solid waste;

(d) a recycling facility that accepts only source separated recyclable materials;

(e) that portion of a facility that refurbishes or re-sells used clothing, furniture or appliances for reuse;

(f) commercial scrap metal or auto salvage operations;

(g) a composting facility that accepts only source separated compostable materials;

(h) manufacturing facilities that use recyclable material in production of a new product;

(i) facilities designed and operated to dispose of sewage sludge on land, such as land application or land injection;

(j) landfarming of petroleum contaminated soils unless within a landfill, where "landfarming" is the remediation of petroleum contaminated soils on the land surface;

(k) any facility or location where clean fill material is accepted, stockpiled, or used, if the facility or location would not otherwise be classified as a solid waste facility;

(l) collection centers;

(m) a facility that uses tire-derived fuel for the purpose of extracting its stored energy; or

(n) air curtain incinerators.

(12) "Source separation" means the separation of recyclable or compostable materials from solid waste at the point of generation by the generator.

(13) "Special waste" means solid waste that has unique handling, transportation, or disposal requirements to assure protection of the environment and the public health, welfare and safety, including:

(a) treated formerly characteristic hazardous wastes (TFCH);

(b) packing house and killing plant offal;

(c) regulated asbestos waste;

(d) ash;

(e) infectious waste;

(f) sludge, except; sludge that is land applied under 40 CFR Part 503 as intermediate or final cover at a landfill and meets the requirements of Subpart B of 40 CFR Part 503;

(g) industrial solid waste that, unless specially handled or disposed, may harm the environment or endanger the public health or safety;

(h) spill of a chemical substance or commercial product that, unless specially handled or disposed, may harm the environment or endanger the public health or safety; and

(i) petroleum contaminated soils, that have a sum of benzene, toluene, ethylbenzene, and xylene isomer concentrations of greater than 50 mg/kg, or benzene individually greater than 10 mg/kg, or a total petroleum hydrocarbon concentration of greater than 100 mg/kg.

(14) "Special waste landfill" means a landfill that receives one or more types of special wastes as defined in Paragraph 13 of Subsection S of this Section.

(15) "Stabilized" means, for composting, that the biological decomposition of the wastes has ceased or diminished to a level such that decomposition no longer poses a health, odor, or safety hazard and does not violate any provisions of these or other applicable regulations.

(16) "Storage" means the accumulation of solid waste for the purpose of transfer, processing or disposal;

(17) "Structural components" means liners, leachate collection systems, final covers, run-on/run-off systems, gas collection and control systems, and any other component used in the construction or operation of the landfill that is necessary for protection of public health, welfare and the environment.

T. Terms starting with the letter 'T' are defined as follows.

(1) "Tire-derived fuel" means a fuel product derived from scrap tires that is suitable for efficient combustion.

(2) "Transfer" means the handling and storage of solid waste for reshipment, resale, or disposal, or for waste reduction or resource conservation.

(3) "Transfer station" means a facility managed for the collection and accumulation of solid waste with an operational rate of greater than 240 cubic yards per day monthly average.

(4) "Transformation facility" means a facility used for the transformation of solid waste, but does not include air curtain incinerators or small animal crematoria.

U. Terms starting with the letter 'U' are defined as follows. "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Examples of unstable areas are poor foundation conditions, areas susceptible to mass movements, and Karst terrain areas where Karst topography, with its characteristic surface and subterranean features, is developed as a result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in Karst terrains include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

V. Terms starting with the letter 'V' are defined as follows.

(1) "Vadose zone" means earth material below the land surface and above ground water, or in between bodies of ground water.

(2) "Vertical expansion" means an upward or downward expansion of the permitted waste boundaries of a landfill.

(3) "Vulnerable area" means an area within a four mile radius from the geographic center of a facility or proposed facility, and:

(a) has a percentage of economically stressed households greater than the state percentage based on the most recent actual census bureau data within any square mile within the four mile radius surrounding the facility or proposed facility; and

(b) where the New Mexico portion has a population of 50 people or more within any square mile within the four mile radius; and

(c) has within it 3 or more regulated facilities not including the applicant's facility.

W. Terms starting with the letter 'W' are defined as follows.

(1) "Waste management unit boundary" means a vertical surface located at the hydraulically down gradient limit of the landfill. This vertical surface extends down into the uppermost aquifer.

(2) "Watercourse" means any river, creek, arroyo, canyon, draw, or wash, or any other channel having definite banks and beds, with visible evidence of continuous or intermittent flow of water.

(3) "Water table" means that surface in unconfined ground water at which the pressure is atmospheric; defined by the levels at which water stands in wells that penetrate the water just far enough to hold standing water.

(4) "Well" means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension.

(5) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(6) "White goods" means large household appliances (such as ovens, washers, dryers, freezers, water heaters and refrigerators) that have been discarded for disposal or recycling.

X. Terms starting with the letter 'X'. [RESERVED]

Y. Terms starting with the letter 'Y'. [RESERVED]

Z. Terms starting with the letter 'Z'. [RESERVED]

[20.9.2.7 NMAC - Rp, 20 NMAC 9.1.I.105, 08/02/07]

20.9.2.8 GENERAL REQUIREMENTS.

A. Any person who hauls solid waste or recyclable materials or provides solid waste or recyclable collection services shall only haul to a permitted or registered facility, and shall use vehicles that have covers or enclosures to prevent the solid waste or recyclable materials from blowing from the vehicle during collection and transportation, and that are cleaned at such times and in such manner as to prevent offensive odors and unsightliness, and that use devices to retain or control free liquids.

B. Any person who generates solid waste shall store the solid waste in suitable storage containers for the solid waste, unless the solid waste is construction and demolition debris, yard refuse, or white goods. Storage containers shall prevent insect and rodent harborage and shall be kept covered and reasonably clean. Outside containers shall also prevent blowing litter, be leak-proof and shall:

(1) if manually handled by a commercial or municipal hauler, be of sufficient size and weight bearing capacity to be safely handled without presenting undue risk of harm to human health or the environment, with safe, usable handles, or shall be bags that are not filled to an extent that they rupture with normal handling; or

(2) if mechanically handled, be compatible with collection vehicles.

C. Any person who stores solid waste, recyclable materials, yard refuse or white goods shall store such materials in a manner that prevents blowing litter, insect and rodent harborage and does not create a public nuisance or public health hazard.

D. Any person who generates, stores, processes, transports or disposes of solid waste shall do so in a manner that does not create a public nuisance.

E. All notifications to the department required by 20.9.2 - 20.9.10 NMAC shall be directed to the bureau chief of the solid waste bureau.

F. Soil, water, and special waste testing methods used to demonstrate compliance with the Solid Waste Act or 20.9.2 - 20.9.10 NMAC shall conform with permit requirements or otherwise be specifically approved by the department prior to use.

G. Any person who excavates a closed cell or solid waste disposal area in response to an emergency situation shall notify the department of such excavation within 48 hours.

H. Any person who accepts, stockpiles, or uses clean fill material shall:

(1) manage the material in a manner that does not create a public nuisance or potential safety hazard, or adversely impact the environment;

(2) not place the material in a watercourse or wetland unless appropriate permits are obtained; and

(3) cover the material with two feet of clean earth within 30 days after being deposited, unless the clean fill material is clean soil, or unless a longer period or alternative material or depth is specifically approved by the department.

[20.9.2.8 NMAC - Rp, 20 NMAC 9.1.I.106, 08/02/07]

20.9.2.9 REQUIREMENTS FOR PUBLIC ENTITIES.

A. Any municipality with a population greater than 3,000 shall provide solid waste collection services at least once weekly or as often as otherwise necessary to comply with the requirements of 20.9.2 - 20.9.10 NMAC.

B. The state, and each municipality, county, or cooperative association shall provide a means to dispose of solid waste generated within its respective jurisdiction that has been approved by the secretary and complies with 20.9.2 - 20.9.10 NMAC.

C. The state, municipality, county, or cooperative association may contract with any person for the collection, transportation, recycling, or disposal of solid waste. Contracting for the collection, transportation, recycling, or disposal of solid waste does not relieve the state, municipality, county or cooperative association of the responsibility for compliance with 20.9.2 - 20.9.10 NMAC.

[20.9.2.9 NMAC - Rp, 20 NMAC 9.1.I.106, 08/02/07]

20.9.2.10 PROHIBITED ACTS.

A. In addition to the prohibited acts identified in Section 74-9-31(A) and Section 74-13-4(J), and subject to the exemptions in Section 74-9-31(B) of the Solid Waste Act, no person shall:

- (1) store, process, or dispose of solid waste except by means approved by the secretary and in accordance with board regulations;
- (2) dispose of any solid waste in this state in a manner that the person knows or should know will harm the environment or endangers the public health, welfare or safety;
- (3) dispose of any solid waste in a place other than a solid waste facility that meets the requirements of 20.9.2 - 20.9.10 NMAC;
- (4) dispose of any solid waste, including special waste, in a solid waste facility when that facility's permit does not authorize the disposal of the particular type of solid waste in that facility;
- (5) construct, operate, modify or close a solid waste facility unless the facility has approval under 20.9.2 - 20.9.10 NMAC from the department for the described action;
- (6) modify permit conditions or modify a solid waste facility unless the facility has applied for and received permission from the secretary for the modification pursuant to 20.1.4 NMAC Permit Procedures - Environment Department;
- (7) dispose of petroleum waste, sludge which that does not meet the analytical criteria of 20.9.8.16 NMAC, septage, domestic sewage, or treated domestic sewage at any solid waste facility;
- (8) dispose of hazardous wastes which are subject to regulation under Subtitle C of the Resource Conservation and Recovery Act, 42 USC 6901 et seq, at any solid waste facility, unless the facility is permitted for the disposal of hazardous wastes;
- (9) dispose of liquid waste at any landfill unless:
 - (a) the liquid waste is household waste other than septic waste and is in a small container similar in size to that normally found in household waste and the container is designed to hold liquids for use other than storage;
 - (b) the liquid waste is leachate or landfill gas condensate generated on-site which is recirculated in accordance with applicable laws and regulations; or
 - (c) the liquid waste is managed in accordance with an approval issued by the secretary;
 - (d) the use of uncontaminated water for dust control or to improve vegetation on a final or intermediate cover is not considered disposal;
- (10) process, recycle, transfer, transform, or dispose of radioactive waste in a solid waste facility;
- (11) dispose of lead-acid batteries at any landfill or incinerator;
- (12) dispose of any infectious waste in a landfill;
- (13) dispose of any material regulated under the Federal Toxic Substances Control Act, 15 U.S.C. Sections 2601-2692, except in a solid waste facility, registered facility or operation authorized to accept such waste;
- (14) allow open burning at a solid waste facility;
- (15) excavate or trench a closed cell or solid waste disposal area without written approval by the department and a determination whether an excavation plan will be required, unless in response to an emergency situation; excavation and trenching do not include excavations or trenches of less than 120 cubic yards or exploratory borings for the purpose of waste characterization, site investigation or mapping, nor does it include removal of waste for routine maintenance on gas collection and control and venting systems;
- (16) violate a term or condition of a closure and post-closure care plan, a registration, or conditions contained in an approval of the department under 20.9.2.17 NMAC;
- (17) allow liquid extraction from sludge at a solid waste facility unless authorized by permit; or
- (18) process, transfer, store, dispose, or allow the disposal of special waste at a collection center.
- (19) dispose at a solid waste facility any type of non-hazardous material that is excluded from the definition of solid waste, unless permitted to do so, except that a landfill may dispose of non-hazardous excluded waste listed under the following subparagraphs of Paragraph (9) of Subsection S of 20.9.2.7 NMAC unless prohibited from doing so in its permit; Subparagraphs (d) (agricultural), (f) (sand and gravel), (i) (densified refuse derived fuel), (m) (scrap tires), (n) (recyclable materials), (o) (compost), and (p) (materials, other than those that are regulated as hazardous, toxic or special waste, that are retained as evidence in a criminal proceeding and that are required to be destroyed or managed in accordance with a court or administrative order, and ash derived from such materials).

B. Any person who generates, stores, processes, transports or disposes of solid waste shall take reasonable measures to determine the characteristics of the waste being handled to assure that no prohibited act is being performed.

C. A Subtitle C facility authorized to accept special waste for disposal may accept solid waste if allowed under its permit.
[20.9.2.10 NMAC - Rp, 20 NMAC 9.1.I.107, 08/02/07]

20.9.2.11 EXCEPTIONS. 20.9.2 - 20-9-10 NMAC does not apply to:

A. disposal of solid waste by a homeowner, residential lessee or tenant, or agricultural enterprise, on the property she or he owns, rents or leases, if the waste was generated on that property, and the disposal by the homeowner, residential lessee or tenant, or agricultural enterprise of the solid waste does not harm the environment or endanger the public health, welfare or safety and does not violate any provision of 20.9.2 - 20.9.10 NMAC;

B. on-site disposal of domestic solid waste generated by a person residing and occupying that same property only if that property is located in a place where it is not feasible, as determined by the department, to dispose of the solid waste in a permitted solid waste facility and the disposal of the solid waste does not harm the environment or endanger the public health, welfare or safety and does not violate any provision of 20.9.2 - 20.9.10 NMAC; or

C. disposal of construction and demolition debris or yard refuse by a person in possession of property if the material was generated on the property and if the disposal of the solid waste does not violate any provision of 20.9.2 - 20.9.10 NMAC.

[20.9.2.11 NMAC - Rp, 20 NMAC 9.1.I.108, 08/02/07]

20.9.2.12 SOLID WASTE FACILITIES; ENTRY BY DEPARTMENT; AVAILABILITY OF RECORDS TO DEPARTMENT. The secretary or any authorized representative, employee or agent of the department may enter, inspect, monitor, sample, or obtain records of a solid waste facility, or commercial hauler as provided in Section 74-9-33 of the Solid Waste Act.

[20.9.2.12 NMAC - Rp, 20 NMAC 9.1.I.111, 08/02/07]

[(Facilities, entry by the department and availability of records was formerly in 20 NMAC 9.1.I.111; recordkeeping was moved to 20.9.5.16 NMAC)]

20.9.2.13 SPECIFIC APPROVALS.

A. Where a specific approval or authorization for an alternative time period, test method or other requirement is allowed under 20.9.2 - 20.9.10 NMAC, the following procedures apply.

(1) The owner or operator shall submit a written request to the department seeking the specific approval or authorization and indicate the regulatory provision allowing the approval or authorization. If the requested approval is for a background ground water quality determination, the request shall include all sample results, approved practical quantitation limits, and a detailed explanation supporting the requested levels. If the request is for an alternative time period, test method or other requirement under 20.9.2 - 20.9.10 NMAC, the request shall explain why the proposed alternative is at least as protective of the public health, safety and welfare as the requirement for which an alternative is requested. In addition, the request shall provide any technical information required in the section allowing the specific approval. The department may request further information prior to acting on the request.

(2) The department shall approve, approve with terms and conditions, or deny the request in writing.

(3) Any affected person who is dissatisfied with action taken by the department on a request for a specific approval or authorization may appeal to the secretary. The request must be made in writing to the secretary within fifteen (15) days after notice of the department's action has been issued. Unless an appeal is received by the secretary within fifteen (15) days after notice to the applicant of the department's action the decision of the department shall be final.

B. If an appeal is received within the fifteen (15) day time limit, the secretary shall hold a hearing within fifteen (15) days after receipt of the request, unless extended for good cause. The secretary shall notify the person who requested the hearing of the date, time and place of the hearing by certified mail.

C. In the appeal hearing, the burden of proof is on the person who requested the hearing.

D. Appeal hearings shall be held at a place designated by the secretary. The secretary may designate a person to conduct the hearing and make a final decision or make recommendations for a final decision. The secretary's hearing notice shall indicate who will conduct the hearing and make the final decision.

E. Upon request the hearing shall be recorded or transcribed by a court reporter. The person who requests the recording or transcription shall pay recording or transcription costs. A request for recording or transcription shall be made at least 5 working days prior to the hearing.

F. In appeal hearings, the rules governing civil procedure and evidence in district court do not apply. Hearings shall be conducted so that all relevant views, arguments and testimony are amply and fairly presented without undue repetition. The secretary shall allow department staff and the hearing requestor to call and examine witnesses, to submit written and oral evidence and arguments, to introduce exhibits, and to cross-examine persons who testify. All testimony shall be taken under oath. At the end of the hearing, the secretary or his designee shall decide and announce if the hearing record will remain open and for how long and for what reason it will be left open.

G. Based upon the evidence presented at the hearing, the secretary shall sustain, modify or reverse the action of the department. The secretary's decision shall be by written order within fifteen (15) days following the close of the hearing record. The decision shall state the reasons therefore and shall be sent by certified mail to the hearing requestor and any other affected person who requests notice. Appeals from the secretary's final decision are by Rule 1-075 NMRA.

[20.9.2.13 NMAC - N, 08/02/07]

20.9.2.14 WAIVERS FOR SMALL MUNICIPAL LANDFILLS.

A. Owners or operators of new or existing municipal landfills that dispose of less than 20 tons of solid waste daily, based on an annual average, and do not accept any special waste other than regulated asbestos, may apply in the permit application or for a specific approval for a waiver from the design requirements of 20.9.4.13 - 20.9.4.15 NMAC and ground water monitoring requirements in 20.9.9.8 - 20.9.9.11 NMAC. To obtain a waiver, the owner or operator must demonstrate that:

(1) the groundwater protection standards for constituents listed or referenced in 20.9.9.20 NMAC will not be exceeded in the uppermost aquifer, and, for an existing landfill, there is no groundwater contamination attributable to the landfill;

(2) the community has no practicable waste management alternative; and

(3) the landfill is located in an area that receives, on average, 25 inches or less annual precipitation.

B. If a waiver is granted under this section, then the secretary may require the owner or operator to submit a ground water monitoring system plan and ground water monitoring plan for approval, and to conduct periodic ground water and vadose zone monitoring, at any time during the active life or post-closure period to demonstrate the landfill is not contaminating ground water. The secretary may also require a ground water monitoring system plan and a ground water monitoring plan to be submitted in the application. If ground water contamination from the landfill is detected after a waiver has been granted under this section, the waiver is revoked and the requirements of 20.9.4.13 - 20.9.4.15 NMAC and 20.9.9.8 - 20.9.9.11 NMAC shall thereafter apply.

[20.9.2.14 NMAC - Rp, 20 NMAC 9.1.I.110, 08/02/07]

20.9.2.15 VARIANCES.

A. Any person seeking a variance from any requirements of 20.9.2 - 20.9.10 NMAC shall do so in accordance with Permit Procedures - Environment Department, 20.1.4 NMAC.

B. Variance petitions shall be accompanied by proof of public notice as in accordance with the Solid Waste Act and with Permit Procedures - Environment Department, 20.1.4 NMAC. The public notice shall:

(1) contain the name of the owner and operator of the solid waste facility;

(2) address and telephone number at which interested persons may obtain further information;

(3) briefly describe for what the variance is being sought and the proposed alternative;

(4) state the time period for which the variance is sought;

(5) be provided by certified mail to the owners of record, as shown by the most recent property tax schedule and tax exempt entities of record, of all properties:

(a) within one hundred feet of the property on which the facility is located if the facility is in a class A or H class county or a municipality with a population of more than 2,500 persons; or

(b) within one-half mile of the property on which the facility is located in a county or municipality other than those specified in Subparagraph (a) of Paragraph (5) of Subsection B of this section;

(6) be provided by certified mail to all municipalities and counties within a 10 mile radius of the property on which the facility is located;

(7) be published once in a newspaper of general circulation in each county in which the property on which the facility is located; this notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice and, and when appropriate shall be printed in both English and Spanish; and

(8) be posted in at least four publicly accessible and conspicuous places, including the existing facility entrance on the property on which the facility is located.

C. The secretary shall deny the variance petition unless the petitioner establishes evidence that:

(1) application of the regulation would result in an arbitrary and unreasonable taking of the applicant's property or would impose an undue economic burden upon any lawful business, occupation or activity; and

(2) granting the variance will not result in any condition injurious to public health, safety or welfare or the environment.

D. No variance shall be granted until the secretary has considered the relative interests of the applicant, other owners of property likely to be affected, and the general public.

E. Variance or renewal of a variance shall be granted for time periods and under conditions consistent with reasons for the variance but within the following limitations:

(1) if the variance is granted on the grounds that there are no practicable means known or available for the adequate prevention of degradation of the environment or the risk to the public health, safety or welfare, it shall continue only until the necessary means for the prevention of the degradation or risk become known and available;

(2) if the variance is granted on the grounds that it is justified to relieve or prevent hardship of a kind other than that provided for in Paragraph (1) of this subsection, it shall not be granted for more than one year.

F. Any variance granted by the secretary shall be reviewed for consistency with existing federal regulations.

[20.9.2.15 NMAC - Rp, 20 NMAC 9.1.X.1001, 08/02/07]

20.9.2.16 EXEMPTIONS.

A. Any person seeking an exemption pursuant to NMSA 1978, Section 74-9-32 shall do so by filing a written petition with the board, and serving a copy of the petition to the secretary. The petition shall be reviewed in accordance with Adjudicatory Procedures - Environmental Improvement Board, 20.1.2 NMAC.

B. A petition for exemption shall:

(1) state each provision of the Solid Waste Act or 20.9.2 - 20.9.10 NMAC from which exemption is sought;

(2) cite, and have attached as exhibits, each provision of applicable federal or state law the petitioner alleges that imposes as stringent or more stringent requirements than those imposed by the Solid Waste Act or 20.9.2 - 20.9.10 NMAC;

(3) be signed by the petitioner or the petitioner's representative; and

(4) contain proof of public notice in accordance with the Solid Waste Act's requirements for applications for solid waste facility permits.

C. Each petition filed with the board for an exemption shall include proof that the applicant has provided notice of the filing of the petition to the public and other affected individuals and entities. The notice shall be:

(1) provided by certified mail to the owners of record, as shown by the most recent property tax schedule and tax exempt entities of record, of all properties:

(a) within one hundred feet of the property on which the facility is located or proposed to be located if the facility is or will be in a class A or H county or a municipality with a population of more than 2,500 persons; or

(b) within one-half mile of the property on which the facility is located or proposed to be located if the facility is or will be in a county or municipality other than those specified in Subparagraph (a) of this paragraph;

(2) provided by certified mail to all municipalities, counties, and tribal governments in which the facility is or will be located and to all municipalities, counties, and tribal governments within a ten mile radius of the property on which the facility is proposed to be constructed, operated or closed;

(3) published once in a newspaper of general circulation in each county in which the property in which the facility is proposed to be constructed, operated or closed is located; this notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice and, when appropriate, shall be printed in both English and Spanish; and

(4) posted in at least four publicly accessible and conspicuous places, including the proposed or existing facility entrance on the property on which the facility is or is proposed to be located.

[20.9.2.16 NMAC - Rp, 20 NMAC 9.1.X.1002, 08/02/07]

20.9.2.17 SEVERABILITY. If any provision or application of 20.9.2 - 20.9.10 NMAC is held invalid by a court of competent jurisdiction, the remainder, or its application to other situations or persons, shall not be affected.
[20.9.2.17 NMAC - Rp, 20 NMAC 9.1.X.1003, 08/02/07]

20.9.2.18 COMPLIANCE WITH OTHER REGULATIONS. Compliance with 20.9.2 - 20.9.10 NMAC does not relieve a person of the obligation to comply with other applicable local, state and federal laws.
[20.9.2.18 NMAC - Rp, 20 NMAC 9.1.X.1004, 08/02/07]

20.9.2.19 SAVINGS CLAUSE. 20.9.2 - 20.9.10 NMAC does not apply to pending litigation or affect violations of prior, effective regulations, permits, registrations, closure and post-closure care plans.
[20.9.2.19 NMAC - Rp, 20 NMAC 9.1.X.1005, 08/02/07]

20.9.2.20 INTERPRETATION. 20.9.2 - 20.9.10 NMAC shall be liberally construed to carry out its purpose.
[20.9.2.20 NMAC - Rp, 20 NMAC 9.1.X.1006, 08/02/07]

20.9.2.21 CONTINUING EFFECT OF PRIOR ACTIONS; EXCEPTIONS.

A. All permits and certificates of registration issued, and all closure and post-closure care plans approved, pursuant to previous regulations shall remain in effect until they expire or they are suspended, revoked, or otherwise modified.

B. Landfills that were in operation prior to May 14, 1989 may continue to operate without a permit until final action is taken upon a permit application or closure plan. Such landfills are not allowed to construct or operate a lateral expansion until permitted to do so.

C. If a permit application, permit renewal application, permit modification application, closure plan, or registration application has been submitted to the department prior to the effective date of this part, the relevant sections of permit application, permit renewal application, permit modification application, closure plan or registration application requirements under 20 NMAC 9.1.201 - 208, 210, 212, 213, and 501-505 shall remain in effect for that application or closure plan. However, all other requirements of 20.9.2 - 20.9.10 NMAC shall apply.
[20.9.2.21 NMAC, Rp, 20 NMAC 9.1.X.1008, 08/02/07]

20.9.2.22 DOCUMENTS. Copies of all documents cited in 20.9.2 - 20.9.10 NMAC may be viewed at the department's Solid Waste Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico.
[20.9.2.22 NMAC - Rp, 20 NMAC 9.1.X.1009, 08/02/07]

HISTORY OF 20.9.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center.

EIB 74-1, Solid Waste Management Regulations, filed 5/3/74.

EIB/SWMR-2, Solid Waste Management Regulations, filed 4/14/89.

EIB/SWMR-3, Solid Waste Management Regulations, filed 12/31/91.

EIB/SWMR-4, Solid Waste Management Regulations, filed 7/18/94.

History of Repealed Material: 20 NMAC 9.1, Solid Waste Management Regulations (filed 10/27/95) repealed 08/02/07.

Other History:

EIB/SWMR-4, Solid Waste Management Regulations (filed 7/18/94) was **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 9.1, Solid Waste Management Regulations, effective 11/30/95.

Those applicable portions of 20 NMAC 9.1, Subpart I and Subpart X, Solid Waste Management Regulations, General Provisions and Miscellaneous, (filed 10/27/95), were **renumbered, reformatted and replaced** by 20.9.2 NMAC, Solid Waste Management General Requirements, effective 08/02/07.