

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT**



**IN THE MATTER OF THE APPLICATION
OF SANDOVAL COUNTY FOR A SOLID WASTE
FACILITY PERMIT RENEWAL AND MODIFICATION
FOR SANDOVAL COUNTY LANDFILL**

No. SWB 16-10 (P)

HEARING OFFICER'S REPORT PURSUANT TO 20.1.4.500(C) NMAC

On August 3, 2016, the appointed Hearing Officer conducted a public hearing in this matter pursuant to 20.1.4.400 NMAC at the Sandoval County Commission Chambers in Bernalillo, New Mexico. Natalia Sanchez Downey appeared as counsel on behalf of Sandoval County ("Applicant"), and Mia Napolitano, Office of General Counsel, appeared as counsel on behalf of the Solid Waste Bureau ("Bureau") of the Resource Protection Division of the New Mexico Environment Department ("NMED"). Applicant seeks renewal of a solid waste facility permit for the Sandoval County Landfill ("Facility") located in Sandoval County, New Mexico.

Applicant presented the technical testimony of Dacia R. Tucholke, I. Keith Gordon, Michael J. Crepeau, Robert Sanchez, and Tommy Mora in support of the solid waste facility permit renewal. The Bureau supports renewal of the solid waste facility permit with fourteen (14) proposed conditions reasonable and necessary to protect health, the environment and public welfare. Applicant agrees to the proposed conditions as a part of the solid waste facility permit renewal. The Bureau presented the technical testimony of George Schuman, James Dyer, Erica Ortega, Joan Snider, and Auralie Ashley-Marx in support of its position. No other person entered an appearance to provide technical testimony in advance of the public hearing. No member of the public questioned the technical witnesses or provided oral comments during the public hearing.

The public hearing lasted just under five hours and the Hearing Officer conducted it in accordance with NMED's Permit Procedures found in 20.1.4 NMAC. The Hearing Officer asked clarifying questions, admitted all exhibits offered by the parties (Applicant's Exhibits 1.1-5 and the Bureau's Exhibits 1-12 including 1A and 11A) into the record proper, and closed the evidentiary record at the conclusion of the public hearing. The record proper also contains the administrative record and all documents filed with the Hearing Clerk including this report. The parties submitted joint proposed findings of fact and conclusions of law on September 1, 2016, which the Hearing Officer reviewed and largely adopted herein with minor non-substantive edits.

FINDINGS OF FACT

Procedural Background & Summary of Proposed Modification

1. Pursuant to the New Mexico Solid Waste Rules, 20.9.2 through 20.9.10 NMAC ("Rules"), and the New Mexico Solid Waste Act, NMSA 1978, §§ 74-9-1 to -43 (1990, as amended through 2011) ("Act"), Applicant submitted an application for renewal and modification of a solid waste facility permit for the Facility on April 17, 2015. Administrative Record ("AR") No. SC-5. Applicant submitted the final version of the application for renewal and modification of the solid waste facility permit for the Facility ("Application") to the Bureau on May 12, 2016. AR No. SC-19; NMED Exhibit 9, p. 4.

2. The Facility is an existing publicly owned solid waste facility owned by Sandoval County and operated by the Sandoval County Public Works Department. AR No. SC-19; NMED Exhibit 5, p. 5; NMED Exhibit 9, p. 3.

3. The Facility is by definition a solid waste facility under the Act and Rules because it is a publicly owned facility used for disposal of solid waste. NMED Exhibit 5, p. 2.

4. The Act authorizes the Cabinet Secretary of the New Mexico Environment Department (“Secretary” or “Secretary - Designate) to issue or deny permits for new and existing solid waste facilities based upon information submitted in a permit application and relevant information received during the public hearing. NMED Exhibit 9, p. 3; NMSA 1978, § 74-9-24(A) (2011).

5. The Act authorizes the Secretary to issue permits and approve modifications to existing permits for publicly-owned solid waste facilities for a maximum period of twenty (20) years, and the Department shall review each permit issued under the Rules at least every ten (10) years. NMED Exhibit 5, p. 2; NMSA 1978, § 74-9-24(G)(1) (2011).

6. The current permits (SWM-050304; SWM-050304(SP)) expire on June 17, 2025. AR. No. SC-19; NMED Exhibit 5, p. 2.

7. Applicant seeks renewal of the twenty (20) year permit and modification to accommodate a vertical and lateral expansion, and to maximize the remaining capacity. The proposed vertical expansion will increase the final grade by a maximum of 109 feet and the lateral expansion will be ten (10) acres within the existing facility boundary. The renewal includes a proposal to continue acceptance of two special wastes as defined in 20.9.2.7(S)(13) NMAC. AR No. SC-19; NMED Exhibit 5, pp. 2-3.

8. The Facility property footprint encompasses approximately 178.3 acres of land located within portions of Sections 33 and 34, Township 13 North, Range 3 East of the New Mexico Prime Meridian, Sandoval County, New Mexico. The Facility is located at 2708 Iris Road NE in Rio Rancho, New Mexico. AR No. SC-19; NMED Exhibit 5, p. 4.

9. The Facility is currently authorized to accept municipal solid waste, construction and demolition debris, clean fill, petroleum contaminated soil, sludge, brush/green waste, and

tires from surrounding communities and county collection centers. AR No. SC-19; NMED Exhibit 5, p. 19.

10. Applicant proposes the receipt of municipal solid waste including construction and demolition debris, scrap tires, green waste, and two special wastes, sludge and petroleum contaminated soils. NMED Exhibit 5, p. 3.

11. Applicant is seeking modifications including an additional lateral and vertical expansion of the solid waste disposal boundary to include the proposed new waste disposal Unit IV. This new area is comprised of a portion of the former Public Service Company of New Mexico ("PNM") utilities easement that overlaps Units I, II, and III. If approved, the proposed vertical expansion would raise the final design elevation by approximately 109 feet. AR No. SC-19; NMED Exhibit 9, p. 4.

12. The Facility anticipates receiving solid and special wastes primarily from Sandoval County, Santa Fe County, Bernalillo County, several nearby Pueblos, and three (3) off-site county-owned and operated convenience stations (Cañon, Peña Blanca, and Cuba). However, waste may originate from other areas depending on market and economic feasibility. AR No. SC-19, Vol. II, Section 2, Subsection 3.3 and Vol II, Section 8; NMED Exhibit 5, p. 3.

13. On May 5, 2016, Secretary Ryan Flynn appointed Jeffrey N. Holappa, Administrative Law Judge for the New Mexico Environment Department, to serve as Hearing Officer in this matter pursuant to 20.1.4.100(E)(2) NMAC. The Hearing Clerk thereafter issued a Notice of Docketing and Hearing Officer Assignment.¹ AR No. SC-17.

14. On July 20, 2016, Applicant and the Bureau each filed a Statement of Intent to Present Technical Testimony. Record Proper Nos. 5 and 6.

¹ On September 12, 2016, Governor Susana Martinez appointed Deputy Secretary, Butch Tongate, to serve as Secretary – Designate of the New Mexico Environment Department after Ryan Flynn stepped down as Secretary effective August 12, 2016.

15. On August 3, 2016, the Hearing Officer conducted a public hearing at the Sandoval County Commission Chambers in Bernalillo, New Mexico.

16. Dacia R. Tucholke, Project Manager for Gordon Environmental, Inc. ("GEI"), submitted written testimony and provided oral testimony at the hearing on behalf of Applicant regarding Application's compliance with 20.9.3 NMAC (Solid Waste Facility Permits and Registrations), compliance with the requirements of 20.9.3.8(D) NMAC for vulnerable area assessments, and compliance with the siting criteria listed in 20.9.4.9 NMAC. Applicant's Exhibits 2.1 and 3.1.

17. I. Keith Gordon, P.E., Professional Engineer and engineer of record for the Facility since 1998, submitted written testimony and provided oral testimony at the hearing on behalf of Applicant regarding his supervision of all design calculations and specifications, sealed engineering drawings, the elements of the Construction Quality Assurance plan, and updates to the facility master plan. Applicant's Exhibits 2.2 and 3.2.

18. Michael J. Crepeau, Project Director for GEI and Technical Expert in Environmental Monitoring and Compliance for the Application, submitted written testimony and provided oral testimony at the hearing on behalf of Applicant regarding the Facility's proposed design upgrades and its compliance with the "Leachate Collection Systems for Landfills" requirements set forth in 20.9.4.15 NMAC; gas management and monitoring, groundwater monitoring, composting operations, the closure/post-closure plan, air quality requirements, and storm water pollution prevention. Applicant's Exhibits 2.3 and 3.3.

19. Robert Sanchez, Landfill Manager for the Facility, submitted written testimony and provided oral testimony at the hearing on behalf of Applicant regarding the Application's compliance with 20.9.5.8 NMAC (General Operating Requirements for all Solid Waste

Facilities). Mr. Sanchez also testified that the Facility and the procedures proposed in the Application meet the applicable sections of 20.9.5.9(A), (D), (F-Q), and (T) NMAC, applicable portions of 20.9.3.8(C)(6) NMAC (Plan of Operations), and applicable portions of 20.9.5.15 NMAC (Contingency Plan). Mr. Sanchez also provided testimony regarding compliance with recordkeeping and training requirements. Applicant's Exhibits 2.4 and 3.4.

20. Tommy Mora, Sandoval County Public Works Director, submitted written testimony and provided oral testimony at the hearing on behalf of Applicant regarding the financial assurance requirements and the disclosure documents for the Application, compliance with Section 74-9-24(B), and compliance with the current permit conditions. Applicant's Exhibit's 2.5 and 3.5.

21. George Schuman, Permit Section Manager for the Bureau, submitted written testimony and provided oral testimony at the hearing on behalf of the Bureau regarding the Bureau's performance of public notice for the hearing and development of the administrative record. Mr. Schuman corrected his previously submitted written testimony to reflect that he mailed the hearing notice to adjacent property owners and governmental entities within (10) miles of the facility forty-six (46) days after the application had been deemed complete rather than fifty-three (53) days. Mr. Schuman also referenced two (2) additions to the administrative record (SC-37 and SC-38) since its filing with the Hearing Clerk on July 20, 2016. NMED Exhibits 1 and 11; NMED Exhibits 1.A and 11.A admitted into evidence during the hearing by the Hearing Officer without objection from Applicant.

22. James Dyer, Hydrologist, submitted written testimony and provided oral testimony at the hearing on behalf of the Bureau regarding Applicant's Landfill Gas Management Plan, Special Waste Disposal Management Plans, Waste Screening and Inspection Plan, Ground Water

Monitoring Systems Plan, and Ground Water Monitoring Plan in the Application. NMED Exhibit 3.

23. Erica Ortega, Engineer Specialist, submitted written testimony and provided oral testimony at the hearing on behalf of the Bureau regarding the siting and operation of the Facility, the Facility's permit history, and her review of the Facility permit renewal and modification application for compliance with the Rules. NMED Exhibit 5.

24. Joan Snider, Environmental Scientist and Specialist, submitted written testimony and provided oral testimony at the hearing on behalf of the Bureau regarding the Composting Plan of Operations for the Facility. NMED Exhibit 7.

25. Auralie Ashley Marx, Bureau Chief, submitted written testimony and provided oral testimony at the hearing on behalf of the Bureau regarding the following: the regulatory framework for permitting a landfill; the Bureau's completeness determination; community meetings held by Applicant; findings regarding air quality issues; findings regarding Applicant's financial assurance estimates and compliance with applicable regulations; the Bureau's consideration of environmental justice principles; the results of the Vulnerable Area Assessment determination; the Bureau's recommendation regarding approval of the permit; the proposed permit conditions and justification for the Bureau's recommendation for approval of the permit; findings of review of the Government Disclosure Statement and Department of Public Safety Investigation Reports; and Applicant's compliance with Section 74-9-24(B). Ms. Ashley-Marx explained changes to the "Proposed Permit Conditions" section of her previously submitted written testimony that occurred following negotiations with GEI staff and offered NMED Exhibit 12 as a replacement. Ms. Ashley-Marx also clarified the financial assurance obligation estimate for the Facility, which is the estimate submitted in the final application for \$4,100,061.00.

NMED Exhibit 9; NMED Exhibit 12 admitted into evidence during the hearing by the Hearing Officer without objection from Applicant.

26. No member of the public provided oral or written comments during the public hearing.

Completeness Determination

27. The Bureau issued one (1) request for additional information to Applicant. AR No. SC-11; NMED Exhibit 5, p. 6. Applicant submitted the applicable responses as required by 20.9.3.17 NMAC.

28. The Bureau reviewed the Application for compliance with the Act and the Rules through a team approach of qualified staff and deemed it administratively complete on May 5, 2016. AR No. SC-16; NMED Exhibit 5, p. 2.

29. Applicant met all permit application requirements in 20.9.3.8 NMAC, 20.9.3.9 NMAC, and 20.9.3.13 NMAC for facilities that accept municipal and special waste, including site plan and engineering drawings. AR Nos. SC-7, -14, -19; NMED Exhibit 5, pp. 5-6.

30. Applicant met all permit renewal application requirements in 20.9.3.25 NMAC. AR Nos. SC-8, -19, -20, -24, -25, -28, -29, -30, -31; NMED Exhibit 5, pp. 7-9.

31. The Application submitted on May 12, 2016, will become the permit if granted by the Secretary. AR No. SC-19; NMED Exhibit 9, p. 4.

Special Waste Management

32. The Application addresses the requirements for special waste. Applicant detailed how it will meet the applicable requirements of 20.9.3.13 NMAC and 20.9.8 NMAC, including proper storage, handling, disposal, processing, and transformation. AR No. SC-19, Vol., I, Part 3, Table I.3.1 and Table I.3.2, Vol. II, Section 3, Vol. II, Section 8; NMED Exhibit 5, pp. 5-6.

33. Applicant also provided a Waste Screening and Inspection Program plan to detect and prevent the disposal of regulated hazardous waste, prohibited and unauthorized wastes, polychlorinated biphenyls, and materials deemed incompatible with the Facility's operation in accordance with 20.9.5.8(B)(2) NMAC. AR No. SC-19, Vol. II; Applicant's Exhibit 3.4, p. 13; NMED Exhibit 3, pp. 6-8.

34. Applicant met the necessary requirements for special waste profiling, testing, disposal, and manifesting. AR No. SC-19, Vol. II, Section 8; NMED Exhibit 9, pp. 11-12.

Maximum Facility Size

35. Applicant addressed and satisfied the maximum facility size requirement of 20.9.4.8 NMAC, stating that the Secretary shall not issue a permit for a solid waste facility larger than five hundred (500) acres. AR No. SC-19, Vol. I, Part 4; NMED Exhibit 5, p. 9.

36. The total acreage of the Facility property is approximately 178.3 acres of land; however, only 122.5 acres of the property is designated as the solid waste facility for waste disposal purposes. *Id.*

Siting Criteria

37. The Rules require that Applicant demonstrate compliance with thirteen (13) siting criteria addressing the Facility's proximity to dwellings, environmentally sensitive features and habitats, and potentially destructive geologic areas. 20.9.4.9 NMAC; NMED Exhibit 5, pp. 9-13.

38. The Facility is not located in a floodplain, or within five hundred (500) feet of wetlands or two hundred (200) feet of a watercourse. AR No. SC-19, Vol. IV, Section 2, Figure IV.1.2, Vol IV, Section 2, Figure IV.1.3, Vol I, Part 3, Attachment I.3.B, Vol IV, Section 2, Figure IV.1.1; Vol. I, Part 4; NMED Exhibit 5, pp. 9-10.

39. Applicant provided information confirming that the uppermost aquifer is not closer than one hundred (100) feet to the bottom of the fill. The distance between the bottom of the fill and the current top of the upper most aquifer ranges from three hundred thirty seven (337) to four hundred forty seven (447) feet. No portion of the proposed lateral expansion is located within an area where the top of the uppermost aquifer is closer than one hundred (100) feet to the bottom of the fill. AR No. SC-19, Vol IV, Section 1, Attachment IV.1.4, Vol. I, Part 4; NMED Exhibit 5, p. 10.

40. No new, abandoned, or exploration subsurface mines are registered with the New Mexico Energy, Minerals and Natural Resources Department near or close to the Facility. The closest surface mining site is a sand and gravel operation approximately four (4) miles southeast of the Facility. No part of the proposed lateral expansion is located in an area where new, abandoned, or exploration subsurface mines exist as registered with the New Mexico Energy, Minerals and Natural Resources Department. AR No. SC-19, Vol. I, Part 4, Vol. IV, Section 1, Attachment IV.1.A; NMED Exhibit 5, p. 10.

41. Applicant provided maps and information showing that the Facility is not located within two hundred (200) feet of a fault that has had a displacement within Holocene time (the past eleven thousand (11,000) years). AR No. SC-19, Vol. I, Part 1, Vol. IV, Section 1, Figure IV.1.6; NMED Exhibit 5, p. 10.

42. Applicant provided two separate cultural resource surveys of the Facility and the results indicated that the Facility is not located within a historically or archaeologically significant area. AR No. SC-19, Vol. IV, Section 1, Attachment IV.1.A; NMED Exhibit 5, p. 11.

43. Applicant provided information from the W.A.T.E.R.S. database, available through the New Mexico Office of the State Engineer, that the Facility is not located within one thousand

(1,000) feet of a public water supply well or a private water supply well with a sustainable yield of one hundred (100) gallons per minute or more. The closest well to the Facility site is a private domestic well located approximately nine hundred twenty seven feet (927) feet southwest of the solid waste disposal boundary, and has a yield of approximately thirty (30) gallons per minute. AR No. SC-19, Vol. IV, Section 1, Figure IV.1.8, Vol. I, Part 4; NMED Exhibit 5, p. 11.

44. Applicant provided information from the W.A.T.E.R.S. database, available through the New Mexico Office of the State Engineer, that the Facility is not located within three hundred fifty (350) feet of a public water supply or private well with a maximum sustainable yield of less than one hundred (100) gallons per minute. AR No. SC-19, Vol. IV, Section 1, Figure IV.1.8, Vol. I, Part 4; NMED Exhibit 5, p. 11.

45. Applicant provided information to identify the Facility's location with respect to the closest airport. The Federal Aviation Administration ("FAA") regulates landfills within 5,000 feet of a runway for piston-driven aircraft, or within 10,000 feet of a runway with turbine or pure jet powered aircraft traffic. The FAA also requires notice of a landfill within six (6) miles of a public use airport. The nearest public use airport is the Double Eagle II Airport which is fourteen (14) miles south of the Facility site. AR No. SC-19, Vol. IV, Section 1, Figure IV.1.10, Vol. I, Part 4, Vol. IV, Section 1, Figure IV.1.9; NMED Exhibit 5, pp. 11-12.

46. No permanent residences, schools, hospitals, churches, or institutions are located within five hundred (500) feet of the Facility. However, an aerial photograph of the Facility boundary provided by Applicant demonstrates the progress of development toward the facility boundary. To date, one residence is located five hundred and twenty three (523) feet to the south of the Facility disposal boundary. AR No. SC-19, Vol. I, Part 4, Vol. IV, Section 1, Figure IV.1.10; NMED Exhibit 5, p. 12.

47. The Facility is not located in an area of active alluvial fans. AR No. SC-19, Vol. I, Part 4; NMED Exhibit 5, p. 12.

48. The Facility is not sited within an area that will result in the destruction or adverse modification of the critical habitat of endangered or threatened species, rare plants and wildlife. AR No. SC-19, Vol IV, Section 1, Figure IV.1.11, Vol. IV, Section 1, Attachment IV.1.A and Attachment IV.1.B; NMED Exhibit 5, p. 12.

49. The site is within a seismic impact zone. Due to the location within a seismic impact zone, the Facility has been designed to resist the maximum horizontal acceleration in lithified earth material for the site. Applicant has demonstrated that all engineered containment structures, including liners, leachate collection systems, and surface water control systems are designed to resist the maximum horizontal acceleration in lithified earth material. AR No. SC-19, Vol. IV, Section 1, Figure IV.1.12, Vol. III, Section 3; Applicant's Exhibit 3.1, pp. 13-14. NMED Exhibit 5, pp. 12-13;

50. The Facility is not located within an unstable area as defined by 20.9.2.7(U) NMAC. AR No. SC-19, Vol. 1, Part 4; Applicant's Exhibit 3.1, p. 14; NMED Exhibit 5, p. 13.

51. The Facility is sited appropriately according to the siting criteria of 20.9.4.9 NMAC. NMED Exhibit 5, p. 13.

Design Criteria

52. Applicant addressed all of the design, engineering, and construction requirements of 20.9.4.13 NMAC, including specifications for the composite liner construction, and the Facility meets all applicable requirements. Ms. Ortega and Dr. Clinton P. Richardson, Ph.D., P.E., BCEE, deemed adequate the initial and final engineering design requirements. AR Nos. SC-7, -14, -19; NMED Exhibit 5, p. 13.

Testing and Quality Control for Liners and Final Covers

53. Applicant addressed and met all applicable testing and quality control requirements for liners and final covers as specified in 20.9.4.14 NMAC. Ms. Ortega and Dr. Richardson reviewed the initial and final engineering design and testing requirements. AR No. SC-19, Vol. II, Section 4, Vol. II, Section 5, Attachment II.5.F; NMED Exhibit 5, pp. 13-14.

Leachate Collections System for the Facility

54. Applicant has addressed all of the general leachate collection system requirements as specified in 20.9.4.15 NMAC. AR Nos. SC-19, Vol. 1, Part 4; Vol. II, Section 1, Sheets 2, 3, 4, 5, 7, 8, 9, 10, 11, and 13; Vol. II, Section 2, -4, -7; Vol. III, Section 2, 5, 9, and 10; NMED Exhibit 5, p. 14.

55. The existing leachate collection system at the Facility encompasses Unit II and Unit III. The leachate collection system in Unit II is built with a minimum slope of 2.0%, 6-inch-diameter perforated pipe enveloped in aggregate and geotextile to promote leachate drainage. The leachate collection sump is equipped with one 4-inch diameter leak detection riser pipe and one 8-inch-diameter leachate extraction riser pipe at the downgradient terminus. The leachate collection sump is equipped with a dedicated submersible pump connected to a dedicated control panel and powered by a portable generator. The piping system is covered with a 24-inch protective soil layer which facilitates leachate drainage. The proposed leachate collection system designed for new Unit IV includes a minimum design slope of 2.0% on the leachate collection piping, 6-inch-diameter leachate collection piping enveloped in aggregate and geotextile to promote leachate flow and drainage, and a minimum 24-inch thick protective soil layer in accordance with 20.9.4.13(E)(1) and (2) NMAC and 20.9.4.15(A) and (B) NMAC. AR No. SC-19, Vol. II, Section 1, Sheets 2 and 3, Vol. II, Section 7; NMED Exhibit 5, pp. 20-21.

56. Applicant proposes to extract the leachate and recirculate it on lined areas of the site, as well as feedstock for the organic composting operations. Routine analysis is performed on leachate samples collected from Cell 4A due to the disposal of 200-500 feet of electrical wire from Los Alamos National Laboratory in 2007. The Facility will continue routine monitoring of the Cell 4A leachate and may elect to conduct additional leachate sampling at the site's other sumps. AR No. SC-19, Vol. II, Section 7; NMED Exhibit 5, p. 21.

57. The leachate collection systems for the Facility comply with 20.9.4.13 NMAC and 20.9.4.15 NMAC. NMED Exhibit 5, p. 21.

Operating Requirements

58. Applicant addressed all of the general operating requirements for solid waste facilities as specified in 20.9.5.8 NMAC. Applicant provided appropriate procedures, programs, and contingency plans for: controlling odor and litter; signage; load inspections; handling and disposal of unauthorized wastes; maintaining an operating record; and for handling spills, fires, floods, explosions, mass movements; and diversion of recyclable materials. AR No. SC-19, Vol. I, Part 5, Vol. II, Section 1, Vol. II, Section 2, Vol. II, Section 3, Vol. II, Section 8, Vol. II, Section 10, Vol. II, Section 11; NMED Exhibit 5, p. 14.

59. Applicant has procedures in place to address the additional operating requirements for municipal and special waste landfills found in 20.9.5.9 NMAC, including: the procedures and programs associated with the placement of waste in the landfill, landfill gas monitoring and management, stormwater management, fire prevention management, access to the landfill, leachate management and disposal, daily and intermediate cover, erosion control, and diversion of recyclables. AR No. SC-19, Vol. I, Part 5, Vol. II, Section 1, Vol. II, Section 2, Vol. II, Section 7, Vol. II, Section 8, Vol. II, Section 3, Vol. II, Section 6; NMED Exhibit 5, pp. 14-15.

Contingency Plan for Emergencies

60. The Facility maintains a Contingency Plan designed to minimize hazards to public health, welfare, or the environment from fires, explosions, or any release of contaminants or hazardous constituents to air, soil, surface water or groundwater. AR No. SC-19, Vol. II, Section 3; NMED Exhibit 5, p. 15.

61. Applicant has addressed and satisfied all contingency plan requirements as specified in 20.9.5.15 NMAC. *Id.*

Recordkeeping and Annual Reports

62. The Facility maintains records as required by 20.9.5.16 NMAC. This includes maintaining an operating record during the active life and post closure care period of the facility, for each day those operations and monitoring or closure occurs. The operating record shall include the following: (i) the type, weight, or volume of each load of waste received; (ii) the origin; (iii) the hauler; (iv) a detailed record of load inspections performed; (v) deviations from the approved design or operations; (vi) all monitoring results, special waste manifests, financial assurance documentation; (v) the facility permit and final order; (vi) construction activities and deviations from the approved post-closure care plan. AR No. SC-19, Vol. I, Part 5, Vol. II, Section 2, Vol. II, Section 5; Applicant's Exhibit 3.4, pp. 16-17; NMED Exhibit 5, p. 15.

63. Annual reports must include the type and weight or volume of waste received each month to include the following: (i) origination of the waste; (ii) the type and weight or volume received from each commercial hauler that delivered waste to the facility; (iii) a description of the landfill capacity used in the previous year and the remaining capacity; (iv) a description of the acreage used for disposal and a description of the progress in implementing the closure plan; (v) weight or volume of each type of special waste received in the previous year; (vi) summary

of monitoring results; (vii) type and weight or volume of materials recycled during the year; (viii) final disposition of materials not stored or recycled; (ix) the amount of leachate generated and treated or recirculated; and (x) any other information requested by the Secretary. *Id.*

64. All required records and plans will be maintained by the Applicant and made available to the Secretary at all reasonable times for inspection. Applicant's Exhibit 3.4, p.17.

Closure and Post-Closure Requirements

65. Applicant has appropriate procedures in place for the closure and maintenance of the Facility pursuant to 20.9.6.8 NMAC and 20.9.6.9 NMAC. AR No. SC-19, Vol. I, Part 6, Vol. II, Section 1 (Sheet 6), Vol. II, Section 5, Vol. II, Section 6, Vol. II, Section 7, Vol. V, Section 2, Vol. III, Section 2, Vol. III, Section 3, Vol. III, Section 6, Vol. III, Section 8, Vol. III, Section 10; NMED Exhibit 5, pp. 15-16.

66. Ms. Ortega and Dr. Richardson reviewed the engineering design requirements and found them adequate to comply with the Rules. AR. No. SC-7, -14; NMED Exhibit 5, pp. 15-16.

67. The Closure and Post-Closure Care Plans describe the steps necessary for closure and post-closure care of the solid waste facility and any anticipated future uses of the property following closure; and submittal of a closure report and post-closure report after closure completion and at the end of the post-closure care period. NMED Exhibit 5, pp.15-16.

68. Applicant will continue care of the Facility for thirty (30) years post closure. Applicant's Exhibit 3.3, p. 10.

Ground Water Monitoring

69. Applicant addressed and satisfied all of the ground water monitoring requirements of 20.9.9 NMAC. AR. No. SC-19, Vol. I, Part 9, Vol. V, Section 2, Vol. 2, Section 5; NMED Exhibit 5, p. 18.

70. As allowed under 20.9.9.8(C) NMAC, the Secretary may suspend part or all of the ground water monitoring requirements if the owner or operator demonstrates no potential for migration of constituents referenced in 20.9.9.20 NMAC from the Facility to the uppermost aquifer during the active life or post-closure care of the Facility.

71. The Facility is not requesting a ground water monitoring suspension, but will implement one if necessary. AR No. SC-19, Vol. V, Section 2; NMED Exhibit 3 p. 5.

72. The ground water network consists of six (6) monitoring wells: one upgradient monitoring well, MW-5, and five down gradient monitoring wells, MW-1, MW-2, MW-3, MW-6, and MW-7. Upgradient monitoring well MW-5 at the Facility became problematic due to the insufficient flow and recharge rates observed during routine monitoring. Therefore, due to the need to continue monitoring ground water quality at this location, Applicant replaced monitoring well MW-5 with a new monitoring well MW-5R in April 2016. AR No. SC-19, Vol. V, Section 2, Figure V.2.1; AR No. SC-29A; NMED Exhibit 3, p. 5.

73. Applicant proposes to submit a written notice of intent and obtain approval from the Department for any future installation, decommissioning, or modification to a ground water measurement, sampling, or analytical device. NMED Exhibit 3, p. 6.

74. Copies of each monitoring report are kept in the Facility's operating record at the Facility and Applicant proposes to continue this practice. *Id.*

75. While developing the alternative parameter list, Applicant considered the following factors: (i) the types, quantities, and concentrations of constituents in wastes managed at the Facility; (ii) the detectability of the constituents and reaction products in the ground water; and (iii) the concentration or values and coefficients of variation of levels of the constituents in the ground water. Currently, the ground water monitoring program for the Facility consists of the

annual collection and analysis of samples from five wells (MW-2, MW-3, MW-5, MW-6, and MW-7) for the constituents in the approved alternate parameter list in the Ground Water Monitoring System and Ground Water Monitoring Plan. AR No. SC-19, Vol. V, Section 2, Table V.2.2; NMED Exhibit 3, p. 6.

76. MW-1 was excluded from ground water sampling due to the continuing water level decline in the well. MW-1 has been declining steadily at a rate of nearly one foot per year since 1999. The Facility will continue to record ground water elevations at MW-1 for each ground water sampling event to assist in characterizing ground water flow direction and velocity at the site. AR No. SC-19, Vol. V, Section 2; NMED Exhibit 3, p. 6

77. Applicant addressed and satisfied all of the ground water monitoring requirements of 20.9.9 NMAC in the Ground Water Monitoring System and Ground Water Monitoring Plan. AR No. SC-19, Vol. V, Section 2; NMED Exhibit 3, p. 6.

Public Notice and Participation

78. Applicant met the public notice requirements by providing public notice of the Application in accordance with NMSA 1978, Section 74-9-22 (1993), NMSA 1978, Section 14-11-1 to -13, and 20.9.3.8(G) NMAC.

79. A translator certified by the American Translators Association translated the public hearing notice into Spanish. AR No. SC-22; NMED Exhibit 1.A, p. 4.

80. On June 20, 2016, the Bureau sent the public hearing notice (English and Spanish) by certified mail to owners of property within one hundred (100) feet of the Facility and the governing bodies of any counties, municipalities, Indian tribes, and pueblos maintaining territory within ten (10) miles of the Facility. The distribution of the hearing notice by mail meets the requirements of Sections 74-9-22 and -23. AR No. SC-24, -25; NMED Exhibit 1.A, p. 5.

81. On June 20, 2016, the Bureau sent the public hearing notice to those individuals who participated in the May 2005 permit modification hearing for the Facility. The Bureau sent the public hearing notice to the physical mailing addresses provided on the sign-in sheet for the May 2005 permit modification hearing.

82. On June 22, 2016, the Bureau sent the public hearing notice via e-mail to a local law firm that had previously requested to receive all of the Bureau's public notices. AR No. SC-27; NMED Exhibit 1.A, p. 7.

83. On June 23, 2016, the Bureau posted the public hearing notice in English and Spanish on the NMED website. The Bureau placed links to the public hearing notice on its homepage, "Hearings" page, and "Notices" page. Electronic posting of the hearing notice on the NMED website meets the requirements specified in NMSA 1978, Section 14-11-10.2 (2003), regarding electronic posting of legal notices. AR No. SC-29; NMED Exhibit 1.A, pp. 6-7.

84. On June 23, 2016, the Bureau posted the public hearing notice at the Bureau's main office located in the Harold Runnels Building in Santa Fe. AR No. SC-28; NMED Exhibit 1.A, p. 7.

85. On June 26, 2016, the Rio Rancho Observer published the public hearing notice in English and Spanish as a legal advertisement and a display advertisement. The Rio Rancho Observer is a newspaper that is published in the county (Sandoval County) where the Facility is located. The Rio Rancho Observer is a newspaper of general circulation meaning it contains news of general interest to the community and reaches a diverse readership. The Rio Rancho Observer meets the requirements of Section 74-9-22 and Section 14-11-2. AR. Nos. SC-2, -21, -30; NMED Exhibit 1.A, pp. 5-6.

86. On June 27, 2016, the Bureau posted the public hearing notice at twelve (12) publically accessible and conspicuous locations including the entrance to the Facility and additional locations in the City of Rio Rancho and the Town of Bernalillo pursuant to Section 74-9-22. The posting of the hearing notice exceeded the statutory requirement, which requires four (4) publically accessible and conspicuous locations. The Bureau posted the public hearing notice in additional locations to maintain consistency with the number of posting locations required for the filing of a solid waste facility permit application. AR No. SC-19, -31; NMED Exhibit 1.A, p. 6.

87. The Bureau created a notice flyer in English and Spanish for distribution to customers of the Facility. AR No. SC-32; NMED Exhibit 1.A, p. 8.

88. The Bureau prepared public service announcements for distribution to radio stations in the vicinity of the Facility. AR No. SC-33; NMED Exhibit 1.A, p. 8.

89. Applicant and the Bureau met all applicable requirements of the Act and the Rules concerning public notice and participation. AR Nos. SC-21, -22, -24, -25, -26, -27, -28, -29, -30, -31, -32; NMED Exhibit 5, p. 21.

Vulnerable Area Assessment and Environmental Justice Considerations

90. Any person seeking a landfill permit modification resulting in a lateral or vertical expansion shall first submit to the Secretary the information that is necessary for the Secretary to determine if the applicant's site is located in a vulnerable area. 20.9.3.8(D) NMAC.

91. A "vulnerable area" is defined by 20.9.2.7(V)(3) NMAC as: "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."

92. All three (3) of the criteria must be met to be considered a vulnerable area.

20.9.2.7(V) NMAC.

93. Applicant performed a vulnerability assessment and the Bureau's review of the assessment confirmed only two (2) out of the three (3) vulnerable area criteria. Specifically, the percentage of economically stressed households exceeds the New Mexico percentage and more than fifty (50) persons live within any square mile within a four (4) mile radius of the Facility. With only two (2) out of the three (3) criteria present, the Bureau concluded that the Facility is not located within a vulnerable area. AR No. SC-3; NMED Exhibit 9, p. 16.

94. On September 2, 2015, the Secretary signed and marked approved the Vulnerable Area Determination Form. AR Nos. SC-10, -19, Vol. IV, Section 2, Attachment IV.2.C; NMED Exhibit 9, p. 16.

95. The Bureau evaluated distributional justice, process justice, and procedural justice principles to determine the existence of any potential environmental injustices and associated risks to the public in relation to the Facility. NMED Exhibit 9, pp. 16-21.

96. Distributional justice was met through the vulnerable area assessment and a determination that there is no unequal siting of landfills or polluting facilities within four (4) miles of the Facility; process justice was served by providing ample opportunities for access to information and creating meaningful opportunities for public participation; and procedural justice was served by strict adherence to the requirements of the Act and Rules, providing trainings and technical assistance, and comprehensive review of the Application. *Id.*

Compliance History

97. Applicant provided the Facility's compliance history and environmental monitoring summaries in an Inspection Summary Table showing enforcement actions from January 4, 2006 to April 8, 2014. AR No. SC-19, Vol. I, Part 3, Attachment I.3.D; NMED Exhibit 9, p. 7.

98. The Bureau's inspection record of operation of the facility confirms the information in the table is correct but had gaps for several years (2008, 2011, and 2015) of other inspections. NMED Exhibit 9, p. 7.

99. The Bureau completed and prepared an amended Inspection Summary Table that contains the missing information for years 2008, 2011, and 2015. AR No. SC-36; NMED Exhibit 9, pp. 7-8.

100. From 2000 through 2003 there were numerous egregious violations and a significant number of violations found during officer inspections. These violations occurred under a different Solid Waste Manager and County Manager. The compliance history since 2006 clearly shows a noticeable improvement in operational oversight and facility management. As a result, the Bureau proposed permit conditions to address historical operational deficiencies. NMED Exhibit 9, pp. 8-9.

Financial Assurance

101. Applicant provided all of the necessary information to adequately establish compliance with the applicable Financial Assurance requirements of 20.9.10 NMAC. AR Nos. SC-19, Vol. I, Part 10, Vol. VI, Section I, -20, -38; NMED Exhibit 9, pp. 12-15.

102. Applicant demonstrated the knowledge and ability to properly manage financial responsibility requirements of the Act and the Rules. *Id.*

103. Applicant selected an approved Financial Assurance mechanism, the Local Government Financial Test, pursuant to 20.9.10.19 NMAC, and has complied with the Financial Test requirements as it is not in default on any outstanding general obligation bonds and no general obligation bonds are rated lower than Aa2. *Id.*

104. The total amount of financial assurance needed for the Facility is \$4,100,061.00. Based on the Bureau's review of the Application, audit reports, documents in the Bureau's files, and correspondence provided by Applicant's Finance Director, Applicant has demonstrated that it has successfully established a long-term, viable and sustainable financial assurance program. Applicant has sufficient funds to complete all closure and post-closure estimated costs, should the Secretary order the closure of the Facility. AR Nos. SC-19, Vol. VI, Section 1, -38; Applicant's Exhibit 3.5, p. 4; NMED Exhibit 9, pp. 13-15.

Disclosure Statements

105. Pursuant to NMSA 1978, Section 74-9-21 (1990), Applicant is required to file disclosure statements for use by the Department of Public Safety to investigate any criminal history of the Applicant or any person who will have decision-making and management responsibility at the Facility.

106. Applicant provided all necessary disclosure statements pursuant to Section 74-9-21 to the Bureau. AR Nos. SC-8, -9; NMED Exhibit 9, pp. 5-7.

107. The Department of Public Safety's reports and the Bureau's record of operation of this Facility confirms no record of any Environmental Protection Agency action at this Facility and no environmental permit revocations, suspensions or denials. AR Nos. SC-4, -19; NMED Exhibit 9, pp. 6-7.

108. There is no basis to deny the Application based on grounds listed in Section 74-9-24(B). NMED Ex. 9, p. 7.

Permit Conditions

109. The Bureau recommends inclusion of the following fourteen (14) conditions found in NMED Exhibit 12 in Applicant's permit:

1. **Final Application:** The final version of the Application received by the Bureau on May 12, 2016 shall become the permit and shall be enforceable pursuant to the Act and the Rules. Volumes of the final version of the Application and engineering plan sets shall be kept at the facility office or scale house in an accessible area for easy reference.
2. **Approved Wastes:** The Facility owner/operator is authorized to accept the following wastes:
 - municipal solid waste;
 - construction and demolition debris; and
 - special wastes limited to:
 - sludge
 - petroleum contaminated soil

As requested in the final version of the Application.

3. **Contingency Plan Training:** Staff must be provided training regarding emergency evacuation, contingency plan in Volume II.A, Section 3, of the Application, and hazard identification within forty-five (45) days from the issuance of the permit. Training on these items must be documented to include: date, time and location of training (in office, tail-gate or location at the site, i.e. working face or evacuation route), name of trainer, and examples of training materials used (Power Point presentations, handouts, or copies of the plans or talking points).
4. **Operations Manual:** Applicant shall compile a separate "Operations Manual" using the necessary plans from the approved permit application. The location of each plan shall be identified in an index and labeled by plan name on a tab for easy location by facility operators and/or labeled sections with the names of the plans. The manual shall include all of the written plans from Volume II.A Sections 2-7 and Volume II.B Sections 8-11, and the Groundwater Monitoring Plan from Volume V, Section 2 of the Application.

- a. Copies of the Operations Manual shall be kept at the Facility and it shall be placed in a location for easy access by operators.
 - b. The Permit Engineering Plans must also be kept for reference in an easily accessed location. A reduced set (i.e., 11" x 17") shall be included with the Operations Manual.
 - c. Submit two printed copies of the Manual to the Bureau Chief within sixty (60) days of issuance of the permit.
5. **Training:** Facility staff involved with landfill operations and recordkeeping shall be trained using the Landfill Management Plans contained within the Operations Manual.
- a. The Solid Waste Manager or his designee shall provide a time-table specifying the sequence and time frame of provision of training and provide a copy to the Bureau Chief and the Enforcement Section Manager.
 - b. Training on the Operations Manual shall be provided and documented by any one or combination of the following:
 - Sandoval County Solid Waste Manager,
 - Sandoval County Public Works Director,
 - Staff from the engineering firm that prepared the landfill management plans, or
 - Another qualified consultant retained by Sandoval County and/or by Director of Solid Waste.
 - c. Initial training of each staff member involved with operations and recordkeeping shall include the following:
 - Location of Operations Manual,
 - How it is organized,
 - How to find information,
 - Procedures for successful completion of landfill management and recordkeeping tasks.
 - d. Training must also be provided regarding how properly to maintain and file records in the operating record at the Facility.
 - e. Training documentation shall include: agenda with subjects covered; training materials used; and a completed Training Record Form (Attachment II.2.K of Permit Application). Documentation shall be placed and maintained in the facility operating record.

- f. A copy of the training documentation shall also be sent to the Bureau Chief and the Enforcement Section Manager, upon completion.
 - g. New Facility staff involved with facility operations and recordkeeping must be familiarized with the location of the Operations Manual within one week from the date of hire, and should be trained using the Operations Manual within 30 days of the first day the employee starts working at the Facility.
 - h. Provisions of subsequent operational training sessions or tail-gate meetings must also be documented on the Training Record Form (Attachment II.2.K of Permit Application), and a copy must be kept in the operating record at the Facility office.
6. **Management Plan Updates:** The Landfill Management Plans in Volume II may be updated or amended as necessary during the term of the permit, as long as:
- i. The proposed amended plans are approved by the Bureau enforcement or permitting staff in writing prior to replacement of the approved plans in the file,
 - ii. Training (as needed) on the updated plans is provided per documentation requirements described in Condition 5.
7. **Financial Assurance:** Copies of records pertaining to financial assurance shall be maintained at the Facility site in a labeled binder or file folder by date with the most recent documents at the front, and oldest records in the back. A duplicate hard copy of records should be maintained off-site or electronically at another County location.
- a. This record at a minimum shall include annual financial assurance estimate worksheets, independent audit reports for each fiscal year, and annual certification letters prepared by the Sandoval County Financial Director regarding annual compliance with requirements of the Rules 20.9.10.10 NMAC for the Local Government Financial Test.
 - b. The annual financial assurance cost estimate and letter from the County's Financial Director shall be provided to the Bureau Chief concurrent with the required annual report due by February 14 of each year (or other date as established by the Bureau).
8. **Self-audit Operational Evaluation Plan:** Within 30 days from issuance of the permit, provide a letter to the Bureau Chief for approval. This letter shall include an affirmative statement that a self-audit operational evaluation plan and record review process will be implemented, and the proposed date for the submission of this plan to the Bureau Chief for review and approval.

- a. This plan shall specify the steps and actions that will be taken by facility managers for the implementation of this Internal Operational Audit Plan to evaluate and check operations, verify record keeping and to track compliance task deadlines to ensure that tasks are completed correctly and in a timely manner to limit the number of possible violations noted in potential Notices of Violation by Enforcement Inspectors. This plan shall be implemented and used to confirm operational compliance with the Rules, permit, and permit conditions. The frequency and duration of such internal audits shall be also specified.
 - b. Create and implement an operational record keeping tracking system using a spreadsheet or other method to track deadlines, dates of task completion to ensure that reporting deadlines are met, to confirm reports and other documents are placed in files, and ensure that necessary operational records are maintained and are easily accessible on site.
9. **Litter Management and Exposed Waste Control Plan:** Litter management and exposed waste on side slopes with intermediate cover at this facility has been a long-standing persistent problem as demonstrated by the numerous citations in Notices of Violation issued by Solid Waste Enforcement Officers. The Solid Waste Manager and/or his/her designee, consultant and other Facility staff shall meet with the Bureau Chief to review the Litter Management and Control Plan contained in the approved permit (Operations Plan – Volume II, Section 2, Subsection 5.11) and discuss options to improve litter control, and preparation and implementation of a more detailed Litter Management and Exposed Waste Control Plan within 30 days of issuance of the permit.
- a. At a minimum the enhanced Litter Management and Exposed Waste Control Plan shall include a site plan map with an attached wind rose showing the types of prevention measures that will be used and locations of various proposed litter catchment methods used to create litter drops internally on the site based on seasonal wind variations. The plan shall specify the frequency of litter clean-ups.
 - b. The revised Litter Management and Exposed Waste Control Plan shall be provided to the Bureau Chief within 45 days from meeting with the Bureau Chief.
 - c. The operator shall use the Edge of Liner and Sideslope Inspection Form in the approved Permit (Volume II, Section 2, Attachment II.2.J) to complete monthly inspections to check for rills and exposed waste on the southern slope and other slopes with intermediate cover. If rills or exposed waste are found, keep a record with the date, photos, and notes regarding when repairs or clean-up will be undertaken. Covering of waste or repairs or tracking of rills

must be made within 45 days from discovery. If unable to address rills, cover, or pick exposed waste within the 45-day time frame, request an extension with a justification as to why the deadline cannot be met to the Bureau Chief at least one week before the end of the 45-day period. If necessary, place woodchips on such slopes to prevent wind and water erosion and exposure of waste.

10. **Cell Construction Milestone Schedule:** At least 30 days prior to the start of cell construction, the permittee shall furnish the Bureau with a major milestone schedule so that the Bureau may effectively monitor landfill liner construction at the Facility.
11. **Cell Construction Plans:** At least 20 working days prior to issuance of any important landfill construction bid documents, landfill cell construction plans must be provided to the Bureau Permit Section Manager for review prior to the start of construction. Any changes requested by the Bureau shall be made prior to release of the bid package and construction drawings.
12. **Alternative Cover Stabilization:** The owner/operator shall submit a proposed time-frame for development and implementation of a Plan based on the Alternative Stabilization Options for Intermediate and Final Cover as detailed in Volume II.A, Section 2, Attachment II.2.L of the Application. This attachment includes proposed management methods for any areas under intermediate cover that have been inactive for more than two years, and have not been successfully stabilized with vegetation or mulch.
 - a. Upon implementation of the Plan, provide a letter to the Bureau Chief for approval specifying what materials and methods, how these materials were used and how they were placed, and the frequency of monitoring to confirm performance. Use of alternative stabilization methods for intermediate cover is permissible in accordance with 20.9.5.9(O)(3) NMAC.
 - b. The Alternative Intermediate Cover Stabilization Plan shall also include the information contained in the approved Permit for intermediate cover maintenance (Operations Plan – Volume II, Section 2, Subsection 5.15) to state the frequency and method of intermediate cover inspection (using the Intermediate Cover Inspection Form provided as Figure II.2.7 in the approved Permit (Volume II, Section 2)), frequency of replacement of alternative erosion control materials, actions to be implemented to repair the intermediate cover, and criteria for determining when repair actions must be taken.
13. **Special Waste Audits:** Audits of the acceptance and disposal processes for authorized special (i.e., PCS and sludge) wastes must be completed every six months for the first 18 months of acceptance by the Solid Waste Manager or a qualified

designee, alone or in conjunction with a qualified consultant familiar with the approved permit.

- a. The audits shall include evaluation of use of the Special Waste Profile Sheet, use of Disposal Management Plan procedures, and proper completion of the Special Waste Manifest and other forms included as attachments in Volume II, Section 8 of the Application.
- b. If some special wastes are not received at the Facility during the first year, auditing of acceptance of these wastes will not be required until the initiation of deliveries of such waste. The term of the audits will occur for 18 months after the start of acceptance of the special waste.

14. Site Sequencing Plan: The Site Sequencing Plan View Sheet 1 of 2, Volume II.A, Section 2, Attachment II.2.I showing the cell fill progression, and the current status regarding placement of intermediate and final cover must be prepared and submitted to the Bureau every five (5) years.

- a. It must also include the current total amount of acreage with daily, intermediate and final cover for each cell, and project how long the areas with intermediate cover will remain in this state before final cover can be applied.
- b. The first updated plan must be provided to the Bureau concurrent with the submittal of the Annual Report and the updated annual financial assurance estimate, no later than February 14, 2018, and thereafter every five (5) years on or before February 14 of each year (or other date as established by the Bureau).

110. The parties agree to the conditions, and agree that if the Secretary grants the permit, these conditions will constitute a part of the permit.

CONCLUSIONS OF LAW

1. The Secretary maintains jurisdiction over the subject matter of the Application and the parties to this proceeding, and is authorized by the Act to issue or deny permits for new and existing solid waste facilities based upon information submitted in a permit application and relevant information received during the public hearing in accordance with Section 74-9-24.

2. No person shall construct, operate, or close a solid waste facility unless the facility has a permit from the Secretary for the described action. NMSA 1978, § 74-9-31(A)(3) and (4) (1995); 20.9.3.8(A) NMAC.

3. The Facility is a solid waste facility subject to the requirements of the Act and the Rules as contemplated by 20.9.3.8(A) NMAC.
4. The Act requires a separate special waste permit for all solid waste facilities that dispose of special waste pursuant to Section 74-9-24(H).
5. The Act requires an application for a permit in a form that contains the information required by the Secretary, including all information necessary for the Secretary to make a decision on the application pursuant to Section 24 of the Act. NMSA 1978, § 74-9-20(B) (1990).
6. The Application satisfies the requirements of Section 74-9-20(B) because it contains all the information required by the Secretary to make a decision on the Application.
7. The Application complies with the requirements of Section 74-9-22, which requires the Application to contain proof that the Applicant has provided notice of filing of the application to the public and other affected individuals and entities.
8. The Application complies with all regulatory requirements of the Act and the Rules related to the proposed construction, operation, maintenance, closure and post-closure care of the Facility.
9. The Application adequately addresses and complies with all applicable requirements of the Act and the Rules for a permit modification with conditions.
10. The Rules require the Secretary to issue a permit modification if the application demonstrates that neither a hazard to public health, welfare or the environment, nor an undue risk to property, will result. 20.9.3.18 NMAC.
11. Applicant demonstrated to the Bureau's satisfaction that the requirements of the Rules and Act have been met, and the Application, together with the Bureau's proposed

conditions and commitments of the Applicant, ensure that neither a hazard to public health, welfare, or the environment, nor an undue risk to property, will result.

12. The Secretary is authorized to delegate authority to a hearing officer to conduct and preside over a hearing. NMSA 1978, § 74-9-29(A)(7) (1990); 20.1.4.100(E) NMAC. The Secretary properly delegated authority to the Hearing Officer to conduct the public hearing on the Application.

13. The Act requires the Secretary to set a date, time, and location for a hearing on the application and give notice of the hearing date, time and location and a brief description of the application in the same manner as required in Section 22 of the Act and to any person who makes a written request for notice regarding a specific application within sixty (60) days of the director's determination that a permit application is complete. NMSA 1978, § 74-9-23(B) (1990).

14. The Bureau complied with the requirements of Section 74-9-23(B). The Bureau provided notice of the public hearing on the Application as required by the Act and 20.1.4 NMAC.

15. The Bureau complied with the requirements of Section 74-9-28(A)(1), which requires that the issuance or refusal to issue a permit for a solid waste facility be subject to prior hearing in accordance with the requirements of Section 29 of the Act.

16. The Bureau complied with the requirements of Section 74-9-23(B), which requires that hearings on applications for solid waste facility permits shall be conducted in accordance with the provisions of Section 29 of the Act.

17. The Hearing Officer conducted the public hearing in accordance with the procedures set forth in the Act and 20.1.4 NMAC.

18. Applicant bears the burden of proving that a permit “should be issued and not denied.” 20.1.4.400(A)(1) NMAC.

19. Nobody presented credible evidence that the Application should be denied for failure to meet the financial responsibility requirements established by the Act. NMSA 1978, §74-9-24(A).

20. Nobody presented credible evidence that the permit modification would be contradictory to or in violation of the Act or the Rules. NMSA 1978, § 74-9-24(A); 20.9.3.22 NMAC.

21. Nobody presented credible evidence that the Application should be denied because a person listed on the Application has exhibited a history of willful disregard for environmental laws of any state or the United States. NMSA 1978, § 74-9-24(B).

22. Nobody presented credible evidence that the Application should be denied because the permitted activity endangers public health, welfare or the environment. 20.9.3.18 NMAC.

23. Nobody presented credible evidence that the Application should be denied because of the Applicant’s failure to demonstrate a knowledge and ability to operate a facility in accordance with the Rules or a history of non-compliance with environmental regulations or statutes at other facilities. 20.9.3.19(A)(5) and (6) NMAC.

24. The Hearing Officer shall determine each matter in controversy by a preponderance of the evidence. 20.1.4.400(A)(3) NMAC. At the public hearing, Applicant demonstrated by a preponderance of the evidence that the solid waste facility permit renewal should be issued by the Secretary as required by 20.1.4.400 NMAC.

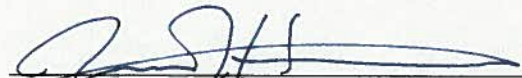
25. The Bureau bears the burden of proof for a challenged condition of the permit proposed by the Bureau. 20.1.4.400 NMAC. Applicant did not challenge the permit conditions.

26. The conditions proposed by the Bureau are reasonable and necessary to assure that the Facility operates in a manner that protects health, the environment and public welfare.

RECOMMENDED DECISION

Upon review of the entire record proper in this matter, I recommend that the Secretary – Designate issue the solid waste facility permit renewal with the fourteen (14) proposed conditions reasonable and necessary to protect health, the environment and public welfare as recommended by the Bureau and agreed to by Applicant.

In light of the aligned positions of the parties as stated in their joint post-hearing submission, I further recommend that the Secretary – Designate waive the comment and oral argument periods set forth in 20.1.4.500(C)(2) and (3) NMAC, and issue the solid waste facility permit renewal within the next thirty (30) days.



Jeffrey N. Holappa, Administrative Law Judge
New Mexico Environment Department
Hearing Officer for SWB 16-10 (P)