

# NMED

New  
Mexico  
Environment  
Department



## OVERVIEW OF SOLID WASTE BUREAU'S 2018 ENFORCEMENT PROGRAM

SOLID WASTE ASSOCIATION OF AMERICA – NEW MEXICO  
2018 ANNUAL MEETING & REGIONAL ROUNDTABLE  
EMBASSY SUITES HOTEL – ALBUQUERQUE, NEW MEXICO

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# Presented By:

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# My Background:

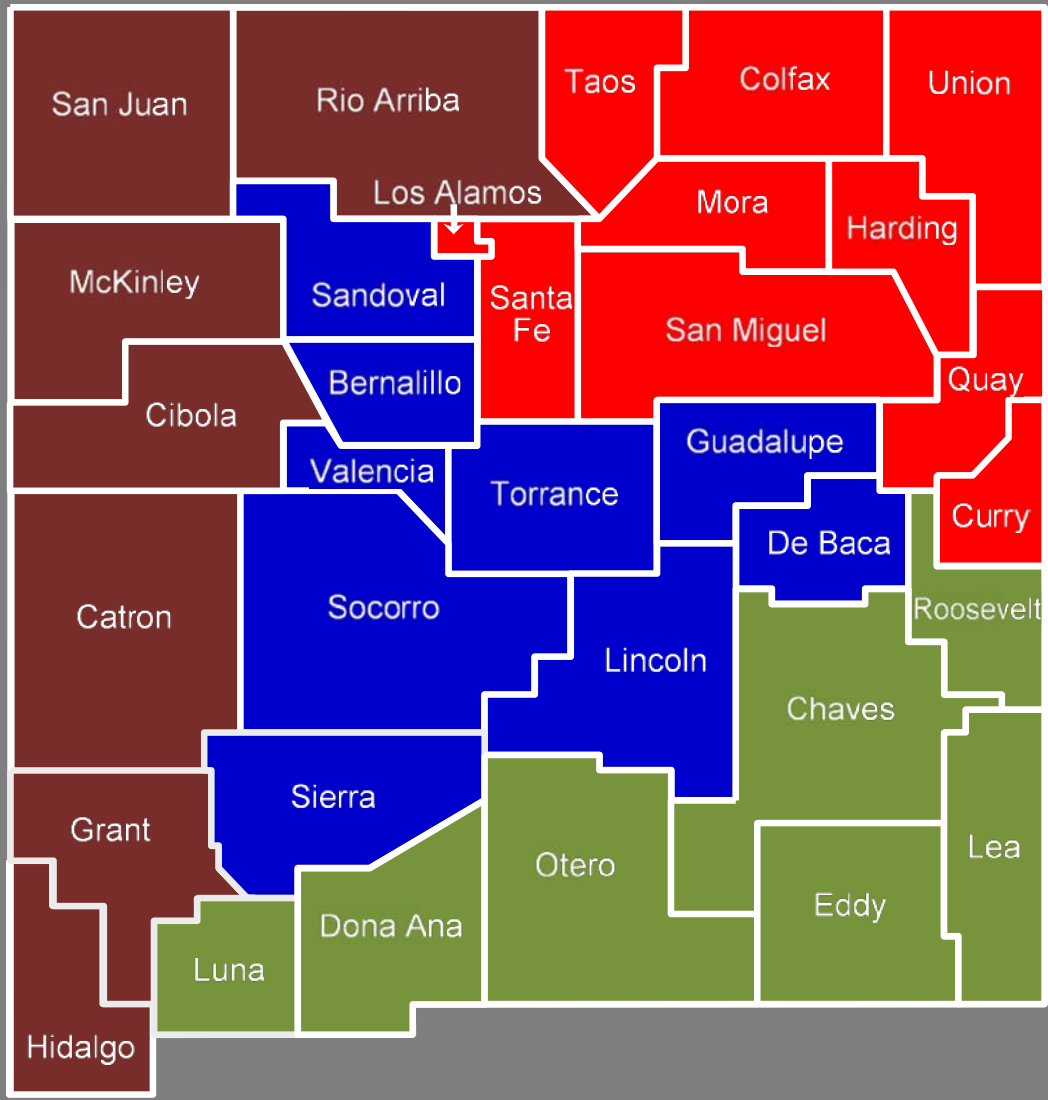
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## My Background...

- 1993-1998, AFOSI Special Agent
  - ▣ Supervised JDET, Travis AFB, CA
  - ▣ Managed Fraud/Environmental Crimes Program, Holloman AFB, NM
- 1998-2005, Enforcement Officer, NMED/SWB
- 2005-Present, Manager, Enforcement Section, NMED/SWB



# NMED/SWB Enforcement Areas



- Enforcement Area I**  
Paul E. Martinez  
(505) 222-9511 [and]  
Daniel R. Galasso  
(505) 222-9589
- Enforcement Area II**  
Peter J. Garcia, Sr.  
(505) 827-1749
- Enforcement Area III**  
Ryan J. McBee  
(575) 915-1170
- Enforcement Area IV**  
Tyre Jameson  
(505) 222-9529

# Regulatory Authority

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- Solid Waste Act [NMSA 1978, §§ 74-9-1 to 74-9-43]
- New Mexico Solid Waste Rules [20.9.2 – 20.9.10 NMAC]



# Regulatory Authority

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- Recycling and Illegal Dumping Act [NMSA 1978, §§ 74-13-1 to 74-13-20]
- Recycling, Illegal Dumping and Scrap Tire Management Rule [20.9.20 NMAC]



# Solid Waste Bureau Enforcement

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- Why Pursue Enforcement?
  - The mission of the Solid Waste Bureau is to promote and assure the safe, efficient and effective management, recycling and disposal of solid waste
  - This benefits all who live in New Mexico by assuring the protection of human health and the environment
  - If violators are allowed to profit by violating the law, where is the incentive to comply?



# Solid Waste Bureau Enforcement

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## □ Why Pursue Enforcement?

- A primary goal of the Solid Waste Bureau's enforcement program is to assure that **NO PERSON** enjoys economic benefit through regulatory non-compliance
- According to the Solid Waste Bureau's Civil Penalty Assessment Policy, an enforcement action should:
  - Create a deterrent to additional non-compliance (for the violator and others)
  - Assure fair and equitable treatment of the regulated community (avoiding unlevel playing fields)
  - Assure swift resolution of environmental problems





# Solid Waste Bureau Enforcement

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- Solid Waste Bureau Enforcement Actions Are:

**Informal**

or

**Formal**



# Solid Waste Bureau Enforcement

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## □ Informal Enforcement

- Informal enforcement actions are requests for voluntary compliance
  - Compliance is voluntary
  - No monetary penalty is assessed
  - Issued for relatively minor, non-repeated violations
  - May or may not request a written response demonstrating corrective action
  - Most enforcement actions issued by the Solid Waste Bureau are informal (95% or more)



# Solid Waste Bureau Enforcement

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- Informal Enforcement Actions – No Penalty
  - Enforcement Letter
    - No written response requested
  - Notice of Inspection (“NOI”)
    - No written response requested
  - Notice of Non-Compliance (“NON”)
    - For non-registered and non-permitted operations only (e.g., Illegal dumping complaints)
  - Notice of Violation (“NOV”)
    - Written response to enforcement manager is requested
    - Follow-up inspection is probable



# Solid Waste Bureau Enforcement

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## □ Formal Enforcement

- Formal enforcement actions are issued pursuant to the SWA or the RAIDA
  - Compliance is compelled (e.g., corrective action)
  - Monetary penalty is routinely assessed
  - Issued for relatively serious or repeated violations
  - Require a formal Answer (i.e., written response) and a public hearing may be request to contest the action, if requested within 30 days of service
  - Due process rights are protected
  - Settlement agreements are encouraged



# Solid Waste Bureau Enforcement

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- Formal Enforcement Actions – With Penalty
  - Administrative Compliance Order (“ACO”)
    - Compels compliance
    - Assesses a civil penalty (up to \$5,000 per day, per violation)
    - Issued by the Secretary (via delegation to Division Director)
    - Public hearing or settlement are options



# Solid Waste Bureau Enforcement

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- Formal Enforcement Actions – With Penalty
  - Settlement Agreement and Stipulated Order
    - Violator voluntarily enters into a legally binding agreement with NMED and agrees to specified corrective action and payment of a civil penalty, avoiding the probable issuance of an ACO
    - Compels compliance
    - Requires payment of a civil penalty (up to \$5,000 per day, per violation)
    - Issued by the Secretary (Division Director approves the settlement terms)



# Solid Waste Bureau Enforcement

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- Formal Enforcement Actions – With Penalty
  - Civil Judicial Action [District Court]
    - NMED files a complaint with the court (e.g., injunctive relief, search warrant request)
    - Judge assesses case, holds hearing(s), takes testimony and makes rulings
    - NMED Stipulated Orders may be accepted and incorporated as a suitable resolution, but failure to comply represents contempt of court



# Solid Waste Bureau Enforcement

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## Determining the Penalty Amount

- Solid Waste Civil Penalty Assessment Policy
- Penalty Amount (Per Violation) =
  - ▣ Gravity-Based Component [+]
  - ▣ Multi-Day Component [+]
  - ▣ Adjustments [+]
  - ▣ Economic Benefit
- Penalty Shall Not Exceed \$5,000 Per Day, Per Violation [SWA Prohibits]





# Solid Waste Bureau Enforcement

## Gravity-Based Penalty Matrix

### *Extent of Deviation from Requirement*

*Potential For Harm*

	<b>MAJOR</b>	<b>MODERATE</b>	<b>MINOR</b>
<b>SEVERE</b>	\$5,000	\$4,000	\$3,000
<b>SIGNIFICANT</b>	\$3,000	\$2,000	\$1,000
<b>MINIMAL</b>	\$1,000	\$500	\$100



# Solid Waste Bureau Enforcement

## Multi-Day Penalty Matrix

### *Extent of Deviation from Requirement*

*Potential For Harm*

	<b>MAJOR</b>	<b>MODERATE</b>	<b>MINOR</b>
<b>SEVERE</b>	\$1,000	\$800	\$700
<b>SIGNIFICANT</b>	\$600	\$500	\$400
<b>MINIMAL</b>	\$300	\$200	\$50



# Solid Waste Bureau Enforcement

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## Statistics

- During FY 2018 (July 1, 2017 to June 30, 2018)
  - Completed 120 inspections of registered or permitted solid waste, scrap tire or medical facilities
  - Issued 80 enforcement actions (excluding ENTS cases)
  - Logged and investigated 139 ENTS complaints
  - Reviewed eight scrap tire civil engineering application permit requests, six (6) scrap tire hauler registrations, and four (4) tire recycling facility registration applications



# Solid Waste Bureau Enforcement

## Statistics

### Formal Enforcement for CY 2018 [So Far]:

RESPONDENT	ISSUANCE DATE	ACO NUMBER	STATUS	PENALTY ASSESSED	PENALTY PAID (OR BEING PAID)	COMMENTS
Durango Trash, LLC	5/4/2018	SWB 18-002 (SO) [Stipulated Order]	Closed	\$1,000	\$1,000	Unregistered commercial hauler
R. Minnix Construction, Inc.	8/21/2018	SWB 18-003 (CO)	Settled	\$70,626	\$15,000	Improper transportation and disposal of PCS; requested public hearing
White Sands Construction, Inc. and WSCI, LLC	8/21/2018	SWB 18-004 (CO)	Settled	\$58,126	\$22,500	Non-manifested transportation and improper disposal of PCS; requested public hearing
SBE, Inc. d/b/a Steve Bell Construction	8/21/2018	SWB 18-005 (CO)	Closed	\$10,000	\$5,000	Failure to characterize and properly dispose of regulated asbestos waste
Eddy County (Artesia Fairgrounds, Happy Valley, Eddy County Yard and Washington Ranch CCs)	9/7/2018	SWB 18-006 (CO)	Closed	\$48,500	\$25,000	Four (4) unregistered collection centers; mailed on 9/10/2018
Friedman Recycling of Albuquerque, LLC	9/24/2018	SWB 18-007 (SO) [Stipulated Order]	Settled	\$31,500	\$31,500	Improper and unsafe recyclables storage, and failure to have an on-site certified operator
DaVita Medical Group New Mexico, LLC (Sunport Healthcare Facility)	11/6/2018	SWB 18-008 (CO)	Open	\$14,000	\$0	IW case
				<b>\$233,752</b>	<b>\$100,000</b>	

# Solid Waste Bureau Enforcement

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## □ All-Goes-Well Informal Enforcement Timeline

- Complaint received and logged [48 Hours]
- Complaint assigned and referred or initial site inspection conducted [2 Weeks]
- NON/NOI/NOV issued [1 Week]
- Violator receipt and requested response [2 Weeks]
- Violator cleans up and sends receipts [1-2 Weeks]
- SWB review, log and follow-up inspection [1-2 Weeks]
- SWB manager or coordinator closes [72 Hours]

**TOTAL PERIOD: Roughly 10 Weeks/2.5 Months**



# Solid Waste Bureau Enforcement

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- **All-Goes-Well Formal Enforcement Timeline**
    - Complaint logged, assigned, inspected/investigated [2 Weeks]
    - NOV issued, attorney requested/assigned [2 Weeks]
    - ACO/SO and associated documents drafted [1 Week]
    - Respondent receipt, submit Answer, hearing request, request for informal settlement meeting [30 Days]
    - Establish hearing date [90 Days]
    - Hold informal settlement meeting [2 Weeks] \*Multiple\*
    - SFO drafted, coordinated and signed by Respondent and Cabinet Secretary [3-4 Weeks]
    - Violator cleans up and sends receipts [2 Weeks]
    - SWB review, log and follow-up inspection [1-2 Weeks]
    - SWB/OGC coordinate, termination letter sent [1 Week]
- TOTAL PERIOD: Roughly 3 to 6 Months**



# Solid Waste Bureau Enforcement

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## □ Not-All-Goes-Well Formal Enforcement Timeline

- Complaint logged, assigned, inspected/investigated [2 Weeks]
- NOV issued, attorney requested/assigned [2 Weeks]
- ACO/SO and associated documents drafted [1 Week]
- Respondent receipt, submit Answer, hearing request, request for informal settlement meeting [30 Days]
- Establish hearing date [90 Days] \*Delayed\*
- Settlement Discussion(s) Unfruitful [8 Weeks] \*Multiple\*
- Hearing held, hearing officer sends report to Cabinet Secretary [30 Days]
- Cabinet Secretary issued Final Order [30 Days]
- Appealed to District Court / Appeals Court [6 Months or more]
- Final Order upheld, SFO drafted, coordinated and accepted by Judge [3-4 Weeks]
- Violator cleans up and sends receipts [2 Weeks]
- SWB review, log and follow-up inspection [1-2 Weeks]
- SWB/OGC coordinate, termination letter sent [1 Week]

**TOTAL PERIOD: Roughly 10 to 18 Months**



# Solid Waste Bureau Enforcement

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## CASE DISCUSSION

- Former Tire Recycling Facility, Cuba, New Mexico
  - In violation from 1997 to Present
  - Why no compliance?
  - NMED Actions
    - Site Inspections and NOVs
    - Two ACOs
    - Mediation (failed)
    - Revoked hauler and tire recycling facility permits
    - Spent roughly \$650K RAIDA grant funds
    - SFO signed, but no effort to monofill or remove tires
  - Fire occurs on June 7, 2018 (EPA assists)





# Solid Waste Bureau Enforcement

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# Solid Waste Bureau Enforcement

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# Solid Waste Bureau Enforcement

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# Solid Waste Bureau Enforcement

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# Solid Waste Bureau Enforcement

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## CASE DISCUSSION

- Former Tire Recycling Facility, Cuba, New Mexico
  - Tire Recycling Facility (“TRF”) permit on December 1, 1997
  - TRF was improperly operated and non-compliant with the permit and regulations (SWB inspections performed)
  - December 31, 2002, NMED issued two Administrative Compliance Orders (“ACOs”) for excessive on-site tires, improper storage and waste mismanagement
  - September 20, 2005, mediation with NMED failed
  - February 20, 2006, Sandoval County Fire Marshall inspected and stated in the report that the site was a “death trap”
  - September 17, 2008, SFO revoked the TRF permit
  - November 17, 2008, NMED Cabinet Secretary signed an emergency declaration, authorizing use of RAIDA funds



# Solid Waste Bureau Enforcement

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# Solid Waste Bureau Enforcement

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# Solid Waste Bureau Enforcement

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# Solid Waste Bureau Enforcement

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# Solid Waste Bureau Enforcement

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## CASE DISCUSSION

- Former Tire Recycling Facility, Cuba, New Mexico
  - April 8, 2009, SFO settled both ACOs issued in 2002, allowing NMED to use a contractor to clean up the site, and Mr. Cordova agreed to work with NMED toward siting a scrap tire monofill, and agreed to pay a \$50,000 penalty (if he failed to comply)
  - As of December 1, 2010, NMED's RFP process and awarded contractor brought the site into fire code compliance, spending roughly \$650K of RAIDA funds
  - December 12, 2010, ACO revoked the scrap tire hauler registration (no \$10,000 surety bond)
  - 2011 through 2017, no bale removal or cooperation with NMED on monofill, although NMED performed numerous site visits, verifying additional tires were not brought to the site



# Solid Waste Bureau Enforcement

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# Solid Waste Bureau Enforcement

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# Solid Waste Bureau Enforcement

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# Solid Waste Bureau Enforcement

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# Solid Waste Bureau Enforcement

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## CASE DISCUSSION

- Former Tire Recycling Facility, Cuba, New Mexico
  - June 7, 2018, a fire broke out involving approximately four stockpiles (suspicious, no formal determination by fire marshal)
  - Cuba and Sandoval County Fire Departments, and subsequently EPA Region 6 personnel, brought in the necessary resources to smother and partially extinguish the burning scrap tires
  - \*\*\*Were it not for NMED's reorganization of the site into proper storage configuration in 2010, fire would have been catastrophic
  - Buried, burned or partially burned tires still hot
  - Although the fire was extinguished (or fully covered), the cover is poor and below surface site conditions are uncertain
  - Does buried burn debris require removal? Who will pay?
  - Remainder of unburned bales and tires still remain on the property. Problem remains.





# Solid Waste Bureau Enforcement

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# Solid Waste Bureau Enforcement

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# Solid Waste Bureau Enforcement

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# Solid Waste Bureau Enforcement

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QUESTIONS?

