

US EPA ARCHIVE DOCUMENT

Letter 2/21/85

Base Program

MEMORANDUM OF AGREEMENT  
BETWEEN  
THE STATE OF NEW MEXICO  
AND  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
REGION VI

I. GENERAL

This Memorandum of Agreement (hereafter "Agreement") establishes policies, responsibilities, and procedures pursuant to 40 CFR 271.8 and § 74-1-6.C., NMSA 1978, for the State of New Mexico Hazardous Waste Management Program (hereafter "State Program") authorized under Section 3006 of the Resource Conservation and Recovery Act (hereafter "RCRA" or "the Act") of 1976 (Pub. L. 94-580, 42 USC 6901, et. seq.) and the United States Environmental Protection Agency Regional Office for Region VI (hereafter "EPA"). This Agreement further sets forth the manner in which the State and EPA will coordinate and cooperate.

This Agreement is entered into by the Secretary of the New Mexico Health and Environment Department (hereafter "Secretary" or the "State"), and the Regional Administrator, EPA Region VI (hereafter "Regional Administrator" or "EPA"). The parties will review this Agreement jointly at least once a year (and at other times as appropriate), in connection with grant funding under Section 3011 of RCRA.

The Director of the New Mexico Health and Environment Department's Environmental Improvement Division (hereafter "Director" or the "State") shall serve as the lead administrator in the coordination and communication between the State and EPA in the implementation of the New Mexico Hazardous Waste Management Program.

Nothing in this Agreement shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under RCRA. Nothing in this agreement shall be construed to contravene any provisions of 40 CFR Part 271.

This Agreement may be modified upon the initiative of either party in order to ensure consistency with State program modifications or for any other purpose mutually agreed upon. Any revisions or modifications must be in writing and must be signed by the Secretary and the Regional Administrator.

This Agreement will remain in effect until such time as State program authorization is withdrawn by or is voluntary transferred to EPA, according to the criteria and provisions established in of 40 CFR 271.22 and 271.23.

This Agreement shall be executed by the Secretary and the Regional Administrator and shall become effective at the time the State's authorization takes effect, which shall be the date specified in the Federal Register notice of EPA's decision to grant authorization to the State.

## II. Policy Statement

Each of the parties to this Agreement is responsible for ensuring that its obligations under RCRA are met. Upon final authorization by EPA, the State assumes primary responsibility for implementing the RCRA hazardous waste program within its boundaries. EPA retains its responsibility to ensure execution of the requirements of RCRA, including direct implementation in the event the State is unable to act. The State and the Regional Administrator agree to maintain a high level of cooperation and coordination between their respective staffs in a partnership to assure successful and effective administration of the State and Federal program.

EPA assumes an oversight role upon granting final authorization to the State. EPA will oversee State program implementation in order to ensure full execution of the requirements of RCRA, to promote national consistency in implementation of the hazardous waste program, to allow EPA to report to the President and Congress on the achievements of the hazardous waste program, and to encourage State's and the EPA to agree on desirable technical support and targets for joint efforts to prevent and mitigate environmental problems associated with the improper management of hazardous wastes. Oversight will be accomplished by EPA through written reporting requirements, permit overview, compliance and enforcement overview, and annual review of State's programs.

## III. State Program Review

### A. General

The Regional Administrator will assess the State administration and enforcement of the hazardous waste program on a continuing basis for equivalence and consistency with RCRA, with this Agreement, and with all applicable Federal requirements and policies and for adequacy of enforcement.

To ensure effective program review, the State agrees to allow EPA access to all files and other information requested by the Regional Administrator and deemed necessary for reviewing State Program administration and enforcement.

Review of the Environmental Improvement Division's files may be scheduled at quarterly intervals. Program review meetings between the State and the Regional Administrator or their assignees will be scheduled at reasonable intervals not less than annually to review specific operating procedures and schedules, to resolve problems, and to discuss mutual program concerns. These meetings will be scheduled at least fifteen (15) days in advance unless agreed to differently. A tentative agenda for the meeting will be prepared by EPA.

### B. Identification of Major Hazardous Waste Handlers

The State agrees to develop with EPA a list of major hazardous waste facilities, generators and transporters in the State designated as "major" hazardous waste handlers. This designation is intended to identify, for

administrative purposes, environmentally significant hazardous waste handlers, and to be used in concentrating inspection, permitting and reporting resources on those handlers. The list shall be submitted as a part of this Agreement and shall be reviewed and updated annually or more often as necessary. Changes to the list do not require a formal amendment to this Agreement so long as both the State and EPA agree in writing to any changes.

From the list of "major" handlers the State agrees to develop and annually review with the Regional Administrator a list of facilities whose permit applications and draft permits will be reviewed by EPA. This smaller list constitutes major facilities for purposes of EPA permit overview.

#### IV. Information Sharing

##### A. General

As the national hazardous waste program matures, the respective roles and responsibilities in this State/Federal partnership will become more clear. As the respective information needs of the State and EPA evolve, changes to this section of the Agreement may be appropriate. During the annual review of this Agreement the State and the Regional Administrator will carefully examine the following information sharing provisions for needed revision.

##### B. EPA

1. EPA will keep the State informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, and any other factors that affect the State Program. EPA will also provide general technical guidance to the State. EPA will share with the State any national reports developed by EPA from the data submitted through State reporting requirements.
2. EPA agrees to provide the State notification information from EPA Form 8700-12 obtained prior to the effective date of this Agreement. A copy of the original notification forms and/or a computer print-out containing all the notification information will be provided. Such information will be provided to the Director within thirty (30) days of the effective date of this Agreement. EPA will also forward, on a monthly basis, notification information (including newly assigned identification numbers) submitted by persons located in the State who file such forms after the effective date of this Agreement. This information will be submitted to the State within ten days of the end of each month for the preceding month.
3. EPA agrees to assign identification numbers to generators and transporters and to owners and operators of hazardous waste treatment, storage, and disposal facilities submitting notifications to the State after the effective date of this Agreement. EPA will do this after receiving a copy of the notification information from the State as specified in Section IV.C.5..
4. EPA agrees to transfer to the State any pending Part A and Part B hazardous waste management facility permit applications originally submitted to EPA pursuant to 40 CFR 270.10 by facilities located in the

State and which have not already been transferred to the State, together with all pertinent file information. Pertinent file information includes applications (including accompanying narratives, plans, maps, etc.) draft permits, public notices, administrative notices, fact sheets, and correspondence. Such materials will be provided within thirty days after the effective date of this Agreement and according to any arrangements the State and the Regional Administrator may make regarding the priority of transfer.

5. EPA will also provide to the State, within five days of receipt, Part A and Part B permit applications submitted directly to EPA by persons in the State after the effective date of this Agreement.
6. EPA agrees to make available to the State copies of any reports and data resulting from compliance inspections within sixty days of the completion of the inspections.
7. EPA will make available to the State other relevant information as requested which the State needs to implement its approved program.

C. State

1. The State agrees to inform the Regional Administrator of any proposed or adopted program changes which would affect the State's ability to implement the authorized program (i.e. changes in statutes, regulations, memoranda of understanding, and judicial or legislative actions affecting those authorities), and modifications of resource levels (i.e. available or budgeted personnel and funds). The State recognizes that program revisions must be made in accordance with the provisions of 40 CFR 271.21.
2. The State will provide compliance monitoring, enforcement and permitting information to the Regional Administrator on a routine basis as specified in the Annual State Work Program.
3. The State agrees to provide other reports and information to the Regional Administrator as specified in the Annual State Work Program.
4. The State agrees to provide other reports and information concerning those facilities identified as "major" facilities to the Regional Administrator as specified in the Annual State Work Program.
5. So that EPA can issue identification numbers and maintain a national inventory of all hazardous waste handlers, the State agrees to provide EPA with the following notification information submitted to the State after the effective date of this Agreement by new hazardous waste generators, transporters, and treatment, storage, and disposal facilities in the State:
  - name and location of the handler
  - mailing address of the handler
  - name and telephone number of a contact person

- type of hazardous waste activity
- process codes (if the handler is a TSDF)

#### D. Site Visits

EPA is responsible for maintaining reliable national data on hazardous waste management. This data is used to report to the President and Congress on the achievements of the hazardous waste program and to support EPA's regulatory development efforts. Whenever EPA determines that it needs to obtain certain information, EPA will first seek to gain this information from the State. The State agrees to supply the Regional Administrator with this information if readily available and as resources allow. If the State is unable to provide the information or if it is necessary to supplement the State information, EPA may conduct a special survey or perform information collection site visits after notifying the State. EPA will share with the State any national reports developed by EPA as a result of such information collection.

#### E. Emergency Situations

Upon receipt of any information that the handling, storage, treatment, transportation, or disposal of hazardous waste is endangering human health or the environment, the party in receipt of such information shall immediately notify by telephone the other party(ies) to this Agreement of the existence of such situation. Appropriate names and home telephone numbers of individuals shall be maintained in current documents available to all parties of this Agreement.

- a. National Response Center 1-800-424-8802.
- b. HED-Environmental Improvement Division 24-Hour  
Emergency Reporting Number (505) 827-9329.
- c. Regional Response Center (214) 767-2720 .

#### F. Confidentiality

1. Any information obtained or used in the administration of the State program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information. Any information obtained from a State subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2.
2. EPA agrees to furnish to the State information in its files which is not submitted under a claim of confidentiality and which the State needs to implement its program. Subject to the conditions in 40 CFR Part 2, EPA will furnish the State information submitted to EPA under a claim of confidentiality which the State needs to implement its program. All information EPA agrees to transfer to the State will be transferred in accordance with the requirements of 40 CFR Part 2.

## V. PERMIT ISSUANCE

### A. EPA Permitting

Upon final authorization of the State program EPA will suspend issuance of Federal permits for hazardous waste treatment, storage, and disposal facilities in the State

Pursuant to any outstanding permit actions, EPA agrees to transfer the applications to the State for processing and notify the facility that the State is now the lead agency. A copy of the notification of transfer shall be sent to the State along with the facility permit application. The State will call-in, process and issue the permits based on a priority schedule agreed to in the Annual State Work Program.

Any final permit issued by EPA prior to the State receiving Final Authorization will be enforced by EPA until the State can call-in, process and issue a State permit. This will be done on a priority schedule agreed to in the Annual State Work Program.

EPA intends to add permitting standards for processes not currently covered by the Part 264 standards. When EPA does promulgate standards for additional processes, EPA will process and enforce RCRA permits in the State in the new areas until the State receives final authorization of equivalent and consistent State standards. At the time the State program is approved in the new areas, EPA will suspend issuance of Federal permits in the State. EPA will also transfer any pending permit applications, completed permits or pertinent file information to the State within thirty days of the approval of the State program in conformance with the conditions of this Agreement. The State will call-in and process permit as agreed to in the Annual State Work Program.

### B. EPA Overview of State Permits

While EPA may comment on any permit application or draft permit, EPA's overview function will focus primarily on those facilities identified by the State and EPA as major facilities for permit overview.

EPA may comment in writing on any draft permit or proposed permit modification, whether or not EPA commented on the permit application, within forty-five days of its receipt. Where EPA indicates, in a comment, that issuance of the permit would be inconsistent with the approved State program, EPA will include in the comment:

- a. A statement of the reasons for the comment (including the section of the State regulations that support the comment); and
- b. The actions that should be taken by the State in order to address the comments (including the conditions which the permit would include if it were issued by EPA).

EPA shall send a copy of its written comments to the permit applicant.

EPA shall withdraw such comments when satisfied that the State has met or refuted its concerns and shall also provide the permit applicant with a copy of such withdrawal.

Under Section 3008(a)(3) of RCRA, EPA may terminate a State issued permit in accordance with the procedures of Part 124, Subpart E, or bring an enforcement action in accordance with the procedures of 40 CFR Part 22 in the case of a violation of a State program requirement. In exercising these authorities, EPA will observe the conditions established in 40 CFR 271.19(e).

### C. State Permitting

The State is responsible for expeditiously drafting, circulating for public review and comment, issuing, modifying, reissuing and terminating RCRA permits for all hazardous waste treatment, storage, and disposal facilities in the State, and shall do so in a manner consistent with RCRA, with this Agreement, with all applicable Federal requirements, and with the State's Program Description.

The State agrees that the Director shall hold a public hearing whenever he receives a written notice of opposition to a draft permit and a request for a public hearing from an affected individual, within 45 days from the date of publication of a notice announcing a proposed permit action unless, after due consideration, that affected individual withdraws his request. The State intends that "rules of standing" be used to define the term "affected individual" when considering requests for the holding of a public hearing. The Director may also hold a public hearing at his discretion.

The State agrees to issue, modify and reissue all permits in accordance with § 74-4-4.2 NMSA 1978, and with Sections 303.A. through G. of the New Mexico Hazardous Waste Management Regulations and to include as permit conditions all applicable provisions of Sections 302.A. through P. of the New Mexico Hazardous Waste Management Regulations. This Agreement also applies to permits issued after final authorization but for which the processing may have begun before final authorization.

The State agrees that in order to carry out permitting procedures consistent with the requirements of 40 CFR 124, that the individuals and agencies entitled to receive public notice of any permit actions under Section 303.C.1. of the New Mexico Hazardous Waste Management Regulations shall also include as applicable:

1. Any other agency which the State knows has issued or is required to issue a RCRA, UIC, PSD, NPDES or 404 permit for the same facility or activity (including EPA when the draft permit is prepared by the State);
2. Federal and State agencies with jurisdiction over fish, shellfish and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, and other appropriate government authorities including any affected States;
3. Persons on a mailing list developed by:

- (a) Including those who request in writing to be on the list;
  - (b) Soliciting persons for "area" lists from participants in past permit proceedings in that area; and
  - (c) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as Regional and State funded newsletters, environmental bulletins, or State law journals. (The State may update the mailing list from time to time by requesting written indication of continued interest from those listed. The State may delete from the list the name of any person who fails to respond to such a request);
4. To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and
  5. To each State agency having any authority under State law with respect to the construction or operation of such facility.

The State also agrees that in addition to the general public notice described in Section 303.C.2. of the New Mexico Hazardous Waste Management Regulations, those persons identified in paragraphs 1. and 2. above shall be mailed a copy of the fact sheet, the permit application (if any), and the draft permit (if any).

The State agrees that any compliance schedule contained in permits it issues will require compliance with applicable standards as soon as possible.

The State agrees to consider all comments EPA makes on permit applications and draft permits. The State will satisfy or refute EPA's concerns on a particular permit application, proposed permit modification or draft permit in writing before issuing the permit or making the modification.

## VI. PERMIT ADMINISTRATION

### A. EPA

EPA will administer the RCRA permits it may have issued to facilities in the State until they expire, are terminated or until such time as the State either incorporates the terms and conditions of the Federal permits in State RCRA permits or issues State RCRA permits to those facilities. EPA will be responsible for enforcing the terms and conditions of the Federal permits, while they remain in force.

### B. State

The State agrees to review any hazardous waste permits which may be issued under State law prior to the effective date of this Agreement and to modify or revoke and reissue such permits as necessary to require compliance with § 74-4-1 et. seq. NMSA 1978 and the New Mexico Hazardous Waste Management Regulations, Parts I through V. The State agrees to modify or revoke and reissue these State permits as RCRA permits in accordance with schedules determined in the Annual State Work Program.

## VII. COMPLIANCE MONITORING AND ENFORCEMENT

### A. EPA

Nothing in this Agreement shall restrict EPA's right to inspect any hazardous waste generator, transporter or facility or bring enforcement action against any person believed to be in violation of the State hazardous waste program in accordance with the provisions of Sections 3008, 3013 and 7003 of RCRA. Before conducting an inspection of a generator, transporter or facility, the Regional Administrator will normally give the State seven (7) days notice of the intent to inspect in accordance with 40 CFR 271.8(b)(3)(i). If the State performs a State compliance inspection and submits a report and data relevant thereto within that time to EPA, no EPA inspection will be made, unless the Regional Administrator deems the State report and data to be inadequate. In case of an imminent hazard to human health and the environment, the Regional Administrator may shorten or waive the notice period.

The frequency of EPA oversight and training inspections will be specified in the Annual State Work Program. Normally, EPA will accompany the State on no more than 5% of the State's compliance inspections.

The Regional Administrator may take enforcement action against any person determined to be in violation of RCRA in accordance with Section 3008(a)(2). EPA will take enforcement action only upon determining that the State has not taken timely and appropriate enforcement action. Prior to issuing a Compliance Order under Section 3008, EPA will give notice to the State. EPA also retains its rights to issue orders and bring actions under Sections 3013 and 7003 of RCRA and any other applicable Federal statute.

After notice to the State, EPA may take action under Section 3008 of RCRA against a holder of a State issued permit on the ground that the permittee is not complying with a condition of that permit. In addition, EPA may take action under Section 3008 of RCRA against a holder of a State issued permit on the ground that the permittee is not complying with a condition that the Regional Administrator in commenting on that permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit.

Within thirty (30) days of the effective date of this Agreement, the State and EPA agree to review the status of any on-going RCRA enforcement actions (such as Warning Letters, Compliance Orders, Consent Agreement & Final Orders, Groundwater Monitoring, Groundwater Waivers). EPA agrees to coordinate the conclusion of the actions with the State. EPA shall retain the lead and be responsible for enforcement procedures after the date of authorization until deemed necessary by EPA to refer these actions to the State with the State's approval. For violations detected prior to authorization, but before EPA has undertaken formal enforcement action, the violation along with recommendations from EPA may be referred to the State for action. If no formal action has been undertaken by EPA within one year of the detection of the violation, the violation, along with recommendations from EPA will be referred to the State for action.

### B. State

The State agrees to carry out a timely and effective program for monitoring the compliance by generators, transporters, and facilities with applicable program requirements (see 40 CFR 271.15 ) as specified in the Annual State Work Program and shall be consistent with all applicable Federal requirements and with the State's Program Description. As part of this program, the State will conduct compliance inspections to assess compliance with generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other program requirements.

The State agrees to take timely and appropriate enforcement actions against all persons in violation of generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other program requirements, including violations detected by compliance inspections. The scope and nature of such enforcement actions shall be in accordance with those applicable enforcement strategies specified in the State's Program Description. The State will maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public.

Where a citizen has an interest which is or may be affected by Division enforcement action, he may intervene in such action pursuant to Rule 24, NMR Civ. P. The Division will not oppose intervention under NMR Civ. P. Rule 24(a) on the grounds that the applicant's interest is adequately represented by the State.

The State agrees to retain all records for at least three years unless there is an enforcement action pending. In that case all records will be retained until such action is resolved.

### C. Shared Enforcement Responsibilities

The State and EPA recognize and agree to the need for carrying out timely and appropriate enforcement actions against persons in violation of program requirements. In addition to the agreements in Sections A and B above, the State and EPA agree to share certain enforcement responsibilities as a means of enhancing and maintaining the State's enforcement efforts.

EPA agrees to provide the State with any assistance available in order to rapidly process enforcement actions. Such assistance shall include, but not be limited to, joint enforcement actions, unilateral enforcement actions by EPA, concurrent enforcement actions, technical assistance in preparing cases, and legal assistance in preparing and pursuing actions.

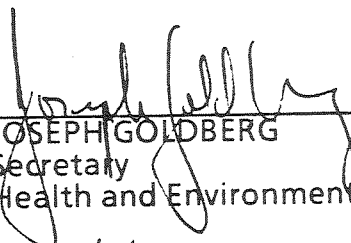
The State agrees to provide EPA with information concerning enforcement actions as outlined elsewhere in this agreement and in the Annual State Work Program. Additionally, the State agrees to develop with EPA, through quarterly enforcement conferences, projected needs for shared enforcement responsibilities.

The State will immediately inform EPA of pending enforcement actions which the State and EPA have agreed require the involvement of EPA. The State

and EPA agree to develop, within five (5) days of the notice by the State, a strategy, including EPA's involvement, for proceeding with the action.

EPA and the State may agree on a periodic basis (no less often than annually, through negotiation of the Annual State Work Program) on the types of enforcement actions to be shared with EPA. Nothing in this agreement shall restrict the State's right to request assistance from EPA on any type of enforcement. EPA agrees to provide the assistance available and as agreed with the State.

BY:

  
JOSEPH GOLDBERG  
Secretary  
Health and Environment Dept.

Date:

7/19/84

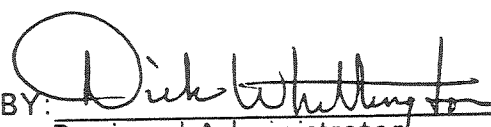
BY:

  
STEVEN ASHER  
Director  
Environmental Improvement Division

Date:

7/16/84

BY:

  
Regional Administrator  
U.S. Environmental Protection Agency  
Region VI

Date:

12-18-84