

US EPA ARCHIVE DOCUMENT

ENFORCEMENT MEMORANDUM OF UNDERSTANDING
BETWEEN THE
NEW MEXICO ENVIRONMENTAL IMPROVEMENT DIVISION
AND
U. S. ENVIRONMENTAL PROTECTION AGENCY

final
Base Program
signed
9-28-84

Introduction

The State of New Mexico and the U.S. Environmental Protection Agency (EPA) agree that enforcement is one of the key components of any environmental protection program. To ensure that both State and Federal resources are used effectively to achieve high rates of compliance within New Mexico's authorized Resource Conservation and Recovery Act program and to work together to deter non-compliance, the undersigned enter into this memorandum of understanding (MOU).

This MOU documents the State/EPA relationship for implementing an effective enforcement program in accordance with minimum national criteria for Enforcement response as outlined in Appendices A through F, and Exhibits A through E which the State of New Mexico and EPA Region 6 agree to follow. Specifically, the MOU ensures that there are 1) clear oversight criteria and procedures for EPA to use in assessing the State Compliance and Enforcement program performance, 2) clear criteria for direct Federal enforcement including procedures for advance consultation and notification, 3) adequate State reporting to ensure effective oversight, and 4) timely and appropriate enforcement actions.

Oversight Criteria and Measures

A good enforcement program must 1) have a complete and accurate list of all regulated facilities, 2) have clear enforceable requirements, 3) have reliable compliance monitoring, 4) strive toward high rates of continuing compliance, 5) take timely and appropriate enforcement actions, and 6) possess sound overall management. The New Mexico Environmental Improvement Division is committed to maintaining such a program.

The New Mexico Environmental Improvement Division agrees to continuously update and maintain a complete inventory of all hazardous waste facilities under its jurisdiction and to submit Hazardous Waste Data Management System updates in accordance with the schedule stipulated in the fiscal year grant work plan to indicate the compliance status.

The New Mexico Environmental Improvement Division agrees to ensure compliance with program requirements through on-site inspections and record reviews in accordance with the fiscal year grant work plan schedule.

The above program requirements, combined with timely and appropriate enforcement, will lead us toward a high level of compliance with the State's laws and regulations. The New Mexico Environmental Improvement Division agrees to maintain a qualified, trained staff to review permit applications, write permits,

conduct field inspections and review all reports so the State RCRA program is effectively enforced.

Oversight Procedures and Protocols

The EPA will conduct a continuous evaluation of the New Mexico Environmental Improvement Division's RCRA program enforcement activities. These reviews will be conducted in conjunction with the regularly scheduled mid-year and end-of-year State program evaluations. During the current fiscal year, EPA will review the State program to assess five measures of compliance and enforcement performance. These are:

1. Overall compliance rate for the regulated community;
2. Correction of violations;
3. Inspections;
4. Formal enforcement actions; and
5. Judicial referrals and filed court cases.

A focus of the review will be an evaluation of the timeliness and appropriateness of the responses to violations. The data needed to evaluate this enforcement program will be drawn from the continuous evaluation of the State's program and reporting data supplied by the State. EPA will also review files on approved and/or pending permit applications to ensure effective implementation of the late/incomplete Part B application policy.

Criteria for Direct Federal Enforcement

In delegated programs, primary responsibility action resides with the State. EPA may take direct enforcement action under the conditions specified in Appendix C.

In the event that EPA does take a direct enforcement action in the State; in order to maintain a strong and effective State/EPA working relationship, EPA will make arrangements for joint action (where possible considering the circumstances), use available State inspection/information, offer the State the opportunity to attend settlement conferences, acknowledge the contribution of the State in the news media to ensure that the State is not erroneously perceived as failing, and keep the State continually apprised of events and reasons for Federal actions.

Advance Notification and Consultation

The EPA will provide advance notice of direct enforcement actions in accordance with the policy of "no surprises" which is the centerpiece of the State/Federal partnership for achieving compliance. The EPA will also coordinate any inspection activity EPA intends to undertake with the State.

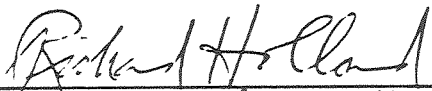
All compliance monitoring and enforcement activities to be conducted by EPA shall be in agreement with the policies, responsibilities and procedures set forth in the current and existing Memorandum of Agreement between the State and EPA, except as modified herein.

State Reporting

The State will provide information in accordance with the requirements of this MOU and the current fiscal year grant work plan.

Once executed, this MOU will continue in effect unless modified by the mutual consent of both parties. The MOU will be re-evaluated annually and revised as necessary.

FOR THE STATE AGENCY



Signature of Agency Head

9-26-82

Date

FOR THE ENVIRONMENTAL PROTECTION AGENCY, REGION 6



Signature of Regional Administrator

9-28-1984

Date

APPENDICES SUMMARY

Appendix A: NATIONAL MINIMUM ENFORCEMENT PERFORMANCE EXPECTATIONS

Presents the minimum national performance expectations for the State program as outlined in the "RCRA Program Quality Document." Enforcement actions appropriate to all levels of violations are included in the "RCRA Program Quality Document".

Appendix B: NATIONAL ENFORCEMENT PERFORMANCE EXPECTATIONS FOR LATE/INCOMPLETE PART B APPLICATIONS

Graphically presents performance expectations for enforcement of late/incomplete Part B applications.

Appendix C: RCRA ENFORCEMENT BY EPA

Defines protocol for EPA lead enforcement actions in an authorized State. The situations which would merit EPA enforcement actions are presented as well as the procedures for State notification.

Appendix D: OVERSIGHT MEASURES: EPA RESPONSIBILITIES

Outlines EPA's reporting and overview responsibilities in support of the State's enforcement program. These activities allow EPA to present an accurate picture of the State's enforcement activities to EPA Headquarters.

Appendix E: STATE REPORTING

Provides national guidelines on State reporting requirements:

- a. Strategic Planning Management System (SPMS);
- b. RCRA Enforcement Management System (REMS); and
- c. Hazardous Waste Data Management System (HWDMS)

APPENDIX A

NATIONAL MINIMUM ENFORCEMENT PERFORMANCE EXPECTATIONS

STATES WITHOUT PENALTY AUTHORITY

Introduction

Development of the RCRA program quality criteria involved active participation by RCRA managers at Headquarters, Regions, States, and the Association of State and Territorial Solid Waste Management Officials.

Implementation of the RCRA program is without precedent among environmental programs in technical and management complexity. The program cannot succeed without close cooperation between EPA and the States. The foundation for this cooperation must be a common understanding of what is necessary to build and sustain a quality RCRA program. Because the criteria are interim, they should be applied realistically, recognizing that individual situations may require adjustments to the national benchmarks in some cases.

A. High Priority Violators

High Priority Violators are those with Class I violations who create a substantial likelihood for potential or actual exposure to hazardous waste, realize a substantial economic benefit as a result of non-compliance, are chronic or recalcitrant violators, or have intentionally committed violations. The Enforcement Response Policy provides an operational definition for Region and State use. For high priority violators:

1. The State will notify EPA of the existence of a High Priority Violation and of its intended course of action within 30 days of the violation discovery */ **/.
2. The case should be referred to the appropriate judicial authority (e.g., State Attorney General, District Attorney, etc.) or to EPA within 90 days from the discovery of the violations for an action penalty. +
3. Judicial authority files the case within 60 days of referral.
4. For cases referred to the State Attorney General's Office which may become unduely delayed, the State of New Mexico and EPA agree to discuss the anticipated progress of the cases and, if necessary, EPA may choose to initiate a parallel Federal action.

*/ Note that emergencies (such as imminent and substantial endangerment situations) should be acted on immediately and not be limited by these criteria.

**/ The violation discovery date is the date when the case development staff determines that a violation has occurred through review of the inspection report and/or other data (e.g., laboratory reports). For purposes of tracking

progress against the criteria, the violation discovery date will be fixed at 45 days after the inspection.

- + A penalty is required for all High Priority violators as specified by the FY 85 RCRA Implementation Plan and the "Quality Hazardous Waste Management Program under RCRA". EPA should consider penalty-only actions if a State has failed to assess a penalty regardless of whether a facility has been brought back into compliance.
- 5. Decision is made to escalate the action if a handler (on a compliance schedule) is not in compliance within 30 days of the compliance schedule date.
- 6. Case is referred to judicial authority within 90 days after decision to refer case.
- 7. Judicial authority files case within 60 days of referral.
- 8. Decision is made to escalate action if a handler (on a compliance schedule) is not in compliance within 30 days of compliance schedule date.

B. Class I Violators

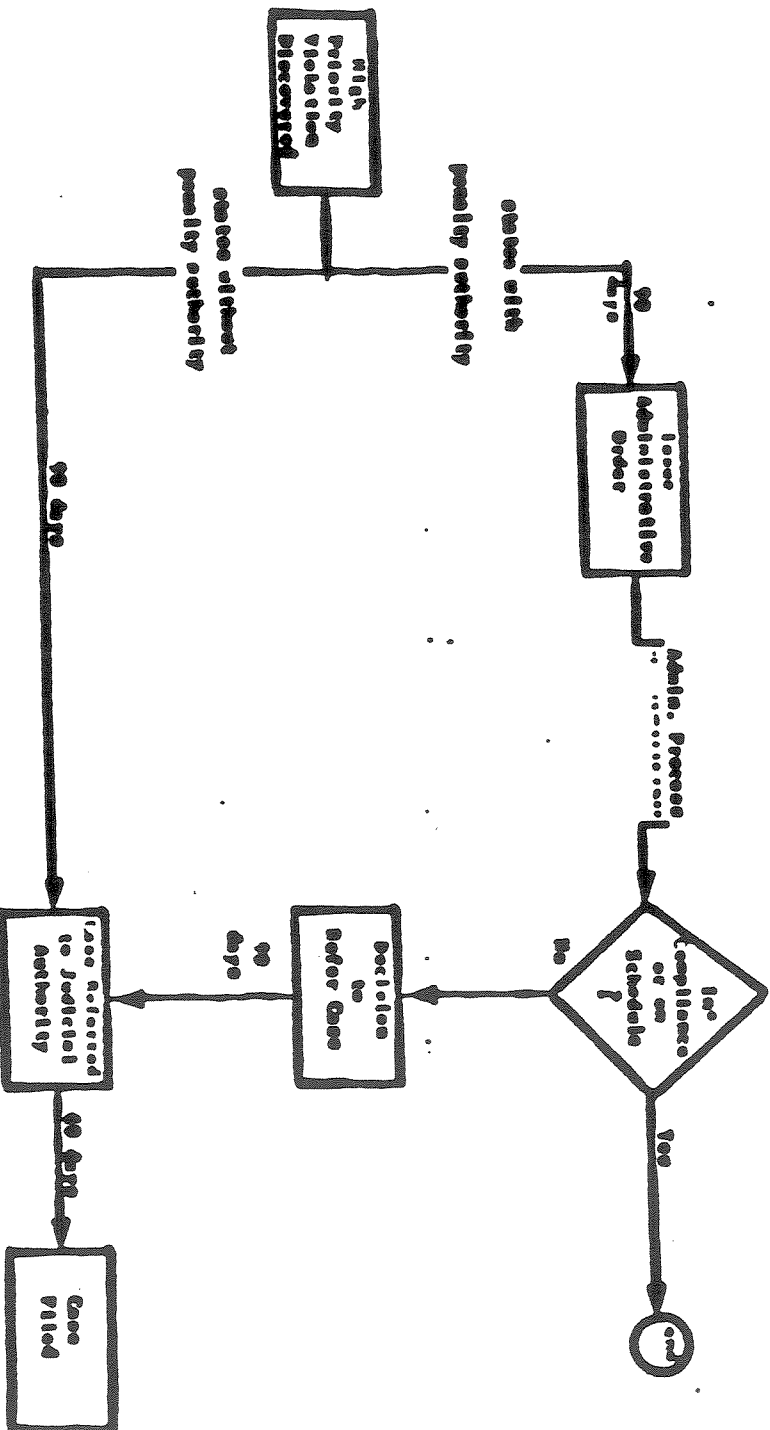
Class I violators are those who violate requirements that are central to the protection of public health and the environment. One example of a Class I violation is the failure to install, operate and maintain a ground-water monitoring system. If a facility fails to comply with ground-water monitoring requirements, the States/EPA is prevented from knowing whether a groundwater quality problem exists and hence from protecting the public health and the environment.

1. An initial enforcement action (e.g. warning letter, notice of violation, or equivalent action) is taken within 30 days of discovery of the violation.
2. Decision is made to escalate action (e.g., civil referral, or referral to EPA for administrative order with penalties) within 90 days of the initial enforcement action for handlers not returned to compliance or on an agreed upon compliance schedule. (More than one action, such as a warning letter, NOV or equivalent, may be taken within this time period.)
3. The case should be referred to appropriate judicial authority of EPA within 90 days after decision to escalate.
4. Judicial authority files case within 60 days of referral.
5. For cases referred to the State Attorney General's Office which become unduly delayed, the State of New Mexico and EPA agree to discuss the anticipated progress of the cases and, if necessary, EPA may choose to initiate a parallel Federal action.
6. Decision is made to escalate action if handler (on a compliance schedule) is not in compliance within 30 days of compliance schedule date.

C. Late/Incomplete Part B Applications

An owner or operator must submit Part B of the permit application when required to do so by the State. The State is required to allow an applicant six months to submit a Part B application; the State may allow additional time for submission at their discretion. Failure to furnish a Part B application by the date specified by the State or failure to furnish in full the information required in Part B is grounds for denial of a RCRA permit and termination of interim status. The enforcement procedures to be followed when an applicant fails to submit a timely Part B application or submits a timely but incomplete Part B application is presented in Exhibit D: "Guidance on Developing Compliance Orders Under Section 3008 of the Resource Conservation and Recovery Act: Failure to Submit and Submittal of Incomplete Part B Permit Applications"; and Appendix C.

TIMELINE FOR ENFORCEMENT ACTIONS HIGH PRIORITY VIOLATIONS

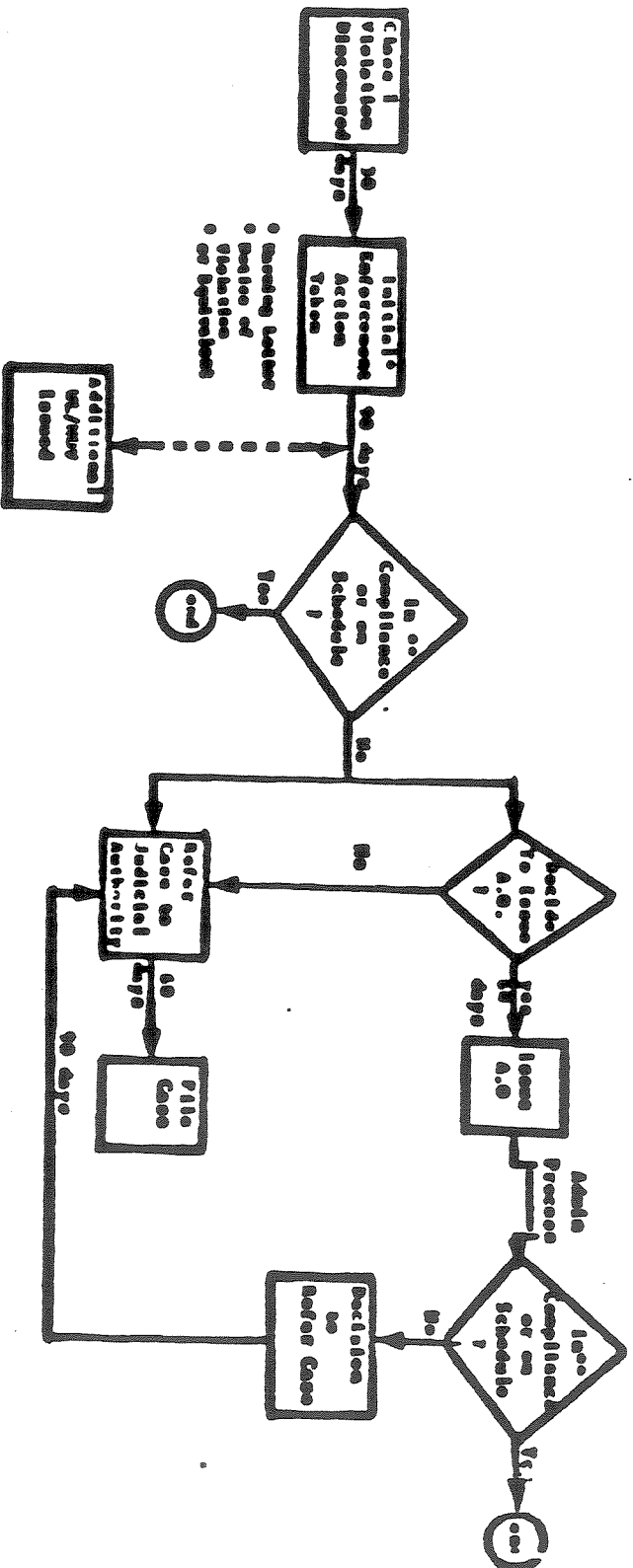


• Thereafter an compliance schedule will be mandated to secure conformance with the schedule. Enacted enforcement actions will be taken if a handler is not in compliance within 90 days of the compliance schedule date.

Time required for administrative processing in addition to the days indicated on the timeline. Pre-hearing negotiations should not generally continue beyond 90 days from issuance of an initial Administrative Order.

TIMELINE FOR ENFORCEMENT ACTIONS

CLASS I VIOLATIONS

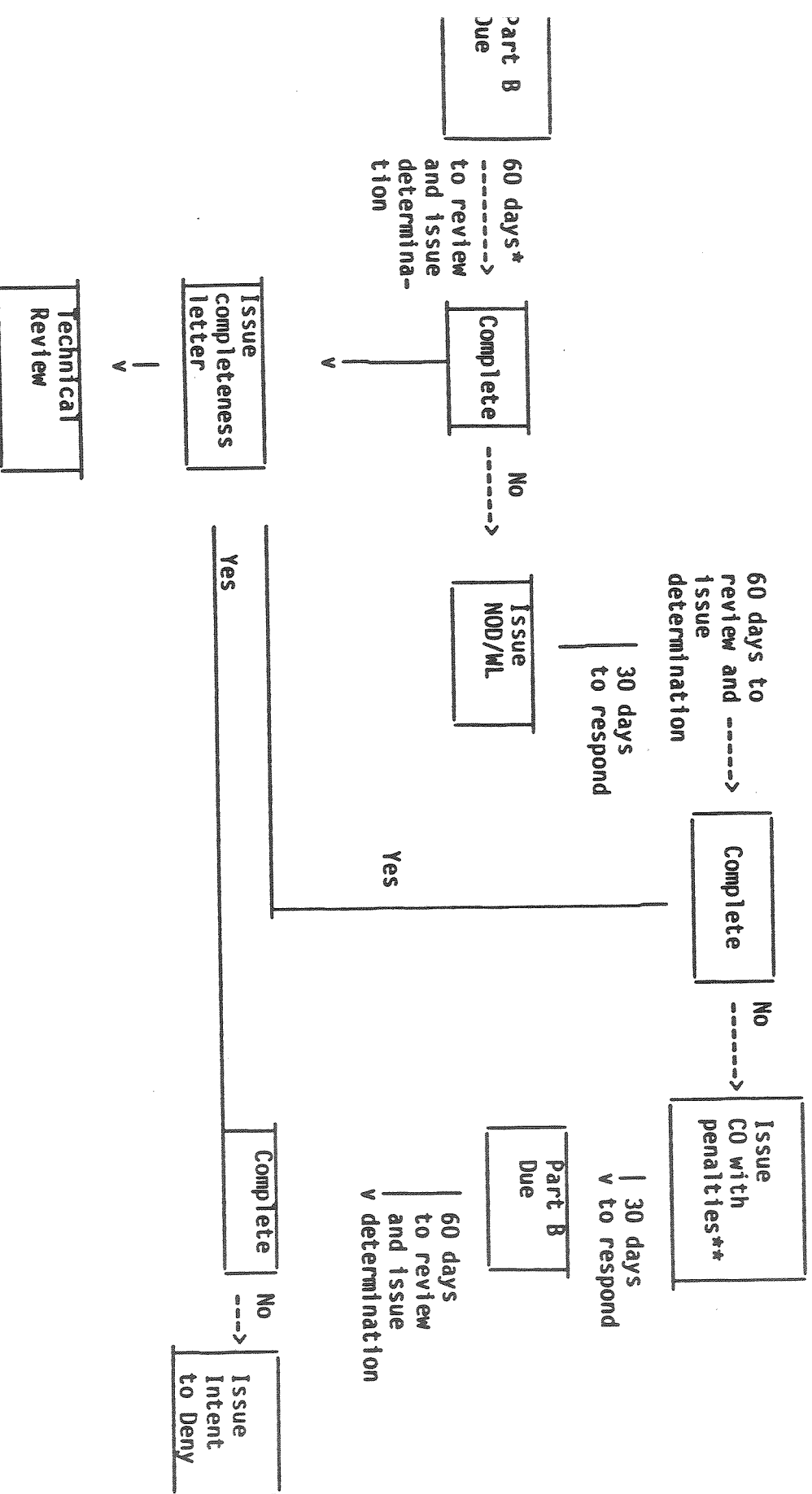


- If the Region or State chooses to issue an Administrative Order (AO) or refer the case immediately instead of taking less formal action, then the timeline for High Priority Violation should be followed.
- Handlers on a compliance schedule will be expected to ensure compliance with the schedule. Required enforcement actions will be taken if a handler is not in compliance within 30 days of the compliance schedule date.
- Time required for administrative processing is in addition to the days indicated on the timeline. Pro-bating regulations should not generally continue beyond 30 days from issuance of an Initial Administrative Order.

--- Refer to an optional action.

APPENDIX B

TIMELINE FOR ENFORCEMENT ACTIONS LATE AND INCOMPLETE PART B APPLICATION



*If new facility, the review period is 30 days.

**On transfer to appropriate judicial authority if State does not have penalty.

APPENDIX C

RCRA ENFORCEMENT BY EPA

A. EPA may take an enforcement action under the following conditions:

1. Situations involving an imminent hazard where EPA can take action more quickly than the State, or the State requests EPA assistance.
2. Cases of national significance (e.g. interstate or multistate issues).
3. State request EPA lead/assistance.
4. State is unable to meet national minimum enforcement performance expectations in Appendices A and B.
5. High Priority/Class I violations noted during oversight inspections if the State has not already addressed this problem as per this MOU.

B. In those cases where EPA takes an enforcement action, the following protocol (except for imminent hazard) will be followed:

1. EPA will notify the State both verbally and by letter of intent 30 days prior to initiating an enforcement action (except in the case of State referrals).
2. The State agrees to submit to the Director, Air and Waste Management Division, all information in the State's possession relating to the enforcement action, within 10 days of a formal written request from the Director, Air and Waste Management Division.
3. EPA will coordinate the issuance of the complaint with the State.
4. The State will be given the opportunity to attend final consent order negotiations/administrative hearings.

APPENDIX D

OVERSIGHT MEASURES: EPA RESPONSIBILITIES

- A. The EPA Enforcement Coordinator assigned to the State will review the status of enforcement grant commitments and active enforcement cases, with the State, on a monthly basis.
- B. On a quarterly basis, there will be a meeting of the EPA Hazardous Materials Branch Chief/Air and Waste Management Division Director with the appropriate State officials to discuss the State's ability to meet the criteria established in the Enforcement Memorandum of Understanding.*
- C. EPA will perform Mid-Year and End-of-Year Performance Evaluation of the State's RCRA program. The protocol for performing the evaluations will be sent to the State 30 days prior to the evaluations.
- D. EPA will provide written monthly status reports on any enforcement actions undertaken by EPA (except criminal). These updates will be provided by the 10th of each month to the Director of the State RCRA program.
- E. EPA will notify the State Agency of the issuance of any enforcement action in a phone call on the day of issuance. This phone call will be confirmed in a letter accompanied by a copy of the enforcement action.
- F. EPA will coordinate press releases with the state.
- G. State data submitted via HWDMS will be used by EPA to the extent possible for reporting SPMS, REMS, and for verifying State accomplishment (inspections record review, etc.).

*Meeting will be arranged by mutual agreement.

APPENDIX E
STATE REPORTING

State performance will be monitored on the basis of both quantitative and qualitative information. The State must report adequate data to ensure effective oversight.* EPA requires the States to submit data, as specified in the fiscal year workplan, for input into the national reporting systems, which are:

1. Strategic Planning Management System (SPMS).
2. RCRA Enforcement Management System (REMS).
3. Hazardous Waste Data Management System (HWDMS)

The State also agrees to report to EPA Region 6, within the requested timeframe, such data that cannot be obtained from other data systems, that the New Mexico Environmental Improvement Division can obtain reasonably and that is deemed necessary to respond to EPA Headquarters, Congressionals, and public inquiries.

The State and EPA agree to exchange any correspondence relating to enforcement at Federal facilities.

*State data submitted via HWDMS will be used by EPA to the extent possible for all state reporting.

EXHIBITS

EXHIBIT A: INTERIM NATIONAL CRITERIA FOR QUALITY HAZARDOUS WASTE
MANAGEMENT PROGRAM UNDER RCRA

EXHIBIT B: RCRA IMPLEMENTATION PLAN

EXHIBIT C: ENFORCEMENT RESPONSE POLICY

EXHIBIT D: ENFORCEMENT PROCEDURES FOR LATE AND INCOMPLETE PART B'S

EXHIBIT E: FORGING AN EFFECTIVE STATE/FEDERAL ENFORCEMENT
AGREEMENT