

US EPA ARCHIVE DOCUMENT

ATTORNEY GENERAL'S SUPPLEMENTAL STATEMENT
TO MAINTAIN AUTHORIZATION

I hereby certify, pursuant to my authority as Assistant Attorney General set forth in Sections 8-5-2(D) and 8-5-5(A) NMSA 1978, and in accordance with Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA"), as codified in 42 U.S.C. §6926 (1983), and 40 C.R.F. 271 my opinion that the laws of the State of New Mexico provide adequate authority to carry out the program set forth in the "Program Description" submitted by the Environmental Improvement Division of the New Mexico Health and Environment Department ("Division"). The specific authorities provided, which are contained in statutes or regulations lawfully adopted at the time of this Statement and which are or shall be in full force and effect at the time this Statement is signed and which shall be fully effective by the time the program is approved, include the amendments identified below.

I. IDENTIFICATION AND LISTING

Remarks of the Attorney General

A. Statutory Changes

1. N.M. Laws. 1987, ch.179, §1 amended the definition of "hazardous waste" to exclude solid or dissolved materials in irrigation return flows or industrial discharges that are point sources under Section 402 of the Federal Water Pollution Control Act, as amended, or source, special nuclear or byproduct materials as defined in the Atomic Energy Act of 1954, as amended.

2. N.M. Laws 1987, ch.179, §2 exempts from the definition of hazardous waste for purposes of state regulation, radioactive waste processed and certified for emplacement in the mined geologic repository at the waste isolation pilot plant.

B. Regulatory Changes

1. State regulations were amended for consistency with 40 C.F.R. §§261.1 through 261.7 so that the Hazardous Waste Act, Sections 74-4-1 through 74-4-13 NMSA 1978 (Supp. 1987) solely applies to substances federally regulated under RCRA. N.M. Laws 1987, ch.179, §3 amended the language of Section 74-4-4 to require that hazardous waste management regulations be equivalent to, but no more stringent than, comparable federal regulations. Because the District of Columbia Circuit court on July 31, 1987 in the American Mining Congress v. The United States Env't'l Protection Agency decision, invalidated the definition of hazardous waste codified in 40 C.F.R. 270.2, the amended state regulations would be more stringent than the federal if the decision were to be appealed and affirmed. According to the Memorandum of Agreement,

however, the State's authorization will not extend to the more stringent regulations.

II. STANDARDS FOR GENERATORS

(No change).

III. STANDARDS FOR TRANSPORTER OF HAZARDOUS WASTE

(No change).

IV. STANDARDS FOR FACILITIES

Remarks of the Attorney General

A. Regulatory Changes

1. Standards for Facilities Without Interim Status, 40 C.F.R. Part 264.

- a. Regulations comparable to subpart I, the use and management of containers, and relating to containment were amended for equivalency with 40 C.F.R. §264.175.
- b. Regulations comparable to subpart J, tanks, and relating to inspection and special requirements for hazardous wastes F020-F023, F026, and F027 were amended for equivalency with 40 C.F.R. §§264.194 and 264.199, respectively.
- c. Regulations setting special requirements for the aforementioned hazardous wastes were added to state regulations comparable to: subpart L, waste piles, for equivalency with 40 C.F.R. §264.259; to subpart M, land treatment, for equivalency with 40 C.F.R. §264.283; to subpart N, landfills, for equivalency with 40 C.F.R. §264.317, and to subpart O, incinerators, for equivalency with 40 C.F.R. §264.343.
- d. The applicability of regulations for incinerators was amended for consistency with 40 C.F.R. §264.340.
- e. The landfill regulations were amended to add methods to demonstrate the presence or absence of free liquids, in order to be equivalent to 40 C.F.R. §264.314.
- f. Closure and Post-Closure Amendments.

1. The general applicability of the regulations was amended for equivalency with 40 C.F.R. §264.110.
2. The closure performance standard regulations were amended for equivalency with 40 C.F.R. §264.111.
3. The regulations governing the closure plan and amendments thereto were amended for consistency with 40 C.F.R. §264.112, except that the state regulations do not require contingent closure plans as set forth in subpart G, only contingent post-closure plans. IVA
4. The regulations concerning the time allowed for closure were amended for consistency with 40 C.F.R. §264.113, except that the state regulations do not specify the time limitations for permit modification as set forth in subsection (c).
5. The regulations regarding disposal or decontamination of equipment, structures and soil, and regarding certification for closure were amended for equivalency with 40 C.F.R. §§264.114 and 264.115, respectively. IVA 24
6. The regulations concerning post-closure care and use of property were amended for equivalency with 40 C.F.R. §264.117. IVA
7. Regulations regarding the post-closure plan and amendments thereto were amended for consistency with 40 C.F.R. §264.118, except that the state regulations require request for modification of the post-closure plan within 60 days after the change or event instead of the period set forth in subsection (d)(3). IVA
8. The post-closure notice regulations were amended for consistency with 40 C.F.R. §264.116 and 264.119, except that the state regulations:
 - a. Differ in the time limitations for submitting the survey and record to local zoning authorities.
 - b. Omit the certification required in subsection (b)(2); and,
 - c. Omit the reference to permit modification for post-closure removal and to the permission

required to annotate the deed as set forth in subsection (c).

9. The definitions to the financial requirements subpart were amended for consistency with 40 C.F.R. §264.141. Within this subpart:

- a. The regulations on cost estimates for closure were amended for consistency with 40 C.F.R. §264.142 except that the time limitations for adjusting the closure cost estimates deviate as for facilities with interim status;
- b. The financial assurance regulations were amended for equivalency with 40 C.F.R. §264.143;
- c. The regulations concerning cost estimates for post-closure care were amended for consistency with 40 C.F.R. §264.144, except that the state regulations do not require the detailed estimate for contingency plans set forth in subsection (a);
- d. The financial assurance regulations were amended for equivalency with 40 C.F.R. §264.145; and,
- e. The regulations governing liability requirements were amended for equivalency with 40 C.F.R. §264.147.

2. Standards for Facilities With Interim Status

a. The general applicability of these standards was amended for equivalency with 40 C.F.R. §265.10 so that the scope would be comparable to the regulations concerning facilities without interim status.

b. Regulations comparable to subpart J, surface impoundments, were amended for equivalency with 40 C.F.R. §265.222, general operating requirements, and with 40 C.F.R. §265.229, special requirements for ignitable or reactive waste.

c. Regulations comparable to subpart M, land treatment, were amended for equivalency with 40 C.F.R. §265.272.

d. Regulations comparable to subpart N, landfills, were amended for equivalency with 40 C.F.R. §265.310, closure and post-closure requirements, with 40 C.F.R. §265.314, special requirements for

bulk and containerized liquids, and with 40 C.F.R. §265.315, special requirements for containers.

e. Regulations comparable to subpart O, incinerators, were amended for equivalency with 40 C.F.R. §265.352, incinerators burning particular hazardous waste.

f. Regulations comparable to subpart P, thermal treatment, were amended for equivalency with 40 C.F.R. §265.270, other thermal treatment, and with 40 C.F.R. §265.383, regulating the burning of particular hazardous waste.

g. Closure and Post-Closure

1. Regulations concerning the applicability of general standards were amended for equivalency with 40 C.F.R. §265.110.
2. Closure performance standards were amended for equivalency with 40 C.F.R. §265.111.
3. The closure plan regulations and amendments to the plan were amended for equivalency with 40 C.F.R. §265.112.
4. Regulations concerning the time for closure were amended for consistency with 40 C.F.R. §265.113, except that the state regulations do not limit foreseeable recommencement to one year as set forth in subsections (a)(1)(ii)(B) and (b)(1)(ii)(B), and apply to the site, not the waste management unit or the facility; they address extensions to the closure period in terms of the facility, not the facility and the hazardous waste management unit as set forth in subsection (b)(1)(ii)(A).
5. Regulations concerning decontamination of equipment, structures and soils were amended for equivalency with 40 C.F.R. §265.114.
6. Regulations regarding the certification of closure were amended for equivalency with 40 C.F.R. §265.115.
7. Regulations on post-closure care and use of the property were amended for consistency with 40 C.F.R. §265.117 except that:
 - a. The state regulations do not set forth monitoring and reporting requirements equivalent to 40 C.F.R. part 265, subparts F, K, L, M,

and N as specified in subsections (a) (1) (i), (a) (1) (ii), and (b);

- b. The state regulations omit the reduction of the post-closure care period set forth in subsection (a)(2)(i);
 - c. The state regulations authorize the director to extend the security requirements, not the post-closure care period as set forth in subsection (a)(2)(i).
8. Regulations concerning the post-closure plan and amendments to the plan were amended for consistency with 40 C.F.R. §265.118, except that:
- a. With regard to the plan:
 - 1. The state regulations' standards for monitoring activities and the functions of the equipment do not equate with 40 C.F.R. part 265 subparts F, K, L, M, and N as set forth in subsections (c) (1) and (c) (2) (ii);
 - 2. The state regulation's definition of "expects to begin closure" deviates from that set forth in subsection (e); and,
 - 3. Deviations in the state's regulations correspond with those for the post-closure care period set forth in 40 C.F.R. §§265.117(a) (1) (i), (a) (1) (ii). See 7(a) above.
 - b. With regard to the amendments:
 - 1. The state regulations require amendments within 60 days, rather than 60 days prior as set forth in subsection (d) (2);
 - 2. The state regulations do not enable the director to request modification or to require a response to the recommendation within 60 days as set forth in subsection (d) (4).
9. Regulations concerning the survey plat and post-closure notices were amended for consistency with 40 C.F.R. §§265.116 and 265.119, except that state regulations require the plat to be submitted within 90 days of closure instead of upon certification of closure as set forth §265.116, and the state regulations omit the

60-day notice requirement set forth in §§265.119 (a), (b).

10. Regulations concerning certification of completion of post-closure care were amended for equivalency with 40 C.F.R. §265.120.

h. Within the financial requirements subpart:

1. Regulations concerning the applicability of, and definitions regarding, financial requirements were amended for equivalency with 40 C.F.R. §§265.140, 265.141;
2. Regulations concerning cost estimates for closure were amended for consistency with 40 C.F.R. §265.142, except that the state regulations differ from subsection (b) as to when adjustments to the estimates must be made;
3. Regulations regarding the cost estimate for post-closure care were amended for equivalency with 40 C.F.R. §265.144; and
4. Regulations concerning financial assurance for post-closure and liability requirements were amended for equivalency with 40 C.F.R. §§265.145, and 265.146 respectively.

i. The regulations were amended to add standards for specific hazardous wastes and specific types of hazardous waste management facilities for equivalency with 40 C.F.R. §§266.20 through 266.23, 266.30, 266.32, 266.33, 266.34, 266.35, 266.36, and 266.70; the state regulations consistent with 40 C.F.R. §266.34 do not refer to "marketers" of hazardous waste.

B. Statutory Changes

(None).

V. REQUIREMENTS FOR PERMITS

Remarks of the Attorney General

A. Regulatory Changes.

The regulations requiring specific information for tank permits were amended for equivalency with 40 C.F.R. §270.16, for surface impoundment--equivalency with 40 C.F.R. §270.17, for waste piles--equivalency with 40 C.F.R. §270.18, for land

treatment--equivalency with 40 C.F.R. §270.20, and for landfills--equivalency with 40 C.F.R. 270.21.

B. Statutory Changes.

N.M. Laws 1987, ch. 170, §4 amended Section 74-4-4.2 to require all permits to include corrective action to remedy any release of hazardous waste from a permitted facility, and to authorize an exception to the public hearing requirements for permit suspension or revocation when necessary to protect the health and environment.

VI. INSPECTIONS

(No change).

VII: ENFORCEMENT REMEDIES

Remarks of the Attorney General

A. N.M. Laws 1987, ch. 179, §8 amended Section 74-4-10 to authorize the director (1) to order a permitted facility to terminate its activities when necessary to protect the health and environment; (2) to order the permitted facility to undertake corrective action and response measures if and when it releases hazardous waste into the environment and (3) to enforce such order in court; (4) to impose civil penalties of up to \$10,000 per day of violation for noncompliance with such order; and, (5) to take action against the permitted facility's insurer or grantor in cases of insolvency. The amended enforcement remedies do not apply to underground storage tanks which are regulated separately.

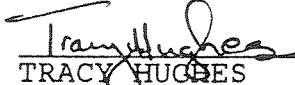
B. N.M. Laws 1987, ch. 179, §9 amended the criminal penalty provisions of Section 74-4-11 to set forth specific violations of the Hazardous Waste Act and the corresponding penalties. The violations are consistent with RCRA criminal penalties, 42 U.S.C. §6928, but they do not apply to owners and operators of underground storage tanks.

VIII. PUBLIC PARTICIPATION IN PUBLIC ENFORCEMENT PROCESS

(No change).

IX. AUTHORITY TO SHARE INFORMATION WITH EPA

(No change).



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