

US EPA ARCHIVE DOCUMENT

Letter 4/23/90
nm/HSWI-III
E pre HSWA

AMENDMENT TO THE MEMORANDUM OF AGREEMENT
BETWEEN THE STATE OF NEW MEXICO
AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY,
REGION VI, FOR FINAL AUTHORIZATION

I. GENERAL

This amendment to the Agreement establishes additional policies, responsibilities and procedures pursuant to 40 CFR 271 for the operation of the State of New Mexico hazardous waste program authorized under Section 3006 of RCRA and subject to review by the EPA Regional Office for Region VI.

II. POLICY STATEMENT

Pursuant to 3006 (g) (1), and in accordance with the Hazardous and Solid Waste Amendments of 1984 (HSWA), EPA has the authority to issue or deny permits or those portions of permits to facilities in New Mexico for the requirements and prohibitions in or stemming from the HSWA until the State's program is amended to reflect those requirements and prohibitions and authorization is received for the portion or portions of the program.

III. JOINT PERMITTING AGREEMENT

EPA and New Mexico hereby enter into a Joint Permitting Agreement for the issuance of RCRA permits in New Mexico. This Joint Permitting Agreement is entered into in accordance with Section 3006 (c)(3) of RCRA. The details of the Joint Permitting Agreement shall be incorporated into the State Work Program. The duties and responsibilities of EPA and the State for joint permitting shall also be specified in the State Work Program.

The details of the Joint Permitting Agreement between EPA and New Mexico as contained in the State Work Program shall be reviewed and revised as often as necessary, but no less often than annually to assure its continued appropriateness.

Upon authorization of the State for any of the provisions of the HSWA, the specifics of the Joint Permitting Agreement as set out in the State Work Program shall be amended to reflect the authorization. Amendment of this Memorandum of Agreement or the execution of a separate Memorandum of Agreement shall be required for authorization of any of the provisions of the HSWA.

IV. 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.

The Regional Administrator may also consider as part of this regular assessment, written comments about the State's program administration and enforcement that are received from regulated persons, the public, and federal, state, and local agencies. Copies of any such comments received by the Regional Administrator will be provided to the State.

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 Priority Activities

The State and EPA agree to develop, on an annual basis as a part of the State grant work plan, criteria for priority activities, including activities regarding handlers of hazardous waste. These criteria will be based on guidance issued by EPA, and other guidance documents as may be appropriate to identify those activities that should receive the highest priority.

The State also agrees to implement and follow the RCRA Enforcement Memorandum of Understanding (MOU) to assure that resources are effectively used to achieve compliance with the State's hazardous waste program and the Federal RCRA Program.

V. 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 will forward on a monthly basis, notification information (including newly assigned identification numbers) submitted by persons located in the State who file such 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. EPA will do this after receiving a copy of the notification information from the State.
4. EPA agrees to make available to the State copies of any reports and data resulting from compliance inspections within the time frames contained in the MOU.
5. 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, memorandum 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 Plan and RCRA Enforcement MOU.
3. The State agrees to provide other reports and information to the Regional Administrator as specified in the Annual State Work Plan and RCRA Enforcement MOU.
4. 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. Data Management

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.

VI. PERMIT ISSUANCE

A. EPA Permitting

Upon final authorization of the State program EPA suspended issuance of Federal permits for hazardous waste treatment, storage, and disposal facilities in the State. EPA continues to issue permits for HSWA requirements for which the State has not yet received authorization.

Pursuant to any outstanding HSWA permit action, EPA agrees to transfer the applications to the State for processing and notify the facility that the State is now the lead agency upon authorization. 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 HSWA permits based on a priority schedule agreed to in the Annual State Work Plan.

Any final HSWA permit issued by EPA prior to the State receiving Final HSWA 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 Plan.

EPA intends to add permitting standards under HSWA for processes not currently covered by the Part 264 standards. When EPA does promulgate standards for additional processes, EPA will process and enforce HSWA 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 for 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 permits as agreed to in the Annual State Work Plan.

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 123 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 may 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 §74-4-2 NMSA 1978, and with Sections 902.A. through G. of the New Mexico Hazardous Waste Management Regulations and to include as permit conditions all applicable provisions of Section 901 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 902.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 902.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 and notified of the location of the permit application (if any), and draft permit (if any), for their review.

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.

VII. PERMIT ADMINISTRATION

A. EPA

EPA will administer the HSWA 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, to 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 X. 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.

VIII. 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 Plan. Normally, EPA will accompany the State on no more than 10% 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 will take enforcement action under conditions outlined in the RCRA Enforcement MOU.

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 the RCRA Enforcement MOU. 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 a Division's enforcement action, he may intervene in such action pursuant to SCRA 1986, 1-024. The Division will not oppose intervention under SCRA 1986, 1-024(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 a strategy when EPA's involvement is required.

EPA and the State may agree on a periodic basis (no less often than annually, through negotiation of the Annual State Work Plan) 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.

IX. Availability of information

A. General

Section 3006(f) of the HSWA provides that States may be authorized by the Administrator under this section if the State program provides for the public availability of information obtained by the State regarding facilities and sites for treatment; storage and disposal of hazardous waste; and that such information is available to the public in substantially the same manner, and to the same degree, as would be the case if the Administrator was carrying out the provisions of this subtitle in the State.

B. Requests for information

1. Pursuant to the Federal Freedom of Information Act (FOIA), 5 U.S.C. 522(a)(2), the State agrees to make certain materials routinely available without a formal FOIA request.
2. The State program agrees to make reasonable efforts to assist a requestor in identifying records being sought, and helping the requestor formulate his or her request.
3. If a request for information is denied, the state agrees to provide the requestor the basis for the denial and notified of State judicial (or, if they exist, administrative) procedures, including statutes of limitations.
4. A reduction or waiver of fees will be considered in connection with each request from the press or other communication medium, or from a public interest group if in the public interest.
5. The State agrees to make the fullest possible disclosure of records to the public, subject to any of the exemptions under the Federal FOIA recognized by the State.

C. Confidentiality of Business Information

If a claim of confidentiality is asserted and cannot be resolved in the time period provided for a Division response to a request, the State agrees to notify the requestor of the confidentiality claim within the maximum time limit provided for a Division response. In addition, the requestor will be told that the request was denied in order to resolve the business confidentiality claim.

D. Oversight

1. The State agrees to keep a log of denials of requests for information (or a file containing copies of denial letters sent to requestors) which will be made available to EPA during State review.
2. The State agrees to keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities, as applied to Section 3006(f).

X. APPROVAL

BY:



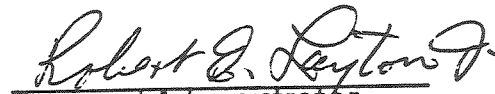
RICHARD MUZZELFELT

Director
Health and Environmental Dept.

DATE:

Sept. 16, 1988

BY:



Regional Administrator
U.S. Environmental Protection
Agency
Region VI

DATE:

April 23, 1990