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New Mexico Health and Environment Department

GARREY CARRUTHERS
Governor

DENNIS BOYD
Secretary

MICHAEL J. BURKHART
Deputy Secretary

RICHARD MITZELFELT
Director

December 17, 1990

Brett Jucha 6H-HS
USEPA Region 6
1445 Ross Avenue Suite 1200
Dallas, Texas 75202

Dear Mr. *Brett* Jucha:

Pursuant to your request of today, please find enclosed a copy of the Program Description as submitted by New Mexico for administration of it's Hazardous Waste Management Program.

Should you have any questions, please feel free to contact me.

Sincerely,

Boyd Hamilton
Boyd Hamilton



PROGRAM DESCRIPTION

DESCRIPTION OF NEW MEXICO HAZARDOUS WASTE MANAGEMENT PROGRAM

This narrative has been developed as outlined in 40 CFR 271.6 and will address the scope, structure, coverage and processes of the New Mexico Hazardous Waste Management Program.

SCOPE

The New Mexico hazardous waste management program is based upon the New Mexico Hazardous Waste Act, § 74-4-1 et. seq. NMSA (1978), as amended. This Act grants the New Mexico Environmental Improvement Division authority to regulate hazardous waste management in New Mexico by empowering the Environmental Improvement Board to adopt regulations equivalent to federal regulations for the management of hazardous waste. These regulations include: 1) criteria for the identification and listing of hazardous waste; 2) standards applicable to generators, transporters and treatment, storage and disposal facilities; 3) permitting procedures; 4) hazardous substance incident notification procedures; and 5) the use of a manifest system. Since the State of New Mexico has adopted regulations which are equivalent to the Federal RCRA criteria for hazardous waste management, the scope and coverage of New Mexico's hazardous waste program is virtually identical to that of the Federal RCRA program. With this concept of following the federal guidance in the development of our regulations, there should be no question regarding the equivalence of the state program.

PROGRAM STRUCTURE

Since New Mexico has been operating a hazardous waste program for sometime, the organizational structure of its program is firmly in place. The program's organizational structure will be discussed, in detail, later in this document package. The hazardous waste program is basically staffed by environmental scientists and water resource specialists who are under the direction of a program manager. Due to the comprehensive nature of the programs included in the Environmental Improvement Division, several other programs provide additional support and expertise to the hazardous waste program. This includes support from administrative programs, the Air Quality Bureau, the Legal Bureau and the Surface Water Quality Bureau. The State realizes that the implementation of a hazardous waste program under Final Authorization will significantly increase the Division's workload. In anticipation of this increase, the Division has proceeded with procuring additional personnel and will continue to do so on an as needs basis.

PROGRAM COVERAGE

The discussion of the State program coverage will be divided into the following areas: universe of hazardous waste; generators of hazardous waste; transporters of hazardous waste; hazardous waste treatment, storage and disposal facilities; and permitting procedures. As evidenced by the following narratives, the State's hazardous waste program, as implemented under the New Mexico Hazardous Waste Management Regulations, is identical to the Federal RCRA program and contains no significant differences.

The universe of hazardous waste covered by the State program appears to be a critical part of program authorization. Even though the definition of hazardous waste contained in the New Mexico Hazardous Waste Act differs from the RCRA

definition, we feel that the definition is equivalent to the RCRA definition. In addition to this, the State has adopted regulations equivalent to 40 CFR Part 261, thus making New Mexico's universe of hazardous waste essentially identical to the Federal universe.

Generators of hazardous wastes in New Mexico will be required to file a notification of their activities with the Director if they have not previously notified EPA pursuant to Section 3010 of RCRA. The authority for requiring generators to comply with reporting and recordkeeping procedures is found in the New Mexico Hazardous Waste Act, § 74-4-4.B NMSA (1978), as amended.

Specifically, the Act has required the Board to promulgate regulations establishing standards for generators which require:

1. recordkeeping practices that accurately identify the quantities of such hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment, and the disposition of such waste;
2. proper labeling of hazardous wastes;
3. use of safe containers;
4. furnishing of information on the general chemical composition of such hazardous waste;
5. use of a manifest system;
6. submission of reports to the Director at such time as the Director deems necessary, setting out the quantities of hazardous waste that he has generated during a particular time period, and the disposition of all such hazardous waste reported.

New Mexico has adopted regulations equivalent to 40 CFR Part 262, thus making New Mexico's generator standards identical to Federal standards.

Transporters of hazardous waste in New Mexico are regulated under the statutory authority of the New Mexico Hazardous Waste Act, § 74-4-4.C NMSA (1978), as amended. A listing of standards which the regulations include are as follows:

1. Recordkeeping concerning all hazardous waste transported, and its source and delivery points;
2. transportation of such hazardous wastes only if properly labeled;
3. compliance with manifest system; and
4. transportation of all such wastes only to the hazardous waste management facility designated on the manifest form.

New Mexico has adopted regulations equivalent to 40 CFR Part 263. We, therefore, feel that our program is equivalent to the Federal program requirements for transporters of hazardous waste. It should be noted however, that since there is no water transportation of hazardous wastes in New Mexico, those portions of the

Federal regulations dealing with this aspect of hazardous waste management have not been incorporated into State regulations.

New Mexico has adopted regulations equivalent to 40 CFR Part 264 and Part 265 which include the interim and final standards for owners and operators of hazardous waste treatment, storage and disposal facilities. Existing legislative authority for such regulations is found in the New Mexico Hazardous Waste Act, § 74-4-4.D NMSA (1978), as amended. A listing of standards which the regulations include are as follows:

1. maintaining records of all hazardous waste which is stored, treated or disposed of, and the manner in which such waste was treated, stored or disposed of;
2. compliance with the requirements of the manifest system;
3. treatment, storage or disposal of all wastes in accordance with approved operating methods, techniques and practices;
4. requirements respecting the location, design and construction of facilities;
5. contingency plans;
6. requirements respecting the maintenance and operation of facilities, qualifications as to ownership, continuity of operation, training of personnel and financial responsibility; and
7. compliance with permit requirements.

Promulgation and adoption of regulations equivalent to 40 CFR Part 264 and Part 265 has made New Mexico's standards for hazardous waste treatment, storage and disposal facilities identical to Federal regulations. We feel that both our statutory and regulatory requirements are adequate for Final Authorization.

The New Mexico Hazardous Waste Act also requires all persons owning and operating a hazardous waste treatment, storage or disposal facility to have a permit issued pursuant to state regulations. In addition, the Act has required the Board to establish procedures for the issuance, suspension and revocation of such permits and allows for public comment at public hearings. Once again, New Mexico has closely followed EPA regulations with regard to permitting by adopting regulations equivalent to 40 CFR Part 270 and Part 124, thereby making our regulations equivalent to federal standards.

State Program Processes

The general State program processes which will be utilized during Final Authorization are: administrative processes, notification processes, compliance and enforcement processes, and permitting processes.

The administrative processes include those associated with general program requirements; such as continuing regulation development, statutory amendment, and public participation [which includes public hearings]. Regulations will be amended on a continuing basis as required. Amendments to existing Federal regulations will be tracked and prepared by Hazardous Waste Section personnel. Depending on the number and volume of amendments, the Division will most likely petition the Environmental Improvement Board for a hearing to consider

amendments every six months, or at minimum, at least annually. Required statutory changes will be prepared by the Division and submitted to the Governor for approval on a biennial basis, as necessary. Legislation may also be introduced independently by individual legislators. Legislation enacted with an emergency clause will become effective immediately upon signature by the Governor, otherwise it will become effective 90 days after the session in which it was enacted.

The notification processes and associated activities will include a continuation of the EPA interim status processes. Since the criteria and listing of hazardous waste in the State program is essentially identical to the Federal program, the notification information will also be compatible and it will, therefore, not be necessary to duplicate this process under the State program but merely continue it.

The processes of compliance and enforcement will be discussed later in this package. A brief review of this processes indicate that an inspection system has been developed which sets the schedule for facility inspections. These inspections will indicate the need for compliance monitoring at the generator's site or TSD facility.

As a result of the inspection and compliance monitoring program, appropriate enforcement actions can be determined. This action may initially take the form of an administrative order, and may be followed by criminal or civil legal actions involving compliance schedules and court litigation. The above processes have been summarized here and will be discussed in detail, later in this document.

The State permitting process will essentially insure that all facilities subject to the provisions of the New Mexico Hazardous Waste Act, § 74-4-1 et seq. NMSA 1978 will be required to have a permit, issued by the Division pursuant to the New Mexico Hazardous Waste Regulations, Parts I through V, for the operation of said facility.

A permit issued by the Division will require that each facility be operated and maintained in accordance with all terms of the permit and any additional conditions, compliance schedules, monitoring requirements and technical standards as maybe deemed necessary to insure the protection of the public health and environment.

The State program shall provide for the modification, suspension and revocation of any such permit pursuant to the New Mexico Hazardous Waste Act.

The State permitting process will also provide for public participation in the permitting process by the public noticing of permit actions (i.e. preparation of a draft permit, intent to deny a permit application, scheduling of a public hearing).

The State program shall also allow at least 45 days for public comment and review whenever a draft permit is prepared or a permit application is tentatively denied.

During that period, any interested party may submit written comments to the Division and may also request a public hearing.

Whenever a public hearing is to be scheduled the Division will give public notice at least thirty (30) days prior to the date.

During a public hearing, any interested party will be provided the opportunity to submit comments and examine witnesses.

All public notices of permit actions shall be made in a manner consistent with 40 CFR 124.10.

At the time of a final permit decision the Director shall issue a response to comments received, and make them available to the public and any other interested party.

A more detailed discussion of the State permitting process will follow later in this document.

ORGANIZATION AND STRUCTURE OF STATE AGENCIES

INTRODUCTION

This part of the program description presents the State agencies having responsibility for administering the hazardous waste program. This discussion focuses on the Environmental Improvement Division, the State's "lead agency" for the hazardous waste regulatory program. Following a discussion of EID's organization and structure is information pertaining to the other agencies in New Mexico which may assist in the implementation of the hazardous waste program. This part concludes with the presentation of required information on agency staffing, program costs, and funding sources.

EID ORGANIZATION AND STRUCTURE

The Environmental Improvement Board is authorized by the New Mexico Hazardous Waste Act, § 74-4-1 et. seq. (1978) to promulgate regulations equivalent to Federal hazardous waste regulations adopted by EPA pursuant to RCRA. The Environmental Improvement Division of the Health and Environment Department has the responsibility for the enforcement of these regulations. Within the EID, the Hazardous Waste Section of the Ground Water and Hazardous Waste Bureau is directly responsible for the hazardous waste program. See Attachment A for organizational charts. The Hazardous Waste Section is primarily responsible for drafting regulations, developing policy, permitting and enforcement activities, collecting and managing data, providing consultation in technical and procedural matters, emergency response to spills and discharges of hazardous materials, problem site activities and coordinating the effort within EID and among other State and Federal agencies in matters concerning hazardous waste management.

In addition to the Hazardous Waste Section, other EID programs have expertise or authority related to solving the State's hazardous waste problem. These include:

Air Quality Bureau - regulates emissions of pollutants to the ambient air;

Surface Water Quality Bureau - regulates discharges of pollutants into surface waters of New Mexico;

Office of Legal Services - provides legal support to the Hazardous Waste Section with respect to the development of legislation and regulations, permitting and enforcement activities; and

Program Support Bureau - provides support with respect to public participation and information activities.

Because all of the above bureaus are organized within one Division, a great deal of information sharing and sharing of expertise and personnel is possible.

Other agencies within the State of New Mexico may have some involvement with hazardous waste. Brief descriptions of these agencies and their authorities and expertise follow.

Environmental Improvement Board - promulgates hazardous waste regulations and conducts public hearings with respect to those regulations.

Scientific Laboratory Division - test samples submitted by EID personnel to determine identity and concentration of chemical contaminants. Samples may be collected during investigations, enforcement actions, clean up operations, and also during routine inspections of hazardous waste facilities and generators. Refer to Attachment B for a description of laboratory capabilities.

New Mexico Department of Agriculture - The New Mexico Hazardous Waste Act, § 74-4-4.1. NMSA (1978) provides that the department of agriculture shall be responsible for the enforcement of all hazardous waste regulations regarding hazardous agricultural waste. Refer to Attachment C for additional details.

Oil Conservation Division of Energy and Minerals Department - Administers programs relating to the production of oil, natural gas and geothermal energy. The RCRA exclusion pertaining to wastes from oil and gas development contained in the RCRA Amendments of 1980 effectively prevents any overlap with OCD regulations. This may have to be addressed at a later date if the exclusion is removed.

Bureau of Coal and Surface Mining - administers several laws relating to the mining and the reclamation of mine sites. Should EPA, after completion of their three-year study of mining wastes, promulgate regulations controlling

hazardous waste from mining activities, EID and the Bureau of Coal and Surface Mining will evaluate their respective programs and authorities and determine if a formal interagency agreement is necessary to delineate areas of responsibility.

STAFFING AND RESOURCES

With the granting of Interim Authorization for Phase I and Phase II, Components A & B, the Division realized the need for additional man-power. In order to successfully implement the interim program, the Division initiated steps to increase present staffing levels with the addition of another Environmental Scientist and a Water Resource Specialist. It is anticipated that approximately 4 additional professional positions and 1 secretarial position will also be added in 1984-1985. These projected personnel increases should prove adequate for the implementation of the program under Final Authorization.

The Hazardous Waste Section is not currently divided into different organizational sections. Because of the size of the program, it is more efficient for each of the environmental scientists to have responsibilities and expertise in all of the program areas. As more personnel come on board and program responsibilities are better defined, the section will probably be divided into the following areas:

Administrative

Permitting

Monitoring and Inspection

Enforcement

Present staff positions in the hazardous waste unit are as follows:

Program Manager Hazardous Waste Section - directs program supervision with respect to compliance inspections, enforcement, manifest system, data management, budgeting and program development. This position requires a Bachelor's Degree in a physical or natural science, public or environmental health or engineering plus any combination of additional education or experience totaling 5 years. (100% support).

5 Environmental Scientist III - program development, compliance inspections, permitting, manifest system, data management and emergency response to hazardous materials incidents. These positions require a Bachelor's Degree in a natural or physical science plus a combination of graduate education and experience adding up to 4 years. (Full-time support)

1 Water Resource Specialist II -Evaluates hazardous waste facility permit applications for suitability and correctness of all data pertaining to geologic and hydrologic factors, ground-water monitoring programs and any remedial action programs. This position requires any combination of education, training, or experience in water resource program activities, hydrology, engineering, mathematics, agriculture, agronomy, surveying or the physical sciences totaling six years. (Full-time support)

1 Secretary II - records management, typing, clerical and general office management. This position requires a high school diploma plus 4 years experience in a clerical and secretarial capacity. (Full-time support).

Projected staff increases include:

- 1 Attorney III
- 1 Secretary II
- 2 Environmental Scientist III
- 1 Water Resource Specialist II

Total work-years from within the Hazardous Waste Unit for the 1983-1984 fiscal year will be 12.0 work years. Additional program support is available from various other sources. This support includes:

- 1. Administrative support - Division Director, Deputy Director, Bureau Chief and Program Support Bureau = .25 work-year;
- 2. Technical Support - Surveillance Section = 1.0 work-years;
Field Support = 0.4 work-years;
- 3. Department of Agriculture = 1.0 work-year; and
- 4. Laboratory Support - Scientific Laboratory Division = 0.25 work-year.

Total work-years on hazardous waste activities, including Hazardous Waste Section staff time and additional support time is 13.90 work-years, as projected below:

	MAN-YEARS
Administrative	2.25
Program Development	1.50
Permitting	4.00
Compliance and Enforcement	6.15
Emergency Response	1.00
TOTAL	13.90

PROGRAM BUDGET

For Fiscal Year 1983-84 the hazardous waste program is funded at a level of \$316,100 in grant support from EPA and \$105,366 in State matching funds. Depending upon program development and needs, however, it is possible that this funding will have to be increased due to the increased involvement of the Division in all program areas.

Personnel Costs ¹ - 1983-1984 (projected)

Health Program Manager (24-4)	\$25,212
Secretary II (9-7)	\$14,040
Environmental Scientist III (20-3)	\$19,752
Environmental Scientist III (20-3)	\$19,752
Environmental Scientist III (20-3)	\$19,752
Environmental Scientist III (20-7)	\$28,200
Environmental Scientist III (20-2)	\$18,816
Water Resource Specialist II (23-2)	\$21,780
<u>Approved Positions:</u>	
Environmental Scientist III (20-2)	\$18,816
Environmental Scientist III (20-2)	\$18,816
Water Resource Specialist II (23-2)	\$21,780
Attorney III (27-2)	\$26,472
Secretary II (9-7)	<u>\$14,040</u>

TOTAL \$235,306

¹These figures reflect salary increases projected for the 1983-1984 fiscal year.

Program Costs - 1983-1984 (projected)

Program Development	\$51,320
Permitting	\$100,000
Compliance and Enforcement	\$158,046
Emergency Response	\$40,000
Administration	\$72,000

TOTAL \$421,466

FUNDING SUMMARY

1983-1984 (Projected)

	<u>STATE</u>	<u>FEDERAL</u>	<u>TOTAL</u>
Personnel	\$58,826	\$176,480	\$235,306
Fringe Benefits	\$10,424	\$31,273	\$41,697
Travel	\$5,002	\$15,009	\$20,011
Equipment	\$11,485	\$34,456	\$45,941
Supplies	\$1,250	\$3,750	\$5,000
Contractual	\$6,750	\$20,250	\$27,000
Other	\$1,125	\$3,375	\$4,500
Indirect Charges	\$10,503	\$31,508	\$42,011
TOTAL	\$105,366	\$316,100	\$421,466

PROJECTED PROGRAM ACTIVITIES, COSTS AND FUNDING FOR 1984-1985

ACTIVITY	MAN-YEARS	COST
Administrative-Development	2.0	\$57,600
Permitting	7.4	\$211,626
Compliance and Enforcement	4.5	\$128,854
Emergency Response	1.0	\$28,587
TOTALS	14.9	\$426,667

FUNDING SUMMARY 1984-1985 (Projected)

	<u>STATE</u>	<u>FEDERAL</u>	<u>TOTAL</u>
Personnel	\$59,734	\$179,200	\$238,934
Fringe Benefits	\$10,667	\$32,000	\$42,667
Travel	\$5,333	\$16,000	\$21,333
Equipment	\$11,733	\$35,200	\$46,933

Supplies	\$1,067.	\$3,200	\$4,267
Contractual	\$6,400	\$19,260	\$25,600
Other	\$1,067	\$3,200	\$4,267
Indirect Charges	\$10,666	\$32,000	\$42,666
TOTAL	\$106,667	\$320,000	\$426,667

PROJECTED PROGRAM ACTIVITIES, COSTS AND FUNDING FOR 1985-1986

ACTIVITY	MAN-YEARS	COST
Administrative-Development	1.5	\$44,667
Permitting	7.9	\$236,734
Compliance and Enforcement	4.5	\$134,000
Emergency Response	1.0	\$31,266
TOTALS	14.9	\$446,667

FUNDING SUMMARY 1985-1986 (Projected)

	<u>STATE</u>	<u>FEDERAL</u>	<u>TOTAL</u>
Personnel	\$62,534	\$187,600	\$250,134
Fringe Benefits	\$11,167	\$33,500	\$44,667
Travel	\$5,583	\$16,750	\$22,333
Equipment	\$12,283	\$36,850	\$49,133
Supplies	\$1,116	\$3,350	\$4,466
Contractual	\$6,700	\$20,100	\$26,800
Other	\$1,117	\$3,350	\$4,467
Indirect Charges	\$11,167	\$33,500	\$44,667
TOTAL	\$111,667	\$320,000	\$446,667

PERMITTING AND APPELLATE REVIEW PROCEDURES

During Final Authorization, New Mexico's permitting procedures will be essentially identical to those promulgated in 40 CFR Parts 270 and 124. The New Mexico Hazardous Waste Act, § 74-4-4 NMSA (1978), has required the Board to adopt regulations equivalent to Federal regulations for the management of hazardous waste. This requirement insures that any future regulations concerning permitting procedures promulgated by EPA will be followed by State promulgation of equivalent regulations. The State permitting process is diagramed in the flow chart in Table 1.

Specifically, § 74-4-4.E. NMSA (1978) stipulates that the Environmental Improvement Board adopt regulations requiring each person owning or operating a facility for the treatment, storage or disposal of hazardous waste to have a permit issued pursuant to requirements established by the Board.

Facilities which were in existence on November 19, 1980 and have complied with the notification requirements of § 74-4-4 NMSA (1978) and 42 U.S.C., 6930, and have submitted a complete application for a permit shall be treated as having been issued such permit until such time as final administrative disposition of such application is made [see New Mexico Hazardous Waste Act § 74-4-9 NMSA (1978); New Mexico Hazardous Waste Management Regulations ("HWMR-2"), Part III, Section 302.C. (February 4, 1984)].

Other facilities which are subject to the requirements of an approved or promulgated UIC or NPDES program, shall be deemed to have a hazardous waste permit for that portion of the facility if: 1. they have been issued a permit by the appropriate program; 2. they comply with the condition of said permit; and 3. they comply with certain requirements as outlined in HWMR, Part III, Section 302.D.

No person, unless they are specifically excluded from the permit requirements of § 74-4-4.E. NMSA (1978), and HWMR, Part III, under the provisions of HWMR, Part III, Section 301.C., shall begin physical construction of a new hazardous waste management facility without first having submitted Part A and Part B of the permit application and received a finally effective hazardous waste permit.

Permitting Procedures

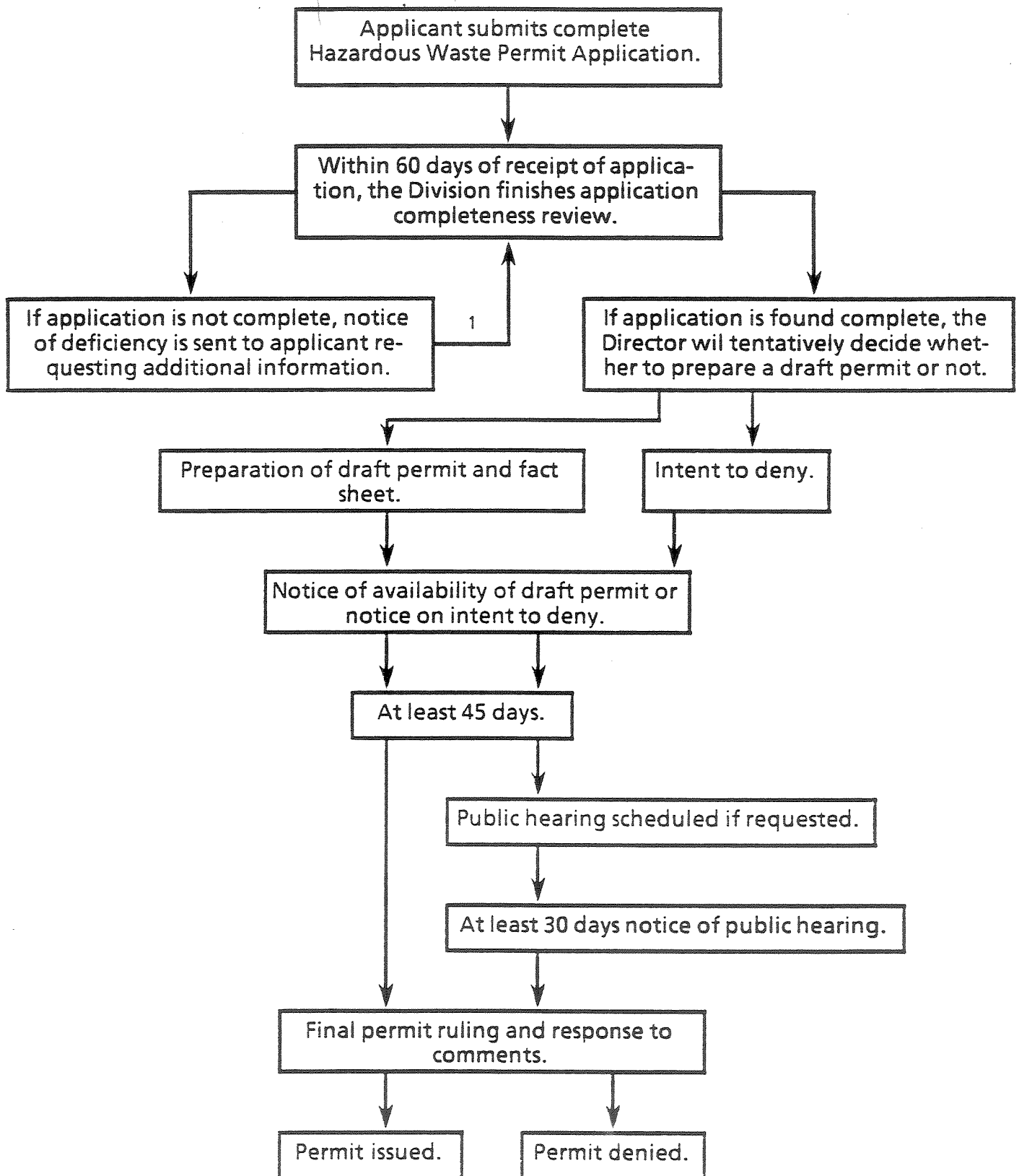
Any person who is required to have a permit shall complete, sign, certify, and submit an application to the Director containing all those appropriate information requirements as detailed in HWMR, Part III, Section 302.A.4. and any other supplemental information which the Director may deem necessary to complete the application.

Once an application is received, EID staff will begin the process of analyzing and reviewing the submission to insure that it contains all the information requirements and the appropriate technical standards for treatment, storage and/or disposal as outlined in HWMR, Part III, Section 302.A.4.a. & b., and any other supplemental information which the Director has requested.

If an application is found to be incomplete after careful examination and review,

TABLE 1

NEW MEXICO HAZARDOUS WASTE PERMITTING PROCESS



1. Review of resubmissions and/or additional information will vary accordingly in time.

the applicant shall be informed by certified mail of the insufficiency(s) and the need for the submission of additional information.

Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.

If the Director decides to prepare a draft permit, he shall prepare a draft permit that contains all conditions, compliance schedules, and monitoring requirements as may be required under HWMR, Part III, Section 302.F., H., I. & J. and the appropriate technical standards for treatment, storage and/or disposal provided for in HWMR, Part III, Section 302.A.4.b.

All draft permits for facilities or activities prepared by the Division shall be accompanied by a fact sheet and shall be based on the administrative file. The fact sheet shall briefly set forth the principal facts and the significant factual legal, methodological and policy questions considered in preparing the draft permit.

The Director shall give public notice by publication in a newspaper of general circulation in the area affected and broadcasts over local radio stations that a draft permit has been prepared or that a permit application has been tentatively denied and shall allow 45 days for public comment and review.

During the comment period, whenever a written notice of opposition to a draft permit and a request for a hearing is received from an affected individual a public hearing will be scheduled. The Division, acting in conjunction with the applicant, will respond to those requests in an attempt to resolve those issues giving rise to such opposition. If such issues can be resolved to the satisfaction of the affected individual, the affected individual may withdraw his request for a public hearing. In such case the public hearing need not be held. The Director may also hold a public hearing at his discretion.

The Director shall give due consideration and the weight he deems appropriate to all comments received during a public comment period and to all relevant facts and circumstances presented at any public hearing.

When ruling on permit issuance, the Division may disapprove in whole or in part, or make reasonable conditions to any permit, if it appears that the proposed action will not meet the requirements of these regulations.

At the time that any final permit decision is issued, the Director shall issue a response to comments. This response shall:

1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
2. Briefly describe and respond to all significant comments on the draft permit application raised during the public comment period, or during any hearing.

The response to comments shall be available to the public.

The approval of a permit does not relieve any person from the responsibility of complying with applicable state or federal laws and regulations.

The Director shall notify the permittee by certified mail of any impending permit action and of any scheduled public hearing.

Permit Modification, Suspension and Revocation

The Director may modify, suspend, or revoke a permit issued pursuant to HWMR, Part III, Section 303.B. for cause set forth in HWMR, Part III, Sections 302.M., 302.N., and 302.O.

The Director may modify, suspend, or revoke a permit upon his initiative or if, after the Division's investigation of the facts and circumstances, pursuant to the request of any interested person, such permit action is deemed warranted.

All requests for permit modification, suspension, or revocation shall be in writing and shall contain facts or reasons supporting the request.

In a permit modification under Section 303.B., HWMR, only those conditions to be modified shall be considered when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit.

The Director shall notify the permittee by certified mail of any impending permit action and of any scheduled public hearing date and issue public notice of impending permit action.

The Director shall give due consideration and the weight he deems appropriate to all comments received during a public comment period and to all relevant facts and circumstances presented at any public hearing.

Public Hearings

No ruling shall be made on permit issuance, modification, suspension or revocation without an opportunity for all interested persons to be given a reasonable chance to submit significant data, views or arguments orally or in writing and to examine witnesses testifying at any public hearing. The comment period specified in HWMR, Part III, Section 303.A.4. shall automatically be extended to the close of any public hearing.

Public notice of a hearing shall be given at least thirty (30) days prior to the date and shall be published in a newspaper of general circulation in the area affected and broadcast over local radio stations. Notice of a public hearing shall be sent to those State, Federal and other agencies which the Director knows may be affected by the public hearing proceedings, including the U.S. EPA. Reasonable effort shall be made to give notice to all persons who have either made a written request to the Division for advance notice of hearings or who have otherwise been solicited by the State for a mailing list and been made aware of the opportunity for advance notice of public hearings.

All public notices issued shall contain the following minimum information:

- I. The subject, the time and place of any scheduled hearing and the manner in which interested persons may present their views;

2. A brief description of the procedures by which requests for hearings may be made, unless already scheduled;
3. Name and address of the office processing the permit action for which notice is being given;
4. Name and address of the permittee or permit applicant, and, if different, of the facility or activity regulated by the permit;
5. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit; and
6. Name, address and telephone number of a person from whom interested persons may obtain further information.

Hearings shall be held in Santa Fe or within any area of the state substantially affected by the proceedings as specified by the Director.

The Director may designate a hearing officer to take evidence at the hearing.

All hearings shall be recorded by a certified court reporter. A transcript will be furnished to all persons for review at the Division's main office. Costs of a copy of a transcript will be borne by those requesting such copies.

In hearings the rules of civil procedures and the technical rules of evidence shall not apply, but the hearings shall be conducted so that all relevant views, arguments, and testimony are amply and fairly received without undue repetition.

Any person heard or represented at the hearing shall be given written notice of the action of the Director.

The Director shall notify the applicant or permittee of his decision and the reasons, therefore, by certified mail.

Appeals

§ 74-4-4.2.F NMSA (1978) provides that any person adversely affected by a decision of the Director concerning the issuance, modification, suspension or revocation of a permit may appeal such decision by filing a notice of appeal with the court of appeals within thirty days after the date the decision is made. The appeal shall be on the record made at the hearing. The appellant shall certify in his notice of appeal that arrangements have been made with the agency for a sufficient number of transcripts of the record of the hearing on which the appeal depends to support his appeal to the court, at the expense of the appellant, including one copy which he shall furnish to the agency.

Upon appeal, the court of appeals shall set aside the decision of the Director only if found to be:

1. arbitrary, capricious or an abuse of discretion;
2. not supported by substantial evidence in the record; or
3. otherwise not in accordance with law.

COMPLIANCE MONITORING, MANIFEST TRACKING AND ENFORCEMENT PROGRAM

An effective and efficient enforcement and compliance monitoring program is essential to the success of New Mexico's Hazardous Waste Program. The enforcement program, as outlined in this section, contains all of the remedies for violations of State program requirements as set forth in 40 CFR 271.16, and are made available to it by:

1. New Mexico Hazardous Waste Act, § 74-4-1 et seq. NMSA (1978) ;
2. EIB Hazardous Waste Management Regulations (Feb. 4, 1984);

The compliance and monitoring system as outlined in this section is designed to assess and monitor compliance as set forth in:

40 CFR 261 "Identification and Listing of Hazardous Waste"

40 CFR 262 "Standards Applicable to Generators of Hazardous Waste"

40 CFR 263 "Standards Applicable to Transporters"

40 CFR 264 "Standards for Owners and Operators of
Hazardous Waste Treatment, Storage and Disposal
Facilities"

40 CFR 265 "Interim Status Standards for Owners and Operators of
Hazardous Waste Treatment, Storage and Disposal
Facilities"

I. Compliance Monitoring

The Environmental Improvement Division's (EID) Hazardous Waste Section compliance monitoring activities will be divided into the following major categories:

- Inspections of hazardous waste generators, transporters, and TSD facilities.
- Review of generator and facility reports required to be submitted to the State.
- Review and approval of facility plans such as the contingency plan, ground-water monitoring plans, financial assurances, requests for waivers, and closure and post-closure plans.
- Provide essential monitoring support in the event of violations and/or emergency situations.
- Provide technical assistance to industry regarding program compliance.
- Conducting a non-notifier program using the standard procedures outlined in the inspection and enforcement sections of this document.

- Manifest tracking.

The following is a description of the EID's inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance or non-compliance with applicable program requirements.

A. Routine Inspections

1. The State program provides for periodic, routine inspections of all facilities and activities subject to hazardous waste regulations in order to:
 - determine compliance or non-compliance with Interim Status standards, issued permit conditions and other program requirements;
 - verify the accuracy of information submitted by permittees and other regulated persons on reporting forms and other forms supplying monitoring data;
 - verify the adequacy of sampling, monitoring and other methods used by permittees and other regulated persons to develop that information; and
 - allow collection and analysis of samples during routine monitoring as necessary.
2. Routine inspection schedules are determined in-house and conducted on a quarterly basis as specified in the annual State Work Program. Routine compliance inspections will be conducted with 24-hour prior notification unless circumstances dictate otherwise.

The Division Director and personnel engaged in compliance evaluations have the authority to enter any site or premises subject to regulation or in which records relevant to the program are kept in order to gain access to pertinent records, inspect, monitor or otherwise investigate compliance with the State program, including compliance with permit conditions and other program requirements (New Mexico Hazardous Waste Act §74-4-4.3 NMSA 1978).

3. Inspection Procedures

Inspections of hazardous waste facilities, generators and transporters shall vary according to facility type and will be performed as outlined in the RCRA Inspection Manual.

During the course of routine compliance inspections, if it is deemed necessary to collect samples of waste material(s) and/or ground-water monitoring samples, they will be collected in accordance with Test Methods for Evaluating Solid Waste - Physical/Chemical Methods, 1982.

Laboratory analysis will be conducted at the Health and Environment Department's Scientific Laboratory Division in accordance with the

procedures set forth in Test Methods for Evaluating Solid Waste - Physical/Chemical Methods, 1982. (see Attachment B)

Routine inspection procedures shall include but not be limited to:

- a. In-Briefing - to inform and acquaint the facility with the purpose of the inspection and the actions to be taken during its course.
- b. Document Review - shall include those documents maintained at EID headquarters as well as all documents required to be maintained by regulation at each particular facility. These will be reviewed by EID inspectors to ensure their physical presence, adequacy and that all required entries are up to date. Reviewed documents shall include operating records, waste analysis plans, contingency plans, financial assurances, ground-water monitoring plans, manifests and biennial reports, as applicable.

Special attention shall be given to reviews of all manifest documents. Entries reviewed shall include:

- presence of required signatures.
 - generator name, location and EPA I.D. number.
 - name of transporter(s), location and EPA I.D. number.
 - name of designated TSD facility, location and EPA I.D. number.
 - description of the manifested waste(s) including:
 - chemical description and classification;
 - EPA hazardous waste I.D. number;
 - its UN or NA I.D. number;
 - the total quantity manifested; and
 - the method of transportation (e.g. bulk, drums);
 - dates shipped and received.
 - any other evidence which might indicate the need for Exception Reports and/or how any manifest discrepancies may have been resolved.
- c. Site Inspection - Inspectors will conduct a visual inspection of all waste management units and surrounding areas, note pertinent information on inspection logs and gather physical evidence as necessary. Items checked shall include physical condition of waste management units, evidence of discharges, segregation schemes, containment devices, emergency and security equipment, etc..

d. Sampling - as necessary, inspectors will collect samples to verify the types of wastes managed at facilities against wastes listed in current notifications, Part A / Part B permit applications and final permit conditions. Collection of samples may also be necessary to verify or refute suspected or reported releases and to corroborate and supplement any ground-water monitoring program requirements.

e. Out-Briefing - summarize inspection procedures and point out any preliminary indications of non-compliance. Inspectors may also amplify the need to correct any major instances of non-compliance.

4. Inspection Review

Once the inspection has been completed and the inspector has returned to headquarters, a review of the inspection checklist and all pertinent field notes will be conducted, followed by the preparation of a brief narrative of the inspection.

In conjunction with this inspection review, the inspector will also note those indicated violations and identify the appropriate regulatory citations. When violations are determined, the necessary enforcement actions shall be pursued as specified in the Enforcement Section of this document.

5. Frequency of Inspections

The following are the minimum inspection frequencies that the EID commits to perform. The frequency of inspections of a site may be increased in instances of non-compliance, violations, and complaints.

- ° Major hazardous waste management facilities (including generators that treat, store, or dispose of waste on-site) - once per year;
- ° All non-major hazardous waste management facilities (including generators that treat, store, or dispose of waste on-site) - once every two years;
- ° Selected non-major generators - once every two years;
- ° Selected transporters - once every two years; and
- ° All RCRA regulated notifiers - at least once every five years.

During FY 84 (Fiscal year 1983-1984) it is projected that the following inspections will be made:

COMPLIANCE MONITORING SITE INSPECTION COMMITMENTS FOR FY 84

1) All majors waste handlers designated by State

<u>1st Quarter</u>	<u>2nd Quarter</u>	<u>3rd Quarter</u>	<u>4th Quarter</u>
5	5	5	6

2) All non-major TSD/TSD combination hazardous waste handlers

<u>1st Quarter</u>	<u>2nd Quarter</u>	<u>3rd Quarter</u>	<u>4th Quarter</u>
0	2	2	1

3) Selected non-major Generators, transporters and gen./ transporter combinations

<u>1st Quarter</u>	<u>2nd Quarter</u>	<u>3rd Quarter</u>	<u>4th Quarter</u>
0	2	5	4

4) All TSD's permitted during FY 84 and 1st. Quarter

<u>1st Quarter</u>	<u>2nd Quarter</u>	<u>3rd Quarter</u>	<u>4th Quarter</u>
1	1	0	0

Total number of facility inspections for FY 84 39

B. NON-ROUTINE INSPECTIONS

Unscheduled inspections will be conducted in response to possible cases of non-compliance, violations and in response to citizen complaints. Non-routine inspections may also be necessary to verify sampling data submitted by facilities.

Typically, non-routine inspections will fall into the following categories:

1. Reported incidences of violations / non-compliance;
2. Suspected incidences of violations / non-compliance;
3. Non-notifier activities; and
4. Sampling inspections.

The need for non-routine inspections may be determined by routine program activities, record reviews, citizen complaints and results of other inspections.

Inspections of possible non-notifiers will routinely be scheduled whenever new information indicating the need is discovered.

Sampling inspections may result after review of facility records or as dictated by new information concerning facility operations.

Inspections of this nature will be conducted following the appropriate procedures outlined in Section I.A. - Routine Inspections.

C. FOLLOW-UP INSPECTIONS

Follow-up inspections to ensure correction of detected violations will be conducted before, or as soon as deemed necessary, following any designated compliance date. This will depend on the speed of facility response and/or anticipated time of correction.

Follow-ups will be prioritized according to type and number of violations detected.

D. Compliance Monitoring / Enforcement Coordination

Individual inspectors are responsible for tracking time frames of Warning Letters, Notices of Violation, Compliance Orders, facility responses, scheduling of follow-up inspections and verification of correction of violations.

Escalation of any enforcement proceedings for continued non-compliance will also be initiated by each inspector and channeled through the Hazardous Waste Program Manager to the Legal Bureau for further development, either on an administrative level or in preparation for action in district court.

II. MANIFEST TRACKING SYSTEM

The EIB has adopted all pertinent regulations promulgated by EPA concerning the transportation of hazardous waste and the manifest tracking system. The manifest system as proposed in the New Mexico Hazardous Waste Regulations specifies that a valid manifest, or shipping paper in the case of rail shipments, must accompany all hazardous waste shipments, unless exempted under the provisions of 201.A.4., so as to ensure that all inter- and intrastate shipments of hazardous waste are designated for delivery, and in the case of intrastate shipments are delivered only to facilities that are authorized to receive such hazardous waste. The Environmental Improvement Division will require the use of the Uniform National Hazardous Waste Manifest on the effective date of 49 FR 10490 March 20, 1984.

A. Manifest Requirements.

1. The New Mexico manifest system requires that:

- a. the manifest itself identify the generator, transporter, designated facility to which the hazardous waste will be transported, and the hazardous waste being transported.
- b. the manifest accompany all wastes offered for transport, except that a shipping paper which contains all the required information will be allowed in the case of shipment by rail; and
- c. shipments of hazardous waste that are not delivered to a designated facility are identified and reported by the generator to the Division. Undelivered shipments may also be identified independently by the

Division through compliance monitoring inspections conducted by the State.

2. In addition, since the State of New Mexico possesses an international border, and international shipments are quite possible, the manifest system will also require that persons exporting hazardous waste to a foreign country must:
 - a. Notify the U.S. EPA Administrator four weeks before the initial shipment of hazardous waste to each country in each calendar year;
 - b. require confirmation of delivery by the foreign consignee; and
 - c. meet the specified information requirements for the manifest; and
 - d. Persons importing hazardous waste must also meet the specified information requirements for the manifest.
3. Required Reports.

In order to ensure the "cradle to grave" management of hazardous waste and to permit effective communications and coordination with other approved State programs and the Federal program, the manifest system will require that the following reports be filed with the Division as described below:

a. Exception Reports:

exception reports must be filed by a generator, for domestic and exported shipments of hazardous waste, if he does not receive a copy of the manifest signed by the owner or operator of the designated facility within the time period specified in the New Mexico Hazardous Waste Management Regulations. The report must contain all required information.

b. Manifest Discrepancies

Whenever a significant manifest discrepancy is discovered, the owner or operator of a facility which receives hazardous waste must attempt to reconcile the discrepancy with the waste generator or transporter. If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Director a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

c. Unmanifested Waste Report

If a facility accepts for treatment, storage or disposal any hazardous waste from an off-site source without an accompanying manifest or shipping paper, and if the waste is not excluded from the manifest requirements of Section 203 of the New Mexico Hazardous Waste Management Regulations, he must prepare and submit to the Director, a single copy of a report containing all required information within 15 days after receiving the waste.

4. Remedies.

In the event that the Division receives an Exception Report, is notified of a manifest discrepancy or discovers any manifest irregularities during compliance monitoring inspections, every attempt shall be made to resolve such irregularities. This shall include notification of the appropriate state agencies where these irregularities involve interstate shipments of hazardous waste, and the investigation by the Division of all irregularities involving intrastate shipments. It is expected that the resolution of such reports, notifications and/or discovered irregularities shall proceed as follows in Sections II.B. and C..

B. EXCEPTION REPORTS

In the event that an Exception report is received by the Division, the following standard procedures will be followed:

1. In incidents involving the inter-state transport of shipments of hazardous waste, the initial response of the Division will be the notification of the appropriate state environmental agency in the state to which the shipment was originally designated, or EPA in the case of a state which does not operate an authorized RCRA program.

This initial response shall provide, via telephone conversation, the concerned state agency or EPA, with all information which has been received by the Division which has led to the filing of an Exception report including:

- a. a description of the efforts taken by the generator to locate the shipment of hazardous waste and the results of those efforts;
- b. a synopsis of all pertinent information contained on the manifest which has been received in conjunction with the Exception Report including an identification of:
 - (1) the generator, his location and EPA I.D. number;
 - (2) the identified transporter(s) his location and EPA I.D. number;
 - (3) the designated TSD facility, its location and EPA I.D. number; and
 - (4) a complete description of the manifested waste(s) including:
 - (a) its chemical description and classification;
 - (b) its EPA hazardous waste I.D. number;
 - (c) its UN or NA I.D. number;
 - (d) the total quantity manifested;

- (e) the method of transportation (e.g. bulk, drums); and
- c. any other information the Division may have in its files concerning the past practices of the involved generator, any correlation of the hazardous waste manifested and those previously shipped by the generator and any information relating to the identified transporter.
 - d. copies of the Exception Report and the accompanying manifest shall be provided to the concerned state agency or EPA as soon as possible along with any other information which may contribute to the resolution of the Exception Report.

After this initial notification of any other authorized state agencies or EPA, the Division will continue its investigation of the submitted Exception Report as described below.

As relevant information becomes available, it again will be relayed to the appropriate state agency or EPA as soon as possible.

2. Incidents involving intra-state shipments of hazardous waste shall be handled by the Division, with the support of any other state agencies as may be appropriate, and as is outlined below.
3. Following the initial receipt of an Exception Report and the notification of any other authorized state agency or EPA in the case of inter-state shipments, the Division shall begin the preparation of a case file involving the received Exception Report. This shall involve the review and compilation of any pertinent data the Division may currently have on file as to the past activities of the generator in question.
4. Once the preliminary file has been established, the Division will initiate a compliance monitoring inspection of the generator that has submitted the Exception Report to verify the information received and to examine and review any other documentation or records the generator has on file concerning past manifesting practices, transporters contracted with, and previously designated TSD facilities.
5. If the transporter(s) indicated on the manifest is a New Mexico based transporter the Division will also conduct a compliance monitoring inspection of the transporter(s) in question to again examine and review any appropriate records on file.
6. If the transporter(s) is based in a state other than New Mexico, and since the Exception Report received may involve the violation of §§ 74-4-4.B.(5), C.(3) & (4), and D. (2) NMSA 1978, and may be subject to the penalties contained in §§ 74-4-11 & 12 NMSA 1978, the Division may request the assistance of the New Mexico State Police and the New Mexico Department of Transportation insofar as their assistance may lead to the identification and location of any transporter which may or may not be licensed to operate in the State of New Mexico.
7. If the TSD facility designated on the manifest is located in the State of New Mexico, the Division will also conduct a compliance monitoring inspection of said facility in order to examine and review any documents

or records which describe any previous involvements the facility may have had with the generator in question and to determine what, if any, involvement the facility may have previously had with the designated transporter(s).

8. Operating under these procedures it is expected that the Division shall be able to expediently resolve any submitted Exception Report concerning intra-state shipments of hazardous waste and to provide effective support to any other state agency or EPA in the case of shipments involving inter-state transport.

C. MANIFEST DISCREPANCIES

In the event that a notification of a manifest discrepancy is received by the Division, the following standard procedures will be followed:

1. Following the receipt of a manifest discrepancy report, the Division shall begin the preparation of a case file concerning said report.

The case file shall initially be developed using any information the Division may currently have on file describing the past activities of the involved generator and transporter(s), as applicable.

2. After the preliminary case file has been developed, the Division shall perform a compliance monitoring inspection of the TSD facility in question to verify the information submitted in the manifest discrepancy report and to examine and review any other pertinent documents and records which may relate to the incident in question, and/or which may describe any previous relationships the facility may have had with the indicated generator and transporter(s).

During the course of any such inspection the Division may collect samples of the waste shipment in question if it is deemed necessary to further corroborate the information already received.

3. If the indicated generator and transporter(s) are located in the State of New Mexico, the Division will also perform inspections of said generator and transporter(s) in order to examine and review any documents or records which may relate to the reported incident and which may have a bearing on such items as waste type(s) generated, past shipments of hazardous waste, and previously designated TSD facilities. Such inspections may involve interviews if permissible with involved employees, drivers, etc. as to their part in the initiation and transportation of the hazardous waste shipment under investigation.
4. If the indicated generator and transporter(s) are located out of state, the Division may request the assistance of the appropriate state agency or EPA in the case of an unauthorized state, in determining the validity of any information previously received in the manifest discrepancy notification.

This will also serve to alert the appropriate state agency or EPA, to possible irregularities in shipping and manifest requirements in the state of origin.

5. Through such investigations, it is expected that the Division shall be able to reconcile those manifest discrepancies reported to it and/or expose any intentional or accidental falsifications made concerning the shipment, transportation and receipt of the hazardous waste in question.

III. Enforcement

The State's enforcement program provides for the initiation and follow-up of any enforcement actions necessary.

A. Coordination of the Investigation of Reported or Suspected Violations

In addition to acting upon incidents of non-compliance identified by EPA or the Division's inspection program, routinely administered by inspectors from the Hazardous Waste Section, public input will also be accepted and evaluated. Information regarding suspected hazardous waste violations brought to the Division's attention will be directed to the Hazardous Waste Section and a complaint form shall be completed by the Division staff member who receives the communication (See Attachment D). The validity of the alleged violation will then be investigated. The investigation can include but shall not be limited to reconnaissance and surveillance by Division staff, personal interviews with the complainant and communications with other Federal, State and local law enforcement, transportation and environmental agencies. If deemed necessary, an inspector from the Hazardous Waste Section may be sent to the alleged site of non-compliance to conduct a compliance monitoring inspection or a hazardous substance release evaluation. During such investigations and inspections, appropriate samples may be collected if necessary, and other pertinent data gathered according to the chain of custody procedures contained in the EPA RCRA Inspection Manual and appropriate Division procedures, so that any evidence will be admissible in a court enforcement proceeding.

B. Transportation and Manifest Tracking System

The EID has adopted all pertinent regulations promulgated by EPA concerning transporters of hazardous waste and the manifest tracking system. (See EIB/HWMR-2) These will serve as a method to identify instances of non-compliance and will enable the Division to determine whether Exception Reports are due; whether disposal facilities are operating without permits; and whether there are generators operating without identification numbers. Such manifest discrepancies shall be investigated and appropriately resolved. Inspections of generators, transporters and treatment, storage and disposal facilities will also allow the Division to identify instances of manifest irregularities and pursue the investigation of such instances.

In addition, the New Mexico Department of Transportation's Motor Transportation Division is empowered to enforce those applicable regulations adopted by the U.S. Department of Transportation concerning the transportation of hazardous materials.

The Motor Transportation Division will not be involved in the inspections of hazardous waste transporter facilities, but it does maintain 19 ports-of-entry

and several mobile inspection units throughout the state and are empowered to enforce those applicable D.O.T. regulations concerning driver and vehicle safety, manifesting, packaging, labeling and placarding.

C. Determination of Violations and Enforcement Proceedings

It is envisioned that the normal enforcement procedure will involve:

1. the determination of a violation based on any information received or detected by the Division, or provided by EPA. Once violations are detected through the EID compliance monitoring program or through other Division activities, they will be evaluated to determine the appropriate enforcement action.

Violations, other than those which may pose an imminent hazard, will be considered on a case-by-case basis considering such criteria as:

- a. the type and number of violations;
 - b. potential for adverse impacts;
 - c. past compliance record and responsiveness of offender;
 - d. anticipated time required for correction; and
 - e. whether the violation is a continuation of a violation previously subject to enforcement action.
 - f. whether the facility has notified of its hazardous waste activity.
2. Once the gravity of the violation is determined enforcement actions will proceed as follows.

Major Violations: those which pose direct and immediate harm or threat to public health or the environment (e.g. discharges or imminent threat of discharge, failure to use manifest system, certain ground-water monitoring and financial requirement violations).

- a. In the event of a condition which may create an imminent hazard to public health or the environment in which immediate action would be required and, in the absence of such action, the Division would pursue enforcement action under § 74-4-13 NMSA 1978, which provides the authority to immediately restrain any activity leading to that condition either through suit in district court or through the issuance of other orders.
- b. Otherwise, enforcement action would proceed with notification by the Division to the violator of his failure to comply with such requirements. As soon as reasonably possible, but at least within thirty (30) days of any detected violation, a Notice of Violation (NOV) shall be sent via certified mail to the facility in non-compliance.

This NOV shall state the number and types of violations, along with the appropriate regulatory and/or statutory citations, and shall direct the offender to correct such violations within thirty (30) days.

If such violation extends beyond the thirtieth day after receipt of notification, the Division, pursuant to § 74-4-10 NMSA 1978, may issue an order requiring compliance within a specified time period or may commence civil action in district court for appropriate relief, including a temporary or permanent injunction.

Minor Violations: procedural, reporting or other violations, which in themselves do not pose direct threats to public health or the environment (e.g. reporting, personnel training, consulting with local authorities).

- a. Enforcement action would commence with notification by the Division to the violator of his failure to comply with such requirements. As soon as reasonably possible, but at least within thirty (30) days of any detected violation, a Notice of Violation (NOV) shall be sent via certified mail to the facility in non-compliance.

This NOV shall state the number and types of violations, along with the appropriate regulatory and/or statutory citations, and shall direct the offender to correct such violations within thirty (30) days.

If such violation extends beyond the thirtieth day after receipt of notification, the Division may send a second NOV if the circumstances warrant it, or, pursuant to § 74-4-10 NMSA 1978, the Director may issue an order requiring compliance within a specified time period or may commence civil action in district court for appropriate relief, including a temporary or permanent injunction.

- b. Minor violations may be escalated to the Major category for repeated failure to respond, correction of violations in a un-timely fashion, or lack of good faith effort on the part of the violator.

Should the situation arise, however, that satisfactory corrective action does not result in any of the situations described above, the Division, shall proceed with escalation of legal action. If the violator is a holder of a permit from this Division, and the infraction is a violation of that permit, then, as an alternative to suit, administrative proceedings could be commenced to suspend or revoke the permit of the violator.

This will allow the establishment of a strict time frame for effecting all necessary actions. Negotiations and compliance scheduling, as previously described above will be employed whenever possible to avoid lengthy litigation.

As can be seen, this enforcement strategy compares favorably with that outlined in EPA's Final Authorization Guidance Manual.

3. The Division is organized in such a manner that there is considerable inter-communication between the respective Bureaus that routinely administer other programs which effect the industrial community. The

Division is also able to maintain a high-profile throughout the state by the staffing of 22 permanent field offices. It is believed that this wide interaction with the public and private sectors will enable the Division to effectively identify and bring under the program any person subject to regulation who has failed to comply with the permit application, or notification requirements or who may be subject to such requirements in the future.

Routinely, facilities applying for any Division permit will be evaluated for their status under the hazardous waste program's regulatory scheme. In addition, all Division personnel will be asked to inform the Hazardous Waste Section of any citizen complaints that they have received or observations they have made of facilities that may either knowingly or unknowingly circumvent the applicable program requirements.

D. Legal Remedies

The New Mexico Hazardous Waste Act, §74-4-1 et. seq. NMSA (1978), as amended, gives the Environmental Improvement Division the authority to make investigations and inspections; to hold hearings; to enter upon public or private property for investigations or surveys; to institute proceedings in any court of competent jurisdiction to compel compliance with any violation of the Act or Regulations as issued thereto; and to bring suit in the appropriate district court to immediately restrain any person who may be handling, storing, treating, transporting or disposing of any solid waste or hazardous waste in such a manner that it may present an imminent and substantial danger to health or the environment.

§ 74-4-4.2.C NMSA (1978) and HWMR-2, Part III, Section 303.B. provide that the Division may modify, suspend or revoke any permit issued under the Hazardous Waste Act for:

1. violation of any permit condition;
2. misrepresentation of, or failure to fully disclose, all relevant facts and information in obtaining the permit; or
3. violation of any provision of the Hazardous Waste Act or any regulation promulgated pursuant to it.

§§ 74-4-4.2.C. & 74-4-9 NMSA (1978) and HWMR-2, Part III, Sections 302.A.1.b.(2)(c), 302.C.1.c., 302.C.5., 302.K. and 302.M. also provide for the revocation of Interim Status for cause.

§ 74-4-11 NMSA (1978) also provides for criminal penalties of not more than ten thousand dollars (\$10,000) or by imprisonment for a definite term not less than one year, or both. If the conviction is for a violation committed after a first conviction of such person under this section, the person shall be punished by a fine of not more than twenty-five thousand dollars (\$25,000) per day of violations, or by imprisonment for not more than two years, or both.

§ 74-4-12 NMSA (1978) provides for civil penalties of up to ten thousand dollars (\$10,000) for each day during any portion of which a violation occurs.

§ 74-4-13 NMSA (1978) provides that whenever the director is in receipt of evidence that the handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial danger to health or the environment, he may bring suit in the appropriate district court to immediately restrain any person contributing to such activity or to take such other action as may be necessary.

The assessment of penalties sought under the provisions of § 74-4-1 et. seq. NMSA 1978 shall be determined by the districts courts. New Mexico does not have a Civil Penalty Policy, however, the Division shall make appropriate recommendations for assessment of penalties based upon the nature and extent of violations.

E. Public Participation in the Enforcement Process

In addition to the investigation of citizen complaints, public participation in enforcement actions is also provided for by means of Rule 24(a) of the Rules of Civil Procedure, NMSA 1978, which allows for intervention of right in civil actions in the state district courts. N.M.R. Civ. Pro. 24(a) is similar to Rule 24(a) of the Federal Rules of Civil Procedure.

ESTIMATED TYPES AND NUMBERS OF REGULATED ACTIVITIES

Table 2 contains an estimate of the number of generators, transporters and TSD facilities in New Mexico. This estimate is based upon the EPA notifier list. New Mexico feels certain that some firms which notified did not need to do so. Many will obviously meet the small quantity generator exemption and may handle wastes which are exempted under the hazardous waste regulations. We have gone through the notifier list and deleted the firms which did not need to notify. Other firms, which in our opinion should have notified, have not done so as of yet. Because of the above and the limited data available to EID at this time, only a very rough estimate can be made of the numbers and types of activities affected by Phase I & II A & B regulations.

TABLE 2

Estimated Types and Number of Regulated Activities¹
(Compiled from EPA Region VI RCRA Notifiers List - 1983)

<u>TYPES</u>	<u>MAJOR</u>	<u>NON-MAJOR</u>
<u>Generator</u>	<u>7</u>	<u>319 (60)</u>
<u>Transportation</u>	<u>2(2)</u>	<u>47 (32)</u>
<u>Storage</u>		
<u>on-site</u>	<u>4</u>	<u>17 (15)</u>
<u>off-site</u>	<u>0</u>	<u>0</u>
<u>Treatment</u>		
<u>on-site</u>	<u>0</u>	<u>0</u>
<u>off-site</u>	<u>0</u>	<u>0</u>
<u>Disposal</u>		
<u>on-site</u>	<u>3</u>	<u>11 (11)</u>

off-site

0

0

¹Figures in parentheses indicate facilities which have notified for more than one activity.

Designation of Major and Non-Major Facilities

The state has based its designation of major, non-major facilities on the following criteria suggested by EPA:

- a. Land disposal activities (except those which the State and EPA have determined, on the basis of the criteria in paragraph c. below, should not be so designated);
- b. Incinerators (except those which the State and EPA have determined, on the basis of the criteria in paragraph c. below, should not be so designated); and
- c. Selected remaining storage and treatment facilities and transporters and generators based on the following criteria:
 - (1) Type of operation,
 - (2) History/record of non-compliance
 - (3) Size of operation
 - (4) Type of waste, and
 - (5) Location.

The treatment, storage, and disposal facilities listed in Table 2 above have initially notified that they utilize the following methods in managing their hazardous waste:

Container storage	13
Tank storage	5
Surface Imp. storage	3
Surface Imp. disposal	9
Landfill disposal	3
Land treatment	2

Of these facilities, 1 has terminated Interim Status, 5 intend to pursue termination of Interim Status, 6 have submitted Part B permit applications, and 1 is in the draft permit/public comment period stage. All others at this point maintain Interim Status.

The types and quantities (rough estimate) of hazardous wastes generated annually by New Mexico are presented on TABLE 3. These figures were summarized from the Part A submittals.

TABLE 3

New Mexico Hazardous Waste by Category as Identified by Part A Submittals:
(EPA Estimated Annual Quantity Sum For Facilities, In Metric Tons - October 30, 1981)

<u>CATEGORIES</u>	<u>WEIGHT (in tons)*</u>
Corrosives	141,997.78
Heavy Metals	569,507.70
Solvents	265.95
Pesticides	19.99
Petroleum wastes	599.69
Reactive	565.16
Ignitable	30,045.77
Miscellaneous organics	6.80
Other metals	471.76
	743,580.60 tons = Total

*Assuming each gallon weights 8.34 lbs., 265 days a year operation, and rounded to the second decimal place (may be updated due to submission of Biennial Reports in March 1984).

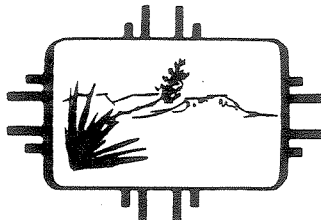
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GARREY CARRUTHERS
Governor

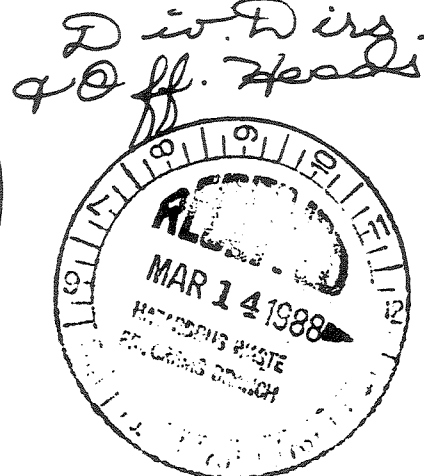
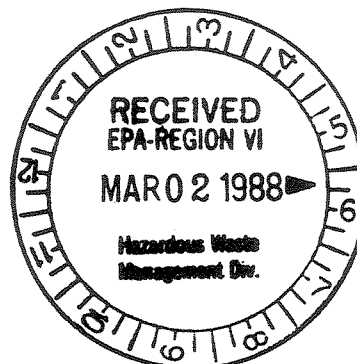
LARRY GORDON
Secretary

CARLA L. MUTH
Deputy Secretary



NEW MEXICO
HEALTH AND ENVIRONMENT
DEPARTMENT

Post Office Box 968
Santa Fe, New Mexico 87504-0968



February 19, 1988

Mr. Robert Layton
Regional Administrator
U.S. EPA Region VI
1445 Ross Ave.
Dallas, Texas 75202

Dear Mr. Layton:

For your information, I have recently re-organized the operational structure of the Environmental Improvement Division (EID) as indicated on the attachments. I believe the grouping of operational functions of EID into Waste Management, Water Management and Community Protection branches will provide more effective and efficient delivery of services and will facilitate communication between programs.

Please feel free to contact me and/or any of the three Deputy Directors if you have any questions and I would appreciate your sharing this information with your staff.

Thank you.

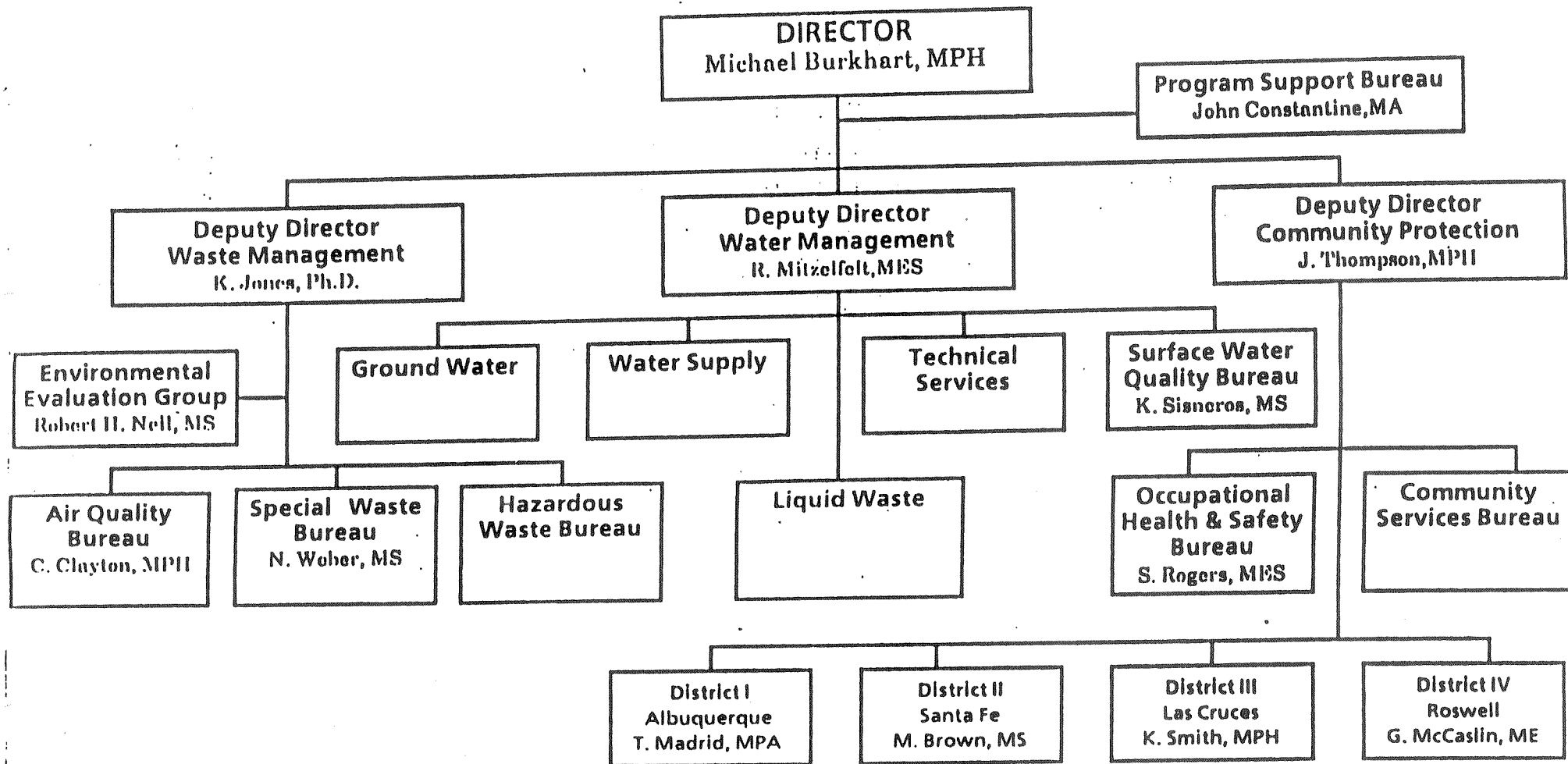
Sincerely,

Michael J. Burkhardt
Director

MJB/JT/ps

cc: Larry Gordon, Secretary, Health and Environment Department
Kirkland Jones, Deputy Director for Waste Management, EID
Richard Mitzelfelt, Deputy Director for Water Management, EID
Jon F. Thompson, Deputy Director for Community Protection, EID

Health and Environment Department Environmental Improvement Division



PROGRAMS

* 17 Field Offices

* Air Quality

* Ground Water Quality

* Water Supply Protection

* Food Quality

* Occupational Health & Safety

* Liquid Waste Disposal

* Insect and Rodent Control

* Public Swimming Pool Regulations

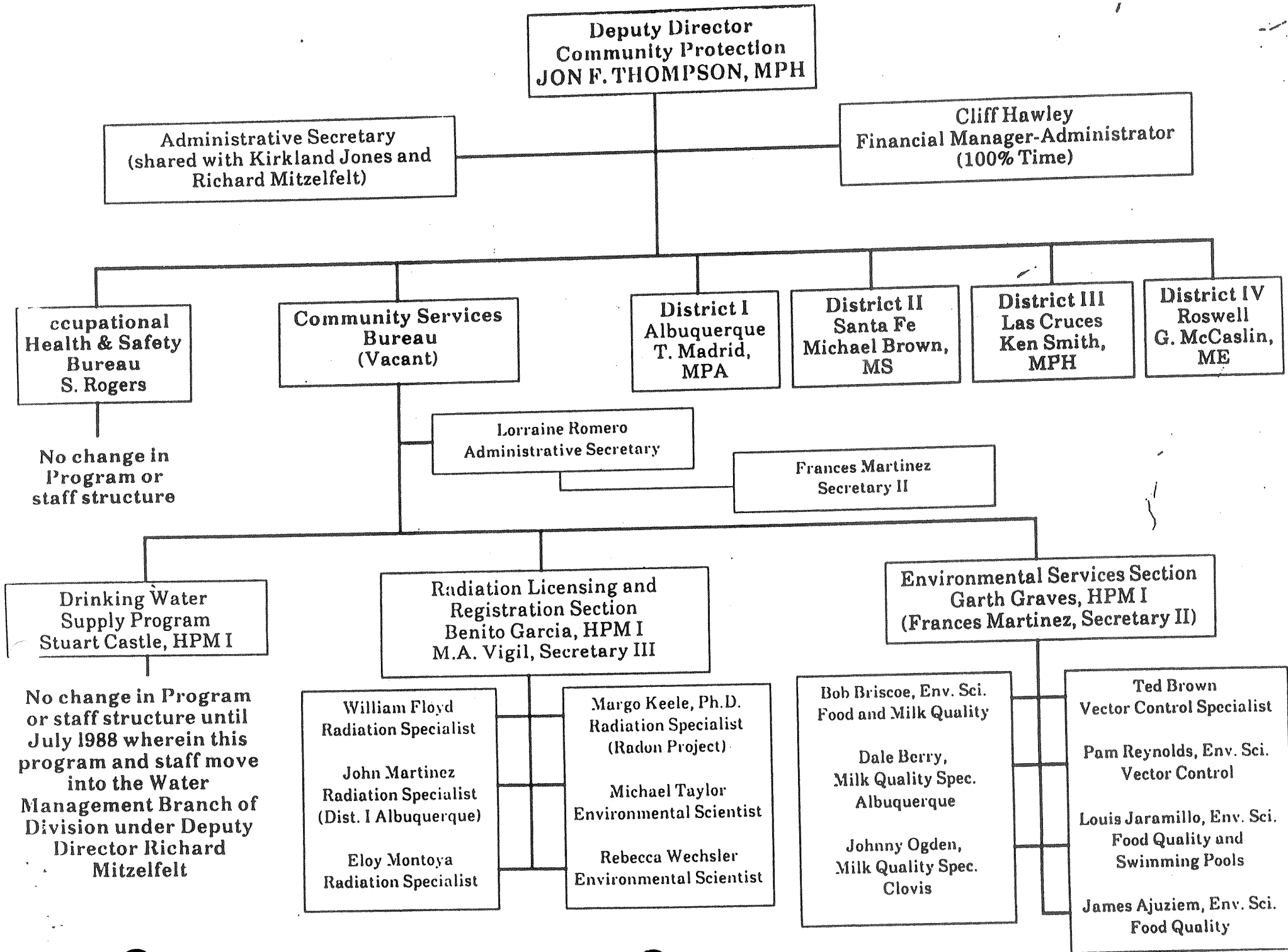
* Solid Waste Management

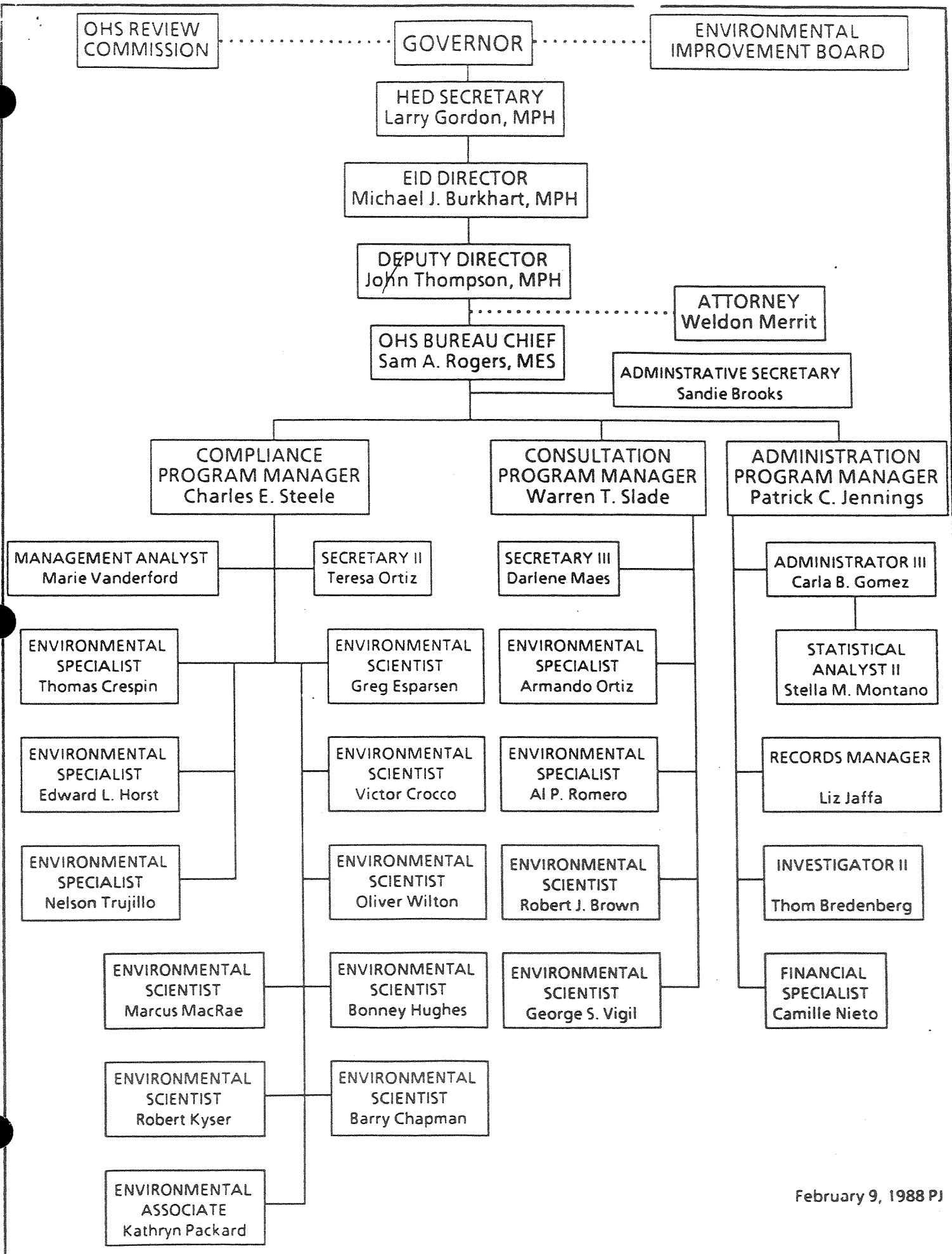
* Hazardous Waste Management

Water Supply

* Surface Water Quality

* Radiation Protection





HAZARDOUS WASTE BUREAU (2/9/88)

VACANT
BUREAU CHIEF
HAZARDOUS WASTE BUREAU

SUSAN HILL E. Sci.
EMERGENCY RESPONSE

HAZARDOUS WASTE
JACK ELLVINGER HPM I
Anna Walker Word Processing Senior
Vacant Secretary III

Boyd Hamilton WRS III

C. Kelly Crossman E. Eng. Spec. I

Julie Wanslow WRS. III

John Gould E. Sup.

Vacant E. Sup.

Vacant WRS. II

Elizebeth Gordon E. Sci.

Mike Sanders E. Sci.

Vacant E. Sci.

SQG E. Sci.

SQG E. Sci.

PCB E. Sci.

UST
KARL SOUDER HPM I
Nancy Gutierrez Micro Computer
Operator

Betsy Reed E. Sci.

Peter Maggiore WRES I

Greg Mello WRS III

Marcie Leavitt WRS III

B. Fredrick WRS II

B. Swanson WRS II

Vacant WRS II

Vacant WRS II

SUPERFUND
STEVE CARY HPM I
Darlene Roybal Word Processing
Senior

Gordon Dirlam Planner 3-A

Ron Conrad E. Sup.

Amy Childers WRS III

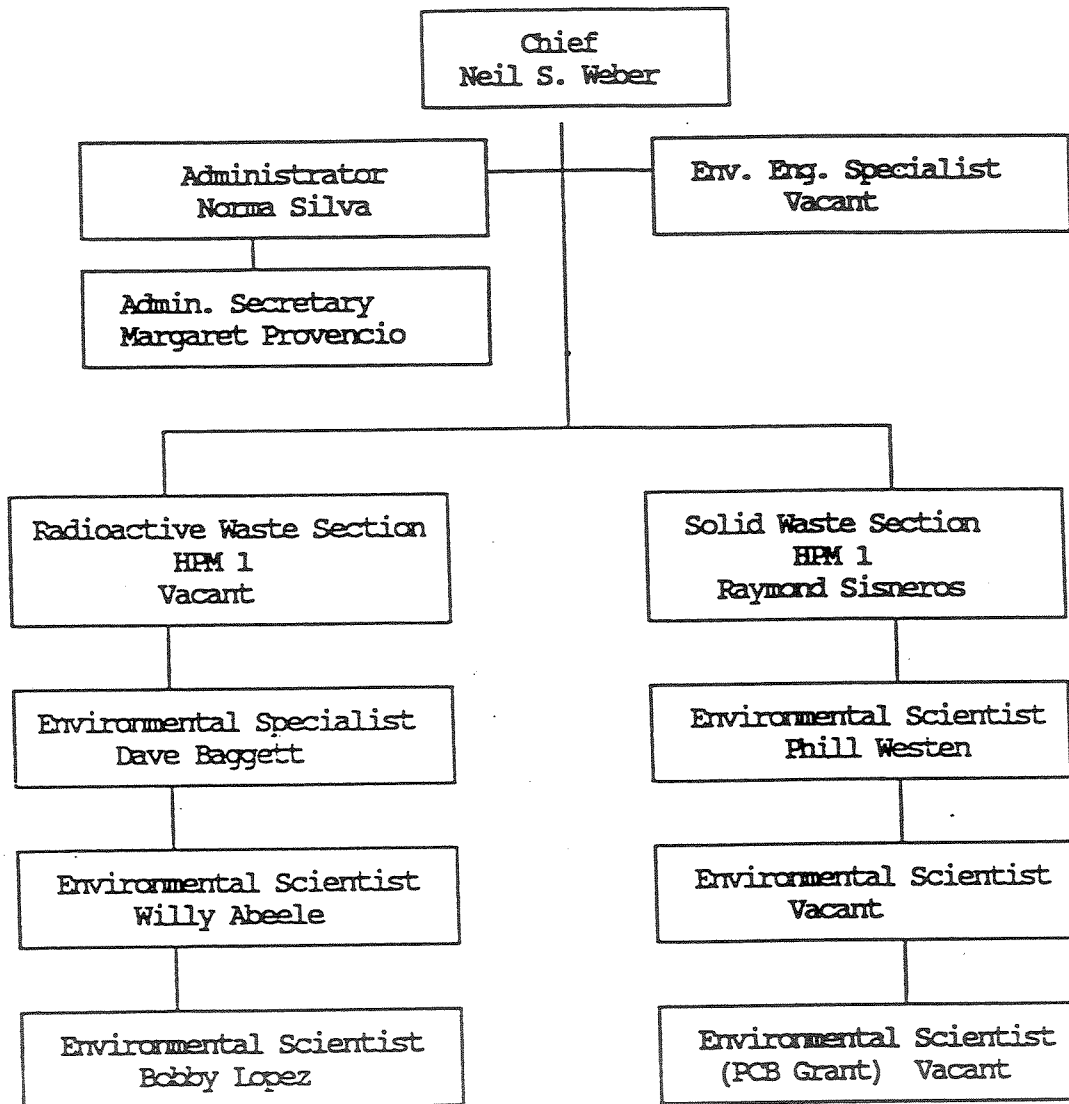
Dale Doremus WRS II

Paul Karas WRS II

Randy Merker WRS II

Kitty Richards E. Sci.

SPECIAL WASTE BUREAU



PROGRAMS

- *Liaison w/NRC on Uranium Mill Licensing
- *Inactive Uranium Mill Tailings Monitoring
- *Abandoned Uranium Mines
- *UMTRA Title I

PROGRAMS

- *Municipal and Household Solid Waste
- *Asbestos Disposal
- *PCB Disposal
- *Infectious Waste

02/09/88

**EID
AIR QUALITY
BUREAU**

G. Scudella
Energy Consultant

Cubia L. Clayton
Bureau Chief

C. Trujillo, Admin. Sec.

**Control Strategy
and Quality Assurance
Section**

C. Williams
Health Program Manager

C. Gurule, Sec. III

**Control Strategy
and
Evaluation Unit**

E. Lundquist, Env. Eng. I
J. LaBauve, Env. Specialist
B. Blankenship, Env. Sci.

Quality Assurance Unit

E. Peyton, Env. Supervisor

M. Stebleton, Env. Sci.
J. Vance, Env. Sci.
M. Coffman, Env. Sci.

**Ambient Monitoring
and Fiscal Analysis
Section**

M. Rinaldi
Health Program Manager

V. Romero, Sec. II

Santa Fe

C. Booker, Env. Supervisor
J. Storey, Env. Sci.

Farmington

D. Barnes, Env. Trainee

Las Cruces

R. Putman, Env. Supervisor
M. Romero, Env. Sci.

Carlsbad

D. Rauch, Env. Sci.

Silver City

D. Galindo, Env. Trainee

**Technical Analysis and
Permit Section**

B. Nicholson
Engineer II A

L. Barela, Sec. III

B. Hargraves, Eng. II A
T. Reed, Env. Sci.
Vacant, Eng. I A

New Source Review Unit

R. Kirkpatrick, Eng. I A
J. Shively, Eng. I A

**Surveillance and
Enforcement Section**

Vacant
Health Program Manager

M. Duran, Sec. II

Vacant, Eng. II A
S. Goel, Eng. II A
D. Duran, Eng. I A
Vacant, Eng. I A
P. Martinez, Env. Sci.
J. Romero, Env. Supervisor
A. Archuleta, Env. Sci.
A. Carlson, Env. Trainee

**SURFACE WATER QUALITY BUREAU
KATHLEEN SISNEROS, CHIEF**

Vacant ?
Administrative Secretary

M. L. Gallegos
Secretary II

M. L. Torres
Word Processor Sen.

**CONSTRUCTION GRANTS
SECTION**

DAVE HANNA, CHIEF

Patrick Olachea
Manager

Dave Gallegos
Env. Eng. II

Alex Puglisi
Env. Supervisor

Laura Gutierrez
Manager II

Tim Kresse
Env. Scientist

Martin Quintana
Personnel Research
Assistant

Dedie Snow
Manager

Peggy Tyler
Mgmt. Analyst IV

Olie Hodges
Mgmt Analyst III

Arun Dhawan
Env. Eng. II

Neil Williams
Env. Eng I

Bob Kane
Env. Eng. I

Vicki Martinez
Secretary III

Vacant
Secretary II

Carol Delgado
Fin. Spec. IV

**SURFACE WATERSECTION
GLENN SAUMS, MANAGER**

Lorena Ortega
Secretary III

Ann Young
Env. Scientist

Mike Saladen
Env. Scientist

Michele Giese
Env. Scientist

Shelda Sutton
Mendoza
Env. Scientist

**SURVEILLANCE AND
STANDARDS SECTION
DAVE TAGUE, MANAGER**

Debby Potter
Env. Scientist

Steven Pierce
Env. Scientist

Larry Smolka
Env. Scientist

Don Diltmore
Prog. Analyst I

Dan Davis
Env. Scientist

**WATER QUALITY
PLANNING SECTION
VACANT, MANAGER**

David Coss
Env. Scientist

Stephanie Kruse
Env. Scientist

Jim Piatt
Env. Scientist

WATER MANAGEMENT
DEPUTY DIRECTOR - RICHARD MITZELFELT
MANAGEMENT ANALYST - Ken Smith

WQCC AND ADMINISTRATIVE
SECRETARY
Patsy Sandoval

Support to
Community
Protection
Deputy Director

**SURFACE WATER
QUALITY BUREAU**

KATHLEEN SISNEROS
BUREAU CHIEF

SEE SEPARATE SHEET

(Temporary)
GROUND WATER SECTION
ERNEST C. REBUCK
PROGRAM MANAGER
Deborah Gallegos, Sec. III
Vacant, Sec. II

SEE SEPARATE SHEET

(Temporary)
**TECHNICAL SERVICES
SECTION**
BRUCE GALLAHER,
PROGRAM MANAGER
Pauline Vigil
Word Proc. Senior

D.
McQUILLAN
WRS III

D. BAKER
WRS II

VACANT
WRS II

VACANT
WRS II

M.
GOAD
WRS III

R.
PERKINS
WRS III

A.
DEARDORFF
PLANNER III

KELLER
STAT
ANALYST III

(Effective July 1, 1988)
WATER SUPPLY SECTION
STUART CASTLE
, PROGRAM MANAGER
Rachel Arguello, Sec. III

R.
ASBURY
ENV SUP

E
ROMERO
CLERK
SPEC

LEAVITT
WRS II

O.
SIMPSON
WRS II

(Temporary)
LIQUID WASTE PROGRAM
PATRICK HANSON
ENV. SCIENTIST III

