

US EPA ARCHIVE DOCUMENT

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See G. Conroy

letter 7/23/92

NEW MEXICO ENVIRONMENT DEPARTMENT  
HAZARDOUS AND RADIOACTIVE MATERIALS BUREAU  
PROGRAM DESCRIPTION

DATE 7-23-92

~~REVISION~~

NEW MEXICO ENVIRONMENT DEPARTMENT  
HAZARDOUS AND RADIOACTIVE MATERIALS BUREAU  
PROGRAM DESCRIPTION

Though this application, the State of New Mexico seeks authorization for a revision to its hazardous waste management program. The State received final authorization from the United States Environmental Protection Agency (EPA) in January, 1985.

Pursuant to 40 Code of Federal Regulations (CFR) Section 271.21, the State is submitting this application to reflect recent program revision to assure that the authorized state hazardous waste program remains equivalent to the federal hazardous waste program under the Resource Conservation and Recovery Act (RCRA).

The State has amended its' regulations to incorporated the 1990 Code of Federal Regulations Parts 260-270. Therefore, the State has regulations equivalent to those of EPA.

This application replaces the application submitted to EPA for non-HSWA IV. Furthermore, this application also requests authorization for those revisions identified as non-HSWA clusters V and VI.

**PROGRAM DESCRIPTION**

**DESCRIPTION OF THE NEW MEXICO HAZARDOUS WASTE PROGRAM**

This narrative has been developed as outlined in 40 CFR 271.6 and will demonstrate that the States' Hazardous Waste Management Program (HWMP) is equivalent to the federal program and that the State has the resources to implement the provisions for which it is seeking authorization. The narrative will address the scope, structure, coverage and process of the New Mexico HWMP.

The program description submitted with this application replaces all prior program descriptions submitted by the State.

## SCOPE

The New Mexico HWMP is based upon the New Mexico Hazardous Waste Act, Sections 74-4-1 et. seq. NMSA (1978), as amended. This Act granted the New Mexico Improvement Division (EID), now referred to as the New Mexico Environment Department (NMED) authority to regulated hazardous waste in New Mexico by empowering the Environmental Improvement Board (EIB) to adopt regulations for the management of hazardous waste equivalent to, and no more stringent than, federal regulations adopted by the federal environmental protection agency pursuant to RCRA. NMED has incorporated the 1990 Code of Federal Regulation, 40 CFR Parts 260-270 for hazardous waste management. However, the State regulations don not incorporated the 40 CFR Part 124 standards. Standards equivalent to 40 CFR 124 comprise Part IX of the New Mexico Hazardous Waste Management Regulation.

As a result of recent legislative action, the Health and Environment Department has been divided into the New Mexico Health Department (NMHD) and the New Mexico Environment Department (NMED).

## PROGRAM STRUCTURE

The HWMP is part of the Hazardous and Radioactive Materials Bureau, Water and Waste Management Division, New Mexico Environment Department. The bureau is subdivided into two (2) programs, the Radioactive Materials Program and the HWMP. The HWMP is then divided into three (3) section each with an immediate supervisor. The sections within HWMP are reporting directly to a program manager, these include: inspection/enforcement, permitting and technical. Data management, authorization and freedom of information are the responsibility of the management analyst. The program manager in turn reports to the bureau chief. The specific titles and job responsibility of staff in each of the sections will be discussed later in this document as part of the discussion on "Staffing and Resources".

HWMP receives additional support and expertise from other bureaus and divisions within NMED. The additional entities will be discussed later in this document as part of the discussion on "Organization and Structure of State Agencies".

## PROGRAM COVERAGE

With the incorporation of the federal regulations, the State program is regulatory identical to the federal program. Therefore, the State regulates the same universe of generators, transporters, and facilities that treat, store and/or dispose of hazardous waste.

The State is inspecting, enforcing and consulting with this universe of facilities in accordance with New Mexico Hazardous Waste Management Regulations, excluding the components of RCRA for which the State has not received authorization.

The State is currently authorized for the base program, non-HSWA Clusters I, II, and III, mixed waste and Subpart X authority.

The State has incorporated by reference, the following sections of 40 CFR into the New Mexico Hazardous Waste Management Regulation:

**NON-HSWA CLUSTER IV (July 1, 1987, through June 30, 1988)**

a. List of Hazardous Constituents for Groundwater Monitoring (Checklist 40). New Mexico has adopted by reference the Federal rules at 40 CFR 264.98 and 264.99 requiring groundwater monitoring and analysis for contaminants specified at Appendix IX, Part 264 and defined site specific contaminants at all land based hazardous waste treatment, storage and disposal facilities. State provisions are equivalent to the Federal standards.

b. Identification and Listing of Hazardous Waste (Check list 41). New Mexico has incorporated by reference the Federal rule listing additional hazardous wastes as listed in Revision Checklist 41. State provision are equivalent to the Federal standards.

c. Liability Requirements for Hazardous Waste Facilities, Corporate Guarantee (Check list 43). New Mexico has adopted the Federal rules at 40 CFR 264.147, 264.151, and 264.147 allowing qualified companies which treat, store or dispose of hazardous waste to use a corporate guarantee to satisfy liability insurance requirements. State provisions are equivalent to the Federal standards.

d. Hazardous Waste Miscellaneous Units (Checklist 45): New Mexico has incorporated by reference miscellaneous Federal rule changes concerning 1) recording and maintenance of monitoring, testing, and analytical data and corrective action in facility operating records; 2) compliance with 264 Subpart F for releases from SWMUs; 3) compliance with closure and post-closure financial responsibility requirements; 4) operating records for miscellaneous hazardous waste units; and 5) general application requirements for miscellaneous hazardous waste units as listed in Revision Checklist 45. State provisions are equivalent to the Federal standards.

e. Technical Corrections, Identification and Listing of Hazardous Waste (Checklists 29 and 46). New Mexico has incorporated by reference the Federal rule listing additional hazardous wastes as listed in Revision Checklists 29 and 46. State provisions are equivalent to the Federal standards.

**NON-HSWA CLUSTER V (July 1, 1988, through June 30, 1989)**

a) Identification and Listing of Hazardous Wastes dates

(Checklists 47, 49, 53, 56, and 57). These provisions have been incorporated by reference, in their entirety. This Regulation is currently in force and the wastes listed in Checklist 53 are considered hazardous waste in New Mexico. The de-listing of iron dextran. State provisions are equivalent to the Federal standards.

b) Standards for Hazardous Waste Storage and Treatment Tanks System (Checklist 52). The revision deals only with the correction of typographic errors inn 40 CFR. Changed portions of 40 CFR have been incorporated by reference and are equivalent to the Federal standards.

c) Statistical Methods for Evaluating Groundwater Monitoring Data from Hazardous Waste Management Facilities (Checklist 55). New Mexico has adopted by reference revised Federal standard prescribing statistical methods, sampling procedures, and performance standards for groundwater monitoring.

d) Requirement for Incinerator Trial Burns (Checklist 60). New Mexico has adopted by reference Federal provisions requiring incinerators to conduct and successfully complete a trial burn, and submit supplemental data as required before a permit can be issued for that facility.

e) Procedures for Post-Closure Permitting (Checklist 61). New Mexico has adopted by reference Federal provisions for lifting the reconstruction limit for changes to certain interim status units so as to allow compliance with federal, state, or local requirements and as necessary allow continued handling of newly listed or identified hazardous wastes, or as required in accordance with an approved closure plan or pursuant to a corrective action order. Provisions at 40 CFR 124 are not incorporated equivalent state requirements are found in the New Mexico Hazardous Waste Management Regulations Part IX.

**NON-HSWA CLUSTER VI (July 1, 1989, through June 30, 1990)**

a) Delay of Closure Period for Hazardous Waste Management Facilities (Checklist 64). Federal provisions allowing amendments of portions of the closure plan for certain types of hazardous waste facilities have been incorporated by reference.

b) Mining Waste Exclusion (Checklists 65 and 71). Federal provisions excluding specified mineral processing wastes from regulation as hazardous wastes (the Bevill exclusion) have been incorporated by reference.

c) Testing and Monitoring Activities (Checklists 67 and 73). New Mexico has adopted the most recent revision of SW-846 for hazardous waste sampling and analytical procedures.

d) Reportable Quantity Adjustment - Zirconium Phosphating Sludge (Check list 72). New Mexico has adopted the Federal provision deleting these sludge from the list of hazardous wastes from specific sources.

e) Criteria for Listing Toxic Wastes - Technical Amendments (Checklist 76). New Mexico has adopted this technical correction to a previously corrected rule.

**PROGRAM PROCESS**

The general State Program processes are: inspection/enforcement, permitting, and authorization/data management.

**Inspection/Enforcement**

This process will be discussed later in this package. In brief, the facilities to be inspected are negotiated as part of the grant process with EPA. Complaints received by HWMP are logged and inspections scheduled on the compliant information and available resources. Enforcement actions are taken based on statutory requirements as outlined within the Hazardous Waste Act, and the Enforcement Memorandum of Understanding (MOU) as negotiated with EPA.

**Permitting**

The permitting process will insure that all facilities subject to the provisions of the New Mexico Hazardous Waste Act, Sections 74-4-1 et. seq., NMSA 1978, will be required to have a permit issued by the Department pursuant to the regulations.

A permit issued by the Department will be in accord with the regulations, and in a manner consistent with 40 CFR 124. The permit will require the facility be operated and maintained in conditions, compliance schedules, monitoring requirements and technical standards as deemed necessary to insure the protection of the public health and environment.

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

The State program allows at least 45 days for public comments and review whenever a draft permit is prepared, or a permit application is tentatively denied. During the comment period, any interested party may submit written comments to the Department and/or request a public hearing. If a public hearing is requested, the Division will give a 30 day public notice prior to any scheduled hearing. During the public hearing the permittee and NMED will offer testimony. In addition, any interested person will also be afforded the opportunity to present testimony. Any interested person will be able to submit comments and cross examine witnesses. In addition to formal public hearings, informal public meetings will be held during the permit review process to educate the community and answer questions about the permit.

After the time of a final permit decision the Secretary shall issue a response to comments received and make them available to the public and any other interested party. An appeal of the Secretary's decision must be made to the State Court of Appeals.

#### **Authorization/Data Management**

This includes those processes associated with general program requirements; such as regulation development, statutory amendments, HWDMS/RCRIS data management, authorization and notification.

Regulations will be amended at least yearly to coincide with the codification for the federal regulations. The program may opt to petition the Environmental Improvement Board to consider amendments more frequently if appropriate.

Required statutory changes will be prepared by NMED and submitted to the legislature on a biennial basis, unless it becomes necessary to introduce legislation to maintain authorization. In this case, NMED will attempt to introduce the required legislative change(s) during the next legislative session. Legislation may also be introduced independently by individual legislators. Legislation enacted under an emergency clause becomes effective immediately upon signature by the Governor, otherwise legislative changes become effective 90 days after the session in which they were enacted.

Data will be entered into the HWDMS/RCRIS data management system at frequency no less than that negotiated during the grant process, with all incorrect data properly re-entered within seven (7) working days of discovery.

Authorization applications will be submitted pursuant to the "Cluster rule" unless NMED opts to seek authorization for individual components.

The State has opted to use the EPA prepared notification forms. These forms are provided upon request, and completed forms received by the State are submitted to EPA for processing and entry into the data management system as appropriate. When regulatory changes require the submission of new or amended notification forms by the facility, the State is required submission of these forms within 90 days of the State amending its' regulations.

#### **ORGANIZATION AND STRUCTURE OF STATE AGENCIES**

The Hazardous and Radioactive Materials Bureau of the New Mexico Environment Department is the States's "lead agency" for the hazardous waste management program.

Other NMED programs that have expertise or authority that can be, and are utilized by the HWMP.

- 1) Air Quality Bureau, which regulates emissions of pollutants to the ambient air;
- 2) Ground Water Bureau, which regulates the disposal of contaminants to the environment that have the potential to contaminate the groundwater;
- 3) Surface Water Bureau, which regulates discharges of pollutants into the surface waters of New Mexico;
- 4) Toxic Sites Bureau which acts as a contractor to EPA for the investigation and remediation of CERCLA sites.
- 5) Occupational Health and Safety Bureau, which regulations the health and safety of the work place environment.

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

Other agencies within the State that provide assistance to Hazardous and Radioactive Materials Bureau are:

- 1) The Office of General Counsel which provides legal support to the bureau with respect to the development of legislation, regulation development and interpretation, permitting and enforcement actions;
- 2) Scientific Laboratory Division (SLD) which provides limited analytical support for identifying contaminants and contaminant concentrations of samples collected during investigations, enforcement actions, clean-up operations, and routine inspections of hazardous waste facilities and generators. The SLD is inspected yearly by EPA. A private contract laboratory is currently being used for analysis for samples collected pursuant to compliance monitoring evaluations;
- 3) New Mexico Department of Agriculture, pursuant to the Hazardous Waste Act, is the lead agency responsible for the enforcement of all hazardous waste regulations regarding hazardous agricultural waste;
- 4) Energy, Minerals and Natural Resources Department administers programs relating to the production of oil, natural gas geothermal energy, and coal;
- 5) Department of Public Safety who administers the emergency response coordination in the State of New Mexico.
- 6) Administrative Service Division which tracks the financial expenditures and submits the yearly budget reports to EPA for the Hazardous and Radioactive Materials Bureau.

#### STAFFING AND RESOURCES

HWMP is divided into three (3) main sections, Permitting, Technical, and Inspection/Enforcement. Each section has been staffed with personnel experienced in the respective needs of that group. This provides the best protection to the environment as well as service to the public and regulated communities. In support of these three (3) section is the administrative/data management group.

##### Permitting

The Permitting section consists of one (1) Health Program Manager, two (2) Water Resources Specialist II, one (1) Environmental Scientist, one (1) EPA-IPA assignee, and one (1) Environmental Specialist (TBC). Responsibilities of this section are:

1. Administrative and Technical review of applications for operating permits submitted commercial and federal facilities.
2. Issuance of operating permits.
3. Review and approval of closure plans submitted by commercial and federal facilities.
4. Approval of closure certifications.
5. Administrative and technical review of post-closure care permit applications submitted by commercial and federal facilities.
6. Issuance of post-closure care permits.
7. Maintenance of existing operating permits to assure compliance as waste streams or operating procedures change during the course of normal operation.
8. Review of applications for mixed waste units at appropriate federal facilities.
9. Response to inquiries from the public regarding regulatory issues affecting the management of hazardous materials.

The duties and responsibilities of each position are as follows:

Health Program Manager (one position)

Supervises, directs and monitors all activities performed by the Permitting section. Prepares and present budget requests, mid-year and end-of-year reports, Work Grant negotiations, evaluates staff training needs and makes recommendations for training, evaluates staff performance, conducts public meetings on proposed regulation changes. Prepares and presents regulatory changes to the EIB. Testifies, if necessary, at Public Hearings on Issuance of Permits. Review all documents prepared by the Permitting section. Interview and in consultation with respective supervisors, hire additional staff.

Water Resource Specialist II (two positions)

Review permit applications for administrative and technical completeness and request additional permit information as necessary. Recommend the issuance of NOD's for those applications determined to be incomplete.

Create an enforcement checklist on those permitted facilities. Recommend the issuance or denial of a permit. Review closure plans for technical completeness. Perform duties assigned by the Bureau Chief/Program Manager/Supervisor as they apply to the Permitting Section.

#### Environmental Scientist (one position)

The duties of the Environmental Scientist will be the same as the Water Resource Specialist II.

#### Environmental Specialist (TBC)

Basic responsibilities will be the same as the Environmental Scientist and Water Resource Specialist II with the potential for being a supervisor.

#### EPA-IPA ASSIGNEE

There is one (1) IPA position presently being assigned to the State of New Mexico. The position that is presently filled is very active in the review of permit applications and closure permits in coordination with other staff members. One of the major tasks that the IPA is assigned to perform is the training of New Mexico Permitting Staff in permit application review and permit writing.

#### INSPECTION/ENFORCEMENT

The Inspection/Enforcement Section of the Hazardous Waste Management Program primarily conducts Compliance Evaluation Inspections (CEI) and Comprehensive Monitoring Evaluation (CME) to determine the regulatory and compliance status of hazardous waste facilities. Grant commitment inspections consume most of the time spent by the inspectors, although other inspections are performed in response to complaints, referrals from other regulatory agencies, and consultations.

This section consists of one (1) Program Manager, one (1) Water Resource Specialist III, one (1) Water Resource Specialist II, and one (1) Environmental Scientist. Their respective duties and responsibilities are as follows:

#### Health Program Manager: (one position)

Supervises, directs and monitors all activities performed by the Inspection/Enforcement, Technical and Administrative Section staff. Prepares and presents budget requests, mid-year and end-of-year reports, Work

Grant negotiations, evaluates staff training needs and makes recommendations for training, evaluates staff performance, conducts public meetings on proposed regulation changes. Prepares and presents regulatory changes to the EIB. Testifies, if necessary, at Public Hearings on Issuance of Permits. Review all Documents prepared by Hazardous Waste Management Program. Interviews and in consultation with respective supervisors, hire additional staff.

Water Resource Specialist III: (one position)

Functions as the supervisor and senior inspector/trainer in the section. This position assist's in the EPA/State Work Grant negotiations, inspection scheduling, conduction of CEIs inspection file review and evaluation, research, training and supervision of the staff.

Water Resource Specialist II: (one position)

Conducts' compliance evaluation inspections and evaluates regulatory compliance and assists facilities achieve compliance with State and Federal Regulations. Compiles information and checklists relating to the facilities inspection results and forwards the results to EPA. Serves the public and regulated community as a source of information regarding the interpretation of the regulations and guidance regarding hazardous waste management.

Environmental Scientist: (one position)

The duties of the Environmental Scientist are the same as the Water Resource Specialist II.

Environmental Specialist: (one position)

The duties of the Environmental Specialist are the same as the Water Resource Specialist II and the Environmental Scientist with the exception that the Environmental Specialist will be assigned the responsibility to be involved in the International Border Issues and Inspections/Enforcement between the USA and Mexico as it applies to New Mexico.

## TECHNICAL

The Technical Section perform reviews of the specified facilities in the following areas:

- Groundwater monitoring data review
- Quality Control/Quality Assurance data review
- Monitoring well installation and location
- Conducting Comprehensive Monitoring Inspection (CME).

The Technical Section consists of one (1) Water Resource Specialist III and one (1) Water Resource Specialist II. Their respective duties and responsibilities are as follows:

Water Resource Specialist III: (one position)

Functions as the supervisor and senior member of the technical staff. Conducts CME on those facilities as agreed upon in the Work Grant. Assists in the Work Grant negotiations, training of staff and assists in budget preparations. Will testify at public hearings as necessary and will assist both the Permitting Section and the Inspection/Enforcement Section on technical issues. This position reports directly to the Program Manager set forth in the Inspection/Enforcement Section.

Water Resource Specialist II: (one position)

Duties are the same as the Water Resource Specialist III with the exception of supervisory duties.

## ADMINISTRATION

The administration consists of a Bureau Chief (25%), two (2) Program Managers (all ready accounted for in the Permitting, Inspection/Enforcement/Technical Sections), one (1) Data Management Specialist, one (1) Management Analyst 1, Administrative Secretary (50%), one (1) Secretary 3, and one (1) Financial Specialist (25%). The Responsibility of these positions are as follows:

Bureau Chief: ( one position, part time - 25%)

Directs all activities in the Bureau. This position along with the Director and Office of the Secretary are the policy makers for the New Mexico Environment Department, Hazardous and Radioactive materials Bureau.

Program Managers: (two (2) positions)

Both position have already been accounted for and responsibilities addressed in the Permitting Section and the Inspection/Enforcement/Technical Sections.

Data Management Specialist: (one position)

Reports to the Program Manager referred to in the Inspection/Enforcement Section. Will be the supervisor over data management. Will assist in data entry, review of all data entered (RCRIS and BRS), evaluate staff, conduct training, assist in budget preparations, mid-year reports and year-end-reports, Authorization, assist in negotiations for the RCRIS Memorandum of Understanding and insure all commitments are satisfied.

Management Analyst I: (one position)

Duties are the same as the Data Management Specialist with the exception of supervisory responsibilities and input into Authorization. This position will report to the Data Management Specialist for assignments.

Administrative Secretary: (part time position - 50%)

Perform clerical work for the Hazardous Waste Management Program and will report to the Bureau Chief.

Secretary III: (one position)

Perform clerical work for the Hazardous Waste Management Program and will report to the Program Manager. The Secretary III will also be trained to be a backup to the Management Analyst I.

Financial Specialist: (part time position - 25%)

The Financial Specialist is responsible for coordinating the Bureau's expenditures, tracking and approving purchase documents prior to submittal, submitting grant applications, completing end-of-year reports, and ensuring that expenditures are conducted in conformance with state regulations and policies and in accordance to federal grant agreements, regulations and policies.

Additional program support is available from various other sources. This support includes:

1. Administrative support from the Office of the Secretary, Deputy Secretary, Branch Administrator, Administrative Services Division, Environmental Improvement Board and the Office of General Counsel.
2. Technical support as provided by other program within and outside NMED.

3. Laboratory support as provided by the Scientific Laboratory Division and legal assistant provided by the Institute of Public Law, University of New Mexico.

4. Approximately 30 positions are being funded through an agreement between the State of New Mexico and the Department of Energy. It is estimated that of the 30 positions being created only 5.0 work years will be indirectly applicable to the Hazardous Waste Management Program. Please note that these positions are not in our work plan nor in the Grant Commitments.

The HWMP is funded from monies allocated by the legislature and monies received for processing hazardous waste permits applications. It is anticipated that funding will remain somewhat constant over the next two years. Therefore, the anticipated state monies will remain between \$200,000 to \$250,000 dollar per year range, and the federal monies will remain be in the \$700,000 to \$750,000 dollar per year range.

EIB promulgated permit fee regulations that authorize the HWMP to assess fee prior to processing a permit application. It is estimated that an average of \$100,000 to \$150,000 dollars per year will be generated from this source over the next two (2) years.

The following is detailed breakout for HWMP personnel salaries and benefits, including retirement, health benefits, fica, annual and sick leave and life insurance:

SECTION/POSITION	SALARIES	BENEFITS	WORK YEARS
Permitting			
HPM I	\$ 31,748	\$ 9,524	1.00
WRS II	25,686	7,706	1.00
WRS II	25,532	7,660	1.00
Envir. Sci.	25,532	7,660	1.00
Envir. Spec.	31,725	9,524	1.00
Inspection/Enforcement			
HPM I	33,388	10,016	1.00
WRS III	28,658	8,597	1.00
WRS II	27,314	8,194	1.00
Envir. Sci.	25,532	7,660	1.00
Envir. Spec.	31,725	9,524	1.00

Technical Unit

WRS III	27,297	8,189	1.00
WRS II	25,532	7,660	1.00

Administration

Bureau Chief @ 25%	12,501	3,750	0.25
Data Management Spec.	25,000	7,500	1.00
Management Analyst	21,551	6,465	1.00
Admin Sec. @ 50%	12,146	3,644	0.50
Sec. 3	17,790	5,338	1.00
Financial Spec @ 25%	5,647	1,694	0.25

TOTAL	\$ 434,306	\$ 130,293	16.00
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The following distribution of federal and non-federal funds by object class category for fiscal years 1993-1994

Personnel	\$ 434,306
Fringe Benefits	130,293
Travel	20,000
Supplies	8,000
Equipment	29,500
Contractual	230,000
Other expenses	52,900
Total Direct Charges	905,299
Indirect Charges	152,843
TOTAL	1,058,142

**PERMITTING AND APPELLATE REVIEW PROCEDURES**

New Mexico's permitting procedures are essentially identical to those of EPA as found within 40 CFR 270, except that any reference to 40 CFR 124 shall be construed to mean Part IX of the New Mexico Hazardous Waste Management Regulations. The State permitting process will insure that all facilities subject to the provisions of the New Mexico Hazardous Waste Act, Sections 74-4-1 *et. seq.* NMSA 1978 as amended, will be required to have a permit issued by the Department. However, all permit modification requests must be public noticed to allow the public to provide comments and/or request a public hearing.

Facilities that were in existence on November 19, 1980, or a later date, if as a result of regulatory and/or authorization changes, that have complied with applicable state and federal notification requirements shall be treated as having been issued a permit until such time as final administrative disposition of their permit application.

In addition, EPA and NMED enters into a Joint Permitting Agreement (JPA) which is to be updated and revised each fiscal year.

#### Permitting Procedures

Any person who is required to have a permit shall complete, sign, certify, and submit an application to the Secretary containing all appropriate information requirements and any other supplemental information which the Secretary may deem necessary as detailed in 40 CFR 270.

If an application is found to be incomplete, the applicant shall be informed by certified mail of the insufficiency(s) and the need for the submission of additional information.

Once the application is complete, the Secretary shall prepare and issue either a draft permit or a notice of intent to deny in accord with the requirements detailed in Part IX Section 902.A of the New Mexico Hazardous Waste Management Regulations.

#### Permit Modification, Suspension and Revocation

The Secretary may modify, suspend, or revoke a permit issued in accord with the requirements detailed in Part IX Section 902.B or the New Mexico Hazardous Waste Management Regulations.

The Secretary shall public notice issuance of a draft permit or a notice of intent to deny, and of any public hearing scheduled in accord with the requirements detailed in Part IX Section 902.C. of the regulations.

#### FACT SHEET

The Secretary shall prepare a fact sheet for every draft permit or a notice of intent to deny in accord with the requirements detailed in Part IX Section 902.D. of the regulations.

#### PUBLIC HEARINGS

The Secretary shall public notice any public hearing at least thirty (30) days prior to the scheduled hearing. Hearings shall be held in Santa Fe or within any area of the state substantially affected by the proceedings and shall be in accord with the requirements detailed in Part IX Section 902.E. of the regulations.

## SECRETARY'S DECISION

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

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

## APPEALS

§ 74-4-4.2.G 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. In accord with § 74-4-4.2.H NMSA (1978) the court of appeals shall set aside the decision of the Secretary only if found to be:

1. arbitrary, capricious or an abuse of discretion;
2. not supported by substantial evidence; 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 State's HWMP. The enforcement program, as outlined in this section, contains all of the remedies for violations of State program requirements as set forth in 40CFR 271.16, and are made available by the New Mexico Hazardous Waste Act § 74-4-1 et.seq. NMSA (1978); and, the Hazardous Waste Management Regulations.

The compliance and monitoring system as outlined in this section is designed to assess and monitor compliance with the Hazardous Waste Management Regulations.

### I. Compliance Monitoring

The HWMP compliance monitoring activities will be divided into the following major categories:

Inspection 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, groundwater monitoring data, financial assurances, requests for waivers, and closure and post-closure plans.

Provide essential monitoring support in the event of violations and/or emergency situations.

Conducting a non-notifier program using the standard procedures outlined in the inspection and enforcement sections of this document.

Manifest tracking.

#### A. Routine Inspections

The HWMP provides for periodic, routine inspections of all facilities and activities subject to the 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 permittee and other regulated persons; and

allow collection of samples for analysis during routine monitoring as necessary.

Routine inspection schedules and facilities to be inspected are determined by the program and negotiated annually during the grant negotiations. Routine compliance inspections will be conducted with 24-hour prior notification unless circumstances dictate otherwise. Complaint and non-notifier inspections will be conducted without prior notice.

Personnel engaged in compliance inspections have been delegated 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 (§ 74-4-4.3 NMSA 1978).

#### Inspection Procedures

Inspections of hazardous waste facilities, generators and transporters shall vary according to facility type. During the course of routine compliance inspections, if it is deemed necessary to collect samples of waste material(s) and/or groundwater monitoring samples, they will be collected in accordance with the latest edition of Test Methods for Evaluating Solid Waste-Physical/Chemical Methods.

Laboratory analysis will be conducted at a private contract laboratory except for samples collected in conjunction with emergency response activities. All samples will be handled and analyzed using EPA approved methods.

Routine inspection procedures shall include but not be limited to an in-briefing to inform and acquaint the facility with the purpose of the inspection and the actions to be taken, and a review of all documents maintained by NMED as well as all documents required to be maintained at the facility by the regulations. These documents will be reviewed by the NMED inspection to ensure their physical presence, adequacy and that all required entries are up to date.

Reviewed documents shall include knowledge of process documentation, operating records, waste analysis plans, contingency plans financial assurances, ground-water monitoring plans, manifests and biennial reports, as applicable.

#### Site Inspections

A visual site inspection of all waste management units and surrounding areas shall be conducted. Items to be checked shall include physical condition of waste management units, evidence of discharges, segregation schemes, containment devices, emergency and security equipment, etc.

Upon completion of the on-site inspection an out-briefing will be held with the facility to summarize the inspection procedures that were followed and point out any preliminary indications of non-compliance. The inspector may also amplify the need to correct any major instances of non-compliance.

#### Inspection Review

The inspector after completion of the inspection shall prepare an inspection report that shall include a brief description of the facility, the findings of the inspection, the violations noted with the appropriate regulatory citations, and the enforcement action deemed necessary.

#### Inspection Frequency

Inspection frequency will be in accord with established EPA guidance and as agreed upon during grant negotiations.

#### 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 inspection may also be necessary to verify sampling data submitted by facilities.

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

- reported incidence of violations/non-compliance;
- suspected incidence of violations/non-compliance;
- non-notifier activities;
- complaint inspections; and
- sampling inspections.

The need for non-routine inspections may be determined by routing 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.

#### 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 data. 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 for compliance, 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 and Radioactive Waste bureau chief to the Office of General Counsel for further development, either on an administrative level or in preparation for action in district court.

#### II. Manifest Requirements

With the incorporation of the federal regulations governing handling of hazardous waste, the manifest requirements imposed by the Hazardous Waste Program are identical to those of EPA. This includes proper preparation of the manifest form; filing exception reports when a signed copy of the manifest has not been returned to the generator within the set time frame; filing a manifest

discrepancy report when significant discrepancies exist between what is listed on the manifest and what is delivered to the facility; and filing a report providing all required information for wastes that are received for treatment, storage and/or disposal not accompanied by a manifest.

The Hazardous Waste Program requires the use of the Uniform Hazardous Waste Manifest.

In the event that the Hazardous Waste Program receives an Exception Report, is notified of a manifest discrepancy or discovers any manifest irregularities during compliance 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.

#### A. EXCEPTION REPORTS

In the event that an Exception report is received by the NMED, 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 NMED 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 NMED which has lead 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: and,
- c. any other information the HWMP 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.

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 NMED 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 NMED, 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 shipment, the NMED 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 NMED may currently have on file as to the past activities of the generator in question.
4. Once the preliminary file has been established, the NMED will initiate a compliance monitoring inspection of the generator that has submitted the Exception Report to verify the information received and to examine 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 NMED 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.A.(3) NMSA 1978, and may be subject to the penalties contained in §§ 74-4-11 & 12 NMSA 1978, the NMED 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 NMED 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 questions 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 NMED 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.

#### B. MANIFEST DISCREPANCIES

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

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

The case file shall initially be developed using any information the NMED 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 NMED 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 relationship(s) the facility may have had with the indicated generator and transporter(s).

During the course of any such inspection the NMED 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 NMED 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 NMED may request the assistance of the appropriate state agency or EPA in the case of any 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 NMED 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 HWMP's inspection program, public input will also be accepted and evaluated. Information regarding suspected hazardous waste violations brought to the NMED's attention will be directed to the HWMP. The validity of the alleged violation will then be investigated. The investigation can include but not be limited to reconnaissance and surveillance by NMED staff, personal interviews with the complainant and communications with interviews with the other Federal, State and local law enforcement, transportation and environmental agencies. If deemed necessary, an inspector from the HWMP may be sent to the alleged city of non-compliance to conduct a compliance monitoring inspection. 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 NMED procedures, so that any evidence will be admissible in a court enforcement proceeding.

#### B. Determination of Violations and Enforcement Proceedings

The normal enforcement procedure will involve:

1. the determination of a violation based on any information received or detected by the HWMP, or provided by EPA. Once violations are detected they will be evaluated to determine the appropriate enforcement action.

Violations, other than those which any 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;
  - e. whether the violation is a continuation of a violation previously subject to enforcement action; and,
  - 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:
- a. For those violations which may create an imminent hazard to public health or the environment in which immediate action should be required, the NMED would pursue enforcement actions 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 HWMP 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.

The 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 NMED, 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.

Any order issued by the NMED will become final unless, no later than thirty days after the order is served, the person or persons named submits a written request to the director for a public hearing. The "Rules Governing Appeals From Compliance Orders Under The Hazardous Waste Act And The Solid Waste Act" govern all adjudicatory proceedings for the issuance of compliance orders under § 74-4-10 NMSA 1978.

Should the situation arise, however, that satisfactory corrective action does not result in any of the situations described above, the NMED, shall proceed with escalation of legal action. If the violator is a holder of a permit from this NMED, 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 described above will be employed whenever possible to avoid lengthy litigation.

3. The NMED 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 NMED 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 NMED to effectively identify and bring under the HWMP 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 NMED permit will be evaluated for their status under the hazardous waste program's regulatory scheme. In addition, all NMED personnel are asked to inform the HWMP of observations they have made of facilities that may either knowingly or unknowingly be circumventing the applicable program requirements.

#### C. Legal Remedies

The New Mexico Hazardous Waste Act, § 74-4-1 et. seq. NMSA (1978), as amended, gives the NMED 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 human health or the environment.

§8 74-4-4.2.D NMSA (1978) and the New Mexico Hazardous Waste Management Regulations allow the Division to 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;
3. violation of any provision of the Hazardous Waste Act or any regulation promulgated pursuant to it; or
4. in the case of research, development and demonstration permits, upon the determination that termination is necessary to protect human health and the environment.

§§ 74-4-11 NMSA (1978) 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 shall be determined by the HWMP in conjunction with the Office of General Counsel. New Mexico has incorporated the EPA Civil Penalty Policy as a guidance document for use in the assessment of penalties.

E. Public Participation in the Enforcement Process

In addition to the investigations of citizen complaints, public participation in enforcement actions is also provided for by SCRA 1-24 means of Rule 24(a) of the Rules Civil Procedure, NMSA 1978, which allows for interventions of right in civil actions in the state district court. 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 FACILITIES

Following is an estimate of the number of generators. The estimated number of regulated activities subject to program revision requirements is summarized in Attachment 3.

ESTIMATED STATE OF NEW MEXICO ACTIVITIES SUBJECT TO PROGRAM REVISION REQUIREMENTS FOR FISCAL YEAR 1992

Type of Activity	Numbers of Handlers (New Mexico)	Waste Quantities Tons (New Mexico)
1) Generators On-Site	151	TSD's = 678,300
2) Transporters	85	N/A
3) Storage	18	Included in #1
4) Treatment	18	Included in #1
5) Disposal	14	Included in #1
6) TSD Offsite	2	70
7) Incinerator	1	N/A
8) Transported Into New Mexico	(1)	4,893 (2)
9) Transported Out of New Mexico	(1)	2,862 (2)

(1) Number of individual shipments into or out of New Mexico. (The State does not track individual shipments into or out of New Mexico).

(2) Number of quantities retrieved from the 1987 Biennial Reports.