

US EPA ARCHIVE DOCUMENT

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ENVIRONMENTAL IMPROVEMENT BOARD
1190 ST. FRANCIS DRIVE
SANTA FE, NEW MEXICO 87503

EIB/HWMR-5
Amended July 9, 1989

HAZARDOUS WASTE MANAGEMENT REGULATIONS

PART I - HAZARDOUS WASTE MANAGEMENT SYSTEM - GENERAL

101. Adoption of 40 CFR Part 260. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 260, through July 1, 1988, are hereby incorporated as Part I of the New Mexico Hazardous Waste Management Regulations.
102. Modifications and Exceptions. The following modifications and exceptions are made to the incorporated federal regulations:
- A. The following terms defined in 40 CFR §260.10 have the meanings set forth herein, in lieu of the meanings set forth in 40 CFR §260.10:
1. "Administrator" or "Regional Administrator" means the Director of the Environmental Improvement Division of the New Mexico Health and Environment Department, or his designee.
- B. The following terms not defined in 40 CFR §260.10 have the meanings set forth herein:
1. "Act" or "RCRA" ("Resource Conservation Recovery Act" as amended) means the Hazardous Waste Act, §§74-4-1 through 74-4-13 NMSA 1978;
 2. "Application" means the Division forms for applying for permits including any additions, revisions, or modifications to the forms, and any other information required by the Director pursuant to these regulations;
 3. "Appropriate act or regulation" means the Hazardous Waste Act or the New Mexico Hazardous Waste Management Regulations, HWMR-5;
 4. "Board" means the Environmental Improvement Board;

5. "CFR" means the Code of Federal Regulations;
 6. "Division" means the Environmental Improvement Division of the New Mexico Health and Environment Department;
 7. "Environmental Protection Agency" or "EPA" shall be construed to mean the Environmental Improvement Division of the Health and Environment Department except when used in the phrase "EPA hazardous waste number" and in the definition of that phrase set forth in 40 CFR §260.10;
 8. "Freedom of Information Act" or "FOIA" means the New Mexico act governing inspection of public records, §§14-2-1 through 14-2-3, 14-3A-1 through 14-3A-2, and 74-4-4.3.C. NMSA 1978;
 9. "Hazardous substance incident" means any emergency incident involving a chemical or chemicals, including but not limited to transportation wrecks, accidental spills or leaks, fires, or explosions, which incident creates the reasonable probability of injury to human health or property; and
 10. "Subtitle C of RCRA" means the New Mexico Hazardous Waste Act, §§74-4-1 to 74-4-13 NMSA 1978.
- C. The following provisions of 40 CFR Part 260 are omitted from Part I of these regulations:
1. The Editorial Note immediately preceding Subpart A;
 2. §260.1(b)(6);
 3. §260.22;
 4. §260.30;
 5. §260.31;
 6. §260.32; and
 7. §260.33.
- D. Whenever there is any requirement in any of the federal regulations incorporated into these regulations to report an emergency situation, the requirement shall be construed to mean that the party required to report shall report the incident to the Division via the New Mexico 24-hour emergency response number, (505) 827-9329.

- E. References to 40 CFR Part 124 within the text of HWMR-5 as adopted shall be construed to mean Section 902 of HWMR-5.

PART II - IDENTIFICATION AND
LISTING OF HAZARDOUS WASTE

201. Adoption of 40 CFR Part 261. The regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 261, through July 1, 1988, are hereby incorporated as Part II of the New Mexico Hazardous Waste Management Regulations.

PART III - STANDARDS APPLICABLE
TO GENERATORS OF HAZARDOUS WASTE

301. Adoption of 40 CFR Part 262. The regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 262, through July 1, 1988, are hereby incorporated as Part III of the New Mexico Hazardous Waste Regulations.

PART IV - STANDARDS APPLICABLE
TO TRANSPORTERS OF HAZARDOUS WASTE

401. Adoption of 40 CFR Part 263. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 263, through July 1, 1988, are hereby incorporated as Part IV of the New Mexico Hazardous Waste Management Regulations.
402. Omissions. The following provisions of 40 CFR Part 263 are omitted from Part III of these regulations:
- A. §263.20 (e).
403. Financial Assessments. The following provisions regarding financial assessments are applicable to hazardous substance incidents, in addition to the provisions of 40 CFR Part 263, Subpart C:
- A. Any regulated person having possession, custody or control of a hazardous substance involved in a hazardous substance incident shall use his best efforts to effectuate a prompt and thorough cleanup, to levels required under applicable standards adopted under the laws of New Mexico. Nothing in the remainder of this section shall be read as authorizing or requiring a delay in clean-up.

- B. In order to achieve the most prompt and thorough cleanup, the Division may assess charges against all regulated persons who contribute to the occurrence of a hazardous substance incident or who had possession, custody or control of the substance at the time such incident occurred.
- C. The foregoing assessment shall be allocated among the regulated persons who are subject to the assessment on a basis deemed by the Division to be equitable under the circumstances. Assessments under this section shall be imposed only to expedite cleanup, and not to assign responsibility or to punish.
- D. Failure of any assessed person to pay the assessment within 30 days of receipt shall subject said person to suspension or revocation of their hazardous waste permit, if they hold one, and subject them to possible fines and/or penalties.
- E. Neither the fact that an assessment has been imposed, nor the size of the assessment, reflects any official view of responsibility for the incident for use in any civil or criminal proceeding. The fact that an assessment has been paid in compliance with these regulations does not constitute an admission of responsibility for the purposes of any civil or criminal proceeding.

PART V - STANDARDS FOR
OWNERS AND OPERATORS OF
HAZARDOUS WASTE TREATMENT
STORAGE, AND DISPOSAL FACILITIES

- 501. Adoption of 40 CFR Part 264. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 264, through July 1, 1988 are hereby incorporated as Part V of the New Mexico Hazardous Waste Management Regulations.
- 502. Omissions. The following provisions of 40 CFR Part 264 are omitted from Part V of these regulations:
 - A. §264.149; and
 - B. §264.150.

PART VI - INTERIM STATUS STANDARDS
FOR OWNERS AND OPERATORS OF
HAZARDOUS WASTE TREATMENT
STORAGE, AND DISPOSAL FACILITIES

601. Adoption of 40 CFR Part 265. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 265, through July 1, 1988, are hereby incorporated as Part VI of the New Mexico Hazardous Waste Management Regulations.
602. Omissions. The following provision of 40 CFR Part 265 are omitted from Part VI of these regulations:
- A. §265.149; and
 - B. §265.150.

PART VII - STANDARDS FOR THE
MANAGEMENT OF SPECIFIC HAZARDOUS
WASTES AND SPECIFIC TYPES OF
HAZARDOUS WASTE MANAGEMENT FACILITIES

701. Adoption of 40 CFR Part 266. The regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 266, through July 1, 1988, are hereby incorporated as Part VII of the New Mexico Hazardous Waste Management Regulations.

PART VIII - LAND DISPOSAL
RESTRICTIONS

801. Adoption of 40 CFR Part 268. The regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 268 through July 1, 1988, are hereby incorporated as Part VIII of the New Mexico Hazardous Waste Management Regulations.

PART IX - THE HAZARDOUS
WASTE PERMIT PROGRAM

901. Adoption of 40 CFR PART 270. The regulations of the United States Environmental Protection Agency set forth 40 CFR Part 270, through July 1, 1988, are hereby incorporated in Part IX of the New Mexico Hazardous Waste Management Regulations.
902. Permitting Procedures.
- A. Permit Issuance.
1. Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.
 2. If the Director decides to prepare a draft permit, he shall prepare a draft permit that contains all conditions, compliance schedules, monitoring requirements and technical standards for treatment, storage, and/or disposal provided for in Part 270 of these regulations.
 3. All draft permits for facilities or activities prepared by the Division under 902.A.2. shall be accompanied by a fact sheet and shall be based on the administrative file. Copies of the fact sheet shall be sent to the applicant, any state or federal agency as applicable and, on request, to any other person.
 4. The Director shall give public notice that a draft permit has been prepared or that a permit application has been tentatively denied and shall allow at least forty-five (45) days for public comment and review. During this 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 may be held. The Division, acting in conjunction with the applicant, will respond to these requests in an attempt to resolve those issues giving rise to such opposition. If such issues can be resolved to the satisfaction of the opponent, the affected individual may waive 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.
 5. No ruling shall be made on permit issuance 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 902.A.4. shall automatically be extended to the close of any public hearing.

6. 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.
 7. 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.
 8. At the time that any final permit decision is issued, the Director shall issue a response to comments. This response shall:
 - a. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
 - b. Briefly describe and respond to all significant comments on the draft permit or the permit application raised during the public comment period, or during any hearing.
 9. The response to comments shall be available to the public.
 10. The approval of a permit does not relieve any person from the responsibility of complying with applicable state or federal laws and regulations.
 11. The Director shall notify the permittee by certified mail of any impending permit action and of any scheduled public hearing date.
- B. Permit Modification, Suspension and Revocation.
1. The Director may modify, suspend, or revoke a permit issued pursuant to 902.B. for cause set forth in Part 270 of these regulations.
 2. The Director may modify, suspend, revoke or terminate 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.
 3. All requests for permit modification, suspension, revocation or termination shall be in writing and shall contain facts or reasons supporting the request.
 4. In a permit modification under this section, 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.

5. Minor modifications as outlined in Part 270 of these regulations are not subject to the requirements in 902.B. for permit modifications.
6. 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.
7. No ruling shall be made on permit modification, suspension or revocation without an opportunity for a public hearing at which all interested persons shall be given a reasonable chance to submit significant data, views or argument orally or in writing and to examine witnesses testifying at the hearing.
8. 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.

C. Public Notices.

1. Public notice of permit actions (preparation of a draft permit, tentative denial of a permit application, scheduling of a public hearing) shall be given by publication of a notice in a newspaper of general circulation in the area affected, broadcasts over local radio stations and by mailing a copy of the notice to the permit applicant, those individuals on the Hazardous Waste Unit's mailing list, and to any units of local, state and federal government as may be applicable.
2. All public notices issued shall contain the following minimum information:
 - a. The subject, the time and place of any scheduled hearing and the manner in which interested persons may present their views;
 - b. A brief description of the procedures by which requests for hearings may be made, unless already scheduled;
 - c. Name and address of the office processing the permit action for which notice is being given;
 - d. Name and address of the permittee or permit applicant, and, if different, of the facility or activity regulated by the permit;
 - e. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit; and

- f. Name, address and telephone number of a person from whom interested persons may obtain further information;
- g. In addition, public notice of a scheduled public hearing shall also contain references to the date of previous public notices relating to the permit.

D. Fact Sheet.

1. A fact sheet shall be prepared for every draft permit for a Hazardous Waste Management facility or activity. 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.
2. The fact sheet shall include, when applicable:
 - a. A brief description of the type of facility or activity which is the subject of the draft permit;
 - b. The type and quantity of wastes which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged.
 - c. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions.
 - d. Reasons why any requested variance or alternative to require standards do or do not appear justified.
 - e. A description of the procedures for reaching a final decision on the draft permit including:
 - (1) The beginning and ending dates of the comment period and the address where comments will be received;
 - (2) Procedures for requesting a hearing and the nature of that hearing; and
 - (3) Any other procedures by which the public may participate in the final decision.
 - f. Name and telephone number of a person to contact for additional information.
3. The fact sheet shall be available at the time the public notice is published.

E. Hearings.

1. Public notice of any public hearing shall be given at least thirty (30) days prior to the scheduled date of the hearing.
2. Hearings shall be held in Santa Fe or within any area of the state substantially affected by the proceedings as specified by the Director.
3. The Director may designate a hearing officer to take evidence at the hearing.
4. 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.
5. 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.
6. Any person heard or represented at the hearing shall be given written notice of the action of the Director.
7. The Director shall notify the applicant or permittee of his decision and the reasons, therefore, by certified mail.

F. Director's Decision.

For purposes of these regulations, the Director's decision is not made until it becomes final under Section 902.G. or until the Board renders its decision under 902.F. either sustaining or reversing the Director. Immediately upon receiving the Board's decision the Director shall enter the Director's decision in accord with the Board's decision, which shall be considered the Director's decision for purposes of appeal to the Court of Appeals.

G. Review and Hearings Before Board.

1. Any person adversely affected by the decision of the Director concerning the issuance, suspension, modification or revocation of a permit may submit a petition for review of the Director's decision by the Environmental Improvement Board. For purposes of this regulation, an applicant for permit, permittee or an alleged violator of a permit or regulation shall be the "appellant". A petition for review must be made in writing to the Board within thirty (30) days after notice of the Director's action or decision has been received by the appellant and must include a statement of issues and supporting

arguments. Unless a timely request for review and hearing is made, the decision of the Director shall be final.

2. Any new evidence becoming available after the tentative decision by, or the hearing before the Director, may be presented at a hearing before the Board if such hearing is requested along with the request for review of the Director's decision. Otherwise, the Board shall consider only the evidence admitted in the record formed at the hearing before the Director or the evidence available to the Director at the time of his or her tentative decision. All parties who participated in the hearing before the Director may submit to the Board, within thirty days of the appellant's request for review, proposed findings and reasons based upon the hearing record.

In reviewing the Director's decision, the Board may modify or reverse the Director's decision if the decision is found to be:

- (a) arbitrary, capricious or an abuse of discretion;
- (b) not supported by substantial evidence; or,
- (c) otherwise not in accordance with law.

If the appellant requests only that the Board review the Director's decision without requesting a hearing to consider new evidence, the Board shall render a decision denying, modifying or sustaining the Director's decision, along with findings and reasons, within sixty (60) days of the appellant's request, and by certified mail shall notify the appellant and shall make a reasonable effort to notify all participants in the hearing before the Director of its decision, findings and reasons. If a hearing to consider new evidence is held, the Board's decision on the Director's decision shall be deferred until the hearing is held in accordance with the sub-sections 3 through 6.

3. If a timely request for hearing is made, the Board shall hold a hearing within sixty (60) days after receipt of the request, and at least twenty (20) days prior to the hearing date shall notify the appellant by certified mail and shall make a reasonable effort to notify all who submitted comments on the permit, or who participated in the hearing before the Director of the date, time and place of the hearing. The Board shall also publish notice of the date, time and place of hearing at least twenty (20) days prior to the hearing date in a newspaper of general circulation in the county in which the facility is proposed to be located or is located and a newspaper of general circulation in the state.

4. The Division will arrange for transcript of the hearing by a certified reporter. Copies of the transcript shall be paid for by those requesting them.
5. Hearings shall be before the Board or a hearing officer appointed by the Board. If a hearing officer is designated by the Board he or she shall conduct the hearing and rule on the evidence presented. In hearings, the technical rules of evidence and the rules of civil procedure shall not apply, but the hearings shall be conducted so that all relevant views are amply and fairly presented without undue repetition. The Board may require reasonable substantiation of statements or records tendered and may require any view to be stated in writing when the circumstances justify.
6. The Board shall allow all parties a reasonable opportunity at a hearing to submit written and oral evidence and arguments, to introduce exhibits, and to cross-examine persons who testify. At any hearing accompanying the review of the Director's decision, in which only new evidence becoming available following the hearing before the Director is allowed, all exhibits, evidence and cross-examination shall be restricted to such new evidence.
7. All parties participating in the hearing may submit proposed findings and reasons to the Board within thirty (30) days following the Board's receipt of the transcript.
8. The Board may adopt findings submitted or may make separate findings, but the Board shall:
 - (a) consider and weigh all of the evidence presented in making or adopting any and all of its findings and reasons;
 - (b) adopt or make only findings and reasons that are supported by substantial evidence as presented; and,
 - (c) not adopt or make any findings and reasons which are arbitrary or capricious, or otherwise not in accordance with the law.
9. Within sixty (60) days following the Board's receipt of the transcript, the Board shall render a decision on the basis of the hearing record sustaining, modifying or reversing the Director, along with findings, and shall notify the appellant and all participants in the hearing of its decision and findings.

PART X - MISCELLANEOUS

1001. Compliance with Other Regulations. Compliance with the Hazardous Waste Management Regulations does not relieve a person of the obligation to comply with other applicable state and federal regulations. If the United States Environmental Protection Agency should suspend any federal hazardous waste regulation having a direct counterpart in these regulations, the counterpart in these regulations shall be deemed suspended without any further action being taken.
1002. Construction. The Hazardous Waste Management Regulations shall be liberally construed to effectuate the purpose of the Act.
1003. Severability. If any Part or application of the Hazardous Waste Management Regulations is held invalid, the remainder, or its application to other situations or persons, shall not be affected.
1004. Supercession of Prior Regulations. These regulations supercede the Hazardous Waste Management Regulations, EIB/HWMMR-4, filed December 16, 1987.