

US EPA ARCHIVE DOCUMENT

Signed 7/23/92

STATE OF NEW MEXICO
HAZARDOUS WASTE AUTHORIZATION
CLUSTERS IV, V AND VI

ATTORNEY GENERAL'S STATEMENT

I hereby certify, pursuant to my authority as Assistant Attorney General set forth in §§8-5-2(D) and 8-5-5(A) NMSA 1978 (Repl. Pamph. 1983 and Cum. Supp. 1989), and in accordance with §3006(b) of the Resource Conservation and Recovery Act ("RCRA") as amended by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. 6901 et seq.) and 40 C.F.R. 271 that in my opinion the laws of the State of New Mexico provide adequate authority to carry out the revised program set forth in the revised "Program Description" submitted by the New Mexico Environment Department ("NMED"). The specific authorities provided are contained in statutes or regulations lawfully adopted at the time this Statement is signed and which are in effect now, as specified below. These authorities and this certification supplement the previously certified authorities described in my and my predecessors certifications of January 1985, April 1988 and July 1989.

I. IDENTIFICATION AND LISTING

A. State statutes and regulations contain lists of hazardous waste which encompass all wastes controlled under the following Federal regulations as indicated in the designated Revision Checklists:

(8) Listing of commercial chemical products and Appendix VIII constituents, 40 CFR 261.33 and Part 261 Appendix VIII, as amended August 6, 1986 (51 FR 28296), Revision Checklist 29; as amended July 10, 1987 (52 FR 26012), Revision Checklist 41; and as amended April 22, 1988 (53 FR 13382), Revision Checklist 46.

(10) Listing of spent potliners from aluminum reduction (K088), 40 CFR 261.32 and Part 261 Appendix VII, as amended September 13, 1988 (53 FR 35412), Revision Checklist 53.

(11) Generic delisting of iron dextran (CAS No. 9004-66-4), 40 CFR 261.33(f) and Part 261 Appendix VIII, as amended October 31, 1988 (53 FR 43878), Revision Checklist 56.

(12) Generic delisting of strontium sulfide (CAS No. 1314-96-1), 40 CFR 261.33(e) and Part 261 Appendix VIII, as amended October 31, 1988 (53 FR 43881), Revision Checklist 57.

(15) Amendments to the F019 hazardous waste listing to exclude wastewater treatment sludges from zirconium phosphating in aluminum can washing, when such phosphating is an exclusive conversion coating process, 40 CFR 261.31, as amended February 14, 1990 (55 FR 5340), Revision Checklist 72.

Federal Authority: RCRA §3001(b).

Citation of Laws and Regulations: Date of Enactment and Adoption

Statutory Authority: §§74-4-4A(1) and 74-4-4D NMSA 1978 (Repl. Pamp. 1992).

Hazardous Waste Management Regulations-6 (HWMR-6) as amended February 1991, §201 (40 CFR Part 261).

Remarks of the Attorney General

New Mexico incorporates 40 CFR 261 by reference at HWMR-6 §201. HWMR-6 adopted the July 1, 1990 version of 40 CFR. It is that version that is referred to in this Attorney General's Statement. HWMR-6 §201 is inclusive of the amendments to 40 CFR 261 promulgated August 6, 1986 at 51 FR 28296, July 10, 1987 at 52 FR 26012, April 22, 1988 at 53 FR 13382 and February 14, 1990 at 55 FR 5340. §§74-4-4A and D NMSA 1978 (Repl. Pamp. 1992) provide the State with authority to adopt Federal Regulations by reference including the sections on identification and listing.

H. State statutes and regulations exempt (with certain limitations) waste samples used in small scale treatability studies from Subtitle C regulation as indicated in Revision Checklist 49.

Federal Authority: RCRA §3001; 40 CFR 260.10 and 261.4(e) and (f) as amended July 19, 1988 (53 FR 27290).

Citation of Laws and Regulations: Date of Enactment and Adoption

Statutory Authority: §§74-4-4A and D NMSA 1978 (Repl. Pamp. 1992).

HWMR-6 as amended February 1991, §§101 and 201 (40 CFR Parts 260 and 261).

Remarks of the Attorney General

New Mexico incorporates 40 CFR 260 and 261 by reference at HWMR-6 as amended February 1991, §§101 and 201 (40 CFR Parts 260 and 261). HWMR-6 §§101 and 201 are inclusive of the amendments to 40 CFR 260 and 261 promulgated July 19, 1988 at 53 FR 27290. §§74-4-4A and D NMSA 1978 (Repl. Pamp. 1992) provide the State with authority to adopt Federal Regulations by reference.

I. State statutes and regulations exclude from the mining waste exemption the six wastes listed at 40 CFR 261.4(b)(7)(1) through 261.4(b)(7)(vi), as indicated in Revision Checklist 53.

Federal Authority: RCRA §3001(b); 40 CFR 261.4(b)(7) as amended September 13, 1988 (53 FR 35412).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: §§74-4-4A and D NMSA 1978 (Repl. Pamp. 1992).

HWMR-6 as amended February 1991, §201 (40 CFR Part 261).

Remarks of the Attorney General

New Mexico incorporates 40 CFR 261 by reference at HWMR-6 as amended February 1991, §201 (40 CFR Part 261). HWMR-6 §201 is inclusive of the amendments to 40 CFR 261 promulgated September 13, 1988 at 53 FR 35412. §§74-4-4A and D NMSA 1978 (Repl. Pamp. 1992) provide the State with authority to adopt Federal Regulations by reference, including the sections on identification and listing.

J. State statutes and regulations provide that:

(1) final criteria to define Bevill-excluded mineral processing wastes, finalize the Bevill status of nine mineral processing waste streams, and list those mineral processing wastes subject to conditional retention as indicated in Revision Checklist 65.

Federal Authority: RCRA §3001(b); 40 CFR 261.3 and 261.4 as amended September 1, 1989 (54 FR 36592).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: §§74-4-4A and D NMSA 1978 (Repl. Pamp. 1992).

HWMR-6 as amended February 1991, §201 (40 CFR Part 261).

Remarks of the Attorney General

New Mexico incorporates 40 CFR 261 by reference at HWMR-6 as amended February 1991, §201 (40 CFR Part 261). HWMR-6 §201 is inclusive of the amendments to 40 CFR 261 promulgated September 1, 1989 at 54 FR 36592. §§74-4-4A and D NMSA 1978 (Repl. Pamp. 1992) provide the State with authority to adopt Federal Regulations by reference, including the sections on identification and listing.

(2) remove five conditionally retained mineral processing wastes from exemption from hazardous waste regulation under

the Beville exclusion, and amend the definitions of "beneficiation" and "designated facility" as indicated in Revision Checklist 71.

Federal Authority: RCRA §3001(b)(3)(A)(ii); 40 CFR 260.10 and 261.4(b)(7) as amended January 23, 1990 (55 FR 2322).

Citation of Laws and Regulations: Date of Enactment and Adoption

Statutory Authority: §§74-4-4A and D NMSA 1978 (Repl. Pamph. 1992).

HWMR-6 as amended February 1991, §§101 and 201 (40 CFR Parts 260 and 261).

Remarks of the Attorney General

New Mexico incorporates 40 CFR 261 by reference at HWMR-6 as amended February 1991, §201 (40 CFR Part 261). HWMR-6 §201 is inclusive of the amendments to 40 CFR 261 promulgated September 1, 1989 at 54 FR 36592. §§74-4-4A and D NMSA 1978 (Repl. Pamph. 1992) provide the State with authority to adopt Federal Regulations by reference, including the sections on identification and listing.

K. State statutes and regulations incorporate 47 new testing methods as approved methods for use in meeting the regulatory requirements under Subtitle C of RCRA as indicated in Revision Checklists 67 and 73.

Federal Authority: RCRA §§3001, 3004, 3005 and 3006; 40 CFR 260.11, and Part 261 Appendix III as amended September 29, 1989 (54 FR 40260) and March 9, 1992 (55 FR 8948).

Citation of Laws and Regulations: Date of Enactment and Adoption

Statutory Authority: §§74-4-4A and D NMSA 1978 (Repl. Pamph. 1992).

HWMR-6 as amended February 1991, §§101 and 201 (40 CFR Parts 260 and 261).

Remarks of the Attorney General

New Mexico incorporates 40 CFR 260 and 261 by reference at HWMR-6 as amended February 1991, §§101 and 201 (40 CFR Parts 260 and 261). HWMR-6 §§101 and 201 are inclusive of the amendments to 40 CFR 260 and 261 promulgated September 29, 1989 at 54 FR 40260. §§74-4-4A and D NMSA 1978 (Repl. Pamph. 1992) provide the State with authority to adopt Federal Regulations by reference.

M. State statutes and regulations contain the language to reflect EPA's intent and consistent interpretation of the criteria

for listing wastes as hazardous under RCRA as indicated in Revision Checklist 76.

Federal Authority: RCRA §3001(a); 40 CFR 261.11(a)(3) as amended May 4, 1990 (55 FR 18726).

Citation of Laws and Regulations: Date of Enactment and Adoption

Statutory Authority: §§74-4-4A and D NMSA 1978 (Repl. Pamp. 1992).

HWMR-6 as amended February 1991, §201 (40 CFR Part 261).

Remarks of the Attorney General

New Mexico incorporates 40 CFR 261 by reference at HWMR-6 as amended February 1991, §201 (40 CFR Part 261). HWMR-6 §201 is inclusive of the amendments to 40 CFR 261 promulgated September 1, 1989 at 54 FR 36592. §§74-4-4A and D NMSA 1978 (Repl. Pamp. 1992) provide the State with authority to adopt Federal Regulations by reference, including the sections on identification and listing.

VII. NATIONAL UNIFORM MANIFEST SYSTEM AND RECORDKEEPING

D. State statutes and regulations include a burden disclosure statement with each uniform manifest form and renew the use of this form as indicated in Revision Checklist 5B.

Federal Authority: RCRA §§2002, 3002 and 3003; 40 CFR 262.20 and 262 Appendix as amended November 8, 1988 (53 FR 45089).

Citation of Laws and Regulations: Date of Enactment and Adoption

Statutory Authority: §§74-4-4A(2)(3) and 74-4-4D NMSA 1978 (Repl. Pamp. 1992), and N.M. Laws 1991, Ch. 25, §6.

HWMR-6 as amended February 1991, §301 (40 CFR Part 262).

Remarks of the Attorney General

New Mexico incorporates 40 CFR 262 by reference at HWMR-6 as amended February 1991, §301 (40 CFR Part 262). HWMR-6 §301 is inclusive of the amendments to 40 CFR 262 promulgated November 8, 1988 at 53 FR 45089. §§74-4-4A(2)(3) and 74-4-4D NMSA 1978 (Repl. Pamp. 1992) provide the State with authority to adopt Federal Regulations by reference. Additionally, N.M. Laws 1991, Ch. 25, §6 is similar to RCRA §2002 and authorizes the State to take action as necessary to assure compliance with the laws.

E. State Statutes and regulations require that generators who ship hazardous waste to a designated facility in an authorized state which has not yet obtained authorization to regulate that

particular waste as hazardous assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility, as indicated in Revision Checklist 71.

Federal Authority: RCRA §§2002, 3002 and 3003; 40 CFR 262.23(e) as amended on January 23, 1990 (55 FR 2322).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: §§74-4-4A(2)(3) and 74-4-4D NMSA 1978 (Repl. Pamph. 1992).

HWMR-6 as amended February 1991, §301 (40 CFR Part 262).

Remarks of the Attorney General

New Mexico incorporates 40 CFR 262 by reference at HWMR-6 as amended February 1991, §301 (40 CFR Part 262). HWMR-6 §301 is inclusive of the amendments to 40 CFR 262 promulgated November 8, 1988 at 53 FR 45089. §§74-4-4A(2)(3) and 74-4-4D NMSA 1978 (Repl. Pamph. 1992) provide the State with authority to adopt Federal Regulations by reference.

XI. GROUNDWATER MONITORING

C. State statutes and regulations provide that with regard to groundwater monitoring, all land based hazardous waste treatment, storage and disposal facilities analyze for a specified core list (40 CFR 264, Appendix IX) of chemicals plus those chemicals specified by the Regional Administrator on a site-specific basis as indicated in Revision Checklist 40.

Federal Authority: RCRA §§1006, 2002(a), 3001, 3004 and 3005; 40 CFR 264.98, 264.99, Appendix IX of 264, and 270.14 as amended July 9, 1987 (52 FR 25942).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: §§74-4-3.1, 74-4-4A(1)(4)(5) and (6) and 74-4-4.2 NMSA 1978 (Repl. Pamp. 1992), and N.M. Laws 1991, Ch. 25, §6.

HWMR-6 as amended February 1991, §§501 and 901 (40 CFR Parts 264 and 270).

Remarks of the Attorney General

New Mexico incorporates 40 CFR 264 and 270 by reference at HWMR-6 as amended February 1991, §§501 and 901 (40 CFR Parts 264 and 270). HWMR-6 §§501 and 901 are inclusive of the amendments to 40 CFR 264 and 270 promulgated July 9, 1987 at 52 FR 25942. §§74-4-4A(1)(4)(5) and (6) and 74-4-4D NMSA 1978 (Repl. Pamp. 1992) provide the State with authority to adopt Federal Regulations by reference. Additionally N.M. Laws 1991, Ch. 25, §6 is similar to RCRA §2002 and authorizes the State to take action as necessary to assure compliance with the laws. §74-4-3.1 NMSA 1978 (Repl. Pamp. 1992) is similar to RCRA §1006 in describing the application of the Hazardous Waste Act in conjunction with other federal environmental acts.

D. State statutes and regulations specify statistical methods, sampling procedures and performance standards that can be used in groundwater monitoring procedures to detect groundwater contamination at permitted hazardous waste facilities as indicated in Revision Checklist 55.

Federal Authority: RCRA §§1006, 2002(a), 3004 and 3005; 40 CFR 264.91, 264.92, 264.97, 264.98 and 264.99 as amended October 11, 1988 (53 FR 39720).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: §§74-4-3.1, 74-4-4A(5)(6) and 74-4-4.2 NMSA 1978 (Repl. Pamp. 1992), and N.M. Laws 1991, Ch. 25, §6.

HWMR-6 as amended February 1991, §501 (40 CFR Part 264).

Remarks of the Attorney General

New Mexico incorporates 40 CFR 264 by reference at HWMR-6 as amended February 1991, §501 (40 CFR Part 264). HWMR-6 §501 is inclusive of the amendments to 40 CFR 264 promulgated October 11, 1988 at 53 FR 39720. §§74-4-4A(5)(6) and 74-4-4D NMSA 1978 (Repl. Pamp. 1992) provide the State with authority to adopt Federal Regulations by reference. Additionally N.M. Laws 1991, Ch. 25, §6 is similar to RCRA §2002 and authorizes the State to take action as necessary to assure compliance with the laws. §74-4-3.1 NMSA 1978 (Repl. Pamp. 1992) is similar to RCRA §1006 in describing the application of the Hazardous Waste Act in conjunction with other

federal environmental acts.

XV. STANDARDS FOR FACILITIES

H. State statutes and regulations allow qualified companies that treat, store or dispose of hazardous waste to use a corporate guarantee to satisfy liability assurance requirements as indicated in Revision Checklists 27 and 43.

Federal Authority: RCRA §§ 2002, 3004, and 3005; 40 CFR 264.147, 264.151 and 265.147 as amended July 11, 1986 (51 FR 25350) and November 18, 1987 (52 FR 44314).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: §§74-4-4A(5)(6) and 74-4-4D NMSA 1978 (Repl. Pamp. 1992) and N.M. Laws 1991, Ch. 25, §6.

HWMR-6 as amended February 1991, §§501 and 601 (40 CFR Parts 264 and 265).

Remarks of the Attorney General

New Mexico incorporates 40 CFR 264 and 265 by reference at HWMR-6 as amended February 1991, §§501 and 601 (40 CFR Parts 264 and 265). HWMR-6 §§501 and 601 are inclusive of the amendments to 40 CFR 264 and 265 promulgated July 11, 1986 at 51 FR 25350 and November 18, 1987 at 52 FR 44314. §§74-4-4A(5)(6) and 74-4-4D NMSA 1978 (Repl. Pamp. 1992) provide the State with authority to adopt Federal Regulations by reference. Additionally N.M. Laws 1991, Ch. 25, §6 is similar to RCRA §2002 and authorizes the State to take action as necessary to assure compliance with the laws.

I. State statutes and regulations require companies that generate, treat or store hazardous waste in tanks to comply with tank standards equivalent to those indicated in Revision Checklist 28 and Revision Checklist 52.

Federal Authority: RCRA §§1006, 2002, 3001 - 3007, 3010, 3014, 3017 - 3019 and 7004; 40 CFR Parts 260, 261, 262, 264, 265 and 270 as amended July 14, 1986 (51 FR 25422), August 15, 1986 (51 FR 29430) and September 2, 1988 (53 FR 34079).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: §§74-4-3.1, 74-4-4A and D, and 74-4-4.2 NMSA 1978 (Repl. Pamp. 1992) and N.M. Laws 1991, Ch. 25, §6.

HWMR-6 as amended February 1991, §§101, 201, 301, 501, 601 and 901 (40 CFR Parts 260, 261, 262, 264, 265 and 270).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Parts 260, 261, 262, 264, 265 and 270 by reference at HWMR-6 as amended February 1991, §§101, 201, 301, 501, 601 and 901. HWMR-6 §§101, 201, 301, 501, 601 and 901 are inclusive of the amendments to 40 CFR 260, 261, 262, 264, 265 and 270 promulgated July 14, 1986 at 51 FR 25422, August 15, 1986 at 51 FR 29430 and September 2, 1988 at 53 FR 34079. §§74-4-4A and D NMSA 1978 (Repl. Pamp. 1992) provide the State with authority to adopt Federal Regulations by reference. §74-4-4.2 NMSA 1978 (Repl. Pamp. 1992) provides the State with the authority to regulate permitting. Additionally N.M. Laws 1991, Ch. 25, §6 is similar to RCRA §2002 and authorizes the State to take action as necessary to assure compliance with the laws. §74-4-3.1 NMSA 1978 (Repl. Pamp. 1992) is similar to RCRA §1006 in describing the application of the Hazardous Waste Act in conjunction with other federal environmental acts.

K. State statutes and regulations allow owners and operators of landfills, surface impoundments or land treatment units, under limited circumstances, to remain open after the final receipt of hazardous wastes in order to receive non-hazardous wastes in that unit as indicated in Revision Checklist 64.

Federal Authority: RCRA §§1006, 2002(a), 3004, 3005 and 3006; 40 CFR 264.13, 264.112, 264.113, 264.142, 265.13, 265.112, 265.113, 265.142 and Appendix I to 270.42 as amended August 14, 1989 (54 FR 33376).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: §§74-4-3.1, 74-4-4A and D NMSA 1978 (Repl. Pamp. 1992) and N.M. Laws 1991, Ch. 25, §6.

HWMR-6 as amended February 1991, §§501 and 601 (40 CFR Parts 264 and 265).

Remarks of the Attorney General

New Mexico incorporates 40 CFR 264 and 265 by reference at HWMR-6 as amended February 1991, §§501 and 601 (40 CFR Parts 264 and 265). HWMR-6 §§501 and 601 are inclusive of the amendments to 40 CFR 264 and 265 promulgated August 14, 1989 at 54 FR 33376. §§74-4-4A and D NMSA 1978 (Repl. Pamp. 1992) provide the State with authority to adopt Federal Regulations by reference. Additionally, N.M. Laws 1991, Ch. 25, §6 is similar to RCRA §2002 and authorizes the State to take action as necessary to assure compliance with the laws. §74-4-3.1 NMSA 1978 (Repl. Pamp. 1992) is similar to RCRA §1006 in describing the application of the Hazardous Waste Act in conjunction with other federal environmental acts.

XVI. REQUIREMENTS FOR PERMITS

O. State statutes and regulations require that all owners and operators of units that treat, store or dispose of hazardous waste in miscellaneous units must comply with the general application requirements (including Part A permit requirements), the Part B general application requirements of §270.14, and specific Part B information requirements for miscellaneous units as indicated in Revision Checklists 45 and 59.

Federal Authority: RCRA §§3004 and 3005; 40 CFR 264.600, 270.14 and 270.23 as amended December 10, 1987 (52 FR 46946) and January 9, 1989 (54 FR 615).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: §§74-4-4 and 74-4-4.2 NMSA 1978 (Repl. Pamp. 1992).

HWMR-6 as amended February 1991, §§501 and 901 (40 CFR Parts 264 and 270).

Remarks of the Attorney General

New Mexico incorporates 40 CFR 264 and 270 by reference at HWMR-6 as amended February 1991, §§501 and 901 (40 CFR Parts 264 and 270). HWMR-6 §§501 and 901 are inclusive of the amendments to 40 CFR 264 and 270 promulgated December 10, 1987 at 52 FR 46946 and January 9, 1989 at 54 FR 615. §§74-4-4A and D NMSA 1978 (Repl. Pamp. 1992) provide the State with authority to adopt Federal Regulations by reference. Additionally, §74-4-4.2 NMSA 1978 authorizes the State to require permit conditions that are necessary to protect human health and the environment.

Q. State statutes and regulations make it clear that existing incinerator facilities must either conduct a trial burn or submit other information as specified in 270.19(a) or (c) before a permit can be issued for that facility as indicated in Revision Checklist 60.

Federal Authority: RCRA §3005(b); 40 CFR Part 270 as amended January 30, 1989 (54 FR 4286).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: §§74-4-4 and 74-4-4.2 NMSA 1978 (Repl. Pamp. 1992).

HWMR-6 as amended February 1991, §901 (40 CFR Part 270).

Remarks of the Attorney General

New Mexico incorporates 40 CFR 270 by reference at HWMR-6 as amended February 1991, §901 (40 CFR Part 270). HWMR-6 §901 is inclusive of the amendments to 40 CFR 270 promulgated January 30, 1989 at 54 FR 4286. §74-4-4 NMSA 1978 (Repl. Pamp. 1992) provides the State with authority to adopt Federal Regulations by reference. Additionally, §74-4-4.2 NMSA 1978 authorizes the State to require permit conditions that are necessary to protect human health and the environment.

R. State statutes and regulations allow greater flexibility to interim status facilities to make changes during interim status following director approval as indicated in Revision Checklist 61.

Federal Authority: RCRA §§2002(a), 3004, 3005 and 3006; 40 CFR 270.72 as amended March 7, 1989 (54 FR 9596).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: §§74-4-4 and 74-4-9 NMSA 1978 (Repl. Pamp. 1992) and N.M. Laws 1991, Ch. 25, §6.

HWMR-6 as amended February 1991, §901 (40 CFR Part 270).

Remarks of the Attorney General

New Mexico incorporates 40 CFR 270 by reference at HWMR-6 as amended February 1991, §901 (40 CFR Part 270). HWMR-6 §901 is inclusive of the amendments to 40 CFR 270 promulgated March 7, 1989 at 54 FR 9596. §74-4-4 NMSA 1978 (Repl. Pamp. 1992) provides the State with authority to adopt Federal Regulations by reference. §74-4-9 NMSA 1978 (Repl. Pamp. 1992) provides that if a facility has met the interim status requirements for RCRA §3005 then it is deemed to have interim status under the New Mexico Hazardous Waste Act. Additionally, N.M. Laws 1991, Ch. 25, §6 is similar to RCRA §2002 and authorizes the State to take action as necessary to assure compliance with the laws.

S. State statutes and regulations lift the reconstruction limit for changes: 1) to certain interim status units necessary to comply with Federal, State or local requirements, 2) necessary to allow continued handling of newly listed or identified hazardous waste, 3) made in accordance with an approved closure plan, and 4) made pursuant to a corrective action order as indicated in Revision Checklist 61.

Federal Authority: RCRA §§2002(a), 3004, 3005 and 3006; 40 CFR 270.72 as amended March 7, 1989 (54 FR 9596).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: §§74-4-4 and 74-4-9 NMSA 1978 (Repl.

Pamp. 1992) and N.M. Laws 1991, Ch. 25, §6.

HWMR-6 as amended February 1991, §901 (40 CFR Part 270).

Remarks of the Attorney General

New Mexico incorporates 40 CFR 270 by reference at HWMR-6 as amended February 1991, §901 (40 CFR Part 270). HWMR-6 §901 is inclusive of the amendments to 40 CFR 270 promulgated March 7, 1989 at 54 FR 9596. §74-4-4 NMSA 1978 (Repl. Pamp. 1992) provides the State with authority to adopt Federal Regulations by reference. §74-4-9 NMSA 1978 (Repl. Pamp. 1992) provides that if a facility has met the interim status requirements for RCRA §3005 then it is deemed to have interim status under the New Mexico Hazardous Waste Act. Additionally, N.M. Laws 1991, Ch. 25, §6 is similar to RCRA §2002 and authorizes the State to take action as necessary to assure compliance with the laws.

T. State statutes and regulations that clarify that a permit can be denied for the active life of a facility while a decision on post closure permitting is pending as indicated in Revision Checklist 61.

Federal Authority: RCRA §§2002(a), 3004, 3005 and 3006; 40 CFR 124.1, 124.15, 124.19, 270.1, 270.10 and 270.29 as amended March 7, 1989 (54 FR 9596).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: §§74-4-4 and 74-4-4.2 NMSA 1978 (Repl. Pamp. 1992) and N.M. Laws 1991, Ch. 25, §6.

HWMR-6 as amended February 1991, §901 (40 CFR Part 270).

Remarks of the Attorney General

New Mexico incorporates 40 CFR 270 by reference at HWMR-6 as amended February 1991, §901 (40 CFR Part 270). HWMR-6 §901 is inclusive of the amendments to 40 CFR 270 promulgated March 7, 1989 at 54 FR 9596. §74-4-4 NMSA 1978 (Repl. Pamp. 1992) provides the State with authority to adopt Federal Regulations by reference. Additionally, §74-4-4.2 NMSA 1978 authorizes the State to require permit conditions that are necessary to protect human health and the environment or that the permit may be denied or terminated. Additionally, N.M. Laws 1991, Ch. 25, §6 is similar to RCRA §2002 and authorizes the State to take action as necessary to assure compliance with the laws.

U. State statutes and regulations that classify as Class 1 certain permit modifications requested by owners/operators necessary to enable permitted facilities to comply with the land disposal restrictions as indicated in Revision Checklist 61.

Specifically these modifications include 1) adding restricted wastes treated to meet applicable 40 CFR Part 268 treatment standards or adding residues from treating "soft hammer" wastes, 2) adding certain wastewater treatment residues and incinerator ash, 3) adding new wastes for treatment in tanks or containers under certain limited conditions, and 4) adding new treatment processes, necessary to treat restricted wastes to meet treatment standards, that take place in tanks or containers.

Federal Authority: RCRA §§2002(a), 3004, 3005 and 3006; 40 CFR 270.42 as amended March 7, 1989 (54 FR 9596).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: §§74-4-4 and 74-4-4.2 NMSA 1978 (Repl. Pamp. 1992) and N.M. Laws 1991, Ch. 25, §6.

HWMR-6 as amended February 1991, §901 (40 CFR Part 270).

Remarks of the Attorney General

New Mexico incorporates 40 CFR 270 by reference at HWMR-6 as amended February 1991, §901 (40 CFR Part 270). HWMR-6 §901 is inclusive of the amendments to 40 CFR 270 promulgated March 7, 1989 at 54 FR 9596. §74-4-4 NMSA 1978 (Repl. Pamp. 1992) provides the State with authority to adopt Federal Regulations by reference. Additionally, N.M. Laws 1991, Ch. 25, §6 is similar to RCRA §2002 and authorizes the State to take action as necessary to assure compliance with the laws. Additionally, §74-4-4.2 NMSA 1978 authorizes the State to require permit conditions that are necessary to protect human health and the environment and the permit may be modified as such.

V. State statutes and regulations incorporate updates to 40 CFR Part 124 as indicated in Checklist 70.

Federal Authority: RCRA §§6901 and 6902; 40 CFR 124.3, 124.5, 124.6, 124.10 and 124.12 as amended April 1, 1983 (48 FR 14146), June 30, 1983 (48 FR 30113), July 26, 1988 (53 FR 28118), September 26, 1988 (53 FR 37396) and January 4, 1989 (54 FR 246).

Citation of Laws and Regulations; Date of En

Statutory Authority: Section 74-4-4.2 N (1992).

HWMR-6 as amended February 1991 adopted

Remarks of the Attorney General

New Mexico has not adopted 40 CFR Pa. HWMR-6 as amended February 1991 adopted §§9 §1003 states that all references to 40 CF

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construed to mean the corresponding provision of HWMR-6 §902. By adopting 40 CFR Part 270 by reference in HWMR-6 §901, New Mexico is equivalent to 124.3(a)(1), (2) and (3). A permit requires an application that has complied with 40 CFR §§270.1, 270.10, 270.11 and 270.13, all of which are requirements of New Mexico's program.

Section 74-4-4.2 NMSA 1978 and HWMR-6 §902.B.1, 2 & 3 are equivalent to 40 CFR 124.5(a). HWMR-6 §902.B.5 is equivalent to 40 CFR 124.5(c)(1). However, due to § 74-4-4.2.E NMSA 1978, New Mexico does not distinguish between major and minor modification. If a hearing is requested, even for a minor modification, a hearing will be held. In this respect, New Mexico's program is more stringent than EPA's required program. Compare 40 CFR §124.5(c)(3). HWMR-6 §902.B.7 is equivalent to 40 CFR 124.5(d).

HWMR-6 §902.A.1.a is equivalent to 40 CFR 124.6(d)(1)-(3) and (4)(i).

HWMR-6 §902.C.1 is equivalent to 40 CFR 124.10(c)(1)(iii), except that "(Indian Tribes)" is not specifically added. However, Indian Tribes are treated as a sovereign state. HWMR-6 §902.C.1 is equivalent to 40 CFR 124.10(c)(1)(ix) & (x).

HWMR-6 §902.A.5.c is equivalent to 40 CFR 124.12(a)(2).

XXII. MEMORANDUM OF AGREEMENT

(1) New Mexico has the authority to enter into the agreement pursuant to §74-1-6 and §9-7A-11 NMSA 1978.

(2) New Mexico has the authority to carry out the agreement, and

(3) No applicable state statute (including the Administrative Procedures Act) requires that the procedure be promulgated as a rule in order to be binding.

THE HONORABLE TOM UDALL
ATTORNEY GENERAL

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