

US EPA ARCHIVE DOCUMENT

Non-HSWA
IV, V, VI

MEMORANDUM OF AGREEMENT BETWEEN
THE STATE OF NEW MEXICO
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VI



I. GENERAL Subsection

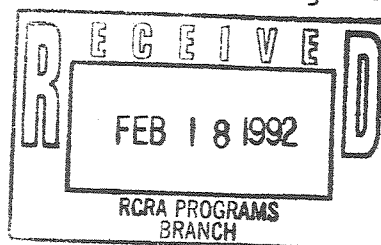
This Memorandum of Agreement (hereinafter "Agreement") establishes policies, responsibilities, and procedures pursuant to 40 CFR 271.8 for the State of New Mexico Hazardous Waste Program (hereinafter "State Program") authorized under Section 3006 of the Resource Conservation and Recovery Act (hereinafter "RCRA or "the Act") of 1976 (42 USC 6901 et seq. ,as amended (Public laws, 94-580, 96-482, 98-616), and the United States Environmental Protection Agency (hereinafter EPA) Regional Office for Region VI. This Agreement further sets forth the manner in which the State and EPA will coordinate in the State's administration and enforcement of the State program and, pending State authorization, EPA's administration of the provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA). [For purposes of this Agreement, references to "RCRA" may includes HSWA.]

This Agreement is entered into by the Secretary of the New Mexico Environment Department (hereinafter "Secretary" or "the State") and the Regional Administrator, EPA Region VI (hereinafter "Regional Administrator" or "EPA").

For administrative purposes, the New Mexico Environment Department will serve as lead agency to simplify coordination and communication between the State and EPA.

Nothing in this Agreement shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under RCRA. Nothing in this Agreement shall be construed to contravene any provision of 40 CFR Part 271.

The parties will review the Agreement jointly at least once a year (and other times as appropriate) during preparation of the annual State Grant Work Plan, in connection with grant funding under Section 3011 of RCRA.



This Agreement amends the Agreement which was effective as of September 16, 1988, and one Agreement effect September 17, 1989. This Agreement may be modified upon the initiative of either party in order to ensure consistency with State program modifications made or for any other purposes mutually agreed upon. Any revisions or modifications to this Agreement must be in writing and must be signed by the State and the Regional Administrator. This Agreement will remain in effect until such time as State program authorization is withdrawn by or is voluntarily transferred to EPA according to the criteria and procedures established in 40 CFR Subsection 271.22 and 40 CFR Subsection 271.23.

This Agreement shall be executed by the State and the Regional Administrator and shall become effective at the time the State's authorization takes effect, which shall be the date set out in the Federal Register notice of the Regional Administrator's decision to grant authorization to the State.

II. POLICY STATEMENT

Each of the parties to this Agreement is responsible for ensuring that its obligations under RCRA are met. Upon granting of final authorization by EPA, the State assumes primary responsibility for implementing the authorized provisions of the RCRA hazardous waste program within its boundaries. EPA retains its responsibility to ensure full and faithful execution of the requirements of RCRA, including direct implementation of HSWA in the event the State is not authorized to act. The State and the Regional Administrator agree to maintain a high level of cooperation and coordination between their respective staffs in partnership to assure successful and effective administration of the State program.

Section 3006(g) of RCRA provides that hazardous waste requirements and prohibitions promulgated pursuant to HSWA are applicable in authorized States at the same time that they are applicable in unauthorized States with the exception of Section 3006(f), (Availability of Information) which cannot be implemented by EPA in authorized States. While EPA retains responsibility for the direct implementation of those provisions of HSWA which the State is not authorized to implement, it is the intention of EPA and the State to coordinate the implementation of such provisions to the greatest degree possible.

EPA will oversee implementation of the authorized State program in order to ensure full execution of the requirements of RCRA, to promote national consistency in implementation of the hazardous waste program, to allow EPA to report to the President and Congress on the achievements of the hazardous waste program, and to encourage States and EPA to agree on desirable technical support and targets for joint efforts to prevent and mitigate environmental problems associated with the improper management of hazardous wastes. Oversight will be accomplished by EPA through written reporting requirements, permit overview, compliance and enforcement overview, and annual review of the State's programs.

III. STATE PROGRAM REVIEW

A. GENERAL

The Regional Administrator will assess the State administration and enforcement of the hazardous waste program on a continuing basis for equivalence and consistency with RCRA, this Agreement, and all applicable Federal requirements and policies, and for adequacy of enforcement. This assessment will be accomplished by EPA review of information submitted by the State in accordance with this Agreement and the State grant work program, permit overview, compliance and enforcement overview, and annual review of State program activities.

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

To ensure effective program review, the State agrees to allow EPA access to all files and other information requested by the Regional Administrator of his or her designee and deemed necessary by EPA for reviewing State program administration and enforcement.

Review of the New Mexico Environment Department files may be scheduled at quarterly intervals. Program review meetings between the State and the Regional Administrator of their assignees will be scheduled at reasonable intervals not less than annually to review specific operating procedures and schedules, to resolve problems and to discuss mutual program concerns.

These meetings will be scheduled at least fifteen days in advance, unless agreed to differently. Tentative agendas for said meetings will be prepared by EPA.

B. Identification of Priority Activities

The State and EPA agree to develop, on an annual basis as a part of the State grant work program, criteria for priority activities, including activities regarding handlers of hazardous waste. These criteria will be based on guidance issued by EPA in the annual Agency Operating Year Guidance, /RCRA Implementation Plan and other guidance documents as appropriate, and will serve to identify those activities that should receive the highest priority during the grant period.

Examples of activities that will be considered high priority will include, but not be limited to, facilities to be inspected, facilities to be permitted, and enforcement actions against facilities with known or suspected ground-water contamination.

IV. INFORMATION SHARING

A. General

As the national hazardous waste program matures, the respective roles and responsibilities in this State/Federal partnership will become clearer. As the respective information needs of the State and EPA evolve, changes to this section of the Agreement may be necessary. During the annual review of this Agreement the State and the Regional Administrator will carefully examine the following information-sharing provisions for needed revision.

B. EPA

1. EPA will keep the State informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, and any other factors that affect the State program. EPA will also provide general technical guidance to the State. EPA will share with the State any national reports developed by EPA from the data submitted through State reporting requirements.

2. The State and EPA have agreed to a joint permitting process (see Section V.D of this Agreement). Under this process the State and EPA have established policies and procedures by which each will pursue their respective and/or joint responsibilities under HSWA.

The State and EPA agree to share information as specified under Section "V.D Joint Permitting Process" and the annual State grant work program. Specifically included shall be the procedures for sharing and coordinating the exchange of information on the following:

- a. Part A and Part B permit applications, whether received prior to the effective date of this Agreement or subsequent to the effective date of this Agreement, and whether first received by the State or EPA;
 - b. Such other information necessary to support the foregoing information;
 - c. Copies of draft permits, proposed permit modifications, and public notices;
 - d. Copies of final permits and permit modifications; and
 - e. Notices of permit denials.
3. EPA agrees to make available to the State copies of any reports and data resulting from compliance inspections within sixty days of completion of the inspections.
 4. EPA agrees to provide the State with notification information from EPA Form 8700-12 obtained prior to the effective date of this Agreement if such information has not already been provided to the State. The State and EPA shall agree on the format in which the information will be provided and the information will be provided within thirty days of the effective date of this Agreement. EPA will also forward, on a monthly basis, notification information (including newly assigned EPA identification numbers) submitted by persons in the State who file such forms after the effective date of this Agreement. This information will be submitted to the Director of Water and Waste Management, within 10 days of the end of each month for the preceding month.

5. EPA agrees to assign EPA identification numbers to generators and transporters and to owners and operators of hazardous waste treatment, storage and disposal facilities submitting notifications after the effective date of this Agreement. Unless otherwise agreed upon, the above information shall be sent the New Mexico Environment Department, Hazardous and Radioactive Materials Bureau, 525 Camino De Los Marquez, Suite 4, P.O. Box 26110, Santa Fe, New Mexico, 87502.
6. EPA will make available to the State other relevant information as requested which the State needs to implement its approved program. Information provided to the State will be subject to the terms of 40 CFR Part 2.

C. State

1. The State agrees to inform the Regional Administrator in advance of any proposed program changes that would affect the State's ability to implement the authorized program. Program changes of concern include modification of the State's legal authorization (i.e., statutes, regulations and judicial or legislative actions affecting those authorities), modifications of Memoranda of Agreement or Understanding with other agencies, and modifications of resource levels (i.e., available or budgeted personnel and funds). The State recognizes that program revisions must be made in accordance with the provisions of 40 CFR 271.21, and that until approved by EPA, revisions are not authorized as RCRA Subtitle C requirements.
2. Annually, through development of the State grant work program, EPA and the State will agree on the type and frequency of reports the State will make in order for EPA to maintain oversight of the State's authorized program. Such reporting shall include, but not be limited to the following:
 - a. Compliance monitoring and enforcement information;
 - b. Information indicating the status of the State's permitting, closure, post-closure, and groundwater monitoring and corrective action activities;
 - c. Various reports designed to accurately describe the status of the State's authorized program, including biennial reports summarizing the quantities and types of hazardous waste generated, transported, treated, stored and disposed in the State; and

- d. If applicable: State decisions to grant variances, waivers, and delisting requests made by hazardous waste handlers.
3. The State agrees to provide EPA with a copy of any decisions regarding requests made by hazardous waste handlers to change their classifications (e.g., requests to be deleted as generators but to retain facility status) and facility requests to make on-site changes prior to permit issuance (e.g., requests to handle additional wastes not identified on the facility's original notification and RCRA Part A Permit Application.)
4. The State agrees to provide EPA with copies of reports on data resulting from any compliance inspection and subsequent enforcement actions when EPA requests such copies.
5. The State agrees to provide any pertinent information requested by the Regional Administrator or his or her designee within a mutually agreed upon time frame, as necessary for EPA to carry out its oversight responsibilities.

D. Site Visits

EPA is responsible for maintaining reliable national data on hazardous waste management. This data is used to report to the President and Congress on the achievements of the hazardous waste program and to support EPA's regulatory development efforts. Whenever EPA determines that it needs to obtain certain information, EPA will first seek to gain this information from the States. The State agrees to supply the Regional Administrator with this information if readily available and as resources allow. If the State is unable to provide the information, or if it is necessary to supplement the State information, EPA may conduct a special survey or perform information collection site visits after notifying the State. EPA will share with the State any national reports developed by EPA as a result of such information collection.

E. Emergency Situations

Upon receipt of any information that the handling, storage, treatment, transportation, or disposal of hazardous waste is endangering human health or the environment, the party in receipt of such information shall immediately notify by telephone the other party(ies) to this Agreement of the existence of such situation.

F. Confidentiality

1. Any information obtained or used in the administration of the State program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2.
2. EPA agrees to furnish to the State information in its files which is not submitted under a claim of confidentiality and which the State needs to implement its program. Subject to the conditions in 40 CFR Part 2, EPA will furnish the State information submitted to EPA under a claim of confidentiality which the State needs to implement its program. All information EPA agrees to transfer to the State will be transferred in accordance with the requirements of 40 CFR Part 2. EPA will notify affected facilities when such information is sent to the State.

V. PERMIT ISSUANCE

A. EPA Permitting

Upon authorization of the State program EPA will suspend issuance of Federal permits for hazardous waste treatment, storage, and disposal facilities for which the State is received authorization. EPA continues to issue permits for certain HSWA requirements for which the state has not yet received authorization.

Whenever EPA adds permitting standards for processes not currently covered by Federal regulations, EPA will process and enforce RCRA permits in the State in the new areas until the State receives final authorization for them. At the time the State program is approved in the new areas, EPA will suspend issuance of Federal permits in the State. EPA will also transfer any pending permit applications, completed permits or pertinent file information to the State within thirty days of the approval of the State program in conformance with the conditions of this Agreement.

The State and EPA have agreed to a joint permitting process (see Section V.D of this Agreement) for the joint processing and enforcement of permits for those provisions of HSWA

for which the State does not have authorization. As the State receives authorization for additional provisions of the HSWA, EPA will suspend issuance of Federal permits in the State for those provisions.

B. EPA Overview of State Permits

While EPA may comment on any permit application or draft permit, EPA's overview function will focus primarily on those facilities identified by the State and EPA in the State's Multi-Year Permit Strategy, annual State Grant Work Program and the State's Program Description.

EPA may comment in writing on any draft permit or proposed permit modification, whether or not EPA commented on the permit application, within forty-five days of its receipt. Where EPA indicates in a comment that the issuance, modification, re-issuance, termination, or denial of a permit would be inconsistent with the approved State program, EPA shall include in the comment:

- a. a statement of the reasons for the comment (including the section of the State law or regulations that supports the comment), and
- b. the actions that should be taken by the State in order to address the comment (including the conditions which the permit would include if it were issued by EPA).

EPA shall send a copy of its written comments to the permit applicant.

EPA shall withdraw such comments when satisfied that the State has met or refuted its concerns and shall also provide the permit applicant with a copy of such withdrawal.

Under Section 3008(a)(3) of RCRA, EPA may terminate a State-issued permit in accordance with the procedures of 40 CFR Part 124, Subpart E, or bring an enforcement action in accordance with the procedures of 40 CFR Part 22 in the case of a violation of a State program requirement. In exercising these authorities, EPA will observe the conditions established in 40 CFR Subsection 271.19(e).

C. State Permitting

The State is responsible for expeditiously drafting, circulating for public review and comment, issuing, modifying, reissuing and terminating RCRA permits for those hazardous waste

treatment, storage and disposal facilities contained in the authorized provisions of the State's program and shall do so in a manner consistent with RCRA as amended by HSWA, this Agreement, all applicable Federal requirements, and the State's Program Description.

The State agrees that the Secretary may hold a public hearing whenever she receives a written notice of opposition to a draft permit and a request for a public hearing from an affected individual, within 45 days from the date of publication of a notice announcing a proposed permit action unless, after due consideration, that affected individual withdraws his request. The State intends that "rules of standing" be used to define the term "affected individual" when considering requests for a public hearing. The Secretary may also hold a public hearing at her discretion.

The State agrees to issue, modify and reissue all permits in accordance with 74-4.2 NMSA 1978, and with Sections 902.A through G. of the New Mexico Hazardous Waste Management Regulations, and to include as permit conditions all required by Section 901 of the New Mexico Hazardous Waste Management Regulations. This Agreement also applies to permits issued after final authorization, but for which processing may have begun before final authorization.

The State agrees that in order to carry out permitting procedures consistent with the requirements of 40 CFR Part 124, that the individuals and agencies entitled to receive public notice of any permit actions under Section 902.C.1. of the New Mexico Hazardous Waste Management Regulations shall also include as applicable:

1. Any other agency which the State knows has issued or is required to issue a RCRA, UIC, PSD, NPDES or 404 permit for the same facility or activity (including EPA when the draft permit is prepared by the State);
2. Federal and State agencies with jurisdiction over fish, shellfish and wildlife resources and over coastal zone management plans, the Advisory Counsel on Historic Preservation, State Historic Preservation Officers, and other appropriate government authorities including any affected States;

3. Persons on a mailing list developed by:
 - (a). Including those who request in writing to be on the list;
 - (b). Soliciting persons for "area" lists from participants in past permit proceedings in that area; and
 - (c). Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as Regional and State funded newsletters, environmental bulletins, or State law journals. (The State may update the mailing list from time to time by requesting written indication of continued interest from those listed. The State may delete from the list the name of any person who fails to respond to such a request);
4. To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and
5. To each State agency having any authority under State law with respect to the construction or operation of such facility.

The State also agrees that in addition to the general public notice described in Section 902.C.2 of the New Mexico Hazardous Waste Management Regulations, those persons identified in paragraphs 1. and 2. above shall be mailed a copy of the fact sheet and notified of the location of the permit application (if any), and draft permit (if any), for their review.

The State agrees that any compliance schedule contained in permits it issues will require compliance with applicable standards as soon as possible.

The State agrees to consider all comments EPA makes on permit applications and draft permits. The State will satisfy or refute EPA's concerns on a particular permit application, proposed permit modification or draft permit in writing before issuing the permit or making the modification.

The State agrees that any compliance schedules contained in permits it issues will require compliance with applicable standards as soon as possible.

The State agrees to consider all comments EPA makes on permit applications and draft permits. The State will satisfy or refute EPA's concerns on a particular permit application, proposed permit modification, or draft permit in writing before issuing the permit or making the modification.

D. Joint Permitting Process

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

EPA and New Mexico hereby establish the joint permitting process for the issuance of RCRA permits in New Mexico. The joint permitting process is established in accordance with Section 3006(c)(3) of RCRA. The details of the joint permitting process shall be incorporated into the annual State Grant Work plan. The duties and responsibilities of EPA and the State for joint permitting shall also be specified in the annual State Grant Work Plan.

The details of the joint permitting process as contained in the State Grant Work Plan shall be reviewed and revised as often as necessary, but no less often than annually to assure its continued appropriateness.

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

VI. PERMIT ADMINISTRATION

A. EPA

EPA will administer the RCRA permits or portions of permits it has issued to facilities in the State until they expire or are terminated. EPA will be responsible for enforcing the terms

and conditions of the Federal permits while they remain in force. When the State either incorporates the terms and conditions of the Federal permits in State RCRA permits, or issues State RCRA permits to those facilities, EPA will terminate those permits pursuant to 40 CFR Part 270 and rely on the State to enforce those terms and conditions subject to the terms of an acceptable State/EPA Joint Permitting Agreement.

B. State

The State agrees to review any hazardous waste permits that may be issued under State law prior to the effective date of this Agreement and to modify, to revoke and reissue such permits as necessary to require compliance with Subsection 74-4-1 et seq. NMSA 1978 and the New Mexico Hazardous Waste Management Regulations, Parts I through X. The State agrees to modify or revoke and reissue these State permits as RCRA permits in accordance with schedules determined in the State Grant Work Program.

VII. COMPLIANCE MONITORING AND ENFORCEMENT

A. EPA

Nothing in this Agreement shall restrict EPA's right to inspect any hazardous waste generator, transporter, or facility, or bring enforcement action against any person believed to be in violation of the State or Federal hazardous waste program, or believed to have a release of hazardous waste or constituent. Before conducting an inspection of a generator, transporter or facility, the Regional Administrator will give the State a least seven days notice of the intent to inspect in accordance with 40 CFR Subsection 271.8(b)(3)(i). If the State performs a compliance inspection and submits to EPA a report and data relevant thereto within that time, no EPA inspection will be made unless the Regional Administrator deems the State report and data to be inadequate. In case of an imminent hazard to human health and the environment, the Regional Administrator may shorten or waive the notice period.

The frequency of EPA oversight and training inspections will be specified in the annual State grant work program. EPA will negotiate on an annual basis with the State the number or percentage of the State's compliance inspections on which EPA will accompany the State.

EPA may take enforcement action against any person determined to be in violation of RCRA in accordance with Section 3008(a)(2). EPA will take enforcement action upon determining that the State has not taken timely and appropriate enforcement action or upon request by the State. Prior to issuing a compliance order under Section 3008(a), EPA will give notice to the State. EPA also retains its rights to issue orders and bring actions under Sections 3008(h), 3013 and 7003 of RCRA and any other applicable Federal statute.

After notice to the State, EPA may take action under Section 3008 of RCRA against a holder of a State-issued permit on the grounds that the permittee is not complying with a condition of that permit. In addition, EPA may take action under section 3008 of RCRA against a holder of a State-issued permit on the grounds that the permittee is not complying with a condition that the Regional Administrator, in commenting on that permit application or draft permit, stated was necessary to implement approved State Program requirements, whether or not that condition was included in the final permit.

B. State

The State agrees to carry out a timely and effective program for monitoring compliance by generators, transporters, and facilities with applicable program requirements (see 40 CFR Subsection 271.15) State Grant Work Plan. As part of this program, the State will conduct inspections to assess compliance with generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other program requirements. Compliance monitoring activities and priorities will be specified in the State/EPA Enforcement Agreement and the annual State grant work program and shall be consistent with all applicable Federal requirements and with the State's program description.

The State agrees to take timely and appropriate enforcement actions against all persons in violation of generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other program requirements, including violations detected by compliance inspections. The scope and nature of such enforcement actions shall be in accordance with the RCRA Enforcement MOU. The State will maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public.

The State agrees to retain all records for a least three years unless there is an enforcement action pending. In that case all records will be retained until such action is resolved.

VII. AVAILABILITY OF INFORMATION (section 3006(f))

A. General

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

B. Request for Information

1. The State agrees to make certain materials routinely available without a formal Freedom of Information Act (FOIA) request. Examples of these materials are final opinions or orders in case adjudication, State regulations, statements of State policy, and administrative staff manuals affecting the public. In addition, records prepared for routine public distribution will also be made available. Examples of such records are press releases, copies of speeches, pamphlets, and educational materials.
2. The State agrees to make reasonable efforts to assist a requestor in identifying records being sought, and to help the requestor formulate his or her request.
3. If a request for information is denied, the State agrees to provide the requestor the basis for the denial and to notify the requestor of State judicial (or, if they exist, administrative) procedures, including statutes of limitation.
4. The State agrees to make the fullest possible disclosure of records to the public, subject to any of the exemptions under the Federal FOIA recognized by the State.
5. A reduction or waiver of fees will be considered in connection with each request from the press or other communication medium, or from a public interest group if in the public interest.

C. Confidentiality of Business Information

If a claim of confidentiality is asserted and cannot be resolved in the time period provided for a State response to a request, the State agrees to notify the requestor of the confidentiality claim within the maximum 20-day time limit provided for State response. In addition, the requestor will be told that the request was denied in order to resolve the business confidentiality claim.

D. Oversight

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

STATE OF NEW MEXICO

U.S. ENVIRONMENTAL PROTECTION AGENCY

AGENCY ENVIRONMENT DEPARTMENT

REGION 6

BY:

Judith M. Espinosa
Secretary

BY:

[Signature]

DATE:

January 16, 1999

DATE:

1-27-93