

US EPA ARCHIVE DOCUMENT

Signed

February 14, 1994

REVISION ATTORNEY GENERAL'S STATEMENT FOR FINAL
AUTHORIZATION FOR CHANGES TO THE FEDERAL
RCRA PROGRAM FROM DECEMBER, 1990 THROUGH
JUNE 1991

RCRA CLUSTER I

I hereby certify, pursuant to my authority as Assistant Attorney General set forth in NMSA 1978, §§8-5-2D and 8-5-5A (Repl. Pamph. 1991) and in accordance with Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA"), as amended by the Hazardous and Solid Waste Amendments of 1984 (42 USC 6901 et seq.), and 40 CFR 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. 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. These authorities and this certification supplement the previously certified authorities described in my and my predecessors certifications of January 1985, April 1988, July 1989 and September, 1992.

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:

(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] and February 25, 1991 [56 FR 7567], Revision Checklists Section 57 and 86.

(17) Listing of one waste (F039), 40 CFR 261.31 and Part 261 Appendix VII, as amended June 1, 1990 [55 FR 22520] and January 31, 1991 [56 FR 3864], Revision Checklists 78 and 83.

(18) Listing of two wastes (F037 and F038) generated in the separation of oil/water/solids from petroleum refinery process wastewaters and oily cooling wastewaters, 40 CFR 261.31 and Part 261 Appendix VII, as amended November 2, 1990 [55 FR 46354] and December 17, 1990 [55 FR 51707], Revision Checklist 81.

(19) Listing of three wastes (F032, F034 and F035) from wood preserving operations that use chlorophenolic, creosote and/or inorganic (arsenical and chromium) preservatives, 40 CFR 261.31 and 261 Appendices III, VII and VIII, as amended December 6, 1990 [55 FR 50450], Revision Checklist 82.

(20) Administrative stay removing, from the K069 listing, slurries generated from air pollution control devices that are

intended to capture acid gases and are not dedicated chiefly to control particulate air emissions, 40 CFR 261.32, as amended May 1, 1991 [56 FR 19951], Revision Checklist 88.

(22) Administrative stay of F034 and F035 listings regarding 1) wastewaters that have not come into contact with wastewater and 2) plants that have previously used chlorophenolic formulations, 40 CFR 261.31 as amended June 13, 1991 [56 FR 27332], Revision Checklist 91.

Federal Authority: RCRA §3001(b).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A(1) and 74-4-4E (Repl. Pamp. 1993).

Hazardous Waste Management Regulations-7 ("HWMR-7") §201, as amended November 20, 1992 (40 CFR Part 261).

Remarks of the Attorney General

On October 21, 1992, New Mexico promulgated HWMR-7 which adopted the July 1, 1992 version of 40 CFR Part 261. HWMR-7 incorporates by reference 40 CFR Part 261 at HWMR-7 §201. This is the version that is referred to in this Attorney General's Statement. HWMR-7 §201 is inclusive of the identification and listing amendments to 40 CFR Part 261 promulgated October 31, 1988 at 53 FR 43881, February 25, 1991 at 56 FR 7567, June 1, 1990 at 55 FR 22520, January 31, 1991 at 3864, November 2, 1990 at 55 FR 46354, December 17, 1990 at 55 FR 51707, December 6, 1990 at 55 FR 50450, May 1, 1991 at 56 FR 19951 and June 13, 1991 at 56 FR 27332. NMSA 1978, §§74-4-4A(1) and 74-4-4E (Repl. Pamp. 1993) provide New Mexico with authority to adopt federal regulations by reference including the sections on identification and listing.

J. State statutes and regulations that:

(2) remove five conditionally retained mineral processing wastes from the exemption from hazardous waste regulation under the Bevill exclusion, and amend the definitions of "beneficiation" and "designated facility" as indicated in Revision Checklists 71 and 90.

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) and June 13, 1991 (56 FR 27300).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A(1) and 74-4-4E (Repl. Pamp. 1993).

HWMR-7 §§101, 102 and 201 as amended November 20, 1992 (40 CFR Parts 260 and 261).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Parts 260 and 261 by reference at HWMR-7 §§101, 102 and 201 as amended November 20, 1992. HWMR-7 §§101, 102 and 201 are inclusive of the amendments to 40 CFR Parts 260 and 261 promulgated January 23, 1990 at 55 FR 2322 and June 13, 1991 at 56 FR 27300. NMSA 1978, §§74-4-4A(1) and 74-4-4E (Repl. Pamp. 1993) provide New Mexico with authority to adopt federal regulations by reference including the sections on identification and listing.

P. State statutes and regulations include definitions of oil/water/solids and aggressive biological treatment units and a statement concerning the point of generation for FO37 and FO38 sludges as indicated in Revision Checklist 81.

Federal Authority: RCRA §3001; 40 CFR 261.31(b), as amended November 2, 1990 (55 FR 46354) and December 17, 1990 (55 FR 51707).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A(1) and 74-4-4E (Repl. Pamp. 1993).

HWMR-7 §201 as amended November 2, 1990 at 55 FR 46354 and December 17, 1990 at 55 FR 51707.

Remarks of the Attorney General

New Mexico incorporates 40 CFR Part 261 by reference at HWMR-7 §201 as amended November 20, 1992. HWMR-7 §201 is inclusive of the wood preserving amendments to 40 CFR Part 261 promulgated November 2, 1990 at 55 FR 46354 and December 17, 1990 at 55 FR 51707. NMSA 1978, §§74-4-4A(1) and 74-4-4E (Repl. Pamp. 1993) provide New Mexico with authority to adopt federal regulations by reference including the sections on identification and listing.

Q. State statutes and regulations exclude from being a solid waste spent wood preserving solution that have been used and are reclaimed and reused for their original intended purpose as indicated in Revision Checklist 82.

Federal Authority: RCRA §3001; 40 CFR 261.4(a)(9) as amended December 6, 1990 (55 FR 50450).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A(1) and 74-4-4E (Repl. Pamp. 1993).

HWMR-7 §201 as amended November 20, 1992 (40 CFR Part 261).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Part 261 by reference at HWMR-7 §201 as amended November 20, 1992. HWMR-7 §201 is inclusive of the wood preserving amendments to 40 CFR Part 261 promulgated December 6, 1990 at 55 FR 50450. NMSA 1978, §§74-4-4A(1) and 74-4-4E (Repl. Pamp. 1993) provide New Mexico with authority to adopt federal regulations by reference including the sections on identification and listing.

R. State statutes and regulations allow deletion of certain hazardous waste codes following equipment cleaning and replacement, provided that the requirements of 261.35 are met, as indicated in Revision Checklist 82.

Federal Authority: RCRA §3001; 40 CFR 261.35 as amended December 6, 1990 (55 FR 50450).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A(1) and 74-4-4E (Repl. Pamp. 1993).

HWMR-7 §201 as amended November 20, 1992 (40 CFR Part 261).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Part 261 by reference at HWMR-7 §201 as amended November 20, 1992. HWMR-7 §201 is inclusive of the wood preserving amendments to 40 CFR Part 261 promulgated December 6, 1990 at 55 FR 50450. NMSA 1978, §§74-4-4A(1) and 74-4-4E (Repl. Pamp. 1993) provide New Mexico with authority to adopt federal regulations by reference including the sections on identification and listing.

T. State statutes and regulations exclude from being a solid waste coke and coal tar from the iron and steel industry that contains or is produced from decanter tank tar sludge, EPA hazardous waste K087, when used as a fuel as indicated in Revision Checklist 85. The process producing the coke and coal tar from such decanter tank tar sludge in a coke oven is also excluded from regulation.

Federal Authority: RCRA §3001; 40 CFR 261.4(a)(10) and 261.6(a)(3)(vii)-(ix) as amended February 21, 1991 (56 FR 7134).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A(1) and 74-4-4E (Repl. Pamp. 1993).

HWMR-7 §201 as amended November 20, 1992 (40 CFR Part 261).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Part 261 by reference at HWMR-7 §201 as amended November 20, 1992. HWMR-7 §201 is inclusive of the coke and coal tar amendments to 40 CFR Part 261 promulgated February 21, 1991 at 56 FR 7134. NMSA 1978, §§74-4-4A(1) and 74-4-4E (Repl. Pamp. 1993) provide New Mexico with authority to adopt federal regulations by reference including the sections on identification and listing.

U. State statutes and regulations do not exclude residues, derived from the burning or processing of hazardous waste in a boiler or industrial furnace, from the definition of a hazardous waste under 40 CFR 261.4(b)(4), (7) or (8) if the owner or operator meets the requirements of 40 CFR 266.112 as indicated in Revision Checklist 85.

Federal Authority: RCRA § 3001; 40 CFR 261.4(b)(4), 261.4(b)(7), 261.4(b)(8) and 266.112 as amended February 21, 1991 (56 FR 7134).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A(1) and 74-4-4E (Repl. Pamp. 1993).

HWMR-7 §§201 and 701 as amended November 20, 1992 (40 CFR Parts 261, 266).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Parts 261 and 266 by reference at HWMR-7 §§201 and 701 as amended November 20, 1992. HWMR-7 §§201 and 701 are inclusive of the boiler and industrial furnace amendments to 40 CFR Parts 261 and 266 promulgated February 21, 1991 at 56 FR 7134. NMSA 1978, §§74-4-4A(1) and 74-4-4E (Repl. Pamp. 1993) provide New Mexico with authority to adopt federal regulations by reference including the sections on identification and listing.

II. DEFINITION OF SOLID WASTE

B. State statutes and regulations include as solid waste secondary material fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste in 40 CFR 261, Subparts C and D as indicated in Revision Checklist 85.

Federal Authority: RCRA §3001; 40 CFR 261.2(d)(2) as amended February 21, 1991 (56 FR 7134).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993). HWMR-7 §201 as amended November 20, 1992 (40 CFR Part 261).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Part 261 by reference at HWMR-7 §201 as amended November 20, 1992. HWMR-7 §201 is inclusive of the solid waste amendments to 40 CFR Part 261 promulgated February 21, 1991 at 56 FR 7134. NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993) provide New Mexico with authority to adopt federal regulations by reference.

XV. STANDARDS FOR FACILITIES

K. State statutes and regulations require new and existing hazardous waste treatment, storage or disposal facilities to control organic air emissions from process vents and equipment leaks as indicated in Revision Checklists 79 and 87.

Federal Authority: RCRA §§ 1006, 2002, 3001-3007, 3010, 3014 and 7004; 40 CFR Parts 261, 264, 265 and 270 as amended June 21, 1990 (55 FR 25454) and April 26, 1991 (56 FR 19290).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993); HWMR-7 §§201, 501, 502, 601, 602 and 901 as amended November 20, 1992 (40 CFR Parts 261, 264, 265 and 270).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Parts 261, 264, 265 and 270 by reference at HWMR-7 §§201, 501, 502, 601, 602 and 901 as amended November 20, 1992. HWMR-7 §§201, 501, 502, 601, 602 and 901 are inclusive of the amendments to 40 CFR Parts 261, 264, 265 and 270 promulgated June 21, 1990 at 55 FR 25454 and April 26, 1991 at 56 FR 19290. NMSA 1978, §§74-4-4A and 74-4-4E provide New Mexico with the authority to adopt federal regulations by reference.

L. State statutes and regulations contain design, operating, inspection and closure requirements for drip pads and associated tanks, sumps and other devices used to assist in the collection of treated wood drippage as indicated in Revision Checklist 82.

Federal Authority: RCRA §§ 2002(a) and 3001(b) & (e)(1); 40 CFR 262.34(a)(2), 264.190, 264.570, 264.571, 264.572, 264.573, 264.574, 264.575, 265.190, 265.440, 265.441, 265.442, 265.443, 265.444, and 265.445 as amended December 6, 1990 (55 FR 50450).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993).

HWMR-7 §§301, 501, 502, 601 and 602 as amended November 20, 1992 (40 CFR Parts 262, 264 and 265).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Parts 262, 264 and 265 by reference at HWMR-7 §§301, 501, 502, 601 and 602 as amended November 20, 1992. HWMR-7 §§301, 501, 502, 601 and 602 are inclusive of the facility standards amendments to 40 CFR Parts 262, 264 and 265 promulgated December 6, 1990 at 55 FR 50450. NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993) provide New Mexico with authority to adopt federal regulations by reference.

M. State statutes and regulations contain an administrative stay for the requirement that new drip pads be impermeable as indicated in Revision Checklist 91.

Federal Authority: RCRA §§3001(b) and (e)(1); 40 CFR 264.573 (a)(4), and 265.443(a)(4) as amended June 13, 1991 (56 FR 27336).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993).

HWMR-7 §§501, 502, 601 and 602 as amended November 20, 1992 (40 CFR Parts 264, 265).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Parts 264 and 265 by reference at HWMR-7 §§501, 502, 601 and 602 as amended November 20, 1992. HWMR-7 §§501, 502, 601 and 602 are inclusive of the amendments to 40 CFR Parts 264 and 265 promulgated June 13, 1991 at 56 FR 27332. NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993) provide New Mexico with authority to adopt federal regulations by reference.

XVI. REQUIREMENTS FOR PERMITS

W. State statutes and regulations contain Special Part B information requirements for drip pads as indicated in Revision Checklist 82.

Federal Authority: RCRA §§ 2002(a) and 3001(b) & (e)(I); 40 CFR 270.26 as amended December 6, 1990 (55 FR 50489).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993).

HWMR-7 §901 as amended November 20, 1992 (40 CFR Part 270).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Part 270 by reference at HWMR-7 §901 as amended November 20, 1992. HWMR-7 §901 is inclusive of the permitting amendments to 40 CFR Part 270 promulgated December 6, 1990 at 55 FR 50489. NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993) provide New Mexico with authority to adopt federal regulations by reference.

X. State statutes and regulations include permitting requirements for boilers and industrial furnaces burning hazardous waste as indicated in Revision Checklist 85.

Federal Authority: RCRA §§ 1006, 2002, 3001 through 3007; 40 CFR 270.22, 270.42(g), 270.42 Appendix I, 270.66, 270.72(a)(6) & (b)(7) and 270.73(f) and (g) as amended February 21, 1991 (56 FR 7134).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A, 74-4-4E and 74-4-4.2 (Repl. Pamp. 1993).

HWMR-7 §901 as amended November 20, 1992 (40 CFR Part 270).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Part 270 by reference at HWMR-7 §901 as amended November 20, 1992. HWMR-7 §901 is inclusive of the permitting amendments to 40 CFR Part 270 promulgated February 21, 1991 at 56 FR 7134. NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993) provide New Mexico with authority to adopt federal regulations by reference. In addition, NMSA 1978, §74-4-4.2 authorizes the state to require permit conditions that are necessary to protect human health and environment.

XX. BURNING OF WASTE FUEL AND USED OIL FUEL IN BOILERS AND INDUSTRIAL FURNACES

C. State statutes and regulations include control standards for emissions of toxic organic compounds, toxic metals, hydrogen chloride, chlorine gas and particulate matter from boilers and industrial furnaces burning hazardous waste, and require owners and operators of such facilities to comply with the general facility standards applicable to hazardous waste treatment, storage and disposal facilities, as indicated in Revision Checklist 85. Hazardous waste storage units at regulated burners are subject to 40 CFR 264 requirements.

Federal Authority: RCRA § 1006, 2002, 3001 through 3007, 3010 and 7004; 40 CFR 260.10, 260.11, 261.3, 261.6, 264.112, 264.340, 265.112, 265.113, 265.340, 265.370, Part 266 Subpart H, and 266 Appendices I-X as amended February 21, 1991 (56 FR 7134).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993).

HWMR-7 §§101, 102, 201, 501, 502, 601, 602 and 701 as amended November 20, 1992 (40 CFR Parts 260, 261, 264, 265 and 266).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Parts 260, 261, 264, 265 and 266 by reference at HWMR-7 §§101, 102, 201, 501, 502, 601, 602 and 701 as amended November 20, 1992. HWMR-7 §§101, 102, 201, 501, 502, 601, 602 and 701 are inclusive of the amendments to 40 CFR Parts 260, 261, 264, 265 and 266 promulgated February 21, 1991 at 56 FR 7134. NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993) provide New Mexico with authority to adopt federal regulations by reference.

XXI. LAND DISPOSAL RESTRICTIONS

F. State statutes and regulations provide specific treatment standards and effective dates for the "Third Third" wastes, "soft hammer First and Second Third wastes"¹, five newly listed wastes, four wastes that fall into the F002 and F005 (spent solvent) waste codes, F025, mixed radioactive/hazardous wastes, characteristic wastes, and multi-source leachate, as well as establish revised treatment standards for petroleum refining hazardous wastes (K048-K052) as indicated in Revision Checklists 78 and 83.

Federal Authority: RCRA §§3001 and 3004 (d)-(k) and (m); 40 CFR 261, 262, 264, 265, 268, and 270 as amended June 1, 1990 (55 FR 22520) and January 31, 1991 (56 FR 3864).

¹ "Soft hammer" wastes are those wastes for which EPA did not promulgate treatment standards by their respective effective dates. These wastes could continue to be disposed of in a landfill or surface impoundment until May 8, 1990 if certain demonstrations were made and the technology requirements of RCRA §3004(o) were met. Other types of land disposal (e.g., underground injection) were not similarly restricted. On May 6, 1990, wastes for which EPA had not established treatment standards became prohibited from all types of land disposal. This latter requirement is referred to as the "hard hammer" provision and ended the soft hammer provisions which were in effect prior to May 6, 1990.

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993).

HWMR-7 §§201, 301, 501, 502, 601, 602, 801 and 901 as amended November 20, 1992 (40 CFR Parts 261, 262, 264, 265, 268 and 270).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Parts 261, 262, 264, 265, 268 and 270 by reference at HWMR-7 §§201, 301, 501, 502, 601, 602, 801 and 901 as amended November 20, 1992. HWMR-7 §§201, 301, 501, 502, 601, 602, 801 and 901 are inclusive of the amendments to 40 CFR Parts 261, 262, 264, 265, 268 and 270 promulgated June 1, 1990 at 55 FR 22520 and January 31, 1991 at 56 FR 3864. NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993) provide New Mexico with authority to adopt federal regulations by reference.

G. State statutes and regulations provide for alternate treatment standards for lab packs meeting certain criteria as indicated in Revision Checklists 78 and 83.

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR 264.316(f), 265.316(f), 268.7(a)(7), 268.7(a)(8), 268.42(c), 268.42(c)(1)-(4), and Part 268 Appendices IV and V, as amended June 1, 1990 (55 FR 22520) and January 31, 1991, (56 FR 3864).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993).

HWMR-7 §§501, 502, 601, 602 and 801 as amended November 20, 1992 (40 CFR Parts 264, 265, 268).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Parts 264, 265 and 268 by reference at HWMR-7 §§501, 502, 601, 602 and 801 as amended November 20, 1992. HWMR-7 §§501, 502, 601, 602 and 801 are inclusive of the amendments to 40 CFR Parts 264, 265 and 268 promulgated June 1, 1990 at 55 FR 22520 and January 31, 1991 at 56 FR 3864. NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993) provide New Mexico with authority to adopt federal regulations by reference.

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