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June 15, 1994

C E R T I F I C A T E

This certifies that attached is a copy of the ENVIRONMENTAL IMPROVEMENT BOARD, rule, EIB/HWMR-7, entitled "Hazardous Waste Management Regulations", consisting of (13) thirteen pages, (13) thirteen sheets, this document was filed as a rule with the State Rules and Publications Division of the State Records Center at 12:37 PM, October 21, 1992, under the provisions of Section 14-4-5, NMSA 1978, of the State Rules Act.

Sue Osborne
Acting State Records Administrator

By:


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State Rules and Publications

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Rule Cover Sheet Side B - Modifying Rule

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1991 OCT 21 PM 12:37

1	Instructions	(Above Space for SRC Use Only) <i>S# 17.10</i>
Please Read The Instructions On Side A Of This Rule Cover Sheet.		
2	Entire Name Of Agency	
Environmental Improvement Board		
3	Agency Address	
1190 St. Francis Drive Santa Fe, NM 87503		
4	Title Of Existing Rule To Be Modified	
Hazardous Waste Management Regulations		
5	Number Of Existing Rule To Be Modified	6 Filing Date Of Existing Rule To Be Modified
EIB/HWMR- 6		February 11, 1991
7	The Existing Rule Is To Be Modified By A (Check One)	
☒ Superseding Rule (which replaces in its entirety an existing rule)		☐ Amending Rule (which changes only part of an existing rule)
		☐ Repealing Rule (which removes in its entirety an existing rule)
8	Title Of Modifying Rule	
Hazardous Waste Management Regulations		
9	Modifying Rule Number	10 Number Of Sheets
EIB/HMP-7		12
11	For Amendments List Pages Added	12 For Amendments List Pages Deleted
13	Authorization	
Name: Roy S. Walker Title: Chairman Date: October 9, 1992		
 Signature		

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD
P.O. BOX 26110/1190 ST. FRANCIS DRIVE
SANTA FE, NEW MEXICO 87503

EIB/HWMR-7

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, 1992, 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 Section 260.10 have the meanings set forth herein, in lieu of the meanings set forth in 40 CFR Section 260.10:

1. "Administrator" or "Regional Administrator" means the Secretary of the New Mexico Environment Department or his/her designee.

B. The following terms not defined in 40 CFR Sections 260.10 and 270.2 have the meanings set forth herein when the terms are used in the Hazardous Waste Management Regulations:

1. "Act" or "RCRA" ("Resource Conservation Recovery Act" as amended) means the New Mexico Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978;

2. "Appropriate act or regulation" means the New Mexico Hazardous Waste Act (or "Act") or the New Mexico Hazardous Waste Management Regulations, HWMR-7;

3. "Board" means the Environmental Improvement Board;

4. "CFR" means the Code of Federal Regulations;

5. "Department" means the New Mexico Environment Department;

6. "Environmental Protection Agency" or "EPA" shall be construed to mean the New Mexico Environment Department except when used in the phrases "EPA hazardous waste number" and "EPA identification number" and "EPA Region"

877 OCT 21 PM 12:37

and in the definition set forth in 40 CFR Section 260.10 and 270.2.

7. "Freedom of Information Act" or "FOIA" means Sections 14-2-1 through 14-2-3, 14-3A-1 through 14-3A-2, and 74-4-4.3D NMSA 1978;

8. "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 to injury to human health or property; and

9. "Secretary" means the Secretary of the New Mexico Environment Department or his/her designee.

10. "Subtitle C of RCRA" means the New Mexico Hazardous Waste Act (or "Act"), Sections 74-4-1 through 74-4-14 NMSA 1978.

C. The following provisions of 40 CFR Part 260 are omitted from Part I of these regulations:

1. Section 260.1(b)(6);
2. Section 260.22;
3. Section 260.30;
4. Section 260.31;
5. Section 260.32; and
6. Section 260.33.

D. Wherever 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 Department via the New Mexico 24-hour emergency response number, (505) 827-9329.

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, 1992, are hereby incorporated as Part II of

OCT 21 PM 12:37

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, 1992, are hereby incorporated as Part III of the New Mexico Hazardous Waste Management 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 263, through July 1, 1992, 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. Section 263.20(e).

**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, 1992, 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. Section 264.149; and
- B. Section 264.150.

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

577 OCT 21 PM 12:37

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, 1992, are hereby incorporated as Part VI of the New Mexico Hazardous Waste Regulations.

602. OMISSIONS. The following provisions of 40 CFR Part 265 are omitted from Part VI of these regulations:

- A. Section 265.149; and
- B. Section 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, 1992, 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, 1992, 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 in 40 CFR Part 270, through July 1, 1992, are hereby incorporated in Part IX of the New Mexico Hazardous Waste Management Regulations.

902. PERMITTING PROCEDURES.

A. Permit Issuance or Denial.

1. Once an application is complete, the Secretary shall prepare and issue either a Draft Permit or a Notice of Intent to Deny.

a. A Draft Permit shall contain all conditions,

1992 OCT 21 PM 12:37

compliance schedules, monitoring requirements and technical standards for treatment, storage, and/or disposal provided for in 40 CFR Part 270.

b. A Notice of Intent to Deny shall state the Secretary's reasons for the intended denial.

2. Any Draft Permit or Notice of Intent to Deny prepared by the Department under Section 902.A.1 of these regulations 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; to any state or federal agency, as applicable; and, on request, to any other person.

3. The Secretary shall give public notice that a Draft Permit or a Notice of Intent to Deny has been prepared, and shall allow forty-five (45) days for review and public comment, including requests for public hearing.

4. If the Secretary issues a Draft Permit, and a timely written notice of opposition to the Draft Permit and a request for a public hearing is received, the Department, acting in conjunction with the applicant, will respond to the request in an attempt to resolve the issues giving rise to the opposition. If such issues are resolved to the satisfaction of the opponent, the opponent may withdraw the request for a public hearing.

5. No ruling shall be made on permit issuance or denial without an opportunity for a public hearing, at which all interested persons shall be given a reasonable chance to submit significant data, views or arguments orally or in writing and to examine witnesses testifying at the public hearing. A public hearing shall be scheduled if:

a. the Secretary issues a Notice of Intent to Deny, and a timely request for public hearing is received from the applicant;

b. the Secretary issues a Draft Permit, a timely request for public hearing is received from any person opposed to the granting of a permit, and such person does not subsequently withdraw the request pursuant to Section 902.A.4 of these regulations; or

c. the Secretary determines, no later than five (5) days following the end of the comment period specified in Section 902.A.3, that a public hearing should be held notwithstanding the absence of a timely request for public hearing.

1992 OCT 21 PM 12:37

6. The comment period specified in Section 902.A.3 shall automatically be extended to the close of any public hearing.

7. The Secretary shall give due consideration and the weight he/she deems appropriate to all comments received during a public comment period and to all relevant facts and circumstances presented at a public hearing.

8. When ruling on permit issuance or denial, the Secretary may disapprove in whole or in part, or make reasonable conditions to any permit, if it appears that the permit applied for will not meet the requirements of these regulations.

9. At the time that any final permit decision is issued, the Secretary 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;

- 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; and

- c. be available to the public.

10. A final permit decision shall become effective thirty (30) days after notice of the decision has been served on the applicant, or such later time as the Secretary may specify. This provision shall not be construed to extend the time for appeal of a permit decision as provided by the Hazardous Waste Act.

11. The approval of a permit does not relieve any person from the responsibility of complying with applicable state or federal laws and regulations.

12. The Secretary shall notify the applicant by certified mail of any impending permit action and of any scheduled public hearing date.

B. Permit Modifications, Suspension and Revocation.

1. The Secretary may modify, suspend, or revoke a permit issued pursuant to Section 902.A of these regulations for cause set forth in 40 CFR Part 270 and the Act.

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2. The Secretary may modify, suspend, revoke any permit upon his/her initiative, or if, after the Department'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 shall be in writing and shall contain facts or reasons supporting the request.

4. If the Secretary decides that the request is not justified, the permittee will be notified in writing explaining the reason for denial. Denial of request of modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.

5. If the Secretary tentatively decides to modify or revoke and reissue a permit under 40 CFR Section 270.41 or 40 CFR Section 270.42, a draft permit shall be prepared incorporating the proposed changes. The Secretary may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of a revoked and reissued permit the Secretary shall require the submission of a new application.

6. 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. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and were being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

7. If the Secretary tentatively decides to terminate a permit under 40 CFR Section 270.43, a notice of intent to terminate shall be issued. A notice of intent to terminate is a type of Draft Permit which follows the same procedures as any Draft Permit under Section 902.

C. Public Notices.

1. Public notice of issuance of a Draft Permit or a Notice of Intent to Deny, and of any public hearing scheduled, 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 permit applicant, those individuals

1992 OCT 21 PM 12:37

on the Department mailing list of persons interested in hazardous waste permit actions, and to any unit 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. The name and address of the office processing the permit action for which notice is being given;

d. The 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;

f. The name, address and telephone number of a person from whom interested persons may obtain further information; and

g. In addition, public notice of a scheduled public hearing shall also contain references to the dates of previous public notices relating to the permit.

h. The notice shall state where interested persons may secure copies of any proposed Draft Permit or Notice of Intent to Deny..

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;

1992 OCT 21 PM 12:37

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 request 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 and shall state the subject.

2. Hearings shall be held in Santa Fe or within any area of the state substantially affected by the proceedings as specified by the Secretary.

3. The Secretary 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 Department'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,

1982 OCT 21 PM 12:07

arguments, and testimony are amply and fairly received without undue repetition.

a. Testimony for hearings on permit issuance or modification shall be presented in the following order:

(1) testimony by the applicant (such testimony is a prerequisite to the granting of the requested permit or modification);

(2) testimony by other persons (except the Department) supporting issuance or modification of the permit, in any reasonable order;

(3) testimony by persons (except the Department) opposed to issuance or modification of the permit, in any reasonable order;

(4) testimony by the Department; and

(5) rebuttal testimony, as appropriate.

b. Testimony for hearings on permit suspension or revocation shall be as follows:

(1) testimony by Department;

(2) testimony by other persons supporting suspension or revocation of the permit, in any reasonable order;

(3) testimony by the permittee;

(4) testimony by other persons opposed to suspension or revocation of the permit, in any reasonable order; and

(5) rebuttal testimony, as appropriate.

c. In all hearings, cross examination of each witness shall be conducted by interested persons, in any reasonable order, immediately after that witness has testified.

6. The burden of proof at hearings shall be as follows:

a. For hearings on permit issuance or modifications, the burden of proof shall be on the applicant or permittee.

b. For hearings on permit suspension or revocation,

1972 OCT 21 PM 12:27

the burden of proof shall be on the Department.

F. Secretary's Decision.

1. Any person heard or represented at the hearing shall be given written notice of the action of the Secretary.
2. The Secretary shall notify the applicant or permittee of his/her decision and the reasons therefore by certified mail.

G. Appeals. Appeals of the Secretary decision shall be as provided by the Hazardous Waste Act.

1. The filing of an appeal does not act as a stay of any action required by the Secretary's decision.
2. The record on appeal shall include the transcript of the hearing, all related correspondence, any responses to comments, and all other information relied upon by the Secretary in deciding upon the permit action.

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. REFERENCE TO 40 CFR PART 124. Reference to any provisions of 40 CFR Part 124 within the text of any other provision of 40 CFR as adopted by these regulations shall be construed to mean the corresponding provision of Section 902 of these regulations.

1004. 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.

1005. EFFECT OF STAY OR INVALIDATION OF INCORPORATED FEDERAL REGULATION. If any federal regulation incorporated by reference in the Hazardous Waste Management Regulations is stayed, invalidated, or otherwise rendered unenforceable by EPA, in whole or in part, by action of a federal court, such incorporated federal regulation

1991 OCT 21 PM 12:37

shall be enforceable by the Department only to the extent it is enforceable by EPA.

1006. AMENDMENT OF PRIOR REGULATIONS. These regulations shall be construed as amendments to the Hazardous Waste Management Regulations, EIB/HWMR-6, filed February 11, 1991, as amended.

1007. SAVING CLAUSE. Amendment of EIB/HWMR-6 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to EIB/HWMR-6.