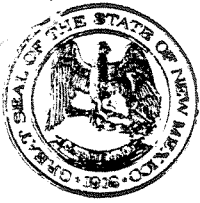


US EPA ARCHIVE DOCUMENT



BRUCE KING
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT
Harold Runnels Building
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502

AG - HSWA I & II
Signed
August 11, 1994

JUDITH M. ESPINOSA
SECRETARY

RON CURRY
DEPUTY SECRETARY

August 15, 1994

Ailma Patterson
USEPA Region 6
Hazardous Waste Management Division
Mail Code 6H-HS
1445 Ross Avenue
Dallas, Texas 75202-2733

Re: Statutory Checklists - HSWA I & II

Dear Ms. Patterson:

Enclosed please find an addendum to the Attorney General's statement for HSWA I & II. After the submittal of the AG's statement, we learned that it was necessary to include the following statutory checklists: SR1, SI and AI. A review of the AG's statement for HSWA I & II reveals that the SI checklist was included under XVIII (A)(B) on pages 22-23. It also appears that SR1 was included (XVI (I)). The AI checklist was not submitted as part of that package.

This addendum includes the ~~SI~~ and SR1 checklists. After review of the AG's statement with regard to SR1, we determined to resubmit that checklist with this addendum. With regard to the SR1 checklist, per your instructions, we have included statutory checklist #30 and followed the model AG statement.

Thank you for your help in this matter. Please call if you have any questions or need additional information. We look forward to receiving authorization for HSWA I and II.

Sincerely,

SUSAN McMICHAEL
Assistant General Counsel

Enclosure(s)

ADDENDUM TO THE NEW MEXICO ATTORNEY GENERAL'S
STATEMENT FOR AUTHORIZATION
HSWA CLUSTERS I AND II

I hereby certify, pursuant to my authority as Assistant Attorney General set forth in NMSA 1978, §§8-5-2(D) and 8-5-5(A) (Repl. Pamp. 1994), 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 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 ("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, July 1989, September 1991, July 1992 and July 1994.

XVI. REQUIREMENTS FOR PERMITS

I. State statutes and regulations require:

- (1) Surface impoundments in existence on November 8, 1984 [or subsequently becoming subject to RCRA pursuant to §3005(j)(6)(A) or (B)] to comply with the double liner, leachate collection, and groundwater monitoring requirements applicable to new units by November 8, 1988 [or the date specified in §3005(j)(6)(A) or (B)] or to stop treating, receiving or storing hazardous waste, unless the surface impoundment qualifies for a special exemption under §3005(j).

Federal Authority: RCRA §3005(j)(1) & (6)(A).

Citation of Laws and Regulations; Date of Enactment and Adoption

NMSA 1978, §74-4-4(A) and (E) (Repl. Pamp. 1993); HWMR-7 §§501 and 502, as amended November 20, 1992 (40 CFR Part 264.221).

Remarks of the Attorney General

NMSA 1978, §§74-4-4(A) and 74-4-4(E) (Repl. Pamp. 1993) provides New Mexico with authority to adopt federal regulations by reference. New Mexico incorporates 40 CFR 264 by reference, with a few exceptions, in the New Mexico Hazardous Waste Management Regulations, §§501 and 502, as amended November 20, 1992 (HWMR-7). HWMR-7 §§501 and 502 adopt by reference 40 CFR 264.221, as amended January 29, 1992 at 57 FR 3487 which is inclusive of the design and operating requirements applicable to existing surface impoundments. Accordingly, New Mexico's requirements are equivalent to the Federal requirements.

XIX. AVAILABILITY OF INFORMATION

State statutes and regulations provide that:

1. All records shall be available to the public unless exempt from the disclosure requirements of the Federal Freedom of Information Act ("FOIA"), 5 U.S.C. §552, pursuant to NMSA 1978, §74-4-4.3(D) (Repl. Pamp. 1993), NMSA 1978, §14-2-1 (Cum. Supp. 1994) and HWMR-7 §§101 and 102 which adopts by reference 40 CFR 260.2.

2. All non-exempt records shall be available to the public regardless of whether any justification or need for records shown the requestor, pursuant to NMSA 1978, §74-4-4.3(D) (Repl. Pamp. 1993), NMSA 1978, §§14-2-1, 14-2-6, 14-2-8(C) (Cum. Supp. 1994) and HWMR-7 §§101 and 102 which adopts by reference 40 CFR 260.2.

3. The same type of records would be available to the public from the State as would be available from EPA, pursuant to NMSA 1978, §§74-4-4.3(D) (Repl. Pamp. 1993), NMSA 1978, §§14-2-1, 14-2-6 (Cum. Supp. 1994) and HWMR-7 §§101 and 102 which adopts by reference 40 CFR 260.2.

4. Information is provided to the public in substantially the same manner as EPA as indicated in 40 CFR Part 2 and the revision checklist in Appendix N of the State Authorization Manual, pursuant to NMSA 1978, §74-4-4.3(D) (Repl. Pamp. 1993) and HWMR-7 §§101 and 102 which adopts by reference 40 CFR 260.2.

5. The State agrees to the fullest possible disclosure of records to the public subject to applicable exemptions, pursuant to NMSA 1978, §74-4-4.3(D) (Repl. Pamp. 1993), NMSA 1978, §14-2-1 (Cum. Supp. 1994) and the Memorandum of Agreement (MOA) entered into between EPA and NMED on May 19, 1994.

Federal Authority: RCRA §3006(f); 40 CFR Part 271.17(c); 40 CFR Part 2; 40 CFR Part 260.2.

Citation of Laws and Regulations; Date of Enactment and Adoption

NMSA 1978, §74-4-4.3(D) (Repl. Pamp. 1993); NMSA 1978, §§14-2-1 through 14-2-12 (Cum. Supp. 1994); HWMR-7 §§101 and 102, as amended November 20, 1992 (40 CFR Part 260.2).

Remarks of the Attorney General

New Mexico has broad authority to demonstrate compliance with Section 3006(f) of the Hazardous and Solid Waste Management Amendments of 1984 (HSWA). The Hazardous Waste Act, NMSA 1978, §74-4-4.3(D) (Repl. Pamp. 1993) and the Inspection of Public Records Act, NMSA 1978, §§14-2-1 through 14-2-12 (Cum. Supp. 1994) provide New Mexico with ample authority to meet these requirements

and ensure that information be made available to the public in substantially the same manner and to the same degree as EPA makes information available. NMSA 1978, §§74-4-4(A) and 74-4-4(E) (Repl. Pamp. 1993) provide New Mexico with authority to adopt federal regulations by reference. New Mexico incorporates 40 CFR 260 by reference, with a few exceptions, at HWMR-7 §§ 101 and 102. HWMR-7, §§101 and 102 is inclusive of 40 CFR 260.2 which further ensures equivalent availability of information. New Mexico's statutory and regulatory authority to meet the procedural and substantive requirements of Section 3006(f) of HSWA are attached hereto as Exhibit 1, RCRA Revision Checklist for Section 3006(f): Availability of Information. In addition, the MOA entered into by New Mexico and EPA on May 19, 1994 provides additional authority to meet these requirements and specifically addresses certain requirements as identified in Exhibit 1. The MOA is attached hereto as Exhibit 2.

Finally, in New Mexico an administrative decision denying a request for information is appealable directly to the district court pursuant to NMSA 1978, §14-2-12 (Cum. Supp. 1994). There is no administrative appeals process to review such a decision. Therefore, New Mexico does not need an equivalent regulation to 40 C.F.R. 2.117 or 40 C.F.R. 2.114(b). See Exhibit 1, Nos. 1.6 and 1.7.

XXII. MEMORANDUM OF AGREEMENT (MOA)

If the State uses the MOA to satisfy Federal procedural requirements, the Attorney General must certify the following:

(1) The State has the authority to enter into the agreement, pursuant to NMSA 1978, §74-1-6(C) (Cum.Supp. 1994) and NMSA 1978, § 9-7A-11 (Repl.Pamp. 1994).

(2) The State has the authority to carry out the agreement, pursuant to NMSA 1978, §§74-1-6 (B)(C)(E)(F)(I) (Cum.Supp. 1994) and NMSA 1978, §9-7A-3 (Repl.Pamp. 1994).

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

Citation of Laws and Regulations; Date of Enactment and Adoption

NMSA 1978, §§74-1-6(B)(C)(E)(F)(I) (Cum.Supp. 1994) and NMSA 1978, §§ 9-7A-3 and 9-7A-11 (Repl.Pamp. 1994).

Remarks of the Attorney General

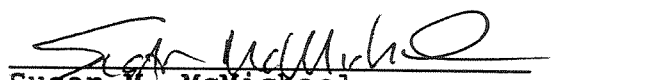
New Mexico does not rely upon the MOA to satisfy any Federal procedural requirement described herein, including those applicable for availability of information and identified in Exhibit 1. State

laws and regulations provide ample authority to satisfy all Federal procedural requirements. However, New Mexico uses the MOA to satisfy two oversight of state programs requirements identified in Exhibit 1 as 4.1 (the State agrees to keep log or files of denials of requests available for inspection) and 4.2 (the State informs the EPA of proposed modifications of its basic statutory authority). New Mexico has also cited the MOA as additional support to statutory authority for other requirements as described herein.

New Mexico has the authority to enter into, and carry out, the MOA pursuant to NMSA 1978, §§74-1-6(B)(C)(E)(F) and (I)(Cum.Supp. 1994) and NMSA 1978, §§9-7A-3 and 9-7A-11 (Repl. Pamp. 1994). Under New Mexico law, no applicable State statute requires that the oversight requirements (4.1 & 4.2) be promulgated as a rule in order to be binding. These requirements, as with the MOA, are not rules intended to have the force and effect of law upon the general public and do not fall within the State Rules Act, NMSA 1978, §§14-4-1 et. seq. (Repl. Pamp. 1988). State v. Ellis, 95 N.M. 427, 622 P.2d 1047 (Ct. App. 1980) (interstate agreements do not fall within the State Rules Act); Bokum Resources v. New Mexico Water Quality Control Comm'n. 93 N.M. 546, 603 P.2d 285 (1979).

THE HONORABLE TOM UDALL
ATTORNEY GENERAL


William R. Brancard
Assistant Attorney General
Attorney General's Office
P.O. Drawer 1508
Santa Fe, New Mexico 87504


Susan M. McMichael
Special Assistant Atty. General
Assistant General Counsel
New Mexico Environment Department
P.O. Box 26110
Santa Fe, New Mexico 87502

Date: August 11, 1994

Date: August 11, 1994