

US EPA ARCHIVE DOCUMENT

AG signed
2 dated 11/28/94

REVISION ATTORNEY GENERAL'S STATEMENT FOR FINAL
AUTHORIZATION FOR CHANGES TO THE FEDERAL
RCRA PROGRAM FROM JANUARY 1983 THROUGH JUNE 1993

RCRA CLUSTER III

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

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:

- (22) Administrative stay, from June 13, 1991 to December 24, 1992, of F032, F034, and F035 listings regarding 1) wastewaters that have not come into contact with process contaminants and 2) plants that have previously used chlorophenolic formulations, 40 CFR 261.31 as amended June 13, 1991 [56 FR 27332] and December 24, 1992 [57 FR 61492], Revision Checklists 91 and 120.
- (23) Listing of seven wastes (K141, K142, K143, K144, K145, K147, and K148) generated during the production, recovery and refining of coke by-products produced from coal, 40 CFR 261.32, and Part 261 Appendix VII as amended August 18, 1992 [57 FR 37284], Revision Checklist 110.
- (24) Listing of three wastes (K149, K150, and K151) from the production of chlorinated toluenes, 40 CFR 261.32 and Part 261 Appendix VII, as amended October 15, 1992 [57 FR 47376], Revision Checklist 115.
- (25) Exceptions to listings of F032, F034, and F035 for wastewaters that have not come into contact with process contaminants, 40 CFR 261.31 as amended

December 24, 1992 [57 FR 61492], Revision Checklist 120.

- (26) Exception to listing of F032 for potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes (i.e., F034 or F035), and where the generator does not reserve or initiate the use of chlorophenolic formulations, 40 CFR 261.31 as amended December 24, 1992 [57 FR 61492], Revision Checklist 120.

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, New Mexico Environmental Improvement Board, 20 NMAC 4.1.201 (effective September 23, 1994) (40 CFR Part 261).

Remarks of the Attorney General

On August 24, 1994, New Mexico promulgated 20 NMAC 4.1 which adopts the July 1, 1993 version of 40 CFR Part 261. 20 NMAC 4.1 incorporates by reference 40 CFR Part 261 at 20 NMAC 4.1.201. This is the version that is referred to in this Attorney General's Statement. 20 NMAC 4.1 became effective 30 days after filing on September 23, 1994. 20 NMAC 4.1.201 is inclusive of the identification and listing amendments to 40 CFR Part 261 promulgated June 13, 1991 at 56 FR 27332, August 18, 1992 at 57 FR 37284, October 15, 1992 at 57 FR 47376, and December 24, 1992 at 57 FR 61492. 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.

L. State statutes and regulations revise the existing toxicity characteristic by replacing the Extraction Procedure (EP) leach test with the Toxicity Characteristic Leaching Procedure (TCLP) for identifying wastes that are defined as hazardous and subject to regulation under Subtitle C of RCRA as indicated in Revision Checklists 74, 108 and 117B. State statutes and regulations also provide for the addition of 25 organic chemicals and their regulatory levels to the list of toxic constituents of concern as indicated in Revision Checklist 74.

Federal Authority: RCRA §§1006, 2002(a), 3001, 3002, 3004, 3005 and 3006; 40 CFR Parts 261, 264, 265 and 268 as amended March 29, 1990 (55 FR 11798), June 29, 1990 (55 FR 26986), June 1, 1992 (57 FR 23062), and July 10, 1992 (57 FR 30657).

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). 20 NMAC 4.1.201, .501, .502, .601, .602 and .801 as amended September 23, 1994 (40 CFR Parts 261, 264, 265 and 268).

Remarks of Attorney General

New Mexico incorporates 40 CFR Parts 261, 264, 265 and 268 by reference, with a few exceptions, at 20 NMAC 4.1.201, .501, .502, .601, .602 and .801 as amended September 23, 1994. 20 NMAC 4.1.201, .501, .502, .601, .602 and .801 are inclusive of the identification and listing amendments to 40 CFR Parts 261, 264, 265 and 268 promulgated March 29, 1990 at 55 FR 11798, June 29, 1990 at 55 FR 26986, June 1, 1992 at 57 FR 23062, and July 10, 1992 at 57 FR 30657. NMSA 1978, §§74-4-4A(1) and 74-4-4E provide New Mexico with authority to adopt federal regulations by reference including the sections on identification and listing.

Y. State statutes and regulations exclude from being a solid waste K060, K087, K141, K142, K143, K144, K145, K147 and K148, and those coke by-product residues that are hazardous only because they exhibit the Toxicity Characteristic when, subsequent to generation, these wastes are recycled by being returned to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar as specified in Revision Checklists 105 and 110.

Federal Authority: RCRA §§3001(e)(2) and (h); 40 CFR 261.4(a)(10) as amended June 22, 1992 (57 FR 27880) and August 18, 1992 (57 FR 37284).

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). 20 NMAC 4.1.201 as amended September 23, 1994 (40 CFR Part 261).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Part 261 by reference at 20 NMAC 4.1.201 as amended September 23, 1994. 20 NMAC 4.1.201 is inclusive of the identification and listing amendments to 40 CFR Part 261 promulgated June 22, 1992 at 57 FR 27880 and August 18, 1992 at 57 FR 37284. 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 materials, 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 Checklists 85, 96, and 111.

Federal Authority: RCRA §3001; 40 CFR Part 261.2(d)(2) and (e)(2)(iv) as amended February 21, 1991 (56 FR 7134), August 27, 1991 (56 FR 42504) and August 25, 1992 (57 FR 38558).

Citations of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993). 20 NMAC 4.1.201 as amended September 23, 1994 (40 CFR Part 261).

Statement of the Attorney General

New Mexico incorporates 40 CFR Part 261 by reference at 20 NMAC 4.1.201 as amended September 23, 1994. 20 NMAC 4.1.201 is inclusive of the amendments to 40 CFR Part 261 promulgated February 21, 1991 at 56 FR 7134, August 27, 1991 at 56 FR 42504, and August 25, 1992 at 57 FR 38558. NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993) provide New Mexico with authority to adopt federal regulations by reference.

X. LIQUIDS IN LANDFILLS

B. State statutes and regulations prohibit the disposal, in hazardous waste landfills, of liquids that have been absorbed in materials that are biodegradable or that release liquids during routine landfill operations, as indicated in Revision Checklist 118.

Federal Authority: RCRA §3004(c); 40 CFR 260.10, 264.13, 264.314, 264.316, 265.13, 265.314, and 265.316 as amended November 18, 1992 (57 FR 54452).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993). 20 NMAC 4.1.101, .501, .502, .601 and .602 as amended September 23, 1994 (40 CFR Parts 260, 264 and 265).

Statement of the Attorney General

New Mexico incorporates 40 CFR Parts 260, 264 and 265 by reference, with a few exceptions, at 20 NMAC 4.1.101, .501, .502, .601 and .602 as amended September 23, 1994. 20 NMAC 4.1.101, .501, .502, .601 and .602 are inclusive of the Liquids in Landfills Amendments to 40 CFR Parts 260, 264 and 265 promulgated November 18, 1992 at 57 FR 54452. NMSA 1978, §§74-4-4A and 74-4-4E provide New Mexico with the authority to adopt federal regulations by

reference.

XV. STANDARDS FOR FACILITIES

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 Checklists 82, 92 and 120.

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), July 1, 1991 (56 FR 30192), and December 24, 1992 (57 FR 61492).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993). 20 NMAC 4.1.301, .501, .502, .601 and .602 as amended September 23, 1994 (40 CFR Parts 262, 264 and 265).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Parts 262, 264 and 265 by reference, with a few exceptions, at 20 NMAC 4.1.301, .501, .502, .601 and .602 as amended September 23, 1994. 20 NMAC 4.1.301, .501 and .601 are inclusive of the Wood Preserving Listing and Technical Amendments to 40 CFR Parts 262, 264 and 265 promulgated December 6, 1990 at 55 FR 50450, July 1, 1991 at 56 FR 30192, and December 24, 1992 at 57 FR 61492. NMSA 1978, §§74-4-4A and 74-4-4E provide New Mexico with the authority to adopt federal regulations by reference.

M. State statutes and regulations contain an administrative stay, from June 13, 1991 to December 24, 1992 for the requirement that new drip pads be impermeable as indicated in Revision Checklists 91 and 120.

Federal Authority: 5 U.S.C. 705; RCRA §§2002(a) and 3001(b)&(e)(1); 40 CFR 264.572(a)(4) and 265.443(a)(4) as amended June 13, 1991 (56 FR 27332) and December 24, 1992 (57 FR 61492).

Citations of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A and 74-4-4E (Rep. Pamp. 1993). 20 NMAC 4.1.501, .502, .601 and .602 as amended September 23, 1994 (40 CFR Part 264 and 265).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Parts 264 and 265 by reference,

with a few exceptions, at 20 NMAC 4.1.501, .502, .601 and .602 as amended September 23, 1994. 20 NMAC 4.1.501, .502, .601 and .602 are inclusive of the Wood Preserving Listing and Technical Amendments to 40 CFR Parts 264 and 265 promulgated June 13, 1991 at 56 FR 27332, and December 24, 1992 at 57 FR 61492. NMSA 1978, §§74-4-4A and 74-4-4E provide New Mexico with the authority to adopt federal regulations by reference.

O. State statutes and regulations allow the use of additional financial instruments (letter of credit, a surety bond, a guarantee, trust fund, and purchase of insurance by other firms) to meet the liability coverage requirements as specified in Revision Checklist 113.

Federal Authority: RCRA §§2002(a), 3004 and 3005; 40 CFR 264.141, 264.147, 264.151, 265.141, 265.147 and 265.151 as amended September 1, 1988 (53 FR 33938), July 1, 1991 (56 FR 30200), and September 16, 1992 (57 FR 42832).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A(5)(f) and 74-4-4E (Repl. Pamp. 1993). 20 NMAC 4.1.501, .502, .601 and .602 as amended September 23, 1994 (40 CFR Part 264 and 265).

Remarks of the Attorney General

New Mexico incorporated 40 CFR Parts 264 and 265 by reference, with a few exceptions, at 20 NMAC 4.1.501, .502, .601 and .602 as amended September 23, 1994. 20 NMAC 4.1.501 and .601 are inclusive of the Consolidated Liability amendments to 40 CFR Parts 264 and 265 promulgated September 1, 1988 at 53 FR 33938, July 1, 1991 at 56 FR 30200, and September 16, 1992 at 57 FR 42832. NMSA 1978, §§74-4-4A and 74-4-4E provide New Mexico with the authority to adopt federal regulations by reference.

P. State statutes and regulations include conforming changes to 264.147(f)(6) and 265.147(f)(6) to expand the instruments available to owners and operators that no longer meet the requirements of the financial test for liability coverage as indicated in Revision Checklist 113.

Federal Authority: RCRA §3004; 40 CFR 264.147(f)(6) and 265.147(f)(6) as amended September 16, 1992 (57 FR 42832).

Citations or Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A(5)(f) and 74-4-4E (Repl. Pamp. 1993). 20 NMAC 4.1.501, .502, .601 and .602 as amended September 23, 1994 (40 CFR Part 264 and 265).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Parts 264 and 265 by reference, with a few exceptions, at 20 NMAC 4.1.501, .502, .601 and .602 as amended September 23, 1994. 20 NMAC 4.1.501, .502, .601 and 602 are inclusive of the Consolidated Liability amendments to 40 CFR Parts 264 and 265 promulgated September 16, 1992 at 57 FR 42832. NMSA 1978, §§74-4-4A and 74-4-4E provide New Mexico with the authority to adopt federal regulations by reference.

Q. State statutes and regulations require reporting of third-party claims against an owner's or operator's liability coverage as indicated by Revision Checklist 113.

Federal Authority: RCRA §§2002(a), 3004 and 3005; 40 CFR 264.147(a)(7) and (b)(7) and 265.147(a)(7) and (b)(7) as amended September 1, 1988 (53 FR 33938) and September 16, 1992 (57 FR 42832).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A(5)(f) and 74-4-4E (Repl. Pamp. 1993). 20 NMAC 4.1.501, .502, .601 and .602 as amended September 23, 1994 (40 CFR Parts 264 and 265).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Parts 264 and 265 by reference at 20 NMAC 4.1.501, .502, .601 and .602 as amended September 23, 1994. 20 NMAC 4.1.501, .502, .601 and .602 are inclusive of the Consolidated Liability amendments to 40 CFR Parts 264 and 265 promulgated September 1, 1988 at 53 FR 33938 and September 16, 1992 at 57 FR 42832. NMSA 1978, §§74-4-4A and 74-4-4E provide New Mexico with the authority to adopt federal regulations by reference.

R. State statutes and regulations require owners and operators of new drip pads to have either 1) a surface protection system meeting the hydraulic conductivity, material chemical compatibility, and assessment requirements of 264.573(a)(4) or 265.443(a)(4), or 2) a liner and leak detection system below the pad as well as a leak collection system as specified in Revision Checklist 120.

Federal Authority: RCRA §§2002(a) and 3001(b)&(e)(1); 40 CFR 264.572, 265.573, 265.442 and 265.443 as amended December 24, 1992 (57 FR 61492).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993). 20 NMAC 4.1.501, .502, .601 and .602 as amended September

23, 1994 (40 CFR Parts 264 and 265).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Parts 264 and 265 by reference, with a few exceptions, at 20 NMAC 4.1.501, .502, .601 and .602 as amended September 23, 1994. 20 NMAC 4.1.501, .502, .601 and .602 are inclusive of the Wood Preserving amendments to 40 CFR Parts 264 and 265 promulgated December 24, 1992 at 57 FR 61492. NMSA 1978, §§74-4-4A and 74-4-4E provide New Mexico with the authority to adopt federal regulations by reference.

S. State statutes and regulations require owners or operators of existing drip pads to meet the hydraulic conductivity, material chemical compatibility, and assessment requirements of 264.573(a)(4) or 265.443(a)(4), as specified in Revision Checklist 120.

Federal Authority: RCRA §§2002(a) and 3001(b)&(e)(1); 40 CFR 264.571, 264.573, 265.441 and 265.443 as amended December 24, 1992 (57 FR 61492).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§ 74-4-4A and 74-4-4E (Repl. Pamp. 1993). 20 NMAC 4.1.501, .502, .601 and .602 as amended September 23, 1994 (40 CFR Parts 264 and 265).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Parts 264 and 265 by reference, with a few exceptions, at 20 NMAC 4.1.501, .502, .601 and .602 as amended September 23, 1994. 20 NMAC 4.1 §§501, .502, .601 and .602 are inclusive of the Wood Preserving amendments to 40 CFR Parts 264 and 265 promulgated December 24, 1992 at 57 FR 61492. NMSA 1978, §§74-4-4A and 74-4-4E provide New Mexico with the authority to adopt federal regulations by reference.

T. State statutes and regulations contain requirements for the management of infrequent and incidental drippage in storage yards as indicated in Revision Checklist 120.

Federal Authority: RCRA §§2002(a) and 3001(b)&(e)(1); 40 CFR 264.570(c) and 265.440(c) as amended December 24, 1992 (57 FR 61492).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993). 20 NMAC 4.1.501, .502, .601 and .602 as amended September 23, 1994 (40 CFR Parts 264 and 265).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Parts 264 and 265 by reference, with a few exceptions, at 20 NMAC 4.1.501, .502, .601 and .602 as amended September 23, 1994. 20 NMAC 4.1.501, .502, .601 and .602 are inclusive of the Wood Preserving amendments to 40 CFR Parts 264 and 265 promulgated December 24, 1992 at 57 FR 61492. NMSA 1978, §§74-4-4A and 74-4-4E provide New Mexico with the authority to adopt federal regulations by reference.

XX. STANDARDS FOR THE MANAGEMENT OF WASTE FUEL AND USED OIL AND FOR THE BURNING OF THESE MATERIALS 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 Checklists 85, 94, 96, 111 and 114. Hazardous waste storage units at regulated burners are subject to the 40 CFR Part 264 requirements.

Federal Authority: RCRA §§1006, 2002, 3001 through 3007, 3010 and 7004; 40 CFR 260.10, 260.11, 260.20, 261.3, 261.6, 264.1, 264.112, 264.340, 265.1, 265.112, 265.113, 265.340, 265.370, Part 266 Subpart H, and Part 266 Appendices I-X as amended February 21, 1991 (56 FR 7134), July 17, 1991 (56 FR 32688), August 27, 1991 (56 FR 42504), August 25, 1992 (57 FR 38558), and September 30, 1992 (57 FR 44999).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993). 20 NMAC 4.1.101, .102, .201, .501, .502, .601, .602 and .701 as amended September 23, 1994 (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, with a few exceptions, at 20 NMAC 4.1.101, .102, .201, .501, .502, .601, .602 and .701 as amended September 23, 1994. 20 NMAC 4.1.101, .102, .201, .501, .502, .601, .602 and .701 are inclusive of the amendments to 40 CFR 260, 261, 264, 265 and 266 promulgated February 21, 1991 at 56 FR 7134, July 17, 1991 at 56 FR 32688, August 27, 1991 at 56 FR 42504, August 25, 1992 at 57 FR 38558, and September 30, 1992 at 57 FR 44999. NMSA 1978, §§ 74-4-4A and 74-4-4E provide New Mexico with the authority to adopt federal regulations by reference.

XXI. LAND DISPOSAL RESTRICTIONS

I. State statutes and regulations provide an extension of the land disposal restriction effective date of hazardous waste debris until May 8, 1994, as indicated in Revision Checklists 103, 116 and 123.

Federal Authority: RCRA §3004(h)(3); 40 CFR 268.25(c)-(e) as amended May 15, 1992 (57 FR 20766); October 20, 1992 (57 FR 47772); and May 14, 1993 (58 FR 28506).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993). 20 NMAC 4.1.801 as amended September 23, 1994 (40 CFR Part 268).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Part 268 by reference at 20 NMAC Part 4.1 §801 as amended September 23, 1994. 20 NMAC 4.1.801 is inclusive of the Land Disposal Restriction Amendments to 40 CFR Part 268 promulgated May 15, 1992 at 57 FR 20766, October 20, 1992 at 57 FR 47772, and May 14, 1993 at 58 FR 28506. NMSA 1978, §§74-4-4A and 74-4-4E provide New Mexico with the authority to adopt federal regulations by reference.

K. State statutes and regulations provide land disposal treatment standards for certain hazardous wastes listed after November 8, 1984 as well as treatment standards for debris contaminated with listed hazardous wastes or debris that exhibit certain hazardous waste characteristics as indicated in Revision Checklist 109.

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 261.3(f), 268.2, 268.5, 268.7, 268.14, 268.36, 268.40, 268.41, 268.42, 268.43, 268.45, 270.13 and 270.14, as amended August 18, 1992 (57 FR 37194).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993). 20 NMAC 4.1.201, .801 and .901 as amended September 23, 1994 (40 CFR Parts 261, 268 and 270).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Parts 261, 268 and 270 by reference at 20 NMAC 4.1.201, .801 and .901 as amended September 23, 1994. 20 NMAC 4.1.201, .801 and .901 are inclusive of the Land Disposal Restriction Amendments to 40 CFR Parts 261, 268 and 270 promulgated August 18, 1992 at 57 FR 37194. 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 include revisions to existing land disposal restrictions including revision of F001-F005 spent solvents treatment standards, conversion of wastewater standards for twenty-four "F" and "K" water codes based on scrubber standards; revisions to K061, K062 and F006 treatment standards; change of recordkeeping requirements; and clarification of rules related to wastes listed because they exhibit a characteristic as indicated in Revision Checklist 109.

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 261.3(a)&(c), 268.9, 268.41, 268.42, 268.43 and 268.46, as amended August 18, 1992 (57 FR 37194).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993). 20 NMAC 4.1.201 and .801 as amended September 23, 1994 (40 CFR Parts 261 and 268).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Parts 261 and 268 by reference at 20 NMAC 4.1.201 and .801 as amended September 23, 1994. 20 NMAC 4.1.201 and .801 are inclusive of the Land Disposal Restriction Amendments to 40 CFR Parts 261 and 268 promulgated August 18, 1992 at 57 FR 37194. NMSA 1978, §§74-4-4A and 74-4-4E provide New Mexico with the authority to adopt federal regulations by reference.

M. State statutes and regulations allow storage and treatment in containment buildings as indicated in Revision Checklist 109.

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 260.10, 262.34, 264.110, 264.111, 264.112, 264.140, 264.142, 264 Subpart DD, 265.110, 265.111, 265.112, 265.140, 265.142, 265.221, 265 Subpart DD, 268.50, 270.42 and 270.72, as amended August 18, 1992 (57 FR 37194).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978 §§74-4-4A and 74-4-4E (Repl. Pamp. 1993). 20 NMAC 4.1.101, .301, .501, .502, .601, .602, .801 and .901 as amended September 23, 1994. (40 CFR Parts 260, 262, 264, 265, 268 and 270).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Parts 260, 262, 264, 265, 268

and 270 by reference at 20 NMAC 4.1.101, .301, .501, .502, .601, .602, .801 and .901 as amended September 23, 1994. 20 NMAC 4.1.101, .301, .501, .502, .601, .602, .801 and .901 are inclusive of the Land Disposal Restriction Amendments to 40 CFR Parts 260, 262, 264, 265, 268 and 270 promulgated August 18, 1992 at 57 FR 37194. NMSA 1978, §§74-4-4A and 74-4-4E provide New Mexico with the authority to adopt federal regulations by reference.

N. State statutes and regulations provide a case-by-case extension of the land disposal effective date until May 8, 1994 for Third Third hazardous soils whose best demonstrated available technology (BDAT) was incineration, retorting or vitrification, as well as for Third Third soils contaminated with radioactive mixed waste as indicated in Revision Checklists 116 and 123.

Federal Authority: RCRA §3004(h)(3); 40 CFR 268.35(c)-(e) as amended October 20, 1992 (57 FR 47772) and May 14, 1993 (58 FR 28506).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993). 20 NMAC 4.1.801 as amended September 23, 1994 (40 CFR Part 268).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Part 268 by reference at 20 NMAC 4.1.801 as amended September 23, 1994. 20 NMAC 4.1.801 is inclusive of the amendments to 40 CFR Part 268 promulgated October 20, 1992 at 57 FR 47772 and May 14, 1993 at 58 FR 28506. NMSA 1978, §§74-4-4A and 74-4-4E provide New Mexico with the authority to adopt federal regulations by reference.

O. State statutes and regulations include land disposal restrictions and treatment standards for certain ignitable and corrosive characteristic wastes whose treatment standards were vacated, as indicated in Revision Checklist 124.

Federal Authority: RCRA §3004(d), (e) & (g); 40 CFR 268.37 as amended on May 24, 1993 (58 FR 29860).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4A and 74-4-4E (Repl. Pamp. 1993). 20 NMAC 4.1.801 as amended September 23, 1994 (40 CFR Part 268).

Remarks of the Attorney General

New Mexico incorporates 40 CFR Part 268 by reference at 20 NMAC 4.1.801 as amended September 23, 1994. 20 NMAC 4.1.801 is

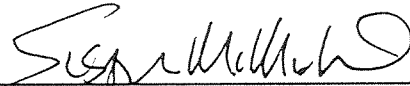
inclusive of the Land Disposal Restriction Amendments to 40 CFR Part 268 promulgated May 24, 1993 at 58 FR 29860. NMSA 1978, §§74-4-4A and 74-4-4E provide New Mexico with the authority to adopt federal regulations by reference.

THE HONORABLE TOM UDALL
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11/22/94
DATE

[rcraiii.94]

Enclosure A

EPA'S REVIEW COMMENTS CONCERNING NEW MEXICO'S RCRA CLUSTER III
AUTHORIZATION APPLICATION

Review of the RCRA Revision Checklist:

1. Checklists 109, 113 and 120: Sections 501, 502 (A) (B), 601, 602(A)(B), 801, 802 (A)(B), 901, and 902 (A-G) are not cited in the State's Attorney General's Statement (AG). Therefore, provide the equivalent citations.
2. Checklist 111: The same comments above pertains to checklist 111.
3. Checklist 114: Section 701 was included on Checklist 114 which was not cited in the State's AG Statement. Provide the equivalent citation.
4. Checklist 118 and 124: Provide equivalent citation that was cited in the State's AG Statement.

Enclosure B

EPA REVIEW COMMENTS CONCERNING NEW MEXICO'S RCRA CLUSTER III
AUTHORIZATION APPLICATION

The New Mexico State's Attorney General's (AG) Statement is in
conformance with the Model Revision Attorney General's Statement
contained in the State Program Advisory (SPA 14).