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February 26, 1996

### C E R T I F I C A T E

This certifies that attached is a copy of the NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD rule, 20 NMAC 4.1 entitled, "Hazardous Waste Management", consisting of fourteen (14) pages, seven (7) sheets, this document was filed as a rule with the State Rules Division of the State Records Center at 1:49 PM, August 24, 1994, under the provisions of Section 14-4-5, NMSA 1978 of the State Rules Act.

L. Elaine Olah  
State Records Administrator

Vickie J. Ortiz  
State Rules Division

SEAL

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*Historical*

**NMAC TRANSMITTAL FORM**

Form 1 NMAC 3.1.22

[ Sequence No. 17.11 ]

|  |
|--|
| <b>1. Agency Name &amp; Mailing Address</b>  |
| ENVIRONMENTAL IMPROVEMENT BOARD<br>P.O. BOX 26110<br>SANTA FE, NEW MEXICO 85702-6110 |

|                               |
|-------------------------------|
| <b>2. Agency Account Code</b> |
| 667                           |

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|--|
| <b>3. Type of Rule Action</b>  |
| <input type="checkbox"/> New <input checked="" type="checkbox"/> Amending <input type="checkbox"/> Repealing |

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|--|
| <b>4. NMAC Title Name &amp; Number</b> |
| ENVIRONMENTAL PROTECTION TITLE 20      |

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|--|
| <b>5. NMAC Chapter Name &amp; Number</b> |
| HAZARDOUS WASTE CHAPTER 4                |

|                                       |
|---------------------------------------|
| <b>6. NMAC Part Name &amp; Number</b> |
| HAZARDOUS WASTE MANAGEMENT PART 1     |

|  |
|--|
| <b>7. Modified NMAC Name, Number &amp; Filing Date (if applicable)</b>   |
| HAZARDOUS WASTE MANAGEMENT REGULATIONS<br>EIB/HWMR-7<br>October 21, 1992 |

|  |
|--|
| <b>8. Are there any materials incorporated by reference other than those exempted by ENMAC 3.1.17?</b> |
| <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes                                    |

|                               |                              |
|-------------------------------|------------------------------|
| <b>9. Amended Pages Added</b> | <b>Amended Pages Deleted</b> |
| 1-12                          | 1-12                         |

|                                  |                               |
|----------------------------------|-------------------------------|
| <b>10. Total Number of Pages</b> | <b>Total Number of Sheets</b> |
| 12                               | 12                            |

|                                 |
|---------------------------------|
| <b>11. Hearing Date of Rule</b> |
| August 12, 1994                 |

|                           |                     |
|---------------------------|---------------------|
| <b>12. Contact Person</b> | <b>Phone Number</b> |
| Tracy M. Hughes           | 827-2834            |

|   |                         |
|---|-------------------------|
| <b>13. Signature &amp; Title of Issuing Authority</b> | <b>14. Date Signed</b>  |
| FRANK McCLURE<br>Chair<br><i>Frank McClure</i>        | <i>19th August 1994</i> |

## NMAC TRANSMITTAL FORM INSTRUCTIONS

Please refer to 1 NMAC 3.1 New Mexico Administrative Code

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| 1. <b>Agency Name &amp; Address:</b> Please enter the complete, official agency name. Include the Division, or Bureau, if appropriate. Enter complete agency mailing address.  |
| 2. <b>Agency Account Code:</b> Please enter the agency's Department of Finance and Administration Account Code.  |
| 3. <b>Type of Rule Action:</b> "New" means a Part, Section or Paragraph which did not previously exist in the NMAC and where no pre-NMAC material existed. "Amending" means a Part, Section or Paragraph which replaces an existing Part, Section or Paragraph or replaces material of a pre-NMAC rule. "Repealing" means a Part, Section or Paragraph which removes in its entirety rule material which is intended by the agency to no longer be in force. |
| 4. - 6 <b>NMAC Name &amp; Number :</b> Please enter the complete NMAC name and number for the Title, Chapter and Part of this rule filing.   |
| 7. <b>Modified NMAC Rule Name, Number, &amp; Filing Date:</b> If the Type of Rule Action is either Amending or Repealing, please enter the complete NMAC number, name and filing date for the Part, Section and/or Paragraph of the Part, Section and/or Paragraph to be amended or repealed. If the modified rule material does not have a NMAC Name and/or Number, please enter the existing name, number and filing date.                                 |
| 8. See 1.NMAC 3.1.17.  |
| 9. <b>Amended Pages Added/Deleted:</b> Please enter the page numbers added or deleted by an amendment.   |
| 10. <b>Number of Pages/Sheets:</b> Enter the total number of pages (single sided or double sided) and the total number of sheets (single pieces of paper) that make up the rule filing.  |
| 11. <b>Hearing Date of Rule:</b> If a public hearing has been held, please enter the date.   |
| 12. <b>Contact Person:</b> Please enter the name and telephone number of the person the Records Center should contact in the event a problem arises with this rule filing.   |
| 13 <b>Signature &amp; Title of Issuing Authority:</b> Please enter the signature and title of the agency officer empowered to authorize the rule filing.   |
| 14. <b>Date of Signature:</b> Please enter the date on which the NMAC Transmittal Form is signed and submitted to the State Records Center.  |

Thank you for your assistance in completing this form.

July 1, 1994

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

TITLE 20 ENVIRONMENTAL PROTECTION  
CHAPTER 4 HAZARDOUS WASTE  
PART 1 HAZARDOUS WASTE MANAGEMENT

SUBPART I - HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. ISSUING AGENCY: Environmental Improvement Board.
2. SCOPE: All persons that generate, store, transport, or dispose of hazardous waste.
3. STATUTORY AUTHORITY: Sections 74-1-8 and 74-4-4 NMSA 1978.
4. DURATION: Permanent.
5. EFFECTIVE DATE: September 23, 1994.
6. OBJECTIVE: The objective of Part 1 of Chapter 4 is to establish regulations for the management of hazardous waste, including standards for the identification and listing of hazardous waste, for generators and transporters of hazardous waste, for owners and operators of hazardous waste treatment, storage, and disposal facilities, for specific wastes and such facilities, for land disposal restrictions, and for issuing, suspending, revoking, or modifying permits.

101. ADOPTION OF 40 CFR PART 260. Except as otherwise provided, the regulations of the United States Environmental Protection Agency ("EPA") set forth in 40 CFR Part 260 through July 1, 1993 are hereby incorporated as Subpart I of this Part.

102. MODIFICATIONS AND EXCEPTIONS. The following modifications and exceptions are made to the incorporated federal regulations:

A. The following terms defined in 40 CFR §260.10 and §270.2 have the meanings set forth herein, in lieu of the meanings set forth in 40 CFR §260.10 and §270.2:

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

1974 AUG 24 PM 1:50

2. "Act or "RCRA" (Resource Conservation and Recovery Act, as amended) means the New Mexico Hazardous Waste Act, §§74-4-1 through 74-4-14 NMSA 1978 (Repl. Pamp. 1993);

B. The following terms not defined in 40 CFR §260.10 and §270.2 have the meanings set forth herein when the terms are used in this Part:

1. "Appropriate act or regulation" means the New Mexico Hazardous Waste Act or 20 NMAC 4.1;

2. "Board" means the Environmental Improvement Board;

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

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

5. "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" and in the definition set forth in 40 CFR §260.10 and §270.2;

6. "Freedom of Information Act" or "FOIA" means §§14-2-1 through 14-2-12, 14-3A-1 through 14-3A-2, and 74-4-4.3D NMSA 1978;

7. "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 of injury to human health or property;

8. "Secretary" means the Secretary of the New Mexico Environment Department or his/her designee; and

9. "Subtitle C of RCRA" means the New Mexico Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978 (Repl. Pamp. 1993).

C. The following provisions of 40 CFR Part 260 are omitted from Subpart I of this Part:

1. §260.1(b)(6);

2. §260.22;

- 3. §260.30;
- 4. §260.31;
- 5. §260.32; and
- 6. §260.33.

D. Wherever there is any requirement in any of the federal regulations incorporated into this Part 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 at (505) 827-9329.

**SUBPART II - IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**

201. ADOPTION OF 40 CFR PART 261. The regulations of the EPA set forth in 40 CFR Part 261 through July 1, 1993 are hereby incorporated as Subpart II of this Part.

**SUBPART III - STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE**

301. ADOPTION OF 40 CFR PART 262. The regulations of the EPA set forth in 40 CFR Part 262 through July 1, 1993 are hereby incorporated as Subpart III of this Part.

**SUBPART IV - STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE**

401. ADOPTION OF 40 CFR PART 263. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 263 through July 1, 1993 are hereby incorporated as Subpart IV of this Part.

402. OMISSIONS. The following provisions of 40 CFR Part 263 are omitted from Subpart IV of this Part:

- A. §263.20(e).

**SUBPART 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 EPA set forth in 40 CFR Part 264 through July 1, 1993 are hereby incorporated as Subpart V of this Part.

1994 AUG 24 PM 1:50

**502. OMISSIONS.** The following provisions of 40 CFR Part 264 are omitted from Subpart V of this Part:

- A. §264.149; and
- B. §264.150.

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

**601. ADOPTION OF 40 CFR PART 265.** Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 265 through July 1, 1993 are hereby incorporated as Subpart VI of this Part.

**602. OMISSIONS.** The following provisions of 40 CFR Part 265 are omitted from Subpart VI of this Part:

- A. §265.149; and
- B. §265.150.

**SUBPART 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 EPA set forth in 40 CFR Part 266 through July 1, 1993 are hereby incorporated as Subpart VII of this Part.

**SUBPART VIII - LAND DISPOSAL RESTRICTIONS**

**801. ADOPTION OF 40 CFR PART 268.** The regulations of the EPA set forth in 40 CFR Part 268 through July 1, 1993 are hereby incorporated as Subpart VIII of this Part.

**SUBPART IX - THE HAZARDOUS WASTE PERMIT PROGRAM**

**901. ADOPTION OF 40 CFR PART 270.** The regulations of the EPA set forth in 40 CFR Part 270 through July 1, 1993 are hereby incorporated as Subpart IX of this Part.

**902. PERMITTING PROCEDURES.**

- A. Permit Issuance or Denial.

1994 AUG 24 PM 1:50

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, 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 §902.A.1 of this Part 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, upon 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 §902.A.4 of this Part; or

1994 AUG 24 PM 1:50

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

1994 AUG 24 PM 1:50

**B. Permit Modifications, Suspension and Revocation.**

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

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 §270.41 or 40 CFR §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 exiting permit until a new final permit is reissued.

7. If the Secretary tentatively decides to terminate a permit under 40 CFR §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 §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 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;

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.

1994 AUG 24 PM 1:50

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;

b. The type and quantity of wastes which are proposed to be or are being treated, stored, disposed, 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 procedure and the technical rules of evidence shall not apply, but the hearings shall be conducted so that all relevant views, 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



**1102. CONSTRUCTION.** This Part shall be liberally construed to effectuate the purpose of the Act.

**1103. 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 this Part shall be construed to mean the corresponding provision of §902 of this Part.

**1104. REFERENCE TO 40 CFR PART 280.** Reference to any provisions of 40 CFR Part 280 within the text of any other provision of 40 CFR as adopted by this Part shall be construed to mean the New Mexico Underground Storage Tank Regulations.

**1105. SEVERABILITY.** If any provision or application of this Part is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

**1106. EFFECT OF STAY OR INVALIDATION OF INCORPORATED FEDERAL REGULATION.** If any federal regulation incorporated by reference in this Part is stayed, invalidated, or otherwise rendered unenforceable by EPA, in whole or in part, by action of a federal court, such incorporated federal regulation shall be enforceable by the Department only to the extent it is enforceable by EPA.

**1107. AMENDMENT OF PRIOR REGULATIONS.** This Part shall be construed as amendments to the Hazardous Waste Management Regulations, EIB/HWMR-7, filed October 21, 1992, as amended.

**1108. SAVING CLAUSE.** Amendment of EIB/HWMR-7 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-7.