

US EPA ARCHIVE DOCUMENT

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

HSWA CLUSTERS I AND II  
(with Corrective Action)

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 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, July 1994, August 1994 and November 1994.

XIII. CORRECTIVE ACTION.

A. State statutes and regulations contain the following corrective action requirements as indicated in Revision Checklist 17L:

- (1) Corrective action is required for releases of hazardous waste or constituents from any solid waste management unit at a facility seeking a permit, regardless of when the waste was placed in the unit, in all permits issued after November 8, 1984.

Federal Authority: RCRA §3004(u); 40 CFR 264.90, 264.101 and 270.60 as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4(A)(5)(h), 74-4-4(E), 74-4-4.2(B)(C) and 74-4-10(E) (Repl. Pamp. 1993). 20 NMAC 4.1.501, .502 and .901 as amended September 23, 1994 (40 CFR Parts 264 and 270).

Remarks of the Attorney General

New Mexico has statutory and regulatory authority to require corrective action for releases of hazardous waste or constituents from any solid waste management unit at a facility seeking a permit, regardless of when the waste was placed in the unit. New Mexico incorporates 40 CFR Parts 264 and 270 by reference, with a few exceptions, at 20 NMAC 4.1.501, .502 and .901. 20 NMAC 4.1.501, .502 and .901 are inclusive of the amendments to 40 CFR Parts 264

and 270 promulgated July 15, 1985 at 50 FR 28702. NMSA 1978, §§74-4-4(A)(5)(h) and 74-4-4(E) provide New Mexico with the authority to adopt federal regulations by reference, including standards for taking corrective action. New Mexico has additional authority for to require an owner or operator seeking a hazardous waste permit to take such corrective action pursuant to Section 74-4-4.2(B)(C). Section 74-4-10(E) provides New Mexico with authority to issue an order requiring corrective action for a facility seeking a permit where there is or has been a release of hazardous waste into the environment from a facility.

- (2) Corrective action is required beyond a facility's boundary, in accordance with RCRA §3004(v).

Federal Authority: RCRA §3004(v)(1); 40 CFR §§264.100(e) and 264.101(c) as amended December 1, 1987 (52 FR 45788).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4(A)(5)(i), 74-4-4(E), 74-4-4.2(B) and 74-4-10(E) (Repl. Pamp. 1993). 20 NMAC 4.1.501 and .502 as amended September 23, 1994 (40 CFR Part 264).

Remarks of the Attorney General

New Mexico has statutory and regulatory authority to require corrective action for releases of hazardous waste or constituents beyond a facility's boundary as necessary to protect human health and the environment as a permit condition or corrective action order. New Mexico incorporates 40 CFR Part 264 by reference, with a few exceptions, at 20 NMAC 4.1.501 and .502. 20 NMAC 4.1.501 and .502 are inclusive of the amendments to 40 CFR Part 264 promulgated December 1, 1987 at 52 FR 45788. NMSA 1978, §§74-4-4(A)(5)(i) and 74-4-4(E) provide New Mexico with the authority to adopt federal regulations by reference, including standards for taking corrective action. New Mexico has additional authority to require corrective action beyond a facility's boundary pursuant to NMSA 1978, §§74-4-4.2(B) and 74-4-10(E).

- (3) Corrective action is required beyond a facility's boundary in accordance with RCRA §3004(v) for all landfills, surface impoundments and waste pile units (including any new units, replacements of existing units or lateral expansions of existing units) which receive hazardous waste after July 26, 1982.

Federal Authority: RCRA §3004(v)(2); 40 CFR 264.90 and 264.100(e).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4(A)(5)(i), 74-4-4(E), 74-4-4.2(B) and 74-4-10(E)(Repl. Pamp. 1993). 20 NMAC 4.1.501 and .502 as amended September 23, 1994 (40 CFR Part 264).

Remarks of the Attorney General

New Mexico has statutory and regulatory authority to require corrective action for releases of hazardous waste or constituents for all landfills, surface impoundments and waste pile units (including any new units, replacements of existing units or lateral expansions of existing units) as necessary to protect human health and the environment as a permit condition or corrective action order. New Mexico incorporates 40 CFR Part 264, with a few exceptions, at 20 NMAC 4.1.501 and .502. NMSA 1978, §§74-4-4(A)(5)(i) and 74-4-4(E) provide New Mexico with the authority to adopt federal regulations by reference, including standards for taking corrective action. New Mexico has additional authority to require corrective action beyond a facility's boundary pursuant to NMSA 1978, §§74-4-4.2(B) and 74-4-10(E).

- (4) There is evidence of financial responsibility for corrective action on- and off-site.

Federal Authority: RCRA §§3004(a)(6); (u); 40 CFR 264.90 and 264.101 as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4(A)(5)(f) and (i), 74-4-4(E), 74-4-4.2(B) and 74-4-10(E)(Repl. Pamp. 1993). 20 NMAC 4.1.501 and .502 as amended September 23, 1994 (40 CFR Part 264).

Remarks of the Attorney General

New Mexico has statutory and regulatory authority to require a facility to provide evidence of financial responsibility for on-site and off-site corrective action. NMSA 1978, §§74-4-4A(5)(f)(i) and 74-4-4(E) provide New Mexico the authority to adopt federal regulations by reference, including the requirement to provide financial assurances for corrective action. New Mexico incorporates 40 CFR Part 264 by reference, with a few exceptions, at 20 NMAC 4.1.501 and .502 as amended September 23, 1994. 20 NMAC 4.1.501 and .502 are inclusive of the amendments to 40 CFR Part 264 promulgated July 15, 1985 at 50 FR 28702. NMSA 1978, §§74-4-4.2(B) and 74-4-10(E) provide New Mexico further authority to require financial assurance for on and off-site corrective action as necessary to protect human health and the environment.

C. State statutes and regulations require owners and operators of facilities seeking permits to provide descriptive information on the solid waste management units themselves and all available information pertaining to any releases from the units as indicated in Revision Checklist 44 A.

Federal Authority: RCRA §3004(u); 40 CFR 270.14 as amended December 1, 1987 (52 FR 45788).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4(A)(6), 74-4-4(E) and 74-4-4.2(A)(Repl. Pamp. 1993). 20 NMAC 4.1.901 as amended September 23, 1994 (40 CFR Part 270).

Remarks of the Attorney General

New Mexico has statutory and regulatory authority to require owners and operators of facilities seeking permits to provide descriptive information on the solid waste management units themselves and all available information pertaining to any releases from units as indicated in Revision Checklist 44 A. New Mexico incorporates the information requirements for permits set forth in 40 CFR Part 270 by reference at 20 NMAC 4.1.901 as amended September 23, 1994. 20 NMAC 4.1.901 is inclusive of the amendments to 40 CFR Part 270 promulgated December 1, 1987 at 52 FR 45788. NMSA 1978, §§74-4-4(A)(6) and 74-4-4(E) provide New Mexico with the authority to adopt federal regulations by reference, including the information requirements for a permit set forth in 40 CFR Part 270. New Mexico has additional authority to require such information pursuant to NMSA 1978, §74-4-4.2(A).

D. State statutes and regulations require that owners and operators of hazardous waste treatment, storage and disposal facilities (including permits-by-rule facilities subject to 264.101) institute corrective action beyond the facility boundary to protect human health and the environment, unless the owner/operator is denied access to adjacent lands despite the owner/operator's best efforts, as indicated in Revision Checklist 44 B.

Federal Authority: RCRA §3004(v); 40 CFR 264.100(e) and 264.101(c) as amended December 1, 1987 (52 FR 45788).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4(A)(5)(i), 74-4-4(E), 74-4-4.2(B), 74-4-10(E)(Repl. Pamp. 1993). 20 NMAC 4.1.501 and .502 as amended September 23, 1994 (40 CFR Part 264).

Remarks of the Attorney General

New Mexico has statutory and regulatory authority to require owners and operators of hazardous waste treatment, storage and disposal facilities to institute corrective action beyond the facility boundary to protect human health and the environment, unless the owner/operator is denied access to adjacent lands despite the owner/operator's best efforts, as indicated in Revision Checklist 44 B. New Mexico incorporates 40 CFR Part 264 by reference, with a few exceptions, at 20 NMAC 4.1.501 and .502. 20 NMAC 4.1.501 and .502 are inclusive of the amendments to 40 CFR Part 264 promulgated December 1, 1987 at 52 FR 45788. NMSA 1978, §§74-4-4(A)(5)(i) and 74-4-4(E) provide New Mexico with the authority to adopt federal regulations by reference, including the corrective action requirements beyond a facility's boundary set forth under 40 CFR Part 264. New Mexico has additional authority to require corrective action beyond the facility boundary pursuant to NMSA 1978, §§74-4-4.2(B) and 74-4-10(E).

E. State statutes and regulations contain the following corrective action requirements for injection wells as indicated in Revision Checklist 44 C.

- (1) Hazardous Waste injection wells now operative under RCRA interim status may retain interim status after issuance of a UIC permit. Until a RCRA permit or a RCRA "rider" to a UIC permit, which addresses Section 3004(u) corrective action, is issued, the well must comply with applicable interim status requirements imposed by §265.230, Parts 144.146 and 147, and any UIC permit requirements.

Federal Authority: RCRA §3004(u); 40 CFR 144.1(h) as amended December 1, 1987 (52 FR 45788).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: Not Applicable<sup>1</sup>

Remarks of the Attorney General

See above

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<sup>1</sup>. New Mexico is not authorized by EPA under the UIC program for Class I hazardous injection wells, and further, there are no present underground injections within the State for Class I hazardous wells pursuant to 40 CFR §145.21(e). Therefore, Checklist 44 C provisions regarding 40 CFR Part 144 are not applicable pursuant to EPA's instructions for Checklist 44 C.

- (2) As part of the UIC permit process, available information regarding operating history and condition of the injection well must be submitted as well as any available information on known releases from the well or injection zone.

Federal Authority: RCRA §3004(u); 40 CFR 144.31(g) as amended December 1, 1987 (52 FR 45788).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: Not applicable - see footnote

Remarks of the Attorney General

See above

- (3) UIC facility owners/operators must submit certain information related to corrective action with their UIC applications.

Federal Authority: RCRA §3004(u); 40 CFR 270.60(b)(3) as amended December 1, 1987 (52 FR 45788).

Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§ 74-4-4(A)(5)(f), (h) and (i), 74-4-4(E) and 74-4-4.2(B)(Repl. Pamp. 1993). 20 NMAC 4.1.901 as amended December 1, 1987 (40 CFR Part 270).

Remarks of the Attorney General

New Mexico has statutory and regulatory authority to require the owner or operator of an injection well dispensing of hazardous waste to submit certain information related to corrective action with their UIC application. New Mexico incorporates the requirements for permits set forth in 40 CFR 270.60(b)(3) as amended December 1, 1987 at 52 FR 45788. 20 NMAC 4.1.901 is inclusive of the amendments to 40 CFR Part 270 promulgated December 1, 1987 at 52 FR 45788. NMSA 1978, §§74-4-4(A)(5)(f), (h) and (i), 74-4-4(E) and 74-4-4.2(B) provide New Mexico with the authority to adopt federal regulations by reference, including the requirement for an owner or operator of an injection well dispensing of hazardous waste to submit certain information related to corrective action with their UIC application.

XVI. REQUIREMENTS FOR PERMITS.

H. State statutes and regulations require landfills, surface impoundments, land treatment units, and waste piles that receive waste after July 26, 1982 and which qualify for interim status to

comply with the groundwater monitoring, unsaturated zone monitoring, and corrective action requirements applicable to new units at the time of permitting as indicated in Revision Checklist 17 L.

Federal Authority: RCRA §3005(i); 40 CFR 264.90(a) as amended July 15, 1985 (50 FR 28702).


Citation of Laws and Regulations; Date of Enactment and Adoption

Statutory Authority: NMSA 1978, §§74-4-4(A)(5), 74-4-4(E), 74-4-10(E) and 74-4-10.1 (Repl. Pamp. 1993). 20 NMAC 4.1.501 and .502 as amended September 23, 1994 (40 CFR Part 264).

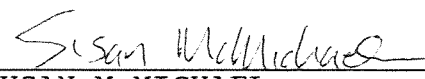
Remarks of the Attorney General

New Mexico has authority to require landfills, surface impoundments, land treatment units, and waste piles that receive waste after July 26, 1982 and which qualify for interim status to comply with the groundwater monitoring, unsaturated zone monitoring, and corrective action requirements applicable to new units at the time of permitting as indicated in Revision Checklist 17 L. New Mexico incorporates 40 CFR Part 264 by reference, with a few exceptions, at 20 NMAC 4.1.501 and .502 as amended September 23, 1994. 20 NMAC 4.1.501 and .502 are inclusive of the amendments to 40 CFR Part 264 promulgated July 15, 1985 at 50 FR 28702. NMSA 1978, §§74-4-4(A)(5) and 74-4-4(E) provide New Mexico with the authority to adopt federal regulations by reference, including standards applicable for groundwater monitoring, unsaturated zone monitoring and corrective action requirements. New Mexico has additional authority to require such compliance pursuant to NMSA 1978, §§74-4-10(E) and 74-4-10.1.

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