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PROGRAM
REVISIONS
(RCRA IV)

does not
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actions

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD
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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. [9-23-94]
- 2. SCOPE: All persons that generate, store, transport, or dispose of hazardous waste. [9-23-94]
- 3. STATUTORY AUTHORITY: NMSA 1978, Sections 74-1-8 and 74-4-4 (Repl. Pamp. 1993). [9-23-94, 11-1-95]
- 4. DURATION: Permanent. [9-23-94]
- 5. EFFECTIVE DATE: November 1, 1995. [9-23-94, 11-1-95]
- 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. [9-23-94, 11-1-95]
- 7. - 100. [Reserved] [11-1-95]
- 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, 1994 are hereby incorporated as Subpart I of this Part. [6-9-89 ... 11-1-95]

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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;

2. "Act or "RCRA" (Resource Conservation and Recovery Act, as amended) means the New Mexico Hazardous Waste Act, NMSA 1978, §§74-4-1 through 74-4-14 (Repl. Pamp. 1993); [6-9-89 . . . 11-1-95]

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," "EPA identification number," "EPA Region," "EPA Acknowledgment of Consent," "EPA Test Methods," and in the definition set forth in 40 CFR §260.10 and §270.2; [6-9-89 . . . 11-1-95]

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

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;

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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, NMSA 1978, §§74-4-1 through 74-4-14 (Repl. Pamp. 1993). [6-9-89 . . . 11-1-95]

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

1. §260.1(b)(6);
2. §260.20;
3. §260.22;
4. §260.30;
5. §260.31;
6. §260.32; and
7. §260.33. [6-9-89 . . . 11-1-95]

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 at (505) 827-9329. [6-9-89, 10-21-92]

103. - 199. [Reserved] [11-1-95]

SUBPART II - IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

200. **ADOPTION OF 40 CFR PART 261.** Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 261 through July 1, 1994 are hereby incorporated as Subpart II of this Part. [20 NMAC 4.1.201, 6-9-89 . . . 11-1-95]

201. - 299. [Reserved] [11-1-95]

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SUBPART III - STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

300. ADOPTION OF 40 CFR PART 262. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 262 through July 1, 1994 are hereby incorporated as Subpart III of this Part. [20 NMAC 4.1.301, 6-9-89 . . . 11-1-95]

301. OMISSIONS. The following provision of 40 CFR Part 262 is omitted from Subpart III of this Part:

- A. §262.51-57. [11-1-95]

302. - 399. [Reserved] [11-1-95]

SUBPART IV - STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

400. 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, 1994 are hereby incorporated as Subpart IV of this Part. [20 NMAC 4.1.401, 6-9-89 . . . 11-1-95]

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

- A. §263.20(e). [20 NMAC 4.1.402, 6-9-89]

402. - 499. [Reserved] [11-1-95]

SUBPART V - STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

500. 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, 1994 are hereby incorporated as Subpart V of this Part. The substitution of the term "EPA" in Subpart I does not apply to the required notice set forth in 40 CFR §264.12(a), as adopted in this Part. [20 NMAC 4.1.501, 6-9-89 . . . 11-1-95]

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

- A. §264.149;
- B. §264.150; and

C. §264.301(1). [20 NMAC 4.1.502, 6-9-89 . . . 11-1-95]

502. - 599. [Reserved] [11-1-95]

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

600. **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, 1994 are hereby incorporated as Subpart VI of this Part. The substitution of term "EPA" in Subpart I does not apply to the required notice set forth in 40 CFR §265.12(a), as adopted in this Part. [20 NMAC 4.1.601, 6-9-89 . . . 11-1-95]

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

A. §265.149; and

B. §265.150. [20 NMAC 4.1.602, 6-9-89]

602. - 699. [Reserved] [11-1-95]

**SUBPART VII - STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS
WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE
MANAGEMENT FACILITIES**

700. **ADOPTION OF 40 CFR PART 266.** Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 266 through July 1, 1994 are hereby incorporated as Subpart VII of this Part. [20 NMAC 4.1.701, 6-9-89 . . . 11-1-95]

701. - 799. [Reserved] [11-1-95]

SUBPART VIII - LAND DISPOSAL RESTRICTIONS

800. **ADOPTION OF 40 CFR PART 268.** Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 268 through July 1, 1994 are hereby incorporated as Subpart VIII of this Part. The substitution of the term "EPA" in Subpart I does not apply in 40 CFR §268.1(e)(3), as adopted in this Part. [20 NMAC 4.1.801, 6-9-89 . . . 11-1-95]

801. - 899. [Reserved] [11-1-95]

SUBPART IX - THE HAZARDOUS WASTE PERMIT PROGRAM

900. ADOPTION OF 40 CFR PART 270. Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 270 through July 1, 1994 are hereby incorporated as Subpart IX of this Part. The substitution of the terms "EPA," "Regional Administrator," and "Administrator" in Subpart I does not apply in 40 CFR §270.5, §270.10(f)(2)&(3), §270.10(g)(1)(i), §270.11(a)(3), §270.32(c), §270.72(a)(5), and §270.72(b)(5), as adopted in this Part. [20 NMAC 4.1.901, 6-9-89 . . . 11-1-95]

901. PERMITTING PROCEDURES.

A. Permit Issuance or Denial.

1. Once an application is determined to be administratively and technically complete, the Secretary shall prepare and issue either a Draft Permit or a Notice of Intent to Deny. [6-9-89 . . . 11-1-95]

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. [6-9-89]

b. A Notice of Intent to Deny shall state the Secretary's reasons for the intended denial. [6-9-89]

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. [6-9-89 . . . 11-1-95]

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. [6-9-89 . . . 10-21-92]

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. [6-9-89 . . . 10-21-92]

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

c. the Secretary determines, no later than five (5) days following the end of the comment period specified in §902.A.3 of this Part, that a public hearing should be held notwithstanding the absence of a timely request for public hearing. [6-9-89 . . . 11-1-95]

6. The comment period specified in §902.A.3 of this Part shall automatically be extended to the close of any public hearing. [6-9-89 . . . 11-1-95]

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. [6-9-89 . . . 10-21-92]

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. [6-9-89 . . . 10-21-92]

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;

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b. briefly describe and respond to all 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. [6-9-89 . . . 11-1-95]

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. [6-9-89 . . . 10-21-92]

11. The approval of a permit does not relieve any person from the responsibility of complying with applicable state or federal laws and regulations. [6-9-89, 12-11-89]

12. The Secretary shall notify the applicant by certified mail of any impending permit action and of any scheduled public hearing date. [6-9-89 . . . 10-21-92]

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. [6-9-89 . . . 11-1-95]

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. [6-9-89 . . . 10-21-92]

3. Requests for permit modification, suspension, revocation shall be in writing and shall contain facts or reasons supporting the request. [6-9-89 . . . 10-21-92]

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. [6-9-89 . . . 10-21-92]

5. If the Secretary 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. [6-9-89 . . . 11-1-95]

6. In a permit modification under this section, only those conditions to be modified shall be reopened. 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. [6-9-89 . . . 11-1-95]

7. If the Secretary decides to terminate a permit under 40 CFR §270.43, a notice of intent to terminate shall be issued. The Secretary shall follow the applicable procedures as required for a Draft Permit under §902 of this Part. [6-9-89 . . . 11-1-95]

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. [6-9-89 . . . 10-21-92]

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;

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- 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. [6-9-89 . . . 10-21-92]

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. [6-9-89 . . . 10-21-92]
- 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:

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(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. [6-9-89 . . . 2-11-91]

3. The fact sheet shall be available at the time the public notice is published. [6-9-89]

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. [6-9-89, 2-11-91]

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. [6-9-89, 2-11-91]

3. The Secretary may designate a hearing officer to take evidence at the hearing. [6-9-89, 2-11-91]

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. [6-9-89, 2-11-91]

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. [6-9-89, 2-11-91]

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. [6-9-89, 2-11-91]

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. [6-9-89, 2-11-91]

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. [6-9-89, 2-11-91]

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, the burden of proof shall be on the Department. [6-9-89, 2-11-91]

F. Secretary's Decision.

1. Any person heard or represented at the hearing shall be given written notice of the action of the Secretary. [6-9-89, 2-11-91]
2. The Secretary shall notify the applicant or permittee of his/her decision and the reasons therefore by certified mail. [6-9-89, 2-11-91]

G. Appeals. Appeals of the Secretary's decision shall be as provided by the Hazardous Waste Act. [2-11-91, 10-21-92]

1. The filing of an appeal does not act as a stay of any action required by the Secretary's decision. [2-11-91, 10-21-92]
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. [20 NMAC 4.1.902, 2-11-91, 10-21-92]

902. - 999. [Reserved] [11-1-95]

SUBPART X - MISCELLANEOUS

1000. - 1100. [Reserved] [11-1-95]

1101. COMPLIANCE WITH OTHER REGULATIONS. Compliance with this Part does not relieve a person of the obligation to comply with all other applicable state and federal regulations. If the EPA should suspend any federal hazardous waste regulation having a direct counterpart to these regulations, the counterpart in these regulations shall be deemed suspended without any further action being taken. [6-9-89, 9-23-94]

1102. CONSTRUCTION. This Part shall be liberally construed to effectuate the purpose of the Act. [6-9-89]

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. [2-11-91, 10-21-92]

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. [9-23-94]

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. [6-9-89]

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. [2-11-91]

1107. AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS. Effective September 23, 1994, this Part amended and superseded the Hazardous Waste Management Regulations, filed October 21, 1992, as amended (EIB/HWMR-7). This Part was amended effective November 1, 1995. [6-9-89 . . . 11-1-95]

1108. SAVING CLAUSE. Amendment and supersession of EIB/HWMR-7 and this Part 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. [6-9-89 . . . 11-1-95]

1109. AVAILABILITY OF MATERIALS INCORPORATED BY REFERENCE. Materials incorporated by reference into this Part may be reviewed at the New Mexico Hazardous and Radioactive Materials Bureau, 2044 Galisteo, Santa Fe, New Mexico 87505. [11-1-95]