

US EPA ARCHIVE DOCUMENT

**PROGRAM DESCRIPTION  
NEW MEXICO ENVIRONMENT DEPARTMENT  
HAZARDOUS WASTE MANAGEMENT PROGRAM  
THROUGH RCRA CLUSTER XII  
OCTOBER 2005**

**I. INTRODUCTION**

The New Mexico Environment Department (NMED) is EPA responsible for administering all hazardous waste regulations for the State of New Mexico. This document provides a description of the hazardous waste regulatory program administered by NMED. It replaces the June 2000 Program Descriptions (PD) submitted as a part of the State's application for authorization.

This program Description reflects the New Mexico Hazardous Waste Management Program (HWMP) as authorized, and also summarizes the implementation of the program. This PD is prepared in accordance with the requirements of 40 CFR §271.6.

The PD is organized as follows: Section II describes the scope, structure, coverage, and process of the HWMP and includes a discussion of the differences between the Federal and State laws and regulations. Section III provides a description of NMEDs responsibilities for administering the program and organizational structure of the program. Section IV provides an overview of staff and financial resources required to carry out the activities of the authorized program and the impact on the existing program. Section V describes the HWMP procedures that are used to implement the program. Section VI provides for the State's compliance tracking and enforcement processes and resources. Section VII indicates the estimated regulated activities within the State. The Appendix includes forms and other explanatory information to assist in explaining the HWMP for New Mexico.

**II. SCOPE, STRUCTURE, COVERAGE, AND PROCESSES**

**II.A. Scope and Coverage of Program Revision**

The HWMP within New Mexico is based upon the New Mexico Hazardous Waste Act (HWA), NMSA 1978, Section §§ 74-4-1 through 74-4-14, as amended (**Attachment A**). The HWA grants the New Mexico Environment Department (NMED) authority to regulate hazardous waste in New Mexico by authorizing the Environmental Improvement Board (EIB) to adopt regulations for the management of hazardous waste that are equivalent to and no more stringent than the federal RCRA regulations adopted by the federal EPA pursuant to federal RCRA of 1976, as amended.

The State program now has in place statutory authority and regulations for all required program components through RCRA Cluster XII. These statutory and regulatory provisions were developed to provide authority corresponding to the Federal program; therefore, the State program is equivalent to, consistent with, and no less stringent than the Federal program.

The State received final authorization for the base RCRA Program from the United States Environmental Protection Agency (EPA) on January 11, 1985 (50 FR 1515) effective January 25, 1985. New Mexico has also received authorization for revisions to its program on February 9, 1990 (55 FR 4604) effective April 10, 1990; July 11, 1990 (55FR 28397) effective July 25, 1990; October 5, 1992 (57 FR 45717) effective December 4, 1992; June 9, 1994 (59 FR 29734) effective August 23, 1994; October 7, 1994 (59 FR 51122) effective December 21, 1994; April 25, 1995 (60 FR 20238) effective July 10, 1995; October 17, 1995 (60 FR 2450) effective January 2, 1996; December 23, 1996 (61 FR 67474) effective March 10 1997; and August 10, 2001 (66 FR 42140) effective October 9, 2001. Since the latest authorization the scope, structure, coverages, and processes have not materially changed with the exception of the Used Oil program. The Used Oil program has been adopted within the HWMP but New Mexico does not have statutory authority for criminal penalties as required by EPA for program authorization.

The adopted regulations include all required rules for the Base Program and Clusters for Non-HSWA, Non-HSWA I through Non-HSWA VI, HSWA I and II, RCRA I through RCRA XII (**Attachment E**). The regulations most recently adopted include rules from RCRA X, XI and XII, and optional rules from various clusters to which New Mexico is seeking authorization. The New Mexico Hazardous Waste Management Regulations (HWMR), 20.4.1 NMAC (**Attachment B**), incorporates through the July 1, 2002 the Code of Federal Regulations, 40 CFR Parts 260 through 270, 273, and 279. The HWMR regulations can be found at [www.nmcpr.state.nm.us](http://www.nmcpr.state.nm.us) under Title 20, Environmental Protection, Chapter 4, Part 1. Also, the HWMR has incorporated 40 CFR sections 124.31, 124.32 and 124.33. The New Mexico HWMP corresponds to the federal program (**Attachment D**) with a few exceptions and is outlined in section II.B.

### II.A.1 Revision Checklists

The regulatory program described reflects the base program and subsequent rules for which New Mexico is already authorized (**Attachment C**). The Revision Checklists (**Attachment L**) provide for the corresponding New Mexico HWA or HWMR cites. New Mexico is seeking authorization for rules within the Clusters X, XI, and XII, and a number of optional rules from previous Clusters, as outlined below:

#### Non-HSWA Cluster IV (Checklist 26.2)

<b>Rule Title:</b>	Listing of Spent Pickle Liquor (KO62) (Revision Checklists 26, 26.1, and 26.2)
<b>Checklist Title:</b>	Listing of Spent Pickle Liquor (KO62)
<b>Reference:</b>	51 FR 19320-19322, 51 FR 33612 (Correction 1), and 52 FR 28697 (Correction 2)
<b>Promulgation Date:</b>	May 28, 1986, September 22, 1986 (Correction 1), August 3, 1987 (Correction 2)
<b>Effective Date:</b>	June 27, 1986
<b>Cluster:</b>	Non-HSWA Cluster II
<b>Provision Type:</b>	Non-HSWA
<b>Optional:</b>	Yes

Revision Checklist 26 and 26.1 have been authorized for New Mexico on April 10, 1990. New Mexico has not received authorization for the Listing of Spent Pickle Liquor (KO62) Correction 2 as provided for in Revision Checklist 26.2. New Mexico is therefore requesting authorization for this checklist.

#### **Non-HSWA Cluster V (Checklists 54 and 54.1)**

**Rule Title:** Permit Modifications for Hazardous Waste Management Facilities (Revision Checklist 54 and 54.1)  
**Checklist Title:** Permit Modifications for Hazardous Waste Management Facilities  
**Reference:** 53 FR 37912; 53 FR 41649 (Correction 1)  
**Promulgation Date:** September 28, 1988, October 24, 1988 (Correction 1)  
**Effective Date:** October 28, 1988  
**Cluster:** Non-HSWA V  
**Provision Type:** Non-HSWA  
**Optional:** Yes

**Summary:** This amends the regulations under RCRA governing modifications of hazardous waste management permits. This rule establishes procedures that apply to changes that facility owners and operations may want to make at their facilities. EPA has categorized selected permit modifications into three classes and established administrative procedures for approving modifications in each of these classes. The purpose of these amendments is to provide owner and operators more flexibility to change specified permit conditions, to expand public notification and participation opportunities, and to allow for expedited approval if no public concern exists for a proposed permit modification.

#### **RCRA Cluster I (Checklists 80, 80.1, 80.2, 84, and 89)**

**Rule Title:** Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Toxicity Characteristic; Hydrocarbon Recovery Operations (Revision Checklists 80, 80.1, and 80.2)  
**Checklist Title:** Toxicity Characteristic; Hydrocarbon Recovery Operations  
**Reference:** 55 FR 40834; 56 FR 3978 (Correction 1); 56 FR 13406 (Correction 2)  
**Promulgation Date:** October 5, 1990; February 1, 1991 (Correction 1); April 2, 1991 (Correction 2)  
**Effective Date:** September 25, 1990; February 1, 1991; March 25, 1991  
**Cluster:** RCRA I  
**Provision Type:** HSWA  
**Optional:** Yes

**Summary:** EPA promulgated revisions on March 29, 1990 to the toxicity characteristic, on of the tests used to determine whether particular wastes are regulated as hazardous under subtitle C of RCRA. New information acquired by EPA since promulgation of the Toxicity Characteristic (TC) rule indicates immediate application of the TC could prevent continued operation of hydrocarbon recovery and remediation activities currently being conducted at a number of petroleum refineries,

marketing terminals and bulk plants handling crude petroleum and immediate products of petroleum refining. EPA believes that cessation of these activities may pose a substantially greater risk to human health and the environment than their continued operation under existing regulatory authorities. As a result of this new information EPA promulgated an interim rule, which extends the compliance date of the TC rule for petroleum refineries, marketing terminals and bulk plants.

On October 5, 1990, EPA promulgated the interim final rule extending the compliance date of the Toxicity Characteristic to January 25, 1991 for groundwater that is re-injected or re-infiltrated during existing hydrocarbon recovery operations at petroleum refineries, marketing terminals and bulk plants. This action extended the compliance date until March 25, 1991, in order to allow EPA sufficient time to fully evaluate comments received on the issue.

On November 7, 1990, EPA proposed to extend the compliance date for the Toxicity Characteristic (TC) until January 25, 1993 for produced groundwater from free phase hydrocarbon recovery operations at certain petroleum industry sites—namely, refineries, marketing terminals and bulk plants. Made aware of likely disruptions to cleanup at these facilities after the TC rulemaking process, EPA concluded that an extension of the compliance date would ensure that these operations would not be interrupted and thereby avoids setbacks in their remediation activities. EPA is made this extension final. The scope has been expanded to include free hydrocarbon recovery operations at petroleum pipeline and transportation sector spill sites as well as petroleum refineries, marketing terminals and bulk plants.

**Rule Title:** Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic (Revision Checklist 84)  
**Checklist Title:** Toxicity Characteristic; Chlorofluorocarbon Refrigerants  
**Reference:** 56 FR 5910  
**Promulgation Date:** February 13, 1991  
**Effective Date:** February 5, 1991  
**Cluster:** RCRA I  
**Provision Type:** HSWA  
**Optional:** Yes

**Summary:** On March 29, 1990 the EPA promulgated revisions to the toxicity characteristic, one of several characteristics used to identify waste regulated as hazardous under Subtitle C of RCRA. EPA has received information that the rule's immediate application may cause certain used chlorofluorocarbon (CFC) refrigerants to be subject to hazardous waste regulations because they exhibit the TC. EPA is concerned that subjecting used CFC refrigerants to Subtitle C regulations will promote continued or increased venting, increasing the levels of ozone-depleting substances in the stratosphere. EPA is promulgating this interim final rule to suspend TC rule for used refrigerants which exhibit the toxicity characteristic and which are recycled.

**Rule Title:** Hazardous Waste Management System; Identification and Listing of Hazardous Waste; CERCLA Hazardous Substance Designation – Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge

**Checklist Title:** Listings (Revision Checklist 89)  
 Revision to the Petroleum Refining Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038)  
**Reference:** 56 FR 21955  
**Promulgation Date:** May 13, 1991  
**Effective Date:** May 2, 1991  
**Cluster:** RCRA I  
**Provision Type:** HWSA  
**Optional:** Yes

**Summary:** On November 2, 1990 EPA promulgated regulations under RCRA to add two wastes to the list of hazardous wastes under 40 CFR § 261.31. These wastes, designated as F037 and F038, are generated in the separation of oil/water/solids from petroleum refinery process wastewaters and oily cooling wastewaters. New information acquired by EPA since the promulgation of the F037 and F038 listings indicates that inclusion of non-contact, once-through cooling waters in the definition of "oily cooling waters" has included within the scope of the listing separation sludges that are not similar in constituent concentration or oil/grease content to other sludges generated in the separation of oil/water/solids from petroleum refinery process wastewaters and oily cooling waters.

#### **RCRA Cluster III (Checklists 107, 117A, 117A.1, 117A.2, 119, and 119.1)**

**Rule Title:** Hazardous Waste Management System; General; Identification and Listing of Hazardous Waste; Used Oil (Revision Checklist 107)  
**Checklist Title:** Used Oil Filter Exclusion; Technical Corrections  
**Reference:** 57 FR 29220  
**Promulgation Date:** July 1, 1992  
**Effective Date:** July 1, 1992  
**Cluster:** RCRA III  
**Provision Type:** HSWA  
**Optional:** Yes, conditionally optional

**Summary:** EPA is correcting errors in the hazardous waste regulations that appeared in the Federal Register on May 20, 1992 [57 FR 21534]. In that Federal Register, EPA issue a final listing determination for used oil that is disposed and promulgated an exclusion from the definition of hazardous waste for certain used oil filters that have been drained. This action corrects two typographical errors in that final rule, one in the preamble discussion and one in the regulatory language at 40 CFR § 261.4 (b)(15).

**Rule Title:** Hazardous Waste Management System; Definition of Hazardous Waste "Mixture" and "Derived-From" Rules (Revision Checklist 117A, 117A.1 and 117A.2)  
**Checklist Title:** Reissuance of the "Mixture" and "Derived-From" Rules  
**Reference:** 57 FR 7628; 57 FR 23062; 57 FR 49278

**Promulgation Date:** March 3, 1992; June 1, 1992; October 30, 1992  
**Effective Date:** February 18, 1992; June 1, 1992; October 30, 1992  
**Cluster:** RCRA III  
**Provision Type:** HSWA and Non-HSWA  
**Optional:** Yes

**Summary:** EPA promulgated the “mixture” and “derived-from” rules to close a potentially major loophole in the hazardous waste management system. Without the “mixture” rule, generators of hazardous waste could perhaps evade regulatory requirements by mixing hazardous waste with non-hazardous waste and claiming that the mixture was no longer hazardous, even though it poses environmental hazards. Without a “derived-from” rule, owners and operators of treatment, storage and disposal facilities could perhaps evade regulations by minimally processing a hazardous waste and claiming that the residue was no longer hazardous.

On March 3, 1992 the EPA announced the interim final promulgation of 40 CFR § 261.3, including the “mixture” and “derived-from” rules. These rules are part of the definition of hazardous waste under Subtitle C of RCRA. The rules define “hazardous waste” to include mixtures of hazardous waste with other solid waste and the residue from managing listed hazardous waste. This notice restores language to 40 CFR § 261.3 that EPA inadvertently omitted from the interim final rulemaking.

This action responds to public comment on two proposals [57 FR 7637], March 3, 1992 and [57 FR 21450], May 20, 1992 to modify EPA’s hazardous waste identification rules under RCRA. Because of the large number of comments received by EPA and the need to evaluate all of the technical information provided by the public, EPA is removing the April 28, 1993 expiration date from its reinstatement of the “mixture” and derived-from” rules published on March 3, 1992. This action will assure continuity of the existing national hazardous waste program while EPA determines the most appropriate approach for modification of the rules.

**Rule Titles:** Hazardous Waste Management System; Identification and Testing of Hazardous Waste; Toxicity Characteristic Revision (Revision Checklist 119 and 119.1)  
**Checklist Title:** Toxicity Characteristic Revision; TCLP Correction  
**Reference:** 57 FR 55114; 58 FR 6854  
**Promulgation Date:** November 24, 1992; February 2, 1993  
**Effective Date:** November 24, 1992  
**Cluster:** RCRA III  
**Provision Type:** HSWA  
**Optional:** Yes

**Summary:** The EPA is amending its hazardous waste regulations under Subtitle C of RCRA for testing conducted to evaluate solid waste for the Toxicity Characteristic (TC). Specifically, this rule removes the quality assurance (QA) requirement found in Method 1311, Toxicity Characteristic Leachate Procedure (TCLP), for correcting measured values for analytical bias (also referred to within this rule as spike recovery correction). However this rule retains appropriate QA provisions,

including that matrix spike recoveries be calculated and that the method of standard additions be employed as the contaminants when appropriate as specified in the method. The February 2, 1993 rule corrects a minor technical error in Part 261, Appendix II.

#### **RCRA Cluster IV (Checklists 127, 129, and 133)**

**Rule Title:** Burning of Hazardous Waste in Boilers and Industrial Furnaces (Revision Checklist 127)  
**Checklist Title:** Boilers and Industrial Furnaces; Administrative Stay and Interim Standards for Bevill Residues  
**Reference:** 58 FR 59598  
**Promulgation Date:** November 9, 1993  
**Effective Date:** October 15, 1993  
**Cluster:** RCRA IV  
**Provision Type:** HSWA  
**Optional:** Yes

**Summary:** On February 21, 1991, EPA promulgated regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA) that would expand controls on hazardous waste combustion to regulate the burning of hazardous waste in boilers and industrial furnaces (BIFs). Among other things, the regulations provide two tests for determining whether residues derived from Bevill devices (e.g., cement kilns, light-weight aggregate kilns, primary smelters, coal-fired boilers) co-processing hazardous waste and raw materials are exempt from hazardous waste control: (1) if levels of the toxic constituents in the waste-derived residue are not significantly higher than in normal residue; or (2) if levels of the toxic constituents in the waste-derived residue do not exceed specified health-based levels. The November 9, 1993 interim final rule announced an administrative stay on the previously-published health-based limits for nonmetals that are used to determine whether Bevill residues are exempt from the definition of hazardous waste under test number 2, provided that other limits are met on an interim basis (in order to prevent a situation where nonmetal constituents in these residues go unmonitored). The effect of this rule is to replace the limits needed to qualify for the Bevill exemption (under test number 2) with the land disposal restriction limits for underlying constituents in nonwastewaters pending further administrative action to establish health-based levels.

**Rule Title:** Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Treatability Studies Sample Exclusion (Revision Checklist 129)  
**Checklist Title:** Revision of Conditional Exemption for Small Scale Treatability Studies  
**Reference:** 59 FR 8362  
**Promulgation Date:** February 18, 1994  
**Effective Date:** February 18, 1994  
**Cluster:** RCRA IV  
**Provision Type:** HSWA and Non-HSWA  
**Optional:** No

**Summary:** On July 7, 1993, the EPA proposed revisions to the Treatability Studies Sample Exemption Rule. The rule conditionally exempts small-scale treatability studies from Subtitle C of RCRA. The principal change to the rule is to increase the quantity of contaminated media, which are conditionally exempt from Subtitle C regulation when used in conducting treatability studies.

**Rule Title:** Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Underground Storage Tanks, and Underground Injection Control Systems; Financial Assurance; Letter of Credit (Revision Checklist 133)

**Checklist Title:** Letter of Credit Revision

**Reference:** 59 FR 29958

**Promulgation Date:** June 10, 1994

**Effective Date:** August 9, 1994

**Cluster:** RCRA IV

**Provision Type:** Non-HSWA

**Optional:** Yes

**Summary:** EPA has amended the regulations related to financial assurance promulgated under Subtitle C and I of RCRA. The regulations cite the "Uniform Customs and Practice for Documentary Credit", published by the International Chamber of Commerce. This notice inserts the words "and copyrighted" into the letter of credit instrument to clarify that the International Chamber of Commerce publication is copyrighted material. As operators using the letter of credit instrument to demonstrate financial assurance must include this additional language.

#### RCRA Cluster V (Checklists 126.1 and 142E)

**Rule 1 Title:** Testing and Monitoring Activities (Revision Checklist 126)

**Rule 2 Title:** Testing and Monitoring Activities, Land Disposal Restrictions Correction (Revision Checklist 126.1)

**Checklist Title:** Testing and Monitoring Activities

**Reference:** 58 FR 46040-46051 and 59 FR 47980-47982

**Promulgation Date:** August 31, 1993 and September 19, 1994

**Effective Date:** August 31, 1993 and August 31, 1993

**Cluster:** RCRA Cluster IV

**Provision Type:** HSWA/Non-HSWA

**Linkage:** Revision Checklists 11, 35, 67, 73, 139, 141, 158 and 180

**Optional:** No

**Summary:** The August 31 (58 FR 46040) rule replaces the current Second Edition (including Updates I and II) of the EPA-approved "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, by incorporating by reference the Third Edition (and its first update) in § 260.11. This rule also revises Part 261 Appendices II (Method 1311, Toxicity Characteristic Leaching Procedure) and III (Chemical Analysis Test Methods) to

refer directly to SW-846; deletes Part 261 Appendix X (Method of Analysis for Chlorinated Dibenzo-p-dioxins and Dibenzofurans); and revises Part 268 Appendices I (Toxicity Characteristic Leaching Procedure) and IX (Extraction Procedure Toxicity Test) to refer to SW-846. In conjunction with these changes, various references to the methods formerly contained in these appendices are changed to refer directly to SW-846.

The September 19th (59 FR 47980) rule corrects the unintended removal of text from 40 CFR 268.7(a) by August rule. Paragraph 268.7(a) sets out the generator waste analysis and recordkeeping requirements of the land disposal restrictions under Subtitle C of RCRA. The August rule revised the reference to Appendix IX of Part 268 to refer to SW-846 Methods 1311 and 1310, instead. The Agency had intended to revise only the introductory text of 268.7(a) and to retain without changing the subparagraphs following the introductory text. Due to an inadvertent administrative error the subparagraphs following the introduction were removed. The September rule makes clear that it was not the Agency's intention to remove these paragraphs and that they remain in effect, and are regarded by the Agency, to have been in effect continuously in the form published in the CFR revised as of July 1, 1993. For this reason, the September rule was not made into a separate checklist.

New Mexico received authorization for only Revision Checklist 126 on March 10, 1997. New Mexico is requesting authorization for Revision Checklist 126.1 that corrects the final regulations, which were published Tuesday, August 31, 1993 ("Hazardous Waste Management System; Testing and Monitoring Activities; Final Rule", 58 FR 46040).

**Rule Title:** Universal Waste Rule (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program) (Revision Checklist 142E)  
**Checklist Title:** Universal Waste Rule: Petition Provisions to Add a New Universal Waste  
**Reference:** 60 FR 25492  
**Promulgation Date:** May 11, 1995  
**Effective Date:** May 11, 1995  
**Cluster:** RCRA V  
**Provision Type:** Non-HSWA  
**Optional:** Yes

**Summary:** On February 11, 1993, EPA proposed new streamlined hazardous waste management regulations governing the collection and management of certain widely generated wastes (batteries, pesticides and thermostats) known as universal wastes [59 FR 9346]. Additional information was noticed for comment on June 20, 1994 [58 FR 31568]. The final rule promulgated streamlined universal waste management regulations, which are very similar to the February 11, 1993 proposal. The new streamlined hazardous waste management regulations promulgated govern the collection and management of certain widely generated wastes identified as universal wastes. The final rule will facilitate the environmentally sound collection and increase the proper recycling or treatment of hazardous waste nickel, cadmium, and other batteries, certain hazardous waste pesticides, and mercury-containing thermostats. The RCRA regulations have been a major impediment to national collection and recycling campaigns for these wastes. The rule will greatly ease the regulatory

burden on retail stores and others that wish to collect or generate these wastes. It should greatly facilitate programs developed to reduce the quantity of these wastes going to municipal solid waste landfills or combustors. It will, also, assure that the wastes subject to this system will go to appropriate treatment or recycling facilities pursuant to the full hazardous waste regulatory controls. It also will serve as a prototype system to which EPA may add other similar wastes in the future. A petition process is also included through which additional wastes could be added to the universal waste regulations in the future. These regulations are set forth in 40 CFR Part 273.

#### RCRA Cluster VIII (Checklist 150)

**Rule Title:** Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste (Revision Checklist 150)  
**Checklist Title:** Recovered Oil Exclusion, Correction  
**Reference:** 61 FR 13103-13106  
**Promulgation Date:** March 26, 1996  
**Effective Date:** May 28, 1996  
**Cluster:** RCRA Cluster VI  
**Provision Type:** Non-HSWA  
**Linkage:** Revision Checklist 135  
**Optional:** Yes

**Summary:** In this rule, EPA is correcting a significant error in the text of a regulatory exclusion, from the definition of solid waste, for recovered oil that is inserted into the petroleum refining process. This exclusion, at 40 CFR 261.4(a)(12) as introduced to the Federal code by the July 28, 1994 Federal Register (59 FR 38536; Revision checklist 135), relates to the recycling of recovered oil--oil that has been recovered from secondary materials such as wastewater generated from normal petroleum exploration, refining, and transport activities--back into the petroleum refining process. The error in the July 28, 1994 rule resulted in inappropriate restrictions on legitimate recycling of recovered oil. The March 26, 1996 rule reflects the result EPA initially intended, which was to condition the exclusion of recovered oil on that oil being reinserted into the petroleum refining process at a point where that process removes or will remove at least some contaminants.

#### RCRA Cluster IX (Checklist 175)

**Rule Title:** Hazardous Remediation Waste Management Requirements (HWIR-Media) (Revision Checklist 175)  
**Checklist Title:** HWIR Media  
**Reference:** 63 FR 65874  
**Promulgation Date:** November 30, 1998  
**Effective Date:** June 1, 1999  
**Cluster:** RCRA IX  
**Provision Type:** HSWA and Non-HSWA  
**Optional:** Yes

**Summary:** As part of the Clinton Administrations environmental regulatory reform initiative, the EPA is issuing new requirements for RCRA hazardous remediation wastes treated, stored, or disposed of during cleanup actions. These new requirements make five major changes: First, they make permits for treating, storing and disposing of remediation wastes faster and easier to obtain; second, they provide that obtaining these permits will not subject the owner and/or operator to facility wide corrective action; third, they create a new kind of unit called a “staging pile” that allows more flexibility in storing remediation waste during cleanup; fourth, they exclude dredged materials from RCRA Subtitle C if they are managed under an appropriate permit under the Marine Protection’ Research and Sanctuaries Act or the Clean Water Act; and fifth, they make it faster and easier for States to receive authorization when they update their RCRA programs to incorporate revisions to the Federal RCRA regulations.

**RCRA Cluster X (Checklists 181, 182, 182.1, 183, 184, 185, and 187)**

**Rule Title:** Hazardous Waste Management System; Modification of the Hazardous Waste Program; Hazardous Waste Lamps (Revision Checklist 181)  
**Checklist Title:** Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps  
**Reference:** 64 FR 36466  
**Promulgation Date:** July 6, 1999  
**Effective Date:** January 6, 2000  
**Cluster:** RCRA X  
**Provision Type:** Non-HSWA  
**Optional:** Yes

**Summary:** This rule adds hazardous waste lamps to the federal list of universal wastes regulated under RCRA. Handlers of universal wastes are subject to less stringent standards for storing, transporting, and collecting these wastes. EPA has concluded that regulating spent hazardous waste lamps as a universal waste under 40 CFR Part 273 will lead to better management of these lamps and will facilitate compliance with hazardous waste requirements. This rule, which streamlines the Subtitle C management requirements for hazardous waste lamps, also supports energy conservation efforts.

**Rule Title:** NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Revision Checklists 182 and 182.1)  
**Checklist Title:** Hazardous Air Pollutant Standards for Combustors  
**Reference:** 64 FR 52828; 64 FR 63209  
**Promulgation Date:** September 30, 1999; November 19, 1999  
**Effective Date:** September 30, 1999; November 19, 1999  
**Cluster:** RCRA X  
**Provision Type:** HSWA and Non-HSWA  
**Optional:** No; however, certain provisions are optional

**Summary:** (1) This rule finalizes National Emissions Standards for Hazardous Air Pollutants (NESHAPS) for three source categories referred to collectively as hazardous waste combustors. Hazard waste combustors include hazardous waste burning incinerators, hazardous waste burning cement kilns, and hazardous waste burning lightweight aggregate kilns. These standards are promulgated under joint authority of the Clean Air Act (CAA) and the Resource Conservation and Recovery Act (RCRA). The rule establishes emission standards for chlorinated dioxins and furans, other toxic organic compounds, toxic metals, hydrochloric acid, chlorine gas and particulate matter. The standards reflect the performance of Maximum Achievable Control Technologies (MACT). After submittal of the Notification of Compliance (NOC) under the CAA, and after modification of the RCRA permit at individual facilities, the RCRA national stack emission standards will no longer apply to hazardous waste combustors. By using both authorities, EPA consolidates regulatory control of hazardous waste combustion into a single set of regulations, eliminating conflicting or duplicative federal requirements while increasing protection of human health and the environment. (2) This rule added a requirement that permits for miscellaneous units must include appropriate terms and conditions from part 63, subpart EEE standards. (3) This rule exempts secondary lead smelters from all provisions of the boilers and industrial furnaces (BIFs) requirements except for 266.101. The smelter must provide a one-time notice to the State identifying each hazardous waste burned and stating that the facility claims an exemption from other BIF requirements. Those secondary lead smelters who have already provided notice pursuant to 266.100(c) do not have to renotify. (4) This rule incorporates the term "treatment" into 266.101(c) to clarify that fuel blending activities that are conducted in units other than 90-day tanks or containers also are subject to full regulation under RCRA. (5) This rule amends the comparable fuels portion to make necessary conforming changes to the comparable fuels specifications as listed in Table 1 of 261.38. (6) This rule corrects a typographical error to section 270.42 Appendix I entry L(9) promulgated in the June 19, 1998 Fast-track rule (Revision Checklist 168; 63 FR 33782).

**Rule Title:** Land Disposal Restrictions Phase IV: Final Rule Promulgating Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Materials and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters (Revision Checklist 183)

**Checklist Title:** Land Disposal Restrictions Phase IV -- Technical Corrections

**Reference:** 64 FR 56469

**Promulgation Date:** October 20, 1999

**Effective Date:** October 20, 1999

**Cluster:** RCRA X

**Provision Type:** HSWA and Non-HSWA

**Optional:** No; however, some provisions are optional

**Summary:** This rule corrects two minor typographical errors and one omission in the May 11, 1999 technical amendment (Revision Checklist 179; 64 FR 25408) to the Phase IV Land Disposal Restrictions (LDR). This rule also corrects three errors in the May 26, 1998 LDR Phase IV final rule (Revision Checklist 167; 63 FR 28556).

**Rule Title:** 180-Day Accumulation Time Under RCRA for Waste Water Treatment Sludges From the Metal Finishing Industry (Revision Checklist 184)  
**Checklist Title:** Accumulation Time for Waste Water Treatment Sludges  
**Reference:** 65 FR 12378  
**Promulgation Date:** March 8, 2000  
**Effective Date:** March 8, 2000  
**Cluster:** RCRA X  
**Provision Type:** Non-HSWA  
**Optional:** Yes

**Summary:** This rule promulgates regulations that allow large quantity generators of F006 wastes up to 180 days (or 270 days in certain circumstances) to accumulate F006 waste on-site in tanks, containers, or containment buildings without a hazardous waste storage permit or interim status, provided that these generators (1) have implemented pollution prevention practices, (2) recycle the F006 waste through metals recovery, (3) accumulate no more than 20,000 kg of F006 waste at any one time, and (4) comply with applicable management standards. The same management standards that apply to 90-day on-site accumulation of hazardous waste apply to the new 180-day (or 270-day, as applicable) on-site accumulation of F006 waste. The extension of the accumulation time addresses economic barriers to the recycling of F006 waste through metals recovery. This change will provide large quantity generators of F006 waste an incentive to choose recycling instead of treatment and land disposal as their final waste management option. This rule is intended to increase recycling.

**Rule Title:** Organobromine Production Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Listing of CERCLA Hazardous Substances, Reportable Quantities (Revision Checklist 185)  
**Checklist Title:** Organobromine Production Wastes Vacatur  
**Reference:** 65 FR 14472  
**Promulgation Date:** March 17, 2000  
**Effective Date:** March 17, 2000  
**Cluster:** RCRA X  
**Provision Type:** HSWA  
**Optional:** Yes

**Summary:** EPA amended its regulations to conform to an order issued on April 9, 1999 by the United States Court of Appeals for the D.C. Circuit in *Great Lakes Chemical Corporation v. EPA* [Docket No. 98-1312] that vacated EPA regulations listing certain organobromine wastes as hazardous wastes under RCRA (63 FR 24596; withdrawn Revision Checklist 165). The land disposal restrictions treatment standards of 40 CFR part 268 are also modified by deleting these wastes and their associated treatment standards. The vacated Federal hazardous waste listings and regulatory requirements based on those listings are to be treated as though they were never in effect. Due to the vacatur, EPA withdrew Revision Checklist 165. Therefore, this revision checklist is only relevant for States that have already adopted the final rule addressed by withdrawn Revision Checklist 165 and wish to amend their regulations to conform to the vacatur.

**Rule Title:** Organobromines Production Wastes; Petroleum Refining Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Final Rule and Correcting Amendments (Revision Checklist 187)

**Checklist Title:** Petroleum Refining Process Wastes -- Clarification

**Reference:** 64 FR 36365

**Promulgation Date:** June 8, 2000

**Effective Date:** June 8, 2000

**Cluster:** RCRA X

**Provision Type:** HSWA

**Optional:** Conditionally optional

**Summary:** This rule corrects an error made in the August 6, 1998 rule (63 FR 42110; Revision Checklist 169) which listed four wastes from the petroleum refining industry as hazardous. The amending language in the August 6, 1998 rule included a typographical error that made the intent of the amendment unclear. The June 8, 2000 final rule addressed by this checklist revises the listing description for hazardous waste code F037 in 40 CFR 261.31(a) to reflect the original intent of the August 6, 1998 amendment. States that adopted the optional changes to 261.31(a) made by Revision Checklist 169 should also adopt the correction made by this rule. Note that in the preamble to the June 8, 2000 rule, it states that EPA neglected to delete the reference to U408 in Appendix VII of 40 CFR Part 268 in the March 17, 2000 rule (65 FR 14472; Revision Checklist 185). However, there was no entry for U408 in that Appendix. The actual amendment for the June 8, 2000 rule incorrectly removes the entry for U048 from Appendix VII to 40 CFR Part 268. U048 should not be removed from Appendix VII.

**RCRA Cluster XI (Checklists 188, 188.1, 188.2, 189, 190, 191, 192A, 192B, and 193)**

**Rule Title:** NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Revision Checklist 188, 188.1, 188.2)

**Checklist Title:** Hazardous Air Pollutant Standards; Technical Corrections

**Reference:** 65 FR 42292; 66 FR 24270; 66 FR 35087

**Promulgation Date:** July 10, 2000; May 14, 2001; July 3, 2001

**Effective Date:** July 10, 2000; May 14, 2001; October 16, 2001

**Cluster:** RCRA XI

**Provision Type:** Non-HSWA

**Optional:** Conditionally optional

**Summary:** (1) This rule adds gas turbines to the list of approved burners for comparable/syngas fuel burners under 40 CFR 261.38(c)(ii)(2). Gas turbines were inadvertently excluded from the list of approved fuel burners in the June 19, 1998 National Emissions Standards for Hazardous Air Pollutants (NESHAPS) rulemaking (63 FR 33782; Revision Checklist 168). This rule also corrects a typographical error made in the June 19, 1998 rule. (2) This rule makes corrections and clarifying revisions to 40 CFR parts 60 and 63. These corrections are noted for informational purposes only, as they are not included in the checklist because they are outside the RCRA program. (3) This checklist includes the May 14, 2001 (66 FR 24270) amendment vacating the Notice of Intent to

Comply (NIC) provisions of EPA's rules relating to the standards for hazardous waste combustors in 40 CFR part 63, subpart EEE. Prior to the vacatur, 40 CFR 270.42(j) allowed facilities to use the streamlined permit modification procedures; however, before they could do so they had to comply with the NIC requirements of 40 CFR 63.1210. Facilities were required to submit their NICs by October 2, 2000 and EPA worked closely with the regulated community to assure that all sources intending to continue operating submitted these NICs. The court issued the vacatur of the NIC provisions on October 11, 2000. Because this was after the date facilities were required to submit their NICs, EPA has determined the court's action does not impact a facility's ability to request a RCRA permit modification using the streamlined procedures of 40 CFR 270.42(j) provided the NIC was submitted as required by the rule that was in affect prior to July 1, 2000 and published in the 40 CFR Part 63, revised as of July 1, 2000. The language at 40 CFR 270.42(j) was modified by the July 10, 2000 rule addressed by Revision Checklist 188 to include a conforming reference to 40 CFR 63.1210, that had been inadvertently left out of the September 30, 1999 rule, which moved the fast-track requirements from 40 CFR 63.1211 to 40 CFR 63.1210. The May 14, 2001 rule, also addressed by Revision Checklist 188, clarified the language at 40 CFR 270.42(j) to indicate which version of 40 CFR 63.1210 must be complied with as a result of the NIC vacatur. (4) This checklist also includes the July 3, 2001 (66 FR 35106) amendment which makes improvements to the implementation of the emission standards of 40 CFR part 63 and clarifies 40 CFR 264.340.

**Rule Title:** Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Chlorinated Aliphatics Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities (Revision Checklist 189)

**Checklist Title:** Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes

**Reference:** 65 FR 67068

**Promulgation Date:** November 8, 2000

**Effective Date:** May 7, 2001

**Cluster:** RCRA XI

**Provision Type:** HSWA

**Optional:** No

**Summary:** (1) This rule adds two wastes (K174 and K175) generated by the chlorinated aliphatics industry to the list of hazardous wastes at 40 CFR 261.32. The new wastes will be subjected to stringent management and treatment standards under RCRA, and to emergency notification requirements. EPA is allowing a contingent-management listing approach for one of these new wastes. Under this approach, the waste will not be a listed hazardous waste if sent to a specific type of management facility. (2) In this rule, EPA also finalizes determinations not to list as hazardous four wastes generated by the chlorinated aliphatics industry.

**Rule Title:** Deferral of Phase IV Standards for PCBs as a Constituent Subject to Treatment in Soil (Revision Checklist 190)

**Checklist Title:** Land Disposal Restrictions Phase IV – Deferral for PCBs in Soil

**Reference:** 65 FR 81373

**Promulgation Date:** December 26, 2000

**Effective Date:** December 26, 2000  
**Cluster:** RCRA XI  
**Provision Type:** HSWA  
**Optional:** Yes

**Summary:** EPA is temporarily deferring a portion of the rule applying Land Disposal Restrictions (LDR) under RCRA to constituents subject to treatment (CST) in soils contaminated with certain characteristic hazardous wastes. EPA promulgated this rule on May 26, 1998. Specifically, EPA is temporarily deferring the requirements that polychlorinated biphenols (PCB's) be considered a CST when they are present in soils that exhibit the Toxicity Characteristic for metals. EPA is taking this action because the regulations appears to be discouraging generators from cleaning up contaminated soils, which is contrary to what EPA intended when EPA promulgated alternative treatment standards for contaminated soils. In addition, EPA needs more time to restudy the issue of appropriate treatment standards for metal-contaminated soils, which also contain PCBs as CST. EPA still requires generators to treat these soils to meet LDR standards for all hazardous constituents except PCBs. Generators also are required to treat PCBs if the total concentration of halogenated organic compounds in the soil equals or exceeds 100 parts per million.

**Rule Title:** Hazardous Waste Identification Rule (HWIR): Revisions to the Mixture and Derived-From Rules (Revision Checklist 192A and B)  
**Checklist Title:** A. Mixture and Derived-From Rules Revisions  
B. Land Disposal Restrictions Correction  
**Reference:** 66 FR 27266  
**Promulgation Date:** May 16, 2001  
**Effective Date:** August 14, 2001  
**Cluster:** RCRA XI  
**Provision Type:** HSWA and Non-HSWA  
**Optional:** Checklist 192 A is optional  
Checklist 192 B is not optional

**Summary:** This action finalizes the retention of the mixture rule and the derived-from rule in RCRA with two revisions. The mixture and derived-from rules ensure that hazardous wastes that are mixed with other wastes or that results from the treatment, storage or disposal of hazardous wastes do not escape regulations and thereby cause harm to human health and the environment. EPA finalized two revisions to the mixture and derived-from rules. These revisions would narrow the scope of the mixture and derived-from rules, tailoring the rules to more specifically match the risks posed by particulate wastes. The first revision is an expanded exclusion for mixtures and derivatives of wastes listed solely for the ignitable, corrosive, and/or reactive characteristics. The second revision is a new conditional exemption from the mixture and derived-from rules for "mixed waste" (that is, wastes that are both hazardous and radioactive).

**Rule Title:** Change of Official EPA Mailing Address; Additional Technical Amendments and Corrections (Revision Checklist 193)  
**Checklist Title:** Change of Official EPA Mailing Address

**Reference:** 66 FR 34374  
**Promulgation Date:** June 28, 2001  
**Effective Date:** June 28, 2001  
**Cluster:** RCRA XI  
**Provision Type:** Non-HSWA  
**Optional:** No

**Summary:** EPA changed the official address in the Code of Federal Register, where applicable, to reflect EPA's relocation of the majority of its Headquarters offices in the Washington Metropolitan area to DC. However, with 25 CFR volumes, 6 major program areas, and continual amending of EPA's regulations, it was inevitable that there would be problems. This documentation is continuing the update and correcting errors made in the previously published FR document. Although the official mailing address has changed, the physical location of the public information center and dockets has not yet changed. This relocation effort will eventually consolidate the EPA Headquarter offices in the Washington Metropolitan area providing for increased saving, efficiency, and enhancement of customer services. The EPA mailing address change will be phased in for all EPA correspondence, publication, forms, and other documents.

#### RCRA Cluster XII (Checklists 194, 195, 196, 197, 198, and 199)

**Rule Title:** Correction to the Hazardous Waste Identification Rule (HWIR): Revisions to the Mixture and Derived-From Rules (Revision Checklist 194)  
**Checklist Title:** Mixture and Derived-From Rules Revision II  
**Reference:** 66 FR 50332  
**Promulgation Date:** October 3, 2001  
**Effective Date:** February 1, 2002 (see 66 FR 61053, December 3, 2001)  
**Cluster:** RCRA XII  
**Provision Type:** HSWA and Non-HSWA  
**Optional:** Yes, conditionally optional

**Summary:** This rule finalizes a clarifying revision to the May 16, 2001 (Revision Checklist 192A; 66 FR 27266) mixture rule. Specifically, the rule clarifies that mixtures of certain excluded wastes, commonly referred to as Bevill wastes, and listed hazardous wastes that are listed solely because they contain a characteristic of ignitability, corrosivity, and/or reactivity, are exempt once the characteristic has been removed. Bevill waste are not currently handled in New Mexico.

**Rule Title:** Hazardous Waste Management System; Identification and Listing of Hazardous Waste: Inorganic Chemical Manufacturing Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities (Revision Checklist 195)  
**Checklist Title:** Inorganic Chemical Manufacturing Wastes Identification and Listing  
**Reference:** 66 FR 58258; 67 FR 17119  
**Promulgation Date:** November 20, 2001; April 9, 2002  
**Effective Date:** May 20, 2002

**Cluster:** RCRA XII  
**Provision Type:** HSWA and Non-HSWA  
**Optional:** No, some provisions are optional

**Summary:** EPA has added to its list of hazardous wastes, three inorganic chemical manufacturing wastes. This listing subjects the wastes to RCRA Subtitle C management and treatment standards and CERCLA emergency notification requirements for releases to the environment. Additionally, the toxic constituents found in the newly listed wastes have been added to the list of constituents which forms the basis for classifying wastes as hazardous and establishes treatments standards for the wastes. This rule also subjects the three inorganic chemical manufacturing wastes to the universal treatments standards under the LDRs program. With this rule, EPA has also made final determinations not to list the remainder of wastes generated by inorganic chemical manufacturing processes that were described in the proposed regulations. Finally, EPA is deferring final action on all elements of the proposed rule related to manganese. This checklist also includes the April 9, 2002 (67 FR 17119) amendment that corrects several errors made to the Treatment Standards for Hazardous Waste table at 268.40.

**Rule Title:** Amendments to the Corrective Action Management Unit Rule (Revision Checklist 196)  
**Checklist Title:** CAMU Amendments  
**Reference:** 67 FR 2962  
**Promulgation Date:** January 22, 2002  
**Effective Date:** April 22, 2002  
**Cluster:** RCRA XII  
**Provision Type:** HSWA  
**Optional:** No; however, some provisions are optional

**Summary:** EPA amended the 1993 Corrective Action Management Unit (CAMU) rule to facilitate treatment, storage and disposal of hazardous wastes managed for implementing cleanup, and to remove cleanup disincentives that RCRA can create. The 1993 CAMU rule was revised as follows: (1) To govern the types of wastes eligible for placement in CAMUs, a definition for "CAMUeligible waste" is created, which is distinct from the 40 CFR 260.10 definition of "remediation waste"; (2) More detailed minimum design and operating standards for CAMUs in which waste remains after closure, with opportunities for Regional Administrator-approved alternate designs; (3) Treatment requirements for wastes placed in CAMUs, including minimum treatment standards, with opportunities for adjustment; (4) More specific CAMU application information requirements including public notice and opportunity for comment, before final CAMU determination; (5) Requirements for CAMUs used only for treatment and storage; and (6) "Grandfathering" of certain types of existing CAMUs and allowing them to operate under the 1993 rule. With this rule, EPA has also; Amended the regulations for staging piles to allow for mixing, blending and other similar physical operations that prepare wastes for subsequent management or treatment; Added a new provision that allows off-site placement of hazardous CAMU-eligible waste in hazardous waste landfills, if treated to meet CAMU treatment standards; Granted interim authorization for the new CAMU amendments, to states currently authorized for the 1993 CAMU

rule; and Expedited state authorization for the CAMU rule, for states that have authorization for RCRA corrective action but not the 1993 CAMU rule.

**Rule Title:** NESHAP: Interim Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Interim Standards Rule) (Revision Checklist 197)  
**Checklist Title:** Hazardous Air Pollutant Standards for Combustors: Interim Standards  
**Reference:** 67 FR 6792  
**Promulgation Date:** February 13, 2002  
**Effective Date:** February 13, 2002  
**Cluster:** RCRA XII  
**Provision Type:** HSWA and Non-HSWA  
**Optional:** Yes

**Summary:** On September 30, 1999, as amended November 19, 1999 (Revision Checklist 182; 64 FR 52828 & 64 FR 63209), EPA promulgated the NESHAPS rule to control emissions of hazardous air pollutants from incinerators, cement kilns and lightweight aggregate kilns that burn hazardous wastes. Portions of the rule were challenged and subsequently vacated by the U.S. Court of Appeals for the District of Columbia Circuit on July 24, 2001. On October 19, 2001, EPA and all petitioners jointly moved the Court to stay the issuance of its mandate for four months to allow EPA time to develop interim standards. The motion also included plans for EPA to issue final standards by June 14, 2005 and to promulgate by February 14, 2002, a rule with amended interim emission standards and compliance and implementation amendments. The Court granted EPA's request and stayed issuance of its mandate until February 14, 2002. In general, this rule (Revision Checklist 197) amends the September 1999 NESHAPS rule to accommodate the parties' joint motion. This rule replaces the vacated emission standards temporarily until final standards are promulgated (by June 14, 2005). EPA believes this Interim Standards Rule best fulfills the statutory requirement to have national emission standards in place by a specified time, while avoiding unnecessary disruption and burden to regulated industry, and affected state and federal administrative agencies.

**Rule Title:** NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Final Rule (Revision Checklist 198)  
**Checklist Title:** Hazardous Air Pollutant Standards for Combustors: Corrections  
**Reference:** 67 FR 6968  
**Promulgation Date:** February 14, 2002  
**Effective Date:** February 14, 2002  
**Cluster:** RCRA XII  
**Provision Type:** HSWA and Non-HSWA  
**Optional:** No; however, some provisions are conditionally optional

**Summary:** This rule was promulgated to correct several technical errors which were made on September 30, 1999 (NESHAPs rule) when EPA established standards for hazardous waste-burning cement kilns, lightweight aggregate kilns, and incinerators (Revision Checklist 182; 64 FR 52828, as amended 64 FR 63209). Additionally, this rule finalizes specific changes to the September 30, 1999 NESHAPs rule by focusing on improvements in emission standards implementation in part 63,

subpart EEE. These changes are outside of the RCRA program and are not addressed by this checklist.

**Rule Title:** Hazardous Waste Management System; Definition of Solid Waste; Toxicity Characteristic (Revision Checklist 199)  
**Checklist Title:** Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste  
**Reference:** 67 FR 11251  
**Promulgation Date:** March 13, 2002  
**Effective Date:** March 13, 2002  
**Cluster:** RCRA XII  
**Provision Type:** Non-HSWA  
**Optional:** No; however, most provisions are conditionally optional

**Summary:** This rule was promulgated in response to vacaturs ordered by the United States Court of Appeals for the District of Columbia Circuit in *Association of Battery Recyclers, v. EPA 208 F.3d 1047 (2000)*. The court vacated two parts of the May 26, 1998 Phase IV LDR rule (63 FR 28556; Revision Checklist 167) in response to a legal challenge from the Association of Battery Recyclers, the National Mining Association and other trade groups. The first vacated part of the rule required deletion of regulatory language classifying mineral processing characteristic by-products and sludges being reclaimed as solid wastes. The second vacated part disallows the Toxicity Characteristic Leaching Procedure (TCLP) to be used for determining whether manufactured gas plant (MGP) waste is hazardous.

#### **II.A.2 New Mexico Authority, Public Notice and Hearing Process for Program Approval**

The HWA (**Attachment A**) specifically grants the NMED authority to regulate hazardous waste in New Mexico. The HWA provides the EIB the authority to adopt regulations for the management of hazardous waste that are equivalent to and no more stringent than the federal RCRA regulations as adopted by the EPA pursuant to the federal RCRA of 1976, as amended.

Specifically, the HWA provides the authority to the EIB to adopt hazardous waste rules for: 1) the identification and listing of hazardous waste consistent with RCRA; and establishing standards for 2) generators; 3) transporters; 4) distributors or marketers of produced fuel produced from hazardous waste or other fuel that contains hazardous waste; 5) owners and operators for the treatment, storage or disposal of hazardous waste; 6) permit requirements; 7) defining modifications; and 8) establishing procedures for the inspection of facilities.

The process to amend or adopt regulations follows the Rulemaking Procedures – Environmental Improvement Board, 20.1.1 NMAC, in association with the HWA. These Rulemaking Procedures outline: 1) the procedures before the EIB; 2) encourages participation in the hearings for the promulgation of regulations; 3) provides for the presentation of evidence from the parties and general public; and 4) that the hearings are conducted in a fair and equitable manner.

The NMED petitioned the EIB on March 10, 2003 for a hearing to amend the HWMR, 20.4.1 NMAC, for the EPA rules through July 1, 2002, including the Used Oil program and rules through Cluster XII. The EIB granted the hearing and a notice was provided in the New Mexico State Register, Volume XIV, Number 8, April 30, 2003, within the Notice of Rulemaking and Proposed Rules section. A notice was also published in the Albuquerque Journal on April 20, 2003. The NMED filed technical testimony as part the prehearing proceedings.

The EIB hearing convened on July 1, 2003 to amend the HWMR and was concluded at the August 5, 2003 EIB meeting. The hearing was conducted in Santa Fe, New Mexico. NMED provided testimony at the hearing for the amended rules and provided explanation to questions and concerns from the EIB and the public. The EIB adopted the amendments to the HWMR on August 5, 2003 as permanent rules. The amended HWMR was notice in the New Mexico State Register, Volume XIV, Number 16, August 29, 2003. The amended HWMR became effective on October 1, 2003 (**Attachment B**).

The incorporation of federal RCRA regulations does not incorporate prospectively future changes to the incorporated sections of 40 CFR, and no other New Mexico law or regulation reduces the scope of coverage or otherwise affects the authority provided by these incorporated-by-reference provisions. Further, New Mexico interprets these incorporated provisions to provide equivalent, if not identical, authority to the federal provisions. Thus, 20.4.1 NMAC provides equivalent and no less stringent authority than the federal RCRA Subtitle C program in effect through July 1, 2002.

## II.B. Differences Between Federal and State Regulations

This section of the PD provides an explanation on the differences between the New Mexico HWMR and the federal RCRA regulations (see **Attachments C and D**). The addition of the rules as outlined in Section II.A.1 will have little if no impact on the HWMP. Also, please refer to the Attorney General's Statement(s) for a detailed discussion of the significance of these differences.

New Mexico, through the HWMR, has incorporate by reference the following federal RCRA regulations as amended through July 1, 2002: 40 CFR Parts 260-270, 40 CFR Part 270; 40 CFR Part 273; and 40 CFR Part 279 with the exception of 40 CFR §§ 260.1(b)(6), 260.20, 260.22, 260.30, 260.31, 260.32, 260.33, 263.20(e), 264.1(f), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f), 264.1080(g), 265.1(c)(4), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), 265.1080(g); 268.5, 268.6, 268.42(b), 268.44(a) through (g).

New Mexico has incorporated by reference 40 CFR Part 124, §§ 124.31, 124.32, and 124.33 regarding the permitting process and repository provisions. Also, it has adopted regulations at 20.4.1.901 NMAC, Permitting Procedures, that are equivalent to and no less stringent than the procedures of 40 CFR Part 124 and required by 40 CFR Part 271.14. These are 40 CFR Part 124.3(a) – (Application for a permit); 124.5(a), (c), and (d) – (Modification of permits); 124.6(a), (d), and (e) – (Draft permit); 124.8 – (Fact sheet); 124.10(a)(1)(ii), 124.10(a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e) – (Public notice); 124.11 – (Public comments and requests for hearings); 124.12(a) – (Public hearings); and 124.17(a) and (c) – (Response to comment).

In addition to the differences as provided in this section, terms such as “EPA” shall mean the “New Mexico Environment Department” with some exceptions, and the use of terms in the HWMR that are not defined in 40 CFR. These minor provisions are provided for in the New Mexico HWMR and, also, outlined in Attachment D.

New Mexico has adopted regulations equivalent to 40 CFR Part 260, Hazardous Waste Management System: General, making the State HWMP equivalent to the federal regulatory program. New Mexico has not adopted regulations related to the provisions relating to the rulemaking petitions for delisting, variances from the classification of solid waste and a boiler, and the respective procedures for variances for such.

New Mexico has adopted regulations equivalent to 40 CFR Part 261, Identification and Listing of Hazardous Waste, and 40 CFR Part 262, Standards Applicable to Generators of Hazardous Waste, making the State HWMP equivalent to the federal program. There are no exceptions in the New Mexico HWMR to these Parts.

New Mexico has adopted regulations equivalent to 40 CFR Part 263, Standards Applicable to Transporters of Hazardous Wastes, making the State HWMP equivalent to the Federal regulatory program. It should be noted that the water (bulk shipment) transporters of hazardous wastes provisions of the federal regulations have not been incorporated into the HWMR.

New Mexico has adopted regulations equivalent to 40 CFR Parts 264, Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, and Part 265, Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, making the State HWMP equivalent to the federal regulatory program. The exceptions are the provisions under the federal RCRA regulations to the requirements and prohibitions regarding state authorization, and the financial requirements related to the use of state-required mechanisms and state assumption of responsibility for closure, post-closure care, or liability requirements.

New Mexico has adopted regulations equivalent to 40 CFR Part 266, Standards for Materials Being Recycled/Reused, making the State HWMP equivalent to the Federal regulatory program. There are no exceptions in the New Mexico HWMR to this Part.

New Mexico has adopted regulations equivalent to 40 CFR Part 268, Land Disposal Restrictions, making the State HWMP equivalent to the Federal regulatory program. It should be noted that the 1) procedures for case-by-case extensions to an effective date 2) petitions to allow land disposal of a waste prohibited under Subpart C of Part 268; 3) treatment standards expressed as specified technologies; and 4) specified variances from a treatment standard provisions of the federal regulations have not been incorporated into the HWMR.

New Mexico has adopted regulations equivalent to 40 CFR Part 270, EPA-Administered Permit Programs – The Hazardous Waste Permit Program, making the State HWMP equivalent to the Federal regulatory program. The exception is the reference to any provision of 40 CFR Part 124 within the text of any other adopted provision of 40 CFR as it is referred to the Permitting Procedures, 20.4.1.901 NMAC. There are three exceptions to this exception though; 1) the pre-

application public meeting and notice, 2) the public notice requirements at the application stage, and 3) the information repository requirements. These provisions are incorporated in the HWMR. The permitting procedures as outlined in the HWMR are equivalent to the federal provisions of 40 CFR Part 124. A discussion of the permitting process is outlined in Section V.

New Mexico has adopted regulations equivalent to 40 CFR Part 273, Standards for Universal Waste Management, making the State HWMP equivalent to the Federal regulatory program. One minor exception is noted for generators of universal waste pesticides as they are to notify the New Mexico Department of Agriculture.

New Mexico has adopted regulations equivalent to 40 CFR Part 279, Used Oil Management Standards, making the State HWMP equivalent to the Federal regulatory program. There are no exceptions in the New Mexico HWMR to this Part. Although New Mexico has adopted the used oil regulations it is not seeking authorization for these regulations at this time.

### **III. STATE AGENCY RESPONSIBILITIES**

#### **III.A. Organization and Structure of the Hazardous Waste Program**

New Mexico statutes provide authority for the NMED to administer the provisions of the State HWMP. The New Mexico Environmental Improvement Act (EIA), NMSA 1978, §§74-1-1 through 74-1-16, and the New Mexico HWA provide this authority. No amendments have been made to the EIA or HWA that affect the ability of the NMED to administer the HWMP. The revisions to the HWMP are implemented by the NMED. As outlined in Section II.A.2, the process for adopting and amending the HWMR is completed through a process with the EIB.

Formerly, the Health and Environment Department was the agency responsible for administering the HWMP. In 1991 the Department of Environment Act, 9-7A-1 to 9-7A-12, NMSA 1978, established a single department, the NMED, to administer the laws and exercise the functions relating to the environment formerly administered and exercised by the Health and Environment Department. The NMED is the sole agency responsible for the HWMP.

The NMED consists of divisions, bureaus and programs. The Secretary of NMED administers policy and imparts the authority provided under the Environment Improvement Act, Department of Environment Act, and specific environmental statutes and regulations, such as the HWA and HWMR. The NMED is comprised of four divisions: 1) Administrative Services Division; 2) Field Operations Division; 3) Environmental Protection Division; and 4) Water & Waste Management Division. The NMED also includes an Office of General Counsel (OGC) and other special programs administered by the Office of the Secretary as outlined on the NMED Organizational Chart (**Attachment F**).

Within the NMED Water & Waste Management Division, the Hazardous Waste Bureau (HWB) is responsible for administering and implementing the HWMP. With the assistance and guidance of the OGC, the Director of the Water & Waste Management Division and the Secretary of the NMED, the HWB carries out the responsibilities of the HWMP.

The HWB is divided effectively into three programs: 1) Permits Management; 2) Compliance & Technical Assistance; and 3) Financial & Data Management (**Attachment G**).

#### **Permits Management Program**

The Permits Management Program is responsible for reviewing all hazardous waste permit applications for their administrative completeness and technical adequacy. During the determination of administrative completeness and technical adequacy review, deficiencies are noted and a Notice of Deficiency (**NOD**) is issued and resolved before a draft permit is developed and noticed for public comment and input. All comments received during the public notice are considered for incorporation into the final permit. All comments, requests for hearings, and the final permit are submitted to the Secretary or his/her designee of the Environment Department for final decision. The final permit is issued, denied, or modified upon final decision of the Secretary or his/her designee. All comments are responded to upon the issuance of the final action.

The Permits Management Program is also responsible to provide regulatory oversight of interim status units and facilities as well as closure and post-closure activities. It also maintains and administers the Federal Facility Compliance Orders for mixed waste issues.

In addition to the responsibilities related to permitting actions, the Permits Management Program is responsible for corrective action activities as outlined in the hazardous waste management permits or other enforceable documents (e.g. corrective action or compliance orders), and established EPA or NMED guidance. It also conducts Comprehensive Groundwater Monitoring Evaluations (**CMEs**) and Compliance Evaluation Inspections (**CEIs**) in conjunction with the Compliance & Technical Assistance Program at permitted and interim status facilities. The program also negotiates and provides technical assistance to regulated facilities on the means to achieve compliance and to resolve media contamination (eg. soil, groundwater) problems. The program provides oversight of hydrogeologic investigations and conduct field inspections relating to permitting and corrective action characterization and remedy activities.

#### **Compliance & Technical Assistance Program**

The Compliance and Technical Assistance Program is responsible for conducting CEI at facilities that generate, store, treat, transport, and/or dispose of hazardous waste. Facilities include conditionally exempt small, small, and large quantity generators, and permitted facilities. Sampling of environmental media is often necessitated by conditions found at these facilities. Complaint investigations are also frequently required. Various types of enforcement actions from informal enforcement notice of violations to formal compliance orders with penalties are initiated against violators of the hazardous waste requirements. The program also conducts activities along the U.S./Mexico border associated with the import of hazardous waste. These activities also include training with U.S. Customs officials in identification of hazardous waste shipments and monitoring compliance with applicable hazardous waste regulations, conducting inspections of vehicles shipping hazardous materials and wastes. Coordinating enforcement activities with EPA Region 6 and neighboring States, as appropriate.

#### **Financial & Data Management Program**

The Financial & Data Management Program includes the Information Management Section, which

maintains the Biennial Reporting System (BRS) and the RCRA Information Management Systems (RCRA Info, previously known as RCRIS); processes RCRA Notification (8700-12) forms and the hazardous waste fees; and responds to and processes New Mexico Public Records Act information requests. The Financial Section of the program provides for and maintains the budget, contracts, and other financial matters for HWB. The Program also provides and administers the EPA 3011 Grant in conjunction with the Permits Management and Compliance & Technical Assistance programs, and EPA Region 6.

The HWB receives technical support and expertise when needed from other bureaus and divisions within NMED, they are:

- 1) Air Quality Bureau - regulates emissions of pollutants to the ambient air;
- 2) Ground Water Quality Bureau - regulates the disposal of contaminants to the environment that have the potential to contaminate the groundwater. Also provides oversight for EPA on CERCLA investigations and remediation sites;
- 3) Surface Water Quality Bureau - regulates discharges of pollutants into the surface waters of New Mexico;
- 4) Solid Waste Bureau - monitors and enforces the state Solid Waste Management Regulations, including transportation and disposal of non-hazardous solid waste and household waste;
- 5) Occupational Health & Safety Bureau - regulates the health and safety of the work place environment;
- 6) Petroleum Storage Tanks Bureau - regulates all non-hazardous waste underground and above ground storage tanks; and
- 7) Office of General Counsel - provides legal support to the bureau with respect to the development of legislation, regulation development and interpretation, permitting and enforcement actions.

---

All of the above bureaus are organized within the NMED, enabling the sharing of information, expertise, and personnel.

Other agencies within the State that provide assistance to HWB:

- 1) Scientific Laboratory Division - provides limited analytical support for identifying contaminants and contaminant concentrations of samples collected during investigations, enforcement actions, clean-up operations, and routine inspections of hazardous waste facilities and generators;

- 2) New Mexico Department of Agriculture - pursuant to the Hazardous Waste Act, is the lead agency responsible for the enforcement of all hazardous waste regulations regarding hazardous agricultural waste;
- 3) Energy, Minerals and Natural Resources Department - administers programs relating to the production of oil, natural gas geothermal energy, and coal;
- 4) Department of Public Safety - administers emergency response coordination in the State of New Mexico;
- 5) NMED Administrative Service Division – provides administrative and financial support to the Bureau.

### III.B Division of Responsibility Between the State and EPA

The HWMP responsibilities of HWB are based on the HWA, the HWMR, the Memorandum of Agreement with EPA (**EPA MOA**), and the negotiated EPA 3011 Grant. EPA retains authority to enforce requirements promulgated pursuant to the Hazardous and Solid Waste Amendments of 1984 (**HSWA**) for which the State has not received authorization. Upon receiving approval of this authorization, New Mexico will have obtained authorization for all mandatory and a majority of the optional rules for HSWA and RCRA through July 1, 2002. For those rules that New Mexico has received authorization it continues to be the lead on permitting and enforcement activities. New Mexico will continue to coordinate activities with EPA for which it has limited or no authority.

The August 27, 2003 (68 FR 51484) Federal Register, *New Mexico: Incorporation by Reference of Approved State Hazardous Waste Management Program*, incorporates by reference the New Mexico authorized hazardous waste program in subpart GG of 40 CFR part 272. Section 272.1601 incorporates by reference the New Mexico HWA and HWMR. This section outlines and provides for the rules that New Mexico is authorized, rules it has adopted and is not authorized by EPA, and for rules it has adopted and cannot receive authorization from EPA.

The rules that New Mexico has not sought authorization or cannot be delegated include:

- 1) (Revision Checklist 51) Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities; Liability Coverage.
- 2) (Revision Checklist SR2\*) Surface Impoundment Variance under §3005(j)(2)-(9) and (13).
- 3) (Revision Checklist BB\*) Exceptions to the Burning and Blending of Hazardous Waste.
- 4) (Revision Checklist CP\*) Hazardous and Used Oil Fuel Criminal Penalties.
- 5) Direct Actions Against Insurers (this is not delegable to States) as provided for in HSWA §3004(t) promulgated on November 11, 1984.

- 6) (Revision Checklists 17 B\* and 17 B.1\*) HSWA Codification Rule; Delisting. Delisting is an optional requirement. New Mexico has not adopted the delisting sections and therefore is not seeking authorizing for these rules.
- 7) (Revision Checklists 112, 122, 122.1, 130, 166, 166.1) Recycled Used Oil Management Standards; Technical Amendments and Corrections and Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Use Oil Management Standards. New Mexico has adopted these rules but is not seeking authorization at this time due to the absence of criminal penalties for used oil. NMED will conduct activities to ensure the used oil rules are adhered to and will coordinate with EPA, if necessary, regarding criminal penalties.
- 8) (Revision Checklist 138) Organic Air Emission Standards for Tanks, Surface impoundments, and Containers. This checklist has been withdrawn. Its applicable provisions are included in Revision Checklist 154, which is a consolidation all of the rules associated with the organic air emission standards for tanks, surface impoundments, and container requirements (Subpart CC). New Mexico adopted the provisions included in Revision Checklist 154 and received EPA authorization for this rule on October 9, 2001.
- 9) (Revision Checklist 143) Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Amendment I. This checklist has been withdrawn. Its applicable provisions are included in Revision Checklist 154, which is a consolidation all of the rules associated with the organic air emission standards for tanks, surface impoundments, and container requirements (Subpart CC). New Mexico adopted the provisions included in Revision Checklist 154 and received EPA authorization for this rule on October 9, 2001.
- 10) (Revision Checklist 152; Not Delegable to State Programs) Imports and Exports of Hazardous Waste Implementation of OECD Council Decision. Like the export requirements at 40 CFR Part 262, Subpart E, the 40 CFR Part 262, Subpart H requirements will be administered by EPA and not the States because the exercise of foreign relations and international commerce powers is reserved to the Federal government under the Constitution. However, EPA strongly encourages States to incorporate these requirements into their regulations for the convenience of the regulated community and for completeness, particularly where a State has already incorporated the 40 CFR Part 262, Subparts E and F provisions into its regulations. New Mexico has adopted the provisions of this rule within the Hazardous Waste Management Regulations.
- 11) (Revision Checklist 167 D) Mineral Processing Secondary Materials Exclusion.
- 12) (Revision Checklist 186; Not Applicable to State Programs) Amendments to Streamline the National Pollutant Discharge Elimination System Program Regulations: Round Two. EPA will not authorize States for this rule and has, therefore, not issued a checklist to be used by States.
- 13) (Revision Checklist 191\*) Storage, treatment, transportation and disposal of mixed waste.

New Mexico is not seeking authorizing for these rules at this time.

#### IV. STAFFING AND FUNDING RESOURCES

##### IV.A Staffing Resources of the Hazardous Waste Management Program

The NMED continues to be staffed with personnel that have the administrative expertise, technical backgrounds and experience necessary to effectively administer and implement the RCRA program.

Many of the personnel currently employed in the RCRA program of the NMED have several years of experience in the hazardous waste program. Both experienced and new personnel participate in training programs, when available, to increase their expertise and skills. Personnel within the HWMP are primarily trained in and have experience as environmental scientists and specialists, engineers, and hydrologists. These individuals are presently involved in the ongoing RCRA permitting, corrective action, facility management activities, compliance and enforcement actions throughout the state.

With respect to assignment of personnel to perform necessary duties to meet the requirements of implementation through RCRA Cluster XII, many factors have been taken into consideration. These factors include: (1) other program plan commitments; (2) other state program commitments; (3) the nature of the work being performed; and (4) the specific skills of the personnel. For example, although most of the personnel involved will be environmental scientists and specialist, engineers, and hydrologists, for example, if a project requires specialized knowledge of hazardous waste characterization, the NMED technical staff utilizes personnel with advanced knowledge in this area.

Therefore, these individuals handle RCRA work involving waste characterization and other work assignments are adjusted accordingly.

With the exception of the addition of the used oil program, the responsibilities of the NMED have not changed since the most recent program authorization submitted in December 2000. It is anticipated that no additional personnel will need to be hired to implement the provisions through RCRA Cluster XII. There have also been no significant changes in the size of the regulated community since the previous authorization.

The HWB consists of fifty full time equivalent (FTE) staff within the Bureau and its' programs (**Attachment G**). Essentially all FTEs with the exception of Defense State Memorandum of Agreement (**DSMOA**) and the spill response coordinator FTEs are dedicated to the HWMP. Section III.A describes the programs and the functions. The HWB staff consists of:

**Bureau Chief (General Manager/Natural Sciences Manager - 1 position)**

Directs all activities in the Bureau. This position along with the program managers, the Water & Waste Management Division Director and the Office of the Secretary are the policy makers for the HWB. The Bureau Chief directs the overall tasks and responsibilities of the entire bureau, delegating specific responsibilities to the appropriate managers.

**Program Managers (3 positions):** The Program Managers are responsible for the management and implementation of the program tasks such as permitting, corrective action, enforcement, compliance

and technical assistance, QA/QC, financial, information and data needs. See individual Programs below.

#### Quality Assurance/Quality Management Manager

The QA/QC manager for the bureau is responsible for QA/QC of data collection techniques, data analysis, and laboratory QC requirements. This position answers directly to the Bureau Chief and is independent of the Bureau Programs. The QA Officer is the F&MP Manager.

### **PERMITS MANAGEMENT PROGRAM**

#### Permits Management Program Manager (Admin/Ops Manager - 1 position)

Manages, directs and monitors all activities performed by the Permits Management Program. Prepares and presents budget requests; work on grant negotiations; evaluates staff training needs; makes recommendations for training; and evaluates staff performance. Testifies, if necessary, at Public Hearings on issuance of permits or appeals. Interviews and consults with respective group managers and supervisors, and makes recommendations for hiring new staff. This position is occupied with personnel that have an educational background in a natural science or engineering, and have experience in the environmental field.

#### Group Manager (Staff Manager - 3 positions)

Manages, directs and monitors all activities performed by subordinate supervisors and technical staff within their group. Coordinates efforts with Program Manager. Evaluates staff training needs; makes recommendations for training; and evaluates staff performance. Testifies, if necessary, at Public Hearings on issuance of permits. Interviews and consults with program manager, group managers and supervisors, and makes recommendations for hiring new staff. These positions are occupied with personnel that have an educational background in a natural science or engineering, and have experience in the environmental field.

The three groups within the Permits Management Program are the:

- 1) WIPP Group - oversees the WIPP permit and its' associated activities. Staff are located in Santa Fe;
- 2) Albuquerque Group - oversees RCRA facilities in the Albuquerque area. Staff are located in Albuquerque offices; and
- 3) Santa Fe Group - oversees RCRA facilities for the remainder of the State

#### Secretary (Secretary O – 1 position)

These positions report directly to the Program Manager. The Secretary position supports administrative duties for the program and bureau. This position also provides for timekeeping for the bureau.

#### Supervisor (Environmental Scientist & Specialist-O and A – 5 positions).

Supervises one or more staff of the program. Oversees complex facilities and projects. Provides for internal training of staff and conducts interviews and recommendations to management of new hires. Testify at public hearings as necessary. This position reports directly to the respective Group

Manager. These positions are occupied with personnel that have an educational background in a natural or life science, or engineering, and have experience in the environmental field.

Technical Staff (Environmental Scientist & Specialist-O, and A, and Hydrologist-O – 18 positions)  
Reviews corrective action deliverables and permit applications for administrative and technical completeness and requests additional permit information as necessary. Recommends the issuance of Notice of Deficiencies for those documents determined to be incomplete. Recommends the issuance or denial of a permit. Reviews closure plans and post closure care plans for technical completeness.

Two of the FTEs are assigned to the Defense State Memorandum of Agreement (DSMOA). These positions report directly to their respective supervisor or Group Manager. Performs duties assigned by the Bureau Chief, Program Manager, Group Manager, or Supervisor as they apply to the Program. These positions are occupied with personnel that have an educational background in a natural or life science, or engineering, and have experience in the environmental field.

## COMPLIANCE & TECHNICAL ASSISTANCE PROGRAM

Compliance & Technical Assistance Program Manager (Staff Manager - 1 position)

Supervises, directs and monitors all activities performed by the Inspection/Enforcement Staff. Prepares and presents budget requests, mid-year and end-of-year reports, work plan and grant negotiations, evaluates staff training needs and makes recommendations for training, evaluates staff performance. Reviews all documents prepared by Hazardous Waste Bureau. Interviews and consults with respective supervisors, hires additional staff. This position is occupied with personnel that have an educational background in a natural or life science, or engineering, and have experience in the environmental field.

Secretary (Secretary-A – 1 position)

These positions report directly to the Program Manager. The Secretary position supports administrative duties for the program and bureau.

Supervisor (Environmental Scientist & Specialist O and A - 2 positions)

Functions as the supervisor and senior inspector/trainer for the RCRA Inspection Teams. These positions conduct hazardous waste compliance evaluation inspections, assist with inspection scheduling, inspection file review and evaluation, research, training and supervision of the staff in their inspection and enforcement duties.

Technical Staff (Environmental Scientist & Specialist O and A - 7 positions)

Conducts hazardous waste inspections, prepares inspection reports, recommends enforcement action, assists with negotiations on compliance issues, testifies at hearings as needed and responds to requests for assistance and information from the public, regulated community and other agencies. These positions are occupied with personnel that have an educational background in a natural or life science, or engineering, and may have experience in the environmental field.

Spill Response Coordinator (Environmental Scientist & Specialist B - 1 position)

Manages non-emergency spill responses and complaints from commercial industries and the private sectors to the impacted medias, manages a resource database associated with the reported

spills/complaints and performs similar duties as the technical staff as needed to public regulated community and other agencies. This position is occupied with personnel that have an educational background in a natural or life science, or engineering, and have experience in the environmental field.

## **FINANCIAL & DATA MANAGEMENT PROGRAM**

### **Program Manager / QA Officer (Staff Manager - 1 position)**

The Program Manager manages and supervises the Financial & Data Management Program (F&DMP). This program is responsible for the monitoring of the Resource Conservation Recovery Act (RCRA), RCRA Info Database, New Mexico Public Records Act, Biennial Reporting System (BRS), NMED Database of Hazardous Waste, Federal Grant Process, Record Management and the implementation of the budgetary, accounting, grants management, procurement, contracts and all administrative functions and support projects for the Hazardous Waste Bureau. The F&DMP Manager also performs duties as the QA Officer. This position is occupied with personnel that have experience in data management and the financial fields.

### **Office Clerk (Office Clerk B - 1 position)**

This position reports directly to the Executive Secretary. Responsibilities are receptionist (i.e., answering the phone, directing all incoming calls to the appropriate party); receiving, stamping and delivering of incoming mail to the appropriate recipient; copying and mailing correspondence from staff and maintaining the Bureau correspondence reading file. Supports activities of the Secretaries.

### **Management Analyst (Management Analyst A - 1 position)**

The duties of this position consist of coordinating facility permit and generator fee data, coordination of RCRA data into the EPA database (RCRA Info), process and maintain Annual Hazardous Waste Regulators Fees, and assist with the training, budget preparations, mid-year reports and year-end reports. The senior Management Analyst position supervises and oversees the junior Management Analyst and the Records Manager. The senior member reports directly to the Program Manager. This position is occupied with personnel that have experience in the data management and the financial field.

### **Records Manager (Information/Records Clerk O – 1 position)**

This position reports to the senior Management Analyst. The duties consist of coordinating RCRA Permits Management Database, assisting in the process and monitoring of the New Mexico Public Records Act, and continually monitoring the records management program. Assist staff with filed documents and records retrieval. This position is occupied with personnel that have experience in the records management.

### **Financial Specialist (Financial Specialist O - 3 positions)**

The senior Financial Specialist duties consist of reviewing accounting reports, contract agreements, analyzing and maintaining the budget, reconciling agencies fiscal records and maintaining communication and personnel management. The senior member currently supervises one junior Financial Specialist position and reports directly to the Program Manager. The junior positions duties consist of preparation of purchase requisitions for the bureau, preparing travel vouchers and

payment vouchers, establishing and maintaining public records, monitoring the supply orders, and processing of depositions and any financial documents to ASD daily. This position also assists with the responsibilities of the other Financial Specialists. This position is occupied with personnel that have experience in the financial field.

#### IT Support (Computer Systems Analyst O - 1 position)

This position reports to the IT Bureau Chief. The duties consist of designing/developing and maintaining databases, decision support systems, and web pages for the bureau. Diagnosing hardware and software problems, train users in the use of systems/applications, assist with processing end of year reports, and coordinate the bureau's needs with the Information Technology Service Bureau and maintenance of the Bureau website.

### **IV.B Overall Changes in Existing Resources from Previously Authorized Program**

It is anticipated that no additional staff will be needed to cover the program for the areas for which the State is seeking authorization. The program has added some new positions to the Permits Management Program since its last authorization within the Permits Management Program due to revenue from the Hazardous Waste Management Fees and associated supplemental fees it has negotiated. There have been no other significant organizational changes made since the previous authorization of the HWMP.

The HWMP has seen no significant changes in the regulated community since the previous authorization. The treatment, storage, and disposal facility (TSDF) universe has remained constant for the past several years. There have been no significant changes in the generator universe during the past two years. It has remained constant other than an indication of a shift from small quantity generators (SQGs) to conditionally exempt small quantity generators (CESQGs).

The existing resources have not changed significantly with respect to the overall HWMP. Within the Permits Management Program the workload has shifted slightly towards corrective action activities related to the signing of the orders on consent regarding corrective action activities at Sandia National Laboratories and Los Alamos National Laboratories. This is due to the aggressive schedules outlined in both of these orders. Also, the permitting effort related to federal facilities has increased over the past two years. The C&TA Program has seen a steady workload of the TSDF universe and an increase in compliance inspection evaluations and technical assistance with the generator universe.

### **IV.C Funding Resources for the Hazardous Waste Management Program**

HWB utilizes all available funding sources to meet budget obligations of the bureau. The funding sources are: 1) General Fund, 2) Corrective Action Fund, 3) Federal Funds, 4) Other State Funds, and 5) the Emergency Fund. See Attachment J for the current FY2006 Budget. For FY07, HWB has requested general, corrective action, federal and other state funds to mutually support the PMP, C&TAP and FDMP programs. The state matching funds are required to be spent within the hazardous waste program. There are no restrictions or limitations that would prohibit these funds from being spent on RCRA requirements.

### General Fund

The General Fund is monies allocated to the NMED yearly from the New Mexico Legislature. For FY2007 \$475.8 (all dollar amounts are reported in the thousands) has been requested to support the bureau with eight FTE's. The General Fund is used to solidify the bureau in meeting PS&EB and general overhead costs such as rent, telecommunications and lease vehicles. \$180.5 of the General Fund will be used as a partial (See CAF Funding) match for the EPA 3011 RCRA Grant. This match is a 25% hard match requirement of the EPA 3011 Grant terms.

### Corrective Action Fund 990 (CAF)

The Corrective Action Fund is a funding source allocated to NMED by the New Mexico Legislature and is generated by a per load fee collected at the loading dock from wholesale distributors of petroleum products. The fund pays for corrective action costs resulting from the unauthorized releases which cause contamination of soil and/or groundwater. For FY2007 NMED requested \$119.5 as a partial match for the EPA 3011 RCRA Grant. This match is a 25% hard match requirement of the grant terms. The use of the CAF has been recently authorized for a three year period of which is in its second year.

### Federal Funds

Federal Funds are secured through an EPA 3011 RCRA Grant. For FY2007 \$762.9 of federal funds has been requested to fund the RCRA grant. This grant supports thirteen FTE's. The grant is generally approved for \$1.2 million annually and has a 25% hard match, which is obtained by two other funding sources of general and corrective action funds (see above). The RCRA grant supports RCRA Subtitle C rules for permitting and enforcement of hazardous waste facilities and generators. The current grant period has been accepted for FY06-07 and is awarded on an annual basis. Funding through FY08 is optimistic and should remain the same.

### Other State Funds

Other State Funds include Generator Fees, Hazardous Waste Permit Fees, and other fees collected through agreements. These funds are deposited in Fund 339 Hazardous Waste Permit Fees and are funded as follows:

#### a. **Generator Fees**

1. HWB requested \$513.0 for FY07. This program supports seven FTE's.
2. Balances in the fund are appropriated to the division for the sole purpose of meeting necessary expenses in the administration and operation of the hazardous waste program.
3. A hazardous waste generation fee is applicable to any business generating hazardous waste, and is based on the quantity of hazardous waste generated annually; however, when any material listed in Paragraph (2) of Subsection I of Section 74-4-3 NMSA 1978 is determined by the board (EIB) to be subject to regulation under Subtitle C of the federal Resource Conservation and Recovery Act (RCRA), the board may set a generation fee for that waste based on its volume, toxicity, mobility and economic impact on the regulated entity.
4. Fee revenues average approximately \$350.0 per annum. Fees are expected to decline due to the number of decreasing SQG's and generators becoming CESQG's. Funding through FY08 will be limited and the program may be forced to seek other funding sources to support the program.

**b. WIPP Fees**

1. HWB requested \$631.9 for FY07. This program supports seven FTE's.
2. NMED and WIPP have mutually agreed to fund specific activities (staff and associated overhead) that assist NMED in maintaining and staffing personnel to specifically work on WIPP permits. Mandatory meetings (WIPP Audits) are held approximately every month and require attendance by NMED at various DOE facilities. The purpose of having dedicated staff to the DOE WIPP ensures that staff is trained and aware of the frequent facility changes.
3. The funding and expenditures for this agreement is specific and holds NMED strictly accountable.
4. Annually, the WIPP fees average approximately \$800.0 and NMED does not see funding difficulties through FY08.

**c. Hazardous Waste Permit Fees:**

1. HWB requested \$1,420.5 for FY07, which supports fourteen FTE's.
  2. Balances in the fund are appropriated to the division for the sole purpose of meeting necessary expenses in the administration and operation of the hazardous waste program.
3. Fees collected pursuant to Subsection F of Section 74-4-4.2 NMSA 1978 are supported by three types of permit fees. Annual Unit Audits (AUA) fees based on the number of hazardous waste management and corrective action units at facilities; permit application fees; and document review fees assessed on corrective action documents reviewed by the agency. AUA fees are assessed annually; permit application fees are assessed only when an application is deemed complete; and document review fees are assessed only when an eligible document is reviewed by the agency. Because only AUA fees are annual, only those receipts are reasonably predictable. Hazardous Waste Fees average approximately \$1.2 million annually.
4. Funding for this program is cyclical due to the ten-year permitting action that takes place. Funding through FY08 will be limited and HWB is forced to seek agreements with the facilities to support bureau activities.
5. Due to the passage of recent legislation, Senate Bill 202, the New Mexico Environment Department's Hazardous Waste Bureau is drafting changes to the Hazardous Waste Fee Regulations, 20.4.1 NMAC. HWB has developed rate schedule guidelines for discussion purposes of a new fee structure and is in process of seeking both public input and consultation from the regulated community through hearings before presenting the proposed changes to the Environmental Improvement Board, the promulgating authority. Regulation changes are expected to increase permit fund receipts by the middle of FY07 and to provide for a more stable revenue source to the program.

**LANL Fees:** As of August September 27, 2005, HWB and DOE-LANL have entered into a Memorandum of Agreement (LANL MOA) for funding purposes. The LANL MOA outlines specific funding provided by DOE-LANL for the purpose of supporting HWB permit writing, inspections and corrective action measures that pertain to LANL. This agreement is very similar to the WIPP agreement and supports specific activities. These agreements help pave a way for the facilities to meet deadlines for corrective action and permitting as governed by RCRA Subtitle C. The current LANL MOA for FY06 will fund HWB with \$1,327.5 of Other State

Funds. Future funding impacts will be evaluated and negotiated annually between the two parties.

**Emergency Fund:** The Emergency Fund is established from the collection of penalties from compliance and enforcement actions. This fund is used for abandoned hazardous substances that are handled on an emergency basis, to lessen the resulting hazards that may present endangerment to humans. This fund is restricted for specific substance incidents as outlined in the HWA and authorized for use only by the Secretary.

## V. STATE PROCEDURES, PERMITTING PROGRAM AND COORDINATION WITH OTHER AGENCIES

### V.A. Regulatory Development

The development of regulations within New Mexico includes many steps. The primary reason to update the HWMR is to continue to provide equivalency with the federal program. In updating the HWMR, the NMED reviews the rules that are provided by EPA to determine if they are required to maintain the HWMP, or if they are optional rules. After determining which rules to adopt, NMED drafts proposed amendments to the HWMR.

The following outline is that of the EIB – Rulemaking Procedures, 20.1.1 NMAC. These rulemaking procedures can be found at [www.nmcpr.state.nm.us](http://www.nmcpr.state.nm.us) under Title 20, Environmental Protection. The rulemaking procedures also corresponds to the requirements of the HWA, specifically 74-4-5, Adoption of regulations; notice and hearing. These rules provide for the amendments to the HWMR from the prehearing procedures through the final decision by the EIB. To ensure that all of the rules are followed the HWA and the EIB rulemaking procedures should be advised. Please also refer to II.A.2, as it provides a summary regarding recent EIB adoption of the HWMR.

The NMED files a petition with the EIB to schedule a hearing. At the next EIB meeting that occurs within 15 days but no more than 60 days after filing the petition the EIB determines whether or not to hold a public hearing on the proposed regulations. The NMED may provide details relating to the petition for a hearing on the proposed regulations at the meeting.

If the EIB determines to hold a public hearing on the petition, it may issue such orders specifying procedures for conducting the public hearing, in addition to those provided in the EIB - Rulemaking Procedures, 20.1.1 NMAC, as may be necessary and appropriate to fully inform the EIB of the proposed regulations. Such orders may include requirements for giving additional public notice, holding pre-hearing conferences, filing direct testimony in writing prior to the hearing, or limiting testimony or cross-examination.

Upon granting of the public hearing, the EIB provides public notice of the hearing at least sixty (60) days prior to the hearing date. Public notice shall include publication in at least one newspaper of general circulation in the State, publication in the New Mexico Register, and such other means of providing notice as the EIB may direct or are required by law. The EIB shall also

make reasonable efforts to give notice to persons who have made a written request to the EIB for advance notice of regulatory change hearings. Requests for such notice shall be addressed to the EIB Administrative Secretary, and shall designate those areas of EIB activity that are of interest.

The public notice of the hearing shall state: 1) the subject, including a description of the proposed regulatory change, time, and place of the hearing; 2) the statutes, regulations, and procedural rules governing the conduct of the hearing, usually the EIB – Rulemaking Procedures, 20.1.1 NMAC; 3) the manner in which persons may present their views or evidence to the Board; 4) the location where persons may secure copies of the proposed regulatory change; and 4) that the EIB may make a decision on the proposed regulatory change at the conclusion of the hearing.

A notice of intent to present technical testimony may be filed by any person, including the petitioner, usually NMED, who intends to present technical testimony at the hearing shall. This occurs no later than ten (10) days prior to the hearing. The notice of intent must include the: 1) identify the person for whom the witness or witnesses will testify; 2) identify each technical witness the person intends to present and state the qualifications of the witness, including educational and work experience; 3) if the hearing will be conducted at multiple locations, indicate the location or locations at which the witnesses will be present. The amendment of rules usually occurs only in Santa Fe; 4) summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of the witness; 5) include the text of any recommended modifications to the proposed regulatory change; and 6) list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing.

The Hearing Officer may enforce the provisions of the rulemaking procedures as he deems appropriate, including but not limited to exclusion of the technical testimony of any witness for whom a notice of intent was not timely filed. If such testimony is admitted, the Hearing Officer may keep the record open after the hearing to allow responses to such testimony.

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony. A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

At the hearing, the rules of civil procedure and the rules of evidence shall not apply. The Hearing Officer shall conduct the hearing so as to provide a reasonable opportunity for all persons to be heard without unnecessary repetition. The hearing shall proceed with an opening statement from the Hearing Officer, stating the nature and subject matter of the hearing and explain the procedures to be followed. The Hearing Officer may allow a brief opening statement by any person who wishes to make one. Unless otherwise ordered, the petitioner shall present its case first followed by other participants as establish during the hearing. The order of presentation may be based upon notices of intent to present technical testimony, sign-in sheets and the availability of witnesses who cannot be present for the entire hearing. If the hearing continues for more than one day, the Hearing Officer shall provide an opportunity each day for

testimony from members of the general public. Members of the general public who wish to present testimony should indicate their intent on a sign-in sheet. The Hearing Officer may allow a brief closing argument by any person who wishes to make one. At the close of the hearing, the Hearing Officer shall determine whether to keep the record open for written submittals in accordance with 20.1.1.404 NMAC. If the record is kept open, the Hearing Officer shall determine and announce the subject(s) on which submittals will be allowed and the deadline for filing the submittals.

All testimony will be taken under oath or affirmation. The Hearing Officer shall admit any relevant evidence, unless the Hearing Officer determines that the evidence is incompetent or unduly repetitious. Any person who testifies at the hearing is subject to cross-examination on the subject matter of his or her direct testimony and matters affecting his or her credibility. Any person attending the hearing is entitled to conduct such cross-examination as may be required for a full and true disclosure of matters at issue in the hearing. The Hearing Officer may limit cross-examination to avoid harassment or intimidation.

Any person offering an exhibit shall provide the required number of copies plus a reasonable number of additional copies for persons attending the hearing. All exhibits offered at the hearing shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially. Large charts and diagrams, models and other bulky exhibits are discouraged. If visual aids are used, legible copies shall be submitted for inclusion in the record.

Unless specified by the EIB, a verbatim transcript shall be made of the hearing. The cost of the original Transcript of Proceeding and of providing a copy for each EIB member and the EIB's counsel shall be borne by the petitioner. This would usually be the NMED. Any person may obtain a copy, at their cost, of the Transcript of Proceeding and may do so directly from the court reporter.

A Hearing Officer's report of the hearing may be compiled. If so, the report shall identify the issues addressed at the hearing, explain the testimony, and make a recommendation for EIB action and shall be filed with the Administrative Secretary within the time specified by the EIB. The Administrative Secretary shall notify each participant that the Hearing Officer's report has been filed and shall provide a copy of the report upon request.

If a quorum of the EIB attended at the hearing, and if the hearing notice indicated that a decision might be made at the conclusion of the hearing, the EIB may immediately deliberate and make a decision on the proposed regulatory change. Also, the EIB may reach its decision on the proposed regulatory change within sixty (60) days following the close of the record. The EIB shall issue its decision on the proposed regulatory change in a suitable format, which shall include its reasons for the action taken. The Administrative Secretary shall provide notice of the EIB's action to each of the participants, and to all other persons who have made a written request to the EIB for notification of the action taken.

Upon completion of the hearing and the final decision of the EIB, the final rule will be published and noticed in the New Mexico State Register. The amended regulation adopted by the board shall

become effective thirty days after filing under the State Rules Act, NMSA 1978, Chapter 14, Article 4.

## **V.B. Notification**

Generators, transporters, and treatment, storage, and disposal facilities that manage hazardous wastes in New Mexico are required to file a notification of their activities with the NMED if they have not previously notified EPA pursuant to Section 3010 of RCRA or the NMED. The authority of requiring generators to comply with reporting and record keeping procedures is found in the New Mexico Hazardous Waste Act, NMSA 1978, Sec. 74-4-4 B, as amended. The NMED requires the use of the EPA *Notification of Generating Hazardous Waste, U.S. EPA Form 8700-12* and can be found at [www.epa.gov/epaoswer/hazwaste/data/form8700/forms.htm](http://www.epa.gov/epaoswer/hazwaste/data/form8700/forms.htm). The NMED enters the information into the RCRA Info database. A number is generated from the RCRA Info database and assigned to the generator. The generator is then notified of the EPA ID number.

## **V.C. Manifest Tracking System**

### **V.C.A. Manifest Requirements**

With the incorporation of the federal regulations governing handling of hazardous waste, the manifest requirements imposed by the NMED are identical to those of EPA. This includes proper preparation of the manifest form; filing exception reports when a signed copy of the manifest has not been returned to the generator within the set time frame; filing a manifest discrepancy report when significant discrepancies exist between what is listed on the manifest and what is delivered to the facility; and filing a report providing all required information for wastes that are received for treatment, storage and/or disposal not accompanied by a manifest.

The NMED requires the use of the Uniform Hazardous Waste Manifest or similar form that provides all required information.

In the event that the NMED receives an Exception Report, is notified of a manifest discrepancy or discovers any manifest irregularities during compliance inspections, every attempt shall be made to resolve the irregularities. This shall include notification of the appropriate state agencies where these irregularities involve interstate shipments of hazardous waste.

### **Exception Reports**

In the event that an Exception report is received by the NMED, the following standard procedures are followed:

In incidents involving the inter-state transport of shipments of hazardous waste, the initial response of the NMED will be the notification of the appropriate state environmental agency in the state to which the shipment was originally designated, or EPA in the case of a state which does not operate an authorized RCRA program. This initial response shall provide, via telephone conversation, the concerned state agency or EPA, with all information which has been received by the NMED which

has lead to the filing of an Exception report including:

- 1) a description of the efforts taken by the generator to locate the shipment of hazardous waste and the results of those efforts;
- 2) a synopsis of all pertinent information contained on the manifest which has been received in conjunction with the Exception Report and,
- 3) any other information the NMED may have in its files concerning the past practices of the involved generator, any correlation of the hazardous waste manifested and those previously shipped by the generator any information relating to the identified transporter.

Copies of the Exception Report and the accompanying manifest shall be provided to the concerned state agency or EPA as soon as possible along with any other information that may contribute to the resolution of the Exception Report. After this initial notification of any other authorized state agencies or EPA the NMED will continue its investigation of the submitted Exception Report. As relevant information becomes available, it again will be related to the appropriate state agency or EPA as soon as possible. Incidents involving intra-state shipments of hazardous waste shall be handled by the NMED, with the support of any other state agencies as may be appropriate, and as is outlined below.

Following the initial receipt of an Exception Report and the notification of any other authorized state agency or EPA in the case of inter-state shipment. The NMED shall begin the preparation of a case file involving the received Exception Report. This shall involve the review and compilation of any pertinent data the NMED may currently have on file as to the past activities of the generator in question. Once the preliminary file has been established, the NMED will initiate a compliance monitoring inspection of the generator that has submitted the Exception Report to vent the information received and to examine past manifesting practices, transporters contracted with, and previously designated TSD facilities.

If the transporter(s) indicated on the manifest is a New Mexico based transporter, the NMED will also conduct a compliance monitoring inspection of the transporter(s) in question to again examine and review any appropriate records on file. If the transporter(s) is based in a state other than New Mexico, and since the Exception Report received may involve the violation of NMSA 1978 Sec. 74-4-4.A(3), and may be subject to the penalties contained in Section 74-4-11 & 12 NMSA 1978, the NMED may request the assistance of the New Mexico State Police and the New Mexico Department of Transportation insofar as their assistance may lead to the identification and location of any transporter which may or may not be licensed to operate in the State of New Mexico.

If the TSD facility designated on the manifest is located in the State of New Mexico, the NMED will also conduct a compliance monitoring inspection of said facility in order to examine and review any documents or records which describe any previous involvements the facility may have had with the generator in questions and to determine what, if any, involvement the facility may have previously had with the designated transporter(s).

Operating under these procedures it is expected that the NMED shall be able to expediently resolve any submitted Exception Report concerning intra-state shipments of hazardous waste and to provide effective support to any other state agency or EPA in the case of shipments involving inter-state transport.

### **Manifest Discrepancies**

In the event that a notification of a manifest discrepancy is received by the NMED, the following procedures will be followed.

Following the receipt of a manifest discrepancy report, the NMED shall begin the preparation of a case file concerning said report. The case file shall initially be developed using any information the NMED may currently have on file describing the past activities of the involved generator and transporter(s), as applicable.

After the preliminary case file has been developed the NMED shall perform a compliance monitoring inspection of the TSD facility in question to verify the information submitted in the manifest discrepancy report and to examine and review any other pertinent documents and records which may relate to the incident in question, and/or which may describe any previous relationship(s) the facility may have had with the indicated generator and transporter(s). During the course of any such inspection the NMED may collect samples of the waste shipment in question if it is deemed necessary to further corroborate the information already received.

If the indicated generator and transporter(s) are located in the State of New Mexico, the NMED will also perform inspections of said generator and transporter(s) in order to examine and review any documents or records which may relate to the reported incident and which may have a bearing on such items as waste type(s) generated, past shipments of hazardous waste, and previously designated TSA facilities. Such inspections may require interviews if permissible with involved employees, drivers, etc., as to their part in the initiation and transportation of the hazardous waste shipment under investigation.

If the indicated generator and transporter(s) are located out of state, the NMED may request the assistance of the appropriate state agency or EPA in the case of any unauthorized state, in determining the validity of any information previously received in the manifest discrepancy notification. This will also serve to alert the appropriate state agency or EPA to possible irregularities in shipping and manifest requirements in the state of origin.

Through such investigations, it is expected that the NMED shall be able to reconcile those manifest discrepancies, reported to it and/or expose any intentional or accidental falsifications made concerning the shipment, transportation and receipt of the hazardous waste in question.

### **V.D. Coordination of Information Regarding Interstate and International Shipments**

The HWMR, 20.4.1.300 incorporates 40 CFR 262 providing for the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, treatment, storage and disposal of hazardous waste for shipments between the United States and those countries. Any issues that arise from concerns of manifest relating to international shipments will be forwarded to and be coordinated with the EPA.

## V.E. Permitting

### General Permitting Program Description

The permitting process will insure that all facilities subject to the provisions of the New Mexico Hazardous Waste Act, Sec. 74-4-1 et. seq., NMSA 1978, will be required to have a permit issued by the Department pursuant to the regulations.

A permit issued by the Department will be in accordance with the regulations, and in a manner consistent with 40 CFR 124. The permit will require the facility be operated and maintained in accordance with permit conditions, compliance schedules, monitoring requirements and technical standards necessary to insure the protection of the public health and environment.

The State program provides for the modification, suspension and revocation of any such permit pursuant to the Hazardous Waste Act.

The State program allows at least 45 days for public comments and review whenever a draft permit or notice of intent to deny has been prepared. During the comment period, an interested party may submit written comments to the Department and/or request a public hearing. If a public hearing is requested the NMED, acting in conjunction with the applicant, 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. If significant changes were made to the draft permit to resolve such issues a "new" draft permit will subsequently be issued for a public comment period.

If a public hearing is requested, the Department will give at least a 30-day public notice prior to any scheduled hearing. During the public hearing the permittee and NMED will also be afforded the opportunity to present testimony. Any interested person will be able to submit comments and cross examine witnesses. In addition to formal public hearings, an informal public meeting is held during the permit review process to educate the community and answer questions about the permit.

A final decision by the Secretary becomes effective 30 days after notice of a decision has been served on the applicant or such time as the Secretary may specify. Appeal of a permit decision may be made to the Court of Appeals within 30 days after the decision.

### Permitting Procedures

The procedures of the NMED for permitting and for administrative and judicial review have not changed since the last approved authorization. The NMED's permitting procedures are essentially identical to those of EPA as found within 40 CFR 270, except that any reference to 40 CFR 124 shall be construed to mean 20.4.1.901 NMAC with the exception of 40 CFR 124.31 through 124.33 as provided for in 20.4.1.1102 NMAC, *Reference to 40 CFR Part 124*. The State permitting process will insure that all facilities subject to the provisions of the New Mexico Hazardous Waste Act, Sections 74-4-1 et. seq. NMSA 1978 as amended, will be required to have a permit issued by the Department. All permit modifications requests must also be public noticed to allow the public to provide comments and/or require a public hearing.

Any person who is required to have a permit shall complete and sign, appropriate information requirements and any other supplemental information which the Secretary may deem necessary as detailed in 40 CFR 270, incorporated by 20.4.1.900 NMAC. If an application is found to be incomplete, the applicant shall be informed by certified mail of the deficiencies and the need for the submission of the required information.

Once the application is complete, the NMED shall prepare and issue either a draft permit or a notice of intent to deny in accordance with the requirements detailed in 20.4.1.901.A. The NMED will also provide for a public notice and fact sheet of the action in accordance with 20.4.1.901.C and D. If a information repository is deemed appropriate it will be established in accordance with 20.4.1.901.E NMAC, incorporating 40 CFR 124.33.

#### **Permit Modification, Renewal, Suspension and Revocation**

The Secretary may modify, suspend or revoke a permit issued in accordance with the requirements detailed in 20.4.1.901.B NMAC. The Secretary shall public notice issuance of a draft permit or a notice of intent to deny, and of any public hearing scheduled in accordance with the requirements detailed in 20.4.1.901.C NMAC.

#### **Fact Sheet**

The Secretary shall prepare a fact sheet for every draft permit or a notice of intent to deny in accordance with the requirements detailed in 20.4.1.901.D NMAC. The fact sheet shall provide the basis for the principal facts and the significant legal, methodological and policy questions considered in preparing the permit.

#### **Secretary's Decision**

Any person heard or represented at the hearing shall be given written notice of the action of the Secretary. The Secretary shall notify the applicant or permittee of her/his decision and the reasons therefore by certified mail in accordance with 20.4.1.901.G NMAC.

#### **Interaction with Enforcement Personnel**

During the review of the application and the drafting of the permit the Permits Management Program staff discuss issues relating to the applicant and the facility with Compliance & Technical Assistance Program staff. This coordination provides for a review of any past compliance and other issues to provide for an improved permit.

In the past two years the Permits Management Program staff have been involved in compliance evaluation inspections coordinated with the Compliance & Technical Assistance Program staff for permitted facilities. These coordinated and comprehensive inspections provide staff from both programs a complementary review of establishing compliance at a facility.

#### **Joint Permitting**

Joint permitting by NMED and EPA is provided if the applicant requests activities that NMED does not currently regulate through the HWMR or for rules that are not delegable to NMED. The Memorandum of Agreement between the NMED and EPA provides for joint permitting activities.

## V.F Interim Facility Status

There are currently four facilities within New Mexico that have interim status units: 1) U.S. DOE Los Alamos National Laboratory, 2) U.S. DOE Sandia National Laboratories, 3) U.S. Army Fort Wingate Depot Activity, and 4) Giant Refining Company – Bloomfield. These interim status facilities are currently in the permitting process for those units at these facilities to either be permitted or closed in accordance with the appropriate regulatory requirements.

Interim status procedures are authorized as outlined in 20.4.1.900 NMAC, incorporating 40 CFR 270 Subpart G - Interim Status. There are no specific procedures that NMED follows other than what is provided for in the HWMR.

## V.G. Biennial Reports

Biennial reports are required as part of the 20.4.1.300 NMAC, incorporating 40 CFR 262.41. The Biennial reports are required of a generator who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States must prepare and submit a single copy of a Biennial Report to the NMED by March 1 of each even numbered year. The Biennial Report must be submitted on EPA Form 8700-13A or via an electronic format approved by NMED, and must cover generator activities during the previous year, and must include specific information. The required information includes:

- (1) The EPA identification number, name, and address of the generator;
- (2) The calendar year covered by the report;
- (3) The EPA identification number, name, and address for each off-site treatment, storage, or disposal facility in the United States to which waste was shipped during the year;
- (4) The name and EPA identification number of each transporter used during the reporting year for shipments to a treatment, storage or disposal facility within the United States;
- (5) A description, EPA hazardous waste number (from 40 CFR part 261, subpart C or D), DOT hazard class, and quantity of each hazardous waste shipped off-site for shipments to a treatment, storage or disposal facility within the United States. This information must be listed by EPA identification number of each such off-site facility to which waste was shipped.
- (6) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.
- (7) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.
- (8) The certification signed by the generator or authorized representative.

Any generator who treats, stores, or disposes of hazardous waste on-site must submit a biennial report covering those wastes in accordance with the provisions of 40 CFR parts 270, 264, 265, and 266. Reporting for exports of hazardous waste is not required on the Biennial Report form. A separate annual report requirement is set forth at 40 CFR 262.56.

This information is reported to EPA for compilation of the data into a national database that is made available to the public in the form of five reports: The National Biennial RCRA Hazardous

Waste Report, List of Large Quantity Generators in the United States, List of Treatment, Storage, and Disposal Facilities in the United States, State Detail Analysis, National Analysis, and State Summary Analysis.

#### **V.H. Groundwater Monitoring Inspections**

Groundwater monitoring inspections are conducted, using as the basis for the inspection, the EPA guidance as provided in the EPA Comprehensive Groundwater Measures Evaluation, and Operations and Maintenance Manual. The inspection is also held in consultation with the facility permit or other enforceable document and for interim status units the 40 CFR 265 requirements, as incorporated by 20.4.1.600 NMAC. Groundwater inspections occur at permitted or interim status facilities with hazardous waste management units that require groundwater monitoring and detection systems. The Permits Management Program and the Compliance & Technical Assistance Program perform groundwater-monitoring inspections.

During the comprehensive groundwater monitoring evaluation (CME), an evaluation of the adequacy of the design and operation of a facility's groundwater monitoring system is conducted. This evaluation is completed by competent staff with a hydrogeology background and includes a review of the owner and operator's characterization of the hydrogeology underlying the hazardous waste management units; monitoring well placement, depth, and spacing; and well design and construction. The CME is used to determine whether a facility implementing detection monitoring should instead be using compliance or assessment monitoring. CMEs at compliance or assessment monitoring facilities include a detailed examination of the assessment monitoring plan and implementation of the plan.

#### **V.I. Waste Minimization/Pollution Prevention Program**

Waste Minimization is promoted in several forms within NMED. The HWB through its permits provides language for waste minimization to provide goals for the facilities to achieve in reducing or eliminating the amounts of hazardous waste produced. Through inspections and technical assistance visits staff also look at processes that assist facilities to potentially reduce hazardous waste generation.

The NMED Pollution Prevention (P<sup>2</sup>) Office is dedicated to assisting New Mexico businesses, local governments and state agencies with pollution prevention issues. The P<sup>2</sup> Office offers services such as technical support, compliance and regulatory assistance, energy and water conservation and efficiency. The following services are available to help meet and go beyond regulatory requirements:

Technical assistance is available for businesses to help them use the Green Zia tools and implement pollution prevention. The Green Zia pollution Prevention/Technical Resource Center is administered through the Waste Management Education and Research Consortium in collaboration with the Energy, Minerals and Natural Resources Department and NMED as part of the Green Zia Environmental Excellence Program.

The Green Zia Environmental Excellence Program is a public recognition and technical assistance program that acknowledges and supports businesses or organizations with a vision and desire to move towards environmental excellence and long-term environmental and economic sustainability. The Green Zia Program is based on the Malcolm Baldrige Business Performance Excellence Criteria and the Quality New Mexico program. It is the only program of its kind nationally and helps participants integrate environmental decision making into core business practices.

In addition to the above, training and workshops, library resources, and free waste assessments are provided.

#### **V.J. Availability of Information Procedures**

The New Mexico Public Records Act can be found at: [www.ago.state.nm.us/divs/civil/IPRAFourthEdition2003.pdf](http://www.ago.state.nm.us/divs/civil/IPRAFourthEdition2003.pdf) which is provided by the New Mexico State Attorney General Office and provides examples of different situations for public records requests. The NMED Public Records Policy (**Attachment K**) provide for the process of handling information requests within the NMED.

Availability of information is provided by NMED to EPA in accordance with the Memorandum of Agreement between NMED and EPA and as outlined in 40 CFR 273.

#### **V.K. Appeal Procedures**

The HWA within Section 74-4-4.14(A) provides that any person adversely affected by a decision of the Secretary concerning the issuance, modification, suspension or revocation of a permit may appeal such decision by filing a notice of appeal with the court of appeals within thirty (30) days after the date the decision is made. In accord with NMSA 1978, Sec. 74-4-4.14(C) the Court of Appeals shall set aside the decision of the Secretary only if found to be: 1) arbitrary, capricious or an abuse of discretion; 2) not supported by substantial evidence; or 3) otherwise not in accordance with law.

### **VI. COMPLIANCE MONITORING AND ENFORCEMENT**

The goal of the Compliance & Technical Assistance Program (C&TAP) of the NMED has not changed since the last authorization. The C&TAP continues to achieve and maintain an efficient rate of compliance within the regulated universe by establishing a comprehensive inspection program and taking timely and effective enforcement actions against violators. The commitments for inspections by NMED are negotiated through the EPA 3011 RCRA Grant.

An effective and efficient enforcement and compliance monitoring section is essential to the success of the State's HWMP. The C&TAP, as outlined in this section, contains the remedies for violations of State program requirements as set forth in 40 CFR 271.16 and are made available by the HWA, 74-4-1, and the HWMR.

The focus of the C&TAP is to conduct Compliance Evaluation Inspections (CEI) at facilities that are involved in the generation of, treatment of, storage of, disposal of, and the transportation of hazardous waste within the State of New Mexico, and to ensure compliance with the regulatory requirements and permits. CEI's are conducted at privately owned businesses, state agencies' and federal facilities. All CEI's require a document review and a walk through of the facility. To assist the inspectors during the inspection, a checklist is filled out along with a violation worksheet on violations found. Pictures are taken of violations unless there are special conditions. A detailed written description of the violation(s) is required.

The NMED continues its attempt to adhere to the time frames for enforcement actions specified in the current EPA Enforcement Response Policy (ERP) and the multi-year EPA/NMED Enforcement Memorandum of Understanding (MOU). Generally, 180 days for formal enforcement against Significant Non-Compliers (SNC), and 180 days from the first day of discovery of exceedence with the compliance schedule (and extensions granted) established through the informal enforcement action, such as a Notice of Violation (NOV), resulting in escalation to formal enforcement, if necessary or appropriate, through an Administrative Compliance Order (CO). In those circumstances in which the NMED determines it cannot meet a specified time frame, it makes every effort to notify the EPA in advance of the deadline with a specification of the reason(s) for the delay.

The NMED identifies violations of RCRA hazardous waste requirements by three primary means: inspections, periodic record reviews (e.g. manifests), and complaints (as verified by subsequent investigations or inspections). The NMED utilizes numerous inspection checklists to identify violations, including the Land Disposal Restriction checklist, when performing inspections at hazardous waste handler sites. Once a violation is identified, it is recorded by entry into the EPA RCRA Information database. Violations are documented by the issuance of a NOV for most violations and by the issuance of an Administrative Compliance Order for SNCs. When either an NOV or CO is issued, compliance is tracked by RCRA Info, until resolution.

Administrative Compliance Orders with penalties are the means commonly used to address SNCs. NOVs are issued to lesser violators, with an administrative order subsequently issued if necessary. The HWA, 74.4.11, provides the NMED to bring criminal actions against person violating the statute. Action may also be referred to the State Attorney General office for criminal prosecution. Fines of up to \$25,000.00 per day per violation are authorized in administrative, civil and criminal actions; additionally, the most serious violations (e.g. illegal disposal), if committed knowingly and willfully, are classified as second degree felonies with a sentence of up to 9 years, fined up to \$100,000, or both.

Once any type of order is issued to a facility, it is tracked by the above-mentioned tracking mechanism until resolution. Verification of compliance is usually accomplished by either requiring the violator to submit appropriate documentation to demonstrate compliance, by a follow-up inspection or a combination of both.

In addition to acting upon incidents of non-compliance identified by EPA or the HWB inspection program, public input is also accepted and evaluated. Information regarding suspected hazardous

waste violations brought to the NMED's attention will be directed to the HWB. The validity of the alleged violation will then be investigated. The investigation can, include but not be limited to, reconnaissance and surveillance by NMED staff, personal interviews with the complainant and communications with interviews with other Federal, State and local law enforcement, transportation and environmental agencies. If deemed necessary, an inspector from the HWB may be sent to the alleged site of noncompliance to conduct an inspection. During such investigations and inspections, appropriate samples may be collected if necessary, and other procedures contained in the EPA RCRA Inspection Manual and appropriate NMED procedures, so that any evidence will be admissible in a court enforcement proceeding.

#### **VI.A. Determination of Violations and Enforcement Proceedings**

The normal enforcement procedure will involve:

1. The determination of a violation based on any information received or detected by the HWB, or provided by EPA.

Violations, other than those which pose an imminent hazard, will be considered on a case-by-case basis considering such criteria as:

- a. the type and number of violations;
  - b. potential for adverse impacts;
  - c. past compliance records and responsiveness of an offender;
  - d. anticipated time required for correction;
  - e. whether the violation is a continuation of a violation previously subject to enforcement action; and
  - f. whether the facility has notified of its hazardous waste activity.
2. Once the gravity of the violation is determined enforcement actions will proceed as follows:
    - a. For those violations which may create an imminent hazard to public health or the environment in which immediate action is required, the NMED would pursue enforcement actions under NMSA 1978, Sec. 74-4-13, which provides the authority to immediately restrain any activity leading to that condition either through suit in district court or through the issuance of other orders.
    - b. Enforcement action would, otherwise, proceed with notification by NMED to the violator of its failure to comply with such requirements. A compliance order will be issued and penalties will be issued to all high priority violators as described in the NMED's penalty policy. Enforcement action would proceed with notification by the HWB to the violator of his failure to comply with such requirements. As soon as reasonably possible, but at least

within thirty (30) days of any detected violation, a Notice of Violation, or Administrative Compliance Order, shall be sent via certified mail to a facility.

The NOV shall state the number and types of violations, along with the appropriate regulatory and/or statutory citations, and shall direct the offender to correct such violations within fifteen (15) days.

If such violation extends beyond the fifteenth (15th) day after receipt of notification, the NMED, pursuant to NMSA 1978, Sec. 74-4-10, may issue a CO requiring compliance within a specified time period or may commence civil action in district court for appropriate relief, including a temporary or permanent injunction.

Any order issued by the NMED will become final unless, no later than thirty days after the order is served, the person or persons named submits a request for a hearing. The *Rules Governing Appeals From Compliance Orders Under the Hazardous Waste Act and the Solid Waste Act* govern all adjudicatory proceedings for the issuance of compliance orders under HWA, NMSA 1978, Sec. 74-4-10.

Should the situation arise, however, that satisfactory corrective action does not result in any of the situations described above, the NMED shall proceed with escalation of legal action. If the violator is a holder of a permit, administrative proceedings could be commenced to suspend or revoke the permit of the violator.

This will allow the establishment of a strict time frame for effecting all necessary actions. Negotiations and compliance scheduling, as previously described above will be employed whenever possible to limit litigation.

3. The NMED is organized in such a manner that there is considerable inter-communication between the respective Bureaus that routinely administer the programs, which affect the regulated community. The NMED is also able to maintain a high-profile throughout the state by the staffing of twenty-one (21) permanent field offices. It is believed that this wide interaction with the public and private sectors will enable the NMED to effectively identify and subject any person to regulation who has failed to comply with the permit application, or notification requirements or who may be subject to such requirements in the future.

Routinely, facilities applying for any NMED permit will be evaluated for their status under the Hazardous Waste Bureau's regulatory scheme. In addition, all NMED personnel are asked to inform the HWB of observations they have made of facilities that may be circumventing the applicable program requirements.

#### VI.B Legal Remedies

The New Mexico Hazardous Waste Act gives the NMED the authority to conduct investigations and inspections; to hold hearings, to enter upon public or private property for investigations or surveys; to institute proceedings in any court of competent jurisdiction to compel compliance with any violation of the Act or Regulations as issued thereto; and to bring suit in the appropriate district

court to immediately restrain any person who may be handling, storing, treating, transporting and/or disposing of any solid waste or hazardous waste in such a manner that it may present an imminent and substantial danger to human health or the environment.

Section 74-4-4.2D.G allows the Secretary to modify, suspend or revoke any permit issued under the Hazardous Waste Act for:

1. Violation of any permit condition;
2. Misrepresentation of, or failure to fully disclose, all relevant facts and information in obtaining the permit;
3. Violation of any provision of the Hazardous Waste Act or any regulation promulgated pursuant to it; or
4. In the case of research, development and demonstration permits, upon the determination that termination is necessary to protect human health and the environment.

Section 74-4-11, provides for criminal penalties of not more than ten thousand dollars (\$10,000) or imprisonment for a definite term not less than one year, or both. If the conviction is for a violation committed after a first conviction of such person under this section, the person shall be punished by a fine of not more than twenty-five thousand dollars (\$25,000) per day of violations, or by imprisonment of not more than two years, or both.

Section 74-4-12 provides for civil penalties of up to ten thousand dollars (\$10,000) for each day during any portion of which a violation occurs.

Section 74-4-13 provides that whenever the director is in receipt of evidence that the handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial danger to health or the environment, he may bring suit in the appropriate district court to immediately restrain any person contributing to such activity or to take such other action as may be necessary.

Section 74-4-14 provides that any person who is or may be affected by any final administrative action of the board or the secretary may appeal to the Court of Appeals for further relief within thirty days after the action. All appeals shall be upon the record before the board or the secretary.

The assessment of penalties shall be determined by the HWB in conjunction with the Office of General Counsel. New Mexico has incorporated the RCRA Civil Penalty Policy as a guidance document for use in the assessment of policies.

In addition to the investigations of citizen complaints, public participation in enforcement actions is also provided for by Rule 24(a) of the New Mexico Rules of Civil Procedure, SCRA, 1-024(a) which allows for interventions of right in civil actions in the state district court. SCRA 1-024(a) is similar to Rule 24(a) of the Federal Rules of Civil Procedure.

## VI.C. Compliance Monitoring

The HWB compliance monitoring activities will be divided into the following major categories: 1) Inspection of hazardous waste generators transporters, and TSD facilities; 2) Review of generator and facility reports required to be submitted to the state; 3) Review and approval of facility plans such as the contingency plan, groundwater monitoring data, financial assurance, requests for waivers, and closure and post-closure plans; 4) Provide essential monitoring support in the event of violations and emergency situations; 5) Conducting a non-notifier program using the standard procedures outlined in the inspection and enforcement sections of this document; and 6) Manifest Tracking.

### 1. Routine Inspections

The HWB provides for periodic, routine inspections of all facilities and activities subject to the hazardous waste regulations in order to:

- a. determine compliance or non-compliance with interim status standards, issued permit conditions and other program requirements;
- b. verify the accuracy of information submitted by permittee and other regulated persons; and
- c. allow collection of samples for analysis during routine monitoring as necessary.

Routine inspection schedules and facilities to be inspected are determined by the program and negotiated annually during the grant negotiations. Routine compliance inspections will be conducted without prior notification unless circumstances dictate otherwise.

Personnel engaged in compliance inspections have been delegated the authority to enter any site or premise subject to regulation. Access and view records relevant to the program are kept in order to gain access to pertinent records, inspect, monitor or otherwise investigate compliance with the State program, including compliance with permit conditions and other program requirements (NMSA 1978, Sec. 74-4-4.3).

### 2. Inspection Procedures

Inspections of hazardous waste facilities, generators and transporters shall vary according to facility type. During the course of routine compliance inspections, if it is deemed necessary to collect samples of waste material(s) and/or groundwater monitoring samples, they will be collected in accordance with the latest edition of SW-846 - Test Methods for Evaluating Solid Waste-Physical/Chemical Methods.

Laboratory analysis will be conducted at a private contract laboratory except for samples collected in conjunction with emergency response activities. All samples will be handled and analyzed using EPA approved methods.

Routine inspection procedures shall include but not be limited to an in-briefing to inform and

acquaint the facility with the purpose of the inspection and the actions to be taken, and a review of all documents maintained by NMED as well as all documents required to be maintained at the facility by the regulations. The NMED inspection personnel to ensure their physical presence will review these documents and that all required entries are up-to-date. Reviewed documents shall include knowledge of process documentation, operating records, waste analysis plans, inspection records and logs, contingency plans, financial assurance documentation, ground-water monitoring plans, manifest and biennial reports, as applicable.

### 3. Site Inspections

A visual site inspection of all waste management units and surrounding areas shall be conducted. Items to be checked shall include physical condition of waste management units, evidence of discharges, segregation schemes, containment devices, emergency and security equipment, etc. Also, storage vessels are inspected to ensure that proper labeling and dating is provided. If potential violations are found, a violation worksheet, in addition to field notes in a logbook, is completed in order to record important information as to the specifics of the potential violation, such as the number of containers, the type of waste, the specific location, and how long the potential violation has existed. Employee comments are also documented. Photographs are taken when possible to record the potential violation. In some instances, a sample will be collected to verify the existence of hazardous waste and to identify the hazardous constituents involved.

Upon completion of the on-site inspection an out-briefing will be held with the facility to summarize the inspection procedures that were followed and point out any preliminary indications of non-compliance. The inspector may also amplify the need to correct any major instances of non-compliance.

### 4. Inspection Review

The inspector after completion of the inspection shall prepare an inspection report that shall include a brief description of the facility, the findings of the inspection, the violations noted with the appropriate regulatory citations, and the enforcement action deemed necessary.

### 5. Inspection Frequency

Inspection frequency will be in accordance with established EPA guidance and as agreed upon during grant negotiations.

### 6. Non-routine Inspections

Unscheduled inspections will be conducted in response to possible cases non-compliance, and in response to citizen complaints. Non-routine inspections may also be necessary to verify sampling data submitted by facilities. Typically, non-routine inspections will fall into the following categories: a) reported incident of violations/non-compliance; b) suspected incidents of violations/non-compliance; non-notifier activities; c) complaint inspections; and d) sampling inspections.

The need for non-routine inspections may be determined by routine program activities, record reviews, citizen complaints and results of the inspections.

Inspections of possible non-notifiers will routinely be scheduled whenever new information indicating the need is discovered.

Sampling inspections may result after review of facility records as dictated by new information concerning facility operations.

#### 7. Follow-up Inspections

Follow-up inspections to ensure correction of the detected violations will be conducted before, or as soon as deemed necessary, following any designated compliance data. This will depend on the speed of facility response and/or anticipated time of correction.

Follow-up will be prioritized according to type and number of violations detected.

#### 8. Compliance Monitoring/Enforcement Coordination

Individual inspectors are responsible for tracing time frames for compliance, scheduling of follow-up inspections and verification of correction of violations. Escalation of any enforcement proceedings for continued non-compliance will also be initiated by each inspector and channeled through the Hazardous Waste Bureau Chief to the Office of General Counsel for further development, either on an administrative level or in preparation for action in district court.

### VII. ESTIMATED REGULATED ACTIVITIES

The regulated community has seen no significant changes since the previous authorization. The treatment, storage, and disposal facility (TSD) universe has remained constant for the past several years with the exception of one new facility that was permitted, but has not constructed or started operations to date. Attachment H outlines the TSD universe. There have been no significant changes in the generator universe during the past two years. It has remained constant other than a shift from small quantity generators (SQGs) to conditionally exempt small quantity generators (CESQGs).

The number of generators and transporters has not significantly changed in New Mexico. Attachment I, 2003, Data from the National Biennial RCRA Hazardous Waste Report provides information as to waste generation of the large quantity generators (LQGs), waste management, waste shipments, waste receipts, and interstate shipments and receipts. The small quantity generators (SQGs) universe was comprised of 152 generators that included waste generation of 496,305 lbs during the 2004 year.