

US EPA ARCHIVE DOCUMENT

Program Description

**PROGRAM DESCRIPTION
NEW MEXICO ENVIRONMENT DEPARTMENT
HAZARDOUS WASTE MANAGEMENT PROGRAM
THROUGH RCRA CLUSTER XII
FEBRUARY 2008**

I. INTRODUCTION

The New Mexico Environment Department (NMED) is 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 August 2006 Program Descriptions (PD) submitted as a part of the State's application for authorization.

This Program Description (PD) 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 NMED's 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; August 10, 2001 (66 FR 42140) effective October 9, 2001; and August 17, 2007 (72 FR 46165) effective . 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 did not receive statutory authority for criminal penalties until recently. Criminal penalties are required by EPA for program authorization of used oil regulations. During the 2007 New Mexico Legislative Session the HWA was amended to include criminal penalties (**Attachment A**).

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 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.nmcp.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 some 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 III, IV and XIII, for used oil, as outlined below:

RCRA Cluster III (Checklists 112, 122 and 122.1)

Rule Title:	Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards (Revision Checklist 112)
Checklist Title:	Recycled Used Oil Management Standards
Reference:	57 FR 41566
Promulgation Date:	September 10, 1992
Effective Date:	March 8, 1993
Cluster:	RCRA III
Provision Type:	HSWA/Non-HSWA
Linkage:	Revision Checklists 19, 122, 130, 166
Optional:	No

Summary: This rule promulgates a final listing decision for used oils that are recycled, as well as standards for the management of used oil under RCRA §3014. EPA has determined that recycled used oil does not have to be listed as a hazardous waste because the used oil management standards issued under this rule are adequately protective of human health and the environment. These standards are codified in a new part 279 in Title 40 of the CFR.

Rule Title: Recycled Used Oil Management Standards; Technical Amendments and Corrections (Revision Checklists 122 and 122.1)
Checklist Title: Recycled Used Oil Management Standards; Technical Amendments and Corrections I
Reference: 58 FR 26420; 58 FR 33341
Promulgation Date: May 3, 1993; June 17, 1993
Effective Date: March 8, 1993; June 17, 1993
Cluster: RCRA III
Provision Type: HSWA and Non-HSWA
Linkage: Revision Checklists 19, 112, 130
Optional: No

RCRA Cluster IV (Checklist 130)

Rule Title: Hazardous Waste Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards (Revision Checklist 130)
Checklist Title: Recycled Used Oil Management Standards; Technical Amendments and Correction II
Reference: 59 FR 10550
Promulgation Date: March 4, 1994
Effective Date: April 4, 1994
Cluster: RCRA IV
Provision Type: HSWA and Non-HSWA
Linkage: Revision Checklists 19, 112, 122, 166
Optional: No

Summary: This rule clarifies the existing pipeline exemption as promulgated by the September 10, 1992 rule (57 FR 41566; Revision Checklist 112) and expands the exemption from the Part 279 requirements to other petroleum refinery applications. Specifically, EPA clarifies that the exemption from the used oil management standards did not intend to exclude used oil mixed with crude oil or natural gas liquids (hereinafter referred to as "crude oil") in pipeline units (e.g. stock tanks, production separators) prior to being introduced into the crude oil pipeline. The rule also expands the used oil exemption to include transportation and/or storage of mixtures of small amounts of used oil (i.e. less than 1%) and crude oil destined for insertion into a petroleum refining facility process at a point prior to crude distillation or catalytic cracking. Also exempted from the Part 279 standards are used oil that is inserted into the petroleum refining facility process after distillation or catalytic cracking operations and used oil that incidentally enters and

is recovered from a refinery's hydrocarbon recovery system or wastewater treatment system, provided these used oils meet certain specifications or handling requirements.

This rule also expands the transfer facility definition to allow used oil to be held for more than 24 hours but less than 35 days prior to an activity performed pursuant to 279.20(b)(2).

Finally, this rule corrects errors in the May 3, 1993 technical amendment (58 FR 26420; Revision Checklist 122) the September 10, 1992 rule.

RCRA Cluster VIII (Checklists 166 and 166.1)

Rule Title: Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards (Revision Checklists 166 and 166.1)

Checklist Title: Recycled Used Oil Management Standards; Technical Correction and Clarification

Reference: 63 FR 24963; 63 FR 37780

Promulgation Date: May 6, 1998; July 14, 1998

Effective Date: July 6, 1998; July 14, 1998

Cluster: RCRA Cluster VIII

Provision Type: Non-HSWA

Linkage: Revision Checklists 112, 122, 130

Optional: Yes

Summary: This rule clarifies: 1) when used oil contaminated with PCBs is regulated under the used oil management standards and when it is not, 2) that the requirements applicable to releases of used oil apply in States that are not authorized for the RCRA base program, 3) that mixtures of

Conditionally Exempt Small Quantity Generator (CESQG) wastes and used oil are subject to the used oil management standards irrespective of how that mixture is to be recycled, and 4) that the initial marketer of used oil that meets the used oil fuel specification needs to keep a record of the shipment of used oil to the facility to which the initial marketer delivers the used oil, but does not

need to keep records on the subsequent transfers of that used oil. This rule also amends incorrect references to the pre-1992 used oil specifications in the provisions which address hazardous waste fuel produced from, or reclaimed from, oil bearing hazardous wastes from petroleum refining operations. The July 14, 1998 technical correction removes three amendments made by the May 6, 1998 rule.

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 noticed 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 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.

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) Environmental Health Division (formerly 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 as outlined on the HWB Organizational Chart (**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 wastes.

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.

The Program also conducts reviews of formerly used defense sites (**FUDS**) under the Defense State Memorandum of Agreement (**DSMOA**) in conjunction with the Army Corps of Engineers. The approach of conducting corrective action for FUDS uses applicable, relevant, and appropriate requirements (ARARs) as established under Superfund Amendments and Reauthorization Act (SARA).

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. The program coordinates 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, as necessary, in conjunction with the other HWB programs. 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; and
- 5) NMED Administrative Service Division – provides administrative and financial support to HWB.

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 is not seeking 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) Direct Actions Against Insurers (this is not delegable to States) as provided for in HSWA §3004(t) promulgated on November 11, 1984.
- 5) (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.
- 6) (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.
- 7) (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.
- 8) (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.

- 9) (Revision Checklist 167 D) Mineral Processing Secondary Materials Exclusion.
- 10) (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.
- 11) (Revision Checklist 191*) Storage, treatment, transportation and disposal of mixed waste. New Mexico is not seeking authorizing for these rules at this time.
- 12) (Revision Checklist 192A) Hazardous Waste Identification Rule (HWIR): Revisions to the Mixture and Derived-From Rules. New Mexico is not seeking authorization 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 and technical expertise 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 financial and management analysts, 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, data management and financial affairs for the HWMP.

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.

The responsibilities of the NMED have not changed since the most recent program authorization of 2007. 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-four full time equivalent (FTE) staff within the Bureau and its' programs including two FTEs supporting information technology functions (**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 (Administrative/Operations Manager II - 1 position)

Manages, directs and monitors all activities performed by the Permits Management Program. Prepares and presents budget requests; prepares grant and conducts 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 Managers and Administrative/Operations I 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 – 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 & Specialists – 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 & Specialists and Engineer Specialist – 20 positions)

Reviews corrective action documents and permit applications for administrative and technical completeness and requests additional permit information as necessary. Recommends the issuance of Notice of Deficiencies or Disapproval for those documents determined to be incomplete. Recommends the issuance or denial of a permit or permit modification request. Reviews closure plans and post closure care plans for technical completeness. Two and a half (2.5) 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 – 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 - 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 - 9 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 - 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 - 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 - 2 positions)

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 repots and year-end reports. This position conducts financial and budget oversight and provides maintenance of contracts and grants. The Management Analyst position supervises and provides oversight of the Financial Analyst positions. This position 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 – 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 - 2 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 (IT Generalist and IT Project Manager - 2 positions)

These positions reports to the IT Bureau Chief. The duties consist of designing/developing and maintaining databases, decision support systems, desktop support, 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. 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 during the last three years 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 within 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 FY2008 authorized budget. 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 the FY2008 Budget \$332.9 (all dollar amounts are reported in the thousands) is authorized to support the bureau with four 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. An additional \$318.8 of the General Fund is authorized, in addition to \$119.5 of the Corrective Action Fund (see CAF below), for match to 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 the FY2008 Budget NMED is authorized for \$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 was authorized by the legislature and is expecting the legislature to appropriate CAF funding next year.

Federal Funds

EPA 3011 RCRA Grant: Federal Funds are secured through an EPA 3011 RCRA Grant. For FY2008 \$1,315.0 of federal funds has been requested to fund the RCRA grant. This grant supports twenty-one FTE's. The grant is generally approved for \$900.0 annually, excluding State match, and has a 25% hard match, which is obtained by three other funding sources of the General Fund, Corrective Action Fund and Other State Funds. The RCRA grant supports RCRA Subtitle C rules for permitting and enforcement of hazardous waste facilities and generators. The current grant work plan period has been accepted for FY2008-2009 with the grant funding awarded on an annual basis. Funding through FY2009 is expected to remain stable.

Defense-State Memorandum of Agreement (DMSOA): This agreement supports the work on formerly used defense sites within the State. The FY2008 authorized budget for DMSOA is \$270.3 and supports three FTEs.

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 is authorized for \$142.9 for FY2008. This program supports three 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 \$300.0 per annum. Fees are expected to decline due to the number of decreasing SQG's and generators becoming CESQG's. Funding through FY2008 will be limited and the program may be forced to seek other funding sources to support the program.

b. Hazardous Waste Permit Fees:

1. HWB is authorized for \$788.9 for FY2008 Budget, which supports six 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 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 and other documents reviewed by the agency. Annual 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 as provided within the fee regulations. Because the Annual Fees are generated based on a unit count for each facility, only those receipts are reasonably predictable.

4. Funding for this program is cyclical due to the ten-year permitting action that takes place. Funding through FY09 will be limited and HWB seeks agreements with the facilities to support bureau activities. Both WIPP, LANL and SNL currently maintain fee agreements with NMED under the authority of the HWA in association with the Hazardous Waste Management Fee Regulations, 20.4.2 NMAC.

WIPP Fees:

1. HWB is authorized for \$632.9 for the FY2008 Budget. This program supports four 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 the WIPP permit and associated activities. 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.

LANL Fees:

1. HWB is authorized for \$1,031.2 for the FY2008 Budget. This program supports ten FTE's.
2. As of September 27, 2005, HWB and Department of Energy-Los Alamos National Laboratory (DOE-LANL) 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.
3. Future funding impacts are evaluated and negotiated annually between LANL and NMED.

SNL Fees:

1. HWB is authorized for \$270.9 for the FY2008 Budget. This program supports two FTE's.
2. As of FY2008, HWB and the Department of Energy-Sandia National Laboratories (DOE-SNL) entered into an agreement for funding purposes similar to the WIPP agreement and supports permitting and corrective action activities at SNL.
3. Future funding impacts are evaluated and negotiated annually between SNL and NMED.

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. HWB is authorized for \$317.1 for the FY2008 Budget. This program supports one FTE.

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 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. 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 led 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

- 3) conjunction with the Exception Report and, 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. Typically the program provides 60 days for public comment on draft permits. 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 regulated 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 three facilities within New Mexico that have interim status units: 1) U.S. DOE Los Alamos National Laboratory, 2) U.S. DOE Sandia National Laboratories, and 3) 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 (P²) Office is dedicated to assisting New Mexico businesses, local governments and state agencies with pollution prevention issues. The P² 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 <www.werc.net/> in collaboration with the Energy, Minerals and Natural Resources Department www.emnrd.state.nm.us/main/index.htm and NMED as part of the Green Zia Environmental Excellence Program.

The Green Zia Environmental Excellence Program

<www.nmenv.state.nm.us/Green_Zia_website/index.html> 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 it's 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 which is provided by the New Mexico State Attorney General Office and provides examples of 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. NOV's 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 (TSDF) 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 TSDF 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.

ATTACHMENTS