

US EPA ARCHIVE DOCUMENT

Environmental Improvement Board (EIB), HWMR-6, as amended, February 28, 1991, New Mexico Register, Vol. II-No. 4, Part IX, Sections 902 (except 902.B.1 through 902.B.6); and Part X, Sections 1001, 1004, and 1005.

(3)(i) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(ii) New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (1992 Replacement Pamphlet), Sections 74-4-3.3 and 74-4-4.2J.

(4) *Unauthorized State Provisions:* The State's adoption of the Federal rules listed below, while incorporated by reference at 40 CFR 272.1601(a), is not approved by EPA and are not enforceable:

Federal requirement	Federal Register reference	Publication date
Liability Requirements.	53 FR 33938	09/01/88
Biennial Report	48 FR 3977	01/28/83
Permit Rules:	48 FR 39611	09/01/83
Settlement Agreement.		
Interim Status Standards	48 FR 52718	11/22/83
Applicability.		
Chlorinated Aliphatic Hydrocarbon Listing (F024).	49 FR 5308	02/10/84
National Uniform Manifest.	49 FR 10490	03/20/84

Additionally, except for the HSWA provisions concerning research, development and demonstration permits (50 FR 28702; July 15, 1985), New Mexico is not authorized to implement any HSWA rule in lieu of EPA. EPA will continue to enforce the Federal HSWA standards for which the State is not authorized until the State receives specific HSWA authorization from EPA.

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VI and the State of New Mexico signed by the EPA Regional Administrator on January 27, 1993, is referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* "Attorney General's Statement for Final Authorization", signed by the Attorney General of New Mexico in January, 1985, and revisions, supplements and addenda to that Statement dated April 13, 1988, September 14, 1988, July 19,

1989 and July 23, 1992, are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description dated and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272, is amended by adding in alphabetical order, "New Mexico" and its listing to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

New Mexico

The statutory provisions include: New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (1992 Replacement Pamphlet), Sections 74-4-2, 74-4-3 (except 74-4-3L, 74-4-3O, and 74-4-3R), 74-4-3.1, 74-4-4.2.A, 74-4-4.2B, 74-4-4.2F, 74-4-4.2G(2), 74-4-4.3F, 74-4-7 introductory paragraph, 74-4-7A, 74-4-9, and 74-4-10.1C, as published by the Michie Company, Law Publishers, 1 Town Hall Square, Charlottesville, Virginia 22906-7587.

The regulatory provisions include: New Mexico Hazardous Waste Management Regulations, Environmental Improvement Board (EIB), HWMR-6, as amended, February 28, 1991, New Mexico Register, Vol. II-No. 4, Parts I through Part VIII; Part IX, Sections 901, 902.B.1 through 902.B.6; and Part X, Section 1003. Copies of the New Mexico regulations can be obtained from the New Mexico Register, New Mexico Information Systems, P. O. Box 6703, Santa Fe, NM 87502.

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[FR Doc. 93-24959 Filed 10-8-93; 8:45 am]
BILLING CODE 6560-50-P

40 CFR Part 272

[FRL-4783-8]

Hazardous Waste Management Program: Incorporation by Reference of Approved State Hazardous Waste Program for Oklahoma

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the United States Environmental Protection Agency (EPA) may grant Final Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses title 40 Code of Federal Regulations (CFR), part 272 to provide notice of the authorization status of State programs, and to incorporate by reference those provisions of the State statutes and regulations that EPA will enforce under RCRA section 3008. EPA intends to incorporate by reference the Oklahoma authorized State program in 40 CFR part 272.

EFFECTIVE DATES: This document will be effective December 13, 1993 unless EPA publishes a prior Federal Register (FR) action withdrawing this immediate final rule. All comments on this action must be received by the close of business November 12, 1993. The incorporation by reference of certain Oklahoma statutes and regulations was approved by the Director of the Federal Register as of December 13, 1993 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Written comments should be sent to Dick Thomas, Region 6 Authorization Coordinator (6H-HS), Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region VI, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, suite 1200, Dallas, TX 75202, 214/655-8528.

FOR FURTHER INFORMATION CONTACT: Dick Thomas, Region 6 Authorization Coordinator (6H-HS), Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region VI, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, suite 1200, Dallas, TX 75202, 214/655-8528.

SUPPLEMENTARY INFORMATION:
Background

Section 3006 of RCRA, 42 U.S.C. 6926 *et seq.*, allows the EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. The purpose of today's Federal Register document is to incorporate by reference EPA's approval of Oklahoma's base hazardous waste management program and its four revisions to that program.

On December 27, 1984, EPA published a Federal Register notice announcing its decision to grant final authorization for the RCRA base program to the State of Oklahoma (see 49 FR 50362). Effective on June 18, 1990 (see 55 FR 14280); November 27, 1990 (see FR 39274); June 3, 1991 (see 56 FR 13411); and November 19, 1991 (see 56

FR 47675), EPA granted Oklahoma additional authorization.

Oklahoma is only authorized for non-HSWA Federal provisions which have been promulgated, through June 30, 1989, in 40 CFR 124 parts 260 through 266, 268, and 270. However, the Oklahoma Industrial Waste Management Regulations include Federal rules that were published in the Federal Register between July 1, 1989 and June 30, 1990. Also, Oklahoma has adopted but is not authorized for the September 1, 1988 (53 FR 33938) amendments to 40 CFR parts 264 and 265 addressing liability requirements. Thus, Federal rules published on September 1, 1988 and between July 1, 1989 and June 30, 1990 and included in the State adoption by reference of Federal code at 310:270-3-2(1) and 310:270-3-2(4) through 310:270-3-2(12) are not part of the State's authorized program and are not Federally enforceable.

Oklahoma is not yet authorized to implement any HSWA requirements in lieu of EPA. However in adopting Federal requirements by reference, the State included in its adoption certain of the HSWA-based regulations that were promulgated by EPA prior to July 1, 1990. Since EPA cannot enforce a State's requirements which have not been reviewed and approved according to the Agency's authorization standards, it is important that EPA clarify any limitations on the scope of a State's approved hazardous waste program. Thus, in those instances where a State's method of adopting Federal law by reference has the effect of including unauthorized requirements, EPA will provide this clarification by: (1) Incorporating by reference the relevant State legal authorities according to the requirements of the Office of Federal Register; and (2) subsequently identifying in a distinct section of this subpart any requirements which while adopted and incorporated by reference, are not authorized by EPA, and therefore are not Federally enforceable. With respect to HSWA requirements for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State received specific HSWA authorization from EPA.

On December 31, 1991, Oklahoma renumbered its hazardous waste rules, Rules and Regulations for Industrial Waste Management, ODH Bulletin 0525, and codified them at Title 310 of the Oklahoma Administrative Code (OAC). The table that follows provides the analogs between the former and renumbered provisions of the Oklahoma hazardous waste regulations.

Former Oklahoma provision ¹	Renumbered Oklahoma provision ²
Chapter One	Subchapter 1
100	310:270-1-1
110	310:270-1-2
120	310:270-1-2
130	310:270-1-2
140	310:270-1-2
150	310:270-1-2
160 (reserved)	
170	310:270-1-2
180	310:270-1-2
Chapter two	Subchapter 3
200	310:270-3-1
210	310:270-3-2
211	310:270-3-3
220-221	310:270-3-4(a)-(b)
230	310:270-3-5
240	310:270-3-6
Chapter three	Subchapter 5
300	310:270-5-1
301	
302	310:270-5-1(1)
303	
304	310:270-5-1(2)
310	310:270-5-3 (Reserved)
320	310:270-5-4 (Reserved)
Chapter five	Subchapter 9
500	310:270-9-1
510	310:270-9-2
520	310:270-9-3
521-522	310:270-9-3(a)-(b)
530	310:270-9-4
531-532	310:270-9-4(1)-(2)
540	310:270-9-5
Chapter six	Subchapter 11
600	310:270-11-1
601-606	310:270-11-1(a)-(f)
610	310:270-11-2
611-612	310:270-11-2(a)-(b)
620	310:270-11-3
621-624	310:270-11-3(a)-(b)
630	310:270-11-4
631-637	310:270-11-4(a)-(g)
Chapter seven	Subchapter 11
700	310:270-13
701-703	310:270-13-1(a)-(c)
710	310:270-13-2
711-713	310:270-13-2(a)-(c)
720	310:270-13-3
730 (reserved)	
740	310:270-13-4
741-743	310:270-13-4(b)-(d)
330	310:270-5-5 (Reserved)
Chapter four	Subchapter 7
400	310:270-7-1
410	310:270-7-2
420	310:270-7-3
430	310:270-7-4

¹ Rules and Regulations for Industrial Waste Management, ODH Bulletin 0525, as amended, June 29, 1989, effective August 17, 1989; April 12, 1990, effective June 4, 1990; and June 21, 1990, effective August 9, 1990.

² Industrial Waste Management Regulations, Chapter 270, Title 310 *The Oklahoma Administrative Code*, (SUBCHAPTERS 1 through 19, Sections 310:270-1-1 through 310:270-19-34), (codified December 31, 1991)

EPA provides both notice of its approval of State programs in 40 CFR part 272 and incorporates by reference therein the State statutes and regulations that EPA will enforce under section 3008 of RCRA. This effort will provide clearer notice to the public of the scope of the authorized program in Oklahoma. Such notice is particularly important in light of the Hazardous and Solid Waste Act Amendments of 1984 (HSWA), Public Law 98-618. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By incorporating by reference the authorized Oklahoma program and by amending the Code of Federal Regulations whenever a new or different set of requirements is authorized in Oklahoma, the status of Federally approved requirements of the Oklahoma program will be readily discernible.

The Agency will only enforce those provisions of the Oklahoma hazardous waste management program for which authorization approval has been granted by EPA. This document incorporates by reference of State hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. Concerning HSWA, some State requirements may be similar to HSWA requirements that are in effect under Federal statutory authority in that State. However, a State's HSWA-type requirements are not authorized and will not be codified into the CFR until the Regional Administrator publishes his final decision to authorize the State for specific HSWA requirements. Until such time, EPA will enforce the HSWA requirements and not the State analogs.

Oklahoma Authorized Hazardous Waste Program

To incorporate by reference the Oklahoma authorized hazardous waste program, EPA intends to add subpart LL to 40 CFR part 272. The State statutes and regulations are incorporated by reference at 40 CFR 272.1851(a) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at 40 CFR 272.1851(e), (f) and (g), respectively.

The Agency retains the authority under sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedure Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to incorporate by reference for purposes of enforcement such particular, authorized Oklahoma enforcement authorities. Section 272.1851(b) of 40 CFR lists those authorized Oklahoma authorities that are part of the authorized program but are not incorporated by reference.

Some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions are not part of the RCRA Subtitle C program because they are "broader in scope" than RCRA Subtitle C (see 40 CFR 271.1(i)). As a result, State provisions which are "broader in scope" than the Federal program are not incorporated by reference for purposes of enforcement in 40 CFR part 272. Section 272.1851(c) of 40 CFR lists for reference and clarify the Oklahoma statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the authorized program being incorporated by reference. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions. Similarly, the State's adoption of Federal rules listed at 40 CFR 272.1851(d) is not approved by EPA and are, therefore, not part of the Federally enforceable program.

HSWA Provisions

As noted above, the Agency is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are immediately effective in Oklahoma and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (see 50 FR 28702, July 15, 1985).

Because of the vast number of HSWA statutory and regulatory requirements

taking effect over the next few years, EPA expects that many previously authorized and incorporated by reference State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to 40 CFR part 271. EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the part of 40 CFR part 272 applicable to the State's incorporation by reference. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It intends to incorporate by reference the decisions already made to authorize Oklahoma's program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 272

Environmental Protection
Administrative practice and procedure,
Confidential business information,
Hazardous waste transportation,
Hazardous waste, Incorporation by
reference, Indian lands,
Intergovernmental relations, Penalties
Reporting and recordkeeping
requirements, Water pollution control
Water supply.

Dated: September 23, 1993.

Joe D. Winkle,

Acting Regional Administrator.

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Subpart LL is amended by adding § 272.1851 to read as follows:

§ 272.1851 Oklahoma State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Oklahoma has final authorization for the following elements as submitted to EPA in Oklahoma's base program application for final authorization which was approved by EPA effective on January 10, 1985. Subsequent program revision applications were approved effective on June 18, 1990, November 27, 1990, June 3, 1991, and November 19, 1991.

(b) *State Statutes and Regulations.* (1) the Oklahoma statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(i) EPA Approved Oklahoma Statutory Requirements Applicable to the Hazardous Waste Management Program, September, 1993.

(ii) EPA Approved Oklahoma Regulatory Requirements Applicable to the Hazardous Waste Management Program, September, 1993.

(2) The following statutes and regulations concerning State enforcement, although not incorporated by reference, are part of the authorized State program:

(i) Oklahoma Controlled Industrial Waste Disposal Act, 63 O.S. 1991, Sections 1-2001.1, 1-2003, 1-2003.1, 1-

2004 (except 1-2004(19) through 1-2004(21) and 1-2004(27) through 1-2004(34)), 1-2004.1, 1-2004.2, 1-2005, 1-2005.1, 1-2005.3, 1-2006, 1-2006.1(A), 1-2007, 1-2008(A), 1-2008(G), 1-2008(H)(1), 1-2009.1(B), 1-2011, 1-2012, 1-2012.1, 1-2013, and 1-2013.1.

(ii) Industrial Waste Management Regulations, Chapter 270, Title 310 The Oklahoma Administrative Code, December 31, 1991: Subchapter 3, Section 310:270-3-2(1); Subchapter 11,

Sections 310:270-11-1(a)(6), 310:270-11-1(e), 310:270-11-2; Subchapter 13, 310:270-13-1, and 310:270-13-3.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, and are not incorporated by reference:

(i) Oklahoma Controlled Industrial Waste Disposal Act, 69 O.S. 1991, Sections 1-2005.2 and 1-2005.3A.

(ii) Industrial Waste Regulations, Chapter 270, Title 310 The Oklahoma

Administrative Code, December 31, 1991: Subchapter 11, Sections 310:270-11-1(c) portion addressing application fees, 310:270-11-1(d) portion addressing application fees; Subchapter 13, Section 310:270-13-4; and Subchapter 17.

(4) *Unauthorized State Provisions:* The State's adoption of the Federal rules listed below, while incorporated by reference at 40 CFR 272.1851(a), is not approved by EPA and are, therefore, not enforceable:

Federal requirement	Federal Register reference	Publication date
Liability Requirements	53 FR 33938	09/01/88
Delay of Closure Period for Hazardous Waste Management Facilities	54 FR 33378	08/14/89
Mining Waste Exclusion I	54 FR 36592	09/01/89
Testing and Monitoring Activities	54 FR 40260	09/29/89
Mining Waste Exclusion II	55 FR 2322	01/23/90
Modification of F019 Listing	55 FR 5340	02/14/90
Testing and Monitoring Activities; Technical Corrections	55 FR 8948	03/09/90
Criteria for Listing Toxic Wastes; Technical Amendment	55 FR 18728	05/04/90
Land Disposal Restrictions for Third Scheduled Wastes (Non-HSWA)	55 FR 22520	06/01/90

Additionally, Oklahoma is not yet authorized to implement any HSWA requirements in lieu of EPA. EPA will continue to enforce the Federal HSWA standards until the State receives specific HSWA authorization from EPA.

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VI and the State of Oklahoma signed by the EPA Regional Administrator on March 22, 1991, is referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* "Attorney General's Statement for Final Authorization", signed by the Attorney General of Oklahoma on January 20, 1984 and revisions, supplements and addenda to that Statement dated January 14, 1988 (as amended July 20, 1989, December 22, 1988 (as amended June 7, 1989 and August 14, 1990), November 20, 1989, and September 16, 1990, are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description dated and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272 is amended by adding in alphabetical order, "Oklahoma" and its listing to read as follows:

Appendix A to Part 272—State Requirements

Oklahoma

The statutory provisions include: Oklahoma Controlled Industrial Waste Disposal Act, 63, O.S. 1991, Sections 1-2002, 1-2006.1 (except 1-2006.1(A)), 1-2006(B) through 1-2008(F), 1-2008(H)(2), 1-2008(H)(3), 1-2009, 1-2009.1 (except 1-2009.1(B)(2)), 1-2010, 1-2012.3, 1-2014(A), 1-2014(B) (except the last sentence), 1-2014(C)(2), 1-2014(D), 1-2014(E) and 1-2014.2.

Copies of the Oklahoma statutes that are incorporated by reference are available from West Publishing Company, 50 West Kellogg Boulevard, P.O. Box 64526, St. Paul, Minnesota 55164-0526.

The regulatory provisions include: Industrial Waste Management Regulations, Chapter 270, Title 310 *The Oklahoma Administrative Code*, December 31, 1991: Subchapter 1, Section 310:270-1-2 (excluding definitions for "Annulus", "Cone of influence", "Fresh water" and "Maximum total pressure gradient"); Subchapter 3, Sections 310:270-3-1 (excluding the phrase "and the Underground Injection Control Program, as amended through July 1, 1990), 310:270-3-2 introductory paragraph, 310:270-3-2(4) through 310:270-3-2(12), 310:270-3-4(a), 310:270-3-5 (excluding the phrase "40 CFR 144.3, 40 CFR 146.3, or"), 310:270-3-6; Subchapter 5 (except 310:270-5-2); Subchapter 7; Subchapter 9 (except 310:270-9-6 and 310:270-9-7); Subchapter 11, Sections 310:270-11-1(a), 310:270-11-1(a)(1) first sentence, 310:270-11-1(a)(2), 310:270-11-1(a)(3), 310:270-11-1(b), 310:270-11-1(c) introductory paragraph (except the phrase "the application fee and"), 310:270-11-1(c)(1) through 310:270-11-1(c)(3), 310:270-11-1(d) introductory

paragraph (except the phrase "the application fee and"), 310:270-11-1(d)(1), 310:270-11-1(d)(2) (except the references "144, 146,"), 310:270-11-1(f), 310:270-11-3, 310:270-11-4(a) through 310:270-11-4(e); and Subchapter 13, Sections 310:270-13-2 introductory paragraph, 310:270-13-2(1) and 310:270-13-2(2) first sentence.

Copies of the Oklahoma regulations that are incorporated by reference can be obtained from The Oklahoma Register, Office of Administrative Rules, Secretary of State, 101 State Capitol, Oklahoma City, Oklahoma 73105.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7000

[NM-010-4210-06; NNMNM 85979]

Withdrawal of Public Lands for the Ojito Area of Critical Environmental Concern; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 7,320 acres of public lands from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the paleontological, geological, recreational, cultural, watershed, and scenic values of the Ojito Area of Critical Environmental Concern. The lands have been and will remain open