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January 19, 1993

FKCA

MEMORANDUM

TO: Dave Vackar, Director, NMED
THRU: Kathleen Sisneros, Director, NMED
FROM: *BK* Benito J. Garcia, Bureau Chief, HRMB
SUBJECT: Briefing Paper for Kay Marr NM Representative to Natural Resources SAC

In preparation for the Natural Resources SAC in connection with the NGA winter meeting, I offer the following observations on the Federal Facilities Compliance Act.

The amendment to the Solid Waste Disposal Act clarifies the provisions on the application of sanctions to federal facilities. The language allows the imposition of administrative orders and civil and administrative penalties and fines by federal, state and local agencies by waiving immunity to the United States. This essentially means that federal facilities are no longer excluded from enforcement and penalties under immunity clauses.

The amendment also stipulates that reasonable service fees can be charged to include but not limited to permit fees, fees for review of plans and other documents and reasonable fees associated with inspection/monitoring programs as well as other non-discriminatory fees. These fees must be assessed in connection with federal, state or local solid waste or hazardous waste regulatory programs.

The amendment does not allow for civil penalties to any agency, employee or officer of the United States. However, the amendment allows for criminal sanctions against agents, employees or officers of the United States, to include fines or imprisonment, under federal or state solid or hazardous waste laws. Criminal sanctions do not apply to federal facilities.



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Administrative enforcement actions and procedures are specified in the statute to include voluntary resolution or settlement under consent order by the regulatory agency. A caveat in the amendment relative to the administrative enforcement action is that no administrative order issued by a regulatory agency can become final until the federal agency to whom the order has been issued has the opportunity to confer with the administrator (Secretary NMED) on the order.

The amendment stipulates that funds collected from federal agencies under the provisions of the FFCA by a state shall be used by a state only for projects designed to improve or protect the environment or to defray the cost of environmental protection or enforcement.

This requirement is effective only if states did not have a law in place at the time of enactment of the FFCA requiring these funds to be used in a different manner. Currently funds collected by hazardous waste programs can go into two funds. One fund is the emergency clean up fund to which penalties and fines are deposited and the other in the hazardous waste fund to which permit fee monies are deposited for the implementation of the hazardous waste program.

The amendment (FFCA) allows the immunity waiver for federal facilities storing mixed waste for three years from enactment of the FFCA. The waiver applies to all civil, criminal and administrative penalties and fines as added by the FFCA. However, the three year limit on the waiver is not applicable to the U.S. Department of Energy (DOE) if the DOE has a plan that has been submitted and approved pursuant to section 3021 of the Solid Waste Disposal Act and is in effect and an order requiring compliance with such a plan has been issued pursuant to Section 3021 (b) of the Solid Waste Disposal Act and which is in effect.

The FFCA also states that any state with an authorized hazardous waste program also may conduct an inspection of any such facility for purposes of enforcing the facility's compliance with the state hazardous waste program. The FFCA also states that federal facilities shall reimburse the Environmental Protection Agency for the costs of the inspection. I construe this to mean that federal facilities must pay the EPA for state authorized program inspections of federal facilities to help subsidize the EPA grant program.

The FFCA stipulates that no later than 180 days after the enactment of the FFCA, the Secretary of Energy shall submit to the Administrator of the EPA and the Governor of each state in which the DOE stores or generates mixed waste, national inventories by

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state on mixed waste, waste stream amounts of waste, five year projection on mixed waste generation, treatment capacities and technologies for mixed wastes. These are general statements, the FFCA includes many specific reporting requirements related to mixed waste.

The FFCA provides specifics for plans for development of treatment capacities and technologies for each DOE facility which stores or generates mixed wastes.

Mixed waste as defined in the FFCA expands the concept from TRU-RCRA wastes to RCRA wastes mixed with by product materials, source materials or special nuclear materials.

I believe most of the allowable actions under the FFCA can readily be incorporated into solid and hazardous waste regulatory programs. The one outstanding issue, from the state's perspective, is the appointment by the Governor of an agency or individual to review and accept the reports on mixed waste inventories and treatment technologies to be submitted by the DOE by April 5, 1993.

Should you wish to discuss these statements, please call me, at your convenience, at 827-4358.

BJG:cj

cc: Ed Horst
✓ Barbara Hoditschek
Coby Muckelroy