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August 8, 1996

Allyn M. Davis
Director
Environmental Permitting and Protection Division
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Dear Mr. Davis:

Attached to this letter is the RCRA Permitting Agreement between the State of New Mexico's Environment Department (NMED) and the Region 6 U. S. Environmental Protection Agency.

This document replaces the Joint Permitting Agreement of August 21, 1992, that was revised by NMED, reviewed and commented upon by David Neleigh, Section Chief for the New Mexico Federal Facilities Section, and subsequently modified by NMED to include Mr. Neleigh's comments.

Please review and indicate your approval of this document by signing where indicated. Return the signed document to Ms. Barbara Hoditschek, RCRA Permits Management Program (RCRAPMP) of the Hazardous and Radioactive Materials Bureau (HRMB). If you have any questions concerning the document, please refer your questions to Ms. Hoditschek at (505) 827-1557.

Thank you in advance for your cooperation.

Sincerely,

Mark E. Weidler
Secretary

attachment

cc: Ed Kelley, Ph.D., Director, WWMD
Benito J. Garcia, Chief, HRMB
Barbara Hoditschek, Program Manager, HWPMP



August 7, 1996

PERMITTING AGREEMENT

BETWEEN

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

and

THE NEW MEXICO ENVIRONMENT DEPARTMENT

(Replaces the Joint Permitting Agreement of Aug. 21 , 1992)

August 7, 1996

I. PURPOSE

A Permitting Agreement (PA) has been entered into by the New Mexico Environment Department (hereinafter referred to as NMED) and the United States Environmental Protection Agency, Region 6, (hereinafter referred to as EPA) to administer the provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA) in accordance with Section 3006(c)(3), of the Federal Resource Conservation and Recovery Act (RCRA), as amended. The purpose of this document is to establish procedures to coordinate the actions of the NMED and EPA to implement RCRA and HSWA provisions in a cost effective and expeditious manner and to satisfy requirements of both State and Federal law. Procedures to be utilized in permitting are described in Section III of this document. Additional permitting tasks and responsibilities of NMED and EPA are included as milestones in the RCRA Grant Workplan (hereinafter referred to as the Grant). Nothing in this agreement shall preclude the EPA and NMED from interactions on preparation, notice and issuance of (HSWA) or (RCRA) permits. Nothing in this agreement shall preclude the EPA from exercising its oversight authority. Nothing in this agreement shall preclude EPA or NMED from exercising statutorily vested authorities.

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II. Permitting and Final Authorization

EPA evaluated the New Mexico Environment Department's hazardous waste statutes and regulations, and found them to be equivalent to the Federal program developed pursuant to HSWA and RCRA. Thus, EPA authorized the State of New Mexico hazardous waste program. The State of New Mexico is authorized for HSWA and RCRA. A permit cannot be considered a full RCRA Permit unless it contains all of the applicable requirements of HSWA. NMED obtained final authorization to issue all RCRA/HSWA Permits and will continue to adopt rules and seek passage of State Statutes to implement and regulate those permits. This document delineates the coordination of the EPA and NMED in RCRA/HSWA permitting activities. Under this agreement, NMED agrees to take the lead in the permitting process, as identified in the Grant. EPA will provide ongoing oversight and quality assurance checks of NMED permitting and closure activities. EPA will also be responsible for technical assistance in the review of HSWA Permit applications as negotiated with NMED. Under this PA, NMED and EPA agree to utilize, to the maximum extent possible, existing procedures for permit processing that were developed pursuant to the Memorandum of Agreement for Final Authorization (MOA) and any subsequent amendments. This arrangement will minimize disruption of ongoing permitting activities and assure that permitting deadlines in HSWA are met.

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This PA will be reviewed at least annually, updated or revised, as necessary, and re-signed prior to October 1. NMED will be the Administrative Authority for all HSWA / RCRA requirements for permits which have been issued or will be issued pursuant to authorization of the State. EPA will continue to process permit modifications to corrective action management units (CAMUs) and Temporary Units (TUs), until NMED becomes authorized for CAMUs and TUs.

III. Specific Procedures for Permit Processing

Procedures for NMED/EPA coordination in permit processing will continue as specified in the MOA, except as modified in this agreement.

- A. NMED shall provide information to EPA regarding the potential regulated universe affected by newly promulgated regulations of HSWA. NMED shall provide EPA the list of affected facilities within thirty days after promulgation.
- B. NMED shall continue to call in RCRA Part B Permit Applications. NMED shall also be responsible for HSWA permit activities. In some specific cases, it may be necessary for EPA to collect information required by NMED for HSWA permitting activities as negotiated by NMED and EPA. In such cases, EPA shall inform NMED of its information gathering activities. All communication between NMED and permit applicants will

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be designed to reflect the provisions of the PA, the roles of NMED and EPA.

C. After receipt of a Part B Application, NMED will review the information for administrative completeness and technical sufficiency. NMED will utilize EPA rules and guidance in reviewing facility compliance with HSWA provisions. NMED facility managers will coordinate the Part B Application reviews with HSWA application review to assure compliance with both RCRA and HSWA requirements.

D. If, after the administrative and/or technical review, NMED determines the application to be incomplete, NMED will develop a Notice of Deficiency (NOD) which includes all information necessary for the applicant to respond with a complete application. NMED notify EPA of the NOD(s) and any associated correspondence as stipulated in the grant. Furthermore, NMED may direct the applicant to send EPA a copy of their response to the NOD.

NMED will follow the procedures of the current Enforcement Memorandum of Understanding (MOU) for all late or incomplete applications. EPA will work with NMED to obtain sufficient information to prepare a draft permit decision.

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- E. If, after the administrative and/or technical review, NMED determines the application is administratively complete for all RCRA and HSWA information requirements, NMED will send a completeness determination letter to the facility, and notify EPA as stipulated in the Grant.
1. In accordance with the Grant, NMED may develop, and issue, specifically, permit provisions relating to HSWA. NMED permits issued pursuant to HSWA will contain the following:
- a) A completed HSWA Permit addressing standard HSWA requirements. EPA Model Permit, Attachment I, shall be used as the guide to insure all HSWA provisions are included and will suffice as a HSWA Checklist.
- b) Corrective Action requirements. Procedures for draft permit, EPA comment, public notice, hearing and permit issuance are those contained in the existing MOA, except as modified by this PA. It should be understood that NMED may provide EPA with a copy of the draft RCRA/HSWA Permit as stipulated in the Grant. EPA will be made aware of the Fact Sheet and the Public Notice Announcements at least 30 days before public notice is published in order that EPA can review and comment on the permit, apart from

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a Response to Comments procedure.

- F. Specific procedures for processing and issuing permits are given in Attachment II.
- G. Specific procedures for processing closure plans are given in Attachment III.
- H. RCRA Facility Assessment (RFA)

Unless otherwise noted, a RFA is a prerequisite for any RCRA/HSWA Permit. A RFA's purpose is to identify a release or the likelihood of a release of hazardous waste or hazardous waste constituents from each Solid Waste Management Unit (SWMU) at a facility and to identify the need, if any, for remedial investigations or corrective action. The RFA consists of three parts- Preliminary Review (PR), Visual Site Inspection (VSI) and Sampling Visit (SV), if appropriate.

RFAs will be conducted at all facilities to be permitted except those facilities requiring Research, Development and Demonstration (RD&D) Permits. A RFA may be conducted at a RD&D Facility, if deemed necessary. A RFA will be conducted by NMED or by EPA personnel or EPA contractors in a technical assistance role to

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NMED. RFAs to be done by NMED will be identified in the State Grant Workplan.

- I. Public notice of application and of hearing will include the following language:

"This notice satisfies the requirements of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6901 et seq. and 40 CFR 124.10". The draft permit, if issued, will implement requirements of the Hazardous and Solid Waste Amendments of 1984 (HSWA), amending the Federal Solid Waste Disposal Act, as amended by RCRA. The New Mexico Environment Department (NMED) has been authorized by the U.S. Environmental Protection Agency whereby permits may be issued in the State in accordance with New Mexico Hazardous Waste Regulations and the Hazardous and Solid Waste Amendments of 1984. Comments on the draft permit may be sent to either:

Ms. Barbara Hoditschek

Program Manager

RCRA Permits Management Program

Hazardous and Radioactive Materials Bureau

P.O. Box 26110

Santa Fe, NM 87502

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or

Mr. Benito Garcia, Chief

Hazardous and Radioactive Materials Bureau

New Mexico Environment Department

P.O. Box 26110

Santa Fe, New Mexico 87502

- J. EPA staff may also participate in NMED hearings upon request by NMED. NMED will give public notice of these hearings. NMED will provide the Hearing Officer who will represent State and EPA if EPA participates. For purpose of the permit(s), the informal, non-evidentiary phase of the hearing will constitute the public hearing.
- K. NMED will develop a State permit which implements HSWA and, therefore, can be separately issued in whole or in part. NMED will identify permit provisions relating to HSWA in the fact sheet, i.e., technical summary.
- L. NMED will provide written notification (telephone facsimile is acceptable) to EPA ten days prior to the publication of any NMED notices, press releases, etc., regarding the application of the permit. EPA will provide comments on such publications, if any, within five days of receipt of such notice.

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- M. NMED will notify EPA orally five days prior to the issuance of the final determination on any permit.
- N. NMED will act on the permit application based on the hearing record developed or may modify it with regard to any RCRA / HSWA provisions.
- O. State permit:
 - 1. NMED will issue a final permit decision and notify EPA of package availability. The package will consist of the signed final permit, public notice authorizations, fact sheet, public comments, transcript or recording of public hearing and response to comments. A copy of the entire package will be made available to EPA upon request.
 - 2. NMED will keep on file copies of all comments received during the public comment period regarding the RCRA / HSWA requirements of any permit.
- P. NMED and EPA will continue to share information in accordance with the existing MOA.
- Q. Interim Status for the units authorized in the permit shall terminate upon the effective date of the permit.
- R. A permit shall normally be issued for a ten-year period with a review after five years. When necessary, a permit may be issued for a period less than

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ten years.

S. Post-Permit Coordination

1. NMED will review and take appropriate action concerning reports and notifications required under State authorized RCRA/HSWA permit conditions. Copies of all reports and notifications on RCRA/HSWA issues will be kept on file and available to EPA.
2. All reports and notifications required under State authority on RCRA / HSWA conditions will be sent by the Permittee to NMED and kept on file by NMED and available to the EPA.
3. After receipt of a workplan, report or notification required under RCRA/HSWA authority, NMED facility managers will review the submission.
4. During the annual Grant Workplan negotiations, selected facilities shall be designated for corrective action documents. After receipt of a workplan, report, or notification required under the HSWA permit, NMED facility managers will coordinate the concurrent review of the submission. The NMED will then draft copy of any notice of deficiency, approval, or conditional approval.
5. NMED will keep copies of those documents on file and available for EPA review.

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6. NMED may issue a deficiency letter and keep a copy on file for EPA review.
7. Approval letters may be developed by NMED. NMED will keep a copy of the letter and the proof of mailing on file for review by the EPA.

T. In the case of Permit Appeals:

1. At a later date, a Standard Operating Procedure (SOP) pertaining to Permit Appeals will be written jointly by EPA and NMED. When completed, the SOP will be attached to this PA as Attachment IV.
2. When a permit appeal is requested by a qualified entity, NMED shall notify EPA of the availability of copies of all pertinent documents pertaining to the appeal after receipt of the documents.
3. NMED shall coordinate efforts with the EPA to ensure that proposed permit appeal settlements are consistent with other such actions in the region.
4. If a Permit Appeal is not settled between parties, State provisions appealed shall be resolved by the Administrative Authority for the State.
5. Following the resolution of the Permit appeal, the appropriate

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Administrative Authority shall institute action to ensure an effective permit and establish the effective date of the permit.



Mark E. Weidler, Secretary
New Mexico Environment Department

8/16/96

Date

Allyn M. Davis
Director,
Multimedia Planning and Permitting Division, 6H
Environmental Protection Agency
Region 6

Date

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ATTACHMENT II

STEPS TO PERMIT ISSUANCE

The Environmental Protection Agency (EPA) has established a generic Standard Operating Procedure for the issuing of RCRA/HSWA Permits.

The following steps of procedure can be found in that document but have been modified to incorporate alternatives used in the State of New Mexico:

1. Steps to perform a completeness determination include:
 - * Review RCRA Parts A and B Applications- determine administrative completeness and technical sufficiency.
 - * If the Permit Applications are found to be incomplete, NMED will issue a Notice of Deficiency with a warning letter, if necessary.
 - * Review the amended Permit Application. If still incomplete, issue an Administrative Order in accordance with the current Enforcement Memorandum of Understanding.
 - * Complete administrative and technical review of Permit Application and notify facility of its completeness.
 - * Update existing tracking system, i.e., HWDHS, RCRIS or the one being used at that time.

2. Preparation of RCRA/HSWA Draft Permit
 - * NMED will develop a draft RCRA /HSWA Permit. Draft permits, plus Public Notice Announcements and Fact Sheets, as applicable, shall be kept on file for comment and review.

Permits will be based on State requirements, as recorded in the New Mexico Hazardous Waste Act, and Federal Regulations, as promulgated under the Resource Conservation and Recovery Act, as amended.

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- * NMED will consolidate the RCRA and HSWA sections into an Initial Draft Permit (IDP), along with the facility Fact Sheet and the Public Notice Announcements.
- * NMED will provide a Final Draft Permit (FDP) to the facility and the public and notify EPA of their availability. The FDP will be submitted to the public for comment for at least the required 45 day Public Notice period. NMED will notify EPA of the official public notice data availability.

3. Final Permit Determination

- * A responsiveness summary will be prepared for all significant comments received during the public comment period for each permit decision. NMED will respond to comments on RCRA conditions and HSWA provisions.
- * NMED will notify EPA that copies of the Final Permit, response to comments and public notice data are available for review.
- * NMED will provide a signature page with the Final Permit. The Secretary of the New Mexico Environment Department, shall have a her/his signature affixed to this page.
- * Update the existing tracking system.

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ATTACHMENT III
STEPS TO APPROVAL OF CLOSURE PLAN

1. General Criteria

- * The State will ensure that closing facilities have adequate ground water monitoring systems and operate them properly. The State will ensure that provisions of the closure and post-closure plans are enforced. The State will determine whether a release has occurred from any SWMU (both regulated and non-regulated units) and take necessary corrective action. The State will grant "clean closure" only if the facility demonstrates that an acceptable level of cleanup is achieved for all RCRA waste contaminated sources, soils and ground water (i.e., treat to background levels, meet Safe Drinking Water Act maximum contaminant levels or other approved health-based levels, or receive approval for an alternate concentration limit).
- * The State will adhere to time-frames stated in 40 CFR 265.112(d)(4) or 20 NMAC 4.1 for the review and approval of submitted closure plans, including partial closure and post-closure plans, for interim status facilities. The State will ensure that the

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facility is inspected and closure certification is reviewed before releasing the financial mechanism.

2. Specific Steps for Approval

- * Review closure plans and obtain information necessary to approve closure plans.
- * Public notice of intent-to-approve the closure plan. Public notice will be given for partial closures
- * Respond to all significant comments received during the public comment period.
- * Issue formal approval of closure plan and notify EPA of the availability of the approved closure plan. Provide EPA with a copy upon request.
- * Update the existing tracking system.