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POSITION: _____

REMARKS: _____

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TOTAL NUMBER OF SHEETS INCLUDING COVER 6

Note
Originally from
George Diels

August 22, 1997

RCRA HAZARDOUS WASTE FACILITY PERMITTING PROCESS

Attached is a package of information relevant to a RCRA hazardous waste facility permitting process. This package of information is based upon existing regulatory provisions only.

Pursuant to these existing provisions, the public must be afforded a minimum 45 day comment period after a draft permit is issued by the New Mexico Environment Department (NMED). If a public hearing is held, the 45 day comment period is automatically extended until the end of the hearing. The regulations also require publication of a notice announcing the hearing. This notice must be published at least 30 days prior to the hearing. The attached materials assume that a hearing will commence on the 31st day after the draft permit is issued and that the "notice of hearing" is issued at the same time the draft permit is issued. The existing regulations do not preclude concurrent issuance of a draft permit and a notice of hearing. The Secretary of NMED has the discretion to order a hearing at any time, but no later than 5 days after the end of the mandated 45 day public comment period. Thus, the Secretary may legally schedule and notice a hearing at the time the draft permit is issued.

Further, the existing regulations do not require that the 45 day public comment period lapse prior to the beginning of a hearing. In fact, members of the public will be able to submit comments up to and during the hearing, since the comment period is automatically extended to the close of any public hearing. The public will be afforded a minimum 60 day period, as projected in the attached materials, for submittal of comments. Also, the NMED and the permit applicant will be able to address public comments up to and throughout the public hearing.

In addition, the regulations provide that the Secretary of NMED shall issue a final order in a permitting matter no later than the earliest of:

1. thirty (30) days after receipt of the Hearing Officer's recommended decision;
2. sixty (60) days after close of the hearing record; or
3. one hundred and eighty (180) days after the Application . . . was deemed complete. 20 NMAC

1.4, §503.A. Any permitting process established by NMED should facilitate a final decision by the Secretary consistent with the earliest of either of the above three conditions. The schedule set forth herein outlines a permitting process that would support a final decision consistent with the above three conditions and pursuant to existing legal requirements.

Description of Contents:

I. The first document is a chart, with the following information:

- (a) activities relative to the RCRA permitting process;
- (b) current legal requirements regarding the particular activities;
- (c) projected time periods, consistent with existing regulatory provisions, for completion of the particular activities;
- (d) elapsed time, i.e. cumulative time from start time to finish for completion of the activity, and
- (e) comments regarding the respective activities.

II. The second document is a compilation of excerpts from the regulatory provisions regarding permitting activities as set forth in the existing regulations. This compilation constitutes all of the time periods relevant to a RCRA hazardous waste permit hearing that are set forth in the current regulations. Other activities could occur during the hearing process, such as the filing of motions and requests for continuances, etc., however, these events could arguably occur concurrently with the activities addressed in the chart and schedule. Although the NMED has drafted several revisions to the existing regulations, those draft revisions are not addressed herein. The existing regulations afford adequate structure for successful accomplishment of a RCRA hazardous waste disposal facility permitting process.

NOTE: The schedule presented assumes aggressive management of parallel activities. Thus, if the draft permit is issued by September 30, 1997, the schedule set forth herein would support receipt of a permit for the WIPP facility prior to the target opening date of May 31, 1998.

Schedule of Activities From Draft Permit Issuance to Final Permit Effective Date

ACTIVITY DESCRIPTION	REGULATORY DURATION (Current Legal Requirements)	PROJECTED DURATION (DAYS)	ELAPSED TIME (NOTE 6 = DRAFT PERMIT)		COMMENTS
			START	FINISH	
1a. EPA review of Draft Permit	45 days translated and tied to the NMT public participation process. (i.e. simultaneous with public review) Paragraph 2 of Section V. B. of the EPANM MOA - February 8, 1997*	45	0	45	EPA stated that they will accomplish this during the public review process.
1b. Public review of Draft Permit <i>Public notice</i>	At least 45 days (20NMAC 4.1 §01A.3)	60	0	60	Public comment period automatically extended to end of public hearing (20NMAC 4.1 §01.A6).
2. Public hearing notice	Notice must be given at least 30 days prior to hearing date (20NMAC 4.1 §01.E.1) (20NMAC 1.4 §02.B)	30	0	30	Notice of public hearing should be made at the same time as draft permit is issued for public review.
3. Public hearing	No time limits	30	31	60	Consistent with NMED letter dated July 8, 1997.
4. Preparation of transcript	Not addressed	34	32	66	Transcript could be prepared each day concurrent with hearing with 6 copies after the hearing is finished.
5. Parties submit proposed findings of fact and conclusions of law	Within 30 days after conclusion of hearing (20NMAC 1.4 §01)	30	61	91	
6. Recommended decision	Within 30 days after filing of proposed findings and conclusions (20NMAC 1.4 §02.A)	30	92	122	Hearing Officer makes his recommended decision to regulatory authority.
7. Comments on recommended decision	Within 15 days after recommended decision (20NMAC 1.4 §02.B)	15	123	138	
8. Oral arguments	No time limits	Not expected			Oral arguments are only at the discretion of the secretary.
9. Final decision**	Earliest of: 1. 30 days after recommended decision 2. 60 days after close of hearing record 3. 180 days after the Application deemed complete (20NMAC 1.4 §03.A)	30	123	153	Secretary makes his final permit decision.

*EPA staff stated that EPA intends to conduct a preliminary review of the draft permit at least 30 days prior to NMED's issuance of the draft permit for public comment.
 **A permit decision shall become effective 30 days after notice of the final decision. 20 NMAC 4.1, 801.A.10.

August 22, 1997

EXISTING LEGAL REQUIREMENTS (RCBA PERMIT HEARING PROCESS)

Comment Period After Issuance of Draft Permit

The Secretary shall give public notice that a Draft Permit . . . has been prepared, and shall allow forty-five (45) days for review and public comment, including requests for public hearing. *20 NMAC 4.1, §901.A.3*

Automatic Extension of the Comment Period

The comment period . . . shall automatically be extended to the close of any public hearing. *20 NMAC, 4.1, §901.A.6*

Scheduling of a Public Hearing

A public hearing shall be scheduled if:

(a) the Secretary issues a Notice of Intent to Deny, and a timely request for public hearing is received from the applicant;

(b) the Secretary issues a Draft Permit, a timely request for public hearing is received from any person opposed to the granting of a permit, and such person does not subsequently withdraw the request pursuant to [§901.A.4] . . .; or,

(c) the Secretary determines, no later than five (5) days following the end of the comment period specified in [901.A.3] . . ., that a public hearing should be held notwithstanding the absence of a timely request for public hearing. *20 NMAC, 4.1, 901.A.5, a-c.*

Pre-Hearing Resolution of Opponent's Issues and Potential Withdrawal of Request for Hearing

If the Secretary issues a Draft Permit, and a timely written notice of opposition to the Draft Permit and a request for a public hearing is received, the Department, acting in conjunction with the applicant, will 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. *20 NMAC, 4.1, §901.A.4.*

Hearing Date

The Hearing Clerk, in coordination with the Hearing Officer, or if no Hearing Officer has been appointed, with the Secretary, shall schedule a hearing for a date no later than ninety (90) days after the date the Application or Petition was deemed complete or a Hearing Determination is received, unless otherwise required by law. *20 NMAC 1.4, §202.A*

Notice of Hearing

Public notice of any public hearing shall be given at least thirty (30) days prior to the scheduled date of the hearing . . . *20 NMAC 4.1, §901.B.1.*

Promptly, but no later than thirty (30) days prior to the hearing date, the Hearing Clerk shall issue a Notice of Hearing . . . *20 NMAC 1.4, §202.B.*

Proposed Findings and Conclusions

Unless otherwise ordered by the Hearing Officer, within thirty (30) days after conclusion of the hearing, or within such time as may be fixed by the Hearing Officer, any party may submit proposed findings of fact and conclusions of law and closing argument if desired. All such submissions shall be in writing, served on all parties and contain adequate references to the record and authorities relied on. No new evidence shall be presented unless specifically allowed by the Hearing Officer. 20 NMAC 1.4, §501

Hearing Officer's Recommended Decision

Unless otherwise ordered by the Secretary, the Hearing Officer shall issue a recommended decision within thirty (30) days after the period for filing of proposed findings and conclusions under Section 501 has expired, but in any event no later than one hundred fifty (150) days after the Application . . . was deemed complete . . . 20 NMAC 1.4, §502.A.

Any party or interested participant may file, within fifteen (15) days after service of the recommended decision on such party or interested participant, any comments such party or interested participant may have regarding the recommended decision, including argument for or against the recommended decision or for modification of the recommended decision. 20 NMAC 1.4, §502.B.

The Secretary may, upon request of a party or sua sponte, allow oral argument on the recommended decision. If oral argument is allowed, the Secretary shall specify the time and place for such oral argument, after giving due consideration to the convenience of the parties and to the deadline for issuance of a final order specified in Section 503. 20 NMAC 1.4, §502.C.

Final Order By the Secretary

The Secretary shall issue a final order in the matter no later than the earliest of:

1. thirty (30) days after receipt of the Hearing Officer's recommended decision;
2. sixty (60) days after close of the hearing record; or
3. one hundred and eighty (180) days after the Application . . . was deemed complete. 20

NMAC 1.4, §503.A.

Effective Date of Permit

A final permit decision shall become effective thirty (30) days after notice of the decision has been served on the applicant, or such later date as the Secretary may specify . . . 20 NMAC 4.1, §901.A.10