

This rule was filed as 20 NMAC 9.1.

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 9 SOLID WASTE**  
**PART 1 SOLID WASTE MANAGEMENT**

20.9.1.1 ISSUING AGENCY: Environmental Improvement Board.  
[11/30/95; 20.9.1.1 NMAC - Rn, 20 NMAC 9.1.I.001, Recompiled 11/27/01]

20.9.1.2 SCOPE: This Part applies to transportation, storage, transfer, processing, transformation, recycling, or disposal of solid waste.  
[11/30/95; 20.9.1.2 NMAC - Rn, 20 NMAC 9.1.I.002, Recompiled 11/27/01]

20.9.1.3 STATUTORY AUTHORITY: NMSA 1978, 74-1-8(A)(14) and the Solid Waste Act, NMSA 1978, 74-9-1 to 74-9-42.  
[11/30/95; 20.9.1.3 NMAC - Rn, 20 NMAC 9.1.I.003, Recompiled 11/27/01]

20.9.1.4 DURATION: Permanent.  
[11/30/95; 20.9.1.4 NMAC - Rn, 20 NMAC 9.1.I.004, Recompiled 11/27/01]

20.9.1.5 EFFECTIVE DATE: November 30, 1995.  
[11/30/95; 20.9.1.5 NMAC - Rn, 20 NMAC 9.1.I.005, Recompiled 11/27/01]

20.9.1.6 OBJECTIVE: The objective of Part 1 of Chapter 9 [20.9.1 NMAC] is to establish standards in the following areas of solid waste management:

- A. facility permits;
- B. facility size, siting criteria, design criteria, and operations;
- C. closure and post-closure;
- D. operator certification;
- E. special waste;
- F. facility ground water monitoring, corrective action, and contingency plans; and
- G. financial assurance.

[11/30/95; 20.9.1.6 NMAC - Rn, 20 NMAC 9.1.I.006, Recompiled 11/27/01]

20.9.1.7 DEFINITIONS: As used in this Part:

- A. "Act" means the Solid Waste Act, NMSA 1978, Sections 74-9-1 through 74-9-42;
- B. "active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with Subpart V [20.9.1.500 NMAC];
- C. "active portion" means that part of a facility that has received or is receiving wastes and that has not been closed in accordance with Subpart V [20.9.1.500 NMAC];
- D. "agricultural" means all methods of production and management of livestock, crops, vegetation and soil including raising, harvesting and marketing; and the activities of feeding, housing and maintaining animals such as cattle, dairy cows, sheep, goats, hogs, horses and poultry;
- E. "alluvial fan" means a low, outspread, relatively flat to gentle sloping mass of loose rock material, shaped like an open fan or a segment of a cone, deposited by a stream at a place where it issues from a narrow mountain valley upon a plain or broad valley;
- F. "aquifer" means a geologic formation, group of formations, or portions of a formation capable of yielding ground water to wells or springs. The uppermost aquifer is the aquifer within the facility's property boundary nearest the natural ground surface including lower aquifers that are hydraulically interconnected with this aquifer;
- G. "areas susceptible to mass movement" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the landfill unit, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, solifluction, block sliding, and rock fall;

H. "asbestos waste":

(1) means regulated asbestos containing material (RACM) which contains more than 1 percent asbestos as determined using the method specified in Appendix A, Subpart F, 40 CFR part 763 Section 1, Polarized Light Microscopy (PLM) and includes:

(a) friable asbestos material, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure;

(b) Category I nonfriable asbestos containing material (ACM) that has become friable including asbestos containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos;

(c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading; or

(d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations, which excludes Category I nonfriable ACM; but

(2) does not include nonfriable asbestos containing materials that, when dry, cannot be crumbled, pulverized, or reduced to a powder by hand pressure;

I. "ash" means the ash that results from the incineration or transformation of solid waste and includes both fly ash and bottom ash, and ash from the incineration of densified-refuse-derived fuel and refuse-derived fuel, but does not include fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels and wastes produced in conjunction with the combustion of fossil fuels that are necessarily associated with the production of energy and that traditionally have been and actually are mixed with and are disposed of or treated at the same time with fly ash, bottom ash, boiler slag or flue gas emission control wastes from coal combustion;

J. "Board" means the Environmental Improvement Board;

K. "cell" means a confined area engineered for the disposal of solid waste;

L. "clean fill" means broken concrete, brick, rock, stone, glass, reclaimed asphalt pavement, or uncontaminated soil generated from construction and demolition activities. Reinforcement materials which are an integral part, such as rebar, are included. Clean fill must be free of other solid waste or hazardous waste;

M. "closed facility" means any solid waste facility that no longer receives solid waste; and for landfills, those closed in accordance with the regulations in effect at the time of closure;

N. "commercial hauler" means any person transporting solid waste for hire by whatever means for the purpose of transfer, processing, storing or disposing of the solid waste in a solid waste facility, except that the term does not include an individual transporting solid waste generated on or from his residential premises for the purpose of disposing of it in a solid waste facility;

O. "commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, excluding residential, household and industrial wastes;

P. "Commission" means the New Mexico Water Quality Control Commission;

Q. "Commission Regulations" means the current regulations of the New Mexico Water Quality Control Commission, including [including] 20 NMAC 6.1 [20.6.1 NMAC] and 6.2 [20.6.2 NMAC];

R. "compost" means organic matter produced from solid waste which has undergone a controlled process of decomposition and pathogen reduction, and has been stabilized to a degree which is potentially beneficial to plant growth and which is used as a soil amendment, growing medium amendment or other similar uses;

S. "composting" means the process by which biological decomposition of organic solid waste is carried out under controlled conditions. The process stabilizes the organic fraction into a material which can be easily and safely stored, handled and used in an environmentally acceptable manner;

T. "construction and demolition debris" means materials generally considered to be not water soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing materials, pipe, gypsum wallboard and lumber from the construction or destruction of a structure project, and includes rocks, soil, tree remains, trees and other vegetative matter that normally results from land clearing. If construction and demolition debris is mixed with any other types of solid waste, it loses its classification as construction and demolition debris. Construction and demolition debris does not include asbestos or liquids including but not limited to waste paints, solvents, sealers, adhesives or potentially hazardous materials;

U. "cooperative association" means a refuse disposal district created pursuant to the Refuse Disposal Act, NMSA 1978, Sections 4-52-1 through 4-52-15, or a sanitation district created pursuant to the Water and Sanitation District Act, NMSA 1978, Sections 73-21-1 through 73-21-54, a special district created pursuant to the Special District Procedures Act, NMSA 1978, Sections 4-53-1 through 4-53-11, a Solid Waste Authority created

pursuant to the Solid Waste Authority Act, NMSA 1978 Sections 74-10-1 through 74-10-100, or other such association created pursuant to the Joint Powers Act, NMSA 1978 Sections 11-1-1 through 11-1-7;

V. "densified-refuse-derived fuel" means a product resulting from the processing of mixed municipal solid waste in a manner that produces a fuel suitable for combustion in existing or new solid-fuel-fired boilers;

W. "Department" means the New Mexico Environment Department;

X. "discharge" means disposal, spilling, leaking, pumping, pouring, emitting, emptying, or dumping into water or in a location and manner where there is a reasonable probability that the discharged substance will reach surface or subsurface water;

Y. "disease vectors" means any rodents, flies, mosquitos, or other animals and insects, capable of transmitting disease to humans;

Z. "dispose or disposal" means causing, allowing, or maintaining the abandonment, discharge, deposit, placement, injection, dumping, spilling, or leaking of any solid waste into or on any land or water;

AA. "drinking water intake" means any intake to a drinking water system whether from a ground water well or surface water impoundment or stream;

AB. "fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side; "displacement of a fault" means the relative movement of any two sides measured in any direction;

AC. "floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters that are inundated by the 100 year flood. The 100 year flood has a one percent chance of recurring in any given year or a flood of magnitude equalled or exceeded once in 100 years on the average over a significantly long period;

AD. "gasification" means a thermal process for the generation of low BTU gas from a solid waste material;

AE. "geosynthetic" means the generic classification of all synthetic materials used in geotechnical applications, including the following classifications;

(1) "geocomposite" means a manufactured material using geotextiles, geogrids, geomembranes, or combinations thereof, in a laminated or composite form;

(2) "geogrid" means a deformed or non-deformed netlike polymeric material used to provide reinforcement to soil slopes;

(3) "geomembrane" means an essentially impermeable membrane used as an integral part of an engineered structure or system designed to limit the movement of liquid or gas in the system;

(4) "geonet" means a type of a geogrid that allows planar flow of liquids and serves as a drainage system;

(5) "geotextile" means any permeable textile used as an integral part of an engineered structure or system to serve as a filter to prevent the movement of soil fines into drainage systems, to provide planar flow for drainage, or to serve as a cushion to protect geomembranes, or to provide structural support;

AF. "ground water" means interstitial water which occurs in the earth's saturated zone and which is capable of entering a well in sufficient amounts to be utilized as a water supply. Saturated zone is that part of the earth's crust in which all voids are filled with water;

AG. "ground water scientist" means a scientist or engineer who has received a baccalaureate or post graduate degree in the natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certifications or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground water monitoring, contaminant fate and transport, and corrective action;

AH. "hot waste" means any waste which is on fire or smoldering when delivered to the solid waste facility;

AI. "household waste" means any solid waste including garbage and trash, derived from households including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas;

AJ. "incinerator" means an enclosed device using controlled flame combustion, the primary purpose of which is to thermally break down solid waste, including, but not limited to, rotary kiln, fluidized bed, and liquid injection incinerators;

AK. "industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not hazardous waste regulated under Subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from the following processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals, plastics and resins manufacturing; pulp and paper industry;

rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment, and water treatment. This term does not include mining waste or oil and gas waste;

AL. "infectious waste" means a limited class of substances that carry a probable risk of transmitting disease to humans, including but not limited to:

(1) microbiological laboratory wastes, including cultures and stocks of infectious agents from clinical research and industrial laboratories, and disposable culture dishes and devices used to transfer, inoculate and mix cultures;

(2) pathological wastes, including human or animal tissues, organs and body parts, removed during surgery, autopsy or biopsy;

(3) disposable equipment, instruments, utensils, and other disposable materials which require special precautions because of contamination by highly contagious diseases;

(4) human blood and blood products, including waste blood, blood serum, and plasma;

(5) used sharps, including used hypodermic needles, syringes, scalpel blades, Pasteur pipettes and broken glass; and

(6) contaminated animal carcasses, body parts and bedding, especially those intentionally exposed to pathogens in research, in the production of biologicals or the "in vivo" testing of pharmaceuticals;

AM. "landfill" means a solid waste facility that receives solid waste for disposal and includes the following classifications:

(1) "municipal landfill" means a discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well or waste pile as these terms are defined under 40 CFR 257.2. A municipal landfill may also receive other types of RCRA Subtitle D waste such as commercial solid waste, nonhazardous sludge, small quantity generator waste, industrial solid waste, construction and demolition debris and other special wastes as defined in Section 105.BZ [Subsection BZ of 20.9.1.7 NMAC]. A municipal landfill may be publicly or privately owned and may be existing, new or a lateral expansion;

(a) "existing municipal landfill" means one receiving waste after May 14, 1989, or receiving waste as of October 9, 1993. Waste placement in existing municipal landfills must be consistent with past operating practices or modified practices to ensure good management;

(b) "new municipal landfill" means one not receiving waste prior to October 9, 1993;

(2) "construction and demolition landfill" means a landfill that receives only construction and demolition debris in quantities equal to or less than 25 tons per day, which is determined by dividing the amount of waste received at the facility for one year by a total operation of 260 days, and landfills that receive more than 25 tpd of construction and demolition debris waste are defined as municipal landfills; and

(3) "special waste landfill" means a landfill which receives solid waste other than household waste. This includes, but is not limited to, commercial wastes or special wastes as defined in Section 105.BZ [Subsection BZ of 20.9.1.7 NMAC]. A construction and demolition landfill is not a special waste landfill;

AN. "lateral expansion" means a horizontal expansion of the waste boundaries of an existing landfill;

AO. "leachate" means the liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from that solid waste;

AP. "lift" means an accumulation of solid waste which is compacted into a cell and over which compacted cover is placed;

AQ. "liner" means a continuous layer constructed of natural or man-made materials beneath and on the sides of a surface impoundment, landfill, or landfill cell, that restricts the downward and lateral movement of solid waste, gases or leachate;

AR. "liquid waste" means any waste material that is determined to contain free liquids, defined by the Paint Filter Test, described in "Test Methods for Evaluating Solid Waste" contained in Section 1101 [Subsection B of 20.9.1.1100 NMAC].

AS. "lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This does not include man-made materials such as fill, concrete, and asphalt;

AT. "low level radioactive waste" means radioactive waste other than:

(1) high level waste such as irradiated reactor fuel, liquid waste from reprocessing irradiated reactor fuel, or solids into which any such liquid waste has been converted;

(2) waste material containing transuranic elements with contamination levels greater than ten (10) nanocuries per gram of waste material;

(3) by-product material as defined in Section 11e.(2) of the "Atomic Energy Act of 1954" as amended November 8, 1978; or

(4) wastes from mining, milling, smelting or similar processing of ores and mineral-bearing material primarily from minerals other than radium;

AU. "lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25oC and atmospheric pressure;

AV. "manure" means a solid waste composed of excreta of animals, residual bedding materials, or other materials that have been used for sanitary or feeding purposes for such animals;

AW. "maximum contaminant level" (MCL) means, the level which has been promulgated under section 1412 of the Safe Drinking Water Act (40 U.S.C. Section 300f et seq.) under 40 CFR part 141;

AX. "maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration as depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment;

AY. "modify" means:

(1) with regard to permit conditions, to change terms or conditions, of a permit, registration, or other approval including accepting types of solid waste which were not permitted or registered (types are residential, commercial, special waste, construction and demolition debris, and industrial process wastes);

(2) with regard to the facility, to change pollution control systems or water or soil or gas monitoring programs from those permitted, registered, or otherwise required; to change the fundamental method of operation from that permitted or registered; or any lateral or vertical expansion beyond original boundaries listed in the original permit application or registration; and

(3) "modify" does not include the following:

(a) routine maintenance, repair or replacement;

(b) an increase in the disposal rate or process rate, if such increase does not exceed the design capacity of the solid waste facility; or

(c) an increase or decrease in the hours of operation;

AZ. "mulch" means a protective covering spread and left upon the ground to reduce evaporation, maintain even soil temperature, prevent erosion, or control weeds;

BA. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, incorporated counties and class H counties;

BB. "open burning" means the combustion of solid waste without:

(1) control of combustion air to maintain adequate temperature for efficient combustion;

(2) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(3) control of the emission of the combustion products;

BC. "operator" means the person(s) responsible for the overall operation of all or any portion of a solid waste facility;

BD. "owner" means the person(s) who owns the facility or part of a solid waste facility;

BE. "person" means any individual, partnership, company, corporation, firm, association, trust, estate, state or federal agency, government instrumentality or agency, institution, county, city, town, village, or municipal authority, or other legal entity however organized;

BF. "petroleum waste" means those liquids and sludges which are accumulated as a result of exploration or production activities regulated under the New Mexico Oil and Gas Act;

BG. "poor foundation conditions" means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a landfill;

BH. "processing" means techniques to change the physical, chemical, or biological character or component of solid waste, but does not include composting or transformation;

BI. "putrescible" means organic material subject to decomposition by microorganisms;

BJ. "pyrolysis" means the process whereby solid waste is thermally decomposed in an oxygen-deficient atmosphere;

BK. "recyclable materials" means materials that would otherwise become solid waste if not recycled and that can be collected, separated or processed and placed in use in the form of raw materials, products or densified-refuse-derived fuels;

BL. "recycling" means any process by which recyclable materials are collected, separated or processed and reused or returned to use in the form of raw materials or products;

BM. "reuse" means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity;

BN. "run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a solid waste facility;

BO. "run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a solid waste facility;

BP. "scavenging" means the uncontrolled removal of solid waste from a solid waste facility;

BQ. "Secretary" means the Secretary of the Department of Environment or her or his designee;

BR. "seismic impact zone" means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in 250 years;

BS. "septage" means the residual wastes and water periodically pumped from liquid waste treatment unit or from a holding tank for maintenance purposes;

BT. "sludge" means any solid, semi-solid, or liquid waste excluding treated effluent generated from a municipal, commercial, or industrial waste water treatment plant, water supply treatment plant, or air pollution control device;

BU. "small transfer station" means a transfer station with a total operational rate of 120 cubic yards or less per day of solid waste which does not include separated recyclable material;

BV. "solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from community activities, but does not include:

(1) drilling fluids, produced waters and other non-domestic wastes associated with the exploration, development or production, transportation, storage, treatment or refinement of crude oil, natural gas, carbon dioxide gas or geothermal energy;

(2) fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels and wastes produced in conjunction with the combustion of fossil fuels that are necessarily associated with the production of energy and that traditionally have been and actually are mixed with and are disposed of or treated at the same time with fly ash, bottom ash, boiler slag or flue gas emission control wastes from coal combustion;

(3) waste from the extraction, beneficiation and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore, coal, copper, molybdenum and other ores and minerals;

(4) agricultural waste, including, but not limited to, manures and crop residues returned to the soil as fertilizer or soil conditioner;

(5) cement kiln dust waste;

(6) sand and gravel;

(7) solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1342, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, 42 U.S.C. Section 2011 et seq.;

(8) densified-refuse-derived fuel; or

(9) any material regulated by Subtitle C or Subtitle I, 42 U.S.C. Section 6901 et seq., except petroleum contaminated soils, of the federal Resource Conservation and Recovery Act of 1976, substances regulated by the Federal Toxic Substances Control Act, 7 U.S.C. Section 136 et seq., or low-level radioactive waste;

BW. "solid waste district" means a geographical area designated by the Board as a solid waste district under the Act;

BX. "solid waste facility" means any public or private system, facility, contiguous land and structures, location, improvements on the land, or other appurtenances or methods used for processing, transformation, recycling or disposal of solid waste, including landfill disposal facilities, transfer stations, resource recovery facilities, incinerators and other similar facilities not specified. Solid waste facility does not include:

(1) equipment specifically approved by order of the Secretary to render medical waste generated on site non-infectious;

(2) a facility that is permitted pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, Sections 74-4-1 through 74-4-14;

(3) a facility fueled by a densified-refuse-derived fuel as long as that facility accepts no other solid waste;

(4) a facility that collects, transfers, or processes source separated household or commercial solid waste for recycling and has a design capacity of 25 tons or less per day;

- (5) storage containers with a total on site storage container capacity of 120 cubic yards or less;
- (6) that portion of a facility that refurbishes or re-sells used clothing, furniture or appliances for reuse;
- (7) scrap metal or auto salvage operations;
- (8) a composting facility which occupies less than 5 acres, uses only water or an inoculant as an additive and utilizes no more than 50% manure in the final mix, and does not compost municipal sewage sludge or municipal solid waste, excluding yard waste;
- (9) manufacturing facilities that use recycled material in production of a new product;
- (10) facilities designed and operated to handle less than 25 tons per day, by dry weight, of sludge on land, such as land application or land injection;
- (11) landfarming of petroleum contaminated soils unless within a landfill or composting facility, where "landfarming" is the remediation of petroleum contaminated soils on the land surface;
- (12) any facility or person accepting, stockpiling, or using clean fill material as long as;
  - (a) the material does not create a public nuisance or adversely impact the environment;
  - (b) the material is not placed in a watercourse or in any other manner inconsistent with the Water Quality Control Commission regulation 2-201 "Disposal of Refuse"; and
  - (c) the material used is covered with two feet of clean earth immediately after deposition or within a reasonable time as determined by the Secretary;
- (13) small transfer stations;

BY. "source separation" means the setting aside of recyclable materials at the point of generation (household or commercial) by the generator before the materials would otherwise become solid waste, but does not include recyclable materials that would otherwise become special waste;

BZ. "special wastes" means the following types of solid wastes that have unique handling, transportation, or disposal requirements to assure protection of the environment and the public health, welfare and safety:

- (1) treated formerly characteristic hazardous wastes (TFCH);
- (2) packing house and killing plant offal;
- (3) asbestos waste;
- (4) ash;
- (5) infectious waste;
- (6) sludge, except compost which meets the provisions of 40 CFR 503;
- (7) industrial solid waste;
- (8) spill of a chemical substance or commercial product;
- (9) dry chemicals, which, when wetted, become characteristically hazardous; and
- (10) petroleum contaminated soils;

CA. "stabilized" means, for composting, that the biological decomposition of the wastes has ceased or diminished to a level such that decomposition no longer poses a health or safety hazard and does not violate any provisions of these or other applicable regulations;

CB. "storage" means the accumulation of solid waste for the purpose of processing or disposal;

CC. "structural components" means liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the landfill that is necessary for protection of public health, welfare and the environment;

CD. "transfer" means the handling and storage of solid waste for reshipment, resale, or disposal, or for waste reduction or resource conservation;

CE. "transfer station" means a facility managed for handling and storage of solid waste in large containers or vehicles for transfer to another facility and includes, but is not limited to, a "convenience center" which accepts solid waste from the general public;

CF. "transformation" means incineration, pyrolysis, distillation, gasification or biological conversion other than composting;

CG. "unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Examples of unstable areas are poor foundation conditions, areas susceptible to mass movements, and Karst terrain areas where Karst topography, with its characteristic surface and subterranean features, is developed as a result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in Karst terrains include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys;

CH. "vadose zone" means the geologic profile extending from the ground surface to the upper surface of the uppermost water-bearing formation and includes localized areas of saturation such as perched water and capillary fringe regions;

CI. "variance" means a waiver from one or more provisions of this Part on any grounds other than those set forth in NMSA 1978, Section 74-9-32 for an exemption;

CJ. "waste management unit boundary" means a vertical surface located at the hydraulically downgradient limit of the landfill. This vertical surface extends down into the uppermost aquifer;

CK. "watercourse" means any river, creek, arroyo, canyon, draw, or wash, or any other channel having definite banks, with visible evidence of continuous or intermittent flow of water;

CL. "water table" means that surface in unconfined ground water at which the pressure is atmospheric; defined by the levels at which water stands in wells that penetrate the water just far enough to hold standing water;

CM. "well" means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension and meets the requirements for monitoring wells in Subpart VIII [20.9.1.800 NMAC];

CN. "wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions; and

CO. "yard refuse" means vegetative matter resulting from landscaping, land maintenance and land clearing operations.

[6/2/74, 5/14/89, 1/30/92, 8/17/94, 11/30/95; 20.9.1.7 NMAC - Rn, 20 NMAC 9.1.I.105, Recompiled 11/27/01]

20.9.1.8 to 20.9.1.105 [RESERVED]

20.9.1.106 GENERAL REQUIREMENTS:

A. All solid waste shall be processed or disposed of by means approved by the Secretary and in accordance with Board regulations including, but not limited to, recycling, composting, transformation, or landfilling.

B. Any municipality, with a population greater than 3,000 shall provide at least once weekly collection or as often as otherwise necessary to comply with the requirements of this Part.

C. The state, and each municipality, county, or cooperative association shall provide a means to dispose of solid waste generated within its respective jurisdiction which has been approved by the Secretary and complies with this Part [

D. The state, municipality, county, or cooperative association may contract with any person for the collection, transportation, recycling, or disposal of solid waste. Contracting for the collection, transportation, recycling, or disposal of solid waste does not relieve the state, municipality, county or cooperative association of the responsibility for compliance with this Part.

E. Any person who provides collection shall use vehicles which shall have covers or enclosures to prevent the solid waste from blowing from the vehicle during collection and transportation, and which are cleaned at such times and in such manner as to prevent offensive odors and unsightliness, and which use devices to retain or control free liquids.

F. Any person who generates solid waste shall provide containers for the solid waste except for construction and demolition debris, yard refuse, and appliances. Storage containers shall prevent insect and rodent harborage and be kept covered and reasonably clean. Outside containers shall also be leak-proof and shall:

(1) if manually handled, have a maximum capacity of 32 gallons with safe, usable handles, or shall be bags which are not filled to an extent that they rupture with normal handling; or

(2) if mechanically handled, be compatible with collection vehicles.

G. Any person who stores yard refuse or appliances shall store such wastes in a manner which prevents insect and rodent harborage and public health hazards.

[6/2/74, 5/14/89, 1/30/92, 8/17/94, 11/30/95; 20.9.1.106 NMAC - Rn, 20 NMAC 9.1.I.106, Recompiled 11/27/01]

20.9.1.107 PROHIBITED ACTS: No person shall:

A. dispose of any solid waste in this state in a manner that the person knows or should know will harm the environment or endangers the public health, welfare or safety;

B. dispose of any solid waste in a place other than a solid waste facility that meets the requirements of this Part;

C. dispose of any solid waste, including special waste, in a solid waste facility when a regulation of the Board or a condition of permit prohibits the disposal of the particular type of solid waste in that facility;



D. construct, operate, modify or close a solid waste facility unless the facility has approval under this Part from the Department for the described action; [1-30-92; 8-27-94; 11/30/95]

E. modify permit conditions or modify a solid waste facility unless the facility has applied for and received permission from the Secretary for the modification pursuant to 20 NMAC 1.4 [20.1.4. NMAC], Permit Procedures - Environment Department;

F. dispose of petroleum waste, sludge which does not meet the analytical criteria of Section 704 of this Part [Subsection D of 20.9.1.700 NMAC] domestic sewage, treated domestic sewage, or septage at any solid waste facility;

G. dispose of hazardous wastes which are subject to regulation under Subtitle C of the Resource Conservation and Recovery Act, 42 USC 6901 et seq, at any solid waste facility, unless the facility is permitted for the disposal of hazardous wastes;

H. dispose of bulk or non-containerized liquid waste at any landfill unless;

(1) the liquid waste is household waste other than septic waste; or

(2) the container holding liquid waste is a small container similar in size to that normally found in household waste and the container is designed to hold liquids for use other than storage, and the waste is household waste;

I. process, recycle, transfer, transform, or dispose of radioactive waste including low level radioactive waste in a solid waste facility; however, nothing in this section shall prohibit the storage or disposal of radioactive materials or radioactive waste from a uranium mine or mill pursuant to a license or other authorization from the United States nuclear regulatory commission or the state;

J. dispose of lead-acid batteries, at any landfill or incinerator;

K. dispose of any infectious waste in a landfill;

L. dispose of any material regulated under the Federal Toxic Substances Control Act, including PCB's as defined in that Act, except asbestos, in a solid waste facility;

M. discharge from a solid waste facility to surface or ground waters of New Mexico which may violate the New Mexico Water Quality Act, Commission regulations or standards, or the Federal Clean Water Act and Safe Drinking Water Act;

N. dispose of any solid waste in violation of any applicable requirements of the New Mexico Air Quality Implementation Plan promulgated under Section 110 of the Federal Clean Air Act;

O. allow open burning at the solid waste facility;

P. dispose or process any solid waste at a new or modified solid waste facility until:

(1) a permit has been issued by the Secretary; and

(2) the Secretary has either:

(a) made an inspection of the solid waste facility and determined that the site has been developed in accordance with the application and its permit conditions and in compliance with the applicable regulations; or

(b) failed to make an inspection of the solid waste facility within 60 days of written notice of completion of construction.

[1/30/92, 8/17/94, 11/30/95; 20.9.1.107 NMAC - Rn, 20 NMAC 9.1.I.107, Recompiled 11/27/01]

20.9.1.108 EXEMPTIONS: This Part does not apply to:

A. disposal of solid waste by a homeowner, residential lessee or tenant or agricultural enterprise, on the property she or he owns, rents or leases, if the waste was generated on that property, and the disposal by the homeowner, residential lessee or tenant or agricultural enterprise of the solid waste does not harm the environment or endanger the public health, welfare or safety and does not violate any provision of this Part;

B. on-site disposal of domestic solid waste generated by a person residing and occupying that same property only if that property is located in a place where it is not feasible, as determined by the Department, to dispose of the solid waste in a permitted solid waste facility and the disposal of the solid waste does not harm the environment or endanger the public health, welfare or safety and does not violate any provision of this Part; or

C. disposal of construction and demolition debris or yard refuse by a person in possession of property if the material was generated on the property and if the disposal of the solid waste does not violate any provision of this Part.

[5/14/89, 1/30/92, 8/17/94, 11/30/95; 20.9.1.108 NMAC - Rn, 20 NMAC 9.1.I.108, Recompiled 11/27/01]

20.9.1.109 RECORD KEEPING AND ANNUAL REPORTS:

A. Owners and operators of solid waste facilities shall make and maintain an operating record during the active life of the facility, for each day that operations, monitoring, closure, or post-closure activity occurs.

B. The operating record shall include:

- (1) type and weight or volume of the solid waste received;
- (2) country, if other than the U.S., state, county, and municipality in which the solid waste originated;
- (3) commercial haulers of the solid waste;
- (4) type and weight or volume of special waste received;
- (5) description of solid waste or special waste handling problems or emergency disposal activities;
- (6) record of deviations from the approved design or operational plans; and
- (7) for a transfer station, the origin and destination of the solid waste, including the facility name, the county in which it is located, and the type and weight or volume of solid waste transported.

C. Owners or operators of solid waste facilities as defined in Section 105.BX [Subsection BX of 20.9.1.7 NMAC]; and operations requiring registration under Section 213 [Subsection M of 20.9.1.210 NMAC] shall submit an annual report to the Secretary for each facility or operation, within 45 days from the end of each calendar year describing the operations of the past year. The reports shall include the following:

- (1) the type and weight or volume of solid waste received in each month of the reported year from each state, county, and municipality in which the waste originated;
- (2) the type and weight or volume of solid waste received from each commercial hauler that delivered waste to the facility;
- (3) for a landfill, a description of the capacity used in the previous year and the remaining capacity;
- (4) for a landfill, a description of the acreage used for disposal, the acreage seeded, the acreage where vegetation is permanently established and a narrative of the owner's or operator's progress in implementing the closure plan;
- (5) the type and weight or volume of special waste received at the solid waste facility in the previous year;
- (6) a summary of all monitoring results;
- (7) written notice to the Secretary if any change in operation has occurred that will reduce the active life of the facility by 25% or more;
- (8) weight or volume of materials recycled during the year;
- (9) final disposition of materials not stored or recycled;
- (10) amount of leachate generated and treated; and
- (11) financial data on forms supplied by the Department.

D. All records, including plans, required by this Part shall be furnished upon request and made available at all reasonable times for inspection by the Secretary.

E. Records of the annual reports for landfills shall be retained at least throughout the post-closure period, and at least seven years after closure for all other solid waste facilities.

F. For landfills, any demonstration made to the Secretary under sections 302.A.12 and 302.A.13 [Subparagraphs (l) and (m), Paragraph (1), Subsection B of 20.9.1.300 NMAC] regarding seismic impact areas and unstable areas shall be kept as part of the facility operating record.

[5/14/89, 1/30/92, 8/17/94, 11/30/95; 20.9.1.109 NMAC - Rn, 20 NMAC 9.1.I.109, Recompiled 11/27/01]

#### 20.9.1.110 EXEMPTIONS FOR SMALL MUNICIPAL LANDFILLS:

A. Owners or operators of new and existing municipal landfills and lateral expansions that dispose of less than 20 tons of solid waste daily, based on an annual average, are exempt from the design requirements in Subpart III [20.9.1.300 NMAC], provided the owner or operator demonstrates that:

- (1) there is no evidence of ground water contamination from the landfill;
- (2) the community has no practicable waste management alternative; and
- (3) the municipal landfill is located in an area that receives 25 inches or less annual precipitation.

B. Municipal landfills that meet the criteria in Section 110.A [Subsection A of 20.9.1.110 NMAC] shall comply with the ground water monitoring requirements in sections 801 through 810 [Subsections A through J of 20.9.1.800 NMAC] by October 9, 1995, if the landfill is new or existing or a lateral expansion located less than two miles from a drinking water intake; or by October 9, 1996, if the landfill is existing or a lateral expansion located more than two miles from a drinking water intake, unless:

- (1) the Secretary determines that ground water monitoring is necessary prior to the dates indicated; or
- (2) the federal Environmental Protection Agency approves alternatives to the ground water monitoring criteria prior to the dates indicated and such alternatives are approved by the Secretary.

[8/17/94; 20.9.1.110 NMAC - Rn, 20.NMAC 9.1.I.110, Recompiled 11/27/01]

20.9.1.111 FACILITIES; ENTRY BY DEPARTMENT; AVAILABILITY OF RECORDS TO DEPARTMENT AND OTHERS:

- A. The Secretary or any authorized representative, employee or agent of the Department may:
- (1) enter any solid waste facility at any reasonable time for the purpose of making an inspection or investigation of solid waste management practices;
  - (2) at any reasonable time, enter, inspect and monitor any solid waste compaction facilities that compact solid waste for disposal in a solid waste district different from the district in which the compaction facility is located;
  - (3) take samples of the waste, soil, air or water and analyze samples of that waste, soil, air or water in order to detect the nature and concentration of contaminants, including those produced by leaching, natural decomposition, gas production or hazardous products in the solid waste facility;
  - (4) for the purposes of developing or assisting in the development of any regulation, conducting any study, taking corrective action or enforcing the provisions of this Part conduct monitoring or testing of the equipment, contents or surrounding soils, air, surface water or ground water at a solid waste facility at any reasonable time; and
  - (5) make reasonable periodic inspections without prior notice at every solid waste facility in order to implement effectively and enforce the requirements of this Part and may, in coordination with the Secretary of the Highway and Transportation Department, conduct at weigh stations, or any other adequate site or facility, inspections of solid waste in transit.

B. Any commercial hauler that disposes of solid waste in a solid waste facility shall allow inspection of his vehicles, transfer stations, collection facilities or any other facilities designed for the collection or transportation of solid waste under the same conditions and circumstances as outlined in Subsection A of this section.

C. The owner or operator may split any samples obtained during the activities specified in this section and conduct an independent analysis.

[1/3092, 8/17/94, 11/30/95; 20.9.1.111 NMAC - Rn, 20 NMAC 9.1.I.111, Recompiled 11/27/01]

20.9.1.112 to 20.9.1.199 [RESERVED]

20.9.1.200 SOLID WASTE FACILITY PERMITS:

- A. Permit Application Requirements:
- (1) A permit is required of:
    - (a) any person seeking to construct, operate, or close a solid waste facility;
    - (b) any person seeking to modify an existing solid waste facility; and
    - (c) an existing solid waste facility for which the Secretary has requested a permit application.
  - (2) Any person seeking a permit shall file an application, which shall:
    - (a) contain all information required by the Act and the applicable section or sections of this part;
    - (b) comply with any additional requirements of 20 NMAC 1.4 [20.1.4 NMAC], Permit Procedures - Environment Department;
      - (c) be accompanied by facility plans and drawings signed and sealed by a professional engineer registered in New Mexico;
      - (d) comply with the financial assurance requirements as specified in Subpart IX [20.9.1.900 NMAC];
      - (e) provide proof of FAA notification if the facility is to be located within five (5) miles of an airport;
      - (f) contain a disclosure statement consistent with Section 74-9-21 of the Solid Waste Act and on forms provided by the Department;
      - (g) demonstrate compliance with the operational criteria contained in Subpart IV [20.9.1.400 NMAC], and record keeping requirements in Subpart I [20.9.1.100 NMAC];
      - (h) demonstrate compliance with the siting restrictions contained in Subpart III [20.9.1.300 NMAC];
      - (i) consist of one copy of the permit application at the time of initial submittal, and four final copies when the application is deemed complete;
      - (j) contain(s) the following site information:

- (i) the name and address of the applicant, property owner, and solid waste facility owner and operator;
- (ii) legal description and maps of the proposed facility site, including land use and zoning of the surrounding area;
- (iii) if exploration holes are drilled to obtain data, a certification that the holes were plugged or sealed in accordance with the State Engineer's requirements for plugging or sealing of test holes;
- (iv) a description of the facility's water source and its location; and
- (v) any other applicable information requested by the Secretary.
- (k) contain the following operational information:
  - (i) means of controlling and mitigating odors;
  - (ii) listing and description of the number, type and size of equipment to be used at the proposed solid waste facility for processing, recovering, recycling, transforming or disposing of solid wastes;
  - (iii) narrative description of the operating plan for the proposed solid waste facility, including but not limited to, the origin, expected composition and weight or volume of solid waste that is proposed to be received at the facility, the process to be used at the facility, the daily operational methodology of the proposed process, the loading rate, the proposed capacity of the facility and the expected life of the facility;
  - (iv) a plan for an alternative waste handling or disposal system during periods when the proposed solid waste facility is not in operation, including procedures to be followed in case of equipment breakdown. Procedures may include the use of standby equipment, extension of operating hours and contractual agreements for diversion of waste to other facilities;
  - (v) anticipated start-up date of the facility;
  - (vi) operating hours of the proposed facility; and
  - (vii) plans for transportation to and from the facility including: 1) the size and approximate number of vehicles that will deliver waste to the facility daily; 2) the routes that will be used by waste vehicles and the suitability of roads and bridges involved; 3) measures for controlling litter, dust and noise caused by traffic; 4) other impacts of traffic to and from the facility; and 5) plans, if any, for diverting solid waste from the waste stream.
- (l) a contingency plan according to Subpart VIII [20.9.1.800 NMAC]; and
- (m) any other information required by the Secretary.
- (3) Each permit application filed with the Secretary shall include proof that the applicant has provided notice of the filing of the application to the public and other affected individuals and entities. The notice shall:
  - (a) be provided by certified mail to the owners of record, as shown by the most recent property tax schedule and tax exempt entities of record, of all properties:
    - (i) within one hundred feet of the property on which the facility is located or proposed to be located if the facility is or will be in a Class A or H county or a municipality with a population of more than two thousand five hundred (2,500) persons; or
    - (ii) within one-half mile of the property on which the facility is located or proposed to be located if the facility is or will be in a county or municipality other than those specified in Subsection a of this section [Item (i), Subparagraph (a), of this paragraph];
  - (b) be provided by certified mail to all municipalities, counties, and tribal governments in which the facility is or will be located and to all municipalities, counties, and tribal governments within a ten mile radius of the property on which the facility is proposed to be constructed, operated or closed;
  - (c) be provided to all parties and interested participants of record for a permit modification or renewal pursuant to Section 210 and 212 [Subsections J and L of 20.9.1.200 NMAC];
  - (d) be published once in a newspaper of general circulation in each county in which the property in which the facility is proposed to be constructed, operated or closed is located; this notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice and, when appropriate, shall be printed in both English and Spanish;
  - (e) be posted in at least four publicly accessible and conspicuous places, including the proposed or existing facility entrance on the property on which the facility is or is proposed to be located; and
  - (f) include the following:
    - (i) name, address, phone number of applicant and contact person;
    - (ii) the anticipated start up date of the facility or modification, and hours of operation;
    - (iii) a description of the facility, including the general process, location, size, quantity, rate, and type of waste to be handled and a description of the modification;

- (iv) the origin of the waste; and
- (v) a statement that comments should be provided to the applicant and the Department.

(4) Multiple facilities may be permitted under one solid waste permit provided each facility meets the applicable requirements in this Part.

B. Additional Permit Requirements for Municipal or Special Waste Landfill Facilities: Any person seeking a permit for a municipal or special waste landfill shall submit the following additional information:

- (1) a schedule of filling and methods of compaction of solid waste;
- (2) types and sources of daily, intermediate and final cover;
- (3) site plans and sections of the facility, drawn to scale, indicating the location of:
  - (a) ground water monitoring wells and landfill gas monitoring points;
  - (b) materials recovery operation(s);
  - (c) borrow and fill areas;
  - (d) fire protection equipment;
  - (e) provisions for concealing the site from public view and reducing noise;
  - (f) surface drainage;
  - (g) water supply;
  - (h) buildings, roads, utilities, storage ponds, fences and other site improvements;
  - (i) the location of electric power transmission and distribution lines, pipelines, railroads, water, gas, oil wells, and public and private roads within 300 feet of the facility; and
  - (j) the location of all-weather access roads to and within the landfill, including slopes, grades, length, load limits and points of entrance and exit;
- (4) a topographic map of the site at a scale of 1"=200 feet, with a contour interval of 2 feet or less where relief is less than 50 feet; and 5 feet or less where relief exceeds 50 feet, with property boundaries of the landfill indicated;
- (5) the most recent full size U.S. Geological Survey topographic map of the area, showing the waste facility boundary and existing utilities and structures within 500 feet from the boundary of the facility site;
- (6) if available, the most recent U.S. Geological Survey, Army Corps of Engineers or Federal Insurance Administration 100-year frequency floodplain map. If not available, the applicant shall otherwise demonstrate the site is not located in a 100-year frequency floodplain;
- (7) a description of site geology and hydrology including:
  - (a) characterization of the uppermost aquifer including depth, flow direction, gradient and velocity;
  - (b) characterization of the geology including the results of a boring plan previously approved by the Secretary plus:
    - (i) a site plan showing the location, surface elevation and total depth of each boring (all borings shall be to a depth of at least 100 feet below the base of the deepest proposed fill area, or to ground water, whichever is encountered first);
    - (ii) a columnar section of each boring, drawn to a scale of 1"=10' graphically depicting the soil and/or rock strata penetrated and describing each layer; if soil: color, degree of compaction, moisture content plus any additional information necessary for an adequate description and classification of each stratum based on the Unified Soils Classification System; and, if rock: a detailed lithologic description, including rock type, degree of induration, presence of fractures, fissility, and porosity (including vugs) plus any other information necessary for an adequate description;
    - (iii) if ground water was encountered, the initial depth it was encountered shall be indicated on the columnar section. Borings may be converted into piezometers or ground water monitoring wells, provided: care is taken not to introduce contamination into the piezometers; and ground water monitoring wells are constructed in accordance with Section 802 [Subsection B of 20.9.1.800 NMAC].
- (8) a demonstration that surface water from the landfill will not discharge contaminants in violation of the New Mexico Water Quality Act, Commission regulations or standards, or the Federal Clean Water Act, including an analysis of surface water flow and control systems including, but not limited to, water diversion, collection, conveyance, erosion and sedimentation control, treatment, storage and discharge facilities to be used;
- (9) closure and post-closure plans as described in Subpart V of this Part [20.9.1.500 NMAC];
- (10) plans and specifications for ground water monitoring systems in accordance with Subpart VIII [20.9.1.800 NMAC];
- (11) plans and specifications for liner and leachate collection systems shall be in accordance with Subpart III [20.9.1.300 NMAC];

(12) plans and specifications for landfill gas monitoring and management programs in accordance with Subpart III [20.9.1.300 NMAC]; and

(13) any other information requested by the Secretary.

C. Additional Permit Requirements for Construction and Demolition Landfills:

(1) Construction and demolition landfills shall submit the following additional information:

(a) a site plan of the proposed facility, drawn to scale, indicating the location of:

(i) storage, loading and unloading areas;

(ii) fencing and gates;

(iii) entrances, exits and access roads;

(iv) location of buildings within 500 feet of the facility; and

(v) public water supply wells and private wells within 1000 feet of the facility.

(b) frequency of construction and demolition debris deposit and collection for reuse from the facility, method of transport and destination.

(2) Construction and demolition debris landfills shall also provide information showing that the facility meets the siting restrictions of Section 303 [Subsection C of 20.9.1.300 NMAC].

(3) Any other information requested by the Secretary.

D. Additional Permit Requirements for Recycling and Processing Facilities Except Composting Facilities: Any person seeking a permit for recycling and processing facilities shall submit the following additional information:

(1) a description of the survey and analysis process used to determine the characteristics of all solid waste expected to be processed;

(2) plans and elevations, to scale, of all structures used for processing, storage, alternate storage, and disposal capability;

(3) a process description of the sampling capability and locations designed into the facility so the process stream can be safely sampled and analyzed;

(4) a description of the methods to be employed for the containment or removal of residues and spills in a manner that protects the public health, welfare, safety and the environment;

(5) an operation and maintenance manual which shall address all of the operating requirements; and

(6) any other information requested by the Secretary.

E. Additional Permit Requirements for Transformation Facilities:

(1) Any person seeking a permit for transformation facilities shall submit the following additional information:

(a) the composition of the waste to be received at the facility;

(b) the method to be used to convert the waste into a feedstock for the transformation process including material separation and recovery systems;

(c) if the transformation process is other than biological, a characterization of the feedstock used as the design basis of the facility shall be included showing:

(i) composition by material type; and

(ii) physical and chemical properties, including moisture content, ash content, and higher heating value.

(d) if the transformation is by means of a biological process, a characterization of the feedstock used as the design basis of the facility shall be included showing:

(i) composition by material type;

(ii) physical and chemical properties, including: moisture content; and percent organic and inorganic matter.

(iii) process efficiency as measured by conversion of volatile solids; and

(iv) end products or residue;

(e) the proposed location and method for disposal, storage or processing of, liquid or solid residues produced by operation of the facility;

(f) the process for separation, storage and ultimate disposal of unmarketable waste generated by the process, including the temporary storage of bulky wastes;

(g) the minimum and maximum volumes of the types of material or solid waste to be stored prior to sale, reuse or disposal, and the minimum and maximum time that material or waste is to be stored;

(h) plans, drawings and specifications including:

(i) site plans, elevations, and equipment general arrangements;

(ii) the most recent full size U.S. Geological Survey topographic map of the area, showing the waste facility boundary, the property boundary, the existing utilities and structures within 500 feet from the boundary of the facility site;

(iii) the location of electric power transmission and distribution lines, pipelines, railroads and public and private roads within 300 feet of the proposed facility;

(iv) the transformation unit, with feed area and residue removal;

(v) all conveyors, ramps and other devices employed to move material throughout the facility;

(vi) control room and equipment;

(vii) pollution control equipment; and

(viii) an operation and maintenance manual that includes: current policies and procedures; the operating requirements for the various stages of transformation; and all information that would enable supervisory and operating personnel, and persons evaluating the operation of the facility, to determine the sequence of operation, plans, diagrams, policies, procedures and legal requirements which must be followed for orderly and successful operation on a daily and ongoing basis;

(i) a description of the facility operation which includes:

(i) a sequential description of the major components used for the treatment of the solid waste starting from its delivery at the facility and continuing through the residue and ash residue treatment and loading operations;

(ii) procedures for facility start-up, scheduled and unscheduled shut downs;

(iii) a description of potential safety hazards and methods of control including, but not limited to, arrangements to detect explosion potential and equipment installed to minimize the impact of explosion; and;

(iv) a description of personnel safety equipment and protective gear including, but not limited to, showers, eye wash, fire extinguishers, hoses, hard hats, safety goggles, hearing protection, and proposed personnel hygiene facilities.

(j) an operations plan including all plant systems complete with process flow and instrumentation diagrams and heat and material balances;

(k) an identification of the ultimate disposition of the residue or end products of the facility such as a landfill or market; and

(l) any other information requested by the Secretary.

(2) The design and operation of the transformation facility shall conform to all applicable codes and standards including but not limited to ASTM, ANSI, ASME, ACI and UBC, most recent edition, as well as the building code requirements in the city, county, or municipality in which the facility is to be located.

(3) Within thirty days of permit issuance and prior to commencement of detailed design work, the applicant shall submit to the Department a comprehensive project schedule in the form of a bar-chart, PERT or critical path network. The schedule shall indicate each major design, procurement, construction, and start-up activity in a properly sequenced and coordinated fashion. Progress reports shall be submitted at least once a month indicating major activities accomplished and percentage of work completed.

F. Additional Permit Requirements for Solid Waste Facilities that Accept Special Waste: Any person seeking a permit to accept special waste at a solid waste facility shall submit the following additional information:

(1) a complete description of the types of wastes to be accepted;

(2) the anticipated amount and frequency of disposal of the wastes;

(3) the method of disposal;

(4) a copy of the disposal management plan for those special wastes not otherwise specified with any special disposal requirements as required by Subpart VII [20.9.1.700 NMAC];

(5) emergency and mitigation measures in case of a spill or leak; and

(6) any other information requested by the Secretary.

G. Additional Permit Requirements for Composting Facilities: Any person seeking a permit for composting facilities shall submit the following additional information:

(1) the composition of the waste to be received at the facility;

(2) the method to be used to convert the waste into a feedstock for the composting process including material separation and recovery systems;

(3) a characterization of the feedstock used as the design basis of the facility shall be included showing:

- (a) composition by material type;
- (b) physical and chemical properties including:
  - (i) moisture content;
  - (ii) percent organic and inorganic matter; and
- (c) process efficiency as measured by conversion of volatile solids;
- (4) a description of the composting process to be used including:
  - (a) the method of measuring, shredding, mixing, and proportioning input materials;
  - (b) a description of the temperature monitoring equipment and the location of all temperature and any other type of monitoring points, and the frequency of monitoring;
  - (c) a description of any proposed additive material, including its quantity, quality, and frequency of use;
  - (d) special precautions or procedures for operation during wind, heavy rain, snow and freezing conditions;
  - (e) estimated composting time duration, which is the time period from initiation of the composting process to completion;
  - (f) for windrow systems, the windrow construction, including width, length, and height;
  - (g) the method of aeration, including turning frequency or mechanical aeration equipment and aeration capacity; and
  - (h) for in-vessel composting systems, a process flow diagram of the entire process, including all major equipment and flow streams;
- (5) a general description of the ultimate use for the finished compost and method for removal from the site and a plan for the disposal of the finished compost that cannot be used in the expected manner due to poor quality or change in market conditions; and
- (6) any other information requested by the Secretary.

H. Additional Permit Requirements for Transfer Stations: Any person seeking a permit for a transfer station shall submit the following additional information:

- (1) a site plan of the proposed facility, drawn to scale, indicating the location of:
  - (a) storage, loading and unloading areas;
  - (b) fencing and gates;
  - (c) entrances, exits, and access roads; and
  - (d) locations of buildings within 100 feet of the facility;
- (2) the collection, treatment, or disposal of waste water from the facility;
- (3) the frequency of solid waste deposit and pick-up from the facility, method of transport, and destination;
- (4) specific operational procedures including traffic patterns, unloading time, and practical capacity of the facility to demonstrate the facility is capable of handling the projected waste stream; and
- (5) any other information requested by the Secretary.

I. Permit, Modification, and Renewal Application Fees: The following shall apply to all permit applications, modifications or permit renewal requests:

- (1) Fees shall be paid by the applicant at the time of application and shall be in accordance with the table listed in Section 1108 [Subsection I of 20.9.1100 NMAC].
- (2) Fees for modifications and renewals shall be half of the stated fee schedule.
- (3) Fees shall be paid by certified check or money order, payable to the Department.
- (4) Fees shall not exceed ten thousand dollars (\$10,000) per application.

J. Permit or Facility Modification:

- (1) Any owner or operator of a solid waste facility who seeks to modify such facility or permit conditions as defined in this Part shall obtain a permit from the Secretary prior to making any modifications. The modification shall not extend the initial term of the permit.
- (2) An application for a modification shall demonstrate compliance with the portions of this Part affected by such a modification.
- (3) The Secretary may also require that the owner or operator modify permit conditions or modify the facility, if:
  - (a) there have been changes that occurred after permit issuance which justify the application of permit conditions that are different from or absent in the existing permit;
  - (b) the Secretary has received information that was not available at the time of permit issuance and would have justified the application of different permit conditions at the time of issuance;



(c) the standards or regulations on which the permit was based have changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued;

(d) the Secretary determines good cause exists for modification such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

(4) All modifications, whether initiated by the owner or operator or by the Secretary, shall be subject to 20 NMAC 1.4 [20.1.4 NMAC], Permit Procedures - Environment Department.

K. Permit Transfer: Permits for the operation of a solid waste facility shall be transferable under the following conditions:

(1) No later than 30 days prior to a change in the designation of the permittee or permit applicant, the sale of a partner's interest in a partnership, the transfer of title to the land, whether or not the permittee is the landowner, or change in the controlling interest of a partnership or corporation who is a permit holder or applicant, the permittee or applicant of record and the person now having the controlling interest shall file an application with the Secretary for transfer of the permit or permit application.

(2) All financial responsibility, disclosure statement, public notice, and hearing requirements shall be met by the proposed transferee.

(3) Failure to initiate a transfer or failure to give complete information or the submission of false information in the application shall constitute grounds for denial of the transfer.

(4) Financial responsibility shall be maintained by the permit holder or applicant until the transferee establishes financial assurance.

(5) An application for permit transfer may be denied if the Secretary finds that the applicant has:

(a) knowingly misrepresented a material fact in the transfer application;

(b) refused to disclose or failed to disclose the information required under the provisions of the

Act;

(c) been convicted of a felony or other crime involving moral turpitude within ten years immediately preceding the date of the submission of the transfer application;

(d) been convicted of a felony within ten years immediately preceding the date of the submission of the transfer application, in any court for any crime defined by state or federal statutes as involving or being the restraint of trade, price fixing, bribery or fraud;

(e) exhibited a history of willful disregard for environmental laws of any state or the United States; or

(f) had any permit revoked or permanently suspended for cause under environmental laws of any state or the United States.

L. Permit Issuance; Period; Expiration; Review; Renewal; Revocation or Suspension:

(1) A permit issued for a publicly owned and publicly operated new or re-permitted existing solid waste facility shall be for the active life of the facility as described in the approved permit or for twenty (20) years, whichever is less.

(2) A permit issued for a publicly owned solid waste facility that is privately operated pursuant to a contract of no more than four years duration entered into in accordance with the state or local procurement code shall be for the active life of the facility as described in the approved permit or for twenty (20) years, whichever is less.

(3) A permit issued under subsections A and B of this Section [Paragraphs (1) and (2) of this subsection] shall be reviewed by the Secretary at least once every ten years.

(4) A permit issued for a privately owned new or re-permitted existing solid waste facility shall be for ten years, or for the active life of the facility, whichever is less.

(5) A permit issued for a publicly owned solid waste facility that is leased to a private person, or that is operated by a private person pursuant to a contract of more than four years duration, shall be for ten years, or for the active life of the facility, whichever is less.

(6) A permit issued under subsections D and E of this section [Paragraphs (4) and (5) of this subsection] shall be reviewed by the Secretary at least every five years.

(7) Interested parties may petition the Secretary for review of permits issued under subsections D and E [Paragraphs (4) and (5) of this subsection] in addition to the five year review. The Secretary shall determine whether there is good cause for such an additional review.

(8) The terms and conditions of the permit or modification shall be specifically identified by the Department.

(9) Any terms or conditions of the permit shall be enforceable to the same extent as a regulation of the Board.

(10) The Secretary shall issue a permit if the applicant demonstrates that the other requirements of this Part are met and the solid waste facility application demonstrates that neither a hazard to public health, welfare or the environment nor undue risk to property will result.

(11) The existence of a permit issued under this Part shall not constitute a defense to a violation of this Part.

(12) The Secretary, within one-hundred-eighty (180) days after the application is deemed complete, and after a public hearing, shall issue a permit, issue a permit with terms and conditions, or deny a permit application. The Secretary may deny a permit application on the basis of information in the application or evidence presented at the hearing, or both, if she or he makes a finding that granting the permit would be in violation of this Part. She or he shall also deny a permit application if the applicant fails to meet the financial responsibility requirements.

(13) The Secretary may deny any permit application or revoke any permit if she or he has reasonable cause to believe that any person required to be listed on the application has:

- (a) knowingly misrepresented a material fact in application for a permit;
- (b) refused to disclose or failed to disclose the information required under the provisions of the

Act;

(c) been convicted of a felony or other crime involving moral turpitude within ten years immediately preceding the date of the submission of the permit application;

(d) been convicted of a felony within ten years immediately preceding the date of submission of the permit application, in any court for any crime defined by the state or federal statutes as involving or being restraint of trade, price-fixing, bribery, or fraud;

(e) exhibited a history of willful disregard for the environmental laws of any state or the United States; or

(f) had any permit revoked or permanently suspended for cause under the environmental laws of any state or the United States.

(14) If any applicant whose permit is being considered for denial or revocation on any basis provided in this section has submitted an affirmative action plan that has been approved in writing by the Secretary and plan approval includes a period of operation under a conditional permit and that will allow the applicant a reasonable opportunity to affirmatively demonstrate his rehabilitation, the Secretary may issue a conditional permit for a reasonable period of time of operation. In approving an affirmative action plan intended to affirmatively demonstrate rehabilitation, the Secretary may consider the following factors:

- (a) implementation by the applicant of formal policies;
- (b) training programs and management control to minimize and prevent the occurrence of future

violations;

(c) installation by the applicant of internal environmental auditing programs;

(d) the discharge of individuals convicted of any crimes set forth in Subsection M [Paragraph (13) of Subsection (L)] of this section; and

(e) such other factors as the Secretary may deem relevant.

(15) Within 60 days of receipt of request for additional information to any permit, the owner or operator shall submit information requested by the Secretary, or the Secretary may deny any permit application or revoke any permit without prejudice.

(16) The following are causes for denying a permit application or revoking a permit during its term:

(a) noncompliance by the permittee with any condition of the permit or this Part;

(b) the permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

(c) a determination that the permitted activity endangers public health, welfare or the environment;

(d) the applicant's failure to demonstrate a knowledge and ability to operate a facility in accordance with this Part or a history of non-compliance with environmental regulations or statutes at other facilities;

(e) modification of a facility without the approval of the Secretary, or failure to obtain the approval for transfer of the permit in accordance with Section 211 [Subsection K of 20.9.1.200].

(17) A permit review shall address:

- (a) the operation;

- (b) compliance history;
- (c) environmental monitoring results, releases, and any remediation;
- (d) changes in information from the disclosure forms;
- (e) any other technical requirements requested by the Secretary;
- (f) financial assurance; and
- (g) any convictions regarding any other state or federal environmental laws since issuance of the permit.

(18) At the time of review a public notice shall be distributed as in accordance with NMSA 1978, Section 74-9-22 of the Solid Waste Act.

(19) If the Secretary determines there is significant public interest, a non-adjudicatory hearing shall be held as part of the review.

(20) For purposes of permit renewal a timely application is one that is initially submitted 12 months prior to the expiration date. A permit renewal application shall address:

- (a) the operation;
- (b) compliance history;
- (c) environmental monitoring results, releases, and any remediation;
- (d) changes in information from the disclosure forms;
- (e) any other technical requirements requested by the Secretary;
- (f) financial assurance;
- (g) any convictions regarding any other state or federal environmental laws since issuance of the permit; and
- (h) compliance demonstrations under Section 302.B [Paragraph (2), Subsection B of 20.9.1.300 NMAC].

(21) At the time of application for renewal a public notice shall be distributed as in accordance with NMSA 1978, Section 74-9-22 of the Solid Waste Act.

(22) An adjudicatory hearing shall be held as part of the renewal procedure.

(23) An applicant for permit renewal may continue to operate until the renewal application permit is issued or denied provided that:

- (a) the applicant is in compliance with the existing permit, this Part, including Section 302.B [Paragraph (2), Subsection B of 20.9.1.300 NMAC] and any federal regulations which apply;
- (b) the permit renewal application was submitted in a timely fashion in accordance with this section; and
- (c) the applicant adequately submits any requested additional information by the deadline(s) specified by the Secretary.

(24) The permit shall automatically expire:

- (a) upon final closure of the facility; or
- (b) upon suspension of operation for more than one year;

(25) A permit may be revoked or suspended for violation of any applicable provision of this Part in accordance with the procedures set forth in 20 NMAC 1.5 [20.1.5 NMAC], Adjudicatory Procedures - Environment Department. Construction, modification and interim operation, if any, shall cease upon the effective date of the revocation or suspension.

(26) No permit for the operation of a solid waste facility shall be valid until the permit, or a notice of a permit, and a legal description of the property on which the facility is located are filed and recorded in the office of the county clerk in each county in which the facility is located.

M. Registration of Operations which are not Defined as Solid Waste Facilities:

(1) The owner or operator of a facility that meets any exemption under Section 105.BX [Subsection BX of 20.9.1.7 NMAC] and that serves the general public shall register with the Department.

- (a) the owner or operator of a small transfer station shall:
  - (i) for a new operation, register prior to any construction or operations;
  - (ii) for existing operations register by January 31, 1995; and
  - (iii) registration shall not be required for individual storage containers that either serve a commercial or industrial establishment, an apartment complex, a hospital or those set up as up as part of a regular collection program.

(b) owners or operators of facilities that collect, transfer, or process source separated household or commercial solid waste for recycling and have a design capacity of less than 25 tpd shall register with the Department according to the following schedule:

- (i) for new recycling facilities register prior to any site development or operations; or
- (ii) for existing recycling facilities register by January 31, 1995.

(2) Any owner or operator who seeks to register with the Department shall provide the following information:

- (a) the name, address, phone number of the applicant and contact person;
- (b) the anticipated start up date and hours of operation;
- (c) legal description and map of the proposed facility site, including land use and zoning of the surrounding area;
- (d) means of controlling and mitigating odors;
- (e) when applicable, listing and description of the number, type and size of equipment to be used at the facility for processing, recovering, recycling, transforming or disposing of solid waste;
- (f) narrative description of the operating plan for the proposed facility, including but not limited to, the origin, expected composition and weight or volume of solid waste or recyclable materials that is proposed to be received at the facility, the process, the loading rate, the proposed capacity of the facility and the expected life of the facility; and
- (g) a plan for an alternative waste handling or disposal system during periods when the proposed facility is not in operation, including procedures to be followed in case of equipment breakdown. Procedures may include the use of standby equipment, extension of operating hours and contractual agreements for diversion of waste to other facilities.

N. Registration of Commercial Haulers:

(1) Commercial haulers of solid waste shall register with the Department by December 31, 1994, or 30 days prior to operations, and shall submit the following information:

- (a) the name, address, phone number of the applicant and contact person;
- (b) the anticipated start up date, hours of operation, and days of collection;
- (c) a list of types of storage containers required for residences, commercial, institutional and industrial establishments to be served;
- (d) location of vehicle maintenance yard;
- (e) certification of proper licensing for both the drivers and vehicles;
- (f) means of controlling and mitigating odors;
- (g) the transport distance from the nearest and farthest points of collection to the solid waste facility;
- (h) any transport transfer requirements;
- (i) location of transfer station(s) to be used, if any;
- (j) the name and location of each and any solid waste facility to be used; and
- (k) an outline of proposed training for drivers and crew to be able to differentiate between hazardous waste, special waste and solid waste.

(2) All special waste haulers shall register with the Department on a form provided by the Department, submit a description of the exact locations of the collection, transfer, and permit number(s) of solid waste facilities used, submit a contingency plan to the Secretary, and carry a copy of the plan in each vehicle along with the appropriate clean-up kits.

[5/14/89, 1/30/92, 1/30/94, 8/17/94, 11/30/95; 20.9.1.200 NMAC - Rn, 20 NMAC 9.1.II.200-214, Recompiled 11/27/01]

20.9.1.201 to 20.9.1.299 [RESERVED]

20.9.1.300 Maximum Size; Siting Criteria; Design Criteria:

A. Maximum Size: The Secretary shall not issue a permit for any solid waste facility larger than five hundred acres.

B. Siting Criteria for Municipal or Special Waste Landfills:

- (1) No municipal or special waste landfill shall be located in the following areas:
  - (a) floodplains, within 500 feet of wetlands, or 200 feet of a watercourse;
  - (b) where depth to seasonal high water table will be closer than 100 feet to the bottom of the fill;
  - (c) where subsurface mines registered with the New Mexico Department of Energy, Minerals and Natural Resources as listed on the Mines, Mills and Quarries Map are considered to be a problem;

(d) within 200 feet of a fault that has had a displacement within Holocene time (i.e., the past 11,000 years), unless the owner or operator demonstrates to the Secretary that an alternative setback of less than 200 feet will prevent damage to the structural integrity of the facility and will be protective of public health, welfare and the environment;

(e) within historically or archaeologically significant sites, unless in compliance with the Cultural Properties Act, NMSA 1978, Sections 18-6-1 to 18-6-23 and the Prehistoric and Historic Sites Preservation Act, NMSA 1978, Sections 18-8-1 to 18-8-8;

(f) within 1,000 feet of a public water supply well or private well that pumps 100 gallons per minute or more;

(g) within 350 feet of a public water supply well or private well that pumps less than 100 gallons per minute;

(h) within the distance to airports set by the Federal Aviation Administration requirements;

(i) within at least 50 feet from the property boundaries and at least 500 feet from the nearest permanent residence, school, hospital, institution or church in existence at the time of initial application;

(j) in an active alluvial fan, i.e., those being currently aggraded by either permanent or intermittent streams;

(k) within areas that will result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in either 50 CFR Part 17 or the latest version of the Handbook of Species Endangered in New Mexico;

(l) within seismic impact zones, unless the owner or operator demonstrates that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site; or

(m) within an unstable area unless the owner or operator demonstrates that engineering measures have been incorporated into the municipal or special waste landfill design to ensure that the integrity of the structural components of the municipal or special waste landfill will not be disrupted.

(2) Existing landfills that cannot make the demonstration specified in 302.A.1 [Subparagraph (a), Paragraph (1), Subsection B of 20.9.1.300 NMAC] pertaining to floodplains or 302.A.8 [Subparagraph (h), Paragraph (1), Subsection B of 20.9.1.300 NMAC] pertaining to airports, or 302.A.13 [Subparagraph (m), Paragraph (1), Subsection B of 20.9.1.300 NMAC], pertaining to unstable areas, shall close by October 9, 1996 in accordance with the closure and post-closure provisions in Subpart V [20.9.1.500 NMAC]. The deadline for closure required by paragraph (B) [Paragraph (2), Subsection B] of this section may be extended up to two years if the owner or operator demonstrates to the Secretary that: there is no available alternative disposal capacity; and there is no immediate threat to public health, welfare and the environment.

(3) The provisions of Subsection 302.A.1 [Subparagraph (a), Paragraph (1) of this subsection] pertaining to watercourses and Subsection 302.A (2, 3, 5, 6, 7, 9, 10, 11) [Subparagraphs (b), (c), (e), (f), (g), (i), (j) and (k), Paragraph (1), Subsection B of this section] shall not apply to any existing landfill until the time the Secretary requests a permit application.

C. Siting Criteria for Construction and Demolition Landfills:

(1) No Construction or demolition landfill shall be located in the following areas:

(a) in floodplains, within 500 feet of wetlands, or 200 feet of a watercourse;

(b) where depth to seasonal high water table will be closer than 50 feet to the bottom of the fill;

(c) within historically or archaeologically significant sites, unless in compliance with the Cultural Properties Act, NMSA 1978, Sections 18-6-1 to 18-6-23, and the Prehistoric and Historic Sites Preservation Act, NMSA 1978, Sections 18-8-1 to 18-8-8;

(d) within the distance set by FAA requirements;

(e) within 1,000 feet of a public water supply well or private well that pumps 100 gallons a minute or more;

(f) within 350 feet of a public water supply well or private well that pumps less than 100 gallons per minute; or

(g) within areas that will result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in either 50 CFR Part 17 or the latest version of the Handbook of Species Endangered in New Mexico.

D. Siting Criteria for Composting Facilities: No composting facility shall be located in the following areas:

(1) floodplains, within 500 feet of wetlands, or 200 feet of a watercourse; or

(2) within 500 feet of any permanent residence, school, hospital, institution or church in existence at the time the permit application for the composting facility is filed.

E. Siting Criteria for Transformation Facilities:

(1) No transformation facility shall be located in the following areas:

(a) a floodplain, or within 500 feet of wetlands or 200 feet of a watercourse;

(b) where subsurface mines registered with the New Mexico Department of Energy, Minerals and Natural Resources as listed on the Mines, Mills and Quarries Map are considered to be a problem;

(c) within historically or archaeologically significant sites, unless in compliance with the Cultural Properties Act, NMSA 1978, Sections 18-6-1 to 18-6-23 and the Prehistoric and Historic Sites Preservation Act, NMSA 1978, Sections 18-8-1 to 18-8-8;

(d) within at least 150 feet from the facility property boundaries; and

(e) within an unstable area unless the owner or operator demonstrates that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components of the unit will not be disrupted.

(2) No infectious waste incinerators having a throughput capacity of less than 1,000 pounds per hour and no other transformation facility of equivalent size shall be located within one mile of any residence, institution, school, church, hospital or other transformation facility in existence at the time the permit application is filed.

(3) No infectious waste incinerators having a throughput capacity of 1,000 pounds per hour or greater and no other transformation facilities shall be located within three miles of any residence, institution, school, church, hospital or other transformation facility in existence at the time the permit application is filed.

F. Design Criteria for Municipal or Special Waste Landfills:

(1) All new municipal or special waste landfills and lateral expansions to existing landfills shall provide a protective layer beneath the solid waste which is constructed:

(a) with a composite liner consisting of two components;

(i) the upper component shall consist of a minimum 30-mil flexible or a 60-mil high density polyethylene (HDPE) geomembrane liner. The geomembrane component shall be installed in direct and uniform contact with the compacted soil component;

(ii) the lower component shall consist of a minimum 24-inch thick layer of compacted soil having a saturated hydraulic conductivity of no more than  $1 \times 10^{-7}$  centimeters per second throughout its thickness. The soil must be free of particles greater than one inch in any dimension; or

(b) in accordance with a design approved by the Secretary, upon EPA approval of the state program in the Federal Register, which provides equivalent protection as the composite liner defined in A.1 [Subparagraph (a), Paragraph (1) of Subsection F of this section] above and ensures concentration values listed in Section 1110 [Subsection K of 20.9.1.1100 NMAC] will not be exceeded in the uppermost aquifer at the relevant point of compliance which shall be at the waste management unit boundary. The Secretary may approve an alternate relevant point of compliance, upon EPA approval of the state program in the Federal Register, and shall be located no more than 150 meters from the waste management unit boundary on land owned by the owner of the landfill.

(i) when approving a design under this section, the Secretary shall consider the following factors: the hydrogeologic characteristics of the landfill and surrounding land; the climatic factors of the area; and the volume and physical and chemical characteristics of the leachate.

(ii) in approving the relevant point of compliance under this section, the Secretary shall consider the following factors: the hydrogeologic characteristics of the facility and surrounding land; the volume and physical and chemical characteristics of the leachate; the quantity, quality, and direction of flow of the ground water; the proximity and withdrawal rate of the ground water users; the availability of alternative drinking water supplies; the existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water; public health, safety, and welfare effects; and the practicable capability of the owner or operator.

(iii) with a leachate collection system that meets the requirements in Section 308 [Subsection H of 20.9.1.300 NMAC].

(2) The design and construction of all liners shall conform to the following criteria:

(a) general requirements:

(i) all liners must be able to withstand the projected loading stresses and disturbances from overlying waste, waste cover materials, and equipment operation;

(ii) all liners shall incorporate a leachate collection system; and

(iii) all liners must be constructed with a minimum two percent slope to promote positive drainage and facilitate leachate collection;

(b) requirements for geosynthetic components:

(i) geosynthetic components of a liner system must be compatible with the waste to be contained. They must be able to resist chemical attack from the waste or leachate. This shall be demonstrated by means of manufacturer's test reports, laboratory analyses or other means approved by the Department;

(ii) any geosynthetic materials installed on slopes greater than 25 percent must be designed to withstand the calculated tensile forces acting upon the geosynthetic materials. The design must consider the maximum friction angle of the geosynthetic with regard to any soil-geosynthetic or geosynthetic-geosynthetic interface and must ensure that overall slope stability is maintained; and

(iii) field seams in geosynthetic material shall be oriented parallel to the line of maximum slope, i.e., oriented along, not across the slope. The number of field seams in corners and irregular shaped areas shall be minimized. There shall be no horizontal seam within five feet of the toe of the slope.

(c) requirements for the soil component of all liners:

(i) the bottom geosynthetic layer, shall be placed on a prepared subgrade consisting, at a minimum, of a 6-inch layer of in-situ soil or select fill compacted to 90% Standard Proctor Density;

(ii) the surface of the soil upon which a geosynthetic will be installed must be free of stones greater than 1/2-inch in any dimension, organic matter, local irregularities, protrusions, loose soil, and any abrupt changes in grade that could damage the geosynthetic; and

(iii) the soil component of the composite liner defined in A.1 [Subparagraph (a), Paragraph (1), Subsection F of this section] above shall be compacted to a minimum of 90% Standard Proctor Density and have the following physical characteristics unless otherwise approved by the Secretary: Plasticity Index greater than 10%; Liquid Limit between 25% and 50%; portion of material passing the No. 200 sieve (0.074 mm and less fraction) greater than 40% (by weight); and clay content greater than 18% (by weight).

(d) all liners shall have a protective cover of at least two feet of granular soil. This protective cover shall, in addition to providing physical protection for the liner, facilitate the collection of leachate in the leachate collection system. Soil materials used to construct this layer must be designed to ensure the hydraulic leachate head on the liner never exceeds one foot. The soil material shall be free of any organic matter and have the following physical characteristics unless otherwise approved by the Secretary: portion of material passing the No. 200 sieve (0.074 mm and less fraction) no greater than 5% by weight; and Uniformity Coefficient (Cu) less than 6 where Cu is defined as D60/D10.

**G. Testing and Quality Control for Liners:**

(1) All testing of geosynthetic and soil materials shall be performed in accordance with applicable ASTM standards.

(2) The construction and installation of all liners shall be done in accordance with a quality control plan which has been approved by the Department. All testing and evaluation of liners shall be complete prior to the placement of the protective cover. All field testing shall be the responsibility of an individual experienced in liner installation and soils engineering. The quality control plan shall:

(a) define the procedures required for testing and reporting the test results for the installation of the liner; and

(b) describe and illustrate to operating personnel all necessary procedures for maintaining the integrity of the liner and leachate collection systems; and

(c) for the soil component all composite liners as defined in Section 306.A.1 [Subparagraph (a), Paragraph (1), Subsection F of 20.9.1.300 NMAC], prescribe the minimum frequency of testing according to the following table unless otherwise approved by the Secretary:

ITEM	LINER SOIL MATERIAL TEST FREQUENCY	
	TEST	FREQUENCY
Clay borrow source testing	Grain size	1/1,000 cy
	Atterberg Limits	1/5,000 cy
	Moisture-density curve	1/5,000 cy
	Lab permeability	1/5,000 cy
Soil liner testing during construction	Density/moisture content (nuclear)	4/acre/lift
	Lab permeability (recompacted)	1/2 acre
	Total thickness (by survey)	1/acre (on grid)

(d) for the protective cover when used to facilitate leachate drainage, prescribe the minimum frequency of testing according to the following table unless otherwise approved by the Secretary:

GRANULAR DRAINAGE LAYER MATERIAL TEST FREQUENCY

ITEM	TEST	FREQUENCY
Granular drainage layer testing	Grain size	1/1,500 cy
	Total thickness	5/acre

(e) for the geomembrane component of all composite liners as defined in Section 306.A.1 [Subparagraph (a), Paragraph (1), Subsection F of 20.9.1.300 NMAC], all testing, both shop and field, shall be as recommended by the manufacturer. The minimum frequency of taking seam samples for destructive testing shall be one per 500 feet of seam length, with a portion of each test sample tested in the field and another in the laboratory. Seam samples shall be tested for peel adhesion and bonded seam strength. Non-destructive testing shall be performed for all seams, seam repairs, and liner repairs.

H. Leachate Collection Systems for Landfills:

(1) All liners and protective layers shall include a leachate collection system, which shall incorporate a piping collection network comprised of perforated pipe having a minimum diameter of 4 inches and a minimum wall thickness of schedule 80 and shall be designed and constructed to:

- (a) maintain less than a one-foot depth of leachate on the liner;
- (b) maintain a minimum of two percent slope throughout the system;
- (c) withstand chemical attack from waste or leachate; and
- (d) withstand the loads, stresses, and disturbances from overlying waste, waste cover materials, and equipment operation.

(2) Any geosynthetic materials such as geonets and geotextiles, if used as components of the leachate collection system, must have a hydraulic conductivity, transmissivity and chemical and physical qualities that will not be adversely affected by waste placement, equipment, operation, or leachate generation. These geosynthetics, if used and operating in conjunction with the soil protective cover for the liner as described in Section 306.B.4 [Subparagraph (d), Paragraph (2), Subsection F of 20.9.1.300 NMAC], must have a hydraulic conductivity and transmissivity designed to ensure the hydraulic head on the liner never exceeds one foot.

(3) A written leachate management plan shall be submitted for approval by the Secretary. The plan shall describe anticipated amounts of leachate, duration of generation and final disposal options of the leachate and shall include:

- (a) a description of the means of analysis; and
- (b) a description of the type of treatment and proposed disposal method.

I. Landfill; Gas Control Systems: Owners and operators of landfills who are required by the Secretary to install a landfill gas control system in order to conform with the requirements of Section 402.B [Paragraph (2), Subsection B of 20.9.1.400 NMAC] shall submit a plan for approval by the Secretary which shall include the following:

(1) the design of the system, indicating the location and design of vents, barriers, collection piping and manifolds and other control measures that will be installed;

(2) if gas recovery is proposed, the design of the proposed gas recovery system and the major on-site components of the system including storage, transportation, processing, treatment or disposal measures required in the management of the generated gases, condensates or other residues;

(3) if gas processing is proposed, it shall be designed:  
(a) in a manner that does not interfere or conflict with the activities on the site or required control measures;

(b) without creating or causing danger to persons or property; and

(4) if gas disposal is proposed, it shall be designed:  
(a) in a manner that does not interfere or conflict with the activities on the site or required control measures;

(b) without creating or causing danger to persons or property;

(c) with active forced ventilation, using vents located at least one foot above the landfill surface at the location of each gas vent;

(5) physical and chemical characterization of condensates or the residues which are generated and the plan for their disposal.

[1/30/92, 8/17/94, 11/30/95; 20.9.1.300 NMAC - Rn, 20 NMAC 9.1.III.300-309, Recompiled 11/27/01]

20.9.1.301 to 20.9.1.399 [RESERVED]



20.9.1.400 SOLID WASTE FACILITY OPERATION REQUIREMENTS:

A. General Operation Requirements for All Solid Waste Facilities:

- (1) All solid waste facilities shall operate in accordance with the requirements listed in this section.
- (2) All solid waste facility owners and operators shall:
  - (a) locate and operate the facility in a manner that does not cause a public nuisance or create a potential hazard to public health, welfare or the environment;
  - (b) post signs to indicate the location of the site, the hours of operation, emergency telephone numbers, to provide disposal instructions, and to state that fires and scavenging are prohibited;
  - (c) have a certified operator or representative present at all times while the facility is operational;
  - (d) implement a plan approved by the Secretary to inspect loads to detect and prevent the disposal of regulated hazardous and unauthorized waste including hazardous waste and PCB's, including:
    - (i) inspection frequency;
    - (ii) inspection personnel;
    - (iii) an inspection area located away from the tipping area; and
    - (iv) a training program for the facility employees in the identification of unauthorized waste including hazardous waste and PCB's.
  - (e) maintain a written record(s) of all inspection(s), signed by the inspector and the commercial hauler, containing at least the following information:
    - (i) date and time of inspection;
    - (ii) name of transportation company and driver;
    - (iii) truck license and truck description;
    - (iv) source of the waste; and
    - (v) any pertinent observations made during the inspection.
  - (f) upon discovery of the receipt of unauthorized waste:
    - (i) notify the Department, the hauler, and the generator within 24 hours;
    - (ii) restrict the area from public access and from facility personnel; and
    - (iii) assure proper cleanup, transport and disposal of the waste.
- (3) The Secretary may authorize temporary changes in operation or facility design in emergency situations when the Secretary determines there is an imminent danger to public health, welfare or the environment.

B. Additional Municipal or Special Waste Landfill Operation Requirements: All municipal or special waste landfill owners and operators that receive solid waste of any quantity shall also:

- (1) Utilize the principles of sanitary engineering to confine the working face to the smallest practical area and to compact the solid waste to the smallest practical volume.
- (2) Prevent the generation and lateral migration of methane gas such that:
  - (a) the concentration of methane generated by the facility does not exceed twenty-five percent (25%) of the lower explosive limit for the gases in facility structures (excluding gas control or recovery system components); and
  - (b) the concentrations of methane gas do not exceed the lower explosive limit for the gases at the facility property boundary.
- (3) Implement a routine methane monitoring program to ensure that the levels in 402.B.1 and 402.B.2 [Subparagraphs (a) and (b), Paragraph (2), Subsection B of 20.9.1.400 NMAC] are met.
  - (a) the type and frequency of monitoring shall be determined based on the following conditions:
    - (i) soil conditions;
    - (ii) the hydrogeologic conditions surrounding the facility;
    - (iii) the hydraulic conditions surrounding the facility; and
    - (iv) the location of facility structures and property lines;
  - (b) the minimum frequency of monitoring shall be quarterly; and
  - (c) if methane gas levels exceed the limits specified in Paragraphs B.1 or B.2 [Subparagraphs (a) or (b), Paragraph (2), Subsection B] of this section, the owner or operator shall:
    - (i) immediately take all necessary steps to ensure protection of public health, welfare and the environment and notify the Secretary;
    - (ii) within seven days of detection, record the methane gas levels detected and a description of the steps taken to protect public health, welfare and the environment; and

(iii) within 60 days of detection, implement a remediation plan for the methane gas releases, and notify the Secretary that the plan has been implemented. The plan shall describe the nature and extent of the problem and proposed remedy.

(4) Prevent unauthorized access by the public and entry by large animals to the active portion of the landfill through the use of fences, gates, locks, or other means that attain equal protection.

(5) Control run-on water onto the site and run-off water from the site, such that:

(a) the run-on control system shall prevent flow onto the active portion of the landfill during the peak discharge from a 25-year storm;

(b) the run-off control system from the active portion of the landfill collects and controls at least the water volume resulting from a 24-hour, 25-year storm; and

(c) run-off from the active portion of the landfill shall not be allowed to discharge any pollutant to the waters of the State or U.S. that violates any requirements of the New Mexico Water Quality Act, Commission regulations and standards or the Federal Clean Water Act.

(6) Prohibit scavenging;

(7) Provide adequate means to prevent and extinguish fires.

(8) Direct the deposit of hot waste at a specific location at the facility which is remote from the operating area. The hot waste shall be immediately spread out for cooling and extinguished if on fire. The hot waste shall not be mixed with the regular solid waste stream until it reaches a temperature that will not provide combustion of any solid waste.

(9) Provide and maintain access roads at the facility site, such that traffic can enter and exit the site safely, flow smoothly, and will not be interrupted by inclement weather.

(10) Provide sufficient unloading areas to meet demands of peak periods.

(11) Collect and treat leachate by a method approved by the Secretary. Maintain records on a quarterly basis of leachate generation and treatment.

(12) Control litter, disease vectors, and odors.

(13) Not excavate a closed cell except as approved by the Secretary.

(14) Cover the active face with a six-inch layer of earth or approved alternate daily cover at the conclusion of each day's operation or more often as conditions may dictate. The Secretary may approve temporary waivers to the daily cover requirements for landfills of less than 20 tons per day.

(15) Provide intermediate cover which shall be:

(a) one foot thick;

(b) placed on all areas of a landfill that will not receive further waste for one month or greater, but have not reached final elevation;

(c) stabilized with vegetation on any areas that will be inactive for more than two years; and

(d) inspected and maintained to prevent erosion and infiltration.

(16) If recycling operations are conducted:

(a) perform them in a sanitary manner, confined to an area remote from the operating area of the landfill, and in a manner which does not interfere with or delay the operation of the landfill; and does not create a nuisance, vector harborage, or public health hazard; and

(b) remove all recyclable materials recovered from the landfill in a timely manner such that the area does not become a permanent storage area.

C. Additional Construction and Demolition Landfill Operation Requirements: All construction and demolition landfill owners and operators shall:

(1) Minimize the on-site population of disease vectors through the periodic application of cover material or other techniques as appropriate so as to protect public health, welfare and the environment;

(2) Apply periodic cover material by the application and compaction of soil or other suitable material over disposed construction and demolition debris at the end of each operating day or at such frequencies and in such a manner as to reduce the risk of fire and impede vector's access to the waste;

(3) Ensure the concentration of explosive gases generated by the facility or practice shall not exceed:

(a) twenty-five percent (25%) of the lower explosive limit for the gases in facility structures (excluding gas control or recovery system components); and

(b) the lower explosive limit for gases at the property boundary;

(4) limit public access so as to not expose the public to potential health and safety hazards at the facility; and

(5) not violate applicable requirements developed under the New Mexico State Air Quality Implementation Plan.

D. Additional transfer Station Operational Requirements:

- (1) Special wastes may be accepted only at transfer stations permitted to accept these wastes.
- (2) Containers used shall be leak-proof and manufactured of non bio-degradable material.
- (3) The owner or operator shall provide adequate means to prevent and extinguish fires.
- (4) If recycling operations are conducted, they shall be done in a sanitary manner, confined to an area remote from the tipping area of a transfer station and in a manner which does not interfere with, or delay operations. Recyclable materials shall be stored in a manner so as not to create a nuisance, harbor vectors, or create a public health hazard and shall be removed in a timely manner.
- (5) There shall be sufficient unloading areas to meet demands of peak periods.
- (6) For transfer stations that handle less than 250 cubic yards of solid waste per day:
  - (a) unloading of solid waste shall be confined to as small an area as possible;
  - (b) all containers and/or trailers shall be emptied at least every other day, or at a rate approved by the Secretary; and
  - (c) uncleaned transfer vehicles containing putrescible materials shall not be parked on public streets or roads except under emergency conditions. Adequate off-street parking facilities for transfer vehicles shall be provided.
- (7) For transfer stations that handle more than 250 cubic yards of solid waste per day, no solid waste shall be left at the station at the end of the operating day unless otherwise approved by the Department.
- (8) Each transfer station shall be cleaned daily of all loose materials and litter.
- (9) If bulky wastes, such as brush, junk vehicles, appliances, and tires are accepted, separate storage areas shall be provided, and the bulky wastes shall be removed in a timely manner.

E. Additional Transformation Facility Operation Requirements: The following operational requirements apply to transformation facilities:

- (1) a transformation facility owner or operator shall:
  - (a) control dust in the unloading and charging areas in such a manner as to prevent explosions and fugitive dust emissions;
  - (b) maintain appropriate fire-fighting equipment in the charging and storage areas and elsewhere as needed;
  - (c) if recycling, conduct those operations in a sanitary manner, which does not interfere with or delay the operations; and remove all recyclable materials recovered, or store them so as not to create a nuisance, vector harborage, or public health hazard;
  - (d) provide sufficient unloading areas to meet demands of peak periods;
  - (e) provide sufficient training for all new employees so that equipment may be operated according to design specifications, and conduct review training annually;
  - (f) key operational procedures shall be prominently posted;
  - (g) storage of special wastes generated by the transformation facility shall be in covered buildings, in covered leak-proof containers, or in tanks, which shall be labeled with a description of the contents;
  - (h) audible signals shall be provided to alert operating personnel of critical operating unit malfunctions;
  - (i) sampling points of each process stream that do not interfere with normal facility operation shall be provided; and
  - (j) if a facility is permitted by the Secretary to handle special wastes, separate areas shall be provided for storage while the special wastes await processing or transport.

(2) The owner or operator shall establish an ash testing program prior to start-up of the transformation facility. Representative samples of both fly ash and bottom ash shall be tested in accordance with Section 704 [Subsection D of 20.9.1.700 NMAC] of this Part. Test methods, the number of tests, detection limits, and parameters to be tested shall be approved by the Secretary. Frequency of testing shall be one sample per month taken within 5 days of the beginning of the month.

(3) All products remaining after transformation shall be disposed of in a landfill permitted to accept these wastes.

F. Additional Recycling and Processing Facility Operation Requirements: The following operational requirements apply to processing facilities:

- (1) Key operational procedures shall be prominently posted.
- (2) Storage of special wastes generated by the processing facility shall be in covered buildings, in covered leak-proof containers, or in tanks, which shall be labeled with a description of the contents.

- (3) Audible signals shall be provided to alert operating personnel of critical operating unit malfunctions.
- (4) Sampling points of each process stream that do not interfere with normal facility operation shall be provided.
- (5) If a facility is permitted by the Secretary to handle special wastes, separate areas shall be provided for storage while the special wastes await processing or transport.
- (6) Storage areas for special wastes shall be clearly marked.
- (7) Storage of residues shall be by means that prevent the material or containers from falling, leaking, or blowing and that prevent exposure of the waste to the weather.
- (8) All materials that are physically, chemically or biologically incompatible shall be stored in separate areas.
- (9) Storage capacity shall be provided for special waste by-products generated during initial start-up characterization period.
- (10) The owner or operator shall provide for the wash-down or other cleanup of the facility. Wastewaters shall be disposed of in accordance with all applicable state and federal regulations.
- (11) If materials have the potential of discharging any oils, polychlorinated biphenyls (PCB's), battery acid, battery alkalines or other liquids have the potential of being discharged or spilled, the containers shall be located in a restricted area identified by signs on a covered, substance-compatible, bermed containment pad.
- (12) A schedule and contacts for removal of stored wastes shall be kept and included in the operation and maintenance manual.

G. Additional Composting Facility Operation Requirements: The following operational requirements apply to composting facilities:

- (1) Daily operational records shall be maintained for the facility, which include, the source of materials, additives, temperature data, and quantity of material processed.
- (2) All waste piles of materials collected for the purpose of composting shall be processed within two years.
- (3) All materials not destined for composting shall be disposed of properly.
- (4) The finished compost shall be sufficiently stable that it can be stored or applied to land without creating a nuisance, environmental threat, or a hazard to health.
- (5) If windrowed, construction and turning frequency shall be sufficient to maintain aerobic conditions that can be measured (for example, oxygen tension measured by an oxygen sensor) and to produce a compost product in the desired time frame.
- (6) The finished compost shall not contain sharp objects.
- (7) All facility owners and operators utilizing municipal sewage sludge, septage or sludge/MSW commingled solid waste shall meet the requirements of applicable New Mexico Water Quality Control Commission Regulations and 40 CFR Parts 257 and 503. Information required by the Commission Regulations and federal requirements shall be made part of the daily operational records.

H. Additional Hauler Operation Requirements:

- (1) Any person who provides collection shall meet the following:
  - (a) solid waste shall be collected and transported so as to prevent environmental, safety, and public health or welfare hazards and nuisances;
  - (b) equipment shall be designed, constructed and operated so as to be leakproof;
  - (c) solid waste shall be covered or enclosed so as to prevent roadside littering during transportation;
  - (d) collection and transportation equipment shall be kept in a sanitary condition through the use of sufficient washings and cleanouts;
  - (e) no solid waste may be transported to a facility which does not meet the requirements of this Part;
  - (f) all solid waste spilled during collection operations shall be cleaned up immediately; and
  - (g) all collection vehicles shall be conspicuously labeled with the company, municipality, or county department name.
- (2) The owner or operator of a hauling system shall notify the Department, in writing, of any major changes in collection or disposal facility being utilized.
- (3) All infectious waste haulers shall comply with the following transportation requirements:
  - (a) infectious waste shall not be transported in the same vehicle with other waste unless the infectious waste is contained in a separate, fully enclosed leak-proof container within the vehicle compartment or

unless all of the waste has been treated as infectious waste in accordance with Section 706 [Subsection F of 20.9.1.700 NMAC];

(b) persons manually loading or unloading containers of infectious waste onto or from transport vehicles shall be provided by their employer with, and required to wear, protective gloves, shoes and eye wear, and clean coveralls. Face shields and respirators may be required as deemed necessary by the Secretary;

(c) surfaces of transport vehicles that have contacted spilled or leaked infectious waste shall be decontaminated by procedures approved by the Secretary;

(d) vehicles transporting infectious waste shall be identified on each side of the vehicle with the name or trademark of the hauler and a biohazard symbol;

(e) each truck, trailer, semitrailer, or container used for shipping infectious waste shall be so designed and constructed, and its contents limited so that under conditions normally incident to transportation, there shall be no releases of infectious waste to the environment;

(f) any truck, trailer, semitrailer, or container used for shipping infectious waste shall be free from leaks, and all discharge openings shall be securely closed during transportation;

(g) no person shall transport infectious waste into the state for treatment, storage, or disposal unless the waste is packaged, contained, labeled and transported in the manner required by this section;

(h) all generator storage containers shall be labeled with the generator's name, the city, and date of collection; and

(i) storage of infectious waste by commercial haulers shall be limited to seven (7) days prior to disposal or treatment unless refrigerated at or below 45 degrees Fahrenheit.

(4) The Secretary may deny or revoke registration if the transporter violates any provisions of this Part.

(5) The owner or operator of a commercial hauling system shall make and maintain a continuous operating record. The operating record shall include:

(a) type and weight or volume of solid waste hauled;

(b) state, county, and municipality in which the solid waste originated; and

(c) solid waste facilities utilized.

(6) Owners or operators shall submit an annual report to the Secretary within 45 days from the end of each calendar year describing the operations of the past year. The reports shall include the following information:

(a) the type and weight or volume of solid waste hauled in each month of the reported year from each state, county, and municipality in which the waste originated;

(b) the amount of waste by weight or volume taken to each facility along with the solid waste facility's permit number;

(c) the amount of waste by weight or volume exported in each month of the reported year and to which state; and

(d) any special operations or cleanups performed.

[1/30/92, 8/17/94, 9/17/94; 20.9.1.400 NMAC - Rn, 20 NMAC 9.1.IV.400-408, Recompiled 11/27/01]

20.9.1.401 to 20.9.1.499 [RESERVED]

#### 20.9.1.500 CLOSURE AND POST-CLOSURE REQUIREMENTS:

##### A. General Requirements:

(1) Closure and post-closure care plans are required of all solid waste facilities and lateral expansions.

(2) The owner or operator of the solid waste facility shall prepare a written closure and post-closure care plan that describes the steps necessary for closure and post-closure care of the solid waste facility.

(3) Closure and post-closure plans are required at the time of application for a permit or modification and for non-permitted existing solid waste facilities at least 90 days prior to closure.

(4) The owner or operator of the solid waste facility shall notify the Secretary of the intent to close at least 90 days before closure occurs.

(5) Closure and post-closure care plans for new solid waste facilities and modifications to existing facilities shall be approved as part of the permit process.

(6) All closure and post-closure care plans shall be approved by the Secretary and may be subject to conditions.

(7) Closure and post-closure care plans for non-permitted solid waste facilities that existed prior to the effective date of the Solid Waste Act (March 5, 1990) shall be approved by the Secretary with due consideration for the following:

(a) such plans are not subject to 20 NMAC 1.4 [20.1.4. NMAC], Permit Procedures - Environment Department; and

(b) after determining that the plan is complete, the Secretary shall provide public notice of the plan in a newspaper of general circulation in the county where the facility is located. A non-adjudicatory hearing will be held if significant public interest warrants it.

(8) Responses to the Secretary's requests for additional information concerning a proposed closure plan shall be made within 60 days of receipt of such a request.

(9) The active life of the facility terminates upon the Secretary's review and acceptance of closure of a facility.

(10) Closure and post-closure inspection and maintenance shall not be required of the facility if the owner or operator demonstrates to the Secretary that all solid waste has been removed, requirements of the closure plan have been met, and following the removal of such wastes, a demonstration is made that the soil has not been contaminated.

(11) All landfills, except construction and demolition debris landfills, which close after October 9, 1991, shall comply with the final cover requirements contained in Section 502 [Subsection B of 20.9.1.500 NMAC], in addition to other closure requirements in effect at the time of closure.

(12) The length of the post-closure care period may be decreased by the Secretary if the owner or operator demonstrates that the reduced period is sufficient to protect public health, welfare, and the environment, or it may be increased by the Secretary if the Secretary determines that a longer period is necessary to protect health, welfare, and the environment. The time period for application of the provisions for Financial Assurance as defined in Subpart IX [20.9.1.900 NMAC] of this Part shall be coincident with the time period of the post-closure care period. Any reduction or extension of the post-closure care period as described in this Section shall be accompanied by an identical reduction or extension of the Financial Assurance provisions.

**B. Closure and Postclosure Requirements for Municipal or Special Waste Landfills:**

(1) Owners and operators of municipal or special waste landfills shall comply with the following closure requirements which shall begin within 30 days after the landfill receives the known final receipt of waste:

(a) owners and operators shall install a final cover system which consists of the following:

(i) an infiltration layer comprised of a minimum of 18 inches of earthen material having a saturated hydraulic conductivity less than or equal to the saturated hydraulic conductivity of any bottom liner system or natural subsoils present, or a saturated hydraulic conductivity no greater than  $1 \times 10^{-5}$  cm/sec. whichever is less;

(ii) an erosion layer consisting of a minimum of 6 inches of earthen material that is capable of sustaining native plant growth;

(iii) any necessary gas vents provided they are sealed to assure no water infiltration;

(iv) side slopes that shall not exceed a 25% grade (four feet horizontal to one foot vertical), such that the final cover of the top portion of a landfill shall have a gradient of 2% to 5%, and that the slope shall be sufficient to prevent the ponding of water and erosion of the cover material.

(b) upon EPA approval of the State program in the Federal Register, the Secretary may approve an alternative final cover design that includes:

(i) an infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer as specified in Section 502.A.1.a [Item (i), Subparagraph (a), Paragraph (1), Subsection B of 20.9.1.500 NMAC]; and

(ii) an erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in Section 502.A.1.b [Item (ii), Subparagraph (1), Subsection B of 20.9.1.500 NMAC];

(c) the written closure plan, at a minimum shall include the following information:

(i) a description of the final cover, and the methods and procedures to be used to install the cover;

(ii) an estimate of the largest area of the landfill ever requiring a final cover at any time during the active life;

(iii) an estimate of the maximum volume of waste ever on-site during the active life of the landfill facility;

(iv) a schedule for completing all activities necessary to satisfy the closure criteria; and

(v) a plan drawing showing the final contours and vegetation in relationship to the surrounding land, and a plan and a description of the vegetation proposed for permanent soil stabilization;

(d) prior to beginning closure of each landfill, an owner or operator must notify the Secretary that a notice of the intent to close the unit has been placed in the operating record;

(e) the owner or operator shall complete closure activities in accordance with the closure plan within 180 days following the beginning of closure. Extensions of the closure period may be granted by the Secretary if the owner or operator demonstrates that closure will, of necessity, take longer than 180 days and has taken and will continue to take all steps necessary to prevent threats to public health, welfare and the environment;

(f) following closure, the owner or operator shall notify the Secretary that closure has been completed in accordance with the closure plan;

(g) following closure, the owner or operator shall record a notation on the deed to the landfill facility property, or some other instrument that is normally examined during title search, and notify the Secretary that the notation has been recorded and a copy has been placed in the operating record. The notation on the deed shall in perpetuity notify any potential purchaser of the property that:

(i) the land has been used as a landfill facility; and

(ii) its use is restricted under the post-closure care requirement; and

(h) the owner or operator may request permission from the Secretary to remove the notation from the deed if all wastes are removed from the facility.

(2) Landfill owners or operators shall comply with the following post-closure requirements:

(a) submit a post-closure care and monitoring plan which shall include, but not be limited to maintenance of cover integrity, maintenance and operation of the leachate collection system, operation of the methane and ground water monitoring systems;

(b) reports of monitoring performance and data collected shall be submitted to the Secretary within 45 days from the end of each calendar year; and

(c) the post-closure care period for a landfill shall be thirty (30) years.

(3) The owner or operator may amend the post-closure plan by submitting a request to the Secretary 30 days prior to the proposed change. No proposed amendment shall be effective unless first approved in writing by the Secretary.

(4) The Secretary may require the owner or operator to amend the post-closure care plan if the Secretary believes that the present or future implementation of the plan may cause a threat to public health, welfare and the environment.

C. Construction and Demolition Landfill Closure and Post-Closure Requirements:

(1) Owners and operators construction and demolition landfills shall comply with the following closure requirements:

(a) a final cover consisting of a compacted layer of not less than two feet of approved material shall be placed over the entire surface of each portion of the final lift starting no later than 30 days and completed within 60 days after the known final receipt of waste. A minimum of six inches of the final cover shall consist of top soil or equivalent depth of composted material.

(b) the side slopes of all above-grade landfills shall not exceed a 25% grade (four feet horizontal to one foot vertical), such that the final cover of the top portion of a landfill shall have a gradient of 2% to 5%, and that the slope shall be sufficient to prevent the ponding of water and erosion of the cover material;

(c) provide a plan showing the final contours and vegetation in relationship to the surrounding land, the description of final use of the land with drawings as appropriate, and a description of vegetation to provide permanent soil stabilization;

(d) upon completion of closure, a detailed description of the use of the site, including a plat, shall be filed with the appropriate county land recording authority for the county in which the site is located. The description and the plat shall be filed so that it will be found during a title search and proof of the filing shall be submitted to the Secretary. The notification on the deed shall perpetually notify any potential purchaser of the property that:

(i) the land has been used as a landfill;

(ii) its use is restricted as described in the post-closure care provisions.

(2) Post-closure care shall be for a period of 30 years and includes control of erosion, maintenance of cover, top slopes, side slopes, drainage, and vegetation. Post-closure care inspections shall be:

(a) once a year for the first three years; and then

(b) once every three years, thereafter.

D. Composting Closure and Post-Closure Requirements:

(1) Within 30 days of closure, all composting facility owners or operators shall:

(a) remove all windrows and in-vessel compost material on the compost facility's real property;

(b) remove or vegetate compacted compost material that may be left on the land;

(c) drain ponds or leachate collection systems, back fill, and assure removed contents are properly disposed;

(d) provide cover if necessary; and

(e) remove buildings, fences, roads, and equipment, clean-up the site, and conduct tests on the soils for contamination.

(2) Composting facility owners or operators shall comply with the following post-closure and monitoring requirements:

(a) maintain ground water monitoring, if required, to detect possible migration of contaminants; and

(b) inspect and maintain any cover material.

(3) Cost-closure inspection and maintenance shall not be required if the facility owner or operator demonstrates that all requirements of closure have been met and there is no evidence of contamination.

E. Closure and Post-Closure Requirements for Other Solid Waste Facilities:

(1) Owners or operators of other solid waste facilities shall comply with the following requirements:

(a) cleanup of the area;

(b) dismantling and removal of any improvements related to solid waste handling or disposal, if required by the Department, such as;

(i) removal of buildings;

(ii) removal of fences; and

(iii) removal of roads;

(c) testing of soils and ground water for contamination if required by the Department; and

(d) any other conditions of the permit.

(2) Post-closure inspection and maintenance shall not be required if the facility demonstrates that all requirements of closure have been met and there is no evidence of contamination.

[1/30/92, 8/17/94, 11/30/95; 20.9.1.500 NMAC - Rn, 20 NMAC 9.1.V.500-505, Recompiled 11/27/01]

20.9.1.501 to 20.9.1.599 [RESERVED]

20.9.1.600 OPERATOR CERTIFICATION:

A. General Provisions:

(1) All operators of landfills, transfer stations, recycling and processing facilities, and transformation facilities shall be certified within 180 days after the promulgation of this Part.

(2) The certified operator shall be a supervisor, manager or equipment operator who has primary authority and responsibility for compliance with this Part and the approved plans and permit conditions for the facility.

(3) A facility which is required to be operated under the direction of a certified operator shall operate for no more than six months in the event that the services of a certified operator are not available; however, the facility shall have someone on site that is knowledgeable as to the operation of that facility in the interim.

(4) An individual desiring to become a certified operator shall complete a training course offered by the Department or its designated agent or equivalent training approved by the Department and pass an examination approved by the Department.

(5) An individual desiring to become a certified operator shall file an application with the Department on a form provided by the Department at least 30 days prior to a scheduled exam.

(6) Operator certification is valid for three years from date of issuance.

(7) Alternate training shall be equivalent to or more extensive than the Department's course work, and shall be approved by the Department. It shall be the applicant's responsibility to submit any documentation the Department may require to evaluate the equivalency of alternate training.

(8) A person holding certification in a particular facility classification may operate any facility in that class.

(9) A person may hold certification in more than one facility classification as may be required by the Department.

(10) The name(s) of the certified operator(s) shall be on file at all times with the Department.

B. Education and Experience:

(1) Each applicant for certification in each classification shall successfully meet the educational, experience and training requirements stipulated:

(a) two (2) years of experience;



- (b) attend and complete an approved course;
- (c) in no case shall actual experience be less than one year in any classification; and
- (d) a high school diploma or G.E.D. equivalent may be substituted for one year's experience.

C. Landfill Training Course:

(1) The required training course for a certified operator of a landfill will be offered by the Department or other approved authority at least once every twelve months.

(2) The training course will address at least the following areas:

- (a) composition of wastes;
- (b) interpreting and using engineering plans, including but not limited to:
  - (i) surveying techniques;
  - (ii) waste decomposition process;
  - (iii) geology and hydrology;
  - (iv) landfill design;
  - (v) landfill operation;
  - (vi) environmental monitoring;
  - (vii) applicable laws and regulations;
  - (viii) the permitting process; and
  - (ix) identification of unauthorized waste including hazardous wastes and PCB's.

D. Recycling Facility Training Course and Processing Facility Training Course: The training course shall address at least the following areas:

- (1) composition of waste;
- (2) transportation requirements;
- (3) mechanical operation and technology;
- (4) materials flow;
- (5) traffic flow control;
- (6) quality control;
- (7) distribution and marketing;
- (8) recycling and processing facility design;
- (9) handling of special wastes;
- (10) applicable laws and regulations; and
- (11) the permitting process.

E. Transformation Facility Training Course: The required training course for a certified operator for an incinerator shall be equivalent to that required by Air Quality Control Regulations 2000 Part X and 2020 Part X, and for transformation facilities it shall address at least the following areas:

- (1) composition of wastes;
- (2) theory of combustion;
- (3) basics in chemistry;
- (4) basics in thermodynamics;
- (5) mechanical and electrical operation and technology;
- (6) air pollution control technology;
- (7) ash handling and disposal operation;
- (8) control room operation;
- (9) continuous emissions monitors and their calibration;
- (10) applicable laws and regulations;
- (11) environmental monitoring and field sampling;
- (12) waste decomposition;
- (13) transportation requirements;
- (14) flow control; and
- (15) the permitting process.

F. Composting Facility Training Course: The required training courses for a certified operator for a composting facility shall address at least the following areas:

- (1) basic microbiology;
- (2) basic chemistry;
- (3) waste decomposition;
- (4) environmental monitoring;
- (5) distribution and marketing;

- (6) composting equipment care and maintenance;
- (7) composting processing methods;
- (8) basic composting techniques;
- (9) quality control;
- (10) compost end-use;
- (11) yard waste and food waste collection system;
- (12) sludge handling;
- (13) staffing and operation; and
- (14) the permitting process.

G. Transfer Station Training Course: The required training course for a certified operator for a transfer station shall address at least the following areas:

- (1) composition of wastes;
- (2) transportation requirements;
- (3) control room operation;
- (4) mechanical operation and technology;
- (5) flow control;
- (6) traffic control;
- (7) large waste item handling;
- (8) applicable laws and regulations;
- (9) transfer station design; and
- (10) the permitting process.

H. Examination:

- (1) An examination will be administered in conjunction with, and at the conclusion of, each training course specified in this Subpart.
- (2) Results of the examination will be forwarded to the individual completing the examination within sixty (60) days after the date of the examination.
- (3) No person shall be eligible for examination unless she or he has completed:
  - (a) the training course offered by the Department; or
  - (b) an alternate training course approved by the Secretary.
- (4) Certification requires a score of at least seventy percent on the examination required by this

section.]

I. Reciprocity:

- (1) The Department may issue certificates without examination to applicants who hold valid certificates or licenses issued by any state, territory, or foreign jurisdiction provided that the Department determines the requirements for such certification are equal to or higher than those set forth in this Part.
- (2) Certificates issued under Subsection A [Paragraph (1), Subsection I] of this section will be in equivalent classification.

J. Recertification:

- (1) Certified operators shall be recertified by the expiration date of their certification.
- (2) Recertification shall be obtained by:
  - (a) attending and successfully completing a training course offered by the Department or its designated agent; or
  - (b) an alternate training course which has been approved by the Department; or
  - (c) completing course work totaling 40 hours, which has been approved by the Secretary.
- (3) If recertification is not obtained prior to the expiration date of the certification, the certification shall be void.
- (4) Lapsed certificates may be reinstated without penalty upon application within thirty days of the expiration date. After that time period, a lapsed certificate may only be reinstated upon reapplication.
- (5) If a lapsed certificate has not been reinstated within one year of its expiration date, the applicant must reapply and retake the appropriate examination.

K. Suspension or Revocation of Certification:

- (1) Certification may be suspended or revoked by the Secretary for:
  - (a) failure to comply with the terms or conditions of the solid waste facility permit;
  - (b) fraud, deceit or submission of inaccurate qualification information;
  - (c) violation of this Part by the certified operator; or
  - (d) failure to comply with the Parental Responsibility Act, NMSA 1978, 40-5A-1 to 40-5A-13.

(2) Disciplinary proceedings shall be conducted in accordance with the Uniform Licensing Act, NMSA 1978, 61-1-1 to 61-1-33, and if applicable, 20 NMAC 1.7 [20.1.7 NMAC]. [1/30/92, 8/17/94, 11/30/95; 20.9.1.600 NMAC - Rn, 20.9.1.VI.600-611, Recompiled 11/27/01]

20.9.1.601 to 20.9.1.699 [RESERVED]

20.9.1.700 SPECIAL WASTE REQUIREMENTS:

A. General: Special wastes shall either be treated prior to disposal or isolated in their disposal to ensure a minimum amount of exposure to the public.

B. Restrictions:

(1) A. Special waste shall be disposed of only at solid waste facilities authorized for disposal of special waste.

(2) If infectious waste is to be incinerated, it shall only be incinerated in an infectious waste incinerator authorized under applicable Air Quality regulations and permitted under this Part.

(3) A manifest in accordance with Section 712 [Subsection L of 20.9.1.700 NMAC] of this Part shall accompany each load of asbestos, infectious waste, petroleum contaminated soils, ash or other special wastes as specified by the Department originating or to be disposed in New Mexico.

C. General Requirements:

(1) Special waste shall be stored at an approved special waste storage area.

(2) Special waste shall not be stored for longer than forty-five days, unless otherwise approved by the Department.

(3) All containers of special waste to be stored or disposed of shall be clearly labeled, indicating the contents and potential health, safety, and environmental hazards associated with the waste.

D. Required Analysis:

(1) The physical and chemical characteristics of all special wastes shall be documented prior to storage, transportation or disposal, by means of:

(a) records of the results of analyses performed in accordance with this section as applicable;

and

(b) detailed descriptions of the generator's knowledge of specific wastes.

(2) All laboratory analyses shall be performed by a laboratory that follows EPA quality assurance and quality control procedures in accordance with EPA approved analytical methods or such other methods acceptable to the Department.

(3) Representative sample(s) shall be analyzed in conformance with the following parameters as appropriate (see Subsection C of Section 1101 of this Part [Paragraph (3), Subsection B of 20.9.1.1100 NMAC]):

(a) ignitability characteristic as defined in 40 CFR, Part 261;

(b) corrosivity characteristic as defined in 40 CFR, Part 261;

(c) reactivity characteristic as defined in 40 CFR, Part 261;

(d) toxicity characteristic as defined by U.S. EPA Test Method 1311: Toxicity Characteristic

Leaching Procedure (TCLP);

(e) Paint Filter Liquids Test as defined by U.S. EPA Test Method 9095;

(f) additional parameters as identified by the Department;

(g) Resource Conservation and Recovery Act (RCRA) Subtitle C listed wastes as defined in 40 CFR, Part 261; and

(h) Toxic Substance Control Act (TSCA), Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), or other applicable statutes.

E. Asbestos Waste:

(1) Transportation of asbestos waste:

(a) No transporter shall accept or transport asbestos waste unless the waste has been properly wetted and containerized.

(i) Asbestos waste is properly wetted when its moisture content prevents fiber release.

(ii) Asbestos waste is properly containerized when it is placed in a plastic bag of 6-mil or thicker, sealed in such a way to be leak-proof, and the amount of void space or air in the bag is minimized. Asbestos waste slurries shall be packaged in leak-proof drums if they are too heavy for the plastic bag containers. The Secretary may authorize other proper methods of containment which may include double bagging, plastic-lined cardboard containers, plastic-lined metal containers, or the use of vacuum trucks for the transport of slurry.

(iii) Pipes or other facility components which are removed as sections without first removing the asbestos shall be wrapped in a minimum of 6-mil plastic sufficient to create a leak-proof container.

(iv) Public access to asbestos wastes shall be prevented and asbestos wastes shall be transported as soon as possible after acceptance.

(b) Transporter waste handling:

(i) A transporter shall ensure that the asbestos waste is properly contained in leak-proof containers with appropriate labels, and that the outsides of the containers are not contaminated with asbestos debris adhering to the containers. The transporter shall not accept nor transport asbestos waste if there is a reason to believe that the condition of the asbestos waste may allow fiber release.

(ii) The transporter shall ensure that the asbestos waste containers are loaded into the transport vehicle in a manner which prevents the breaking of the containers. The transporter shall ensure that the asbestos waste containers are transferred at the disposal site in such a manner to avoid fiber release.

(iii) If the transporter discovers that the asbestos waste is not properly containerized in conformance with 705.A.1 [Subparagraph (a), Paragraph (1), Subsection E, of this section], the transporter shall immediately clean up the contaminated area and repair or reseal the container by means of double bagging, plastic wrap, or other appropriate methods. The Department shall be notified of any release. The transporter shall ensure that all containers in his possession are leak-proof and cannot release fibers.

(c) Asbestos waste handling: Vehicles used for transport of containerized asbestos waste shall have an enclosed carrying compartment. All surfaces of vehicles and other asbestos handling equipment and facilities shall be maintained free from the accumulation of dusts and waste containing asbestos. No vehicle which uses compactors to reduce waste volume may be used to transport asbestos waste. Vacuum trucks shall be inspected to ensure that liquid is not leaking from the truck.

(2) Labeling requirements for asbestos containers: Warning labels: All asbestos containers shall be tagged with a warning label. Labels approved by the EPA or the Occupational Safety and Health Administration (OSHA) shall be worded, as shown below. The Secretary may authorize the use of other similar labels. DANGER; CONTAINS ASBESTOS FIBERS; AVOID CREATING DUST; CANCER AND LUNG DISEASE HAZARD.

(3) Disposal of asbestos waste:

(a) Receipt of asbestos waste.

(i) The transporter of the asbestos waste shall notify the landfill operator that the load contains asbestos.

(ii) The landfill owner or operator shall inspect the loads to verify that the asbestos is properly contained in leak-tight containers and labeled appropriately. The owner or operator shall notify the Secretary if the owner or operator believes that the asbestos waste is in a condition that may cause significant fiber release during disposal. If the wastes are not properly containerized, and the landfill owner or operator accepts the load, the owner or operator shall thoroughly soak the asbestos with a water spray prior to unloading, rinse out the truck, and immediately cover the wastes with non-waste containing material which prevents fiber release prior to compacting the waste in the landfill.

(b) Waste deposition and covering: The owner or operator shall:

(i) prepare a separate trench to receive only asbestos wastes. The trench shall be as narrow as possible while complying with all applicable trenching regulations;

(ii) align the trench perpendicular to the prevailing winds;

(iii) place asbestos containers into the trench with sufficient care to avoid breaking the containers;

(iv) completely cover the containerized waste within 18 hours with a minimum of 6 inches of non-waste containing material;

(v) completely cover improperly containerized asbestos containing material with 6 inches of non-waste containing material immediately; and

(vi) not compact the asbestos containing material until it is completely covered with 6 inches of non-waste containing material.

(c) Closure of an asbestos containing cell. For closure of a cell containing asbestos material, the landfill owner or operator shall:

(i) cover with an additional 30 inches of compacted non-waste containing material to provide a 36-inch final cover to the original grade,

(ii) at the discretion of the Secretary, implement measures where necessary to control erosion and rodent intrusion.

(d) Control of public access: The operator shall provide barriers adequate to control public access. At a minimum, the owner or operator shall:

(i) limit access to the asbestos management site to no more than two entrances by gates that can be locked when left unattended and by fencing adequate to deter access by the general public.

(ii) place warning signs at the entrance and at intervals no greater than 100 feet along the perimeter of the sections where asbestos waste is deposited. The sign shall read as follows: ASBESTOS WASTE DISPOSAL SITE; DO NOT CREATE DUST; BREATHING ASBESTOS IS HAZARDOUS TO YOUR HEALTH.

(iii) The signs shall be posted in such a manner and location that a person can easily read the legend and conform to the requirements of 20 inches by 14 inches upright format signs specified in 29 CFR 1910.145(d)(4) (or equivalent regulation adopted by the Board under the Occupational Health and Safety Act). Spacing between any two lines shall be at least equal to the height of the upper of the two lines.

(e) The owner or operator shall have at least one employee who has received at least 24 hours of course work in an EPA certified training course which deals with the identification, hazards and management of asbestos wastes. An employee with this training shall be present at all times when asbestos wastes are being disposed.

F. Infectious Waste:

(1) This section applies:

(a) without regard to the quantity of infectious waste produced, to any producer of infectious waste including, but not limited to, any:

- (i) general acute care hospitals;
- (ii) skilled nursing facility or convalescent hospitals;
- (iii) intermediate care facilities;
- (iv) in-patient care facilities for the developmentally disabled;
- (v) dialysis clinics;
- (vi) free clinics;
- (vii) community clinics;
- (viii) employee clinics;
- (ix) health maintenance organizations;
- (x) home health agencies;
- (xi) surgical clinics;
- (xii) urgent care clinics;
- (xiii) acute psychiatric hospitals;
- (xiv) blood/plasma centers;
- (xv) laboratories;
- (xvi) medical buildings;
- (xvii) physicians offices;
- (xviii) veterinarians;
- (xix) dental offices;
- (xx) acupuncturists;
- (xxi) funeral homes; and
- (xxii) eye clinics; and

(b) to all infectious waste storage, treatment, and disposal facilities.

(2) All material that has been rendered non-infectious may be handled as non-infectious waste, provided:

(a) it is not an otherwise regulated, hazardous, special, or radioactive waste and is not subject to the requirements of this section;

(b) the operator of the disposal facility applies daily cover as required in Section 402 [Subsection B of 20.9.1.400 NMAC] prior to any compaction of the sharps; and

(c) any person that treats infectious waste shall certify in writing the waste has been rendered noninfectious by sterilization, incineration or another method approved by the Secretary. Certification shall be provided to the transporter or disposal facility and kept in the facility operating record. A certification that the waste has been rendered noninfectious shall be provided to the generator, transporter, and disposal facility. The generator and disposal facility shall maintain copies of certifications and the records made available to the Department upon request.

(3) The following storage and containment requirements apply to all infectious waste:

(a) Containment shall be in a manner and location which affords protection from animal intrusion, does not provide a breeding place or a food source for insects and rodents, and minimizes exposure to the public.

(b) Infectious waste shall be segregated by separate containment from other waste at the point of origin.

(c) Except for sharps, shall be contained in plastic bags inside rigid containers. The bags shall be securely tied to prevent leakage or expulsion of solid or liquid wastes during storage, handling or transport.

(d) Sharps shall be contained for storage, transportation, treatment, and disposal in leak-proof, rigid, puncture-resistant containers which are manufactured for the purpose of sharps containment and are taped closed or tightly lidded to preclude loss of contents.

(e) All bags used for containment purposes shall be red or orange and clearly identified as specified in 29 CFR 1910.145(f)(4). Rigid containers shall be labeled "biomedical waste", or otherwise conspicuously labeled as holding infectious waste, or placed in disposable bags used for other infectious waste. Disposable rigid containers shall meet or exceed the standards for a classified strength of at least 200-pound mullen test.

(f) If other waste is placed in the same container as regulated infectious waste, then the generator shall package, label and mark the container and its entire contents as infectious waste.

(g) Rigid infectious waste containers may be reused for infectious or non-infectious waste if they are thoroughly washed and decontaminated each time they are emptied and the surfaces of the containers have been completely protected from contamination by disposable, unpunctured or undamaged liners, bags, or other devices that are removed with the infectious waste, and the surface of the containers have not been damaged or punctured.

(h) Storage and containment areas shall protect infectious waste from the elements, be ventilated to the outdoors, be only accessible to authorized persons, and be marked with prominent warning signs on, or adjacent to, the exterior doors or gates. The warning signs shall be easily read during daylight from a distance of 25 feet.

(i) Generators of medical waste, shall place an absorbent material inside the liner of the rigid container equal to one (1) cup of absorbent material per each six (6) cubic feet of box area if the rigid container is to hold any containers which had held free liquids; if the rigid container is to hold containers which do hold free liquids, then enough absorbent material shall be placed inside the liner of the rigid container sufficient to absorb 15% of the total volume of free liquids inside the rigid container.

(j) Compactors, grinders or similar devices shall not be used to reduce the volume of infectious waste before the waste has been rendered non-infectious unless prior approval has been obtained from the Department.

(4) All infectious waste treatment, storage and disposal facilities subject to this section shall comply with the following operational requirements:

(a) Every person who generates, transports, stores, treats, or disposes of infectious waste shall prepare and maintain on file a management plan for the waste that identifies the type of waste the person generates or handles, the segregation, packaging, labelling, collection, storage, and transportation procedures to be implemented, the treatment or disposal methods that will be used, the transporter and disposal facility that will be used, and the person responsible for the management of the infectious waste.

(b) All infectious waste management facilities may only accept infectious waste that is accompanied by a manifest that contains the information required by Section 712 of this Part [Subsection L of 20.9.1.700 NMAC].

(c) Report to the Secretary any delivery of unauthorized waste, contamination of any person, or other emergencies immediately upon recognition.

(d) Human fetal remains shall be disposed by incineration or interment, which are considered to be human fetal remains when measured to be 500 grams or greater as defined by the State Medical Examiner.

(e) Infectious waste consisting of recognizable human anatomical remains shall be disposed by incineration or interment, unless such remains have been contaminated with a regulated hazardous chemical or radioactive substance. Such contaminated remains shall be disposed of at a permitted hazardous or radioactive waste facility.

(5) Treatment and disposal of infectious waste shall be by one of the following methods:

(a) incineration in a controlled air multi-chambered incinerator which provides complete combustion of the waste to carbonized or mineralized ash:

- (i) ash from the incinerator shall be sampled in accordance with Section 404.B of this Part [Paragraph (2), Subsection D of Section 20.9.1.400 NMAC];
- (ii) the sample shall be analyzed by the U.S. EPA Test Method 1311: Toxic Characteristics Leaching Procedure (TCLP) to determine if it is a hazardous waste. If hazardous, it shall be managed by applicable state regulations;
- (iii) the retention times and temperatures for each chamber shall be continuously measured and recorded, or other equivalent tests approved by the Department to determine if it is still infectious shall be performed. If infectious, it shall be retreated in accordance with this section; and
- (iv) charge rates shall be maintained and recorded.
- (b) sterilization by heating in a steam sterilizer so as to render the waste non-infectious:
  - (i) the operator shall have available and shall certify in writing that she or he understands written operating procedures for each steam sterilizer including time, temperature, pressure, type of waste, type of container(s), closure on container(s), pattern of loading, water content, and maximum load quantity;
  - (ii) infectious waste shall be subjected to sufficient temperature, pressure and time to kill *Bacillus stearothermophilus* spores or induce a complete color change in an approved steam sterilization integrator when either indicator is located in the center of the waste load being decontaminated;
  - (iii) unless a steam sterilizer is equipped to continuously monitor and record temperature and pressure during the entire length of each sterilization cycle, each package of infectious waste to be sterilized shall have a temperature sensitive tape or equivalent test material such as chemical indicators attached that will indicate if the sterilization temperature and pressure have been reached. Waste shall not be considered sterilized if the tape or equivalent indicator fails to indicate that a temperature of at least 250 degrees Fahrenheit or 121 degrees Celsius was reached during the process;
  - (iv) each sterilization unit shall be evaluated for effectiveness with spores of *B. stearothermophilus* or approved steam sterilization integrator at least once each 40 hours of operation; and
  - (v) a written log shall be maintained for each sterilization unit which contains: date, time and load number for each load; amount per load; duration of the cycle; and the operator's name.
- (c) discharge to a sewage treatment system that provides secondary treatment of waste and only if the waste is liquid or semi-solid and if approved by the operator of the sewage treatment system;
- (d) other methods may be approved by the Secretary which provide:
  - (i) a 6Log<sub>10</sub> reduction in: 1) vegetative bacteria *Staphylococcus aureus* or *Pseudomonas aeruginosa*; 2) fungi *Penicillium chrysogenum*, *Aspergillus niger*, or *Candida albicans*; 3) parasites *Cryptosporidium* spp. oocysts or *Giardia* spp. cysts; 4) mycobacteria *Mycobacterium phlei*, *Mycobacterium terrae*, or *Mycobacterium bovis* (BCG); and 5) Viruses Polio 2 or Polio 3 or Bacteriophage;
  - (ii) a 4Log<sub>10</sub> reduction in bacterial spores of *Bacillus stearothermophilus* or *Bacillus subtilis*; and
  - (iii) verification that the species used in 706.E.4.a and 706.E.4.b [Items (i) and (ii), Subparagraph (d), Paragraph (5), Subsection F of 20.9.1.700 NMAC] are the species indicated and that the strain used is appropriate for the proposed method.

G. Ash:

- (1) Transporters of ash shall:
  - (a) not accept or transport ash unless it has been treated or is securely covered to prevent release of fugitive dust;
  - (b) cover vehicles to prevent fugitive dust loss during transport; and
  - (c) line or seal vehicles in a manner to prevent any leakage of liquids or fugitive dust during transport.
- (2) The landfill owner or operator shall:
  - (a) prepare a trench to receive non-hazardous ash;
  - (b) provide a ground water monitoring system and a leachate collection system unless an adequate demonstration is made to the Secretary that such systems are not necessary;
  - (c) keep the ash wetted to prevent fugitive emissions prior to covering;
  - (d) unload transport vehicles at the bottom of the trenches; and
  - (e) completely cover the ash within 24 hours with a minimum of 6 inches of clean non-waste containing material, or other material approved by the Secretary.
- (3) For closure of a cell or trench containing ash, the landfill owner or operator shall install a final cover system which consists of:

(a) an infiltration layer comprised of a minimum of 18 inches of earthen material having a saturated hydraulic conductivity less than or equal to the saturated hydraulic conductivity of any bottom liner system or natural subsoils present, or a saturated hydraulic conductivity no greater than  $1 \times 10^{-5}$  cm/sec whichever is less;

(b) an erosion layer consisting of a minimum of 6 inches of earthen material that is capable of sustaining native plant growth;

(c) any necessary gas vents provided they are sealed to assure no water infiltration; and

(d) the side slopes that shall not exceed a 25% grade (four feet horizontal to one foot vertical), such that the final cover of the top portion of an ash fill shall have a gradient of 2% to 5%, and that the slope shall be sufficient to prevent the ponding of water and erosion of the cover material.

(4) The owner or operator shall provide barriers adequate to control public access and shall:

(a) limit access to the ash site to no more than two entrances, by:

(i) gates that can be locked when left unattended; and

(ii) fencing adequate to deter access by the general public; or

(b) when trenches are used at a landfill, isolate such trenches from the rest of the facility in a manner to deter access by the general public.

(5) Ash that is temporarily stored at a generation site awaiting transportation shall be stored in a manner so as to prevent fugitive dust emissions.

#### H. Petroleum Contaminated Soils:

(1) All petroleum contaminated soils to be disposed of or treated at a landfill or composting facility shall be tested under the requirements of Section 704 [Subsection D of 20.9.1.700 NMAC]. All soils that are suspected to be contaminated with petroleum products shall be tested for Total Petroleum Hydrocarbons (TPH) and other contaminants as deemed necessary by the Secretary to determine the contaminants of the soil. Copies of the results from the laboratory analyses shall be placed in the daily operating record and made available to the Secretary upon request.

(2) Petroleum contaminated soils containing free liquid shall not be accepted at a landfill. When the soil can pass the Paint Filter Test, the test results shall be placed in the daily operating record and made available to the Secretary upon request.

(3) Petroleum contaminated soil may be stored temporarily on-site in a bermed area on an impermeable liner or in a manner that does not contaminate ground water, surface water, air or uncontaminated soil. The method of storage shall be approved by the Secretary.

(4) Petroleum contaminated soil shall be spread, inside a bermed area, no greater than 6 inches thick. The spread area may be required to be lined with an impermeable material. The soil shall be turned or disced once every two weeks until remediation is determined to be adequate.

(5) Remediation shall be deemed adequate when the following conditions are met in a soil sample of what appears to be the most heavily contaminated soil:

(a) the sum of benzene, toluene, ethylbenzene, and xylene isomer concentrations is less than 500 mg/Kg, with benzene individually less than 10 mg/Kg; and

(b) the TPH concentration is less than 1,000 mg/Kg.

(6) Uncontaminated or remediated soils shall not be mixed with contaminated soils.

(7) The owner or operator shall provide a written report to the Department documenting remediation. Upon Department approval of the report, the treated soil may be left in place, removed for beneficial use, including use as daily or weekly cover at the landfill, or disposed of as a solid waste.

#### I. Sludge:

(1) All owners or operators that dispose of sludge, except compost which meets the provisions of 40 CFR 503, at a landfill shall obtain approval from the Secretary and meet the following requirements prior to disposal:

(a) the landfill shall be permitted or authorized to receive sludge;

(b) the sludge from municipal wastewater treatment plants shall be sampled and analyzed to show that it meets the criteria specified in Section 1109 [Subsection J of 20.9.1.1100 NMAC]. The test parameters and limits for other sludges shall be as specified by the Secretary:

(i) the frequency of sampling shall be one representative sample per 100 cubic yards of sludge, an alternate frequency may be approved by the Secretary if a demonstration is made that the sludge is homogeneous; and

(ii) the laboratory used to analyze the sludge shall follow EPA quality assurance and quality control (QA/QC) procedures in accordance with EPA approved methods. The laboratory's QA/QC plan shall be approved by the Department.



- (c) provide a description of the transport method, a demonstration the method will be leak free and covered, the volume to be transported and total time period for disposal of any sludges (piles);
- (d) provide a description of any future plans for continuation of landfill disposal of the sludge including how often sludge will be tested and transported to the landfill and how long the sludge will be stored prior to disposal;
- (e) copies of the shipping records shall be provided to the landfill owner or operator;
- (f) provide a site map indicating the facility boundaries, the location of the sludge disposal area, and the routes of the disposal vehicles;
- (g) provide as part of their contingency plan a section describing methods for clean-up if an accident should occur during transport or disposal;
- (h) sludge from municipal waste water treatment plants shall be covered at the end of the day in order to be excluded from pathogen reduction criteria; and
- (i) sludge derived from the treatment of domestic sewage, received at the landfill for further treatment, shall meet the requirements of 40 CFR 257, Appendix II and the treatment area must be restricted from public access.
- (j) All sludge derived from the treatment of domestic sewage and used as final cover materials shall comply with requirements under 40 CFR, Part 257.3-6.

(2) Liquid extraction shall not be allowed at landfills unless specifically approved by the Secretary.

(3) Land application of sludge derived from the treatment of domestic sewage, and compost that includes sludge derived from the treatment of domestic sewage, and which meets the definition of solid waste facility shall comply with:

- (a) the federal regulations under 40 CFR, Part 503; and
- (b) any additional requirements by the Secretary, such as, but not limited to, analytical testing frequencies and parameters, siting criteria, and loading rates.

(4) Owners and operators of landfills dedicated solely for the disposal of sludge derived from the treatment of domestic sewage shall comply with the requirements of 40 CFR Part 503.

J. Packing House and Killing Plant Offal: Prior to disposal at a landfill, these wastes shall pass the Paint Filter Test and be mixed with soil, in a separate area of the facility, to a consistency that will support compaction and cover material.

K. Disposition for Special Waste Not Otherwise Specified: A disposal management plan (DMP) shall be developed by the owner or operator and approved by the Department for each landfill that wishes to receive special wastes that do not have specified disposal requirements. The DMP shall include, at a minimum, the following:

- (1) a description of methods to identify the various special wastes, including the use of test parameters in Section 704 [Subsection D of 20.9.1.700 NMAC];
- (2) disposition procedures for incoming special wastes;
- (3) notification procedures to the Department in the event of wastes that either fail the tests listed in Section 704 [Subsection D of 20.9.1.700 NMAC] or prove to be one of the listed special wastes; and
- (4) any tracking system to be used to:
  - (a) compile and record the amounts and types of wastes received;
  - (b) locate the waste in either the disposal area; or
  - (c) manifest the waste as provided for by Section 712 [Subsection L of 20.9.1.700 NMAC], if

warranted.

L. Manifest Requirements:

(1) A manifest containing the following information shall accompany each load of special waste as specified in Section 702.C [Paragraph (3), Subsection B of 20.9.1.700 NMAC] originating or to be disposed in New Mexico:

- (a) name, address and phone number of the generator of the special waste;
- (b) name, address and phone number of any and all commercial haulers in the order each will be transporting the waste;
- (c) name, site address, phone number and identification number of the solid waste facility to which the waste is to be delivered;
- (d) type and proper name of waste being shipped;
- (e) total weight or volume of waste prior to shipment from generator;
- (f) total weight or volume of waste received at solid waste facility;
- (g) type and number of containers in shipment;

- (h) any special handling instructions;
- (i) date and location the waste was delivered;
- (j) date of receipt from the generator and total weight or volume of the special waste shall be provided by the transporter; and
- (k) if more than one commercial hauler is used, each commercial hauler shall provide the date of receipt and total weight or volume of said waste received from the previous commercial hauler.

(2) The manifest shall accurately reflect the information and be signed by the generator and each commercial hauler of the special waste, and by the solid waste facility owner or operator, acknowledging delivery, quantity, and receipt of the waste. All signatories shall be duly authorized agents of their organizations.

(3) Upon discovery of any significant discrepancy including, but not limited to, factual misrepresentation on the manifest, irregularities in transportation, discharges, or any unauthorized action in regard to the shipment, delivery, or disposal of the solid waste, the person discovering the discrepancy shall notify the Department, the generator, commercial hauler, and the solid waste facility within 24 hours.

(4) Upon receipt of a special waste shipment at the solid waste facility, the owner or operator shall send a signed copy of the manifest back to the generator.

(5) A copy of the manifest shall be retained by the commercial hauler and the solid waste facility for their permanent records. The generator shall retain both the original copy and the returned copy signed by the solid waste facility owner or operator for the generator's permanent records.

(6) Copies of the manifest shall be made available to the Secretary upon request and shall be retained by the facility owner or operator throughout the post-closure period and any extended time period deemed necessary by the Secretary.

[1/30/92, 8/17/94, 11/30/95; 20.9.1.700 NMAC - Rn, 20 NMAC 9.1.VII.700-712, Recompiled 11/27/01]

20.9.1.701 to 20.9.1.799 [RESERVED]

20.9.1.800 GROUND WATER MONITORING; CORRECTIVE ACTION; CONTINGENCY PLAN:

A. Ground Water Monitoring:

(1) All landfills shall establish ground water monitoring programs in accordance with the following schedule which shall be maintained throughout the active life and post-closure care period of the landfill:

(a) owners or operators of new landfills and lateral expansions shall comply with this Subpart [20.9.1.800 NMAC] prior to placement of waste in the landfill;

(b) owners or operators of existing landfills or landfills that closed on or after October 9, 1993 shall comply with the ground water monitoring requirements of this Subpart [20.9.1.800 NMAC] by October 9, 1994 unless the landfill qualifies for a small landfill exemption under Section 110 [20.9.1.110 NMAC];

(c) owners or operators of landfills which closed on or after May 14, 1989, and before October 9, 1993, and were required to monitor ground water, shall comply with this Subpart [20.9.1.800 NMAC] by October 9, 1994, with exception that the parameters may be limited to those approved at closure. The Secretary may require monitoring for additional parameters as necessary to protect the public health, welfare and the environment;

(d) construction and demolition landfills are exempt from ground water monitoring requirements unless the Secretary finds that there is a potential for hazardous constituents to migrate from the facility to the uppermost aquifer.

(2) All other solid waste facilities shall demonstrate the ground water will be protected.

(3) Upon EPA approval of the State Program in the Federal Register, part or all of the ground water monitoring requirements of Sections 802 [Subsection B of 20.9.1.800 NMAC] through 806 [Subsection F of 20.9.1.800 NMAC] may be suspended by the Secretary if the owner or operator can demonstrate that there is no potential for migration of hazardous constituents from their landfill to the uppermost aquifer during the active life of the landfill and the post-closure care period. This demonstration shall be certified by a qualified ground water scientist and approved by the Secretary based upon factual information presented in an adjudicatory hearing process. The demonstration shall be based upon:

(a) site-specific field measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport, and

(b) contaminant fate and transport predictions that maximize contaminant migration and consider impacts on public health, welfare and environment.

B. Ground Water Monitoring Systems:

(1) A ground water monitoring system shall be approved by the Secretary and consist of a sufficient number of wells, installed at appropriate locations and depths, to yield ground water samples from the uppermost aquifer that:

- (a) represent the quality of background ground water that has not been affected by leakage from a landfill;
- (b) represent the quality of ground water passing the relevant point of compliance which shall be at the waste management unit boundaries on land owned by the owner of the landfill. Upon EPA approval of the State Program in the Federal Register, the Secretary may approve an alternative relevant point of compliance located no more than 150 meters from the waste management unit boundaries on land owned by the owner of the landfill;
  - (i) the downgradient monitoring system shall be installed at the relevant point of compliance;
  - (ii) when physical obstacles preclude installation of ground water monitoring wells at the relevant point of compliance at existing landfills, the downgradient monitoring system may be installed at the closest practicable distance hydraulically downgradient from the relevant point of compliance that ensure detection of ground water contamination in the uppermost aquifer.

(2) Upon EPA approval of the State program in the Federal Register, the Secretary may approve a multiunit ground water monitoring system instead of separate systems for each landfill where the facility has several landfills, provided the multiunit system meets the appropriate requirements of this Part and will be as protective of public health, welfare and the environment as individual monitoring systems for each landfill, based on the following factors:

- (a) number, spacing, and orientation of the landfills;
- (b) hydrogeologic setting;
- (c) site history;
- (d) engineering design of the landfills; and
- (e) type of waste accepted at the landfills.

(3) Monitoring wells shall be constructed in such a manner that the integrity of the bore-hole and well is maintained and is in accordance with ASTM method 5092 or the following requirements:

- (a) the bore-hole shall be drilled a minimum of 4 inches larger than the casing diameter to allow for the emplacement of sand and sealant.
- (b) care shall be taken not to introduce contamination to the well.
- (c) the well shall be developed so that ground water flows freely through the screen and is not turbid, and that all sediment is removed from the well.
- (d) the casing shall unless otherwise approved by the Secretary, consist of Schedule 40 or heavier threaded PVC pipe of not less than 2 inches:
  - (i) the casing shall extend from the top of the screen to at least one foot above ground surface.
  - (ii) the casing top shall be protected by a cap and a locking shroud shall protect the exposed casing.
  - (iii) the shroud shall be large enough to allow easy access for removal of the plastic cap.
- (e) the screen shall be at least a 20-foot section of machine slotted or other manufactured screen. A slot size of 0.01-inch generally is adequate for most installations. No on-site or hack-saw slotting is permitted.
- (f) if the uppermost aquifer is unconfined; the top of the screen shall be 5 feet above the water table to allow for seasonal fluctuations.
- (g) if the uppermost aquifer is confined; the top of the screen shall be at the top of the stratigraphic boundary between the aquifer and the confining layer.
- (h) the screen shall be centralized at the top and the bottom.
- (i) an annular space from 2 feet below to 2 feet above the screen shall be packed with sand.
  - (i) the sand shall be clean and medium to coarse grained.
  - (ii) the sand shall be properly sized to prevent fines from entering the well.
  - (iii) a tremmie pipe shall be used for sand placement in deeper wells.
- (j) the annular space for at least 2 feet above the sand pack shall be grouted or sealed.
  - (i) pressure grouting with bentonite or cement using a tremmie pipe is preferred.
  - (ii) alternatively, a bentonite seal may be installed using bentonite pellets, 1/4 or 1/2 inch in size.

(k) the annular space above the seal can be filled with clean uncontaminated drill cuttings, or clean sandy clay to within 10 feet of the ground surface.

(l) the annular space above the cuttings shall be filled with bentonite-cement grout for 7 feet.

(m) the remaining 3 feet shall be filled with concrete (expanding cement).

(n) a concrete slab with a minimum of a 2-foot radius and a 4-inch thickness shall be poured around the shroud. The pad shall be sloped so that rainfall and run-off flows away from the shroud.

(o) a construction and lithologic log for each monitoring well shall be submitted to the Secretary.

(p) the casing of each well or wells which will be used to monitor ground water shall be surveyed. The location of the well shall be determined within one-tenth of a foot, and the height above sea level at the top of the casing shall be determined one-hundredth of a foot.

(4) The owner or operator shall notify the Secretary within 30 days that the design, installation, development, and decommission of any monitoring wells, piezometers and other measurement, sampling, and analytical devices documentation has been placed in the operating record. This notification shall be at least 14 days prior to the installation of decommissioning of any monitoring wells or piezometers.

(5) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices shall be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(6) The number, spacing, and depths of monitoring systems shall be:

(a) based upon site-specific technical information that includes thorough characterization of:

(i) aquifer thickness, ground water flow rate, flow direction including seasonal and temporal fluctuations in ground water flow; and

(ii) saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer; and materials comprising the confining unit defining the lower boundary of the uppermost aquifer; including, but not limited to: thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities, and effective porosities.

(b) certified by a qualified ground water scientist and approved by the Secretary. Within 14 days of this certification, the owner or operator shall notify the Secretary that the certification has been placed in the operating record.

(7) Vadose zone monitoring or leak detection systems if approved for use by the Secretary shall include:

(a) direct and indirect monitoring techniques such as:

(i) permanent geophysical monitoring stations such as those which utilize access tubes for neutron moderation instrumentation, time domain reflectometry (TDR) probes, capacitance probes or other permanently installed devices;

(ii) nested piezometers when used for monitoring perched water or locally saturated portions of the vadose zone;

(iii) soil gas measurements;

(iv) lysimeters;

(v) electronic leak detectors; and

(vi) other devices or methods as approved by the Secretary;

(b) an adequate frequency of testing and a sufficient number of sampling points at appropriate locations and depths to determine a change in soil characteristics; and

(c) an action plan that addresses potential vadose zone contamination and the sources of the contamination.

#### C. Ground Water Sampling and Analysis:

(1) The ground water monitoring program shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground water quality at the upgradient and downgradient wells. The owner or operator shall notify the Secretary that the sampling and analysis program documentation has been placed in the operating record. The program shall include procedures and techniques for:

(a) sample collection;

(b) sample preservation and shipment;

(c) analytical procedures;

(d) chain of custody control; and

(e) quality assurance and quality control.

(2) The ground water monitoring program shall include sampling and analytical methods that are appropriate for ground water sampling and that accurately measure hazardous constituents and other monitoring parameters in ground water samples. Ground water samples shall not be field-filtered prior to laboratory analysis unless allowed under 40 CFR Part 258 and approved by the Secretary. Ground water sampling shall be conducted in accordance with the RCRA Ground Water Monitoring: Draft Technical Guidance unless otherwise approved by the Secretary.

(3) Ground water elevations shall be measured within one-hundredth of a foot in each well immediately prior to purging, each time ground water is sampled. The owner or operator shall determine the rate and direction of ground water flow each time ground water is sampled. Ground water elevations in wells which monitor the same waste management area shall be measured within a period of time short enough to avoid temporal variations in ground water flow which could preclude accurate determination of ground water flow rate and direction.

(4) The owner or operator shall establish background ground water quality in a hydraulically upgradient or background well(s) for each of the monitoring parameters or constituents required in the particular ground water monitoring program that applies to the landfill. Background ground water quality may be established at wells that are not located hydraulically upgradient from the landfill if it meets the requirements of this Subpart [20.9.1.800 NMAC].

(5) The number of samples collected to establish ground water quality data shall be consistent with the appropriate statistical procedures determined pursuant to this Subpart [20.9.1.800 NMAC].

(6) The owner or operator shall specify in the operating record the following statistical method:

(a) a comparison using a t-interval or t-test with a Type I error level of no less than 0.01 shall be made between the established background concentration and any subsequent sample analysis results for each parameter or constituent from each individual well.

(i) background levels and concentrations shall be established for each parameter or constituent for each individual well from at least four independent samples during the first semiannual sampling event and at least one additional sample during the subsequent semi-annual sampling event.

(ii) if the background concentration is below the practical quantitation limit (PQL), the PQL in Section 1100 [20.9.1.1100 NMAC], Tables I, and II shall be used to establish background unless otherwise approved by Secretary. A statistical method is not necessary for a comparison between the analytical results and the PQL.

(b) another method approved by the Secretary which meets the performance standards of 40 CFR Part 258.53(h). A justification for this alternative must be placed in the operating record and must demonstrate the method meets the performance standards of 40 CFR Part 258.53(h).

(7) The owner or operator shall determine whether or not the Assessment Monitoring Level (AML) has been reached for each parameter required in the particular ground water monitoring program that applies to the landfill as determined in this Subpart [20.9.1.800 NMAC];

(a) in determining whether the AML has been reached, the owner or operator shall compare the ground water quality of each parameter at each monitoring well to the background value of that constituent, according to the statistical procedures and performance standards specified in this part;

(b) within 90 days after completing sampling, the owner or operator shall determine whether the AML has been reached at each monitoring well and notify the Secretary.

(8) Ground water documentation shall be submitted to the Secretary, for each sample, complying with the following reporting requirements:

(a) parameter;

(b) test method (EPA or equivalent) for each parameter;

(c) Ground Water Protection Standard for each parameter;

(d) Method Detection Limit (MDL) for each parameter;

(e) Practical Quantitation Limit (PQL)

(f) well number (lat/long);

(g) laboratory ID sample number;

(h) chain of custody documentation;

(i) date sampled;

(j) date received at the laboratory;

(k) date analysis commenced;

(l) results, with parameter, CAS number, concentration with units, Ground Water Protection Standard, PQL, Qualifier Code (i.e.: J, B, U, etc.) well number and sample date on the same sheet;

- (m) sample preservation (filed data);
- (n) review (signature and date);
- (o) field blank results, trip blank results;
- (p) QA/QC summary report (laboratory blanks, spike recoveries, etc.); and
- (q) anomaly report (non-conformance with QA/QC plan, corrective actions, etc.).

D. Detection Monitoring Program:

(1) Detection monitoring is required at landfills at all ground water wells unless suspended in accordance with Section 801.C. A [Paragraph (3), Subsection A of 20.9.1.800 NMAC] detection monitoring program shall include the monitoring for constituents listed in Section 1100 [20.9.1.1100 NMAC], Table I. Upon EPA approval of the State Program in the Federal Register, after background concentrations have been established as required in 803.F.1 [Subparagraph (a), Paragraph (6), Subsection C of 20.9.1.800 NMAC] for all Section 1100 [20.9.1.1100 NMAC], Table I constituents, the Secretary may;

(a) delete any of the Section 1100 [20.9.1.1100 NMAC], Table I monitoring parameters for a municipal landfill if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the landfill; and

(b) establish an alternate list of inorganic indicator parameters for a landfill in lieu of some or all of the heavy metals listed in Section 1100 [20.9.1.1100 NMAC], Table I, if the alternative parameters provide a reliable indication of inorganic releases from the landfill to the groundwater. In determining alternative parameters, the Secretary shall consider the following factors;

- (i) the types, quantities, and concentrations of constituents in wastes managed at the landfill;
- (ii) the mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated earth zone beneath the landfill;
- (iii) the detectability of indicator parameters, waste constituents, and reaction products in the groundwater; and
- (iv) the concentrations or values and coefficients of variation of monitoring parameters or constituents in the groundwater background.

(2) The monitoring frequency for all constituents listed in Section 1100 [20.9.1.1100 NMAC], Table I or alternate constituent list approved by the Secretary under 804.A [Paragraph (1), Subsection D of 20.9.1.800 NMAC] shall be at least semiannually during the active life of the facility (including closure) and the post-closure period;

(a) upon approval by the Secretary of an alternate constituent list under 804.A., the minimum frequency for all the constituents on Section 1100 [20.9.1.1100 NMAC], Table I shall be at least once every five years in addition to the required frequencies for the alternate list.

(b) upon EPA approval of the State Program in the Federal Register, the Secretary may approve annual sampling after the first year based on the following factors:

- (i) lithology of the aquifer and unsaturated zone;
- (ii) hydraulic conductivity of the aquifer and unsaturated zone;
- (iii) ground water flow rates;
- (iv) minimum distance between upgradient edge of the landfill and downgradient monitoring well screen (minimum distance of travel); and
- (v) resource value of the aquifer.

(3) If the owner or operator determines that the AML has been reached for one or more of the constituents listed in Section 1100 [20.9.1.1100 NMAC], Table I or alternate constituent list approved by the Secretary in 804.A [Paragraph (1), Subsection D of 20.9.1.800 NMAC], at any monitoring well, the owner or operator:

(a) shall, within 14 days of this finding, place a notice in the operating record indicating which constituents have shown AMLs, and notify the Secretary that this notice was placed in the operating record;

(b) shall establish, within 90 days of the finding, an assessment monitoring program meeting the requirements of this part except as provided for in this section;

(c) upon EPA approval of the State program in the Federal Register, the owner or operator may demonstrate that a source other than a landfill caused the contamination or that the AML resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality;

(i) a report documenting this demonstration shall be certified by a qualified ground water scientist and approved by the Secretary and be placed in the operating record;

(ii) if a successful demonstration is made and documented, the owner or operator may continue detection monitoring as specified in this section; and

(iii) if, after 90 days of the finding, a successful demonstration is not made, the owner or operator must initiate an assessment monitoring program as required in this Subpart [20.9.1.800 NMAC].

E. Assessment Monitoring Levels:

(1) Assessment monitoring shall be required by the Secretary in the event that there is an increase in contaminants above the AML established for the facility in this Subpart [20.9.1.800 NMAC] as evidenced in the ground water quality monitoring data.

(2) Background water quality data submitted to the Secretary shall be used as the baseline for determination of AMLs. If a constituent is not detected in the background water quality monitoring data, then the practical quantitation limits (PQLs), as specified in Table I and II of Section 1100 [20.9.1.1100 NMAC], shall be used as the baseline. All monitoring data shall meet the PQLs for their respective constituents unless otherwise approved by the Secretary.

(3) For all hazardous constituents, identified in Tables I and II of Section 1100 [20.9.1.1100 NMAC], AMLs shall be based upon 50% of the groundwater protection standard.

(4) If background concentrations of anthropogenic hazardous contaminants are above 50% of the ground water protection standards, then 50 percent of the ground water protection standards shall be used as the AMLs.

(5) If background concentrations of non-anthropogenic hazardous constituents are above 50 percent of the ground water protection standards, then any statistically significant increase above those background concentrations shall be used as the AMLs.

(6) If a ground water protection standard has not been established for a hazardous constituent, the AML shall be based upon a 95 percent increase over the PQL of the contaminant.

(7) For constituents subject to aesthetic or irrigation standards, as identified in Table I of Section 1100 [20.9.1.1100 NMAC], the AMLs shall be based upon 75 percent of the ground water protection standard, except pH, which shall be the ground water protection standard.

(8) If background concentrations of anthropogenic aesthetic or irrigation contaminants are above 75 percent of the ground water protection standards, then 75 percent of the ground water protection standards shall be used as the AMLs.

(9) If background concentrations of non-anthropogenic aesthetic or irrigation constituents are above 75 percent of the ground water protection standards, then any statistically significant increase above those background concentrations shall be used as the AMLs.

(10) If more than one toxic pollutant, as defined by the New Mexico Water Quality Control Commission Regulations, is detected, the toxic pollutant criteria of the Commission Regulations for the combination of contaminants shall be used to determine the AMLs. However, this shall apply only in cases where such AMLs are more stringent than the AMLs determined under subsections B-I [Paragraphs (2) through (9), Subsection E] of this section.

F. Assessment Monitoring:

(1) Assessment monitoring shall be done whenever the AML has been reached for one or more of Table I or alternate constituent list approved under 804.A [Paragraph (1), Subsection D of 20.9.1.800 NMAC].

(2) Within 90 days of the finding mandating an assessment monitoring program, and annually thereafter, the owner or operator shall sample and analyze the ground water for all constituents of Section 1100 [20.9.1.1100 NMAC], Table II for each downgradient well. For any constituents detected in the downgradient wells as a result of the complete analysis, a minimum of four independent samples from each well (upgradient and downgradient) shall be collected and analyzed to establish background for the constituents within 120 days of mandating the assessment monitoring program.

(3) Upon EPA approval of the State program in the Federal Register, the Secretary may specify an alternative frequency or subset of wells for repeated sampling during the active life and post-closure care of the unit considering the following:

- (a) lithology of the aquifer and unsaturated zone;
- (b) hydraulic conductivity of the aquifer and unsaturated zone;
- (c) ground water flow rate;
- (d) minimum distance between upgradient edge of the facility and downgradient monitoring well screen;

- (e) resource value of the aquifer; and
- (f) nature of any constituents detected in response to this section.

- (4) After obtaining the results from the required sampling of this section, the owner or operator shall:
- (a) notify the Secretary and place in the operating record within 14 days of any constituents that have been detected;
  - (b) within 90 days and at least semiannually, resample all wells and analyze for all constituents in Table I and any in Table II that have been detected. Upon EPA approval of the State program in the Federal Register, the Secretary may specify an alternate monitoring frequency but no less than annually during the active life and post-closure care period;
  - (c) establish background concentrations for any constituents detected pursuant to paragraphs B or D.2 of this section; and
  - (d) establish ground water protection standards for all constituents detected pursuant to paragraphs B or D [Paragraphs (2) or (4)] of this section [subsection].
- (5) If the concentration of all Table I and II constituents are shown to be at or below AML after two sampling events, the owner or operator shall notify the Secretary and may return to detection monitoring.
- (6) If the concentration of any constituent in Table I and II is above AML, but below the corrective action level (CAL), the owner or operator shall continue assessment monitoring in accordance with this section.
- (7) If one or more Table I and II constituents are detected above the CALs in any sampling event, the owner or operator shall, within 14 days of this finding, notify the Secretary and all appropriate local government officials;
- (a) the owner or operator shall also:
    - (i) characterize the nature and extent of the release by installing additional monitoring wells as necessary;
    - (ii) install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with this section;
    - (iii) notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off site; and
    - (iv) initiate an assessment of corrective measures as required by Section 808 [Subsection H of 20.9.1.800 NMAC] within 90 days;
  - (b) the owner or operator may demonstrate that a source other than the facility caused the contamination, or that the increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality. A report documenting this demonstration shall be certified by a qualified ground water scientist and approved by the Secretary. If a successful demonstration is made in accordance with the assessment monitoring program the owner or operator may return to detection monitoring. Until a successful demonstration is made, the owner or operator shall comply with this Subpart [20.9.1.800 NMAC] including initiating an assessment of corrective action.
- (8) The owner or operator shall establish a ground water protection standard for each Table I and II constituent in Section 1100 [20.9.1.1100 NMAC] detected in the ground water. The ground water protection standard shall be:
- (a) for constituents for which a Maximum Contaminant Level (MCL) has been promulgated under Section 1412 of the Safe Drinking Water Act, 40 CFR part 141, the MCL for that constituent, unless a standard has been established under the New Mexico Water Quality Control Commission Regulations, in which case the more stringent of the two shall apply;
  - (b) for constituents for which MCLs or New Mexico Water Quality Control Commission Standards have not been promulgated, the background concentration for the constituent established from wells; or
  - (c) for constituents for which the background level, which has not been affected by leakage from the landfill, is higher than the MCL or New Mexico Water Quality Control Standard identified under subsection H.1 of this section [Subparagraph (a), Paragraph (8) of this subsection] or health based levels identified under paragraph I of this section [Paragraph (9) of this subsection], the background concentration.
- (9) Upon EPA approval of the State program in the Federal Register, the Secretary may establish an alternative ground water protection standard for constituents for which MCLs or New Mexico Water Quality Control Commission Standards have not been established. These ground water protection standards shall be appropriate health based levels that satisfy the following:
- (a) the level is derived in a manner consistent with EPA guidelines for assessing the health risks of environmental pollutants;
  - (b) the level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards or equivalent;



(c) for carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level within the  $1 \times 10^{-4}$  to  $1 \times 10^{-6}$  range; and

(d) for systemic toxicants, the level represents a concentration to which the human population could be exposed to on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes of this subpart, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

(10) Upon EPA approval of the State program in the Federal Register, in establishing ground water protection standards under Section 806.I [Paragraph (9), Subsection F of this section], the Secretary may consider the following:

- (a) multiple contaminants in the ground water;
- (b) exposure threats to sensitive environmental receptors; and
- (c) other site specific exposure or potential exposure to ground water.

G. Corrective Action Levels:

(1) Corrective action shall be required by the Secretary in the event that there is an increase in contaminants above the corrective action level (CAL) established for the facility in this Subpart [20.9.1.800 NMAC] as evidenced in the ground water quality monitoring data.

(2) Background water quality data submitted to the Secretary shall be used as the baseline for determination of CALs. If a constituent is not detected in the background water quality monitoring data, then the PQLs, as specified in Table I and II of Section 1100 [20.9.1.1100 NMAC], shall be used as the baseline. All monitoring data shall meet the PQLs for their respective constituents unless otherwise approved by the Secretary.

(3) For all hazardous constituents, identified in Table I and II of Section 1100 [20.9.1.1100 NMAC], CALs shall be based upon 75% of the ground water protection standard.

(4) If background concentrations of anthropogenic hazardous contaminants are above 75% of the ground water protection standards, then 75% of the ground water protection standards shall be used as the CALs.

(5) If background concentrations of non-anthropogenic hazardous constituents are above 75% of the ground water protection standards, then any statistically significant increase above those background concentrations shall be used as the CALs.

(6) For constituents subject to aesthetic or irrigation standards, as identified in Table I of Section 1100 [20.9.1.1100 NMAC], the CALs shall be based upon the ground water protection standard.

(7) If background concentrations of anthropogenic aesthetic or irrigation contaminants exceed the ground water protection standards, then the ground water protection standards shall be used as the CALs.

(8) If background concentrations of non-anthropogenic or irrigation constituents exceed the ground water protection standards, then any statistically significant increase above those background concentrations shall be used as the CALs.

(9) If more than one ground water contaminant affecting public health, welfare is present, the toxic pollutant criteria of the New Mexico Water Quality Control Commission Regulations for the combination of contaminants shall be used to determine the CALs. However, this shall apply only in cases when the CALs as determined under subsections B-H of this section [Paragraphs (2) to (8) of this subsection] are less stringent.

H. Assessment of Corrective Measures:

(1) Within 90 days of finding that any of the constituents listed in Table I and II have been detected exceeding CALs, the owner or operator shall initiate an assessment of corrective measures. Such an assessment shall be completed within a reasonable period of time.

(2) The owner or operator shall continue to monitor in accordance with the assessment monitoring program as specified in Section 806 [Subsection F of 20.9.1.800 NMAC].

(3) The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described in Section 809 [Subsection I of 20.9.1.800 NMAC], addressing at least the following:

(a) the performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts and control of exposure to any residual contamination;

(b) the time required to begin and complete the remedy;

(c) the costs of remedy implementation; and

(d) the institutional requirements for local permits or other environmental or public health requirements that may substantially affect implementation of the remedy(s) [remedies].

(4) The owner or operator shall discuss the results of the corrective measures assessment, prior to the selection of remedy, in a public meeting with interested and affected parties.

I. Selection of Remedy:

(1) Based on the results of the corrective measures assessment conducted under Section 808 Subsection H of 20.9.1.800 NMAC], the owner or operator shall select a remedy that, at a minimum, meets the standards listed in this section [subsection].

(2) Remedies shall:

- (a) be protective of public health, welfare and the environment;
- (b) attain the CAL;
- (c) control the source(s) of releases so as to reduce or eliminate, to the maximum extent

practicable, further releases into the environment that may pose a threat to public health, welfare or the environment; and

(d) comply with standards for management of wastes as specified in Section 810.D [Paragraph (4), Subsection J of 20.9.1.800 NMAC].

(3) In selecting a remedy that meets the standards listed above, the owner or operator shall consider the following evaluation factors:

(a) the long and short term effectiveness and protectiveness of the potential remedy(s) [remedies], along with the degree of certainty that the remedy will prove successful based on consideration of the following:

- (i) magnitude of reduction of existing risks;
- (ii) magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;
- (iii) the type and degree of long term management required, including monitoring, operation, and maintenance;
- (iv) short term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to public health, welfare and the environment associated with excavation, transportation, and redisposal of containment;
- (v) time until full protection is achieved;
- (vi) potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to public health, welfare and the environment associated with excavation, transportation, redisposal, or containment;
- (vii) long term reliability of the engineering and institutional controls; and
- (viii) potential need for replacement of the remedy.

(b) the effectiveness of the remedy in controlling the source to reduce the further releases based on consideration of the following factors:

- (i) the extent to which containment practices will reduce further releases; and
- (ii) the extent to which treatment technologies may be used;

(c) the ease or difficulty of implementing a potential remedy(s) based on consideration of the following types of factors:

- (i) degree of difficulty associated with constructing the technology;
- (ii) expected operational reliability of the technologies;
- (iii) need to coordinate with and obtain necessary approvals and permits from other agencies;
- (iv) availability of necessary equipment and specialists; and
- (v) available capacity and location of needed treatment, storage, and disposal services;

(d) practicable capability of the owner or operator, including a consideration of the technical and economic capability; and

(e) the degree to which community concerns are addressed by potential remedies.

(4) The owner or operator shall specify as part of the selected remedy a schedule(s) for initiating and completing remedial activities. Such a schedule shall require the initiation of remedial activities within a reasonable period of time taking into consideration the factors set forth in this section. The owner or operator shall consider the following factors in determining the schedule of remedial activities:

- (a) extent and nature of contamination;
- (b) practical capabilities of remedial technologies in achieving compliance with ground water protection standards and other objectives of the remedy;
- (c) availability of treatment or disposal capacity for wastes managed during implementation of the remedy;

(d) desirability of utilizing technologies that are not currently available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;

(e) potential risks to public health, welfare and the environment from exposure to contamination prior to completion of the remedy;

(f) resource value of the aquifer including:

(i) current and future uses;

(ii) proximity and withdrawal rate of users;

(iii) ground water quantity and quality;

(iv) the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituent;

(v) the hydrogeologic characteristic of the facility and surrounding land;

(vi) ground water removal and treatment costs; and

(vii) the cost and availability of alternative water supplies.

(g) practicable capability of the owner or operator; and

(h) other relevant factors.

(5) Upon EPA approval of the State program in the Federal Register, the Secretary may determine that remediation of a release is not necessary if the owner or operator demonstrates to the satisfaction of the Secretary that:

(a) the ground water is additionally contaminated by substances that have originated from a source other than a landfill and those substances are present in concentrations such that the cleanup of the release would provide no significant reduction in risk to actual or potential receptors;

(b) the constituent(s) is present in ground water that:

(i) is not currently or reasonably expected to be a source of drinking water or water to be used for agricultural purposes; and

(ii) is not hydraulically connected with waters to which the hazardous constituents are migrating or are likely to migrate in a concentration(s) that would exceed the ground water protection standards established under Section 806 [Subsection F of 20.9.1.800 NMAC];

(c) remediation of the release(s) is technically impracticable;

(d) remediation results in unacceptable cross media impacts;

(e) the ground water contamination originated from a source other than the landfill.

(6) A determination by the Secretary pursuant to Subsection E [Paragraph (5), Subsection I] of this section shall not affect the authority of the Secretary to require the owner or operator undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the ground water, to prevent exposure to the ground water to concentrations that are technically practicable and significantly reduce threats to public health, welfare or the environment.

J. Implementation of Corrective Action Program:

(1) Based on the schedule established under Section 809.D [Paragraph (4), Subsection I of 20.9.1.800 NMAC] for initiation and completion of remedial activities the owner or operator shall:

(a) establish and implement a corrective action ground water monitoring program that:

(i) at a minimum, meets the requirements of an assessment monitoring program under Section 806 [Subsection F of 20.9.1.800 NMAC];

(ii) indicate the effectiveness of the corrective action remedy; and

(iii) demonstrate compliance with ground water protection standard;

(b) implement the corrective action remedy selected under section 809 [Subsection I of 20.9.1.800 NMAC]; and

(c) take any interim measures necessary to ensure the protection of public health, welfare and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to Section 809 [Subsection I of 20.9.1.800 NMAC]. The following factors shall be considered by an owner or operator in determining whether interim measures are necessary:

(i) time required to develop and implement a final remedy;

(ii) actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;

(iii) actual or potential contamination of drinking water supplies or sensitive ecosystems;

- (iv) further degradation of the ground water that may occur if remedial action is not initiated expeditiously;
- (v) weather conditions that may cause hazardous constituents to migrate or be released;
- (vi) risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and
- (vii) other situations that may pose threats to public health, welfare and the environment.

(2) An owner or operator may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of Section 809.B [Paragraph (2), Subsection I of Section 20.9.1.800 NMAC] are not being achieved through the remedy selected. In such cases, the owner or operator shall implement other methods or techniques that could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under paragraph C [Paragraph (3), Subsection J] of this section.

(3) If the owner or operator determines that compliance with requirements under Section 809.B [Paragraph (2), Subsection I of 20.9.1.800 NMAC] cannot be practically achieved with any currently available methods, the owner or operator shall:

- (a) obtain certification of a qualified ground water scientist and approval by the Secretary that compliance with requirements under Section 809.B [Paragraph (2), Subsection I of 20.9.1.800 NMAC] cannot be practically achieved with any available methods;

- (b) implement alternate measures to control exposure to residual contamination, as necessary, to protect public health, welfare and the environment; and

- (c) implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:

- (i) technically practicable; and

- (ii) consistent with the overall objective of the remedy;

- (d) notify the Secretary within 14 days with a report justifying the alternative measures prior to implementing the alternative measures.

(4) All solid wastes that are managed pursuant to Section 809 [Subsection I of 20.9.1.800 NMAC], or an interim measure required under Subsection A.3 [Subparagraph (c), Paragraph (1), Subsection J] of this section, shall be managed in a manner which:

- (a) is protective of public health, welfare and the environment; and

- (b) complies with applicable RCRA requirements.

(5) Remedies selected pursuant to Section 809 [Subsection I of 20.9.1.800 NMAC] shall be considered complete when:

- (a) the owner or operator complies with the ground water protection standards established under Section 806 [Subsection F of 20.9.1.800 NMAC] at all points within the plume of contamination that lie beyond the ground water monitoring well system established under Section 802 [Subsection B of 20.9.1.800 NMAC];

- (b) compliance with the CALs established under Section 806 [Subsection F of 20.9.1.800 NMAC] has been achieved by demonstrating that concentrations of Table I and II constituents have not exceeded the CAL(s) for a period of three (3) consecutive years. Upon EPA approval of the State program in the Federal Register, the Secretary may specify an alternative length of time during which the owner or operator shall demonstrate that concentrations of Table I and II constituents have not exceeded CAL(s) taking into consideration:

- (i) extent and concentration of the release(s);

- (ii) behavior characteristics of the hazardous constituents in the ground water;

- (iii) accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that affect the accuracy; and

- (iv) characteristics of the ground water; and

- (c) all actions required to complete the remedy have been satisfied.

(6) Upon completion of the remedy, the owner or operator shall notify the Secretary within 14 days with a certification that the remedy has been completed in compliance with the requirements of paragraph E [Paragraph (5), Subsection J] of this section. The certification shall be signed by a qualified ground water scientist and approved by the Secretary.

(7) When, upon completion of the certification, the owner or operator determines that the corrective action remedy has been completed in accordance with the requirements under Subsection E [Paragraph (5), Subsection J] of this section, the owner or operator shall be released from the requirements for financial assurance for corrective action under Subpart IX.[20.9.1.900 NMAC].

K. Contingency Plan:

(1) This section applies to owners and operators of all solid waste facilities except as otherwise provided.

(2) Each owner or operator shall have a contingency plan for each solid waste facility. The contingency plan shall be designed to minimize hazards to public health, welfare or the environment from fires, explosions, or any unplanned sudden or non-sudden release of contaminants or hazardous waste constituents to air, soil, surface water or ground water.

(3) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of contaminants or hazardous waste constituents which could threaten public health, welfare or the environment.

(4) The contingency plan for emergencies shall, if applicable:

(a) describe the actions facility personnel must take in response to fires, explosions, or releases of contaminants or hazardous waste constituents to air, soil, surface water, or ground water;

(b) describe arrangements with local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services;

(c) list name(s), address(es), and phone numbers (office and home) of the emergency coordinator(s). Where more than one person is listed, one must be named as the primary emergency coordinator;

(d) include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list and a brief outline of its capabilities;

(e) include an evacuation plan for facility personnel. The plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes in cases where the primary routes could be blocked by fire or releases of hazardous wastes;

(f) include an evaluation of expected contaminants, expected media contaminated, and procedures for investigation, containment, and correction or remediation;

(g) list where copies of the contingency plan will be kept, which must include the facility, all local police departments, fire departments, hospitals, and State and local emergency response teams;

(h) indicate when the contingency plan will be amended, which shall be immediately if necessary, whenever:

(i) the facility permit is revised or modified;

(ii) the plan fails in an emergency;

(iii) the facility changes, design, construction, operation, maintenance or other

circumstances in a way that increase the potential for fires, explosions, or releases of hazardous waste constituents, or changes the response necessary in an emergency;

(iv) the list of Emergency Coordinators changes; or

(v) the list of emergency equipment changes.

(i) describe how the Emergency Coordinator or his designee, whenever there is an imminent or actual emergency situation, will immediately;

(i) activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(ii) notify appropriate State and local agencies with designated response roles if their help is needed.

(j) describe how the Emergency Coordinator, whenever there is a release, fire, or explosion, will immediately identify the character, exact source, amount, and extent of any release materials. She or he may do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis. Also describe how the Emergency Coordinator will concurrently assess possible hazards to public health, welfare or the environment that may result from the release, fire, or explosion. This assessment must consider both the direct and indirect hazard of the release, fire, or explosion;

(k) describe how if the facility stops operations in response to fire, explosion, or release, the Emergency Coordinator will monitor for leaks, pressure buildup, gas generation or rupture in valves, pipes, or the equipment, wherever this is appropriate;

(l) describe how the Emergency Coordinator, immediately after an emergency, will provide for treating, storing, or disposing of recovered waste, or any other material that results from a release, fire, or explosion at a facility. Such methods for treating, storing, or disposing of recovered waste must be approved by the Secretary; and

(m) describe how the Emergency Coordinator will ensure that no waste, which may be incompatible with the released material, is treated, stored, or disposed of until cleanup procedures are complete. [1/30/92, 8/17/94, 11/30/95; 20.9.1.800 NMAC - Rn, 20 NMAC 9.1.VIII.800, Recompiled 11/27/01]

20.9.1.801 to 20.9.1.899 [RESERVED]

20.9.1.900 FINANCIAL ASSURANCE:

A. Applicability and Effective Date:

(1) The requirements of this Subpart [20.9.1.900 NMAC] apply to owners and operators of all solid waste facilities, except owners and operators who are the United States, the State of New Mexico, and any agency, department, instrumentality, office, or institution of those governments whose debts and liabilities are the debts and liabilities of the United States or the State of New Mexico.

(2) The requirements of this Subpart are effective upon the earliest of:

- (a) when an owner or operator seeks a permit;
- (b) when an owner or operator seeks a permit to modify their facility;
- (c) when the Secretary has requested a permit application; or
- (d) when the date for compliance with financial assurance provisions established in 40 CFR

258.70, Subpart G - Financial Assurance Criteria, takes effect.

(3) Multiple facilities under one permit shall be treated individually for the purposes of this Subpart. Estimates and assurance must be given for each facility, yet multiple facilities may be covered by one or more mechanisms.

B. Financial Assurance for Closure:

(1) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of the facility ever requiring closure as required under Subpart V [20.9.1.500 NMAC] at any time during the active life in accordance with the closure plan. The estimate may contain a subsidiary schedule showing the amount necessary to perform closure of the facility in each year of the permit life of the facility. The owner or operator must place a copy of the estimate in the operating record and file the same with the Secretary.

(a) For landfills, the cost estimate must equal the cost of closing the largest area of all landfill cells ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see Section 502 of this Part [Subsection B of 20.9.1.500 NMAC]). Should the owner or operator submit a subsidiary schedule as described in paragraph A [Paragraph (1), Subsection B] of this section, the amount guaranteed annually may be in accordance with this schedule upon approval by the Secretary. If the owner or operator, upon inspection, is found to be utilizing acreage in excess of the amount shown in the subsidiary schedule, final closure on the excess acreage must be completed within sixty days of the subsidiary schedule and the amount of financial assurance must be increased to reflect the excess acreage.

(b) For all other facilities, the cost estimate must equal the cost of closure to be performed in accordance with the applicable portions of Sections 503, 504, or 505 [Subsections C, D or E of 20.9.1.500 NMAC].

(c) During the active life of the facility, the owner or operator must annually adjust the closure cost estimate for inflation.

(d) The owner or operator must increase the closure cost estimate and the amount of financial assurance provided under paragraph C [Paragraph (3), Subsection B] of this section if changes to the closure plan or facility conditions increase the maximum cost of closure at any time during the remaining active life.

(e) The owner or operator may reduce the closure cost estimate and the amount of financial assurance provided under paragraph C [Paragraph (3), Subsection B] of this section if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the facility, upon approval by the Secretary. The owner or operator must notify the Secretary that the justification for the reduction of the closure cost estimate and the amount of financial assurance has been placed in the operating record.

(2) All estimates provided pursuant to this section are subject to review and approval by the Secretary and shall be kept on file with the Secretary.

(3) The owner or operator of each solid waste facility must establish financial assurance for closure of the facility in compliance with Section 906 [Subsection F of 20.9.1.900 NMAC]. The owner or operator must provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with Subpart V [20.9.1.500 NMAC]. This demonstration shall be considered given when the Secretary

has received certification that all the requirements of Subpart V of this Part [20.9.1.500 NMAC] have been met. Following receipt of this, the Secretary will either:

- (a) notify the owner or operator in writing that s/he is no longer required to maintain financial assurance for the activities required by Subpart V [20.9.1.500 NMAC]; or
- (b) provide the owner or operator with a detailed written statement of any reason to believe that the activities required under Subpart V [20.9.1.500 NMAC] have not been conducted satisfactorily.

(4) Owners or operators who consider their estimates provided under this section to be confidential under 18 U.S.C. Section 1905, may submit their reasons for this treatment along with the estimate. Upon a determination that confidential treatment is accorded, the Secretary will treat the appropriate portions as confidential. Such information, however, may be disclosed as required by law.

C. Financial Assurance for Post-Closure:

(1) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the facility in compliance with the post-closure care plan developed under Subpart V of this Part [20.9.1.500 NMAC]. The post-closure cost estimate used to demonstrate financial assurance in paragraph C [Paragraph (3), Subsection C] of this section must account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period. The owner or operator may submit a subsidiary schedule showing, for the permit life of the facility, the annual incremental acreage and total acreage needing post-closure care and the corresponding estimate of post-closure costs. The owner or operator must notify the Secretary that the estimate has been placed in the operating record and file the same with the Secretary.

(a) The cost estimate for post-closure care must be based on the most expensive costs for post-closure care during the post-closure care period. Should the owner or operator submit a subsidiary schedule as described in paragraph A [Paragraph (1) Subsection C] of this section, the amount guaranteed annually for post-closure care during the permit life of the facility may be in accordance with this schedule upon approval by the Secretary. If the owner or operator, upon inspection, is found to have exceeded the acreage shown on the subsidiary schedule, the subsidiary schedule and the amount of financial assurance shall be increased within sixty days.

(b) During the permit life of the facility and during the post-closure care period, the owner or operator must annually adjust the post-closure care estimate for inflation.

(c) The owner or operator must increase the post-closure care cost estimate and the amount of financial assurance provided under paragraph C [Paragraph (3), Subsection C] of this section if changes in the post-closure care plan or facility conditions increase the maximum cost of post-closure care.

(d) The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance provided under paragraph C [Paragraph (3), Subsection C] of this section if the cost estimate exceeds the maximum cost of post-closure care remaining over the post-closure care period, upon approval by the Secretary. The owner or operator must notify the Secretary that the justification for the reduction of the post-closure cost estimate and the amount of financial assurance have been placed in the operating record.

(2) All estimates provided pursuant to this section are subject to review and approval by the Secretary and shall be kept on file with the Secretary.

(3) The owner or operator of each solid waste facility must establish, in a manner in accordance with Section 906 of this Part [Subsection F of 20.9.1.900 NMAC], financial assurance for the costs of post-closure care as required under Subpart V of this Part [20.9.1.500 NMAC]. The owner or operator must provide continuous coverage for post-closure care until released from financial assurance requirements by demonstrating compliance with Subpart V [20.9.1.500 NMAC]. This demonstration shall be considered given when the Secretary has received certification that all the requirements of Subpart V of this Part [20.9.1.500 NMAC] have been met. Following receipt of this, the Secretary will either:

- (a) notify the owner or operator in writing that s/he is no longer required to maintain financial assurance for the activities required by Subpart V [20.9.1.500 NMAC]; or
- (b) provide the owner or operator with a detailed written statement of any reason to believe that the activities required under Subpart V [20.9.1.500 NMAC] have not been conducted satisfactorily.

(4) Owners or operators who consider their estimates provided under this section to be confidential under 18 U.S.C. Section 1905, may submit their reasons for this treatment along with the estimate. Upon a determination that confidential treatment is accorded, the Secretary will treat the appropriate portions as confidential. Such information, however, may be disclosed as required by law.

D. Financial Assurance for Phase I & Phase II Assessment:

(1) Unless suspended from the requirements of Subpart VIII [20.9.1.800 NMAC] according to the qualifications in 801.C [Paragraph (3), Subsection A of 20.9.1.800 NMAC], the owner or operator must have a

detailed written estimate, in current dollars, of the cost of hiring a third party to conduct activities of the Phase I (Section 806 [Paragraph F of 20.9.1.800 NMAC]) and Phase II (Sections 808 and 809 Paragraphs H and I of 20.9.1.800 NMAC) assessment as described in Subpart VIII of this Part [20.9.1.800 NMAC]. The Phase I and Phase II assessment costs estimate must account for the entire cost of the Phase I and Phase II assessment for the entire assessment period. The owner or operator must notify the Secretary that the estimate has been placed in the operating record and file the same with the Secretary.

(a) During the permit life of the facility and during the post-closure care period, the owner or operator must annually adjust the Phase I and Phase II assessment estimate for inflation.

(b) The owner or operator must increase the Phase I and Phase II cost estimate and the amount of financial assurance provided under paragraph C of this section [Paragraph (3) of this subsection] if changes in the Phase I and Phase II assessment or facility conditions increase the maximum costs of Phase I and Phase II assessment.

(c) The owner or operator may reduce the amount of the Phase I and Phase II assessment cost estimate and the amount of financial assurance provided under paragraph C of this section [Paragraph (3) of this subsection] if the cost estimate exceeds the maximum remaining cost for the Phase I and Phase II assessment, upon approval by the Secretary. The owner or operator must notify the Secretary that the justification for the reduction of the Phase I and Phase II assessment cost estimate and the amount of financial assurance have been placed in the operating record.

(2) All estimates provided pursuant to this section are subject to review and approval by the Secretary and shall be kept on file with the Department.

(3) The owner or operator of each solid waste facility must establish, in a manner in accordance with Section 906 of this Part [Subsection F of this section], financial assurance for the costs of Phase I and Phase II assessment care as required under Subpart VIII of this Part [20.9.1.800 NMAC]. The owner or operator must provide continuous coverage for the Phase I and Phase II assessment until released from financial assurance requirements by demonstrating compliance with Subpart V of this Part [20.9.1.500 NMAC]. This demonstration shall be considered given when the Secretary has received certification that all the requirements of Subpart V of this Part [20.9.1.500 NMAC] have been met. Following receipt of this, the Secretary will either:

(a) notify the owner or operator in writing that s/he is no longer required to maintain financial assurance for the Phase I and Phase II assessment specified in Subpart VIII [20.9.1.800 NMAC]; or

(b) notify the owner or operator in writing of any reason why s/he will be required to maintain financial assurance for the Phase I and Phase II assessment specified in Subpart VIII [20.9.1.800 NMAC].

(4) Owners or operators who consider their estimates provided under this section to be confidential under 18 U.S.C. Section 1905, may submit their reasons for this treatment along with the estimate. Upon a determination that confidential treatment is accorded, the Secretary will treat the appropriate portions as confidential. Such information, however, may be disclosed to officers, employees, or authorized representatives of the United States concerned with carrying out the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6902 et seq., or when relevant in any proceedings under the Solid Waste Act.

#### E. Financial Assurance for Corrective Action:

(1) An owner or operator of a facility required to undertake a corrective action program under Subpart VIII of this Part [20.9.1.800 NMAC] must have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the program required under Subpart VIII of this Part [20.9.1.800 NMAC]. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator must notify the Secretary that the estimate has been placed in the operating record and file the same with the Secretary.

(a) The owner or operator must annually adjust the estimate for inflation until the corrective action program is completed in accordance with Subpart VIII of this Part [20.9.1.800 NMAC].

(b) The owner or operator must increase the corrective action cost estimate and the amount of financial assurance provided under paragraph D of this section [Paragraph (4) of this subsection] if changes in the corrective action program or facility conditions increase the maximum costs of corrective action.

(c) The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided under paragraph D of this section [Paragraph (4) of this subsection] if the cost estimate exceeds the maximum remaining cost corrective action, upon approval by the Secretary. The owner or operator must notify the Secretary that the justification for the reduction of the corrective action cost estimate and the amount of financial assurance have been placed in the operating record.



(2) An owner or operator of a facility required to guarantee any portion of a corrective action program as a condition of any permit or decision by the Secretary based upon factual information presented in an adjudicatory hearing process, must have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the conditions of the permit or the Secretary's decision. The corrective action cost estimate must account for the total costs of the corrective action activities as described in the permit condition or the Secretary's decision. The owner or operator must notify the Secretary that the estimate has been placed in the operating record and file the same with the Secretary.

(a) The owner or operator must annually adjust the estimate for inflation until the corrective action program is completed in accordance with Subpart VIII of this Part [20.9.1.800 NMAC].

(b) The owner or operator must increase the corrective action cost estimate and the amount of financial assurance provided under paragraph D of this section [Paragraph (4) of this subsection] if changes in the corrective action program or facility conditions increase the maximum costs of corrective action.

(c) The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided under paragraph D of this section [Paragraph (4) of this subsection] if the cost estimate exceeds the maximum remaining cost corrective action, upon approval by the Secretary. The owner or operator must notify the Secretary that the justification for the reduction of the corrective action cost estimate and the amount of financial assurance have been placed in the operating record.

(3) All estimates provided pursuant to this section are subject to review and approval by the Secretary and shall be kept on file with the Secretary.

(4) The owner or operator of each solid waste facility required to provide assurance for a corrective action program under Subpart VIII of this Part [20.9.1.800 NMAC] must establish, in a manner in accordance with Section 906 of this Part [Subsection F of 20.9.1.900 NMAC], financial assurance for the most recent corrective action program or if required as a condition of a permit or a decision by the Secretary based upon factual information presented in an adjudicatory hearing process. The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements by demonstrating compliance with Subpart VIII [20.9.1.800 NMAC] in the event of a corrective action or with Subpart V [20.9.1.500 NMAC] at the termination of the post-closure period. This demonstration shall be considered given when the Secretary has received certification that all the requirements of the appropriate Subpart of this Part [sections of 20.9.1 NMAC] have been met. Following receipt of this, the Secretary will either:

(a) notify the owner or operator in writing that s/he is no longer required to maintain financial assurance pursuant to this section; or

(b) notify the owner or operator in writing of any reason why s/he will be required to maintain financial assurance for the corrective action activities specified in Subpart VIII [20.9.1.800 NMAC] or specified as part of a decision by the Secretary pursuant to this section.

F. Allowable Mechanism: The mechanisms used to demonstrate financial assurance under this section must ensure that the funds necessary to meet the costs of closure, post-closure care, the Phase I and Phase II assessment, and corrective action for known releases, condition of a permit, or by order of the Secretary will be available whenever they are needed. Owners or operators must choose from the options specified in paragraphs A through H of this section [Paragraphs (1) through (8) in this subsection]. Mechanisms executed for financial assurance pursuant to this section shall be payable to or name the New Mexico governmental entity or entities who own or operate the facility(ies) as the beneficiary of the instrument, and if no New Mexico governmental entity or entities own or operate the facility(ies) then the instrument shall be made payable to or name the State of New Mexico as the beneficiary.

(1) Trust Fund:

(a) An owner or operator may demonstrate financial assurance for closure, post closure, the Phase I and Phase II assessment, or corrective action by establishing a Trust fund worded as in the forms supplied by the Secretary (see Section 1102 [Subsection C of 20.9.1.1100 NMAC]). This Trust fund may also be used as a repository for funds received from other mechanisms specified in this section [subsection]. The Trust shall be established as follows:

(i) Payments into the Trust fund must be made at least annually but may be made on a more frequent basis by the owner or operator over the term of the initial permit or over the remaining life of the facility, whichever is shorter, in the case of a Trust fund for closure, post closure, or the Phase I and Phase II assessment, or over one-half of the estimated length of the corrective action period for known releases, or in the time period specified by the permit condition or the Secretary's decision. This period is referred as the pay-in period.

(ii) For a Trust fund used to demonstrate financial assurance for closure, post closure, and the Phase I and Phase II assessment, the first payment into the fund must be at least equal to the current cost estimate

approved by the Secretary for closure, post closure, or the Phase I and Phase II assessment divided by the number of years in the pay-in period as defined in paragraph A.1.(a) [Item (i), Subparagraph (a), Paragraph (1), Subsection F] of this section. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{\text{CE}-\text{CV}}{\text{Y}}$$

where CE is the current cost estimate for closure, post closure, or the Phase I and Phase II assessment (updated for inflation or other changes), CV is the current value of the Trust fund, and Y is the number of years remaining in the pay-in period.

(iii) for a Trust fund used to demonstrate financial assurance for corrective action, the first payment into the Trust fund must be at least equal to one-half of the current cost estimates approved by the Secretary for corrective action divided by the number of years in the corrective action pay-in period as defined in paragraph A.1.(a) of this section [Item (i), Subparagraph (a), Paragraph (1) of this subsection]. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{\text{R}-\text{C}}{\text{Y}}$$

where R is the most recent estimate of the required Trust fund balance for corrective action (i.e. the total costs that will be incurred during the second half of the corrective action period, if for a known release; the remaining costs of the portion specified as a condition of a permit or decision by the Secretary), C is the current value of the Trust fund, and Y is the number of years remaining on the pay-in period.

(iv) The initial payment into the Trust fund must be made before the initial receipt of waste or before the effective date of this section, whichever is later, in the case of closure, post closure, and the Phase I and Phase II assessment, or no later than 120 days after the corrective action remedy has been selected in accordance with Subpart VIII [20.9.1.800 NMAC], the permit issuance, or the Secretary's decision.

(v) If the owner or operator establishes a Trust fund after having used one or more alternate mechanisms specified in this section, the initial payment into the Trust fund must be at least equal the amount that the fund would contain if the Trust fund were established initially and annual payments made according to the specifications of this paragraph [subparagraph].

(vi) The owner or operator, or other person authorized to conduct closure, post closure care, the Phase I and Phase II assessment, or corrective action activities may request reimbursement from the Trust for these expenditures. Unless there is an imminent threat to public health, welfare and safety or the environment, or undue economic hardship would delay the implementation or cease the maintenance of the corrective action program, requests for reimbursement will be granted by the Secretary only if sufficient funds are remaining in the Trust fund to cover the remaining costs of closure, post closure, the Phase I and Phase II assessment, or corrective action, and if justification and documentation of the cost is filed with the Secretary and placed in the operating record. Withdrawal of any funds from the Trust shall be directed in writing to the Trustee by the Secretary.

(vii) The Trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance as specified in this section or if s/he is no longer required to demonstrate financial responsibility in accordance with the requirements of Sections 902.C, 903.C, 904.C, or 905.D [Paragraph (3) of Subsections B, C and D of 20.9.1.900 NMAC or Paragraph (4), Subsection E of 20.9.1.900 NMAC].

(viii) Trustees shall be Trust companies, or banks authorized to do business as a Trust company in New Mexico under the Trust Company Act, NMSA 1978 Section 58-9-4 or 58-10-35, or authorized under Federal law.

(b) A copy of the Trust agreement, quarterly and annual reports of the Trustee on the Trust fund balance shall be kept on file with the Secretary.

(2) Surety Bond Guaranteeing Payment or Performance:

(a) An owner or operator may demonstrate financial assurance for closure, post closure, the Phase I and Phase II assessment, or corrective action by obtaining a Performance Bond payable to the Trust outlined in 905.A [Paragraph (1), Subsection E of 20.1.9.00 NMAC] or payable to a standby Trust fund set up by the owner or operator and worded as in the forms supplied by the Secretary (see Sections 1102, 1103, and 1104 [Subsections C, D and E of 20.9.1.1100 NMAC]). The bond must be effective before the initial receipt of waste or before the effective date of this section as specified in 901.B [Paragraph (2), Subsection B of 20.9.1.900 NMAC], whichever is later, in the case of closure, post closure, and the Phase I and Phase II assessment, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Subpart VIII [20.9.1.800 NMAC], the permit issuance, or the Secretary's decision. The owner or operator must notify the Secretary that a copy of the bond has been placed in the operating record and file the same with the Secretary. Companies providing

Performance Bonds shall be admitted carriers, licensed carriers, or registered carriers of surplus lines insurance and authorized in the State of New Mexico to do business and be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury;

(i) The penal sum of the bond must be in an amount at least equal to the current closure, post closure, the Phase I and Phase II assessment, or corrective action cost estimate except as provided under 906.I Paragraph (9), Subsection F of 20.9.1.900 NMAC].

(ii) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(iii) Payments made under the terms of the bond will be deposited by the surety directly into the Trust fund or standby Trust fund. Payments from the Trust fund must be approved by the Secretary.

(b) A copy of the Performance Bond, the latest annual financial statement of the Surety, and the Trust agreement or the standby Trust agreement shall be kept on file with the Secretary.

(3) Irrevocable Letter of Credit:

(a) An owner or operator may demonstrate financial assurance for closure, post closure, the Phase I and Phase II assessment, or corrective action by obtaining an irrevocable standby letter of credit worded as in the forms supplied by the Secretary (see Section 1107 [Subsection H of 20.9.1.1100 NMAC]) payable to the Trust outlined in 905.A [Paragraph (1), Subsection E of 20.9.1.900 NMAC] or payable to a standby trust fund established in conformity to the requirements of this Subpart [20.9.1.900 NMAC]. A letter of credit shall not constitute more than fifty percent (50%) of the total financial responsibility required. The letter of credit must be effective before the initial receipt of waste or before the effective date of this Subpart [20.9.1,900 NMAC] whichever is later, in the case of closure, post-closure, and the Phase I and Phase II assessment, or no later than 120 days after the corrective action remedy has been selected in accordance with Subpart VIII, the permit issuance, or the Secretary's decision. The owner or operator must notify the Secretary that a copy of the letter of credit has been placed in the operating record. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State of New Mexico agency. At a minimum, the issuing institution must be authorized to transact business in the State of New Mexico.

(b) A letter from the owner or operator referring to the letter of credit by number, issuing institution, issue date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit in the operating record.

(c) The institution issuing the letter of credit shall be an institution with assets of at least one billion dollars (\$1,000,000,000). If the issuing institution is less than this amount in assets, the letter of credit must be fully collateralized by the owner or operator to be acceptable under this section.

(d) The letter of credit must be irrevocable and issued for a period of at least one year in an amount for the current cost estimate for closure, post-closure care, or corrective action, whichever is applicable. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the Secretary 120 days in advance of cancellation. If the letter of credit is canceled by the issuing institution, the owner or operator must obtain alternate financial assurance.

(e) The Trust fund or standby Trust fund set up by the owner or operator shall be worded as in the forms supplied by the Secretary (see Sections 1102 and 1104 [Subsections C and E of 20.9.1.1100 NMAC]). The letter of credit shall provide for performance of any of the items listed in 902, 903, 904, or 905 [Subsections B, C, D or E of 20.9.1.900 NMAC] by the payment into the Trust fund or standby Trust Fund of amounts up to the total in the event that the owner or operator fails to perform any or all of the requirements.

(f) The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in this section or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of this Subpart [20.9.1.900 NMAC].

(g) A copy of the letter of credit, the latest annual financial statement of the issuing institution, and the Trust fund or standby Trust fund agreement shall be kept on file with the Secretary.

(4) Insurance:

(a) An owner or operator may demonstrate financial assurance for closure, post closure, or the Phase I and Phase II assessment by obtaining insurance which conforms to the requirements of this Subpart [20.9.1.900 NMAC]. The insurance must be effective before the initial receipt of waste or before the effective date of this Subpart [20.9.1.900 NMAC], whichever is later, in the case of closure, post-closure, and the Phase I and Phase II assessment, or no later than 120 days after the corrective action remedy has been selected in accordance with Subpart VIII, the permit issuance, or the Secretary's decision. At a minimum, the insurer must be authorized to transact the business of insurance in the State of New Mexico and have an asset size of one hundred million dollars

(\$100,000,000) or greater or an admitted carrier, a licensed carrier or a registered carrier of surplus lines insurance or reinsurance and authorized to transact the business of insurance in the State of New Mexico and have either a surplus of not less than twenty-five million dollars (\$25,000,000) above undiscounted actuarial reserves including incurred but not reported (IBNR) claims, or have an AM BEST Rating of not less than a B+ or the equivalent rating of other recognized Rating Companies. The owner or operator must notify the Secretary that a copy of the insurance policy has been placed in the operating record. A certificate of insurance worded as in the form supplied by the Secretary (see Section 1106 [Subsection G of 20.9.1.1100 NMAC]) shall be filed with the Secretary.

(b) The closure, post-closure care insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs or is required, or to provide post-closure care for the facility whenever the post-closure care period begins, or to provide the Phase I and Phase II assessment whenever required, whichever is applicable. The policy must also guarantee that once closure, post-closure care, or the Phase I and Phase II assessment begins, the insurer will be responsible for the paying out of funds to the owner or operator or other persons authorized to conduct closure or post-closure care, up to an amount equal to the face amount of the policy.

(c) The insurance policy must be issued for a face amount at least equal to the current cost estimate as developed in 902, 903, or 904 [Subsections B, C or D of 20.9.1.900 NMAC] or for a pro-rata amount if used in conjunction with other mechanisms. The term face amount means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(d) An owner or operator, or any other person authorized to conduct closure, post-closure, the Phase I Phase II assessment may receive reimbursements for closure, post-closure, or the Phase I and Phase II assessment expenditures, whichever is applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of care, and if justification and documentation of the cost is placed in the operating record and that reimbursement has been received.

(e) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(f) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator, and to the Secretary, 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator must obtain alternate financial assurance as specified in this section.

(g) For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to eighty five percent (85%) of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

(h) The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in this section or if the owner or operator, is no longer required to demonstrate financial responsibility in accordance with the requirements of 902 or 903 [Subsections B or C of 20.9.1.900 NMAC].

(i) A copy of the insurance policy and the latest annual financial statement of the insurer shall be kept on file with the Secretary. The owner or operator shall report any changes in either surplus or rating to the Secretary. In addition, a copy of the latest annual rating (if applicable) and a copy of the latest audited financial statements shall be forwarded by the insurer to the owner or operator and the Secretary.

(5) Risk Management Pool:

(a) An owner or operator may demonstrate financial assurance for closure, post closure, the Phase I and Phase II assessment, or corrective action by joining a risk management pool. Participation in an approved risk management pool must be effective before the initial receipt of waste or before the effective date of this Subpart [20.9.1.900 NMAC], whichever is later, in the case of closure, post-closure, and the Phase I and Phase II assessment, or no later than 120 days after the corrective action remedy has been selected in accordance with Subpart VIII [20.9.1.800 NMAC], the permit issuance, or the Secretary's decision. Approved pools will incorporate any mechanisms or combination of mechanisms in Section 906 [Subsection F of 20.9.1.900 NMAC] and have the following characteristics:

(i) is evidenced by a written contractual agreement among participating private entities or a Joint Powers Agreement among participating governmental entities;

(ii) would not be in violation of the anti-donation clause of the New Mexico State Constitution if funds were used;

(iii) is liquid in nature allowing for prompt initiation and payment of closure, post closure, the Phase I and Phase II assessment, or corrective action activities;

(iv) has a defined annual contribution table that provides for timely periodic payments from the risk sharers;

(v) provides for guaranteed and timely supplemental funding in the event of an incident that depletes the assets of the pool;

(vi) has incorporated in its framework a Trust fund or standby Trust fund that conforms with Section 906.A [Paragraph (1), Subsection F of this section].

(b) A copy of the agreement establishing the risk management pool, demonstration there is no violation of the anti-donation clause, the contribution table, the Trust fund or standby Trust fund agreement, and any other guarantee documents allowed under this section employed by the pool shall be kept on file with the Secretary.

(6) Local Government Financial Test:

(a) An owner or operator that satisfies the requirements of paragraphs F.2. through F.4. of this section [Subparagraphs (b) through (d), Paragraph (6), Subsection F of this section] may demonstrate financial assurance up to the amount specified in paragraph F.5 of this section [Subparagraph (e), Paragraph (6), of this subsection] for closure, post closure, the Phase I and Phase II assessment, and/or corrective action.

(b) Financial component:

(i) The owner or operator must satisfy one of the following: 1) if the owner or operator has outstanding general obligations bonds, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all outstanding general obligation bonds; or, 2) if the owner or operator does not have outstanding general obligation bonds, it must satisfy each of the following financial ratios: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and a ratio of annual debt service to total expenditures less than or equal to 0.20; and a ratio of long-term debt issued and outstanding to capital expenditures less than or equal to 2.00.

(ii) The owner or operator must prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments.

(iii) An owner or operator is not eligible to assure its obligations under this Subsection F if it: is currently in default on any outstanding general obligation bonds; has an outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; operated at a deficit equal to five percent or more of total annual revenue in either of the past two fiscal years; or receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate State agency) auditing its financial statement as required under paragraph F.2.b [Item (ii), Subparagraph (b), Paragraph (6), Subsection F] of this section. However, the Secretary may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Secretary deems the qualification insufficient to warrant disallowance of the test.

(c) Public notice component: The local government owner or operator must place a reference to the closure, post-closure care, the Phase I and Phase II assessment, or corrective action costs assured through the financial test into its most recent comprehensive annual financial report or budget. The reference must be included before the effective date of this Subpart [20.9.1800 NMAC] or prior to the initial receipt of waste at the facility, whichever is later, in the case of closure, post-closure care, and the Phase I and Phase II assessment, and, in the case of corrective action, not later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Subpart VIII [20.9.1.800 NMAC], the permit issuance, or the Secretary's decision. The reference must include the amount of each cost-estimate and the year(s) in which the local government expects these costs to be incurred. References in the budget must occur as budgeted line items if the activities are to occur in the period covered by the budget, but may appear in a supplemental data section if the activities will not occur until after the period covered by the budget.

(d) Recordkeeping and reporting requirements:

(i) The local government owner or operator must place the following items in the facility's operating record: a letter signed by the local government's chief financial officer that: lists all the current cost estimates covered by a financial test, as described in paragraph F.3 [Subparagraph (c), Paragraph (6), Subsection F] of this section; provides evidence and certifies that the local government meets the conditions of either paragraph F.2 and F.3 [Subparagraphs (b) and (c), Paragraph (6), Subsection F] of this section; and certifies that the local government meets the conditions of paragraph F.5 [Subparagraph (e), Paragraph (6), Subsection F] of this section; the local government's independently audited year-end financial statements for the

latest fiscal year, including the unqualified opinion of the auditor who must be an independent, certified public accountant or an appropriate State agency that conducts equivalent comprehensive audits; and a report to the local government from the local government's independent certified public accountant or the appropriate State agency stating that: the certified public accountant or State agency has compared the data in the chief financial officer's letter with the owner's or operator's independently audited, year-end financial statements for the latest fiscal year; and in connection with that examination, no matters came to his attention which caused him to believe that the data in the chief financial officer's letter should be adjusted.

(ii) the items required in paragraph F.4.a [Item (i), Subparagraph (d)] of this section must be placed in the facility operating record as follows: in the case of closure, post-closure care, and the Phase I and Phase II assessment, either before the initial receipt of waste at the facility or before the effective date of this Subpart [20.9.1.800 NMAC], whichever is later; or in the case of corrective action, not later than 120 days after the corrective action remedy is selected in accordance with the requirements of Subpart VIII [20.9.1.800 NMAC], the permit issuance, or the Secretary's decision.

(iii) After the initial placement of the items in the facility's operating record, the local government owner or operator must update the information and place the updated information in the operating record within 90 days following the close of the owner or operator's fiscal year.

(iv) The local government owner or operator is no longer required to meet the requirements of paragraph F.4 [Subparagraph (d), Paragraph (6)] of this section when: the owner or operator substitutes alternate financial assurance as specified in paragraph F.4.e [Item (v), Subparagraph (d), Paragraph (6), Subsection F] of this section; or the owner or operator is released from the requirements of this section in accordance with 902.C., 903.C., 904.C., or 905.D [Paragraph (3), Subsections B, C and D of 20.9.1.900 NMAC or Paragraph (4), Subsection E of 20.9.1.900 NMAC].

(v) A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test it must, within 120 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this section, place the required submissions for that assurance in the operating record, and notify the Secretary that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

(vi) The Secretary, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the Secretary finds, on the basis of such reports or other information that the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternate financial assurance in accordance with paragraph F.4.e [Item (v), Subparagraph (d), Paragraph (6), Subsection F] of this section.

(e) Calculation of costs to be assured: The portion of the closure, post-closure, the Phase I and Phase II assessment, and/or corrective action costs for which an owner or operator can assure under this paragraph F.5 [Subparagraph (e), Paragraph (6)] is determined as follows:

(i) If the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, the Phase I and Phase II assessment, and/or corrective action costs that equal up to forty three percent (43%) of the local government's total annual revenue.

(ii) If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR part 280, PCB storage facilities under 40 CFR part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR parts 264 and 265, it must add those costs to the closure, post-closure, the Phase I and Phase II assessment, and/or corrective action costs it seeks to assure under this paragraph F.5 [Subparagraph (e), Paragraph (6)]. The total must not exceed forty three percent (43%) of the local government's total annual revenue.

(iii) the owner or operator must obtain an alternate financial assurance instrument for those costs that exceed the limits set in paragraphs F.5.a and F.5.b [Items (i) and (ii), Subparagraph (e), Paragraph (6), Subsection F] of this section.

(7) Solid Waste Local Government Reserve Fund:

(a) An owner or operator who is a governmental entity may demonstrate financial assurance for closure, post closure, the Phase I and Phase II assessment, and/or corrective action by establishing a reserve fund within its existing financial accounting system which conforms to the wording in Section 1105 [Subsection F of 20.9.1.1100 NMAC]. The reserve fund must be created by resolution of the governing body specifying the use of funds only for purposes of closure, post-closure, the Phase I and Phase II assessment, and/or corrective action for the

facility. The resolution must be effective before the initial receipt of waste or before the effective date of this Subpart, whichever is later, in the case of closure, post-closure, and the Phase I and Phase II assessment, or not later than 120 days after the corrective action remedy has been selected in accordance with Subpart VIII [20.9.1.800 NMAC], the permit issuance, or the Secretary's decision. The resolution must specify withdrawals from the fund will only occur with approval by the Secretary. Funding of the reserve fund will be according to the schedule specified in 906.A [Paragraph (1), Subsection F of this section]. At a minimum, the reserve fund must be audited annually by the State Auditor under the Single Audit Act.

(b) A copy of the resolution and audit reports of the reserve fund shall be kept on file with the Secretary.

(8) Local Government Guarantee:

(a) An owner or operator may demonstrate financial assurance for closure, post-closure, the Phase I and Phase II assessment, and/or corrective action, as required by Sections 902, 903, 904, and/or 905 [Subsections B, C, D and /or E of 20.9.1.900 NMAC] by obtaining a written guarantee provided by a local government. The guarantor must meet the requirements of the local government financial test in paragraph 906.F [Paragraph (6), Subsection F, Section 20.9.1.900 NMAC] of this Subpart [Subpart] and must comply with the terms of a written guarantee.

(b) Terms of the written guarantee: The guarantee must be effective before the initial receipt of waste or before the effective date of this section, whichever is later, in the case of closure, post-closure care, or the Phase I and Phase II assessment, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Subpart VIII [20.9.1.800 NMAC], the permit issuance, or the Secretary's decision. The guarantee must provide that:

(i) if the owner or operator fails to perform closure, post-closure care, the Phase I and Phase II assessment, and/or corrective action of a facility covered by the guarantee, the guarantor will: perform, or pay a third party to perform, closure, post-closure care, and/or corrective action as required; or establish a fully funded trust fund as specified in paragraph 906.A [Paragraph (1), Subsection F] of this section in the name of the owner or operator.

(ii) the guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Secretary. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Secretary, as evidenced by the return receipts.

(iii) if a guarantee is canceled, the owner or operator must within 90 days following receipt of the cancellation notice by the owner or operator and the Secretary, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the Secretary. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days following the close of the guarantor's fiscal year, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record and notify the Secretary.

(c) Recordkeeping and reporting:

(i) The owner or operator must place a certified copy of the guarantee along with the items required under paragraph 906.F.4 of this Subpart [Subparagraph D, Paragraph (6), Subsection F of 20.9.1.900 NMAC] into the facility's operating record before the initial receipt of waste or before the effective date of this Subpart [20.9.1.900 NMAC], whichever is later, in the case of closure, post-closure care, or the Phase I and Phase II assessment, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Subpart VIII [20.9.1.800 NMAC], the permit issuance, or the Secretary's decision.

(ii) The owner or operator is no longer required to maintain the items specified in paragraph H.2 (Subparagraph (b), Paragraph (8), Subsection F) of this section when: the owner or operator substitutes alternate financial assurance as specified in this section; or the owner or operator is released from the requirements of this section [subsection] in accordance with 902.C, 903.C, 904.C, or 905.D [Paragraph (3) of Subsections B, C and D or Paragraph (4) of Subsection E of 20.9.1.900 NMAC].

(iii) If a local government guarantor no longer meets the requirements of paragraph 906.F.2 of this Part [Subparagraph (b), Paragraph (6), Subsection F of this section], the owner or operator must, within 90 days following the close of the guarantor's fiscal year obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the Secretary. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days.

(9) Use of Multiple Financial Mechanisms: An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. The mechanisms must be as specified in

paragraphs A, B, C, D, E, F, G, and H [Paragraphs (1) through (8), Subsection F] of this section, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate approved by the Secretary for closure, post-closure care, the Phase I and Phase II assessment, or corrective action, as applicable. A complete listing of the mechanisms and amounts guaranteed by each must be on file with the Secretary.

[8/17/94, 11/30/95; 20.9.1.900 NMAC - Rn, 20 NMAC 9.1.IX.900 to 906, Recompiled 11/27/01]

20.9.1.901 to 20.9.1.999 [RESERVED]

20.9.1.1000 MISCELLANEOUS:

A. Variances:

(1) Any person seeking a variance from any requirement of this Part shall do so in accordance with 20 NMAC 1.4 20.1.4 NMAC], Permit Procedures - Environment Department.

(2) Variance petitions shall be accompanied by proof of public notice as in accordance with the Act and with 20 NMAC 1.4 [20.1.4 NMAC], Permit Procedures - Environment Department. The public notice shall:

- (a) contain the name of the owner and operator of the solid waste facility;
- (b) address and telephone number at which interested persons may obtain further information;
- (c) briefly describe for what the variance is being sought and the proposed alternative;
- (d) state the time period for which the variance is sought;
- (e) be provided by certified mail to the owners of record, as shown by the most recent property

tax schedule and tax exempt entities of record, of all properties:

(i) within one hundred feet of the property on which the facility is located if the facility is in a Class A or H class county or a municipality with a population of more than two thousand five hundred (2,500) persons; or

(ii) within one-half mile of the property on which the facility is located in a county or municipality other than those specified in paragraph a [Item (i), Subparagraph (e), Paragraph (2)] of this subsection;

(f) be provided by certified mail to all municipalities and counties within a 10 mile radius of the property on which the facility is located;

(g) be published once in a newspaper of general circulation in each county in which the property on which the facility is located; this notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice and, and when appropriate shall be printed in both English and Spanish; and

(h) be posted in at least four publicly accessible and conspicuous places, including the existing facility entrance on the property on which the facility is located.

(3) The Secretary shall deny the variance petition unless the petitioner establishes evidence that:

(a) application of the regulation would result in an arbitrary and unreasonable taking of the applicant's property or will impose an undue economic burden upon any lawful business, occupation or activity; and

(b) granting the variance will not result in any condition injurious to public health, safety or welfare or the environment.

(4) No variance shall be granted until the Secretary has considered the relative interests of the applicant, other owners of property likely to be affected, and the general public.

(5) Variance or renewal of a variance shall be granted for time periods and under conditions consistent with reasons for the variance but within the following limitations:

(a) if the variance is granted on the grounds that there are no practicable means known or available for the adequate prevention of degradation of the environment or the risk to the public health, safety or welfare, it shall continue only until the necessary means for the prevention of the degradation or risk become known and available; or

(b) if the variance is granted on the grounds that it is justified to relieve or prevent hardship of a kind other than that provided for in Paragraph (1) [Subparagraph (a), Paragraph (5)] of this subsection, it shall not be granted for more than one year.

(6) The Department shall maintain a file, open to public inspection, of all petitions for a variance, and the action taken on such petitions.

(7) Any variance or exemption granted by the Secretary shall be reviewed for consistency with existing Federal regulations.

B. Exemptions:



- (1) Any person seeking an exemption pursuant to NMSA 1978, Section 74-9-32 shall do so by filing a written petition with the Board, and serving a copy of the petition to the Secretary.
- (2) A petition for exemption shall:
  - (a) state each provision of the Act or this Part from which exemption is sought;
  - (b) cite, and have attached as exhibits, each provision of applicable federal or state law the petitioner alleges that imposes as stringent or more stringent requirements than those imposed by the Act or this Part [20.9.1.NMAC]; and
  - (c) be signed by the petitioner or the petitioner's representative; and
  - (d) contain proof of public notice in accordance with the Act's requirements for applications for solid waste disposal facility permits.
- (3) Each application filed with the Secretary for an exemption shall include proof that the applicant has provided notice of the filing of the application to the public and other affected individuals and entities. The notice shall be:
  - (a) provided by certified mail to the owners of record, as shown by the most recent property tax schedule and tax exempt entities of record, of all properties:
    - (i) within one hundred feet of the property on which the facility is located or proposed to be located if the facility is or will be in a Class A or H county or a municipality with a population of more than two thousand five hundred (2,500) persons; or
    - (ii) within one-half mile of the property on which the facility is located or proposed to be located if the facility is or will be in a county or municipality other than those specified in Subsection a of this section [Item (i), of this subparagraph];
  - (b) provided by certified mail to all municipalities, counties, and tribal governments in which the facility is or will be located and to all municipalities, counties, and tribal governments within a ten mile radius of the property on which the facility is proposed to be constructed, operated or closed;
  - (c) published once in a newspaper of general circulation in each county in which the property in which the facility is proposed to be constructed, operated or closed is located; this notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice and, when appropriate, shall be printed in both English and Spanish; and
  - (d) posted in at least four publicly accessible and conspicuous places, including the proposed or existing facility entrance on the property on which the facility is or is proposed to be located.
- (4) The Board may designate a hearing officer to take evidence at the hearing.
- (5) If a quorum of the Board is present at the hearing, the Board may, but shall not be required to, act immediately upon conclusion of the hearing. If a quorum of the Board is not present, or if the Board elects not to take action immediately, the hearing officer may, upon request of any party, hold the hearing record open for a designated period of time for receipt of additional information.
- (6) If the Board does not take action immediately upon conclusion of the hearing, the Board shall take action at the next regularly scheduled Board meeting occurring at least two weeks after the close of the hearing record, and shall provide notice of its action to:
  - (a) the petitioner, by certified mail;
  - (b) the Department, by delivery of a copy to the Secretary; and
  - (c) all other persons who appeared at the hearing and provided their addresses to the Board Secretary or hearing officer, by first class mail.
- (7) The Board shall deny the petition unless the petitioner establishes by clear and convincing evidence that the applicable federal or state law cited by the petitioner imposes as stringent or more stringent requirements than those imposed by the Act or this Part.
- (8) The Board shall maintain a file, open to public inspection, of all exemption petitions, and the action taken on such petitions.
  - C. Severability: If any provision or application of this Part is held invalid by a court of competent jurisdiction, the remainder, or its application to other situations or persons, shall not be affected.
  - D. Compliance with Other Regulations: Compliance with this Part does not relieve a person of the obligation to comply with other applicable local, state and federal regulations.
  - E. Savings Clause: This Part does not apply to pending litigation or affect violations of prior, effective regulations governing the disposal of solid waste.
  - F. Interpretation: This Part shall be liberally construed to carry out its purpose.

G. Supersession of Prior Regulations: This Part supersedes the Solid Waste Management Regulations, EIB/SWMR-4, filed July 18, 1994. EIB/SWMR-4 superseded the Solid Waste Management Regulations, EIB/SWMR-3, filed December 31, 1991.

H. Continuing Effect of Prior Actions; Exceptions: Except as provided otherwise in this section, all permits and certificates of registration issued, and all closure and post-closure care plans approved, pursuant to previous regulations shall remain in effect until they expire or they are suspended, revoked, or otherwise modified pursuant to this Part [20.9.1 NMAC], provided:

(1) the owner and operator of an active solid waste facility shall comply with all applicable provisions of Subparts I, III, IV V, VI, VII, VIII, and IX of this Part [Sections 20.9.1.100 , 20.9.1.300, 20.9.1.400, 20.9.1.500, 20.9.1.600, 20.9.1.700, 20.9.1.800 and 20.9.1.900 NMAC];

(2) the regulations pursuant to which previously-approved closure and post-closure care plans were approved shall continue to apply, in lieu of this Part, to such closure and post-closure and post-closure care plans; and

(3) the requirements under Section 213 of EIB/SWMR-3 regarding submittal of permit applications, closure plans, and site assessments by specified time frames for existing facilities continue to apply.

I. Documents: Copies of all documents cited in this Part may be viewed at the Departments's Solid Waste Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico. [6/2/74, 5/14/89, 1/30/92, 8/17/94, 11/30/95; 20.9.1.1000 NMAC - Rn, 20 NMAC 9.1.X.1000-1009, Recompiled 11/27/01]

20.9.1001 to 20.9.1.1099 [RESERVED]

20.9.1.1100 TABLES, PARAMETERS, AND SAMPLE FORMS:

A. Ground Water Parameters: The standards in Tables I and II are from the New Mexico Water Quality Control Commission Regulations or the federal Safe Drinking Water Act as they exist on the effective date of this Part. Check with the Department to confirm the standards are still applicable.

TABLE I					
Parameter	Standard <sup>2</sup>	PQL <sup>3</sup>	Parameter	Standard	PQL
	mg/l	mg/l		mg/l	mg/l
Arsenic <sup>1</sup>	0.05	0.01	Barium <sup>1</sup>	1.0	0.02
Benzene <sup>1</sup>	0.005	0.001	Benzo[a]pyrene <sup>1</sup>	0.0002	0.0001
Cadmium <sup>1</sup>	0.005	0.002	Boron	0.75(i)	0.5
Carbon tetrachloride <sup>1</sup>	0.005	0.002	Chloride	250(a)	5.0
Chloroform <sup>1</sup>	0.1	0.005	Chromium <sup>1</sup>	0.05	0.01
Cobalt	0.05(i)	0.03	Copper	1.0(a)	0.06
Cyanide <sup>1</sup>	0.2	0.1	1,2-Dichloroethane (EDC) <sup>1</sup>	0.005	0.001
1,1-Dichloroethane <sup>1</sup>	0.025	0.005	1,1-Dichloroethylene (1,1-DCE) <sup>1</sup>	0.005	0.001
Ethylbenzene <sup>1</sup>	0.7	0.005	Ethylene dibromide (EDB) <sup>1</sup>	0.00005	0.000025
Fluoride <sup>1</sup>	1.6	0.4	Iron	0.3(a)	0.1
Lead <sup>1</sup>	0.05	0.01	Magnesium		
Manganese	0.05(a)	0.03	Mercury <sup>1</sup>	0.002	0.001
Methylene chloride <sup>1</sup>	0.005	0.001	Molybdenum	1.0(i)	0.75
Nickel <sup>1</sup>	0.1	0.05	Nitrate <sup>1</sup>	10	1.0
PAHs: Total Naphthalene plus monomethyl-naphthalenes <sup>1</sup>	0.03	0.01	Phenols	0.005(a)	0.003
Polychlorinated biphenyls (PCB's) <sup>1</sup>	0.001	0.0005	Potassium		
Radioactivity: Combined Radium-226 and Radium 228 <sup>1</sup>	5.0pCi/l	2.5pCi/l	Selenium <sup>1</sup>	0.01	0.005
Silver <sup>1</sup>	0.05	0.01	Sodium		
Sulfate	250(a)	5.0	Toluene <sup>1</sup>	0.75	0.005

Total Dissolved Solids	500(a)	5.0	Total Xylenes <sup>1</sup>	0.62	0.005
1,1,2,2-Tetrachloro-ethane <sup>1</sup>	0.01	0.005	Tetrachloroethylene <sup>1</sup>	0.005	0.0005
1,1,1-Trichloroethane <sup>1</sup>	0.06	0.005	Aluminum	5.0(i)	3.0
1,1,2-Trichloroethane <sup>1</sup>	0.005	0.002	Trichloroethylene <sup>1</sup>	0.005	0.001
Uranium <sup>1</sup>	5.0	2.5	Vinyl Chloride <sup>1</sup>	0.001	0.0004
Zinc	5.0(a)	0.05	pH (Units)	6.5-8.5(a)	0.1
Ammonia			Total Nitrogen <sup>1</sup>	10	1.0
Specific Conductance			Total Organic Carbon		
Temperature			Water Elevation		
Antimony <sup>1</sup>	0.006	0.003	Beryllium <sup>1</sup>	0.004	0.002
Thallium <sup>1</sup>	0.002	0.001	Vanadium <sup>1</sup>		0.08
Acetone <sup>1</sup>		0.1	Acrylonitrile <sup>1</sup>		0.2
Bromochloromethane <sup>1</sup>		0.002	Bromodichloromethane <sup>1</sup>		0.005
Bromoform <sup>1</sup>		0.015	Carbon disulfide <sup>1</sup>		0.1
Chlorobenzene <sup>1</sup>	0.1	0.005	Chloroethane <sup>1</sup>		0.01
Dibromochloromethane <sup>1</sup>		0.005	1,2-Dibromo-3-chloropropane <sup>1</sup>	0.0002	0.0001
1,2-Dichloropropane <sup>1</sup>	0.005	0.0005	cis-1,3-Dichloropropene <sup>1</sup>		0.02
2-Hexanone <sup>1</sup>		0.05	Methyl bromide <sup>1</sup>		0.02
Methyl chloride <sup>1</sup>		0.001	Methylene bromide <sup>1</sup>		0.02
1,1,1,2-Tetrachloroethane <sup>1</sup>		0.005	Trichlorofluoromethane <sup>1</sup>		0.01
1,2,3-Trichloropropane <sup>1</sup>		0.01	Vinyl acetate <sup>1</sup>		0.05
o-Dichlorobenzene <sup>1</sup>	0.06	0.01	p-Dichlorobenzene <sup>1</sup>	0.075	0.015
trans-1,4-Dichloro-2-butene <sup>1</sup>	0.1	HCO <sub>3</sub>			
CO <sub>3</sub>					
Calcium			Total Kjeldahl Nitrogen		0.01
			trans-1,3-Dichloropropene <sup>1</sup>		

<sup>1</sup> Constituent is considered to be hazardous.

<sup>2</sup> Ground Water Protection Standard subject to change under the New Mexico Water Quality Control Commission Regulations or the federal Safe Drinking Water Act (see Section 806.H.1 [Subparagraph (1), Paragraph (8), Subsection F of 20.9.1.800 NMAC]).

<sup>3</sup> Practical Quantitation Limits (PQL) are the lowest concentration of analytes in ground waters that can be reliably determined within specified limits of precision and accuracy under routine laboratory operating conditions.

All standards are health based except for those followed by (a) aesthetic standard or (i) irrigation standard. For those parameters without a specific standard, background standards shall be established.

Common Name	PQL (mg/l)	Common Name	PQL (mg/l)
Acenaphthene	0.01	Acenaphthylene	0.01
Acetone	0.10	Acetonitrile	0.10
Acetophenone	0.01	2-Acetylaminofluorene	0.02
Acrolein	0.10	Acrylonitrile	0.20
Aldrin	0.01	Allyl chloride	0.01
		Anthracene	0.01
4-Aminobiphenyl	0.02	Antimony	0.30
Arsenic	0.01	Barium	0.02
Benzene	0.001	Benzo[a]anthracene	0.01
Benzo[b]fluoranthene	0.02	Benzo[k]fluoranthene	0.02
Benzo[ghi]perylene	0.01	Benzo[a]pyrene	0.01
Benzyl alcohol	0.01	Beryllium	0.002

alpha-BHC	0.0001	beta-BHC	0.0001
delta-BHC	0.0001	gamma-BHC	0.0001
Bis(2-chloroethoxy)methane	0.01	Bis(2-chloroethyl) ether	0.01
Bis(2-chloro-1-methylethyl) ether	0.01	Bis(2-ethylhexyl) phthalate	0.02
Bromochloromethane	0.002	Bromodichloromethane	0.005
Bromoform	0.015	4-Bromophenyl phenyl ether	0.01
Butyl benzyl phthalate	0.01	Cadmium	0.002
Carbon disulfide	0.10	Carbon tetrachloride	0.002
Chlordane	0.005	p-Chloroaniline	0.02
Chlorobenzene	0.005	Chlorobenzilate	0.01
p-Chloro-m-cresol	0.005	Chloroethane	0.01
Chloroform	0.005	2-Chloronaphthalene	0.01
2-Chlorophenol	0.01	4-Chlorophenyl phenyl ether	0.01
Chloroprene	0.05	Chromium	0.01
Chrysene	0.01	Cobalt <sup>2</sup>	0.03
Copper <sup>2</sup>	0.06	m-Cresol	0.01
o-Cresol	0.01	p-Cresol	0.01
Cyanide	0.1	2,4-D	0.01
4,4'-DDD	0.001	4,4'-DDE	0.001
4,4'-DDT	0.001	Diallate	0.01
Dibenz[a,h]anthracene	0.01	Dibenzofuran	0.01
Dibromochloromethane	0.005	1,2-Dibromo-3-chloropropane	0.0001
o-Dichlorobenzene	0.01	Di-n-butyl phthalate	0.01
p-Dichlorobenzene	0.015	m-Dichlorobenzene	0.01
trans-1,4-Dichloro-2-butene	0.1	3,3'-Dichlorobenzidine	0.01
1,1-Dichloroethane	0.005	Dichlorodifluoromethane	0.005
1,1-Dichloroethylene	0.001	1,2-Dichloroethane	0.001
trans-1,2-Dichloroethylene	0.005	cis-1,2-Dichloro ethylene	0.005
2,6-Dichlorophenol	0.01	2,4-Dichlorophenol	0.01
1,3-Dichloropropane	0.005	1,2-Dichloropropane	0.0005
Dichloropropene	0.005	2,2-Dichloropropane	0.0151, 1-
trans-1,3-Dichloropropene	0.01	cis-1,3-Dichloropropene	0.02
Diethyl phthalate	0.01	Dieldrin	0.001
Dimethoate	0.02	O,O-Diethyl O-2- pyrazinyl phosphorothioate	0.02
7,12-Dimethylbenz[a]anthracene	0.01	p-(Dimethylamino) azobenzene	0.01
2,4-Dimethylphenol	0.01	3,3'-Dimethylbenzidine	0.01
m-Dinitrobenzene	0.02	Dimethyl phthalate	0.01
2,4-Dinitrophenol	0.05	4,6-Dinitro-o-cresol	0.05
2,6-Dinitrotoluene	0.01	2,4-Dinitrotoluene	0.01
Di-n-octyl phthalate	0.01	Dinoseb	0.02
Disulfoton	0.01	Diphenylamine	0.01
Endosulfan II	0.001	Endosulfan I	0.001
Endrin	0.001	Endosulfan sulfate	0.001
Ethylbenzene	0.005	Endrin aldehyde	0.001
Ethyl methanesulfonate	0.02	Ethylene dibromide	0.000025
Fluoranthene	0.01	Ethyl methacrylate	0.01
Heptachlor	0.001	Famphur	0.02
Hexachlorobenzene	0.001	Fluorene	0.01
Hexachlorocyclopentadiene	0.01	Heptachlor epoxide	0.001
Hexachloropropene	0.01	Hexachlorbutadiene	0.01
Indeno(1,2,3-cd)pyrene	0.01	Hexachloroethane	0.01
Isodrin	0.02	2-Hexanone	0.05
		Isobutyl alcohol	0.05
		Isophorone	0.01

Isosafrole	0.01	Kepone	0.02
Lead	0.01	Mercury	0.001
Methacrylonitrile	0.005	Methapyrilene	0.10
Methoxychlor	0.01	Methyl bromide	0.02
Methyl chloride	0.001	3-Methylcholanthrene	0.01
Methyl ethyl ketone	0.01	Methyl iodide	0.04
Methyl methacrylate	0.03	Methyl methanesulfonate	0.01
2-Methylnaphthalene	0.01	Methyl parathion	0.01
4-Methyl-2-pentanone	0.015	Methylene bromide	0.02
Methylene chloride	0.001	Naphthalene	0.01
1,4-Naphthoquinone	0.01	1-Naphthylamine	0.01
2-Naphthylamine	0.01	Nickel	0.05
o-Nitroaniline	0.01	m-Nitroaniline	0.05
p-Nitroaniline	0.02	Nitrobenzene	0.01
o-Nitrophenol	0.01	p-Nitrophenol	0.05
N-Nitrosodi-n-butylamine	0.01	N-Nitrosodiethylamine	0.02
N-Nitrosodimethylamine	0.002	N-Nitrosodiphenylamine	0.005
N-Nitrosodipropylamine	0.01	N-Nitrosomethylethylamine	0.01
N-Nitrosopiperidine	0.02	N-Nitrosopyrrolidine	0.04
5-Nitro-o-toluidine	0.01	Parathion	0.01
Pentachlorobenzene	0.01	Pentachloronitrobenzene	0.02
Pentachlorophenol	0.05	Phenacetin	0.02
Phenanthrene	0.01	Phenol	0.001
p-Phenylenediamine	0.01	Phorate	0.01
Polychlorinated biphenyls	0.0005	Pronamide	0.01
Propionitrile	0.06	Pyrene	0.01
Safrole	0.01	Selenium	0.02
Silver	0.01	Silvex	0.002
Styrene	0.01	Sulfide	4.00
2,4,5-T	0.002	1,2,4,5-Tetrachlorobenzene	0.01
1,1,1,2-Tetrachloroethane	0.005	1,1,2,2-Tetrachlorethane	0.005
Tetrachloroethylene	0.0005	2,3,4,6-Tetrachlorophenol	0.01
Thallium	0.001	Tin	0.40
Toluene	0.005	o-Toluidine	0.01
Toxaphene	0.001	1,2,4-Trichlorobenzene	0.01
1,1,1-Trichloroethane	0.005	1,1,2-Trichloroethane	0.002
Trichloroethylene	0.001	Trichlorofluoromethane	0.01
2,4,5-Trichlorophenol	0.01	2,4,6-Trichlorophenol	0.01
1,2,3-Trichloropropane	0.01	O,O,O-Triethylphosphor thiolate	0.01
sym-Trinitrobenzene	0.01	Vanadium	0.08
Vinyl acetate	0.05	Vinyl chloride	0.0004
Xylene (Total)	0.005	Zinc <sup>2</sup>	0.05

<sup>1</sup> All constituents in Table II are considered hazardous.

<sup>2</sup> May follow aesthetic or irrigation standards.

B. Soil, Water and Special Waste Testing Parameters:

(1) The following are soils testing procedures acceptable to the Department:

- (a) constant head by method ASTM D2434.
- (b) falling head method as described in Appendix VII of the Corps of Engineers Manual

EM1110-2-1906, November 30, 1970, Laboratory Soils Testing;

(c) sieve analysis and hydrometer analysis: #4, #10, #40, #200, -200, and hydrometer analysis on -200 fraction by method ASTM D422.

(d) Atterberg limits by methods ASTM D423 and D424.

(e) moisture density relations by method ASTM D698.

(f) moisture content by method ASTM D2216.

(g) consolidation test.

- (2) The following water testing procedures are acceptable to the Department:
- (a) "Standard Methods for the Examination of Water and Wastewater", latest edition, American Public Health Association.
  - (b) "Methods for Chemical Analysis of Water and Waste" and other publications of the Analytical Quality Laboratory, EPA.
  - (c) "Techniques of Water Resource Investigation" of the U.S. Geological Survey.
  - (d) "Annual Book of ASTM Standards, Part 31, Water", latest edition, American Society For Testing and Materials.
  - (e) "National Handbook of Recommended Methods for Water-Data Acquisition", latest edition, prepared cooperatively by agencies of the United States Government under the sponsorship of the U.S. Geological Survey.
  - (f) for radioactivity the methods specified in "Interim Radiochemical Methodology for Drinking Water", Environmental Monitoring and Support Laboratory, EPA-600/4-75-008, U.S. EPA, Cincinnati, Ohio 45268 or "Prescribed Procedures for Measurement of Radioactivity in Drinking Water" EPA-600/4-80-032.
  - (g) for uranium: ASTM D-2907 "Microquantities of Uranium in Water by Fluorometry."
  - (h) specific conductance by U.S. EPA test method 9050.
  - (i) EPA Report SW-846, "Test Methods for Evaluating Solid Waste", third edition, November 1986, as revised, December 1987.
- (3) The following test methods for special waste are acceptable to the Department:
- (a) ignitability by U.S. EPA test method 1010, Pensky-Martens Closed-Cup Method for Determining Ignitability, or test method 1020, Setaflash Closed-Cup Method for Determining Ignitability.
  - (b) corrosivity by U.S. EPA test method 1110, Corrosivity Toward Steel.
  - (c) toxicity by U.S. EPA test method 1311, Toxicity Characteristic Leaching Procedure (TCLP).
  - (d) Halogenated Volatile Organics by gas chromatography, U.S. EPA test method 8010.
  - (e) Aromatic Volatile Organics by gas chromatography, U.S. EPA test method 8020.
  - (f) Volatile Organic Compounds by gas chromatography/mass spectrometry (GC/MS): Packed Column Technique, EPA test method 8240.
  - (g) TPH determined by EPA test method 418.1, infra-red detection method.
  - (h) liquids test by U.S. EPA test method 9095, Paint Filter Liquids Test.
  - (i) EPA Report SW-846, "Test Methods for Evaluating Solid Waste", third edition, November 1986, as revised, December 1987.

C. Trust Agreement:

- (1) New Mexico governmental entity as beneficiary:

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of \_\_\_\_" or "a national bank"], the "Trustee."

Whereas, the New Mexico Environmental Improvement Board, "EIB", has established certain regulations applicable to the Grantor, requiring that an owner or operator of a solid waste management facility shall provide assurance that funds will be available when needed for certain activities as required in a permit issued pursuant to the Solid Waste Management Regulations.

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions.

As used in this Agreement:

- (a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities and Cost Estimates.

This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the New Mexico Solid Waste Facility Permit number, name, address, and the current cost estimates for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of [insert name of Municipality] (\_\_\_\_). The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the New Mexico Environment Department (NMED).

#### Section 4. Payments Pursuant to the Solid Waste Management Regulations.

The Trustee shall make payments from the Fund as the NMED Secretary shall direct, in writing, to provide for the payment of the costs pursuant to Solid Waste Management Regulations of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the NMED Secretary from the Fund for the costs in such amounts as the NMED Secretary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the NMED Secretary specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

#### Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee as described in Schedule B attached hereto.

#### Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

#### Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

#### Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see the application of the purchase money or to inquire into the validity or expediency of any such sale or disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to

deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

#### Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

#### Section 10. Annual Valuation.

The Trustee shall annually, at least 30 days prior to the anniversary date of the establishment of the Fund, furnish to the Grantor and to the NMED Secretary a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the NMED Secretary shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

#### Section 11. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

#### Section 12. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

#### Section 13. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor trustee accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and property then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the NMED Secretary, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

#### Section 14. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the NMED Secretary to the Trustee shall be in writing, signed by the NMED Secretary, or designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or NMED hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or NMED, except as provided for herein.

#### Section 15. Notice of Nonpayment.

The Trustee shall notify the Grantor and the NMED Secretary by certified mail within 10 days following the expiration of the 30-day period after the anniversary date of the Trust, if no payment is received from the Grantor during that period according to Schedule B attached hereto. After the payin period is completed, the Trustee shall not be required to send a notice of nonpayment.

#### Section 16. Amendment of Agreement.



This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the NMED Secretary, or by the Trustee and the NMED Secretary if the Grantor ceases to exist.

Section 17. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the NMED Secretary, or by the Trustee and the NMED Secretary, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the NMED Secretary issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the State of New Mexico.

Section 20. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in the Solid Waste Management Regulations as such regulations were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

State of \_\_\_\_\_

County of \_\_\_\_\_

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

(2) Department as beneficiary.

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of \_\_\_\_" or "a national bank"], the "Trustee."

Whereas, the New Mexico Environmental Improvement Board, "EIB", has established certain regulations applicable to the Grantor, requiring that an owner or operator of a solid waste management facility shall provide assurance that funds will be available when needed for certain activities as required in a permit issued pursuant to the Solid Waste Management Regulations.

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions.

As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

#### Section 2. Identification of Facilities and Cost Estimates.

This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the New Mexico Solid Waste Facility Permit number, name, address, and the current cost estimates for which financial assurance is demonstrated by this Agreement].

#### Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the State of New Mexico, C/O Secretary, New Mexico Environment Department (NMED). The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by NMED.

#### Section 4. Payments Pursuant to the Solid Waste Management Regulations.

The Trustee shall make payments from the Fund as the NMED Secretary shall direct, in writing, to provide for the payment of the costs pursuant to Solid Waste Management Regulations of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the NMED Secretary from the Fund for the costs in such amounts as the NMED Secretary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the NMED Secretary specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

#### Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee as described in Schedule B attached hereto.

#### Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

#### Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment comp any registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

#### Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see the application of the purchase money or to inquire into the validity or expediency of any such sale or disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

#### Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

#### Section 10. Annual Valuation.

The Trustee shall annually, at least 30 days prior to the anniversary date of the establishment of the Fund, furnish to the Grantor and to the NMED Secretary a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the NMED Secretary shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

#### Section 11. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

#### Section 12. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

#### Section 13. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor trustee accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and property then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the NMED Secretary, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

#### Section 14. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the NMED Secretary to the Trustee shall be in writing, signed by the NMED Secretary, or designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to

assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or NMED hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or NMED, except as provided for herein.

Section 15. Notice of Nonpayment.

The Trustee shall notify the Grantor and the NMED Secretary by certified mail within 10 days following the expiration of the 30-day period after the anniversary date of the Trust, if no payment is received from the Grantor during that period according to Schedule B attached hereto. After the payin period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the NMED Secretary, or by the Trustee and the NMED Secretary if the Grantor ceases to exist.

Section 17. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the NMED Secretary, or by the Trustee and the NMED Secretary, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the NMED Secretary issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the State of New Mexico.

Section 20. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in the Solid Waste Management Regulations as such regulations were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

State of \_\_\_\_\_

County of \_\_\_\_\_

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

D. Performance Bond:

- (1) New Mexico governmental entity as beneficiary.

Date Bond executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: [legal name and business address of owner or operator]  
Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]  
State of incorporation: \_\_\_\_\_  
Surety(ies): [name(s) and business address(es)]

\_\_\_\_\_  
New Mexico Solid Waste Facility Permit Number, name, address, and amounts pursuant to the Solid Waste Management Regulations for each facility guaranteed by this bond [indicate costs pursuant to the Solid Waste Management Regulations separately ]: \_\_\_\_\_

Total penal sum of bond: \$ \_\_\_\_\_  
Surety's bond number: \_\_\_\_\_

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to [insert name of Municipality] (hereinafter called \_\_\_\_), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Solid Waste Act, to have a permit in order to own or operate each solid waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for certain costs pursuant to the Solid Waste Management Regulations and as a condition of the permit, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform the activities for which financial assurance is given pursuant to the Solid Waste Management Regulations, whenever required to do so, of each facility for which this bond guarantees those activities, in accordance with the closure/post closure/contingency plan(s) and other requirements of the permit as such plan(s) and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance as specified in the Solid Waste Management Regulations, and obtain the New Mexico Environment Department (NMED) Secretary's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the NMED Secretary from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the NMED Secretary that the Principal has been found in violation of the requirements of the Solid Waste Management Regulations, for a facility for which this bond guarantees performance, the Surety(ies) shall either perform in accordance with the closure/post closure/contingency plan(s) and other permit requirements or place the amount(s) guaranteed for the facility into the standby trust fund as directed by the NMED Secretary.

Upon notification by the NMED Secretary that the Principal has failed to provide alternate financial assurance as specified in the Solid Waste Management Regulations, and obtain written approval of such assurance from the NMED Secretary during the 90 days following receipt by both the Principal and the NMED Secretary of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount(s) guaranteed for the facility(ies) into the standby trust fund as directed by the NMED Secretary.

The Surety(ies) hereby waive(s) notification of amendments to closure/post closure/contingency plan(s), permit, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the NMED Secretary, provided, however, that cancellation shall not occur during the 120 days

beginning on the date of receipt of the notice of cancellation by both the Principal and the NMED Secretary, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the NMED Secretary.

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new amount(s) for the activities required in the permit and pursuant to the Solid Waste Management Regulations, provided that no decrease in the penal sum takes place without the written permission of the NMED Secretary.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in the Solid Waste Management Regulations \_\_\_\_\_ as such regulation was constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address]

State of incorporation: \_\_\_\_\_

Liability limit: \$ \_\_\_\_\_

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

Bond premium: \$ \_\_\_\_\_

(2) Department as beneficiary:

Date Bond executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: \_\_\_\_\_

Surety(ies): [name(s) and business address(es)]

\_\_\_\_\_  
New Mexico Solid Waste Facility Permit Number, name, address, and amounts pursuant to the Solid Waste Management Regulations for each facility guaranteed by this bond [indicate costs pursuant to the Solid Waste Management Regulations separately ]: \_\_\_\_\_

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the State of New Mexico, C/O Secretary, New Mexico Environment Department (hereinafter called NMED), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Solid Waste Act, to have a permit in order to own or operate each solid waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for certain costs pursuant to the Solid Waste Management Regulations and as a condition of the permit, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform the activities for which financial assurance is given pursuant to the Solid Waste Management Regulations, whenever required to do so, of each facility for which this bond guarantees those activities, in accordance with the closure/post closure/contingency plan(s) and other requirements of the permit as such plan(s) and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance as specified in the Solid Waste Management Regulations, and obtain the NMED Secretary's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the NMED Secretary from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the NMED Secretary that the Principal has been found in violation of the requirements of the Solid Waste Management Regulations, for a facility for which this bond guarantees performance, the Surety(ies) shall either perform in accordance with the closure/post closure/contingency plan(s) and other permit requirements or place the amount(s) guaranteed for the facility into the standby trust fund as directed by the NMED Secretary.

Upon notification by the NMED Secretary that the Principal has failed to provide alternate financial assurance as specified in the Solid Waste Management Regulations, and obtain written approval of such assurance from the NMED Secretary during the 90 days following receipt by both the Principal and the NMED Secretary of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount(s) guaranteed for the facility(ies) into the standby trust fund as directed by the NMED Secretary.

The Surety(ies) hereby waive(s) notification of amendments to closure/post closure/contingency plan(s), permit, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the NMED Secretary, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the NMED Secretary, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the NMED Secretary.

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new amount(s) for the activities required in the permit and pursuant to the Solid Waste Management Regulations, provided that no decrease in the penal sum takes place without the written permission of the NMED Secretary.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in the Solid Waste Management Regulations \_\_\_\_\_ as such regulation was constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address]

State of incorporation: \_\_\_\_\_

Liability limit: \$ \_\_\_\_\_

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

Bond premium: \$ \_\_\_\_\_

E. Standby Trust Agreement:

(1) New Mexico governmental entity as beneficiary:

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of \_\_\_\_" or "a national bank"], the "Trustee."

Whereas, the New Mexico Environmental Improvement Board, "EIB", has established certain regulations applicable to the Grantor, requiring that an owner or operator of a solid waste management facility shall provide assurance that funds will be available when needed for certain activities as required in a permit issued pursuant to the Solid Waste Management Regulations.

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions.

As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities and Cost Estimates.

This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the New Mexico Solid Waste Facility Permit number, name, address, and the current cost estimates for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of [insert name of Municipality] (\_\_\_\_). The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the New Mexico Environment Department (NMED).

Section 4. Payments Pursuant to the Solid Waste Management Regulations.

The Trustee shall make payments from the Fund as the NMED Secretary shall direct, in writing, to provide for the payment of the costs pursuant to Solid Waste Management Regulations of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the NMED Secretary from the Fund for the costs in such amounts as the NMED Secretary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the NMED Secretary specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee as described in Schedule B attached hereto.

Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;



(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

#### Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

#### Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see the application of the purchase money or to inquire into the validity or expediency of any such sale or disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

#### Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

#### Section 10. Annual Valuation.

The Trustee shall annually, at least 30 days prior to the anniversary date of the establishment of the Fund, furnish to the Grantor and to the NMED Secretary a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the NMED Secretary shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

#### Section 11. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

#### Section 12. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

#### Section 13. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor trustee accepts the

appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and property then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the NMED Secretary, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the NMED Secretary to the Trustee shall be in writing, signed by the NMED Secretary, or designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or NMED hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or NMED, except as provided for herein.

Section 15. Notice of Nonpayment.

The Trustee shall notify the Grantor and the NMED Secretary by certified mail within 10 days following the expiration of the 30-day period after the anniversary date of the Trust, if no payment is received from the Grantor during that period according to Schedule B attached hereto. After the payin period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the NMED Secretary, or by the Trustee and the NMED Secretary if the Grantor ceases to exist.

Section 17. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the NMED Secretary, or by the Trustee and the NMED Secretary, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the NMED Secretary issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the State of New Mexico.

Section 20. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in the Solid Waste Management Regulations as such regulations were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

State of \_\_\_\_\_

County of \_\_\_\_\_

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

(2) Department as beneficiary:

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of \_\_\_\_" or "a national bank"], the "Trustee."

Whereas, the New Mexico Environmental Improvement Board, "EIB", has established certain regulations applicable to the Grantor, requiring that an owner or operator of a solid waste management facility shall provide assurance that funds will be available when needed for certain activities as required in a permit issued pursuant to the Solid Waste Management Regulations.

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions.

As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities and Cost Estimates.

This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the New Mexico Solid Waste Facility Permit number, name, address, and the current cost estimates for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the State of New Mexico, C/O Secretary, New Mexico Environment Department (NMED). The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by NMED.

Section 4. Payments Pursuant to the Solid Waste Management Regulations.

The Trustee shall make payments from the Fund as the NMED Secretary shall direct, in writing, to provide for the payment of the costs pursuant to Solid Waste Management Regulations of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the NMED Secretary from the Fund for the costs in such amounts as the NMED Secretary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the NMED Secretary specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee as described in Schedule B attached hereto.

Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and

guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

#### Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

#### Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see the application of the purchase money or to inquire into the validity or expediency of any such sale or disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

#### Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

#### Section 10. Annual Valuation.

The Trustee shall annually, at least 30 days prior to the anniversary date of the establishment of the Fund, furnish to the Grantor and to the NMED Secretary a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the NMED Secretary shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

#### Section 11. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advise of counsel.

Section 12. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor trustee accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and property then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the NMED Secretary, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the NMED Secretary to the Trustee shall be in writing, signed by the NMED Secretary, or designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or NMED hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or NMED, except as provided for herein.

Section 15. Notice of Nonpayment.

The Trustee shall notify the Grantor and the NMED Secretary by certified mail within 10 days following the expiration of the 30-day period after the anniversary date of the Trust, if no payment is received from the Grantor during that period according to Schedule B attached hereto. After the payin period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the NMED Secretary, or by the Trustee and the NMED Secretary if the Grantor ceases to exist.

Section 17. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the NMED Secretary, or by the Trustee and the NMED Secretary, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the NMED Secretary issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the State of New Mexico.

Section 20. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in the Solid Waste Management Regulations as such regulations were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

State of \_\_\_\_\_

County of \_\_\_\_\_

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

F. Local Government Reserve Resolution:

(Council/Commission) Bill No.:

SPONSORED BY:

RESOLUTION

ESTABLISHING A RESTRICTED CASH ACCOUNT AND RELATED LIABILITY ACCOUNT IN THE (insert name of the fund) FUND TO PROVIDE FUNDS FOR FUTURE (CLOSURE, POST-CLOSURE, PHASE I AND PHASE II, AND/OR CORRECTIVE ACTION) COSTS AT THE (insert name of governmental entity) FACILITY KNOWN AS (insert name of facility).

WHEREAS, the (insert name of governmental entity) is (opening, operating, closing) a solid waste management facility known as (insert name of facility); and

WHEREAS, the post-closure care period of the (name of facility) is expected to be at least (insert number of years) years; and,

WHEREAS, the (insert name of the facility) facility is being designed and constructed to meet or exceed the Solid Waste Management Regulations of the State of New Mexico; and

WHEREAS, the Solid Waste Management Regulations require the owner or operator shall establish financial assurance for adequate (closure, post-closure care, Phase I and Phase II assessment, and/or corrective action) for the facility; and,

WHEREAS, the cost for (closure, post-closure, Phase I and Phase II assessment, and/or corrective action) is estimated to be (insert dollar amount numeric and written) based on a cost summary provided by the landfill design engineers; and,

WHEREAS, the annual amount to be transferred in FY (insert fiscal year) is (insert dollar amount, numeric and written).

BE IT RESOLVED BY THE COUNCIL/COMMISSION, THE GOVERNING BODY OF (insert name of governing body);

Section 1. That the (Name of the Governing Body) establish a restricted cash account and related liability account in the (insert name of the fund) to be used solely to fund future (closure, post-closure, Phase I and Phase II, and/or corrective action) expenditures for (the name of the facility) facility.

Section 2. That each year the (managing department/entity of the facility) shall include as part of its annual budget submittal, an amount to be appropriate for transfer into the restricted cash account with a related liability account for the unspent appropriation. Each year the transfer will be reviewed and adjusted to reflect any increases or decreases in the original cost estimate of (insert dollar amount). This will build a fund sufficient to assure (closure, post-closure, Phase I and Phase II assessment, and/or corrective action) costs for the (insert name of the facility) facility by (insert year).

Section 3. That withdrawals from the restricted cash account shall only be for the purposes of (closure, post-closure, Phase I and Phase II assessment, and/or corrective action) as defined in the Solid Waste Management Regulations of the State of New Mexico for the (insert name of the facility) facility.

Section 4. That withdrawals from the restricted cash account shall only be authorized by the (City Council/County Commission) and the Secretary of the New Mexico Environment Department upon submission of adequate proof of work performed for (closure, post-closure, Phase I and Phase II assessment, and/or corrective action) as defined in the Solid Waste Management Regulations of the State of New Mexico.

G. Certificate of Insurance for Closure, Postclosure Care and/or Phase I and Phase II Assessment:

Name and Address of Insurer  
(herein called the "Insurer"): \_\_\_\_\_

Name and Address of Insured  
(herein called the "Insured"): \_\_\_\_\_

Facilities Covered: [List for each facility: The New Mexico Environment Department Identification Number, name, address, and the amount of insurance for closure, the amount of insurance for post-closure care, the amount of insurance for Phase I and Phase II assessment (these amounts for all facilities covered must total the face amount shown below.)]

Face Amount: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Effective Date: \_\_\_\_\_

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert as applicable "closure", "post-closure care", and/or "Phase I and Phase II assessment"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of the New Mexico Solid Waste Management Regulations, EIB/SWMR-4, Section 906.D [Paragraph (4), Subsection F of 20.9.1.900 NMAC], as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Secretary, New Mexico Environment Department, the Insurer agrees to furnish the Secretary a duplicate original of the Policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in New Mexico Solid Waste Management Regulations, EIB/SWMR-4, as such regulations were constituted on the date shown immediately below.

[Authorized signature of Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: \_\_\_\_\_

[Date]

H. Irrevocable Standby Letter of Credit:

(1) New Mexico governmental entity as payee:

(Addressee)

(Name of Local Government Entity)

Dear Sir or Madam:

We hereby establish our Irrevocable Standby letter of Credit No. \_\_\_\_\_ in your favor, at the request and for the account of [owners or operator's name and address] up to the aggregate amount of [in words] U.S. dollars \$ \_\_\_\_\_, available upon presentation of

(1) a sight draft from the New Mexico Environment Department, bearing reference to this letter of credit No. \_\_\_\_\_, and

(2) a signed statement from the Secretary of the New Mexico Environment Department reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Solid Waste Act as amended."

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] of [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you're so notified, any unused portion of the credit shall be available upon presentation

of the above mentioned sight draft and statement of certification for 120 days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us. and we shall deposit the amount of the draft directly into the [trust fund or standby trust fund] of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording of this letter in Solid Waste Management Regulations, EIB/SWMR-4, as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution] [Date]

This credit is subject to the Uniform Commercial Code.

(2) Department as payee:

Secretary

New Mexico Environment Department

Dear Sir or Madam:

We hereby establish our Irrevocable Standby letter of Credit No.\_\_\_\_ in your favor, at the request and for the account of [owners or operator's name and address] up to the aggregate amount of [in words] U.S. dollars \$\_\_\_\_\_, available upon presentation of

(1) a sight draft from the New Mexico Environment Department, bearing reference to this letter of credit No. \_\_\_\_\_, and

(2) a signed statement from the Secretary of the New Mexico Environment Department reading as follows:

"I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Solid Waste Act as amended."

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] of [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you're so notified, any unused portion of the credit shall be available upon presentation of the above mentioned sight draft and statement of certification for 120 days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us. and we shall deposit the amount of the draft directly into the [trust fund or standby trust fund] of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording of this letter in Solid Waste Management Regulations, EIB/SWMR-4, as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution] [Date]

This credit is subject to the Uniform Commercial Code.

I. Fees:

Facility	Any size	<20 ton/day	20 <100 ton/day	>100 ton/day
Municipal, industrial & special waste landfill	NA	\$6000	\$8,000	\$10,000
Construction/Demolition landfills	\$3,000			
Transformation	\$10,000			
Processing	\$5,000			
Transfer	\$3,000			
Land application of sludge <sup>1</sup>	\$10,000			
Recycling <sup>1</sup>	\$2,000			
Composting <sup>1</sup>	\$2,000			

<sup>1</sup> Applies to facilities defined as solid waste facilities in Section 105 [20.9.1.7 NMAC].

J. Minimum Test Parameters for Landfill Disposal of Municipal Wastewater Sludge: Parameters:

- (1) No free liquids as determined by Paint Filter Liquids Test (U.S. EPA Test Method 9095).
- (2) Percent solids.
- (3) pH: 2.0 - 12.5 (acceptable range).
- (4) PCB's: No Detectable Concentration.
- (5) TCLP (U.S. EPA Test Method 1311)



Parameters	Maximum Allowable Concentration (mg/L)
Arsenic	5.0
Benzene	0.5
Cadmium	1.0
Chlordane	0.03
Chromium	5.0
2,4-Dichlorophenoxy -acetic acid	10.0
Lead	5.0
Lindane	0.4
Mercury	0.2
Methyl ethyl ketone	200.0
Toxaphene	0.5

K. Liner Equivalency Demonstration Parameters:

Parameter	Maximum Allowable Concentration (mg/L) at the Point of Compliance for liner equivalency demonstration purposes only
Arsenic	0.05
Barium	1.0
Benzene	0.005
Cadmium	0.01
Carbon tetrachlorid	0.005
Chromium (hexavalent)	0.05
2,4-Dichlorophenoxy acetic acid	0.1
1,4-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
Endrin	0.0002
Fluoride	4.0
Lindane	0.004
Lead	0.05
Mercury	0.002
Methoxychlor	0.1
Nitrate	10.0
Selenium	0.01
Silver	0.05
Toxaphene	0.005
1,1,1-Trichloroethane	0.2
Trichloroethylene	0.005
2,4,5-Trichlorophenoxy acetic acid	0.01
Vinyl Chloride	0.002

[1/30/92, 8/17/94, 11/30/95; 20.9.1.1100 NMAC - Rn, 20 NMAC 9.1.XI.1100-1110, Recompiled 11/27/01]

20.9.1.1101 to 20.9.1.1199 [RESERVED]

HISTORY OF 20.9.1 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

EIB 74-1, Solid Waste Management Regulations, 5/31/74.

EIB/SWMR-2, Solid Waste Management Regulations, 4/14/89.

EIB/SWMR-3, Solid Waste Management Regulations, 12/31/91.

History of Repealed Material: [RESERVED]