



SUSANA MARTINEZ
Governor
JOHN A. SANCHEZ
Lieutenant Governor

**NEW MEXICO
ENVIRONMENT DEPARTMENT**

Harold Runnels Building
1190 Saint Francis Drive (87505)
PO Box 5469, Santa Fe, NM 87502-5469
Phone (505) 827-2990 Fax (505) 827-1628
www.nmenv.state.nm.us



RYAN FLYNN
Cabinet Secretary
BUTCH TONGATE
Deputy Secretary

OFFICE OF GENERAL COUNSEL

ATTORNEY GENERAL'S CERTIFICATION STATEMENT

I, John Verheul, am the Special Assistant Attorney General designated by the New Mexico Attorney General to represent the State of New Mexico for the purpose of certifying to the United States Environmental Protection Agency ("EPA") that the New Mexico Environment Department ("NMED") has the legal authority to accept and require electronic submittals in lieu of paper. See enclosed letter from Hector H. Balderas, Attorney General of the State of New Mexico.

I have reviewed the NMED's application and supporting documentation to the EPA for the approval of electronic reporting, and I hereby certify:

- (1) that the NMED has sufficient legal authority provided by lawfully enacted or promulgated statutes and/or regulations to implement the electronic reporting component of its authorized programs consistent with 40 CFR § 3.2000 and with this application;
- (2) that such statutes or regulations are or will be in full force and effect on the date of this certification; and
- (3) that the NMED has authority to enforce the affected programs using electronic documents collected under these programs.

To assist EPA's review of this application, I have included a description prepared by the NMED which specifically links applicable provisions of 40 C.F.R. Part 3 with relevant portions of the New Mexico statutes and NMED regulations. The description shows NMED's authority to implement electronic reporting. I have also included with this certification descriptions and copies of all State statutes and regulations relevant to this application. These statutes and regulations demonstrate the NMED's authority to enforce the affected authorized programs using electronic documents.



John Verheul
Special Assistant Attorney General of the State of New Mexico
August 5, 2015

I. NMED LEGAL AUTHORITY TO IMPLEMENT ELECTRONIC REPORTING IN CONFORMANCE WITH 40 CFR § 3.2000

FEDERAL RULE	RELEVANT STATE STATUTE OR RULE
40 CFR 3.2000(a)(2) – “valid electronic signature” is required if a person would have been required to sign the paper document	NMSA 1978, Section 14-6-5 (2001) 20.2.1.117 NMAC
40 CFR 3.2000 (a)(2) – verify that the method used to create electronic signatures satisfies the definition of “valid electronic signature” in 40 CFR 3.3	NMSA 1978, Section 14-6-2 (2001) 20.2.1.117 NMAC
40 CFR 3.2000(b)(5)(iv) – verify that each signatory will have the opportunity, at the time of signing, to review the content or meaning of the required certification statement, including any applicable provisions that false certification carries criminal penalties	NMSA 1978, Section 14-6-9 (2001) 20.2.1.117 NMAC
40 CFR 3.2000(b)(5)(vii) – verify that for each electronic signature device used to create an electronic signature, the identity of the individual uniquely entitled to use the device and his/her relation to the entity has been determined with legal certainty (e.g., identity-proofing method is sufficiently robust to meet the “beyond a reasonable doubt” evidentiary standard)	NMSA 1978, Section 14-6-9 (2001) 20.2.1.117 NMAC
40 CFR 3.2000(c) – verify that a person is subject to all appropriate civil, criminal penalties or other remedies for failure to comply with a reporting requirement if the person fails to comply with the applicable federal regulation	20.2.1.117 NMAC
40 CFR 3.2000(c) – verify that where an electronic document submitted to satisfy a reporting requirement bears an electronic signature, the electronic signature legally binds or obligates the signatory or makes the signatory responsible to the same extent as the signatory’s handwritten signature on a paper document	NMSA 1978, Section 14-6-7 (2001) 20.2.1.117 NMAC
40 CFR 3.2000(c) – verify that the signatory will be uniquely entitled to use the electronic signature device at the time	NMSA 1978, Section 14-6-9 (2001) 20.2.1.117 NMAC

of signature	
40 CFR 3.2000(c) – verify that nothing in the state program limits the use of electronic documents or information derived from electronic documents as evidence in enforcement proceedings	NMSA 1978, Section 14-6-13 (2001) 20.2.1.117 NMAC

II. GENERAL AUTHORITY OF NMED AS “STATE AGENCY” FOR PURPOSES OF 40 CFR § 3.2000:

The Uniform Electronic Transactions Act (“UETA”), NMSA 1978, Sections 14-16-1 to -21 (2001, as amended through 2013) provides that each government agency of the State of New Mexico shall determine whether, and the extent to which, it will create and retain electronic records, and the extent to which it will send and accept electronic records and electronic signatures to and from other persons.

The NMED is created by the **Department of Environment Act, NMSA 1978, Sections 9-7A-1 to -15 (1991, as amended through 2005)**, and identified as a “state agency” in **NMSA 1978, Section 9-7A-11(B)**.

Section 14-16-5 of the UETA provides legal recognition of electronic records, electronic signatures, and electronic contracts; if a law requires a record to be in writing or if the law requires a signature, an electronic writing or an electronic signature satisfies the law.

Section 14-16-7 of the UETA provides that an electronic record or signature is attributable to a person if it was the act of the person, which may be shown in any feasible manner including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

Section 14-16-13 of the UETA provides that, in a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

III. GENERAL REGULATORY AND ENFORCEMENT AUTHORITY OF NMED

NMSA 1978, Section 9-7A-6(B)(5) provides that the NMED shall assure implementation of and compliance with the provisions of law for which administration or execution it is responsible and to enforce those orders and instructions by appropriate administrative action or actions in the courts.

NMSA 1978, Section 74-1-6 (2009) provides the NMED with the power, including, but not limited to, to collect civil penalties pursuant to law, the right to sue and be sued, to make contracts, to enforce the rules, regulations and orders promulgated by the Environmental Improvement Board, and environmental management and consumer

protection laws for which the department is responsible by appropriate action in courts of competent jurisdiction, and to maintain such other powers as may be necessary and appropriate for the exercise of the powers and duties delegated to the department.

NMSA 1978, Section 74-1-5 (1997) provides that the Environmental Improvement Board shall adopt and promulgate all regulations applying to persons and entities outside of the NMED, including the requirement of records and reports.

IV. SPECIFIC AUTHORITY OF NMED TO ENFORCE THE AFFECTED AUTHORIZED PROGRAMS USING ELECTRONIC DOCUMENTS

- **Air Quality**: The Air Quality Control Act, NMSA 1978, Sections 74-2-1 to -17 (1967, as amended through 2009), including enforcement provisions at Section 74-2-12 (2006), *New Mexico Air Quality (Statewide) Rules* (incorporates federal Air Quality reporting rules by reference), 20.2.1 NMAC (09/05/1995, as amended through 01/23/2015).
- **Electronic Reporting**: The Uniform Electronic Transactions Act, NMSA 1978, Sections 14-16-1 to -21 (2001, as amended through 2013) provides that each government agency of the State of New Mexico shall determine whether, and the extent to which, it will create and retain electronic records, and the extent to which it will send and accept electronic records and electronic signatures to and from other persons. 20.2.1.117 NMAC provides authority for the NMED to require the submittal of electronic records in lieu of paper, and incorporates 40 CFR § 3.2000 by reference.



FEB 23 2015

Attorney General of New Mexico

HECTOR H. BALDERAS
Attorney General

February 17, 2015

ELIZABETH A. GLENN
Chief Deputy Attorney General

John Verheul, Esq.
Assistant General Counsel
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502-5469

Re: Special Commission

Dear Mr. Verheul:

Effective the date of your request, Attorney General Hector H. Balderas appoints you a Special Assistant Attorney General for the purpose of representing the New Mexico Environment Department ("NMED") for the purpose of certifying to the United States Environmental Protection Agency (EPA) that the NMED Air Quality Control Bureau has the legal authority to enforce its authorized programs using electronically submitted documents. This commission and title should be used only in connection with the aforementioned representation and for no other purpose and may be revoked at any time for failure to comply with the conditions described in this letter or as deemed appropriate by the Attorney General in his sole discretion. This commission shall automatically terminate on the earlier of the date that your employment with NMED ends, the date the matter is resolved or the expiration of Attorney General Balderas' term of office, whichever comes first.

Please refer to the enclosed Revised Litigation Protocol specifying the Attorney General-state agency relationship. Your commission is expressly conditioned upon adherence with the requirements of the protocol.

Please advise me prior to initiating or responding to any unusual or significant matters during the course of the above-specified case. Upon notification, we will determine whether it is necessary to impart any authority beyond that granted to you by this commission or otherwise act to resolve the matter. Thank you for your cooperation and efforts to protect the best interests of New Mexico and its citizens.

Sincerely,


ELIZABETH GLENN
Chief Deputy Attorney General

cc: John Wheeler, Chief Counsel, AGO
Jeffrey Kendall, General Counsel, NMED