

PERMIT PART 4 CORRECTIVE ACTION

PART HIGHLIGHTS

This Part sets forth the requirements for the Permittee to conduct corrective action for all releases of hazardous waste or hazardous constituents at the Facility, as required by Sections 74-4-4.A.5.h, 74-4-4.2.B, and 74-4-10.F of the New Mexico Hazardous Waste Act (**HWA**) and the Resource Conservation and Recovery Act (**RCRA**).

CORRECTIVE ACTION FROM RELEASES

Sections 74-4-4.A.5.h and 74-4-4.2 of the HWA

Sections 74-4-4.A.5.h and 74-4-4.2 of the HWA and 20.4.1.500 NMAC, incorporating 40 CFR §264.101 require that Permits issued after April 8, 1987, shall require corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any SWMU at a treatment, storage or disposal facility, regardless of the time at which the waste was placed in the SWMU.

Sections 74-4-4.A.5.i of the HWA

Sections 74-4-4.A.5.i of the HWA and 20.4.1.500 NMAC, incorporating 40 CFR §264.101(c) require corrective action beyond the facility boundary where necessary to protect human health and the environment unless the Permittee demonstrates to the satisfaction of the Secretary that, despite the Permittee's best efforts, the Permittee was unable to obtain the necessary permission to undertake such actions.

Sections 3004(u) and 3004(v) of RCRA

The Permittee may also be required to take corrective action for releases of hazardous constituents from any SWMU at the Facility, or beyond the facility property boundaries, regardless of when the waste was placed, under section 3004(u) and 3004(v) of RCRA.

IV.A APPLICABILITY

The Conditions of this Part apply to:

- IV.A.1.** The SWMUs and AOCs identified in Appendix IV-A, Table A (SWMUs and AOCs requiring corrective action), and Table B which require no RCRA Facility Investigation (**RFI**) at this time;
- IV.A.2.** Any additional SWMUs or AOCs discovered during the course of groundwater monitoring, field investigations, environmental audits, or other means. As used in this Permit, the terms "discover", "discovery", or "discovered" refer to the date on which the Permittee either, (1) visually

observes evidence of a new SWMU or AOC, (2) visually observes evidence of a previously unidentified release of hazardous constituents to the environment, or (3) receives information which suggests the presence of a new release of hazardous waste or hazardous constituents to the environment.

- IV.A.3.** Contamination, which has migrated beyond the Facility boundary, if applicable. The Permittee shall implement corrective actions beyond the CSU boundary where necessary to protect human health and the environment, unless the Permittee demonstrates to the satisfaction of the Secretary that, despite the Permittee's best efforts, as determined by the Secretary, the Permittee was unable to obtain the necessary permission to undertake such actions. The Permittee is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. Assurances of financial responsibility for completion of such off-site corrective action will be required.

IV.B. NOTIFICATION AND ASSESSMENT REQUIREMENTS FOR NEWLY IDENTIFIED SWMUs AND AOCs

- IV.B.1.** The Permittee shall notify the Secretary in writing, within fifteen (15) calendar days of discovery, of any suspected new AOC as discovered under Condition IV.A.2. The notification shall include, at a minimum, the location of the AOC and all available information pertaining to the nature of the release (e.g., media affected, hazardous constituents released, magnitude of release, etc.). The Secretary may conduct, or require the Permittee to conduct, further assessment (i.e., confirmatory sampling) in order to determine the status of the suspected AOC. The Secretary will notify the Permittee in writing of the final determination as to the status of the suspected AOC. If the Secretary determines that further investigation is needed, it shall be investigated pursuant to Permit Condition IV.B.3.
- IV.B.2.** The Permittee shall notify the Secretary in writing, within fifteen (15) calendar days of discovery, of any additional SWMU as discovered under Condition IV.A.2.
- IV.B.3.** The Permittee shall prepare and submit to the Secretary, within ninety (90) calendar days of notification, a SWMU Assessment Report (**SAR**) for each SWMU identified under Condition IV.B.2. At a minimum, the SAR shall provide the following information:
- a. Location of unit(s) on a topographic map of appropriate scale such as required under 20.4.1.900 NMAC, incorporating 40 CFR §270.14(b)(19).

- b. Designation of type and function of unit(s).
- c. General dimensions, capacities and structural description of unit(s) (supply any available plans/drawings).
- d. Dates that the unit(s) was operated.
- e. Specification of all wastes that have been managed at/in the unit(s) to the extent available. Include any available data on hazardous constituents in the wastes.
- f. All available information pertaining to any release of hazardous waste or hazardous constituents from such unit(s) (to include groundwater data, soil analyses, air, and/or surface water data).

IV.B.4. Based on the results of the SAR, the Secretary will determine the need for further investigations at the SWMUs covered in the SAR. If the Secretary determines that such investigations are needed, the Permittee shall be required to prepare a plan for such investigations as outlined in Condition IV.E.1.b, or IV.D.2.

IV.C. NOTIFICATION REQUIREMENTS FOR NEWLY DISCOVERED RELEASES FROM SWMUs or AOCs

IV.C.1. The Permittee shall notify the Secretary in writing of any newly discovered release(s) of hazardous waste or hazardous constituents discovered during the course of groundwater monitoring, field investigations, environmental audits, or other means, within fifteen (15) calendar days of discovery. Such newly discovered releases may be from SWMUs or AOCs identified in Appendix IV-A, or SWMU or AOCs identified in Condition IV.A.2, for which further investigation under Condition IV.B.4, was not required.

IV.C.2. If the Secretary determines that further investigation of newly discovered releases from SWMUs or AOCs is needed, the Permittee shall be required to prepare a Work Plan for such investigations as outlined in Permit Conditions IV.E.1.b, c, and d.

IV.D. CONFIRMATORY SAMPLING (CS)

IV.D.1. The Permittee shall prepare and submit a Confirmatory Sampling (CS) Work Plan for each additional SWMU identified under Condition IV.B.2. The CS Work Plan shall be submitted within forty-five (45) calendar days

from discovery of the SWMU, pursuant to Permit Condition IV.B.2. The CS Work Plan shall include schedules of implementation and completion of specific actions necessary to determine whether or not a release has occurred. It should also address applicable requirements and affected media. In order to partly or wholly satisfy the CS requirement, previously existing data may be submitted with the CS Work Plan for the Secretary's consideration.

- IV.D.2.** Upon notification by the Secretary, the Permittee shall prepare and submit a CS Work Plan for suspected AOCs per Permit Condition IV.B.1. The CS Work Plan shall be submitted within forty-five (45) calendar days of notification by the Secretary that a CS Work Plan is required. The CS Work Plan shall meet the basic requirements listed in Permit Condition IV.D.1.
- IV.D.3.** The CS Work Plan must be approved by the Secretary, in writing, prior to implementation. The Secretary will specify the start date of the CS Work Plan schedule in the letter approving the CS Work Plan. If the Secretary disapproves the CS Work Plan, the Secretary will either (1) notify the Permittee in writing of the CS Work Plan's deficiencies and specify a due date for submission of a revised CS Work Plan, (2) revise the CS Work Plan and notify the Permittee of the revisions, or (3) conditionally approve the CS Work Plan and notify the Permittee of the conditions.
- IV.D.4.** The Permittee shall implement the confirmatory sampling in accordance with the approved CS Work Plan.
- IV.D.5.** The Permittee shall prepare and submit to the Secretary in accordance with the schedule in the approved CS Work Plan, a CS Report identifying all SWMUs or AOCs that have released hazardous waste or hazardous constituents into the environment. The CS Report shall include all data, including raw data, and a summary and analysis of the data, that supports the above determination. If submittal of the CS Report coincides with submittal of the RFI Report, then the CS Report and the RFI Report may be combined into one document.
- IV.D.6.** Based on the results of the CS Report, the Secretary will determine the need for further investigations at the SWMUs or AOCs covered in the CS Report. If the Secretary determines that such investigations are needed, the Permittee shall be required to prepare a Work Plan for such investigations as outlined in Condition IV.E.1.c. The Secretary will notify the Permittee of any decision that no further action is required.

IV.E. RCRA FACILITY INVESTIGATION (RFI)

IV.E.1. RFI Work Plan

- IV.E.1.a.** The Permittee shall prepare and submit to the Secretary, within ninety (90) calendar days of the effective date of this permit, a RCRA Facility Investigation Work Plan for those units identified in Condition IV.A.1, i.e., the sites listed in Table A, as requiring corrective action at this time. The Permittee shall use the deadlines for deliverables found in the NFA Compliance Schedule of Appendix 4-E of this Permit Part as a guide, when prioritizing the sites for remediation. This Work Plan shall be developed to meet the requirements of Condition IV.E.1.c.
- IV.E.1.b.** The Permittee shall prepare and submit to the Secretary, within ninety (90) calendar days of notification by the Secretary, an RFI Work Plan for those units identified under Condition IV.B.4, Condition IV.C.2, or Condition IV.D.6.
- IV.E.1.c.** The RFI Work Plan shall meet the requirements of Appendix IV-B. The RFI Work Plan shall include schedules of implementation and completion of specific actions necessary to determine the nature and extent of contamination and the potential pathways of contaminant releases to the air, soil, surface water, and groundwater. The Permittee must provide sufficient justification and associated documentation that a release is not probable or has already been characterized if a unit or a media/pathway associated with a unit (groundwater, surface water, soil, subsurface gas, or air) is not included in the RFI Work Plan. Such deletions of a unit, medium or pathway from the RFI are subject to the approval of the Secretary. The Permittee shall provide sufficient written justification for any omissions or deviations from the minimum requirements of Appendix B. Such omissions or deviations are subject to the approval of the Secretary. In addition, the scope of the RFI Work Plan shall include all investigations necessary to ensure compliance with 20.4.1.500 NMAC, incorporating 40 CFR §264.101(c).
- IV.E.1.d.** The RFI Work Plan must be approved by the Secretary, in writing, prior to implementation. The Secretary will specify the start date of the RFI Work Plan schedule in the letter approving the RFI Work Plan. If the Secretary disapproves the RFI Work Plan, the Secretary will either (1) notify the Permittee in writing of the RFI Work Plan's deficiencies and specify a due date for submission of a revised RFI Work Plan, (2) revise the RFI Work Plan and notify the Permittee of the revisions and the start date of the schedule within the approved RFI Work Plan, or (3) conditionally approve the RFI Work Plan and notify the Permittee of the conditions.

IV.E.2. RFI Implementation

The Permittee shall implement the RFI in accordance with the approved RFI Work Plan and Appendix B. The Permittee shall notify the Secretary at least twenty (20) calendar days prior to any sampling activity, field-testing or field monitoring activity required by this Permit to provide agency personnel the opportunity to observe investigation procedures and/or split samples.

IV.E.3. RFI Reports

IV.E.3.a. The Permittee shall prepare and submit to the Secretary Draft and Final RFI Report for the investigations conducted pursuant to the RFI Work Plan submitted under Condition IV.E.1. The Draft RFI Report shall be submitted to the Secretary for review in accordance with the schedule in the approved RFI Work Plan. The Final RFI Report shall be submitted to the Secretary within thirty (30) calendar days of receipt of the Secretary's final comments on the Draft RFI Report. The RFI Report shall include an analysis and summary of all required investigations of SWMUs and AOCs and their results. The summary shall describe the type and extent of contamination at the facility, including sources and migration pathways, identify all hazardous constituents present in all media, and describe actual or potential receptors. The RFI Report shall also describe the extent of contamination (qualitative/quantitative) in relation to background levels indicative of the area. If the Draft RFI Report is a summary of the initial phase investigatory work, the report shall include a work plan for the final phase investigatory actions required based on the initial findings. Approval of the final phase work plan shall be carried out in accordance with Condition IV.E.1.d. The objective of this task shall be to ensure that the investigation data are sufficient in quality (e.g., quality assurance procedures have been followed) and quantity to describe the nature and extent of contamination, potential threat to human health and/or the environment, and to support a Corrective Measures Study, if necessary.

IV.E.3.b. The Permittee shall prepare and submit to the Secretary, along with the Draft and Final RFI Report, action levels for each of the hazardous constituents reported in Condition IV.E.3.a. Action levels shall be calculated as specified in Permit Part 4, Appendix 4-F.

IV.E.3.c. The Secretary will review the RFI Report, including the action levels stipulated in Condition IV.E.3.b. The Secretary will notify the Permittee of the need for further investigative action if necessary and, if appropriate at this moment of the investigation, inform the Permittee, if not already notified, of the need for a Corrective Measures Study to meet the requirements of IV.G and 20.4.1.500 NMAC, incorporating 40 CFR §264.101. The Secretary will notify the Permittee of any decision that no further action is necessary. Any further investigative action required by the Secretary will be prepared and submitted in accordance with a schedule specified by the Secretary and approved in accordance with Condition IV.E.1.d.

IV.E.3.d. If the time required to conduct the RFI is greater than one hundred eighty (180) calendar days, the Permittee shall provide the Secretary with quarterly RFI Progress Reports beginning ninety (90) calendar days from the start date specified by the Secretary in the RFI Work Plan approval letter. The Progress Reports shall contain the following information at a minimum:

- i. A description of the portion of the RFI completed;
- ii. Summaries of findings;
- iii. Summaries of any deviations from the approved RFI Work Plan during the reporting period;
- iv. Summaries of any significant contacts with local community public interest groups or State government;
- v. Summaries of any problems or potential problems encountered during the reporting period;
- vi. Actions taken to rectify problems;
- vii. Changes in relevant personnel;
- viii. Projected work for the next reporting period; and
- ix. Copies of daily reports, inspection reports, data, etc.

IV.F. INTERIM MEASURES (IM)

IV.F.1. IM Work Plan

IV.F.1.a. Upon notification by the Secretary, the Permittee shall prepare and submit an Interim Measures (IM) Work Plan

for any SWMU or AOC, which the Secretary determines, is necessary. IM are necessary in order to minimize or prevent the further migration of contaminants and limit actual or potential human and environmental exposure to contaminants while long-term corrective action remedies are evaluated and, if necessary, implemented. The IM Work Plan shall be submitted within thirty (30) calendar days of such notification and shall include the elements listed in IV.F.1.b. Such interim measures may be conducted concurrently with investigations required under the terms of this Permit.

IV.F.1.b. The Permittee may initiate IM at a SWMU or AOC by submitting the appropriate notification pursuant to Permit Condition I.F.9, contained in Part 1 of this Permit. The Secretary will process Permittee initiated IM by either conditionally approving the IM or imposing an IM Work Plan per Condition IV.F.1.a. Permittee-initiated IM shall be considered conditionally approved unless the Secretary specifically imposes an IM Work Plan within thirty (30) calendar days of receipt of notification of the Permittee initiated IM. The scope and success of Permittee initiated IM conditionally approved per Condition IV.F.1.b. shall be subject to subsequent in-depth review; the Secretary will either comment on or approve the Permittee initiated IM. Permittee initiated IM must follow the progress and final reporting requirements in Condition IV.F.3.

IV.F.1.c. The IM Work Plan shall ensure that the interim measures are designed to mitigate any current or potential threat(s) to human health or the environment and is consistent with and integrated into any long-term solution at the facility. The IM Work Plan shall include: the interim measures objectives, procedures for implementation (including any designs, plans, or specifications), and schedules for implementation.

IV.F.1.d. The IM Work Plan imposed under Condition IV.F.1.a must be approved by the Secretary in writing prior to implementation. The Secretary will specify the start date of the IM Work Plan schedule in the letter approving the IM Work Plan. If the Secretary disapproves the IM Work Plan, the Secretary will either (1) notify the Permittee in writing of the IM Work Plan's deficiencies and specify a due date for submission of a revised IM Work Plan, (2) revise the IM Work Plan and notify the Permittee of the revisions and

the start date of the schedule within the approved IM Work Plan, or (3) conditionally approve the IM Work Plan and notify the Permittee of the conditions.

IV.F.2. IM Implementation

IV.F.2.a. The Permittee shall implement the interim measures imposed under Condition IV.F.1.a. in accordance with the approved IM Work Plan.

IV.F.2.b. The Permittee shall give notice to the Secretary as soon as possible of any planned changes, reductions or additions to the IM Work Plan imposed under Condition IV.F.1.a. or initiated by the Permittee under Condition IV.F.1.b.

IV.F.2.c. Final approval of corrective action required under 20.4.1.500 NMAC, incorporating 40 CFR §264.101 which is achieved through interim measures shall be as a permit modification in accordance with 20.4.1.900 NMAC, incorporating 40 CFR §270.41 and Condition IV.H.

IV.F.3. IM Reports

IV.F.3.a. If the time required for completion of interim measures imposed under Condition II.F.1.a. or implemented under Condition II.F.1.b. is greater than one year, the Permittee shall provide the Secretary with progress reports at intervals specified in the approved Work Plan or semi-annually for Permittee initiated interim measures. The Progress Reports shall contain the following information at a minimum:

- i. A description of the portion of the interim measures completed;
- ii. Summaries of findings;
- iii. Summaries of any deviations from the IM Work Plan during the reporting period;
- iv. Summaries of any problems or potential problems encountered during the reporting period; and
- v. Projected work for the next reporting period.

IV.F.3.b. The Permittee shall prepare and submit to the Secretary, within ninety (90) calendar days of completion of interim measures conducted under Condition IV.F., an Interim Measures (**IM**) Report. The IM Report shall contain the following information at a minimum:

- i. A description of interim measures implemented;
- ii. Summaries of results;
- iii. Summaries of all problems encountered;
- iv. Summaries of accomplishments and/or effectiveness of interim measures; and
- v. Copies of all relevant laboratory/monitoring data, etc. in accordance with Condition I.F.8 (in Part I).

IV.G. CORRECTIVE MEASURES STUDY

IV.G.1. Corrective Measures Study (CMS) Work Plan

IV.G.1.a. The Permittee shall prepare and submit a CMS Work Plan for additional SWMUs requiring a CMS within ninety (90) calendar days of notification by the Secretary that a CMS is required. This CMS Work Plan shall be developed to meet the requirements of Condition IV.G.1.b. The Permittee may seek approval from the Secretary for concurrent RFI/CMS. The CMS may be performed concurrent with the RFI process if the Secretary determines that sufficient investigative details are available to allow concurrent action.

IV.G.1.b. The CMS Work Plan shall meet the requirements of Appendix C at a minimum. The CMS Work Plan shall include schedules of implementation and completion of specific actions necessary to complete a CMS. The Permittee must provide sufficient justification and/or documentation for any unit deleted from the CMS Work Plan. Such deletion of a unit is subject to the approval of the Secretary. The Permittee shall provide sufficient written justification for any omissions or deviations from the minimum requirements of Appendix IV-C. Such omissions or deviations are subject to the approval of the Secretary. The scope of the CMS Work Plan shall include all investigations necessary to ensure compliance with

Section 74-4-4.2 of the HWA, 3005(c)(3), 20.4.1.500 NMAC, incorporating 40 CFR §264.101, §264.552, and 20.4.1.900 NMAC, incorporating 40 CFR §270.32(b)(2). The Permittee shall implement corrective actions beyond the Facility boundary, as set forth in Condition IV.A.3.

IV.G.1.c. The Secretary will either approve or disapprove, in writing, the CMS Work Plan. If the Secretary disapproves the CMS Work Plan, the Secretary will either (1) notify the Permittee in writing of the CMS Work Plan's deficiencies and specify a due date for submittal of a revised CMS Work Plan, (2) revise the CMS Work Plan and notify the Permittee of the revisions, or (3) conditionally approve the CMS Work Plan and notify the Permittee of the conditions. This modified CMS Work Plan becomes the approved CMS Work Plan.

IV.G.2. Corrective Measures Study Implementation

The Permittee shall begin to implement the Corrective Measures Study according to the schedules specified in the CMS Work Plan, no later than fifteen (15) calendar days after the Permittee has received written approval from the Secretary for the CMS Work Plan. Pursuant to Permit Condition IV.G.1.b, the CMS shall be conducted in accordance with the approved CMS Work Plan.

IV.G.3. CMS Report

IV.G.3.a. The Permittee shall prepare and submit to the Secretary a draft and final CMS Report for the study conducted pursuant to the approved CMS Work Plan and in accordance with Appendix C. The draft CMS Report shall be submitted to the Secretary in accordance with the schedule in the approved CMS Work Plan. The final CMS Report shall be submitted to the Secretary within thirty (30) calendar days of receipt of the Secretary's final comments on the draft CMS Report. The CMS Report shall summarize any bench-scale or pilot tests conducted. The CMS Report must include an evaluation of each remedial alternative. If a remedial alternative requires the use of a corrective action management unit (CAMU), the CMS report shall include all information necessary to establish and implement the CAMU. The CMS Report shall present all information gathered under the approved CMS Work Plan. The CMS Final Report must contain adequate information to support the Secretary's decision on the

recommended remedy, described under Permit Condition IV.H.

IV.G.3.b. If the Secretary determines that the CMS Final Report does not fully satisfy the information requirements specified under Permit Condition IV.G.3.a., the Secretary may disapprove the CMS Final Report. If the Secretary disapproves the CMS Final Report, the Secretary will notify the Permittee in writing of deficiencies in the CMS Final Report and specify a due date for submittal of a revised CMS Final Report. The Secretary will notify the Permittee of any no further action decision.

IV.G.3.c. As specified under Permit Condition IV.G.3.b., based on preliminary results and the CMS Final Report, the Secretary may require the Permittee to evaluate additional remedies or particular elements of one or more proposed remedies.

IV.H. REMEDY APPROVAL AND PERMIT MODIFICATION

IV.H.1. A remedy shall be proposed by the Permittee from the remedial alternatives evaluated in the CMS. It will be based at a minimum on protection of human health and the environment, as per specific site conditions and existing regulations. The proposed remedy may include any interim measures implemented to date. The proposed remedy will be reviewed and approved by the Secretary prior to its implementation.

IV.H.2. Pursuant to 20.4.1.900 NMAC, incorporating 40 CFR §270.41, a permit modification will be initiated by the Secretary after recommendation of a remedy under Condition IV.H.1. This modification will serve to incorporate a final remedy, including a CAMU if necessary, into this Permit.

IV.H.3. Within one hundred and twenty (120) calendar days after this Permit has been modified for remedy selection, the Permittee shall demonstrate financial assurance for completing the approved remedy.

IV.I. MODIFICATION OF THE CORRECTIVE ACTION SCHEDULE OF COMPLIANCE

IV.I.1. If at any time the Secretary determines that modification of the Corrective Action Schedule of Compliance is necessary, the Secretary may initiate a modification to the Schedule of Compliance (Appendix IV-D).

IV.I.2. Modifications that are initiated and finalized by the Secretary will be in accordance with the applicable provisions of 20.4.1.900 NMAC, incorporating 40 CFR §270. The Permittee may also request a permit modification in accordance with 20.4.1.900 NMAC, incorporating 40 CFR §270 to change the Schedule of Compliance.

IV.J. WORK PLAN AND REPORT REQUIREMENTS

IV.J.1. All work plans and schedules shall be subject to approval by the Secretary prior to implementation to assure that such work plans and schedules are consistent with the requirements of this Permit and with applicable regulations. The Permittee shall revise all submittals and schedules as specified by the Secretary. Upon approval the Permittee shall implement all work plans and schedules as written.

IV.J.2. All work plans and reports shall be submitted in accordance with the approved schedule. Extensions of the due date for submittals may be granted by the Secretary based on the Permittee's demonstration that sufficient justification for the extension exists.

IV.J.3. If the Permittee at any time determines that the SWMU assessment report (**SAR**) information required under Condition IV.B, the CS Work Plan under Condition IV.D, or RFI Work Plan required under Condition IV.E. no longer satisfy the requirements of 20.4.1.500 NMAC, incorporating 40 CFR §264.101 or this Permit for prior or continuing releases of hazardous waste or hazardous constituents from solid waste management units and/or areas of concern, the Permittee shall submit an amended Work Plan to the Secretary within ninety (90) calendar days of such determination.

IV.J.4. Three (3) copies of all reports and work plans shall be provided by the Permittee to the Secretary at the following address:

New Mexico Environment Department
The Hazardous Waste Bureau
2095 Rodeo Park Drive East, Building 1
P.O. Box 26110
Santa Fe, NM 87505-6303

IV.K. APPROVAL/DISAPPROVAL OF SUBMITTALS

IV.K.1. The Secretary will review the work plans, reports, schedules, and other documents ("submittals") which require the Secretary's approval in accordance with the conditions of this permit. The Secretary will notify the Permittee in writing of any submittal that is disapproved, and the basis thereof. Condition IV.L, shall apply only to submittals that have been disapproved and revised by the Secretary, or that have been disapproved by the Secretary, then revised and resubmitted by the Permittee, and again disapproved by the Secretary.

IV.L. VOLUNTARY CORRECTIVE MEASURES (VCM)

At any time, if the Permittee identifies a corrective measure that, if implemented before final corrective measures have been identified, would reduce impacts to human health and the environment, reduce cost and/or reduce overall schedule, the Permittee is encouraged to request approval from the Administrative Authority for the activities. In the request for a approval, the Permittee must include: (1) a description of the remediation initiative, including the details of the unit or activity that is subject to permit requirements; and (2) an explanation of how the proposed action is consistent with the overall corrective action objectives and requirements. The administrative authority will review and consider the Voluntary Corrective Measure Request to ensure that it would not pose unacceptable risk to human health and the environment or interfere with the attainment of the final remedy at the SWMU. Where a Voluntary Corrective Measure Request is approved under these circumstances, the approval will make clear that the voluntary

corrective activities initiated may not be the final remedy, and that the voluntary corrective measure will not absolve the Permittee from further cleanup responsibilities at a later date. Additionally, approval of a voluntary corrective measure shall not absolve the Permittee from petitioning the site for no further action (NFA) in the form of a Class 3 modification. Following this review, the Administrative Authority will approve or disallow the application.

IV.M. DISPUTE RESOLUTION

IV.M.1. The Permittee and NMED shall use their best efforts to informally and in good faith resolve all disputes arising out of requirements in this Part. The Permittee shall not invoke dispute resolution for purposes of delay. If, however, the Permittee disagrees, in whole or in part, with the Secretary's revision of a submittal or disapproval of any revised submittal required by the Permit, the following shall apply:

IV.M.1.a. The Permittee shall notify the Secretary in writing within thirty (30) calendar days of receipt of the Secretary's revision of a submittal or disapproval of a revised submittal. Such notice shall set forth the specific matters in dispute, the work affected by the dispute, including specific compliance dates, all factual data, analysis, opinion and documentation supporting the Permittee's position, and any matters considered necessary for the Secretary's determination.

IV.M.1.b. The Permittee and HWB permitting staff shall have thirty (30) calendar days to use best efforts to resolve the dispute informally. If the Permittee and HWB staff are unable to resolve the dispute, the Permittee may request a final decision from the Secretary.

IV.M.1.c. In the event agreement is reached, the Permittee shall comply with the terms of such agreement or if appropriate submit the revised submittal and implement the same in accordance with and within the time frame specified in such agreement. The resolution of the dispute shall, as necessary and appropriate, be incorporated as a Permit Condition.

IV.M.1.d. If agreement is not reached, the Secretary will notify the Permittee in writing of his/her decision on the dispute within thirty (30) calendar days from receipt of Permittee's request under Permit Condition IV.M.1.b. The Secretary's decision is a final agency action and shall be incorporated as an enforceable Permit Condition. The Permittee shall

comply with the terms and conditions of the Secretary's decision.

- IV.M.1.e.** The invocation of dispute resolution shall not stay the requirements of the disputed Permit Condition absent a determination by the Secretary that just cause exists. The Permittee shall proceed to take any action required by those portions of the submission and of the permit that the Secretary determines are not affected by the dispute.