

NEW MEXICO

Agreement Under Section 18(e) of the
Occupational Safety and Health Act of 1970

Pursuant to Section 18(e) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act), as implemented by 29 CFR 1954.3, an agreement, effective immediately, is hereby entered into between the Regional Administrator for Occupational Safety and Health, Region VI, and the Director of the Environmental Improvement Division for the State of New Mexico.

1. The purpose of this agreement is to set forth the scope of the exercise of Federal authority under Section 18(e) of the Act in the State of New Mexico with respect to occupational safety and health standards promulgated under Section 6 of the Act, by specifying areas of State responsibility, and delineating continuing Federal responsibilities in the State. The agreement is based on a finding by the Assistant Secretary of Labor that the State has achieved operational status under the New Mexico 18(b) State Plan approved December 10, 1975.

The New Mexico State Plan adopted the definition of occupational safety and health issues expressed in 29 CFR 1902.2(c) and elected to cover all issues except maritime concerns. Therefore, the term issue applied to the New Mexico State Plan is defined as the State's occupational safety and health standards which are at least as effective as the Federal standards for each such issue.

In accordance with the provision of 29 CFR 1954.3, the State of New Mexico has been determined to have achieved operational status in the issues defined by:

- a. Enactment of the New Mexico Occupational Health and Safety Act, Sections 50-9-1 through 50-9-25, NMSA 1978. This legislation provides the necessary legal framework to bring the State Plan into conformity with the Act and 29 CFR 1902.

- b. Promulgation of State standards comparable to Federal occupational safety and health standards 29 CFR 1910, 29 CFR 1926, and 29 CFR 1928 as published in the Federal Register December 10, 1975 (40 FR 57455) with additions and corrections as approved on November 7, 1978 (43 FR 51863); July 13, 1979 (44 FR 40948); July 15, 1980 (45 FR 47544); and March 3, 1981 (46 FR 15003).
 - c. Qualified personnel are engaged in enforcing State standards in accordance with the State's legislation: namely, positions allocated for 7 Safety Inspectors and 3 Health Inspectors as of September 25, 1981.
 - d. Provision for review of State citations and penalties before an independent Review Board effective September 1976.
 - e. Enforcement of existing State standards pursuant to the provisions of New Mexico legislation since June 15, 1976 and monitored since November 1976 and reported since January 1977.
2. In addition, the State has provided under its Plan for:
- a. Notification to employers and their employees of their rights and responsibilities under the New Mexico State Plan by requiring display in workplaces covered by the Plan of a State job safety and health poster since July 1976 which was approved on July 2, 1976.
 - b. Occupational accident and illness recordkeeping and reporting by employers covered under the Plan, promulgated and implemented in June 1976 with subsequent revisions.
 - c. Response to complaints alleging job safety and health violations, and to complaints alleging discrimination under the State OHS Act.
 - d. Assurance for employer and employee rights.
3. In accordance with this finding, Federal enforcement authority under Section 18(e) of the Act will not be initiated with regard to Federal Occupational Safety and Health standards on the issues covered by 29 CFR 1910, 29 CFR 1926, and 29 CFR 1928, where State standards are in effect and operational, except as provided in section 4 below.

4. Federal responsibility under the Act will continue to be retained and/or exercised with regard to:
- a. Responding to complaints filed with the Occupational Safety and Health Administration alleging discrimination under Section 11(c) of the Act.
 - b. Enforcement of Federal OSHA standards on Indian Reservation lands where the State is unable to obtain entry.
 - c. Investigation and inspection for the purpose of carrying out the Assistant Secretary of Labor's monitoring obligations under Section 18(f) of the Act as set forth in 29 CFR 1954.
 - d. Enforcement relating to any contractors and/or sub-contractors on any Federal establishment where the State cannot obtain entry, including National Parks, Department of Defense facilities, etc.
 - e. Open cases remaining from Federal inspections conducted prior to "operational status" of the State in order to complete processing of Federal enforcement activities. Federal OSHA will:
 - (1) Conduct all follow-up inspections, but limited to the initial Federal citation and any subsequent enforcement actions to ensure abatement.
 - (2) Report all new violations observed during the course of follow-up activity to the State where it has standards enforcement responsibility in accordance with the procedures contained in the OSHA Field Operations Manual Chapter XVII.
 - (3) Act upon reports of State inspections related to non-compliance with abatement requirements previously established by OSHA.
 - f. Enforcement of new Federal standards. Federal OSHA retains the right to exercise full Federal enforcement authority of any safety or health standard which Federal OSHA has promulgated until such time as the State has adopted a comparable standard. When exercising such enforcement authority, the Assistant Secretary will notify the State designee promptly of Federal OSHA's intention to enforce the particular standards in a particular establishment. The State may assist in any


such inspection, in the discretion of the State designee and to the extent determined appropriate by the State designee.

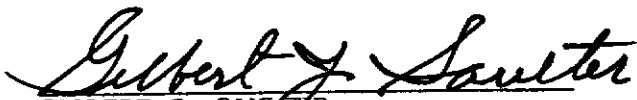
- g. Situations where the State is unable to gain entry. Federal OSHA retains the right to exercise, without notice to the employer, full concurrent Federal enforcement authority over any establishment for which, such establishment having refused entry to the State, the State is unable to obtain a warrant to enforce the right of entry. The State agrees to advise the appropriate OSHA regional office of each instance of its inability to obtain a warrant to gain entry to a workplace. The OSHA regional office will work with the State to determine the appropriate Federal action necessary, including obtaining a warrant and conducting a Federal inspection.
- h. Enforcement of unique and complex standards. When, in the opinion of the Assistant Secretary, a new safety or health standard is so unique or complex that it requires a uniform enforcement policy, the Assistant Secretary will consult with the State and a mutually agreeable strategy will be developed for the conduct of the initial inspections under the new standard. Appropriate training and assistance may be provided for both Federal and State Compliance Officers. The procedures for the inspection will be mutually developed and the inspection itself will be conducted by a Federal Compliance Officer alone, or if the State so desires, working as a team with the State Compliance Officer. If the inspection is a joint inspection, unless there is a compelling reason for the issuance of a Federal citation, e.g., uniform national litigation strategy, etc., any citation issued will be a State citation, and enforcement procedures will be in accordance with State policy. If the inspection is a Federal only inspection, a Federal citation will be issued.
- i. Situations of temporary State deficiency. On occasion, and in extraordinary circumstances, a State may not be able fully or effectively to exercise its enforcement authority. Examples of these circumstances include, among others, a substantial temporary reduction of State resources or staff, jurisdictional limitations on State enforcement authority, worksites which lie within more than one State, or State inability to enforce effectively a particular standard. Such circumstances may call for a limited resumption of Federal enforcement authority, which may occur at the State's request or upon the Assistant

Secretary's determination, after consideration of all relevant factors and after discussion with the State that resumed Federal enforcement authority is necessary to protect the safety and health of workers in the State.

5. In addition, the Regional Administrator, Region VI will:
 - a. Immediately refer to the State for appropriate investigation notifications concerning fatalities and/or catastrophes where State standards are in effect and operational.
 - b. Promptly refer to the State complaints filed with the Occupational Safety and Health Administration about workplace safety and health conditions where State standards are in effect and operational.
 - c. Make prompt recommendation to the Assistant Secretary for reinstatement of Federal enforcement activity where such action is necessary to assure occupational safety and health protection to employees.
6. In view of the determination regarding the operational status of the New Mexico State Plan, the State shall:
 - a. Conduct all enforcement activity in all issues covered under the State Plan and under this agreement where the State is operational.
 - b. Make appropriate response to all notifications of fatalities and catastrophes and complaints about workplace safety and health conditions referred under "5(a) and (b)" above, where State standards are in effect and operational.
 - c. For the purpose of the Federal statistical program, report all fatalities and/or catastrophes to the Occupational Safety and Health Administration Area Office in Albuquerque, New Mexico, by telephone not later than the close of business, one business day after receipt of notification by the State.
 - d. Continue to submit change supplements in making changes to the New Mexico Occupational Health and Safety Plan as required by 29 CFR 1953.
 - e. Respond to complaints filed with the State alleging discrimination.
7. This agreement does not cover each and every right and duty of the respective parties. However, it does describe in broad terms the general agreement between the State of New Mexico and the Occupational Safety and Health Administration as to the extent of Federal compliance activity within the State during the term of this agreement.

8. Notwithstanding and in addition to the provisions of Section 4 of this agreement, this agreement is subject to revision or termination by the Assistant Secretary of Labor upon failure by the State to comply with any of its provisions, when the results of evaluation and monitoring under 29 CFR 1954 reveal that State operations fail to be at acceptable levels, or on the basis of other relevant factors. Federal authority may then be exercised to the degree necessary to assure occupational safety and health protection to employees. Any decision by the Assistant Secretary of Labor to revise or terminate this agreement shall provide the State a reasonable time, generally not to exceed 30 days, to submit justification to the Regional Administrator for review and submission to the Assistant Secretary showing cause why such decision should not be made.
9. This Agreement shall not be construed as an admission or estoppel against any party or as a waiver of any right under adjudication in Environmental Improvement Division v Marshall, No. 78-945-MC (D.N.M. September 10, 1979), appeal docketed, No. 79-2246, 10th Cir., November 26, 1979.



 THOMAS E. BACA
 Director
 Environmental Improvement Division



 GILBERT J. SAULTER
 Regional Administrator
 Region VI, USDOL-OSHA

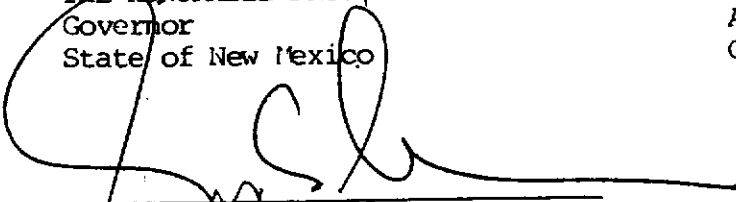
Date: 10-5-81

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AS WITNESSED BY:


 THE HONORABLE BRUCE KING
 Governor
 State of New Mexico


 THORNE G. AUCHTER
 Assistant Secretary
 Occupational Safety and Health
 Administration


 GEORGE S. GOLDSTEIN, Ph.D.
 Secretary
 Health and Environment Department
 State of New Mexico