



NEW MEXICO ENVIRONMENT DEPARTMENT

Office of the Secretary

POLICY AND PROCEDURE 07-09

SUBJECT: Non-Employee Procedure for Filing Complaints Alleging Discrimination on the Basis of Race, Color, National Origin, Disability, Age or Sex Under 40 C.F.R. Parts 5 and 7

PURPOSE: This document is intended to provide guidance to non-employees who have reason to believe they have been discriminated against by the New Mexico Environment Department ("NMED") on the basis of

- Race,
- Color,
- National origin,
- Disability,
- Age, or
- Sex

REVISIONS: This is a new policy required by agencies that utilize federal funds.

APPLICABILITY: This policy applies to all non-employees affected by decisions made by federally delegated programs within NMED. NMED employees shall follow procedures set out in Policy 01-04 Non-Discrimination and Policy 02-70 Conflict Resolution and Grievances.

POLICY: This document, in compliance with 40 C.F.R. §§ 5.135 and 7.90, provides a step-by-step procedure for filing a timely discrimination complaint to NMED and describes the process that will be used to investigate and resolve the complaint. However, these procedures do not apply to administrative actions, such as permitting, rulemaking or enforcement matters that are being pursued in another forum.

REFERENCES: 40 C.F.R. Parts 5 and 7 and 40 C.F.R. §§ 5.135 and 7.90.

APPROVAL: _____

Ron Curry, Cabinet Secretary

DATE: _____

2/18/08

I. SUBMISSION OF COMPLAINT

A. Filing Complaints of Discrimination.

(1) Complainants may submit written complaints to NMED's Community and Tribal Liaison (Liaison) at 1190 St. Francis Drive, Santa Fe, New Mexico 87505. Anonymous complaints can not be investigated and will not be accepted.

(2) In cases where the complainant is unable or incapable of providing a written statement, but wishes NMED to investigate alleged discrimination, a verbal complaint of discrimination may be made to NMED by calling the Community and Tribal Liaison at 505-827-2855. The complainant will be interviewed by an NMED employee who, if necessary, will assist the person in converting the verbal complaint to writing. All complaints must, however, be signed by the complainant or his/her representative.

(3) Complaints must be filed with the Community and Tribal Liaison at NMED within 90 days of an alleged discriminatory act. NMED has the authority to waive the 90-day time period required for filing a complaint if the complainant can demonstrate that the failure to file was based on "good cause." If the complainant wishes to request a waiver, the complainant must submit a detailed description explaining why the complainant failed to file the complaint within 90 days of the alleged act(s) of discrimination.

B. Complaint Format.

(1) All complaints must be in writing, and signed by the complainant or his/her representative before NMED can respond. Complaints shall:

a) describe with specificity the action(s) that allegedly intentionally discriminate or result in discrimination in violation of 40 CFR Parts 5 and 7;

b) describe with specificity the impact that allegedly has occurred or will occur as the result of such action(s); and

c) identify the parties subjected to, impacted by, or potentially impacted by the alleged discrimination.

(2) NMED will provide the complainant or his/her representative with a written acknowledgment within ten working days verifying of receipt of received the complaint.

C. Determination of Jurisdiction and Investigative Merit.

The Community and Tribal Liaison, in conjunction with the Office of General Counsel, based on the information in the complaint and additional information provided by the alleged civil rights violator(s), will determine if NMED has jurisdiction to pursue the matter and whether the complaint has sufficient merit to warrant an investigation. These determinations will be made within 15 working days after the receipt of the complaint by NMED and shall be communicated in writing to the complainant. A complaint shall be regarded as meriting investigation unless:

(1) it clearly appears on its face to be frivolous or trivial;

- (2) within 15 working days after the receipt of the complaint, NMED voluntarily concedes noncompliance and agrees to take appropriate remedial action or reaches an informal resolution with the complainant;
- (3) within 15 working days after the receipt of the complaint, the complainant withdraws the complaint; or
- (4) it is not timely and good cause does not exist for waiving the requirement.

II. INVESTIGATION

If the Community and Tribal Liaison accepts the complaint, the Liaison will designate an individual to investigate the allegation(s). After examining all of the information in conjunction with the requirements in 40 C.F.R. Parts 5 and 7, the investigator will draft a report with findings and recommendations.

A. Request for Additional Information from Complainant.

In the event that the complainant has not submitted sufficient information to make a determination of jurisdiction or investigative merit, NMED may request additional information. This request shall be made within 15 working days of the receipt of the complaint by NMED and will require that the party submit the information within 60 working days from the date of the original request. Failure of the complainant to submit additional information within the designated timeframe may be considered good cause for determination of no investigative merit.

B. Request for Information Involving Third Party Entities.

In the case of complaints involving a third party(s), e.g. a sub-recipient, permit applicant or permittee, NMED will notify the third party(s) that the complaint has been received within 15 working days of receipt of the complete complaint. At such time and if necessary, NMED will ask the third party(s) to provide necessary information to NMED to investigate the complaint. NMED will use the information provided by the third party(s) and the complainant in seeking to resolve the complaint.

III. DISPOSITION OF COMPLAINTS

Within 180 days of accepting the complaint, the Office of the Secretary will issue a written decision approving or disapproving the findings and recommendations made in the investigative report. NMED will implement any recommendations approved by the Office of the Secretary. The consequent disposition of the complaint will be communicated to the complainant in writing.

IV. ALTERNATIVE TO SUBMISSION OF COMPLAINT

In the alternative to filing a complaint with NMED, complaints may be filed in accordance with 40 C.F.R. Parts 5 and 7 with the U.S. EPA, Office of Civil Rights, 1200 Pennsylvania Avenue, N.W., Mail Code 1201A, Washington, DC 20460-1000.