

1 **20.6.2.2001 PROCEDURES FOR CERTIFICATION OF FEDERAL NATIONAL POLLUTANT**  
 2 **DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS:**

3 **A.** This section applies to the State certification of draft National Pollutant Discharge Elimination  
 4 System (NPDES) permits under section 401 of the federal Clean Water Act. The purpose of such certification is to  
 5 reasonably ensure that the permitted activities will be conducted in a manner that will comply with applicable water  
 6 quality standards, the statewide water quality management plan, and the antidegradation policy.

7 **B.** After review of a draft permit, the department will either:

8 (1) certify that the discharge will comply with the applicable provisions of Sections 208(e),  
 9 301, 302, 303, 306 and 307 of the federal Clean Water Act and with appropriate requirements of State law;

10 (2) certify that the discharge will comply with the applicable provisions of Sections 208(e),  
 11 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law upon inclusion  
 12 of specified conditions in the permit;

13 (3) deny certification and include reasons for the denial; or

14 (4) waive its right to certify.

15 **C.** Pursuant to federal regulations at 40 Code of Federal Regulations section 124.10(c), the U.S.  
 16 Environmental Protection Agency provides notice of draft NPDES permits to the applicant (except for general  
 17 permits); various local, state, federal, tribal and pueblo government agencies; and other interested parties, and it  
 18 allows at least 30 days of public comment. To the extent practicable, the department will provide public notice that  
 19 the department is reviewing a draft NPDES permit for the purpose of preparing a state certification or denial  
 20 pursuant to Section 401 of the federal Clean Water Act jointly with the notice provided by the U.S. Environmental  
 21 Protection Agency. The department will also post notice on its website.

22 **D.** When joint notice is impractical, the department shall provide notice that the department is  
 23 reviewing a draft NPDES permit for purpose of preparing a state certification or denial pursuant to Section 401 of  
 24 the federal Clean Water Act as follows:

25 (1) for general permits by posting notice on the department's website, or

26 (2) for individual permits by:

27 (a) posting notice on the department's website;

28 (b) publishing notice in a newspaper of general circulation in the location of the  
 29 discharge;

30 (c) mailing notice to the applicant;

31 (d) mailing or e-mailing notice to those persons on the general and facility-specific  
 32 mailing list maintained by the department who have requested such notice; and

33 (e) mailing notice to any affected local, state, federal, tribal, or pueblo government  
 34 agency, as identified by the department.

35 **E.** Public notices may describe more than one permit or permit action. The notice provided under  
 36 Subsections C and D of 20.6.2.2001 NMAC shall include:

37 (1) for general permits:

38 (a) a statement that the department will accept written comments on the permit  
 39 certification or denial during the comment period including the address where comments may be submitted;

40 (b) a brief description of the activities that produce the discharge; and

41 (c) a description of the geographic area to be covered by the permit; or

42 (2) for individual permits:

43 (a) a statement that the department will accept written comments on the permit  
 44 certification or denial during the comment period including the address where comments may be  
 45 submitted;

46 (b) the name and address of the permittee or permit applicant and, if different, of  
 47 the facility or activity regulated by the permit;

48 (c) a brief description of the activities that produce the discharge; and

49 (d) a general description of the location of the discharge and the name of the  
 50 receiving water.

51 **F.** Following the public notice provided under Subsections C or D of 20.6.2.2001 NMAC, there shall  
 52 be a period of at least 30 days during which interested persons may submit written comments to the department.  
 53 The 30-day comment period shall begin on the date of the public notice provided under Subsections C or D of  
 54 20.6.2.2001 NMAC. The department shall consider all comments.

1           **G.**       Following the public comment period provided under Subsection F of 20.6.2.2001 NMAC, the  
2 department shall issue a final permit certification including any conditions that the department places on the  
3 certification, or issue a statement of denial including the reasons for the denial, or waive its right to certify. The  
4 final certification will generally be issued within 33 days from the date a request to grant, deny or waive  
5 certification is received by the department, unless the department in consultation with the U.S. Environmental  
6 Protection Agency Regional Administrator finds that unusual circumstances require a longer time. The department  
7 shall send a copy of the final permit certification or denial to the U.S. Environmental Protection Agency, the  
8 applicant (except for general permits), and those members of the public who submitted comments to the department.  
9 The permit certification or denial shall be in writing and shall include:

- 10                   (1)       the name of the applicant (except for general permits) and the NPDES permit number;
- 11                   (2)       a statement that the department has examined the application or other relevant  
12 information and bases its certification upon an evaluation of the information contained in such application or other  
13 information which is relevant to water quality considerations;
- 14                   (3)       a statement that there is a reasonable assurance that the activity will be conducted in a  
15 manner which will not violate applicable water quality standards;
- 16                   (4)       a statement of any conditions which the department deems necessary or desirable with  
17 respect to the discharge of the activity;
- 18                   (5)       identification of any condition more stringent than that in the draft permit required to  
19 assure compliance with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water  
20 Act and with appropriate requirements of state law citing the Clean Water Act or state law upon which the condition  
21 is based;
- 22                   (6)       a statement of the extent to which each condition of the draft permit can be made less  
23 stringent without violating the requirements of state law, including water quality standards; and
- 24                   (7)       Such other information as the department may determine to be appropriate.

25           **H.**       Any person who is adversely affected by the certification or denial of a specific permit may appeal  
26 such certification or denial by filing a petition for review with the secretary within 30 days after the department  
27 issues the final permit certification or statement of denial. Such petition shall be in writing and shall include a  
28 concise statement of the reasons for the appeal and the relief requested. The secretary may hold a hearing on the  
29 appeal. In any such appeal hearing, the procedures of Part 20.1.4 NMAC shall not apply. The department shall  
30 give notice of the appeal hearing at least 30 days prior to the hearing. The notice shall state the date, time, and  
31 location of the appeal hearing and shall include the pertinent information listed in Subsection E(2)(b), (c), and (d) of  
32 20.6.2.2001 NMAC. The Secretary shall appoint a hearing officer to preside over the appeal hearing. Any person  
33 may present oral or written statements, data, technical information, legal arguments, or other information on the  
34 permit certification or denial during the appeal hearing. Reasonable time limits may be placed on oral statements,  
35 and the submission of written statements may be required. Cross examination of persons presenting oral statements  
36 shall not be allowed. Within 30 days after the completion of the hearing, or such other time as the secretary may  
37 order given the complexities of the case, the hearing officer shall submit recommendations to the secretary. The  
38 secretary shall issue a final decision on the appeal within 30 days after receiving the recommendation, or such other  
39 time as the secretary may order given the complexities of the case.

40           **I.**       Pursuant to the New Mexico Water Quality Act, NMSA 1978, § 74-6-5(O), any person who is  
41 adversely affected by the secretary's final decision may file with the commission a petition for review of that  
42 decision based on the administrative record.  
43

1 **20.6.2.2002 PROCEDURES FOR CERTIFICATION OF FEDERAL PERMITS FOR DISCHARGE OF**  
 2 **DREDGED OR FILL MATERIAL:**

3 **A.** This section applies to the State certification of draft permits for the discharge of dredged or fill  
 4 material under section 401 of the federal Clean Water Act. The purpose of such certification is to reasonably ensure  
 5 that the permitted activities will be conducted in a manner that will comply with applicable water quality standards,  
 6 the statewide water quality management plan, and the antidegradation policy.

7 **B.** After review of a draft permit, the department will either:

8 (1) certify that the discharge will comply with the applicable provisions of Sections 301,  
 9 302, 303, 306 and 307 of the federal Clean Water Act and with appropriate requirements of State law;

10 (2) certify that the discharge will comply with the applicable provisions of Sections 301,  
 11 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law upon inclusion of  
 12 specified conditions in the permit;

13 (3) deny certification and include reasons for the denial; or

14 (4) waive its right to certify.

15 **C.** Pursuant to federal regulations at 33 Code of Federal Regulations section 325.3 and section 330.5,  
 16 the U.S. Army Corps of Engineers provides notice of draft dredged or fill permits to the applicant (except for  
 17 general or nationwide permits); various local, state, federal, tribal and pueblo government agencies; and other  
 18 interested parties, and it allows at least 15 days of public comment. To the extent practicable, the department will  
 19 provide public notice that the department is reviewing a draft permit for the purpose of preparing a state certification  
 20 or denial pursuant to Section 401 of the federal Clean Water Act jointly with the notice provided by the U.S. Army  
 21 Corps of Engineers. The department will also post notice on its website.

22 **D.** When joint notice is impractical, the department shall provide notice that the department is  
 23 reviewing a draft dredged or fill permit for purpose of preparing a state certification or denial pursuant to Section  
 24 401 of the federal Clean Water Act as follows:

25 (1) for general permits by posting notice on the department's website, or

26 (2) for individual permits by:

27 (a) posting notice on the department's website;

28 (b) publishing notice in a newspaper of general circulation in the location of the  
 29 discharge;

30 (c) mailing notice to the applicant;

31 (d) mailing or e-mailing notice to those persons on the general and facility-specific  
 32 mailing list maintained by the department who have requested such notice; and

33 (e) mailing notice to any affected local, state, federal, tribal, or pueblo government  
 34 agency, as identified by the department.

35 **E.** Public notices may describe more than one permit or permit action. The notice provided under  
 36 Subsections C and D of 20.6.2.2002 NMAC shall include:

37 (1) for general permits:

38 (a) a statement that the department will accept written comments on the permit  
 39 certification or denial during the comment period including the address where comments may be submitted; and

40 (b) a brief description of the activities that produce the discharge; or

41 (2) for individual permits:

42 (a) a statement that the department will accept written comments on the permit  
 43 certification or denial during the comment period including the address where comments may be  
 44 submitted;

45 (b) the name and address of the permittee or permit applicant and, if different, of  
 46 the facility or activity regulated by the permit;

47 (c) a brief description of the activities that produce the discharge; and

48 (d) a general description of the location of the discharge and the name of the  
 49 receiving water.

50 **F.** Following the public notice provided under Subsections C or D of 20.6.2.2002 NMAC, there shall  
 51 be a period of at least 30 days during which interested persons may submit written comments to the department.  
 52 The 30-day comment period shall begin on the date of the public notice provided under Subsections C or D of  
 53 20.6.2.2002 NMAC. The department shall consider all comments.

54 **G.** The public notice provisions in Subsection C and D of Section 20.6.2.2002 NMAC and the public  
 55 comment provisions in Subsection F of Section 20.6.2.2002 NMAC shall not apply to permits issued using

1 emergency procedures under 33 Code of Federal Regulations section 325.2(e)(4). However, even in emergency  
2 situations, reasonable efforts shall be made to receive comments from interested state and local agencies and the  
3 affected public.

4 **H.** Following the public comment period provided under Subsection F of 20.6.2.2002 NMAC, the  
5 department shall issue a final permit certification including any conditions that the department places on the  
6 certification, or issue a statement of denial including the reasons for the denial, or waive its right to certify. The  
7 final certification will generally be issued within 60 days from the date a request to grant, deny or waive  
8 certification is received by the department, unless a hearing is held, or unless the department in consultation with the  
9 U.S. Army Corps of Engineers District Engineer finds that unusual circumstances require a longer time. The  
10 department shall send a copy of the final permit certification or denial to the Army Corps of Engineers, the applicant  
11 (except for general or nationwide permits), and those members of the public who submitted comments to the  
12 department. The permit certification or denial shall be in writing and shall include:

- 13 (1) the name of the applicant (except for general permits) and the permit number;
- 14 (2) a statement that the department has examined the application or other relevant  
15 information and bases its certification upon an evaluation of the information contained in such application or other  
16 information which is relevant to water quality considerations;
- 17 (3) a statement that there is a reasonable assurance that the activity will be conducted in a  
18 manner which will not violate applicable water quality standards;
- 19 (4) a statement of any conditions which the department deems necessary or desirable with  
20 respect to the discharge of the activity;
- 21 (5) identification of any condition more stringent than that in the draft permit required to  
22 assure compliance with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act  
23 and with appropriate requirements of state law citing the Clean Water Act or state law upon which the condition is  
24 based;
- 25 (6) a statement of the extent to which each condition of the draft permit can be made less  
26 stringent without violating the requirements of state law, including water quality standards; and
- 27 (7) Such other information as the department may determine to be appropriate.

28 **I.** Any person who is adversely affected by the certification or denial of a specific permit may appeal  
29 such certification or denial by filing a petition for review with the secretary within 30 days after the department  
30 issues the final permit certification or statement of denial. Such petition shall be in writing and shall include a  
31 concise statement of the reasons for the appeal and the relief requested. The secretary may hold a hearing on the  
32 appeal. In any such appeal hearing, the procedures of Part 20.1.4 NMAC shall not apply. The department shall  
33 give notice of the appeal hearing at least 30 days prior to the hearing. The notice shall state the date, time, and  
34 location of the appeal hearing and shall include the pertinent information listed in Subsection E(2)(b), (c), and (d) of  
35 20.6.2.2002 NMAC. The Secretary shall appoint a hearing officer to preside over the appeal hearing. Any person  
36 may present oral or written statements, data, technical information, legal arguments, or other information on the  
37 permit certification or denial during the appeal hearing. Reasonable time limits may be placed on oral statements,  
38 and the submission of written statements may be required. Cross examination of persons presenting oral statements  
39 shall not be allowed. Within 30 days after the completion of the hearing, or such other time as the secretary may  
40 order given the complexities of the case, the hearing officer shall submit recommendations to the secretary. The  
41 secretary shall issue a final decision on the appeal within 30 days after receiving the recommendation, or such other  
42 time as the secretary may order given the complexities of the case.

43 **J.** Pursuant to the New Mexico Water Quality Act, NMSA 1978, § 74-6-5(O), any person who is  
44 adversely affected by the secretary's final decision may file with the commission a petition for review of that  
45 decision based on the administrative record.

46

1 **20.6.2.2003 PROCEDURES FOR CERTIFICATION OF OTHER FEDERAL PERMITS:**

2 **A.** This section applies to the State certification of draft federal permits under section 401 of the  
3 federal Clean Water Act, except for NPDES permits or permits for the discharge of dredged or fill material. For  
4 example, this section applies to certification of permits issued by the Federal Energy Regulatory Commission  
5 (FERC), and to permits issued under the Rivers and Harbors Act of 1899. The purpose of such certification is to  
6 reasonably ensure that the permitted activities will be conducted in a manner that will comply with applicable water  
7 quality standards, the statewide water quality management plan, and the antidegradation policy.

8 **B.** After review of a draft permit, the department will either:

9 (1) certify that the activity will comply with the applicable provisions of Sections 301, 302,  
10 303, 306 and 307 of the federal Clean Water Act and with appropriate requirements of State law;

11 (2) certify that the activity will comply with the applicable provisions of Sections 301, 302,  
12 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law upon inclusion of specified  
13 conditions in the permit;

14 (3) deny certification and include reasons for the denial; or

15 (4) waive its right to certify.

16 **C.** To the extent practicable, the department will provide public notice that the department is  
17 reviewing a draft federal permit for the purpose of preparing a state certification or denial jointly with the notice  
18 provided by the federal permitting agency. The department will also post notice on its website.

19 **D.** When joint notice is impractical, the department shall provide notice that the department is  
20 reviewing a draft federal permit for purpose of preparing a state certification or denial pursuant to Section 401 of  
21 the federal Clean Water Act as follows:

22 (1) for general permits by posting notice on the department's website, or

23 (2) for individual permits by:

24 (a) posting notice on the department's website;

25 (b) publishing notice in a newspaper of general circulation in the location of the

26 permitted activity;

27 (c) mailing notice to the applicant;

28 (d) mailing or e-mailing notice to those persons on the general and facility-specific

29 mailing list maintained by the department who have requested such notice; and

30 (e) mailing notice to any affected local, state, federal, tribal, or pueblo government  
31 agency, as identified by the department.

32 **E.** Public notices may describe more than one permit or permit action. The notice provided under  
33 Subsections C and D of 20.6.2.2003 NMAC shall include:

34 (1) for general permits:

35 (a) a statement that the department will accept written comments on the permit  
36 certification or denial during the comment period including the address where comments may be submitted; and

37 (b) a brief description of the permitted activities; or

38 (2) for individual permits:

39 (a) a statement that the department will accept written comments on the permit  
40 certification or denial during the comment period including the address where comments may be  
41 submitted;

42 (b) the name and address of the permittee or permit applicant and, if different, of  
43 the facility or activity regulated by the permit;

44 (c) a brief description of the permitted activities; and

45 (d) a general description of the location of the permitted activities and the name of  
46 the affected water.

47 **F.** Following the public notice provided under Subsections C or D of 20.6.2.2003 NMAC, there shall  
48 be a period of at least 30 days during which interested persons may submit written comments to the department.  
49 The 30-day comment period shall begin on the date of the public notice provided under Subsections C or D of  
50 20.6.2.2003 NMAC. The department shall consider all comments.

51 **G.** Following the public comment period provided under Subsection F of 20.6.2.2003 NMAC, the  
52 department shall issue a final permit certification including any conditions that the department places on the  
53 certification, or issue a statement of denial including the reasons for the denial, or waive its right to certify. The  
54 final certification will generally be issued within 60 days from the date a request to grant, deny or waive  
55 certification is received by the department, unless the department in consultation with the federal permitting agency

1 finds that unusual circumstances require a longer time. The department shall send a copy of the final permit  
2 certification or denial to the federal permitting agency, the applicant (except for general permits), and those  
3 members of the public who submitted comments to the department. The permit certification or denial shall be in  
4 writing and shall include:

- 5 (1) the name of the applicant (except for general permits) and the permit number;
- 6 (2) a statement that the department has examined the application or other relevant  
7 information and bases its certification upon an evaluation of the information contained in such application or other  
8 information which is relevant to water quality considerations;
- 9 (3) a statement that there is a reasonable assurance that the activity will be conducted in a  
10 manner which will not violate applicable water quality standards;
- 11 (4) a statement of any conditions which the department deems necessary or desirable with  
12 respect to the discharge of the activity;
- 13 (5) identification of any condition more stringent than that in the draft permit required to  
14 assure compliance with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act  
15 and with appropriate requirements of state law citing the Clean Water Act or state law upon which the condition is  
16 based;
- 17 (6) a statement of the extent to which each condition of the draft permit can be made less  
18 stringent without violating the requirements of state law, including water quality standards; and
- 19 (7) Such other information as the department may determine to be appropriate.

20 **H.** Any person who is adversely affected by the certification or denial of a specific permit may appeal  
21 such certification or denial by filing a petition for review with the secretary within 30 days after the department  
22 issues the final permit certification or statement of denial. Such petition shall be in writing and shall include a  
23 concise statement of the reasons for the appeal and the relief requested. The secretary may hold a hearing on the  
24 appeal. In any such appeal hearing, the procedures of Part 20.1.4 NMAC shall not apply. The department shall  
25 give notice of the appeal hearing at least 30 days prior to the hearing. The notice shall state the date, time, and  
26 location of the appeal hearing and shall include the pertinent information listed in Subsection E(2)(b), (c), and (d) of  
27 20.6.2.2003 NMAC. The Secretary shall appoint a hearing officer to preside over the appeal hearing. Any person  
28 may present oral or written statements, data, technical information, legal arguments, or other information on the  
29 permit certification or denial during the appeal hearing. Reasonable time limits may be placed on oral statements,  
30 and the submission of written statements may be required. Cross examination of persons presenting oral statements  
31 shall not be allowed. Within 30 days after the completion of the hearing, or such other time as the secretary may  
32 order given the complexities of the case, the hearing officer shall submit recommendations to the secretary. The  
33 secretary shall issue a final decision on the appeal within 30 days after receiving the recommendation, or such other  
34 time as the secretary may order given the complexities of the case.

35 **I.** Pursuant to the New Mexico Water Quality Act, NMSA 1978, § 74-6-5(O), any person who is  
36 adversely affected by the secretary's final decision may file with the commission a petition for review of that  
37 decision based on the administrative record.  
38