

**Saums, Glenn, NMENV**

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**From:** De Saillan, Charles, NMENV  
**Sent:** Monday, October 25, 2010 5:52 PM  
**To:** Mondragon, Fred, EDD  
**Cc:** Sandoval, Judi, EDD; Leavitt, Marcy, NMENV; Saums, Glenn, NMENV  
**Subject:** Submission of Proposed Rules  
**Attachments:** LETTER-SECRETARY MONDRAGON.pdf; CERTIFICATION PROCEDURE-final 9-27-10.doc

Dear Secretary Mondragon:

I am sending you by regular mail the attached proposed rule and cover letter, explaining why the Environment Department does not deem that the proposed rule, if adopted, will have an adverse effect on small businesses, in accordance with the Small Business Regulatory Relief Act.

Sincerely,

- Charles de Saillan



BILL RICHARDSON  
Governor

DIANE DENISH  
Lieutenant Governor

NEW MEXICO  
ENVIRONMENT DEPARTMENT  
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RON CURRY  
Secretary

SARAH COTTRELL  
Deputy Secretary

October 26, 2010

Secretary Fred Mondragón  
Economic Development Department  
Joseph Montoya Building  
1100 St. Francis Drive  
Suite 1060  
Santa Fe, New Mexico 87505

Re: Submission to the Small Business Regulatory Advisory Commission - Proposed  
Procedural Rules for Certification of Federal Water Quality Permits

Dear Secretary Mondragón:

Pursuant to the requirements of the Small Business Regulatory Relief Act, NMSA 1978, §§ 14-4A-1 to 14-4A-6, I am writing on behalf of the New Mexico Environment Department (Department) to inform the Small Business Regulatory Advisory Commission, of a proposed rulemaking before the New Mexico Water Quality Control Commission (WQCC). The Department has filed a rulemaking petition with the WQCC to establish procedures for the State certification of federal water quality permits. As explained more fully below, the Department does not deem that the proposed rules, if adopted, will have an adverse affect on small businesses. A copy of the proposed rules is enclosed herewith, and I am sending you an electronic copy in Word format via electronic mail.

Under section 301(a) of the federal Clean Water Act, the discharge of any pollutant by any person into a water of the United States is unlawful, except in accordance with a permit issued under the Act. 33 U.S.C. § 1311(a). The Clean Water Act establishes two primary programs to implement the permit requirement. First, section 402 of the Act establishes the National Pollutant Discharge Elimination System (NPDES). 33 U.S.C. § 1342. It authorizes the United States Environmental Protection Agency (EPA) to issue NPDES permits for the discharge of pollutants into waters of the United States. *Id.* Second, section 404 of the Act establishes a permitting program for the discharge of dredged or fill material. 33 U.S.C. § 1344. It authorizes the Army Corps of Engineers to issue permits for the discharge of dredged or fill material into waters of the United States. *Id.* In addition, several other federal statutes require licenses or permits for activities affecting waters of the United States. For example, the Federal Power Act authorizes the Federal Energy Regulatory Commission (FERC) to issue preliminary

permits and licenses for the construction and operation of dams and reservoirs. 16 U.S.C. § 797(e), (f). The Rivers and Harbors Act of 1899 authorizes the Army Corps of Engineers to issue permits and licenses for the construction of any obstruction to navigation in waters of the United States. 33 U.S.C. §§ 401, 403.

The Clean Water Act requires state involvement in the issuance of such federal permits. Section 401(a) of the Act provides that an applicant for a federal license or permit to conduct any activity “which may result in any discharge into” waters of the United States must obtain from the state in which the discharge originates a certification that the discharge will comply with all applicable requirements of the Clean Water Act, and with all applicable requirements of state law. 33 U.S.C. § 1341(a), (d). The Environment Department, through its Surface Water Quality Bureau, administers the certification of these federal permits in New Mexico.

Both the Clean Water Act and the New Mexico Water Quality Act require the adoption of procedures for certification of federal permits. Section 401(a)(1) of the Clean Water Act provides that the appropriate state agency “shall establish procedures for public notice in the case of all applications for certification by it and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications.” 33 U.S.C. § 1341(a)(1). The Water Quality Act similarly provides that “[t]he [WQCC] shall adopt regulations establishing procedures for certifying federal water quality permits.” NMSA 1978, § 74-6-5(B).

To meet these statutory mandates, the Department has drafted the enclosed proposed rules. The proposed rules are divided into three sections. Each section addresses, in similar fashion, certification of federal permits issued under different statutory authority. The first section of the proposed rules, section 20.6.2.2001 NMAC, would apply to certification of NPDES permits issued by EPA under section 402 of the Clean Water Act. The second section of the proposed rules, section 20.6.2.2002 NMAC, would apply to certification of permits for discharge of dredged or fill material issued by the Army Corps of Engineers under section 404 of the Clean Water Act. The third section of the proposed rules, section 20.6.2.2003 NMAC, would apply to certification of other federal permits for activities that might result in a discharge into waters of the United States. The proposed rules would require the Department to issue a public notice that it is reviewing a draft federal permit for purpose of certification or denial of certification. The rules would prescribe how the notice is to be published and to whom it is to be sent. The proposed rules would also prescribe the information to be included in the notice. The Department would have the option, if practical, to issue the notice jointly with EPA or the Army Corps of Engineers. The public would then have a minimum of thirty days to submit comments to the Department on the draft permit. The Department would be required to consider all pertinent public comments. *Id.* Following the public comment period, the Department would then certify the permit, certify the permit subject to conditions, or deny certification. If the Department does not act within the time prescribed by the federal permitting agency for such action, the authority to do so would be waived. Any person adversely affected by the certification decision would then have thirty days to appeal that decision to the Department Secretary. The Secretary could hold a hearing on the appeal. The Secretary’s decision could then be appealed to the WQCC.

The Department, on September 28, 2010, filed a rulemaking petition with the WQCC proposing the enclosed rules. The WQCC has set the matter for hearing during its regularly scheduled meeting on January 11, 2011. The location of the hearing has not yet been determined.

The Department does not deem that the proposed rules, if adopted, will have an adverse affect on small businesses. The proposed rules are purely procedural. They establish the procedures that the Department would be required to follow in certifying federal permits. They would not place any obligations on small businesses, or any other private entities. Moreover, the proposed rules would not represent a significant change in the certification process, as they effectively codify the Department's current practice. Further, promulgation of the rules would add clarity and certainty to the certification process. Small businesses and other interested parties would have a better understanding of how the process works, and what their options are to participate in the process. Such clarification would not have an adverse effect on small businesses; if anything, promulgation of the rules would have a favorable effect on small businesses.

If you or the Advisory Commission has any questions regarding this matter, please call me at (505) 827-2985.

Sincerely,



Charles de Saillan  
Assistant General Counsel

Enclosure

cc: Marcy Leavitt, Director, Water and Waste Management Division  
Glenn Saums, Chief, Surface Water Quality Bureau  
Judi Sandoval, Small Business Regulatory Advisory Commission

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

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

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

- (1) certify that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the federal Clean Water Act and with appropriate requirements of State law;
  - (2) certify that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law upon inclusion of specified conditions in the permit; or
  - (3) deny certification and include reasons for the denial.
- (4) If the department does not act on the certification within the time prescribed by the federal permitting agency for such action, the authority to do so shall be waived.

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

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

- (1) for general permits by:
  - (a) posting notice on the department's website;
  - (b) publishing notice in at least one newspaper of general circulation;
  - (c) mailing or e-mailing notice to those persons on the general mailing list maintained by the department who have requested such notice; and
  - (d) mailing or e-mailing notice to any affected local, state, federal, tribal, or pueblo government agency, as identified by the department; or
- (2) for individual permits by:
  - (a) posting notice on the department's website;
  - (b) publishing notice in a newspaper of general circulation in the location of the discharge;
  - (c) mailing notice to the applicant;
  - (d) mailing or e-mailing notice to those persons on the general and facility-specific mailing list maintained by the department who have requested such notice; and
  - (e) mailing notice to any affected local, state, federal, tribal, or pueblo government agency, as identified by the department.

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

- (1) for general permits:
  - (a) a statement that the department will accept written comments on the draft permit during the comment period including the address where comments may be submitted;
  - (b) a brief description of the activities that produce the discharge; and
  - (c) a description of the geographic area to be covered by the permit; or
- (2) for individual permits:
  - (a) a statement that the department will accept written comments on the draft permit during the comment period including the address where comments may be submitted;
  - (b) the name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;
  - (c) a brief description of the activities that produce the discharge; and
  - (d) a general description of the location of the discharge and the name of the receiving water.

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

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

- (1) The permit certification shall be in writing and shall include:
  - (a) the name of the applicant (except for general permits) and the NPDES permit number;
  - (b) a statement that the department has examined the application or other relevant information and bases its certification upon an evaluation of the information contained in such application or other information which is relevant to water quality considerations;
  - (c) a statement that there is a reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards;
  - (d) a statement of any conditions which the department deems necessary or desirable with respect to the discharge of the activity;
  - (e) identification of any condition more stringent than that in the draft permit required to assure compliance with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of state law citing the Clean Water Act or state law upon which the condition is based;
  - (f) a statement of the extent to which each condition of the draft permit can be made less stringent without violating the requirements of state law, including water quality standards; and
  - (g) such other information as the department may determine to be appropriate.
- (2) With justification, including any of the reasons listed in the New Mexico Water Quality Act, NMSA 1978, § 74-6-5(E), the department may deny permit certification. Denial of permit certification shall be in writing and shall include:
  - (a) the name of the applicant (except for general permits) and the NPDES permit number;
  - (b) a statement that the department has examined the application or other relevant information and bases its denial upon an evaluation of the information contained in such application or other information which is relevant to water quality considerations;
  - (c) a statement of denial including the reasons for the denial; and
  - (d) such other information as the department may determine to be appropriate.

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

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

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

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

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

- (1) certify that the discharge will comply with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the federal Clean Water Act and with appropriate requirements of State law;
- (2) certify that the discharge will comply with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law upon inclusion of specified conditions in the permit; or
- (3) deny certification and include reasons for the denial.

(4) If the department does not act on the certification within the time prescribed by the federal permitting agency for such action, the authority to do so shall be waived.

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

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

- (1) for general permits by:
  - (a) posting notice on the department's website;
  - (b) publishing notice in at least one newspaper of general circulation;
  - (c) mailing or e-mailing notice to those persons on the general mailing list maintained by the department who have requested such notice; and
  - (d) mailing or e-mailing notice to any affected local, state, federal, tribal, or pueblo government agency, as identified by the department; or
- (2) for individual permit applications by:
  - (a) posting notice on the department's website;
  - (b) publishing notice in a newspaper of general circulation in the location of the discharge;
  - (c) mailing notice to the applicant;
  - (d) mailing or e-mailing notice to those persons on the general and facility-specific mailing list maintained by the department who have requested such notice; and
  - (e) mailing notice to any affected local, state, federal, tribal, or pueblo government agency, as identified by the department.

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

- (1) for general permits:
  - (a) a statement that the department will accept written comments on the draft permit during the comment period including the address where comments may be submitted;
  - (b) a brief description of the activities that produce the discharge; and
  - (c) a description of the geographic area to be covered by the permit; or
- (2) for individual permit applications:
  - (a) a statement that the department will accept written comments on the permit application during the comment period including the address where comments may be submitted;
  - (b) the name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;
  - (c) a brief description of the activities that produce the discharge; and
  - (d) a general description of the location of the discharge and the name of the receiving water.

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

**G.** The public notice provisions in Subsection C and D of Section 20.6.2.2002 NMAC and the public comment provisions in Subsection F of Section 20.6.2.2002 NMAC shall not apply to permits issued using emergency procedures under 33 Code of Federal Regulations section 325.2(e)(4). However, even in emergency situations, reasonable efforts shall be made to receive comments from interested state and local agencies and the affected public.

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

- (1) The permit certification or denial shall be in writing and shall include:
  - (a) the name of the applicant (except for general permits) and the permit number;
  - (b) a statement that the department has examined the application or other relevant information and bases its certification upon an evaluation of the information contained in such application or other information which is relevant to water quality considerations;
  - (c) a statement that there is a reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards;
  - (d) a statement of any conditions which the department deems necessary or desirable with respect to the discharge of the activity; and
  - (e) such other information as the department may determine to be appropriate.
- (2) With justification, including any of the reasons listed in the New Mexico Water Quality Act, NMSA 1978, § 74-6-5(E), the department may deny permit certification. Denial of permit certification shall be in writing and shall include:
  - (a) the name of the applicant (except for general permits) and the permit number;
  - (b) a statement that the department has examined the application or other relevant information and bases its denial upon an evaluation of the information contained in such application or other information which is relevant to water quality considerations;
  - (c) a statement of denial including the reasons for the denial; and
  - (d) such other information as the department may determine to be appropriate.

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

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

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

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

**B.** After review of a draft permit, permit application or license, the department will either:

- (1) certify that the activity will comply with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the federal Clean Water Act and with appropriate requirements of State law;
- (2) certify that the activity will comply with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law upon inclusion of specified conditions in the permit; or
- (3) deny certification and include reasons for the denial.

(4) If the department does not act on the certification within the time prescribed by the federal permitting agency for such action, the authority to do so shall be waived.

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

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

- (1) for general permits or licenses by:
  - (a) posting notice on the department's website;
  - (b) publishing notice in at least one newspaper of general circulation;
  - (c) mailing or e-mailing notice to those persons on the general mailing list maintained by the department who have requested such notice; and
  - (d) mailing or e-mailing notice to any affected local, state, federal, tribal, or pueblo government agency, as identified by the department; or
- (2) for individual permits or licenses by:
  - (a) posting notice on the department's website;
  - (b) publishing notice in a newspaper of general circulation in the location of the permitted or licensed activity;
  - (c) mailing notice to the applicant;
  - (d) mailing or e-mailing notice to those persons on the general and facility-specific mailing list maintained by the department who have requested such notice; and
  - (e) mailing notice to any affected local, state, federal, tribal, or pueblo government agency, as identified by the department.

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

- (1) for general permits or licenses:
  - (a) a statement that the department will accept written comments on the permit or license during the comment period including the address where comments may be submitted; and
  - (b) a brief description of the permitted or licensed activities; and
  - (c) a description of the geographic area to be covered by the permit; or
- (2) for individual permits or licenses:
  - (a) a statement that the department will accept written comments on the permit or license during the comment period including the address where comments may be submitted;
  - (b) the name and address of the licensee, permittee or permit or license applicant and, if different, of the facility or activity regulated by the permit or license;
  - (c) a brief description of the permitted or licensed activities; and
  - (d) a general description of the location of the permitted or licensed activities and the name of the receiving water.

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

**G.** Following the public comment period provided under Subsection F of 20.6.2.2003 NMAC, the department shall issue a final certification including any conditions that the department places on the certification, or issue a statement of denial including the reasons for the denial. The final certification will generally be issued within 60 days from the date a request to grant or deny certification is received by the department, unless the department in consultation with the federal permitting or licensing agency finds that unusual circumstances require a longer time. The department shall send a copy of the final certification or denial to the federal permitting or licensing agency, the applicant (except for general permits), and those members of the public who submitted comments to the department.

- (1) The certification or denial shall be in writing and shall include:
  - (a) the name of the applicant (except for general permits) and the permit or license number;
  - (b) a statement that the department has examined the application or other relevant information and bases its certification upon an evaluation of the information contained in such application or other information which is relevant to water quality considerations;
  - (c) a statement that there is a reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards;
  - (d) a statement of any conditions which the department deems necessary or desirable with respect to the discharge of the activity;
  - (e) identification of any condition more stringent than that in the draft permit or license required to assure compliance with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of state law citing the Clean Water Act or state law upon which the condition is based;
  - (f) a statement of the extent to which each condition of the draft permit or license can be made less stringent without violating the requirements of state law, including water quality standards; and
  - (g) Such other information as the department may determine to be appropriate.
- (2) With justification, including any of the reasons listed in the New Mexico Water Quality Act, NMSA 1978, § 74-6-5(E), the department may deny certification. Denial of certification shall be in writing and shall include:
  - (a) the name of the applicant (except for general permits) and the permit or license number;
  - (b) a statement that the department has examined the application or other relevant information and bases its denial upon an evaluation of the information contained in such application or other information which is relevant to water quality considerations;
  - (c) a statement of denial including the reasons for the denial; and
  - (d) such other information as the department may determine to be appropriate.

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

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