

This is an amendment to 20.5.10 NMAC, Sections 2, 3, 6, 7, 8, 9 and 10, effective March 17, 2012.

20.5.10.2 SCOPE: This part applies to ~~[owners and operators of storage tanks as provided in 20.5.1 NMAC]~~ aggrieved parties as defined in this part.
[20.5.10.2 NMAC - Rp, 20.5.10.2 NMAC, 6/15/09; A, 3/17/12]

20.5.10.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through ~~[74-1-16]~~ 74-1-17 NMSA 1978.
[20.5.10.3 NMAC - Rp, 20.5.10.3 NMAC, 6/15/09; A, 3/17/12]

20.5.10.6 OBJECTIVE: The purpose of this part is to provide ~~[owners and operators]~~ aggrieved parties a means of seeking expedited review or reconsideration of decisions made by the department under 20.5 NMAC in regulating storage tank systems in order to protect the public health, safety and welfare and the environment of the state.
[20.5.10.6 NMAC - Rp, 20.5.10.6 NMAC, 6/15/09; A, 3/17/12]

20.5.10.7 DEFINITIONS:

- A. The definitions in 20.5.1 NMAC apply to this part.
B. As used in this part, the term “aggrieved party” means:
- (1) an owner, operator, person designated as a representative under 20.5.17.19 or product deliverer aggrieved by a decision by the department pursuant to 20.5 NMAC;
 - (2) an offeror aggrieved by a decision by the department on contractor selection under 20.5.17 NMAC;
 - (3) a contractor aggrieved by a decision by the department under 20.5.17 NMAC;
 - (4) a person that has been denied designation as a representative under 20.5.17.19 NMAC; or
 - (5) a person that has been denied qualification or disqualified under 20.5.16 NMAC.
- [20.5.10.7 NMAC - Rp, 20.5.10.7 NMAC, 6/15/09; A, 3/17/12]

20.5.10.8 INITIATION OF ADMINISTRATIVE REVIEW:

- A. Except for appeals as provided for in 20.5.17 NMAC for compliance determinations, any ~~[owner, operator or contractor aggrieved by a decision made by the department pursuant to 20.5.1 through 20.5.17 NMAC, any offeror aggrieved by a decision made by the department pursuant to 20.5.17 NMAC and any person denied designation as a representative pursuant to 20.5.17.19 NMAC]~~ aggrieved party may obtain review of the decision by either:
- (1) submitting to the department a written request for informal review pursuant to 20.5.10.9 NMAC;
- or
- (2) submitting to the secretary or the secretary's designee a written request for review on written submittals pursuant to 20.5.10.10 NMAC.
- B. Any request for administrative review initiated pursuant to Subsection A of this section must be postmarked within 15 days of the date of the decision ~~[to be reviewed].~~
- C. ~~[A person entitled to review under Subsection A of this section]~~ An aggrieved party may request review on written submittals under 20.5.10.10 NMAC without first requesting informal review under 20.5.10.9 NMAC. If, however, ~~[a person entitled to review]~~ an aggrieved party first requests informal review under 20.5.10.9 NMAC, the ~~[person]~~ aggrieved party thereafter may request review on written submittals under 20.5.10.10 NMAC of the determination made by the department pursuant to Subsection D of 20.5.10.9 NMAC, provided that the request for review on written submittals under 20.5.10.10 NMAC is postmarked within 15 days of the date of the determination made by the department pursuant to Subsection D of 20.5.10.9 NMAC.
- D. Review under this part does not stay the decision being reviewed, unless otherwise ordered by the secretary or secretary's designee, nor does it apply to or affect the secretary's authority to issue compliance orders or otherwise seek enforcement of these regulations, 20.5 NMAC, under the provisions of the Hazardous Waste Act or the Ground Water Protection Act.
[20.5.10.8 NMAC - Rp, 20.5.10.1000 NMAC, 6/15/09; A, 3/17/12]

20.5.10.9 INFORMAL REVIEW:

A. A request for informal review by an ~~[owner or operator]~~ aggrieved party shall be in writing and shall specify the grounds upon which the ~~[owner or operator]~~ aggrieved party objects to the decision ~~[to be reviewed]~~. Every request for informal review shall be submitted to the department by the deadline set out in ~~[Subsections B and C]~~ Subsection B of 20.5.10.8 NMAC.

B. The department shall afford prompt opportunity for an informal conference at which the ~~[owner or operator]~~ aggrieved party may present the ~~[owner's or operator's]~~ aggrieved party's views on the issues raised in the request for review and offer any supporting documentation or testimony. The department shall notify the ~~[owner or operator]~~ aggrieved party of the time, date and place of the informal conference.

C. If the decision to be reviewed was based on an inspection or field test performed or witnessed by an employee of the department, the member of department staff conducting the review must be someone other than the employee who conducted or witnessed the inspection or test.

D. After considering all written and oral views presented, the department shall affirm, modify or reverse the original decision and shall furnish the ~~[owner or operator]~~ aggrieved party with a written notification of its determination.

[20.5.10.9 NMAC - Rp, 20.5.10.1001 NMAC, 6/15/09; A, 3/17/12]

20.5.10.10 REVIEW BY THE SECRETARY OR THE SECRETARY'S DESIGNEE ON WRITTEN SUBMITTALS:

A. Every request for review by the secretary or the secretary's designee on written submittals shall be in writing and shall specify the grounds upon which the ~~[owner or operator]~~ aggrieved party objects to the decision ~~[to be reviewed]~~. The request shall be accompanied by any and all written materials and argument which the ~~[owner or operator]~~ aggrieved party wishes the secretary or the secretary's designee to consider upon review. The request and all written materials and argument shall be submitted to the secretary or the secretary's designee by the deadline set out in Subsections B and C of 20.5.10.8 NMAC.

B. Within 15 days after the filing of the ~~[owner or operator's]~~ aggrieved party's request for review and submittal of all the ~~[owner or operator's]~~ aggrieved party's supporting material, department staff shall provide to the secretary or the secretary's designee any and all written materials and argument in support of the position of department staff on the issues raised by the ~~[owner or operator]~~ aggrieved party.

C. For good cause shown, the secretary or the secretary's designee may permit either party (that is, either department staff or the ~~[owner or operator]~~ aggrieved party) additional time in which to submit the supporting written materials and argument allowed by Subsections A and B of this section. Any extension of time to submit written submittals shall not include the authority to extend the time to file a request for review under this part.

D. The action of the secretary or the secretary's designee on the request for review shall be based on the written materials and argument submitted pursuant to this section unless the secretary or the secretary's designee schedules a hearing on the request for review as set forth below.

E. The secretary or the secretary's designee may exercise discretion in determining if there is significant public interest for a public hearing and, if so, may provide notice of the time and place of the hearing to the ~~[owner and operator]~~ aggrieved party, and may provide notice to interested persons other than the ~~[owner or operator]~~ aggrieved party and provide for public participation in the review process described in this section, as the secretary or the secretary's designee deems appropriate.

F. If the secretary chooses to hold a hearing as described in Subsection E of this section, the secretary shall hold the hearing within 60 days after receiving the written materials and argument described in Subsection A or after receiving the request for a hearing, whichever occurs last. In the event the department holds a hearing, the cost of the court reporter and transcript shall be paid by the party that requested the hearing. The hearing shall be conducted in accordance with 20.1.5 NMAC.

G. The action of the secretary or the secretary's designee on the request for review shall be by written order and shall state the decision and the reason therefore. The secretary or the secretary's designee shall send a copy of the order to the ~~[owner or operator]~~ aggrieved party and furnish a copy to department staff promptly after the order is entered. This written order shall be the department's final action on the request for review. Any judicial review of this final order shall be as provided by applicable law.

[20.5.10.10 NMAC - Rp, 20.5.10.1002 NMAC, 6/15/09; A, 3/17/12]