

This is an amendment to 20.5.16 NMAC, Sections 3 and 13 and a repeal of Sections 14 and 15, effective March 17, 2012.

20.5.16.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the provisions of the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978; the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through [74-1-16] 74-1-17 NMSA 1978.

[20.5.16.3 NMAC - Rp, 20.5.16.3 NMAC, 6/15/09; A, 3/17/12]

20.5.16.13 APPEALING ADVERSE DETERMINATIONS:

~~A.~~ A firm that has been denied qualification or that has been disqualified under this part may obtain review of the decision by ~~either:~~ using the procedures set forth in 20.5.10 NMAC, Administrative Review.

~~(1) — submitting to the department a written request for informal review pursuant to 20.5.16.14 NMAC;~~

~~or~~

~~(2) — submitting to the secretary or the secretary's designee a written request for review on written submittals pursuant to 20.5.16.15 NMAC.~~

~~B. — Any request for administrative review initiated under Subsection A of this section must be postmarked within 15 days of the date of the decision to be reviewed.~~

~~C. — A firm may request review on written submittals under 20.5.16.15 NMAC without first requesting informal review under 20.5.16.14 NMAC. If, however, the firm first requests informal review under 20.5.16.14 NMAC, the firm thereafter may request review on written submittals under 20.5.16.15 NMAC of the determination made by the department pursuant to Subsection D of 20.5.16.14 NMAC, provided that the request for review on written submittals under 20.5.16.15 NMAC is postmarked within 15 days of the date of the determination made by the department pursuant to Subsection D of 20.5.16.14 NMAC.~~

~~D. — Review under this part does not stay the decision being reviewed nor does it apply to or affect the secretary's authority to issue compliance orders or otherwise seek enforcement of any of the provisions of Title 20, Chapter 5 NMAC.]~~

[20.5.16.13 NMAC - Rp, 20.5.16.1612 NMAC, 6/15/09; A, 3/17/12]

20.5.16.14 [INFORMAL REVIEW:

~~A. — Every request for informal review by a firm shall be in writing and shall specify the grounds upon which the firm 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 of 20.5.16.13 NMAC.~~

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

~~C. — The member of department staff conducting the review must be someone other than the employee who made the original decision not to qualify the firm to perform corrective action under this part.~~

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

~~[RESERVED]~~

[20.5.16.14 NMAC - Rp, 20.5.16.1613 NMAC, 6/15/09; Repealed, 3/17/12]

20.5.16.15 [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 firm objects to the decision to be reviewed. The request shall be accompanied by any and all written materials and argument which the firm 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 20.5.16.13 NMAC.~~

~~B. — Within 15 days of the filing of the firm's request for review and submittal of all the firm'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 firm.~~

~~C. — For good cause shown, the secretary or the secretary's designee may permit either department staff or the firm 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 whether to grant a hearing requested by the firm seeking review. If the secretary exercises the discretion to hold a hearing, the secretary shall provide notice of the time and place of the hearing to the firm making the request.~~

~~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 therefor. The secretary or the secretary's designee shall send a copy of the order to the firm 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.] [RESERVED]~~

[20.5.16.15 NMAC - Rp, 20.5.16.1614 NMAC, 6/15/09; Repealed, 3/17/12]