

1 **Exhibit 3 - Proposed Changes to 20.7.7 NMAC**

2 **TITLE 20 ENVIRONMENTAL PROTECTION**

3 **CHAPTER 7 WASTEWATER AND WATER SUPPLY FACILITIES**

4 **PART 7 REVIEW PROCEDURES FOR WASTEWATER CONSTRUCTION LOANS**

5
6 **20.7.7.1 ISSUING AGENCY.** New Mexico Environment Department.

7 [11/30/1995; 20.7.7.1 NMAC – [~~Rn, 20 NMAC 7.7.100, 7/16/2000~~] Rp, 20.7.7.1 NMAC, / /2020]

8
9 **20.7.7.2 SCOPE.** These procedures apply to all construction or planning/design projects funded in-part
10 [~~from funds~~] from the Wastewater Facilities Construction Loan Fund which [~~are~~] is derived from the federal
11 capitalization grant except as provided in [~~Section 20.7.7.11 NMAC~~] Section 11 of 20.7.7 NMAC.

12 [10/22/1988; 11/30/1995; 20.7.7.2 NMAC – [~~Rn, 20 NMAC 7.7.101 & A, 7/16/2000~~] Rp, 20.7.7.2 NMAC,
13 / /2020]

14
15 **20.7.7.3 STATUTORY AUTHORITY.** Department of Environment Act, [~~NMSA 1978, 9-7A-6.F~~]
16 Subsection D of Section 9-7A-6 NMSA 1978; Wastewater Facility Construction Loan Act, [~~NMSA 1978, Sections~~
17 ~~74-6A-1 to 15~~] Sections 74-6A-1 to 15 NMSA 1978; and Water Quality [~~Control~~] Act, NMSA 1978, Sections 74-6-
18 1 to 17.

19 [10/22/1988; 11/30/1995; 20.7.7.3 NMAC – [~~Rn, 20 NMAC 7.7.102, 7/16/2000~~] Rp, 20.7.7.3 NMAC, / /2020]

20
21 **20.7.7.4 DURATION.** Permanent.

22 [11/30/1995; 20.7.7.4 NMAC – [~~Rn, 20 NMAC 7.7.103, 7/16/2000~~] Rp, 20.7.7.4 NMAC, / /2020]

23
24 **20.7.7.5 EFFECTIVE DATE.** July 16, 2000 This Part amends and replaces the Environmental Review
25 Procedures for Projects Funded Through the Wastewater Facility Construction Loan Program, HED 88-3 (EID),
26 filed September 22, 1988, as amended.

27 **A.** All references to HED 88-3 (EID) or to the Review Procedures for Projects Funded Through the
28 Wastewater Facility Construction Loan Program in any other rule shall be construed as a reference to this Part.

29 **B.** The amendment and replacement of HED 88-3 (EID) shall not affect any administrative or judicial
30 enforcement action pending on the effective date of such amendment nor the validity of any financial assistance
31 provided pursuant to HED 88-3 (EID).

32 [11/30/1995; 20.7.7.5 NMAC – [~~Rn, 20 NMAC 7.7.104 & A, 7/16/2000~~] Rp, 20.7.7.5 NMAC, / /2020]

33
34 **20.7.7.6 OBJECTIVE.** This Part establishes the New Mexico Environment Department's policy and
35 procedures for the identification and analysis of the environmental impacts of construction of wastewater facilities
36 funded in-part through loans from the Wastewater Facility Construction Loan Fund (which is New Mexico's SRF)
37 and the preparation and processing of Environmental Impact Statements (EISs). This procedure shall be coordinated
38 with and shall be consistent with [~~the~~] NMED's environmental review responsibilities pursuant to the Governor's
39 Executive Order 83-73, "State Clearinghouse Review Process."

40 [10/22/1988; 11/30/1995; 20.7.7.6 NMAC – [~~Rn, 20 NMAC 7.7.105, 7/16/2000~~] Rp, 20.7.7.6 NMAC, / /2020]

41
42 **20.7.7.7 DEFINITIONS.** All terminology used in this Part will be consistent with the terms as defined in
43 40 CFR Part 1508 (the CEQ Regulations) except as provided in this Part. [~~Any qualifications will be provided in the~~
44 ~~definitions set forth in this Part.~~]

45 **A. "Applicant"** means any [~~local authority~~] state agency or other qualified borrower, which has filed
46 an application for loan assistance from the SRF.

47 **B. "Environmental Information Document"** (EID) means any written analysis prepared by an
48 applicant or contractor describing the environmental impacts of a proposed project. This document will be of
49 sufficient scope to enable the responsible official to assess the environmental impacts of the proposed project;

50 **C. "Department" or "NMED"** means the New Mexico environment department.

51 [~~C.~~]**D. "environmental review"** means the process whereby an evaluation is undertaken by [~~the~~] NMED
52 to determine whether a proposed project may have a significant impact on the environment and therefore require the
53 preparation of an Environmental Impact Statement (EIS);

54 [~~D.~~]**E. "Loan"** means a loan of funds by a written loan agreement from the SRF;

1 ~~[E. "planning/design loan"]~~ **F. "Planning/design loan"** means a loan which is issued for the
2 purpose of preparation of a plan (including environmental review process) ~~and/or~~ or preparation of design
3 drawings and specifications for a potential construction project.

4 ~~[F. "project"]~~ **G. "Project"** means a construction project which receives a loan for the purpose of
5 building a publicly owned treatment works (POTW) or other eligible works.

6 ~~[G.]~~ **H. "Record of Decision"** (ROD) means a document prepared and issued by the NMED responsible
7 official on the Environmental Impact Statement (EIS) which includes an identification of mitigation measures.

8 ~~[H.]~~ **I. "Responsible Official"** means the Secretary~~[-New Mexico Environment Department]~~ of the
9 department who is authorized to fulfill the requirements of these procedures. The Chief of the Construction
10 Programs Bureau is delegated the day-to-day responsibilities for implementing these procedures.

11 **J. "SRF"** means the state revolving loan fund as established by the Wastewater Facility Construction
12 Loan Act.

13 **K. "State agency"** means an agency or department of the New Mexico executive branch of
14 government.

15 [10/22/1988; 11/30/1995; 20.7.7.7 NMAC – ~~Rn, 20 NMAC 7.7.109 & A, 7/16/2000~~] Rp, 20.7.7.7 NMAC,
16 / /2020]

18 20.7.7.8 BACKGROUND.

19 **A.** ~~[Pursuant to Clean Water Act amendments of 1987 (CWA) the U.S. Environmental Protection~~
20 ~~Agency (EPA) issued on January 28, 1988 the final "Initial Guidance – State Water Pollution Control Revolving~~
21 ~~Funds (SRF)." Section III.8.11. states the following: Section 212 POTW projects that the State constructs with~~
22 ~~funds "directly made available by" capitalization grants (equivalency projects) must be treated under the National~~
23 ~~Environmental Policy Act (NEPA) in the same manner as Title II construction grants projects. To comply with this~~
24 ~~requirement, the State may either develop or revise its own "NEPA like" environmental review methods or adopt~~
25 ~~and apply the procedures at 40 CFR Part 6. If the State selects its own method for conducting environmental~~
26 ~~reviews, the process must be approved by the Regional Administrator. State processes will be evaluated on the basis~~
27 ~~of the guidance included as Appendix D which describes an adequate NEPA like program for environmental~~
28 ~~reviews of equivalency projects. State environmental review procedures that have previously been used in the Title~~
29 ~~II program augmented by actions formerly undertaken by EPA and that are supported by State authority will meet~~
30 ~~these requirements. Under section 602(a) of the CWA, the Administrator is authorized to include specifications in~~
31 ~~the capitalization grant agreement that are in addition to those required by section 602(b). Pursuant to this authority,~~
32 ~~EPA will also require States to agree to conduct reviews of the potential environmental impacts of all other section~~
33 ~~212 POTW construction projects receiving assistance from the SRF. If the State chooses to, it may apply a different~~
34 ~~environmental review process to these other projects. If so, the RA will evaluate and approve this process on the~~
35 ~~basis of additional guidance that is also included in Appendix D. This "second tier" process differs in scope and~~
36 ~~rigor from the NEPA like process required for equivalency projects under section 602(b)(6). Changes to both the~~
37 ~~NEPA like and second tier environmental review process must be approved by the RA. In the annual review, the~~
38 ~~RA will determine whether the appropriate environmental reviews have been conducted on all treatment works~~
39 ~~projects, as defined in section 212, that have received assistance from the SRF.] On June 10, 2014, the President~~
40 ~~signed into law the Water Resources Reform and Development Act of 2014. The U.S. Environmental Protection~~
41 ~~Agency (EPA) issued on September 18, 2014, Interpretive Guidance for Certain Amendments in the Water~~
42 ~~Resources Reform and Development Act to Titles I, II, V, and VI of the Federal Water Pollution Control Act~~
43 ~~(FWPCA). Section 5002 states the following: All CWSRF-funded projects involving the construction of treatment~~
44 ~~works, regardless of the source of the funding... must undergo an environmental review. The [EPA] has consistently~~
45 ~~interpreted the statement "with assistance made available by a State water pollution control revolving fund~~
46 ~~authorized under this title" to mean that the specific requirement identified applies to all CWSRF-funded projects,~~
47 ~~not just equivalency projects. Consistent with this prior interpretation, ay project that is considered a "treatment~~
48 ~~work" as defined in the FWCPA section 212, now incorporated in FWCPA Section 502(26), must comply with the~~
49 ~~FWCPA 511(c)(1) regardless of which eligibility it is funded under (see section 603(c)). A state may choose to~~
50 ~~apply its own "NEPA-like" state environmental review process for complying with the FWCPA 511(c)(1) provided~~
51 ~~that the elements in 40 CFR 35.3140(b)(1) through (5) are met.~~

52 **B.** The ~~[New Mexico Environment Department (NMED)]~~ department, pursuant to [9-7A-6 NMSA
53 1978] Section 9-7A-6 NMSA 1978, revised and adopted the procedures as outlined at 40 CFR Part 6 - Procedures
54 for Implementing the Requirements of the Council on Environmental Quality on the National Environmental Policy
55 Act of 1969 (NEPA).

1 C. NMED is authorized by ~~[NMSA 1978, Sections 74-6A-4.A, 5.B and F.]~~ Subsection A of Section
2 74-6A-4 NMSA 1978 of the Wastewater Facility Construction Loan Act to establish and administer a program to
3 make loans to ~~[local authorities]~~ state agencies and other qualified borrowers for construction or modification of
4 wastewater facilities. In carrying out this responsibility, the Secretary of the ~~[Environment Department]~~ department
5 has adopted policies, requirements, procedures, and guidelines for administration of the SRF which includes the
6 primary responsibility for conducting environmental reviews and evaluations of SRF projects. Legal remedies
7 available to the public to challenge environmental review determinations and enforcement pursuant to this procedure
8 are provided by appeal by an aggrieved party(s) of the determination or action through administrative channels to
9 higher authorities within ~~[the]~~ NMED.

10 D. The New Mexico Water Quality Act, ~~[NMSA 1978, Sections 74-6-1 to 17]~~ Sections 74-6-1 to 17
11 NMSA 1978, created the Water Quality Control Commission (WQCC) which is the state water pollution control
12 agency for all purposes of the federal Clean Water Act, as amended. The WQCC may take all action necessary and
13 appropriate to secure to New Mexico and its political subdivisions the benefits of the federal act. The Water Quality
14 Act identifies legal remedies available to it and its constituent agencies (including NMED) in enforcement of its
15 regulations, and legal remedies available to the public regarding implementation of programs covered by the Water
16 Quality Act which includes the ~~[SRF]~~ SRF.
17 [10/22/1988; 11/30/1995; 20.7.7.8 NMAC – ~~[Rn, 20 NMAC 7.7.106 & A, 7/16/2000]~~ Rp, 20.7.7.8 NMAC,
18 / /2020]

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20 **20.7.7.9 CONSTRUCTION.** This Part shall be liberally construed to carry out the purposes of the Act. If
21 any provision or application of this Part is held invalid, the remainder or its application to other situations or persons
22 shall not be affected.
23 [11/30/1995; 20.7.7.9 NMAC – ~~[Rn, 20 NMAC 7.7.107, 7/16/2000]~~ Rp, 20.7.7.9 NMAC, / /2020]
24

25 **20.7.7.10 COMPLIANCE WITH OTHER REGULATIONS.** Compliance with this Part does not relieve a
26 person from the obligation to comply with other applicable state and federal regulations.
27 [11/30/1995; 20.7.7.10 NMAC – ~~[Rn, 20 NMAC 7.7.108, 7/16/2000]~~ Rp, 20.7.7.10 NMAC, / /2020]
28

29 **20.7.7.11 OVERVIEW.** The process for conducting an environmental review of wastewater facility
30 construction projects includes the following steps.

31 A. Consultation. The applicant is encouraged to consult with NMED early in project formulation or
32 the facilities planning stage to determine whether a project is eligible for a categorical exclusion from the remaining
33 substantive environmental review requirements of these procedures, to determine alternatives to the proposed
34 project for evaluation, to identify potential environmental issues ~~[and opportunities for public recreation and open~~
35 ~~space]~~, and to determine the potential need for partitioning the environmental review process ~~[and/or]~~ or the need for
36 an Environmental Impact Statement (EIS).

37 B. Determining categorical exclusion eligibility. At the request of an applicant, NMED will
38 determine if a project is eligible for a categorical exclusion in accordance with the submission of a loan application
39 and other documents submitted to NMED to substantiate the request.

40 C. Documenting environmental information. If the project is determined to be ineligible for a
41 categorical exclusion, or if no request for a categorical exclusion is made, the potential applicant subsequently
42 prepares an Environmental Information Document (EID) for the project.

43 D. In the event that the proposed action is of a limited nature, but does not qualify for a categorical
44 exclusion, and that an EID had been approved previously by the ~~[USEPA]~~ EPA or NMED for wastewater facilities,
45 the responsible official may determine to what extent updated information may suffice to provide the requisite
46 environmental review of the project.

47 E. Assessing environmental impacts. NMED reviews the ~~[Environmental Information Document~~
48 ~~(EID)]~~ EID, prepares an environmental assessment (EA), and based upon an assessment of the environmental
49 impacts of the proposed project ~~[the]~~ NMED:

- 50 (1) Prepares and issues a Finding of No Significant Impact (FONSI); or
51 (2) Prepares or issues a Notice of Intent to prepare an original or supplemental EIS and
52 Record of Decision (ROD).

53 F. Monitoring. The construction and post-construction operation and maintenance of the facilities
54 are monitored to ensure implementation of mitigation measures identified in the FONSI or ROD.

55 [10/22/1988; 11/30/1995; 20.7.7.11 NMAC – ~~[Rn, 20 NMAC 7.7.200 & A, 7/16/2000]~~ Rp, 20.7.7.11 NMAC,
56 / /2020]

1
2 **20.7.7.12 CONSULTING DURING THE ~~[FACILITIES PLANNING PROCESS]~~ PRELIMINARY**
3 **ENGINEERING PROCESS.** The responsible official shall initiate the environmental review process early to
4 identify environmental effects, avoid delays, and resolve conflicts. The environmental review process should be
5 integrated throughout the ~~[facilities planning process]~~ preliminary engineering process. Potential applicants should
6 consult with NMED early in the ~~[facilities planning process]~~ preliminary engineering process. The consultation
7 ~~[would be most useful]~~ should be conducted during the evaluation of project alternatives prior to the selection of a
8 preferred alternative, to assist in resolving any identified environmental problems.
9 ~~[10/22/1988; 11/30/1995; 20.7.7.12 NMAC – [Rn, 20 NMAC 7.7.201 & A, 7/16/2000] Rp, 20.7.7.12 NMAC,~~
10 ~~/ /2020]~~

11
12 **20.7.7.13 COORDINATION WITH OTHER ENVIRONMENTAL REVIEW AND CONSULTATION**
13 **REQUIREMENTS.** ~~[Pertinent laws, regulations, or executive orders which should be included in a coordinated~~
14 ~~environmental review effort:~~

15 **A. ENVIRONMENTAL:**

- 16 ~~_____ (1) Archeological and Historic Preservation Act of 1974, PL 93-291~~
- 17 ~~_____ (2) Clean Air Act, 42 U.S.C. 7506(e)~~
- 18 ~~_____ (3) Coastal Barrier Resources Act, 16 U.S.C. 3501 et seq.~~
- 19 ~~_____ (4) Coastal Zone Management Act of 1972, PL 92-583, as amended~~
- 20 ~~_____ (5) Endangered Species Act 16 U.S.C. 1531 et seq.~~
- 21 ~~_____ (6) Executive Order 11593, Protection and Enhancement of the Cultural Environment~~
- 22 ~~_____ (7) Executive Order 11988, Floodplain Management~~
- 23 ~~_____ (8) Executive Order 11990, Protection of Wetlands~~
- 24 ~~_____ (9) Farmland Protection Policy Act, 7 U.S.C. 4201 et seq.~~
- 25 ~~_____ (10) Fish and Wildlife Coordination Act, PL 85-624, as amended~~
- 26 ~~_____ (11) National Historic Preservation Act of 1966, PL 89-665, as amended~~
- 27 ~~_____ (12) Safe Drinking Water Act, section 1424 (e), PL 92-523, as amended~~
- 28 ~~_____ (13) Wild and Scenic Rivers Act, PL 90-542, as amended~~
- 29 ~~_____ (14) Historic Sites Act of 1935, 16 U.S.C. 461 et seq.~~

30 **B. ECONOMIC:**

- 31 ~~_____ (1) Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as~~
32 ~~amended.~~
- 33 ~~_____ (2) Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including~~
34 ~~Executive Order 11738, Administration of Clean Air Act and the Federal Water Pollution Control Act with Respect~~
35 ~~to Federal Contracts, Grants, or Loans.~~

36 **C. SOCIAL LEGISLATION**

- 37 ~~_____ (1) Age Discrimination Act, PL 94-135~~
- 38 ~~_____ (2) Civil Rights Act of 1964, PL 88-352~~
- 39 ~~_____ (3) Section 13 of PL 92-500; Prohibition against sex discrimination under the Federal Water~~
40 ~~Pollution Control Act~~
- 41 ~~_____ (4) Executive Order 11246, Equal Employment Opportunity~~
- 42 ~~_____ (5) Executive Orders 11625 and 12138, Women's and Minority Business Enterprise~~
- 43 ~~_____ (6) Rehabilitation Act of 1973, PL 93-112 (including Executive Orders 11914 and 11250)~~

44 **D. MISCELLANEOUS AUTHORITY:**

- 45 ~~_____ (1) Uniform Relocation and Real Property Acquisition Policies Act of 1970.~~
- 46 ~~_____ (2) Executive Order 12549 – Debarment and Suspension.] Pertinent laws, regulations, or~~
47 ~~executive orders should be included in a coordinated environmental review effort as outlined in the NNMED~~
48 ~~Construction Programs Bureau State Environmental Review Process (SERP), EPA' general terms and conditions of~~
49 ~~the grant, and the EPA CWSRF guidance.~~
50 ~~[20.7.7.13 NMAC – [Rn, 20 NMAC 7.7.202 & A, 7/16/2000] Rp, 20.7.7.13 NMAC, / /2020]~~

51
52 **20.7.7.14 REVIEW OF COMPLETED ~~[FACILITIES PLANS]~~ PRELIMINARY ENGINEERING**
53 **REPORTS.** NMED shall review the completed ~~[facilities plan with particular attention to the EID and its~~
54 ~~utilization]~~ preliminary engineering reports (PER) and EID in the development of alternatives and the selection of a
55 preferred alternative. An adequate EID shall be an integral part of ~~[any facilities plan]~~ planning submitted to

1 NMED. The EID shall be of sufficient scope to enable the responsible official to make determinations on requests
2 for partitioning the environmental review process and for preparing an [EA] environmental assessment (EA).
3 [10/22/1988; 11/30/1995; 20.7.7.14 NMAC – ~~[Rn, 20 NMAC 7.7.300 & A, 7/16/2000]~~ Rp, 20.7.7.14 NMAC,
4 / /2020]

6 **20.7.7.15 ENVIRONMENTAL ASSESSMENT.** The environmental assessment process shall cover all
7 potentially significant environmental impacts. NMED personnel shall assess environmental impacts before ~~[the~~
8 ~~facilities plan]~~ PER approval. The EID shall address all elements in 40 CFR Part 6 and follow ~~[NMED guidance.]~~
9 the SERP. In minimizing the adverse effects of the proposed action:

10 ~~[A. Minimizing adverse effects of the proposed action.~~

11 ~~(1)~~ **A.** Structural and nonstructural measures, directly or indirectly related to the
12 facilities plan, to mitigate or eliminate adverse effects on the human and natural environments shall be identified
13 during the environmental review. Among other measures, structural provisions include changes in facility design,
14 size, and location; nonstructural provisions include staging facilities, monitoring and enforcement of environmental
15 regulations, and local commitments to develop and enforce land use regulations.

16 ~~(2)~~ **B.** NMED shall not accept a ~~[facilities plan]~~ PER, nor approve loan assistance for
17 its implementation, if the applicant has not made, or agreed to make, changes in the project, in accordance with
18 determinations made in a FONSI or the ROD for ~~[a]~~ an EIS. NMED shall condition a loan or seek other ways to
19 ensure that the applicant will comply with such environmental review determinations.

20 [20.7.7.15 NMAC – ~~[Rn, 20 NMAC 7.7.301 & A, 7/16/2000]~~ Rp, 20.7.7.15 NMAC, / /2020]

22 **20.7.7.16 FONSI/EID DETERMINATION.** The responsible official shall apply the criteria under Section
23 19 of 20.7.7 NMAC to the following:

24 **A.** A complete ~~[facilities plan]~~ PER;

25 **B.** The EID; and

26 **C.** Other documentation deemed necessary by the responsible official adequate to make an EIS
27 determination by NMED. Following an independent environmental review of the projects, the responsible official
28 shall document in writing the reasons for his determination to issue a FONSI or to prepare an EIS. The responsible
29 official's determination to issue a FONSI or to prepare an EIS shall constitute final ~~[NMED]~~ department action.

30 [10/22/1988; 11/30/1995; 20.7.7.16 NMAC – ~~[Rn, 20 NMAC 7.7.302 & A, 7/16/2000]~~ Rp, 20.7.7.16 NMAC,
31 / /2020]

33 **20.7.7.17 PARTITIONING THE ENVIRONMENTAL REVIEW PROCESS.**

34 **A.** Purpose. Under certain circumstances, the building of a component/portion of a wastewater
35 treatment system may be justified in advance of completing all environmental review requirements for the remainder
36 of the system(s). When there are overriding considerations of cost or impaired program effectiveness the
37 responsible official may approve a loan for a discrete component of a complete wastewater treatment system(s).
38 The process of partitioning the environmental review for the discrete component shall comply with the criteria and
39 procedures described in subsection (B) of this section. In addition, all reasonable alternatives for the overall
40 wastewater treatment works system(s), of which the component is a part, shall have been previously identified and
41 each part of the environmental review for the remainder of the overall facilities plan shall comply with all
42 requirements under Sections 14 and 15 of 20.7.7 NMAC.

43 **B.** Criteria for partitioning. The project component must:

44 (1) Immediately remedy a severe public health, water quality, or other environmental
45 problem;

46 (2) Not foreclose any reasonable alternatives identified for the overall wastewater treatment
47 works system(s);

48 (3) Not cause significant adverse direct or indirect environmental impacts including those
49 which cannot be acceptably mitigated without completing the entire wastewater treatment system of which the
50 component is a part; and

51 (4) Not be highly controversial.

52 **C.** Request for partitioning. The applicant's request for partitioning must contain the following:

53 (1) A description of the discrete component proposed for construction before completing the
54 environmental review of the entire facilities plan;

55 (2) How the component meets the above criteria;

1 (3) The environmental information required by Sections 14 and 15 of 20.7.7 NMAC for the
2 component; and

3 (4) Any preliminary information that may be important to NMED in an EA determination for
4 the entire facilities plan.

5 D. Approval of requests for partitioning. The responsible official shall:

6 (1) Review the request for partitioning against all requirements of this procedure;

7 (2) If approvable, prepare and issue a FONSI;

8 (3) Include a loan condition prohibiting the building of additional or different components of
9 the entire facilities plan for which the environmental review is not complete.

10 [10/22/1988; 20.7.7.17 NMAC – ~~[Rn, 20 NMAC 7.7.303 & A, 7/16/2000]~~ Rp, 20.7.7.17 NMAC, / /2020]

11
12 **20.7.7.18 FINDING OF NO SIGNIFICANT IMPACT (FONSI) DETERMINATION.**

13 A. Criteria for producing and distributing a FONSI. If, after completion of the ~~[environmental~~
14 ~~assessment]~~ EA, NMED determines that an EIS will not be required, the responsible official shall issue a FONSI.
15 The FONSI will be based on NMED independent review of the EID and any other environmental information
16 deemed necessary by the responsible official, consistent with the requirements of Sections 14 and 15 of 20.7.7
17 NMAC. The FONSI shall list mitigation measures necessary to make the recommended alternative environmentally
18 acceptable.

19 B. Proceeding with loan agreement.

20 (1) Once the issued FONSI becomes effective for the ~~[facilities plan for the study area]~~
21 project, after a ~~[thirty (30)]~~ 30 day public comment period ~~[a loan agreement]~~ construction may proceed unless the
22 responsible official determines that the project or environmental conditions have changed significantly from that
23 which underwent environmental review.

24 (2) For an EID five or more years old, the responsible official shall re-evaluate the project,
25 environmental conditions, and public views, and, prior to approval of loan agreement, either:

26 (a) Reaffirm - issue a public notice reaffirming the original environmental
27 determination to proceed with the project without revising the EID;

28 (b) Supplement - require an update of the EID, issue and distribute a revised FONSI
29 with the necessary public notice or

30 (c) Reassess - withdraw the FONSI and publish a notice of intent to produce an EIS,
31 followed by the preparation, issuance, and distribution of the EIS and ROD.

32 C. Revisions to the Project.

33 (1) Statement of Findings. If the project scope of work is revised after FONSI has been
34 issued, but the revision is determined by NMED to be a minor revision, NMED shall issue a Statement of Findings
35 (SOF) documenting the reason for the revision and its impact, if any, on the environment. The SOF shall be
36 distributed to parties who previously indicated interest in the project environmental review process.

37 (2) Amendment. If the project scope of work is revised after a FONSI has been issued, but
38 the revision is determined by NMED to be significant, NMED shall issue an amendment to the FONSI with proper
39 public notification as identified in Section 23 of 20.7.7 NMAC and shall provide for a public meeting to discuss the
40 amendment.

41 [10/22/1988; 11/30/1995; 20.7.7.18 NMAC – ~~[Rn, 20 NMAC 7.7.304 & A, 7/16/2000]~~ Rp, 20.7.7.18 NMAC,
42 / /2020]

43
44 **20.7.7.19 CRITERIA FOR INITIATING ENVIRONMENTAL IMPACT STATEMENTS[~~(EIS)~~].**

45 Conditions requiring an EIS. The responsible official shall assure that an EIS will be prepared and issued when it is
46 determined that the proposed project will cause any of the following conditions to exist, or when:

47 ~~[A. The project may significantly affect the pattern and type of land use (industrial, commercial,~~
48 ~~agricultural, recreational, residential) or growth and distribution of population;~~

49 ~~_____ B. The effects resulting from any structure or facility constructed or operated may conflict with local,~~
50 ~~regional, or state land use plans or policies;~~

51 ~~_____ C. The project may have significant adverse effects on wetlands, including indirect and cumulative~~
52 ~~effects, or any major part of the project may be located in wetlands;~~

53 ~~_____ D. The project may significantly affect a habitat identified on the Department of the Interior' or the~~
54 ~~State's threatened and endangered species lists, or may be located in the habitat;~~

1 E. Implementation of the project may directly cause or induce changes that significantly displace
2 population, alter the character of existing residential areas, adversely affect a floodplain, or adversely affect
3 significant amounts of important farmlands or agricultural operations on this land.

4 F. The project may directly, indirectly, or cumulatively have significant adverse effects on parklands,
5 preserves, other public lands, or areas of recognized scenic, recreational, archaeological, or historic value;

6 G. The project may directly, or through induced development, have a significant adverse effect upon
7 local ambient air quality, local ambient noise levels, surface water or groundwater quality or quantity, water supply,
8 fish, shellfish, wildlife, and their natural habitats;

9 H. The treated effluent is being discharged into a body of water where the present classification is too
10 lenient or is being challenged as too low to protect present or recent uses, and the effluent will not be of sufficient
11 quality or quantity to meet the requirements of these uses; or

12 I. Other conditions. The responsible official shall also consider preparing an EIS if the project is
13 highly controversial; the project, in conjunction with related federal, state, local, or tribal resource projects, produces
14 significant cumulative impacts; or if it is determined that the treatment works may violate federal, state, local, or
15 tribal laws or requirements imposed for the protection of the environment.]

16 A. The proposed action would result in a discharge of treated effluent from a new or modified
17 existing facility into a body of water and the discharge is likely to have a significant effect on the quality of the
18 receiving waters.

19 B. The proposed action is likely to directly, or through induced development, have significant
20 adverse effect upon local ambient air quality or local ambient noise levels.

21 C. The proposed action is likely to have significant adverse effects on surface water reservoirs or
22 navigation projects.

23 D. The proposed action would be inconsistent with state or local government, or federally-recognized
24 Indian tribe approved land use plans or regulations, or federal land management plans.

25 E. The proposed action would be inconsistent with state or local government, or federally-recognized
26 Indian tribe environmental, resource-protection, or land-use laws and regulations for protection of the environment.

27 F. The proposed action is likely to significantly affect the environment through the release of
28 radioactive hazardous or toxic substances, or biota.

29 G. The proposed action involves uncertain environmental effects or highly unique environmental
30 risks that are likely to be significant.

31 H. The proposed action is likely to significantly affect national natural landmarks or any property on
32 or eligible for the National Register of Historic Places.

33 I. The proposed action is likely to significantly affect environmentally important natural resources
34 such as wetlands, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and
35 scenic rivers, and significant fish or wildlife habitat.

36 J. The proposed action in conjunction with related federal, state or local government, or federally-
37 recognized Indian tribe projects is likely to produce significant cumulative impacts.

38 K. The proposed action is likely to significantly affect the pattern and type of land use (industrial,
39 commercial, recreational, residential) or growth and distribution of population including altering the character of
40 existing residential areas.

41 [10/22/1988; 20.7.7.19 NMAC – [~~Rn, 20 NMAC 7.7.305 & A, 7/16/2000~~] Rp, 20.7.7.19 NMAC, / /2020]

42

43 **20.7.7.20 ENVIRONMENTAL IMPACT STATEMENT (EIS) PREPARATION.**

44 **A.** Steps in preparing the EIS. In addition to the other requirements specified in this procedure, the
45 responsible official will conduct the following activities:

46 (1) Notice of intent. If a determination is made that an EIS will be required, the responsible
47 official shall prepare and distribute a notice of intent.

48 (2) Scoping. As soon as possible, after the publication of the notice of intent, the responsible
49 official will convene a meeting of affected federal, state, and local agencies, or affected Indian tribes, the applicant
50 and other interested parties to determine the scope of the EIS. As part of the scoping meeting, NMED will, as a
51 minimum:

52 (a) Determine the significance of issues for and the scope of those significant issues
53 to be analyzed in depth in the EIS;

54 (b) Identify the preliminary range of alternatives to be considered;

55 (c) Identify potential cooperating agencies and determine the information or
56 analyses that may be needed from cooperating agencies or other parties;

- 1 (d) Discuss the method for EIS preparation and the public participation strategy;
- 2 (e) Identify consultation requirements of other environmental laws; and
- 3 (f) Determine the relationship between the EIS and the completion of the facilities
- 4 plan and any necessary coordination arrangements between the preparers of both documents.

5 (3) Identifying and evaluating alternatives. Immediately following the scoping process, the
6 responsible official shall commence the identification and evaluation of all potentially viable alternatives to
7 adequately address the range of issues identified in the scoping process. Additional issues may be addressed, or
8 others eliminated, during this process and the reasons documented as part of the EIS.

9 **B. Methods for preparing EIS.** After NMED determines the need for an EIS, it shall select one of the
10 following methods for its preparation:

- 11 (1) By NMED contracting directly with a qualified consulting firm;
- 12 (2) By utilizing a third party method whereby the responsible official enters into "third party
13 agreements" for the applicant to engage and pay for the services of a third party to prepare the EIS. Such agreement
14 shall not be initiated unless both the applicant and the responsible official agree to its creation. A third party
15 agreement will be established prior to the applicant's EID and eliminate the need for the document. In proceeding
16 under the third party agreement, the responsible official shall carry out the following practices:

17 (a) In consultation with the applicant, choose the ~~third~~ third party contractor and
18 manage that contract;

19 (b) Select the consultant based on ability and absence of conflict of interest. Third
20 party contractors ~~[will be required to]~~ shall execute a disclosure statement prepared by the responsible official
21 signifying they have no financial or other conflicting interest in the outcome of the project; and

22 (c) Specify the information to be developed and supervise the gathering, analysis,
23 and presentation of the information. The responsible official shall have sole authority for approval and modification
24 of the statements, analyses, and conclusions included in the third party EIS.

25 [10/22/1988; 11/30/1995; 20.7.7.20 NMAC – ~~[Rn, 20 NMAC 7.7.306, 7/16/2000]~~ Rp, 20.7.7.20 NMAC,
26 / /2020]

27
28 **20.7.7.21 THE ENVIRONMENTAL IMPACT STATEMENT (EIS) FORMAT.** Preparers of EIS must
29 conform with the requirements of 40 CFR, Part 1502, in writing the EIS. The format used for the EIS shall
30 encourage good analysis and clear presentation of alternatives, including the proposed action, and their
31 environmental, economic, and social impacts. The following standard format for EISs should be used unless the
32 responsible official determines that there is a compelling reason to do otherwise:

- 33 **A.** Cover Sheet;
- 34 **B.** Executive Summary;
- 35 **C.** Table of Contents;
- 36 **D.** Purpose of and need for action;
- 37 **E.** Alternatives including proposed action;
- 38 **F.** Affected environment;
- 39 **G.** Environmental consequences of the alternative;
- 40 **H.** Coordination (includes list of agencies, organizations, and persons to whom copies of the EIS are

- 41 sent);
- 42 **I.** List of preparers;
- 43 **J.** Index (commensurate with complexity of EIS);
- 44 **K.** Appendices.

45 [10/22/1988; 20.7.7.21 NMAC – ~~[Rn, 20 NMAC 7.7.310 & A, 7/16/2000]~~ Rp, 20.7.7.21 NMAC, / /2020]

46
47 **20.7.7.22 MONITORING FOR COMPLIANCE.**

48 **A.** General. The responsible official shall ensure adequate monitoring of mitigation measures and
49 other loan conditions identified in the FONSI or ROD.

50 **B.** Enforcement. If the applicant fails to comply with loan conditions, the responsible official may
51 consider applying the sanctions.

52 [10/22/1988; 20.7.7.22 NMAC – ~~[Rn, 20 NMAC 7.7.308 & A, 7/16/2000]~~ Rp, 20.7.7.22 NMAC, / /2020]

53
54 **20.7.7.23 PUBLIC, FEDERAL AGENCY, AND OTHER STATE AGENCY INVOLVEMENT.**

55 **A.** ~~[The]~~ NMED shall make diligent efforts to involve the public in the environmental review process
56 consistent with program regulations and State Clearinghouse for Intergovernmental Review policies on public

1 participation. The responsible official shall ensure that public notice is provided and shall ensure that public
2 involvement is carried out following state policies and guidelines on public participation.

3 **B. General.** It is NMED's policy that certain public participation steps be achieved before NMED
4 completes the environmental review process. ~~[As]~~ At a minimum potential applicants shall conduct one public
5 hearing prior to formal adoption of a facilities plan to discuss the proposed facilities plan and any needed mitigation
6 measures.

7 **C. Publication of notices of intent.** As soon as practicable after ~~[his]~~ a decision is rendered to issue a
8 categorical exclusion or FONSI, or to prepare an EIS (but before the signing process), the responsible official shall
9 send the notice of intent to interested and affected members of the public, and shall publish the notice of intent in a
10 newspaper of general circulation in the community of the project.

11 **D.** The responsible official shall not take administrative action on the project for at least 30 calendar
12 days after release of the notice of determination on the categorical exclusion or release of the FONSI to allow time
13 for public response.

14 **E. EIS.** The responsible official shall follow, as applicable, procedures identified at 40 CFR, Part 6,
15 Subpart B, for official filing requirements, availability of documents, commenting process, and supplements to the
16 EIS.

17 **F. Record of Decision.** The responsible official shall disseminate the record of decision to those
18 parties which commented on the draft or final EIS. One copy shall be submitted to EPA.

19 **G. Scope.** The responsible official may institute additional NEPA-related public participation
20 procedures as are deemed necessary during the environmental review process.

21 [10/22/1988; 11/30/1995; 20.7.7.23 NMAC – ~~[Rn, 20 NMAC 7.7.309 & A, 7/16/2000]~~ Rp, 20.7.7.23 NMAC,
22 / /2020]