

This rule was filed as 20 NMAC 6.1.

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 6 WATER QUALITY**  
**PART 3 VOLUNTARY REMEDIATION**

20.6.3.1 ISSUING AGENCY: New Mexico Environment Department.  
[7/15/99; 20.6.3.1 NMAC - Rn, 20 NMAC 6.3.I.101, Recompiled 11/27/01]

20.6.3.2 SCOPE: This Part provides for the expeditious, voluntary cleanup of contaminated properties in New Mexico in a manner that is protective of human health and the environment, and the promotion of their redevelopment and productive use.  
[7/15/99; 20.6.3.2 NMAC - Rn, 20 NMAC 6.3.I.102, Recompiled 11/27/01]

20.6.3.3 STATUTORY AUTHORITY: These regulations are promulgated pursuant to the provisions of the Voluntary Remediation Act, NMSA 1978, Sections 74-4G-1 et seq.  
[7/15/99; 20.6.3.3 NMAC - Rn, 20 NMAC 6.3.I.103, Recompiled 11/27/01]

20.6.3.4 DURATION: Permanent.  
[7/15/99; 20.6.3.4 NMAC - Rn, 20 NMAC 6.3.I.104, Recompiled 11/27/01]

20.6.3.5 EFFECTIVE DATE: These regulations are effective as of July 15, 1999 unless a later date is cited at the end of a Section or Paragraph.  
[7/15/99; 20.6.3.5 NMAC - Rn, 20 NMAC 6.3.I.105, Recompiled 11/27/01]

20.6.3.6 OBJECTIVE: The objective of Part 3 of Chapter 6 is:  
A. to implement the Voluntary Remediation Act, NMSA 1978, Sections 74-4G-1 et seq.;

B. to provide incentives for the voluntary assessment and remediation of contaminated property, with state oversight; and

C. to remove future liability of lenders and landowners.  
[7/15/99; 20.6.3.6 NMAC - Rn, 20 NMAC.6.3.I.106, Recompiled 11/27/01]

20.6.3.7 DEFINITIONS: The words and phrases used in this Part have the same meaning as in The Voluntary Remediation Act, NMSA 1978, Sections 74-4G-1 et seq. As used in this Part:

A. "Act" means the Voluntary Remediation Act, NMSA 1978, Sections 74-4G-1 et seq.

B. "background" means, for purposes of the voluntary remediation program only and for no other purposes in this Part and any other regulations, including but not limited to surface water standards, the amount of contaminants naturally occurring from undisturbed geologic sources or contaminants which the participant establishes are occurring solely from a source other than the participant's facility. This definition does not apply to any other program area in the department, nor shall this definition be interpreted as applicable to any other program area, and this definition shall not prevent the secretary from requiring remediation of commingled plumes of pollution, shall not prevent participants from seeking contribution or other legal or equitable relief from other persons, and shall not preclude the secretary from exercising enforcement authority under any applicable statute, regulation or common law.

C. "facility" means any structure, installation, operation, storage tank, transmission line, motor vehicle, rolling stock, or activity of any kind, whether stationary or mobile;

D. "notice of violation" means a notice that alleges one or more violations of law and describes actions that should or must be taken to avoid an enforcement action;

E. "owner" means the person or persons who own a facility, or part of a facility;

F. "operator" means the person or persons responsible for the overall operations of a facility;

G. "secretary" means the Secretary of the New Mexico Environment Department or his or her designee;  
[7/15/99; 20.6.3.7 NMAC - Rn, 20 NMAC.6.3.I.107, Recompiled 11/27/01]

20.6.3.8 COMPLIANCE WITH OTHER LAW: Compliance with this Part does not relieve a person from the obligation to comply with other applicable federal, state and local law.  
[7/15/99; 20.6.3.8 NMAC - Rn, 20 NMAC 6.3.I.108, Recompiled 11/27/01]

20.6.3.9 VOLUNTARY REMEDIATION ACTIVITIES: Voluntary remediation activities may include, but are not limited to:

- A. research to establish the history of ownership, release(s), contaminant use, storage, and management, and environmental permits and compliance;
- B. research and subsurface investigations, including intrusive and non-intrusive techniques, to assess the site's hydrogeologic characteristics;
- C. the collection and analysis of soil, sediment, surface water, ground water, soil gas, atmospheric, indoor air, and/or biological samples;
- D. assessment of the nature and extent, migration pathways, and environmental fate and transport of contaminants;
- E. performance of a human health and ecological risk assessment;
- F. installation of waste or product recovery and water treatment systems;
- G. installation of soil vapor extraction or other vadose zone remediation systems;
- H. removal and on- or off-site treatment, recycling, or reuse of contaminated media;
- I. removal of the contents of, or removal of, drums, barrels, tanks, or other bulk containers which contain or may contain contaminants;
- J. capping or covering of contaminated media;
- K. other measures to mitigate human health and ecological receptors' potential exposures and risks;
- L. post-remediation verification sampling and/or monitoring; and
- M. any other remediation action consistent with the purpose of achieving the performance standard of

Subpart I, Section 110 of this Part.

[7/15/99; 20.6.3.9 NMAC - Rn, 20 NMAC 6.3.I.109, Recompiled 11/27/01]

20.6.3.10 PERFORMANCE STANDARD AND ASSOCIATED REQUIREMENTS:

- A. Activities performed pursuant to the Act shall be designed to collect, develop, and evaluate sufficient information to support proposed conclusions regarding:
  - (1) the source, nature and extent, migration pathways, and environmental fate and transport of contaminants in all environmental media present at the site (i.e., soil, ground water, surface water, sediment, and/or air);
  - (2) the risk of harm posed by the site to human health, safety, and the environment;
  - (3) the need to conduct remedial actions at the site to safeguard against such risks; and
  - (4) the remedial action selection and design, if appropriate.
- B. If applicable standards are prescribed by law or regulation, voluntary remediation activities shall achieve applicable standards. Where applicable standards are not prescribed by law or regulation, voluntary remediation activities shall be performed in order to achieve a final site condition such that no contaminant will present a significant risk of harm to human health, safety, or the environment during any foreseeable period of time. Such level of cleanup shall be attained by reducing the risk from exposure to individual carcinogens or suspected carcinogens to an individual lifetime cancer risk of less than one cancer incident in 100,000 exposed persons (1 X 10<sup>-5</sup>); and by reducing the risk from exposure to individual noncarcinogenic contaminants to a hazard quotient of less than 1. In order to achieve this performance standard, the applicant may evaluate the risk of harm posed by the site to human health, safety, or the environment by employing one of three general methods:
  - (1) Method 1: Comparison of site concentrations to site-specific background concentrations; or
  - (2) Method 2: Comparison of site concentrations to applicable water quality standards and soil guidelines approved by the Department, including but not limited to:
    - (a) risk-based soil remediation guidelines developed by the department;
    - (b) standards for water, as listed in the most recent version of the New Mexico Water Quality Control Commission (WQCC) Regulations, 20 NMAC 6.1 [20.6.1 NMAC] and 20 NMAC 6.2 [20.6.2 NMAC], or other more stringent applicable standards, as appropriate; and
    - (c) other applicable standards. Where more than one applicable standard exists, the most stringent applicable standard will be applied; or
  - (3) Method 3: Performance of a detailed, site-specific human health and, if applicable, environmental risk assessment. Such a Method 3 evaluation will be required to employ a cumulative exposure approach. In no

case shall a Method 3 evaluation propose voluntary remediation activities that are not designed to meet all applicable standards.

C. Any risk assessment conducted under this Section shall be based on reasonable and conservative assumptions about exposures and pathways, shall take into consideration exposure of sensitive subgroups to contaminants and the possibility of future changes in land use, and shall incorporate an adequate margin of safety.

D. The selection of voluntary remediation activities that will achieve a permanent solution shall be required, unless the participant demonstrates and the secretary concurs that implementation of voluntary remediation activities to achieve a permanent solution would be infeasible or impracticable.

E. An environmental risk assessment shall be required only when ecological receptors are present at or in the near vicinity of a site. Such an environmental risk assessment shall be a Method 3 site-specific assessment, and may be combined with a Method 1, 2, or 3 evaluation of human health risks.

F. The department may approve voluntary remediation activities that do not achieve residential health-based levels in all environmental media of concern only if the participant provides an affirmation of future non-residential land use, or an easement or other legal document binding on successors in interest to the site, in a form satisfactory to the department.

G. The department, in its discretion, may require an easement or other legal document binding on successors in interest to the site where voluntary remediation activities include post-completion monitoring, maintenance of engineering controls, remediation systems, or post-closure care.

[7/15/99; 20.6.3.10 - Rn, 20 NMAC 6.3.I.110, Recompiled 11/27/01]

20.6.3.11 to 20.6.3.199 [RESERVED]

20.6.3.200 APPLICATION FOR DETERMINATION OF ELIGIBILITY, AND FEE:

A. Eligibility:

- (1) To be eligible for a voluntary remediation agreement an applicant must:
  - (a) own the site;
  - (b) operate a facility located on the site;
  - (c) be a prospective owner of the site; or
  - (d) be a prospective operator of a facility at the site.
- (2) Multiple applicants may apply for a voluntary remediation agreement; however, a primary applicant who will serve as the department's point of contact must be designated.
- (3) The secretary shall reject an application for a voluntary remediation agreement if the secretary determines that one or more of the grounds for rejection specified in 74-4G-5(D), N.M.S.A., exist.
- (4) The secretary may reject an application for a voluntary remediation agreement if:
  - (a) the applicant has, within ten (10) years immediately preceding the date of the application, knowingly misrepresented a material fact in an application for a permit or plan submitted pursuant to federal or local environmental law or environmental law of a state other than New Mexico;
  - (b) a predecessor, successor, assign, parent, subsidiary, affiliate, officer, director, partner, managing agent or employee of the applicant has within ten (10) years immediately preceding the date of submission of the application engaged in conduct described in N.M.S.A. 74-4G-5(D)(7)(a)-(c) or Paragraph 1 of this subsection, or had an environmental permit revoked or suspended as described in N.M.S.A. 74-4G-5(D)(7)(d);
  - (c) a permit that addresses a contaminant described in the application was required for the site or facility under any state or federal law but the site or facility did not obtain the required permit; or
  - (d) a notice of violation that addresses a contaminant at the site or facility described in the application has been issued by any federal, state or local agency, and action has not been taken to remedy the alleged violations to the issuing agency's satisfaction.
- (5) If the department determines that an application is incomplete or inaccurate, the secretary shall deny the application or notify the applicant in writing of the alleged incompleteness or inaccuracy and require the applicant to remedy the incompleteness or inaccuracies. If the secretary requires the applicant to remedy the incompleteness or inaccuracies, and the applicant does not remedy the alleged incompleteness or inaccuracies within thirty (30) days of receipt of written notice of such requirement, the secretary shall deny the application.
- (6) Applicants having sites where remedial actions were completed under another state or federal program, or without any state or federal oversight, may be allowed to enter into a voluntary remediation agreement, at the discretion of the secretary. However, all other application requirements and eligibility criteria described in this Section must be met in order for such an application to be considered. In cases where an applicant has completed remedial action prior to the effective date of these regulations under another state or federal program and

received agency approval, the applicant may be required to complete additional work in order to obtain a certificate of completion as described in Subpart V of this Part [20.6.3.500 NMAC] if:

- (a) the remediation did not address all contaminants or contaminated media within the site;
- (b) regulatory requirements have changed since the date of completion of remediation; or
- (c) the performance standard described in Subpart I, Section 110 of this Part [20.6.3.10 NMAC]

is not met.

(7) The secretary shall, on a first come, first-served basis or within thirty (30) calendar days of receipt of a complete application, conditionally determine whether the applicant is eligible to participate in a voluntary remediation agreement pursuant to the provisions of Subpart III of this Part [20.6.3.300 NMAC] The secretary shall notify the applicant in writing as to its decision, and the reasons for an applicant's ineligibility, if applicable. The final eligibility determination will be made by the secretary no later than fifteen (15) calendar days after the close of the public comment period, or if a public meeting is held, within fifteen (15) calendar days of the public meeting, as described in Subpart III, Section 305 of this Part [Subsection E of 20.6.3.300 NMAC]

B. Application Process: An applicant may request to enter into a voluntary remediation agreement with the department by completing the "application for determination of eligibility" form provided by the department. The application shall include:

- (1) general information disclosing:
  - (a) the name of the applicant;
  - (b) the site, its location, and past and current ownership, operator and use history;
  - (c) information for the ten (10) years preceding the date of submission of the application on past, present, and pending regulatory permits in New Mexico, and on administrative and judicial enforcement actions, permit revocations and suspensions, and approved remediation plans in New Mexico and other states; and
  - (d) other general information requested by the department.

(2) the following written "Declaration of Ability and Intent" signed by the applicant: "I attest under the pains and penalties of perjury that:

(a) I am the applicant [or title of office held, general partner, or similar responsible representative of applicant], and I am fully authorized to make this attestation on behalf of and to legally bind, the applicant;

(b) I have personally examined and am familiar with the requirements of the Voluntary Remediation Act, NMSA 1978 Sections 74-4G-1, et seq. and Voluntary Remediation Regulations, 20 NMAC 6.3 [20.6.3 NMAC];

(c) Based upon my inquiry of the person(s) employed or engaged to perform work pursuant to this application, and my/that person's(s') or entity's (ies') understanding as to the estimated costs of the proposed voluntary remediation actions, that the applicant has the technical, financial, and legal ability and intent to proceed with the proposed voluntary remediation actions in accordance with the Voluntary Remediation Act and 20 NMAC 6.3 [20.6.3 NMAC], and other applicable requirements; and

(d) The applicant will notify the department upon becoming aware of an inability to proceed with the proposed voluntary remediation actions because such actions are beyond the applicant's technical, financial, or legal ability to perform them."

(3) A Phase I environmental assessment of the site which generally conforms with the American Society for Testing and Materials (ASTM) Standard Practice E 1527, as amended, if available, or its equivalent, which at minimum includes:

- (a) the legal description of the site, including a site map;
- (b) the description of the physical, hydrological, and geological characteristics of the site, including the location of nearest water supply wells and surface water bodies;
- (c) information of which the applicant is aware concerning the source(s), nature and extent of all contaminants or releases at the site and immediately contiguous to the site; and
- (d) relevant information of which the applicant is aware concerning the potential for human or other exposure to contamination originating at the site, including but not limited to current land use, depth to groundwater, location of utilities, and potential human health and ecological receptors.

(4) a preliminary work plan describing the proposed voluntary remediation activities as they are currently envisioned as being submitted in a final voluntary remediation work plan, as described in Subpart IV of this part [20.6.3.400 NMAC].

(5) written consent by the property owner, if different from the applicant, supporting the proposed voluntary remediation activities, including any restrictions on property use.

C. Application Fee: An applicant shall pay at the time of submitting the application, a non-refundable application fee of \$1,000 per application that will pay for the department's costs of processing the application.

[7/15/99; 20.6.3.200, - Rn, 20 NMAC 6.3.II.200 to 203, Recompiled 11/27/01]

20.6.3.201 to 20.6.3.299 [RESERVED]

20.6.3.300 VOLUNTARY REMEDIATION AGREEMENT:

A. Agreement Provisions:

(1) After the secretary determines that an applicant is eligible, the secretary may enter into a voluntary remediation agreement with the applicant. Such an agreement shall be made final after receipt and incorporation of public comments, as described in Section 304 of this Subpart [Subsection D of 20.6.3.300 NMAC].

(2) The voluntary remediation agreement shall be set forth on a standard form developed by the department, and shall include:

(a) A provision for the Department's oversight, including:

(i) access to the site;

(ii) on-site collection of samples and inspection and copying of site and facility records;

(iii) compensation for oversight costs in accordance with the fee structure specified in

Section 310 of this Part [Subsection J of 20.6.3.300 NMAC];

(b) a reference to applicable statutes, regulations, standards, and guidance that must be complied with;

(c) a provision requiring the site to be remediated to applicable standards such that the performance standard described in Subpart I, Section 110 of this Part [20.6.3.10 NMAC] will be achieved;

(d) a preliminary work plan, describing the proposed voluntary remediation activities as they are currently envisioned as being submitted in a final voluntary remediation work plan, as described in Subpart IV of this Part [20.6.3.400 NMAC];

(e) identification of items to be submitted for department review and approval, including a work plan, quarterly status reports or status reports to be submitted at a different frequency, as determined by the department, and a final completion report that provides all information necessary to verify that all work contemplated by the voluntary remediation agreement has been completed, and that the applicable standards have been met;

(f) a provision requiring the applicant to obtain all applicable permits for the site and any required access agreements; and

(g) a schedule for completing significant proposed tasks, report submittals, and department review.

(3) The secretary shall not initiate an enforcement action, including an administrative or judicial action, against a participant for the contamination or release thereof, or for the activity that results in the contamination or release thereof, if the contamination is the subject of an agreement pursuant to these regulations. However, this Section shall not be a bar to any enforcement action if the agreement is not finalized, if the agreement is terminated or rescinded, or if the participant does not successfully initiate or implement the agreement within a reasonable time under the schedules set forth in the voluntary remediation agreement and approved work plans.

(4) The agreement shall become final and effective upon being signed by both the secretary and the applicant. The effective date of the agreement shall be the later date of signature by either the secretary or the applicant.

B. Public Notice and Comment:

(1) Before the voluntary remediation agreement becomes finalized, the applicant must:

(a) make the proposed voluntary remediation agreement available for public inspection at a location in reasonable proximity to the site, within ten (10) calendar days of the receipt of the conditional eligibility determination from the department;

(b) notify the following entities and advise them of the proposed voluntary remediation agreement, the location where the proposed agreement can be reviewed, and the opportunity to submit comments to the department;

(i) any local, state, federal, tribal or pueblo governmental agency potentially affected by the proposed voluntary remediation agreement, including at a minimum, the mayor and director of the board of health, or their equivalent, of the municipality in which the site is located;

(ii) those parties that have requested notification;

(iii) the general public by posting a notice at the site on a form provided by the department, and by publishing a notice in a newspaper of general circulation in the state and a newspaper published in the area where the site is located, such notice to be published in the legal advertisements section of the newspaper and at one other place in the newspaper chosen to give the general public the most effective notice, and if the department determines it is appropriate, shall be published in both English and Spanish;

(c) Include in the public notice:

(i) the name of the applicant;

(ii) the location of the site;

(iii) a brief description of the proposed remediation activities described in the preliminary voluntary remediation work plan;

(iv) the address to which comments may be submitted and the deadline for submitting comments;

(v) the address and telephone number at which persons may obtain further information; and

(d) submit to the department a copy of the public notice as well as an affidavit of publication and a signed statement affirming that the applicant has complied with the provisions of this Subsection [Paragraph].

(2) The secretary shall provide a comment period of at least thirty (30) calendar days following publication of the newspaper notice.

(3) During the comment period, interested parties may submit written comments to the department concerning the proposed voluntary remediation agreement activities.

(4) During the comment period, any interested person may submit a request for public meeting. The request shall be in writing to the department and shall set forth the reasons why the meeting should be held. A public meeting will be held at the applicant's expense if the secretary determines that there is significant public interest.

(5) If a public meeting is to be held, the applicant shall, at its expense, at least ten (10) calendar days before the meeting, mail a notice of the time and place of the meeting to all persons who have submitted written comments or a request for public meeting, and publish the notice in a newspaper of general circulation in the state and a newspaper published in the area where the site is located, in the legal advertisements section of the newspaper and at one other place in the newspaper chosen to give the general public the most effective notice. If the department determines it is appropriate, the notice shall be published in both English and Spanish.

C. Public Meeting:

(1) The department may appoint a meeting facilitator.

(2) The applicant and the department may prepare a fact sheet to be distributed at the public meeting, written in English and Spanish or other language as deemed appropriate, describing site history and the planned voluntary remediation activities.

(3) The record of the public meeting will consist of a tape recording. Tape copying and other transcript costs shall be paid by the person requesting the copy or transcript.

(4) Persons requiring assistance in the form of auxiliary aid or translation will have such assistance provided at the expense of the applicant.

(5) At the meeting, all interested persons shall be given a reasonable chance to submit data, views, or arguments orally or in writing, and to ask questions of the department and of the applicant, or its authorized representatives.

D. Consideration of Public Comments:

(1) In deciding whether to enter into a voluntary remediation agreement, and whether to approve the terms of such an agreement, the secretary shall consider public comments.

(2) If the secretary deems it appropriate, public comments will be incorporated into the final voluntary remediation agreement.

E. Approval of Voluntary Remediation Agreement: The secretary shall, within thirty (30) calendar days of the secretary's final determination that the applicant is eligible, approve, approve with modifications, or disapprove the proposed voluntary remediation agreement. The secretary shall mail notice of this determination to the applicant and all persons who presented written comments or presented oral comments at the public hearing.

F. Execution of Voluntary Remediation Agreement: If the secretary approves the voluntary remediation agreement as proposed, the secretary and applicant shall execute the agreement and the agreement shall become effective. If the secretary approves the voluntary remediation agreement with modifications and the modifications are acceptable to the applicant, the secretary and applicant shall execute the agreement and the agreement shall become effective.

G. Additional Public Participation: If members of the public request to participate in the voluntary remediation activities, then a mailing list of interested parties will be developed. These interested parties will be kept informed of the availability of key project submittals as they are received by the department. Such submittals will be made available by the department for public review and comment upon request.

H. Termination:

(1) If an agreement is not reached between an applicant and the secretary on or before the thirtieth (30th) calendar day after the secretary determines an applicant to be eligible pursuant to the provisions of Subparts II and III of this Part [20.6.3.200 and 20.6.3.300 NMAC], the applicant or the secretary may withdraw from the negotiations.

(2) The participant may terminate a voluntary remediation agreement with sixty (60) calendar days' written notice via certified mail, return receipt requested, to the department.

(3) The secretary may terminate a voluntary remediation agreement on a finding that the participant is not in compliance with the voluntary remediation agreement. Notice of termination will be made to the participant via certified mail, return receipt requested, and facts supporting the secretary's rationale for termination shall be set forth in the notification.

(4) The department's costs incurred or obligated before the date the notice of termination is received are recoverable by the department under the agreement if the agreement is terminated.

I. Dispute Resolution: In the event of any dispute regarding the requirements of the voluntary remediation agreement, oversight costs charged by the department to the participant, these regulations, or the Act, the participant may notify the secretary by certified mail that a dispute has arisen and the participant desires to invoke the dispute resolution provisions of this Section. Such notification must be made within fifteen (15) calendar days after the participant receives the decision of the secretary that causes the dispute, or the applicant waives its right to dispute the decision. Upon such notification, all deadlines affected by the dispute shall be extended for a thirty (30) calendar day negotiation period, or for a maximum of sixty (60) calendar days if approved by the secretary for good cause shown. During this negotiation period, the secretary and the participant shall meet at least once. Such meeting(s) may be facilitated by a mutually agreed upon third party, but the third party shall assume no power or authority granted or delegated to the secretary by the Act. If the dispute remains unresolved after the negotiation period, the secretary shall issue a binding final decision, including a written statement of the reason for the decision.

J. Oversight Fee Structure: In accordance with the terms and schedule specified in the voluntary remediation agreement, the participant will compensate the department for all reasonable costs associated with the oversight of the voluntary remediation activities based upon a standard hourly rate to be calculated by the department on an annual basis. Oversight costs shall include direct and indirect costs of overhead, salaries, benefits, equipment and utility use fees, and legal, management, and support costs associated with the preparation of the voluntary remediation agreement, review of the participant's work plans and reports, and oversight of and performance of field activities (including but not limited to travel, sampling, and chemical analysis of samples), participation in dispute resolution activities, as well as long-term oversight performed by the department after its issue of a conditional certificate of completion, as described in Subpart V of this Part [20.6.3.500 NMAC]. Oversight will be invoiced based on actual hours of staff oversight, at the rate calculated per a formula established by the department. Travel and per diem costs will be invoiced at state-designated rates. Sampling and analysis costs will be invoiced at actual cost plus indirect overhead rate. The effective hourly rate for the first twelve (12) months following the effective date of these regulations shall be based on the department's best estimate of total operating costs, and total available technical staff hours. The hourly rate for subsequent periods will be calculated and subsequently updated on November 1 of each year, following a thirty (30) calendar day public comment period. [7/15/99], 20.6.3.300 NMAC - Rn, 20 NMAC 6.3.III.300 to 310, Recompiled 11/27/01]

20.6.3.311 to 399 [RESERVED]

20.6.3.400 VOLUNTARY REMEDIATION WORK PLAN:

A. Applicability: Unless the participant demonstrates that further investigation and/or cleanup are not required in order to comply with the performance standard described in Subpart I, Section 110 of this Part [20.6.3.10 NMAC], after a voluntary remediation agreement becomes effective, the participant shall submit to the department a proposed final voluntary remediation work plan for the site remediation.

B. Content: The final voluntary remediation work plan shall provide a detailed description of voluntary remediation activities to be undertaken to achieve the performance standard described in Subpart I, Section 110 of this part [20.6.3.10 NMAC]. At a minimum, the final voluntary remediation work plan shall include:

- (1) a summary of site and contaminant use, storage, disposal, and release history, and the site investigation work performed to date;
- (2) A detailed description, including plans and sketches, of any additional investigation to be conducted to determine the type, nature and extent of contaminants at the site, including but not limited to: location and type of sample, sample collection techniques, monitoring techniques, sample analytical methods, and quality assurance/quality control methods;
- (3) contaminants and media (including but not limited to air, surface water, groundwater, soil, and facility structures) to be addressed by the remediation;
- (4) a statement of work to accomplish remediation of the site, and the method to reach the performance standard described in Subpart I, Section 110 of this Part [20.6.3.10 NMAC];
- (5) a monitoring plan to be implemented during the duration of remediation activities, if applicable;
- (6) confirmatory sampling and analytical methods to verify that remediation of the site has met the performance standard described in Subpart I, Section 110 of this Part [20.6.3.10 NMAC];
- (7) post completion monitoring and maintenance to ensure that the closure conditions, including any engineering controls or affirmation of future non-residential land use upon which the final remedy is dependent, are maintained after completion, if applicable;
- (8) an implementation schedule for all identified investigation and remediation tasks;
- (9) a site-specific health and safety plan that complies with all applicable standards and guidelines;
- (10) a plan describing the proposed management of investigation and remediation derived wastes, if applicable;
- (11) copies of, or a schedule for obtaining, all necessary and applicable permits and access agreements required to accomplish remediation of the site; and
- (12) any other pertinent information requested by the department which is reasonably necessary to meet the requirements of these regulations.

C. Schedule: The participant shall submit to the department a proposed final voluntary remediation work plan according to the schedule in the voluntary remediation agreement, but in no event shall the participant submit the work plan, or, if the work plan is to be prepared in phases, the work plan for the first phase, later than sixty (60) calendar days following the effective date of the voluntary remediation agreement.

D. Work Plan Modification: Any approved voluntary remediation work plan may be modified at the request of the participant and/or the department, with both parties' approval. Following receipt of the modification request, the secretary shall determine whether or not the proposed modification is significant. If the secretary determines that the proposed modification is significant, the applicant shall make the proposed modification available for public inspection at a location in reasonable proximity to the site within ten (10) calendar days of the secretary's determination, and the applicant and department shall comply with Sections 302.A.2, 302.A.3, 302.A.4 [Subparagraphs (b), (c) and (d), Paragraph (1), Subsection (B) of 20.6.3.300 NMAC], 302.B., 302.C, 302.D. and 302.E. of this Part [Paragraphs (2), (3) (4) and (5), Subsection (B) of 20.6.3.300 NMAC] with respect to the proposed modification. If a public meeting is held on the proposed modification, Section 303 of this Part [Subsection (C) of 20.6.3.300 NMAC] shall apply to the meeting. If the secretary determines that the proposed modification is not significant, the applicant shall at its expense mail to all persons on the mailing list of interested persons maintained pursuant to Section 307 of this Part [Subsection (G) of 20.6.3.300 NMAC] notice of the proposed modification. The proposed modification will be made available by the department for public review and comment upon request. In all cases, the secretary shall consider public comments in determining whether to approve the proposed modification.

E. Review Process: Following submittal of a proposed final voluntary remediation work plan or work plan modification, the secretary shall review and approve, approve with conditions, or disapprove the work plan or work plan modification within forty-five (45) calendar days of receipt. If the secretary disapproves the work plan or work plan modification, the participant may be granted an opportunity to submit a revised version, as determined by the secretary.

[7/15/99; 20.6.3.400 NMAC - Rn, 20 NMAC 6.3.IV 400 to 405, Recompiled 11/27/01]

20.6.3.401 to 20.6.3.499 [RESERVED]

20.6.3.500 CERTIFICATE OF COMPLETION:

A. Applicability:

(1) If the participant files with the department a signed Affidavit of Completion of Voluntary Remediation, and the secretary determines that a participant has successfully complied with the voluntary



remediation agreement and the site conditions meet the applicable standards, the secretary shall issue the participant a certificate of completion.

(2) For voluntary remediation activities completed on a portion of a site, the certificate of completion shall pertain only to that specific portion of the site, and shall include a legal description of that area.

(3) If the remediation requires post-completion monitoring, maintenance of engineering controls, remediation systems, post-closure care, or an affirmation of future non-residential land use, and the participant is satisfactorily implementing these requirements, the secretary may issue a conditional certificate of completion. To keep a conditional certificate of completion valid, the participant must satisfactorily continue to implement and maintain the necessary monitoring, engineering controls, remediation systems, post-closure care, and affirmation of future non-residential land use upon which the final remedy is dependent.

B. Process:

(1) The participant shall demonstrate to the secretary that site conditions meet the applicable standards by submitting a voluntary remediation completion report to the department. The report shall include, as appropriate:

(a) a summary of remediation activities conducted at the site;

(b) sampling methods and results of verification sampling or monitoring that indicates that remediation is complete;

(c) the method used to evaluate potential risks posed by site-related contaminants that successfully demonstrates that the performance standard has been met, as described in Subpart I, Section 110 of this Part [20.6.3.10 NMAC];

(d) a description of all monitoring, affirmation of future non-residential land use, or engineering controls upon which the final remedy is dependent;

(e) copies of all manifests, waste disposal records, or other documentation documenting the final disposition of all remediation-derived waste; and

(f) any other pertinent information requested by the department that is reasonably necessary to meet the requirements of these regulations.

(2) The report shall be submitted to the department with a signed Affidavit of Completion of Voluntary Remediation from the participant and legal description of the affected property that indicates that remediation is complete, in accordance with the voluntary remediation agreement and applicable regulations and guidance.

(3) No certificate of completion shall be issued to a participant who has not paid invoiced oversight costs in full to the department.

(4) The department shall review and determine the sufficiency of a completion report within forty-five (45) days of receipt. If the secretary approves the completion report, the secretary will issue a certificate of completion or a conditional certificate of completion, as appropriate. If the secretary does not approve the completion report, the secretary shall either issue a finding that the participant is not in compliance with the voluntary remediation agreement and terminate the agreement, or advise the participant in writing of data gaps in the report. The participant shall correct any identified data gaps and resubmit the completion report within thirty (30) calendar days of receipt of notice of the data gaps.

(5) If a conditional certificate of completion has been issued, the department shall conduct audits to ensure that all engineering controls, remediation systems, post-closure care, or affirmation of future non-residential land use upon which the final remedy is dependent are being maintained appropriately. These audits shall be performed at least every other year for the first ten (10) years following the issuance of the conditional certificate of completion, and every five (5) years thereafter. If during the course of such an audit, the department finds that any of the monitoring requirements, engineering controls, remediation systems, post-closure care, or affirmation of future non-residential land use are not being properly maintained such that the performance standard described in Subpart I, Section 110 of this Part [20.6.3.10 NMAC] is no longer being met, the department may revoke the conditional certificate of completion and initiate an enforcement action.

[7/15/99; 20.6.3.500 NMAC - Rn, 20 NMAC 6.3.V.500 to 502, Recompiled 11/27/01]

20.6.3.501 to 20.6.3.599 [RESERVED]

20.6.3.600 COVENANT NOT TO SUE:

A. Applicability: After the secretary issues a certificate of completion or a conditional certificate of completion for a site, the secretary shall provide a covenant not to sue to a purchaser or prospective purchaser of the site that did not contribute to the site contamination, for any direct liability, including future liability for claims based upon the contamination covered by the agreement and over which the department has authority. Except as

may be provided under federal law or as may be agreed to by a federal government entity, the covenant not to sue shall not release or otherwise apply to claims by the federal government for claims based on federal law. Except as may be agreed to by another department or agency of the state, the covenant not to sue shall not release or otherwise apply to claims of any other office, department or agency of the State. Except as may be agreed to by a third party, the covenant not to sue shall not release or otherwise affect a person's liability to third parties.

B. Reservation of Rights: The department expressly reserves the right to take any action, including any enforcement action, to address any contamination not covered by the voluntary remediation agreement, including any release of a contaminant that occurs after issuance of the certificate of completion, or any release of a contaminant not covered by the voluntary remediation agreement. The secretary's covenant not to sue under this part shall not apply to any such release.

C. Transferability: The secretary's covenant not to sue under this part shall be transferable with title to the site, unless the title is transferred to a party who has contributed to the site contamination, or is an officer, director, parent, subsidiary, affiliate, partner, managing agent, or employee thereof.

[7/15/99; 20.6.3.600 NMAC - Rn, 20 NMAC 6.3.VI.600 to 603, Recompiled 11/27/01]

20.6.3.601 to 20.6.3.699 [RESERVED]

20.6.3.700 RESCISSION: The Secretary may rescind a certificate of completion, conditional certificate of completion, or a covenant not to sue if the Department determines that:

A. based on reasonable evidence, contamination addressed in the agreement still poses, following remediation, an unreasonable threat to human health or the environment, or that the performance standard described in Subpart I, Section 110 of this Part [20.6.3.10 NMAC] has not been met;

B. the voluntary remediation agreement was performed in a manner that fails to comply substantially with the terms and conditions of the agreement or voluntary remediation work plan;

C. any monitoring requirements, engineering controls, remediation systems, post-closure care, or affirmation of future non-residential land use upon which the final remedy is dependent are not being implemented satisfactorily;

D. the voluntary remediation agreement is a result of fraud; or

E. contamination was present at the site at the time the voluntary remediation agreement was signed or the voluntary remediation work plan was approved, but the department was not properly informed of the type, extent, or magnitude of the contaminants.

[7/15/99; 20.6.3.700 NMAC - Rn, 20 NMAC 6.3.VII.700 and 701, Recompiled 11/27/01]

20.6.3.701 to 20.6.3.799 [RESERVED]

HISTORY OF 20.6.3 NMAC: [RESERVED]

History of Repealed Material: [RESERVED]