

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 7 WASTEWATER AND WATER SUPPLY FACILITIES
PART 7 REVIEW PROCEDURES FOR WASTEWATER CONSTRUCTION LOANS

20.7.7.1 ISSUING AGENCY. New Mexico Environment Department.
[11-30-95; 20.7.7.1 NMAC – Rn, 20 NMAC 7.7.100, 7/16/2000]

20.7.7.2 SCOPE. These procedures apply to all construction or planning/design projects funded in-part from funds from the Wastewater Facilities Construction Loan Fund which are derived from the federal capitalization grant except as provided in Section 20.7.7.11 NMAC.
[10-22-88; 11-30-95; 20.7.7.2 NMAC – Rn, 20 NMAC 7.7.101 & A, 7/16/2000]

20.7.7.3 STATUTORY AUTHORITY. Department of Environment Act, NMSA 1978, 9-7A-6.F; Wastewater Facility Construction Loan Act, NMSA 1978, Sections 74-6A-1 to 15; and Water Quality Control Act, NMSA 1978, Sections 74-6-1 to 17.
[10-22-88; 11-30-95; 20.7.7.3 NMAC – Rn, 20 NMAC 7.7.102, 7/16/2000]

20.7.7.4 DURATION. Permanent.
[11-30-95; 20.7.7.4 NMAC – Rn, 20 NMAC 7.7.103, 7/16/2000]

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

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

B. The amendment and replacement of HED 88-3 (EID) shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any financial assistance provided pursuant to HED 88-3 (EID).
[11-30-95; 20.7.7.5 NMAC – Rn, 20 NMAC 7.7.104 & A, 7/16/2000]

20.7.7.6 OBJECTIVE. This Part establishes the New Mexico Environment Department's policy and procedures for the identification and analysis of the environmental impacts of construction of wastewater facilities funded in-part through loans from the Wastewater Facility Construction Loan Fund (which is New Mexico's SRF) and the preparation and processing of Environmental Impact Statements (EISs). This procedure shall be coordinated with and shall be consistent with the NMED's environmental review responsibilities pursuant to the Governor's Executive Order 83-73, "State Clearinghouse Review Process."
[10-22-88; 11-30-95; 20.7.7.6 NMAC – Rn, 20 NMAC 7.7.105, 7/16/2000]

20.7.7.7 DEFINITIONS. All terminology used in this Part will be consistent with the terms as defined in 40 CFR Part 1508 (the CEQ Regulations). Any qualifications will be provided in the definitions set forth in this Part.

A. "Applicant" means any local authority, which has filed an application for loan assistance from the SRF.

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

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

D. "loan" means a loan of funds by a written loan agreement from the SRF;

E. "planning/design loan" means a loan which is issued for the purpose of preparation of a plan (including environmental review process) and/or preparation of design drawings and specifications for a potential construction project.

F. "project" means a construction project which receives a loan for the purpose of building a publicly owned treatment works or other eligible works.

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

H. "Responsible Official" means the Secretary, New Mexico Environment Department who is authorized to fulfill the requirements of these procedures. The Chief of the Construction Programs Bureau is delegated the day-to-day responsibilities for implementing these procedures.
[10-22-88; 11-30-95; 20.7.7.7 NMAC – Rn, 20 NMAC 7.7.109 & A, 7/16/2000]

20.7.7.8 BACKGROUND.

A. Pursuant to Clean Water Act amendments of 1987 (CWA) the U.S. Environmental Protection Agency (EPA) issued on January 28, 1988 the final "Initial Guidance - State Water Pollution Control Revolving Funds (SRF)." Section III.8.11. states the following: Section 212 POTW projects that the State constructs with funds "directly made available by" capitalization grants (equivalency projects) must be treated under the National Environmental Policy Act (NEPA) in the same manner as Title II construction grants projects. To comply with this requirement, the State may either develop or revise its own "NEPA-like" environmental review methods or adopt and apply the procedures at 40 CFR Part 6. If the State selects its own method for conducting environmental reviews, the process must be approved by the Regional Administrator. State processes will be evaluated on the basis of the guidance included as Appendix D which describes an adequate NEPA-like program for environmental reviews of equivalency projects. State environmental review procedures that have previously been used in the Title II program augmented by actions formerly undertaken by EPA and that are supported by State authority will meet these requirements. Under section 602(a) of the CWA, the Administrator is authorized to include specifications in the capitalization grant agreement that are in addition to those required by section 602(b). Pursuant to this authority, EPA will also require States to agree to conduct reviews of the potential environmental impacts of all other section 212 POTW construction projects receiving assistance from the SRF. If the State chooses to, it may apply a different environmental review process to these other projects. If so, the RA will evaluate and approve this process on the basis of additional guidance that is also included in Appendix D. This "second tier" process differs in scope and rigor from the NEPA-like process required for equivalency projects under section 602(b)(6). Changes to both the NEPA-like and second-tier environmental review process must be approved by the RA. In the annual review, the RA will determine whether the appropriate environmental reviews have been conducted on all treatment works projects, as defined in section 212, that have received assistance from the SRF.

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

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

D. The New Mexico Water Quality Act, NMSA 1978, Sections 74-6-1 to 17, created the Water Quality Control Commission (WQCC) which is the state water pollution control agency for all purposes of the federal Clean Water Act, as amended. The WQCC may take all action necessary and appropriate to secure to New Mexico and its political subdivisions the benefits of the federal act. The Water Quality Act identifies legal remedies available to it and its constituent agencies (including NMED) in enforcement of its regulations, and legal remedies available to the public regarding implementation of programs covered by the Water Quality Act which includes the SRF).
[10-22-88; 11-30-95; 20.7.7.8 NMAC – Rn, 20 NMAC 7.7.106 & A, 7/16/2000]

20.7.7.9 CONSTRUCTION. This Part shall be liberally construed to carry out the purposes of the Act. If any provision or application of this Part is held invalid, the remainder or its application to other situations or persons shall not be affected.
[11-30-95; 20.7.7.9 NMAC – Rn, 20 NMAC 7.7.107, 7/16/2000]

20.7.7.10 COMPLIANCE WITH OTHER REGULATIONS. Compliance with this Part does not relieve a person from the obligation to comply with other applicable state and federal regulations.
[11-30-95; 20.7.7.10 NMAC – Rn, 20 NMAC 7.7.108, 7/16/2000]

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

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

B. Determining categorical exclusion eligibility. At the request of an applicant, NMED will determine if a project is eligible for a categorical exclusion in accordance with the submission of a loan application.

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

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

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

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

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

[10-22-88; 11-30-95; 20.7.7.11 NMAC – Rn, 20 NMAC 7.7.200 & A, 7/16/2000]

20.7.7.12 CONSULTING DURING THE FACILITIES PLANNING PROCESS. The responsible official shall initiate the environmental review process early to identify environmental effects, avoid delays, and resolve conflicts. The environmental review process should be integrated throughout the facilities planning process. Potential applicants should consult with NMED early in the facilities planning process. The consultation would be most useful during the evaluation of project alternatives prior to the selection of a preferred alternative, to assist in resolving any identified environmental problems.

[10-22-88; 11-30-95; 20.7.7.12 NMAC – Rn, 20 NMAC 7.7.201 & A, 7/16/2000]

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

A. ENVIRONMENTAL:

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

B. ECONOMIC:

- (1) Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended

(2) Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738. Administration of Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans

C. SOCIAL LEGISLATION

- (1) Age Discrimination Act, PL 94-135
- (2) Civil Rights Act of 1964, PL 88-352
- (3) Section 13 of PL 92-500; Prohibition against sex discrimination under the Federal Water

Pollution Control Act

- (4) Executive Order 11246, Equal Employment Opportunity
- (5) Executive Orders 11625 and 12138, Women's and Minority Business Enterprise
- (6) Rehabilitation Act of 1973, PL 93-112 (including Executive Orders 11914 and 11250)

D. MISCELLANEOUS AUTHORITY:

- (1) Uniform Relocation and Real Property Acquisition Policies Act of 1970.
- (2) Executive Order 12549 - Debarment and Suspension

[20.7.7.13 NMAC – Rn, 20 NMAC 7.7.202 & A, 7/16/2000]

20.7.7.14 REVIEW OF COMPLETED FACILITIES PLANS. NMED shall review the completed facilities plan with particular attention to the EID and its utilization in the development of alternatives and the selection of a preferred alternative. An adequate EID shall be an integral part of any facilities plan submitted to NMED. The EID shall be of sufficient scope to enable the responsible official to make determinations on requests for partitioning the environmental review process and for preparing an EA.

[10-22-88; 11-30-95; 20.7.7.14 NMAC – Rn, 20 NMAC 7.7.300 & A, 7/16/2000]

20.7.7.15 ENVIRONMENTAL ASSESSMENT. The environmental assessment process shall cover all potentially significant environmental impacts. NMED personnel shall assess environmental impacts before the facilities plan approval. The EID shall address all elements in 40 CFR Part 6 and follow NMED guidance.

A. Minimizing adverse effects of the proposed action.

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

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

[20.7.7.15 NMAC – Rn, 20 NMAC 7.7.301 & A, 7-16-2000]

20.7.7.16 FONSI/EID DETERMINATION. The responsible official shall apply the criteria under Section 20.7.7.19 NMAC to the following:

A. A complete facilities plan;

B. The EID; and

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

[10-22-88; 11-30-95; 20.7.7.16 NMAC – Rn, 20 NMAC 7.7.302 & A, 7/16/2000]

20.7.7.17 PARTITIONING THE ENVIRONMENTAL REVIEW PROCESS.

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

review for the remainder of the overall facilities plan shall comply with all requirements under Section 20.7.7.14 NMAC and 20.7.7.15 NMAC.

B. Criteria for partitioning. The project component must:

- (1) Immediately remedy a severe public health, water quality or other environmental problem;
- (2) Not foreclose any reasonable alternatives identified for the overall wastewater treatment works

system(s);

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

- (4) Not be highly controversial.

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

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

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

(3) The environmental information required by Sections 20.7.7.14 NMAC and 20.7.7.15 NMAC for the component; and

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

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

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

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

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

[10-22-88; 20.7.7.17 NMAC – Rn, 20 NMAC 7.7.303 & A, 7/16/2000]

20.7.7.18 FINDING OF NO SIGNIFICANT IMPACT (FONSI) DETERMINATION.

A. Criteria for producing and distributing a FONSI. If, after completion of the environmental assessment, NMED determines that an EIS will not be required, the responsible official shall issue a FONSI. The FONSI will be based on NMED independent review of the EID and any other environmental information deemed necessary by the responsible official, consistent with the requirements of Sections 20.7.7.14 NMAC and 20.7.7.15 NMAC. The FONSI shall list mitigation measures necessary to make the recommended alternative environmentally acceptable.

B. Proceeding with loan agreement.

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

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

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

- (b) Supplement--require an update of the EID, issue and distribute a revised FONSI or

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

C. Revisions to the Project.

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

(2) Amendment. If the project scope of work is revised after a FONSI has been issued, but the revision is determined by NMED to be significant, NMED shall issue an amendment to the FONSI with proper public notification as identified in Section 20.7.7.23 NMAC and shall provide for a public meeting to discuss the amendment.

[10-22-88; 11-30-95; 20.7.7.18 NMAC – Rn, 20 NMAC 7.7.304 & A, 7/16/2000]

20.7.7.19 CRITERIA FOR INITIATING ENVIRONMENTAL IMPACT STATEMENTS (EIS).

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

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

- B. The effects resulting from any structure or facility constructed or operated may conflict with local, regional, or state land use plans or policies;
 - C. The project may have significant adverse effects on wetlands, including indirect and cumulative effects, or any major part of the project may be located in wetlands;
 - D. The project may significantly affect a habitat identified on the Department of the Interior' or the State's threatened and endangered species lists, or may be located in the habitat;
 - E. Implementation of the project may directly cause or induce changes that significantly displace population, alter the character of existing residential areas, adversely affect a floodplain, or adversely affect significant amounts of important farmlands or agricultural operations on this land.
 - F. The project may directly, indirectly, or cumulatively have significant adverse effects on parklands, preserves, other public lands, or areas of recognized scenic, recreational, archaeological, or historic value;
 - G. The project may directly, or through induced development, have a significant adverse effect upon local ambient air quality, local ambient noise levels, surface water or groundwater quality or quantity, water supply, fish, shellfish, wildlife, and their natural habitats;
 - H. The treated effluent is being discharged into a body of water where the present classification is too lenient or is being challenged as too low to protect present or recent uses, and the effluent will not be of sufficient quality or quantity to meet the requirements of these uses; or
 - I. Other conditions. The responsible official shall also consider preparing an EIS if the project is highly controversial; the project, in conjunction with related federal, state, local, or tribal resource projects, produces significant cumulative impacts; or if it is determined that the treatment works may violate federal, state, local, or tribal laws or requirements imposed for the protection of the environment.
- [10-22-88; 20.7.7.19 NMAC – Rn, 20 NMAC 7.7.305 & A, 7/16/2000]

20.7.7.20 ENVIRONMENTAL IMPACT STATEMENT (EIS) PREPARATION.

- A. Steps in preparing the EIS. In addition to the other requirements specified in this procedure, the responsible official will conduct the following activities:
 - (1) Notice of intent. If a determination is made that an EIS will be required, the responsible official shall prepare and distribute a notice of intent.
 - (2) Scoping. As soon as possible, after the publication of the notice of intent, the responsible official will convene a meeting of affected federal, state, and local agencies, or affected Indian tribes, the applicant and other interested parties to determine the scope of the EIS. As part of the scoping meeting, NMED will, as a minimum:
 - (a) Determine the significance of issues for and the scope of those significant issues to be analyzed in depth in the EIS;
 - (b) Identify the preliminary range of alternatives to be considered;
 - (c) Identify potential cooperating agencies and determine the information or analyses that may be needed from cooperating agencies or other parties;
 - (d) Discuss the method for EIS preparation and the public participation strategy;
 - (e) Identify consultation requirements of other environmental laws; and
 - (f) Determine the relationship between the EIS and the completion of the facilities plan and any necessary coordination arrangements between the preparers of both documents.
 - (3) Identifying and evaluating alternatives. Immediately following the scoping process, the responsible official shall commence the identification and evaluation of all potentially viable alternatives to adequately address the range of issues identified in the scoping process. Additional issues may be addressed, or others eliminated, during this process and the reasons documented as part of the EIS.
- B. Methods for preparing EIS. After NMED determines the need for an EIS, it shall select one of the following methods for its preparation:
 - (1) By NMED contracting directly with a qualified consulting firm;
 - (2) By utilizing a third party method whereby the responsible official enters into "third party agreements" for the applicant to engage and pay for the services of a third party to prepare the EIS. Such agreement shall not be initiated unless both the applicant and the responsible official agree to its creation. A third party agreement will be established prior to the applicant's EID and eliminate the need for the document. In proceeding under the third party agreement, the responsible official shall carry out the following practices:
 - (a) In consultation with the applicant, choose the third contractor and manage that contract;
 - (b) Select the consultant based on ability and absence of conflict of interest. Third party contractors will be required to execute a disclosure statement prepared by the responsible official signifying they have no financial or other conflicting interest in the outcome of the project; and

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

[10-22-88; 11-30-95; 20.7.7.20 NMAC – Rn, 20 NMAC 7.7.306, 7/16/2000]

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

- A. Cover Sheet;
- B. Executive Summary;
- C. Table of Contents;
- D. Purpose of and need for action;
- E. Alternatives including proposed action;
- F. Affected environment;
- G. Environmental consequences of the alternative;
- H. Coordination (includes list of agencies, organizations, and persons to whom copies of the EIS are sent);
- I. List of preparers;
- J. Index (commensurate with complexity of EIS);
- K. Appendices.

[10-22-88; 20.7.7.21 NMAC – Rn, 20 NMAC 7.7.310 & A, 7/16/2000]

20.7.7.22 MONITORING FOR COMPLIANCE.

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

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

[10-22-88; 20.7.7.22 NMAC – Rn, 20 NMAC 7.7.308 & A, 7/16/2000]

20.7.7.23 PUBLIC, FEDERAL AGENCY, AND OTHER STATE AGENCY INVOLVEMENT.

A. The NMED shall make diligent efforts to involve the public in the environmental review process consistent with program regulations and State Clearinghouse for Intergovernmental Review policies on public participation. The responsible official shall ensure that public notice is provided and shall ensure that public involvement is carried out following state policies and guidelines on public participation.

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

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

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

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

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

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

[10-22-88; 11-30-95; 20.7.7.23 NMAC – Rn, 20 NMAC 7.7.309 & A, 7/16/2000]

HISTORY OF 20.7.7 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records – state records center and archives:

HED 88-3 (EID), New Mexico Health and Environment Department, Environmental Improvement Division, Review Procedures for Projects Funded Through The Wastewater Facility Construction Loan Program, 9/22/88

OTHER HISTORY:

20 NMAC 7.7, Wastewater and Water Supply Facilities – Review Procedures For Wastewater Construction Loans, 10/25/95