

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 5 PETROLEUM STORAGE TANKS
PART 122 QUALIFICATION OF PERSONS PERFORMING CORRECTIVE ACTION

20.5.122.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.
[20.5.122.1 NMAC - N, 07/24/2018]

20.5.122.2 SCOPE: This part applies to all persons performing corrective action on behalf of storage tank owners, operators or the state under 20.5 NMAC.
[20.5.122.2 NMAC - N, 07/24/2018]

20.5.122.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the provisions of the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978; the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.
[20.5.122.3 NMAC - N, 07/24/2018]

20.5.122.4 DURATION: Permanent.
[20.5.122.4 NMAC - N, 07/24/2018]

20.5.122.5 EFFECTIVE DATE: July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.
[20.5.122.5 NMAC - N, 07/24/2018]

20.5.122.6 OBJECTIVE: The objective of this part is to establish rules for the qualification of firms for and disqualification of firms from conducting corrective action on sites where releases from storage tanks have caused contamination.
[20.5.122.6 NMAC - N, 07/24/2018]

20.5.122.7 DEFINITIONS:

A. The definitions in 20.5.101 NMAC and the Ground Water Protection Act apply to this part. In the case of conflict, the definitions in the Ground Water Protection Act control.

B. For purposes of this part, the term “firm” shall be synonymous with the term “person,” as defined in 20.5.101 NMAC.

C. For purposes of this part, the term “proposal” means an offer to complete work submitted in response to given specifications issued for a responsible party-lead site or for a state-lead site.
[20.5.122.7 NMAC - N, 07/24/2018]

20.5.122.8 to 20.5.122.2199 [RESERVED]

20.5.122.2200 PAYMENTS: Payments from the corrective action fund may be made only for corrective action conducted by firms qualified by the department to perform such work pursuant to this part.
[20.5.122.2200 NMAC - N, 07/24/2018]

20.5.122.2201 QUALIFICATION OF FIRMS:

A. Except as provided in Subsections C and D of this section, firms shall be evaluated for qualification by the department to conduct corrective action for each workplan submitted. Except as provided in Subsection B of this section, firms shall be qualified upon approval of the following:

(1) the subject workplan;

(2) a current statement of qualifications of the firm’s authorized representative, the individual with direct, responsible, supervisory control of the approved workplan unless previously submitted under the current active phase of corrective action; and

(3) if the involvement of a professional engineer is required for the work to be undertaken under the workplan, a current statement of qualifications of the professional engineer that complies with 20.5.122.2203 NMAC.

B. In addition to the requirements of Subsection A of this section, if the department reasonably believes that a firm already qualified to perform corrective action under an approved workplan is not timely paying its subcontractors, suppliers, laboratories, and other entities included in any invoice connected with an approved workplan, the firm shall not be qualified unless it provides proof to satisfy the department that within the preceding two years it has paid those entities according to the firm's contractual agreements.

C. When initial response or initial abatement is required at a site, firms may be qualified prior to commencement of work by submitting for verbal approval a statement of qualifications for the authorized representative and, if a professional engineer is required by 20.5.119 NMAC or 20.5.120 NMAC, for the professional engineer. Written statements of qualifications shall be submitted to the department with the report on initial abatement required by Subsection B of 20.5.119.1903 or 20.5.120.2002 NMAC.

D. When remediation is required at a site, selection of a remediation proposal in accordance with the competitive selection process described in 20.5.123.2306 NMAC and 20.5.123.2308 NMAC qualifies the successful firm to conduct corrective action within the scope of work defined by the proposal, except as provided in 20.5.122.2204 NMAC. A firm may be tentatively qualified prior to submitting a proposal under 20.5.123.2306 NMAC or 20.5.123.2308 NMAC by submitting for verbal approval a statement of qualifications for the authorized representative and, if a professional engineer is required by 20.5.119 NMAC or 20.5.120 NMAC, for the professional engineer.

E. Statements of qualifications shall include:

- (1) the authorized representative's name and status as sole proprietor, officer, partner, employee or subcontractor of the firm;
- (2) education relevant to the nature of the work to be performed;
- (3) experience relevant to the nature of the work to be performed; and
- (4) licenses and certifications required for the work to be performed.

F. While the required education and experience for the authorized representative may vary with the work to be performed, the following shall be considered minimums: a baccalaureate degree in science or engineering and at least two years of applicable experience in the investigation and remediation of unsaturated and saturated zone contamination, or five years supervised experience in investigation or remediation of unsaturated and saturated zone contamination.

G. Firms performing corrective action must maintain their qualification at all stages of work in order for the costs of that work to be eligible for payment.

H. This part is in addition to and not in lieu of any other licensing and registration requirements of the Construction Industries Licensing Act, Sections 60-13-1 through 60-13-59 NMSA 1978.

I. This part does not relieve contractors or owners or operators of their obligations and liabilities under applicable local, state, and federal laws and regulations.
[20.5.122.2201 NMAC - N, 07/24/2018]

20.5.122.2202 DISQUALIFICATION OF FIRMS:

A. The department may disqualify a qualified firm if the department determines that the firm has:

- (1) knowingly misrepresented a material fact in its request to become qualified or in any subsequent report or communication with the department;
- (2) failed to comply with any of the requirements of 20.5.119 NMAC, 20.5.120 NMAC, 20.5.122 NMAC or 20.5.123 NMAC;
- (3) failed to complete to the department's satisfaction the work described in one or more approved workplans; or
- (4) when required to do so by 20.5.122.2201 NMAC, failed to prove to the department's satisfaction that it has timely paid its subcontractors, suppliers, laboratories and other entities.

B. A firm that has been disqualified under this section may become eligible to perform corrective action upon satisfactory proof that the firm has remedied, to the department's satisfaction, the problem that led to disqualification. For purposes of Paragraph (4) of Subsection A of this section, a firm that has timely paid its subcontractors, suppliers, laboratories and other entities for at least six months, and which meets all applicable requirements of 20.5.122.2201 NMAC, shall become eligible to perform corrective action.
[20.5.122.2202 NMAC - N, 07/24/2018]

20.5.122.2203 REQUIREMENTS FOR PROFESSIONAL ENGINEERS: If the involvement of a professional engineer is required for the corrective action being conducted, the firm's qualification requirements shall include licensure by the New Mexico state board of licensure for professional engineers and surveyors in the

discipline of engineering appropriate to the corrective action. This requirement may be met by demonstrating that the firm has on staff or available by contract a professional engineer licensed in the appropriate discipline.
[20.5.122.2203 NMAC - N, 07/24/2018]

20.5.122.2204 ADVERSE DETERMINATIONS ON REQUESTS TO QUALIFY FIRMS:

A. In reviewing a firm's qualifications to perform corrective action, the department shall consider the nature of the work to be performed under the submitted workplan. Except as provided in Subsections B and C of this section, the department's determination on a request to qualify a firm for a workplan involving remediation shall be consistent with the department's selection of the firm's proposal for remediation under 20.5.123 NMAC, if applicable.

B. Failure of a qualified firm to complete work described in one or more approved workplans to the satisfaction of the department may be taken into consideration when the firm's qualifications are reviewed by the department for purposes of future workplans.

C. The failure of a qualified firm to complete work described in an approved workplan to the satisfaction of the department may result in a determination by the department that further work by the firm is not eligible for payment or that a new remediation proposal or workplan, or both, is required.

D. Nothing in this part is intended to affect the rights or obligations of the department or its contractors in any suspension or debarment proceedings undertaken by the department under the Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978. Suspension or debarment under the Procurement Code will be considered, however, in the department's determination on a firm's qualifications under this part.

[20.5.122.2204 NMAC - N, 07/24/2018]

20.5.122.2205 APPEALING ADVERSE DETERMINATIONS: A firm that has been denied qualification or that has been disqualified under this part may obtain review of the decision by using the procedures set forth in 20.5.125 NMAC.

[20.5.122.2205 NMAC - N, 07/24/2018]

HISTORY OF 20.5.122 NMAC:

Pre-NMAC History: None.

History of Repealed Material:

20 NMAC 5.16, Underground Storage Tanks, Certification of Contractors (filed 2/27/97), repealed 2/2/00.

20 NMAC 5.16, Underground Storage Tanks, Qualification of Contractors (filed 12/30/99), repealed 8/15/03.

20.5.16 NMAC, Petroleum Storage Tanks, Qualification of Persons Performing Corrective Action (filed 7/16/03), repealed 6/15/09.

20.5.16 NMAC, Petroleum Storage Tanks, Qualification of Persons Performing Corrective Action (filed 6/15/09), repealed 7/24/18.

Other History:

20 NMAC 5.16, Underground Storage Tanks, Certification of Contractors, (filed 10/06/95) replaced by 20 NMAC 5.16, Underground Storage Tanks, Certification of Contractors, effective 4/1/97.

20 NMAC 5.16, Underground Storage Tanks, Certification of Contractors, (filed 02/27/97) replaced by 20 NMAC 5.16, Underground Storage Tanks, Qualification of Contractors, effective 2/2/00.

20 NMAC 5.16, Underground Storage Tanks, Qualification of Contractors, (filed 12/30/99) replaced by 20.5.16 NMAC, Petroleum Storage Tanks, Qualification of Persons Performing Corrective Action, effective 8/15/03.

20.5.16 NMAC, Petroleum Storage Tanks, Qualification of Persons Performing Corrective Action (filed 7/16/03) replaced by 20.5.16 NMAC, Petroleum Storage Tanks, Qualification of Persons Performing Corrective Action, effective 6/15/09.

20.5.16 NMAC, Petroleum Storage Tanks, Qualification of Persons Performing Corrective Action (filed 6/15/09) was renumbered, reformatted, and replaced by 20.5.122 NMAC, Petroleum Storage Tanks, Qualification of Persons Performing Corrective Action, effective 7/24/18.