

**PROPOSED RULE: Part 34.16
(Variances)**

A. An operator may file a written request for a variance from any requirement of these rules with the division district office. The request for variance shall include:

- (1) a detailed statement explaining the need for a variance, and
- (2) a detailed written demonstration that the variance will afford reasonable protection against contamination of fresh water.

B. The division district office shall approve or deny the variance within 60 days of receipt. If the division district office denies the variance, it shall provide the operator with the reasons for denial by certified mail, return receipt requested.

C. If a request for variance from the requirements of this rule (19.15.34.1 through 19.15.34.18 NMAC) is not approved or denied within 60 days of the date the request for variance is received by the district office, the operator may seek a hearing pursuant to 19.15.4 NMAC.

D. If the operator requests a hearing pursuant to 19.15.4 NMAC within 60 days after receipt of notice, the division shall set the matter for hearing, with notice to the operator and the appropriate division district office.

E. The operator shall provide notice of the hearing on the request for variance to the surface owner of the site by certified mail, return receipt requested, at least 20 days prior to the date of hearing.

F. Variances must receive division district office approval prior to implementation.

**19.15.17.15.A
(Variances)**

(1) An operator shall demonstrate with a complete application to the appropriate division district office that the requested variance provides equal or better protection of fresh water, public health and the environment. The appropriate division district office shall approve or deny the variance within 60 days of receipt of the complete application.

(2) If the appropriate division district office denies the variance then it shall notify the operator within 60 days of receipt of the complete application for the reasons of denial by certified mail, return receipt requested. If the operator requests a hearing within 10 days after receipt of such notice, the division shall set the matter for hearing, with notice to the operator and the appropriate division district office.

(3) An application for a variance shall include:

- (a) a statement in detail explaining why the applicant wants to vary from the requirement of 19.15.17 NMAC, and
- (b) a detailed written demonstration that the variance will provide equal or better protection of fresh water, public health and the environment.

(4) If a variance goes to hearing pursuant to Paragraph (2) of Subsection A of 19.15.17.15 NMAC, in addition to the hearing process required by 19.15.4 NMAC, the application for hearing shall include:

- (a) a copy of the complete application submitted for a variance under Paragraph (3) of Subsection A of 19.15.17.15 NMAC;
- (b) proof of notification to the surface owner of the location of the requested variance.

(5) The division clerk will set the application for hearing as soon as practicable.