



STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF PROPOSED
AMENDMENTS TO 20.7.3 NMAC –
Liquid Waste Disposal and Treatment

No. EIB 14-04 (R)

NEW MEXICO ENVIRONMENT DEPARTMENT'S
NOTICE OF INTENT TO PRESENT TECHNICAL TESTIMONY

The New Mexico Environment Department, pursuant to 20.1.1 NMAC – *Rulemaking Procedures*, and the Notice of Public Hearing, files this Notice of Intent to Present Technical Testimony at the public hearing in this matter scheduled to commence on July 11, 2014.

1. Person filing the statement

New Mexico Environment Department

2. Witnesses

Jack King. Mr. King is currently the Bureau Chief of the Department's Environmental Health Bureau. Mr. King has been with the Department for approximately 12 years. He holds both Bachelor of Science and Master's degrees from New Mexico State University. His Resume is attached as Exhibit 1.

Jim Vincent. Mr. Vincent is currently the Manager for the Department's Liquid Waste Program. Mr. Vincent has been with the Department for approximately 6 years. He holds a Bachelor of Science degree in Civil Engineering with an Environmental Engineering minor from the University of New Hampshire, and a Master's degree from Lesley College in Cambridge, Massachusetts. His Resume is attached as Exhibit 8.

3. Testimony and Exhibits

The direct testimony and supporting exhibits for each witness are attached to this Notice. The Department anticipates that each witness will need approximately 20 minutes to summarize their written testimony.

4. Cross-Examination

The Department intends to present the witnesses individually for cross-examination.

5. Reservation of Rights

The Department reserves the right to call any person and offer any exhibit in response to the testimony or exhibits offered by another person in the hearing.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT
OFFICE OF GENERAL COUNSEL



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LIST OF EXHIBITS

NMED Exhibit 1	Resume of Jack King
NMED Exhibit 2	Published Amendments to 20.6.2 Adopted by the WQCC
NMED Exhibit 3	Sign-in Sheet for Public Meeting
NMED Exhibit 4	Power Point Presentation
NMED Exhibit 5	Small Business Advisory Letter
NMED Exhibit 6	Public Notice as Published in <i>ABQ Journal</i>
NMED Exhibit 7	Affidavit of Publication for <i>ABQ Journal</i>
NMED Exhibit 8	Resume of James Vincent
NMED Exhibit 9	Permit Transfer Spreadsheet
NMED Exhibit 10	Public Comments Received on Proposed Rule Change
NMED Exhibit 11	Proposed Corrections From 2012 Overhaul of 20.7.3 NMAC



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ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF PROPOSED
AMENDMENTS TO 20.7.3 NMAC –
Liquid Waste Disposal and Treatment

No. EIB 14-04 (R)

DIRECT TESTIMONY OF JACK KING

I. INTRODUCTION

I am Jack King, the Bureau Chief of the Environmental Health Bureau (“EHB”), which contains the Department’s Liquid Waste Program (“LWP”). I have been with the Department for approximately 12 years. My Resume is attached to the Notice of Intent (“NOI”) as NMED Exhibit 1. My testimony will describe the broad reasons for the proposed amendments, describe the processes used to solicit public input in developing the proposed rules, and describe most of the exhibits. The testimony of our Liquid Waste Program Manager, Jim Vincent, will focus on the substantive proposed changes to each specific section of the Regulations, and how the Bureau will implement these changes.

The Environmental Health Bureau (“EHB” or “the Bureau”) proposes to amend the Liquid Waste Disposal and Treatment Regulations (“Liquid Waste Regulations”), 20.7.3 NMAC, to increase the scope of the regulations such that on-site systems receiving between 2,001 gallons per day and 5,000 gpd would be covered by the Liquid Waste Regulations. Parallel changes to the Ground and Surface Water Protection Regulations, 20.6.2 NMAC, were recently adopted by the Water Quality Control Commission (“WQCC”). The published amendments to 20.6.2 NMAC are attached as NMED Exhibit 2. Those changes will dovetail and be compatible with any changes made to the Liquid Waste Rules, as they essentially defer to the Liquid Waste

King Testimony

Rules. By providing a reference to the Liquid Waste Rules, the WQCC Regulations will accommodate the authority limits and volume requirements adopted by the Environmental Improvement Board (“EIB”) in this proceeding.

The EHB’s redline-strikethrough rules proposal filed March 5, 2014 is already in the record with our Petition and Statement of Reasons. The EHB is also proposing a couple of additional changes to correct drafting errors that occurred during the filing of the last amendments adopted by the EIB in 2012. Those changes are included in our NOI as NMED **Exhibit 11**.

II. PUBLIC PARTICIPATION

The Ground Water Quality Bureau (“GWQB”) and LWP held a joint public informational meeting in Albuquerque on February 17, 2014 to present information to the regulated community and the public about the proposed changes to both the Liquid Waste Rules and the WQCC Regulations. Prior to this meeting, the GWQB obtained a list from its database of all small domestic waste and other discharge permits that could be affected by the change in regulatory authority. The GWQB then sent notice of the public information meeting to that list, approximately 184 persons, by first class mail or email. The LWP also sent a notice of the public information meeting to its list of generally interested stakeholders, which includes approximately 350 members.

At the February 17th public meeting, approximately 25 members of the public attended the informational session. The February 17th sign-in list is attached to the NOI as NMED **Exhibit 3**. At the meeting, staff from both the GWQB and the LWP presented the general scope, language, and expected impact of the proposed rule amendments. The Power Point presented by the GWQB and LWP is included in the NOI as NMED **Exhibit 4**, and was posted on the LWP

King Testimony

webpage to provide additional outreach to members of the public who were unable to attend the public meeting.

Generally, based on comments from the February 17th public information meeting, the regulated community has welcomed this proposed change. This rule amendment would expedite the permitting process for systems in the 2001-5000 gpd range without negatively affecting state groundwater quality. Additionally, the rule change will decrease the overall administrative regulatory burden and costs of compliance for these systems.

On March 11, 2014, we provided notice of the proposed rule amendment to the Small Business Regulatory Advisory Committee (“Small Business Committee”). A copy of the Small Business Regulatory Advisory Committee letter is included in the NOI as NMED **Exhibit 5**. To date, the Small Business Committee has not responded to the Bureau’s notice. Additionally, the GWQB presented the proposed rule amendments to the statewide Realtors Association of New Mexico at its meeting on April 30th in Albuquerque.

III. PUBLIC NOTICE

In order to meet notice requirements for this hearing, the Bureau published a Notice of Public Hearing (“Hearing Notice”) in the New Mexico Register on April 30, 2014 in Volume XXV, Issue 8. The Hearing Notice was also published in the *Albuquerque Journal* on April 18, 2014. A copy of the Hearing Notice as published in the *Journal* is attached as NMED **Exhibit 6**, and the affidavit of publication is included in the NOI as NMED **Exhibit 7**. The Bureau also sent the Hearing Notice to the stakeholder mailing list used for the February 17, 2014 public information meeting.

King Testimony

IV. REDUCTION OF ADMINISTRATIVE BURDEN

The Ground and Surface Water Protection Regulations, 20.6.2 NMAC, were designed primarily for large municipal, commercial, and industrial sources. Permits issued under these Regulations are significantly more burdensome to small businesses when compared to a liquid waste permit issued under 20.7.3 NMAC. The Groundwater Regulations require two public notices sent to interested parties, Tribal and other governmental officials, and published in several newspapers. Small domestic and nitrogenous waste systems should not be subject to the same requirements as larger and more complex ground water discharge permitted facilities, *e.g.*, municipal and industrial facilities. Additionally, because it can easily take over eight months for even non-contested applications to receive a final discharge permit, it is a significant burden on new businesses to wait to construct and open. Where contested, and if a public hearing is required due to determination of substantial public interest (20.6.2.3108.K NMAC), a final permit can and often does take more than a year to issue under the Ground and Surface Water Protection Regulations.

Transferring small domestic and nitrogenous waste systems to the LWP will significantly reduce the regulatory burden for these permittees, without significantly increasing the total number of permits managed by the LWP.

V. PROGRAM ADJUSTMENTS FOR ADDITIONAL WORKLOAD

The LWP has been authorized to add two additional Full-Time-Equivalent staff to review, inspect and monitor these larger flow systems. These “Large Flow” Environmentalists will be located in either the Santa Fe or Albuquerque field offices and they will be responsible for the initial permit review and final inspections for systems with flows between 2001-5000 gpd. They will also be responsible for regular compliance inspections to ensure that the system

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is being operated in accordance with the permit conditions. These Large Flow Environmentalists will work closely with the District Liquid Waste Specialists and Environmentalists who are located in the 22 field offices. This team effort will provide more effective monitoring of these systems and a quicker response to system failures when they arise.

VI. WHY THE BUREAU IS PROPOSING THIS CHANGE NOW

The increase in scope was not proposed during the general overhaul of the Liquid Waste Regulations in 2012 for several reasons. First, because of the high vacancy rate within the LWP at that time, there was concern that the Program would not have the capacity to handle the additional workload. Second, it was felt that the issue needed further research and discussion between the GWQB and the LWP to determine exactly which permits were eligible for transfer and to insure that permits could be transferred smoothly without decreasing groundwater protection. Third, it was evident that more extensive stakeholder input was needed to ascertain the impact of the proposed changes on the regulated community.

The vacancies at the LWP have now for the most part been filled, and as indicated earlier in my testimony more positions will be added if the Board adopts this change. Regular meetings between GWQB and LWP have allowed us to identify the permits to be transferred, and to develop methods and procedures for transferring them. Stakeholder input has been almost universally positive, and has been very important in helping the Department develop this proposal.

VII. CONCLUSION

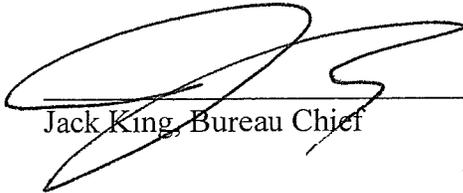
Both the EHB and the GWQB have worked with the regulated community and other interested members of the public to develop a proposal that will significantly streamline permitting for a number of small businesses while maintaining the protection of human health

King Testimony

and the environment that is the Bureau's mission.

The EHB requests that the EIB approve the proposed changes.

Thank you. This concludes my direct testimony.



Jack King, Bureau Chief

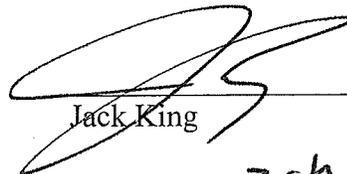
6/20/14

Date

VERIFICATION

STATE OF NEW MEXICO)
)
COUNTY OF SANTA FE)

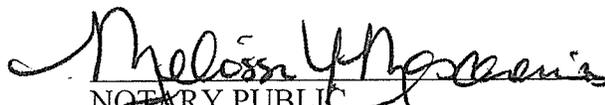
BEFORE ME, the undersigned notary public, on this day personally appeared Jack King, Bureau Chief of the Environmental Health Bureau of the New Mexico Environment Department, who by me duly sworn upon his oath said that he is duly qualified and authorized in all respects to make this affidavit, that he has read the above prepared written testimony and that every statement contained in this testimony is true and correct to the best of his knowledge and belief.



Jack King

SUBSCRIBED AND SWORN TO BEFORE ME on this 20th day of June, 2014, by
JACK KING

Seal



NOTARY PUBLIC
STATE OF NEW MEXICO

My commission expires April 3, 2015



STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD

**IN THE MATTER OF PROPOSED
AMENDMENTS TO 20.7.3 NMAC –
*Liquid Waste Disposal and Treatment***

No. EIB 14-04 (R)

DIRECT TESTIMONY OF JAMES VINCENT

I. INTRODUCTION

I am Jim Vincent and I am the Program Manager for the Department's Liquid Waste Program. I have been with the Department for approximately 6 years. My Resume is attached to the Notice of Intent ("NOI") as NMED **Exhibit 8**. My testimony will describe the substantive proposed changes to each specific section of the Regulations, and how the Bureau will implement these changes, as well as additional changes to correct drafting errors that occurred during the filing of the last amendments adopted by the Board in 2013.

II. DESCRIPTION OF PROPOSED CHANGES

The proposed changes consist of simply changing the number 2,000 to 5,000 in each location in the LW Regulations that discusses the scope of the regulations, or that discusses the maximum size of an on-site system covered by the LW regulations. We have identified a total of eleven places in the rule where this specific change should be made. In addition, there are two sentences in the rule as currently filed with state records that create internal inconsistencies and we would like to ask the Board to take this opportunity while the rule is open to revise those sentences so that they are consistent with other parts of the rule. These proposed changes are in redline-strikeout form in **Exhibit 11**. The first proposed change is the elimination of the very last sentence in Section 603: "The concentration limit shall be based on a 6 sample rolling average

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with no single sample exceeding twice the concentration limit.” During the 2012 overhaul of the rule, the Department’s intent was to remove all references to 6 sample rolling averages. We proposed removing it in three other places, but simply missed this one. The second proposed change is to remove the phrase “in excess of one foot” in subsection 701(K), and to substitute the word “invert” for “bottom” and substitute the word “distribution” for “drain” in that sentence. During the 2012 overhaul, the Board changed a similar sentence in footnote 4 of Table 302.1 to read exactly this way, and since subsection K refers to the same requirement, it should be consistent.

III. IMPLEMENTATION OF PROPOSED CHANGES

The LWP currently manages more than 150,000 permits statewide. The proposed increase in scope will initially add an additional 112 permits (or 0.07%) to that load. However, the larger systems do have a larger potential to impact groundwater, and will, on average, require more staff time and attention for permitting, inspecting, and monitoring than would be required for a typical single-family residential liquid waste system.

IV. EFFECT ON THE REGULATED COMMUNITY

The LW Program will provide better customer service for permittees in the 2001-5,000 gpd range. In contrast to the GWQB, which primarily runs its operations out of Santa Fe, the LWP has 22 Field Offices. This will provide applicants and permittees with much more direct and efficient communication with EHB inspectors. Many of the contractors who currently have regular contact and familiarity with local LWP staff will be the same contractors who will be installing and maintaining these systems.

Following the EIB regulation changes which took effect on September 1, 2013, the GWQB and LWP have met approximately every 2 weeks from the fall of 2013 through the time

Vincent Testimony

of this submittal. When the scope of the regulations (20.7.3.2) changed to include systems that “receive” 2000 gpd or less and allowed the use of actual metered water use data to determine program eligibility (20.7.3.201(0)(3)(b)), there were many existing discharge permits which became eligible to be permitted under the Liquid Waste Regulations. The purpose of these meetings was to outline and discuss the transition of existing facilities between the LWP and the GWQB. The GWQB and LWP found there were approximately 50 facilities eligible for immediate transfer to the LWP based on the volume of discharge and nature/quality of the effluent. In most of these cases, GWQB staff found that the facilities had been over-designed and were consistently discharging less than the threshold LWP limit of 2,000 GPD. GWQB staff reviewed and verified actual and reported usage of these facilities. As of June 11, 2014, the GWQB has initiated the transfer of 32 facilities to the LWP, and is continuing to work on additional transfers.

During these meetings the two programs also reviewed potential impacts should the proposed rule be changed. We agreed that there were two general categories that would be affected by the proposed rule changes. These were: (1) existing facilities discharging between 2,001 and 5,000 gpd (currently regulated by the GWQB); and (2) new facilities discharging less than 5,000 gpd.

Regarding the first category, the GWQB has identified approximately 62 facilities that have existing permitted volumes between 2,001 and 5,000 gpd that could be transferred if this rule change is approved. See Liquid Waste Transfer Spreadsheet, attached as NMED **Exhibit 9**. The GWQB and LWP program staff continue to review and monitor these facilities to ensure their potential for transfer. Where a facility’s discharge volume, documented by required permit

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reporting, is consistently at or over 5,000 gpd, it will stay under the jurisdiction and oversight of the GWQB.

In the second category are new facilities seeking a ground water discharge permit for the first time. In order to allow these facilities to continue their planning, implementation and start of their businesses, GWQB has moved forward with the proposed permits. If GWQB and LWP agree that the facility is unlikely to discharge over 2,000 gpd, then the programs have recommended that the new facility be permitted by the LWP rather than the GWQB. If the proposed discharge is more than 2,000 gpd, and if the applicant has expressed an interest in moving forward under the current WQCC Regulations for permit approval, then the GWQB has worked toward issuing a discharge permit (as these facilities are currently under GWQB jurisdiction). If the rules are changed, then these discharge permits will be transferred to the LWP like the facilities in the second group. The GWQB estimates that the LWP should expect to receive approximately 5-10 permits on an annual basis for facilities that have a design flow between 2001-5000 gpd.

It is important to note that the current exemption of 2,000 gpd and under and the proposed exemption for liquid waste as defined in the Liquid Waste Disposal and Treatment Regulations is primarily directed toward domestic wastes from residential and commercial units. While the LWP program may take over some commercial permits from GWQB such as animal kennels and clinics, or food operations or processing facilities, the following are excluded from LWP jurisdiction: industrial process wastewaters, roof drainage, mine or mill tailings or wastes (20.7.3.7.L(5) NMAC). Therefore, regardless of the discharge volume of these facilities, they are excluded from LWP jurisdiction and will remain under GWQB authority.

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As of April 24, 2014, the GWQB had approximately 917 active Ground Water Discharge Permits. The total number of existing facilities that will be transferred to LWP if the EIB approves the rule amendments is currently estimated at 62 regulated facilities, or roughly 7% of the active Ground Water Discharge Permits.

V. REQUIREMENTS FOR THE USE OF ENGINEERS AND OPERATORS ARE NOT AFFECTED BY THE AMENDMENTS

The regulations will continue to allow qualified contractors to submit applications without professional engineers provided that they meet all regulatory requirements within 20.7.3 NMAC. Qualified contractors are contractors who have a valid and appropriate classification of licensure issued by the Construction Industries Division (“CID”) of the Regulation and Licensing Department. For any design of a conventional or advanced treatment system with site or other limiting conditions that cannot be addressed by following a standard design from these regulations or from alternative resources recognized by the Department, the seal of a professional engineer is required. This is in accordance with Section 601(C) of the Liquid Waste Disposal and Treatment Regulations 20.7.3 NMAC.

For systems which are between 2001-5000 gpd, this rule change will not affect the determination whether or not a certified operator would be required pursuant to the Utility Operator Certification Regulations 20.7.4 NMAC. If a certified operator was required for a particular system before this proposed regulation change, then they would still be required to have a certified operation, and vice versa.

VI. EXAMPLES OF THE TYPES OF SYSTEMS THAT WILL BE TRANSFERRED TO LWP

The GWQB has identified 62 existing discharge permits (as of 6-11-14) that would be transferred to the LWP should this proposed regulation change be approved. See NMED

Vincent Testimony

Exhibit 9. These discharge permits include systems that serve mobile home parks, veterinary clinics, RV parks, schools, restaurants, state parks and seasonal youth camps. I offer the following four examples as the typical type of systems that would be transferred from the GWQB to the LWP:

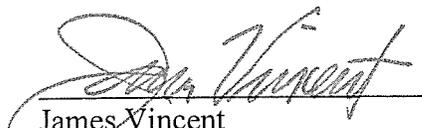
EXAMPLE 1: A mobile home park in Farmington which recorded the highest quarterly meter reading of 4300 gpd. This system serves approximately 31 mobile homes and consists of conventional septic tanks and disposal fields.

EXAMPLE 2: An animal shelter/veterinary clinic in Santa Fe which recorded a maximum daily meter flow of approximately 4800 gpd. This system serves an animal shelter, veterinary clinic and provides restrooms. The liquid waste system consists of a hair and sediment tank followed by septic tanks and a conventional disposal field.

EXAMPLE 3: An elementary school in Algodones which recorded a highest quarterly flow of approximately 2300 gpd. The system serves an elementary school with offices and a kitchen. The liquid waste system consists of a school with offices and a kitchen. The system consists of a conventional septic tank and disposal field.

EXAMPLE 4: A state park in Tukumcari which recorded a highest quarterly meter reading of 2775 gpd. The system serves multiple uses and consists of a comfort station, visitor center, residences, trailer park, RV dump station, boat bilge, vault toilets and houseboat holding tanks. The liquid waste system consists of two synthetically-lined evaporative lagoons.

Thank you. This concludes my direct testimony.


James Vincent
Liquid Waste Program Manager

6-20-14
Date

Jack King

June 19, 2014

Experience

January 2013 to Present

NMED

Ruidoso, NM

Bureau Chief

- Direct the activities of the Environmental Health Bureau (EHB) with 22 field offices and 115 employees
- Implement and administer multiple environmental health programs including food program, liquid waste program and pool program
- Oversee the management of the \$8,000,000 budget
- Develop and administer the EHB strategic plan
- Directly supervise three district managers, and four program managers
- Responsible for program development, policy development, quality services, fiscal compliance, state and federal regulation compliance, public relations, and funder relations.

April 2011 to January 2013

Staff Manager

- Supervise and direct the activities of fourteen employees in four field offices (Ruidoso, Roswell, Carlsbad and Hobbs)
- Implement and administer multiple public health/environmental programs
- Permit, inspect & provide technical assistance liquid waste systems, food facilities, & pools
- Develop and oversee the advanced treatment liquid waste system in Lincoln County
- Participate and operate as Deputy Incident Commander of the Lincoln County Watershed Restoration and Protection Team during the Little Bear Fire Recovery incident

August 2002 to April 2012

Environmental Supervisor

- Permit, inspect & provide technical assistance liquid waste systems, food facilities, & pools
- Supervise and direct the activities of two employees
- Develop and oversee the advanced treatment liquid waste system in Lincoln County

November 2000 to
August 2002

NMDOH

Roswell, NM

District Manager

- Supervise 9 staff and oversee their work quality and quantity
- Implement and administer multiple public health programs out of the SE District office
- Provide regulatory oversight for Developmental Disabilities Division in the southeastern part of the state.

December 1997 to
October 2000

MENTOR, Inc

Albuquerque, NM

State Director

- Direct the operations of a statewide public health/human service provider agency for the elderly, developmentally disabled and traumatic brain injured individuals.
- Indirect supervision of over 600 employees and direct supervision of 15 employees
- Responsible for program development, policy development, quality services, fiscal compliance, state and federal regulation compliance, public relations, and funder relations. Oversee quality assurance, including environmental health and safety.

July 1993 to December
1997

NMDOH

Roswell, NM

Planner

- Implement and administer multiple public health programs in the southeast region of NM
- Collaborate with other State agencies in the oversight and enforcement administration of a public health system for people with disabilities.
- Utilize technical assistance and other avenues to assist in program development

August 1981 to July 1993

King Construction

Ruidoso, NM

Owner/ Manager

- Operate home building and remodeling business
- Supervise and direct the work of up to 20 employees
- Oversee all operations including construction management, financial, purchasing, permitting etc.

Education

January 1999

NMSU

Las Cruces, NM

Master of Arts

- Educational Administration

July 1979

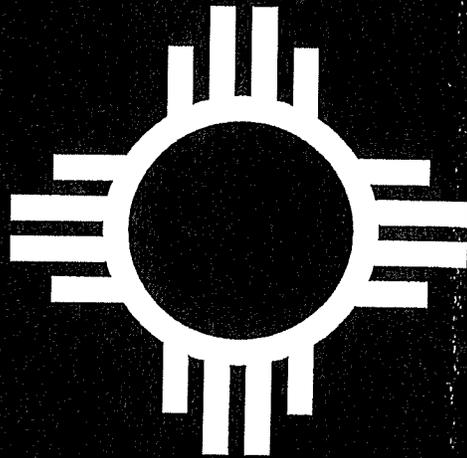
Bachelor of Science

- Agriculture

References

References are available on request.

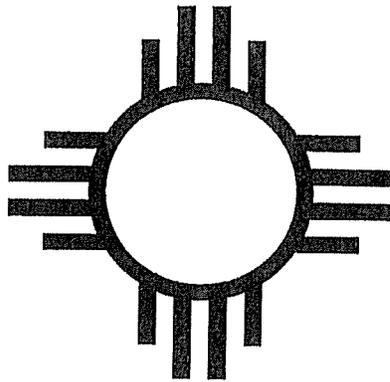
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The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2014

NEW MEXICO WATER QUALITY CONTROL COMMISSION

This is an amendment to 20.6.2 NMAC, Sections 7, 3105, 5002 and 5101, effective August 1, 2014.

20.6.2.7 DEFINITIONS:

Terms defined in the Water Quality Act, but not defined in this part, will have the meaning given in the act. As used in this part:

- A. "abandoned well"** means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be rehabilitated for its intended purpose or other purposes including monitoring and observation;
- B. "abate" or "abatement"** means the investigation, containment, removal or other mitigation of water pollution;
- C. "abatement plan"** means a description of any operational, monitoring, contingency and closure requirements and conditions for the prevention, investigation and abatement of water pollution, and includes Stage 1, Stage 2, or Stage 1 and 2 of the abatement plan, as approved by the secretary;
- D. "adjacent properties"** means properties that are contiguous to the discharge site or property that would be contiguous to the discharge site but for being separated by a public or private right of way, including roads and highways.
- E. "background"** means, for purposes of ground-water abatement plans only and for no other purposes in this part or any other regulations including but not limited to surface-water standards, the amount of ground-water contaminants naturally occurring from undisturbed geologic sources or water contaminants which the responsible person establishes are occurring from a source other than the responsible person's facility; this definition shall not prevent the secretary from requiring abatement of commingled plumes of pollution, shall not prevent responsible persons 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;
- F. "casing"** means pipe or tubing of appropriate material, diameter and weight used to support the sides of a well hole and thus prevent the walls from caving, to prevent loss of drilling mud into porous ground, or to prevent fluid from entering or leaving the well other than to or from the injection zone;

G. "cementing" means the operation whereby a cementing slurry is pumped into a drilled hole and/or forced behind the casing;

H. "cesspool" means a "drywell" that receives untreated domestic liquid waste containing human excreta, and which sometimes has an open bottom and/or perforated sides; a large capacity cesspool means a cesspool that receives ~~greater than 2,000 gallons per day of untreated domestic~~ liquid waste greater than that regulated by 20.7.3 NMAC;

I. "collapse" means the structural failure of overlying materials caused by removal of underlying materials;

J. "commission" means:
(1) the New Mexico water quality control commission or

(2) the department, when used in connection with any administrative and enforcement activity;

K. "confining zone" means a geological formation, group of formations, or part of a formation that is capable of limiting fluid movement from an injection zone;

L. "conventional mining" means the production of minerals from an open pit or underground excavation; underground excavations include mine shafts, workings and air vents, but does not include excavations primarily caused by in situ extraction activities;

M. "daily composite sample" means a sample collected over any twenty-four hour period at intervals not to exceed one hour and obtained by combining equal volumes of the effluent collected, or means a sample collected in accordance with federal permit conditions where a permit has been issued under the national pollutant discharge elimination system or for those facilities which include a waste stabilization pond in the treatment process where the retention time is greater than twenty (20) days, means a sample obtained by compositing equal volumes of at least two grab samples collected within a period of not more than twenty-four (24) hours;

N. "department", "agency", or "division" means the New Mexico environment department or a constituent agency designated by the commission;

O. "discharge permit" means a discharge plan approved by the department;

P. "discharge permit modification" means a change to the requirements of a discharge permit that result from a change in the location of the discharge, a significant increase in the quantity of the discharge, a significant change in the quality of the discharge; or as required by the secretary;

Q. "discharge permit

renewal" means the re-issuance of a discharge permit for the same, previously permitted discharge;

R. "discharge plan" means a description of any operational, monitoring, contingency, and closure requirements and conditions for any discharge of effluent or leachate which may move directly or indirectly into ground water;

S. "discharge site" means the entire site where the discharge and associated activities will take place;

T. "disposal" means to abandon, deposit, inter or otherwise discard a fluid as a final action after its use has been achieved;

U. "domestic liquid waste" means human excreta and water-carried waste from typical residential plumbing fixtures and activities, including but not limited to waste from toilets, sinks, bath fixtures, clothes or dishwashing machines and floor drains;

V. "domestic liquid waste treatment unit" means a watertight unit designed, constructed and installed to stabilize only domestic liquid waste and to retain solids contained in such domestic liquid waste, including but not limited to aerobic treatment units and septic tanks;

W. "drywell" means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids;

X. "experimental technology" means a technology which has not been proven feasible under the conditions in which it is being tested;

Y. "fluid" means material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state;

Z. "ground water" means interstitial water which occurs in saturated earth material and which is capable of entering a well in sufficient amounts to be utilized as a water supply;

AA. "hazard to public health" exists when water which is used or is reasonably expected to be used in the future as a human drinking water supply exceeds at the time and place of such use, one or more of the numerical standards of Subsection A of 20.6.2.3103 NMAC, or the naturally occurring concentrations, whichever is higher, or if any toxic pollutant affecting human health is present in the water; in determining whether a discharge would cause a hazard to public health to exist, the secretary shall investigate and consider the purification and dilution reasonably expected to occur from the time and place of discharge to the time and place of withdrawal for use as human drinking

water;

BB. "improved sinkhole" means a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface;

CC. "injection" means the subsurface emplacement of fluids through a well;

DD. "injection zone" means a geological formation, group of formations, or part of a formation receiving fluids through a well;

EE. "motor vehicle waste disposal well" means a well which receives or has received fluids from vehicular repair or maintenance activities;

FF. "non-aqueous phase liquid" means an interstitial body of liquid oil, petroleum product, petrochemical, or organic solvent, including an emulsion containing such material;

GG. "operational area" means a geographic area defined in a project discharge permit where a group of wells or well fields in close proximity comprise a single class III well operation;

HH. "owner of record" means an owner of property according to the property records of the tax assessor in the county in which the discharge site is located at the time the application was deemed administratively complete;

II. "packer" means a device lowered into a well to produce a fluid-tight seal within the casing;

JJ. "person" means an individual or any other entity including partnerships, corporation, associations, responsible business or association agents or officers, the state or a political subdivision of the state or any agency, department or instrumentality of the United States and any of its officers, agents or employees;

KK. "petitioner" means a person seeking a variance from a regulation of the commission pursuant to Section 74-6-4(G) NMSA 1978;

LL. "plugging" means the act or process of stopping the flow of water, oil or gas into or out of a geological formation, group of formations or part of a formation through a borehole or well penetrating these geologic units;

MM. "project discharge permit" means a discharge permit which describes the operation of similar class III wells or well fields within one or more individual operational areas;

NN. "refuse" includes food, swill, carrion, slops and all substances from the preparation, cooking and consumption of food and from the handling, storage and sale of food products, the carcasses

of animals, junked parts of automobiles and other machinery, paper, paper cartons, tree branches, yard trimmings, discarded furniture, cans, oil, ashes, bottles, and all unwholesome material;

OO. "responsible person" means a person who is required to submit an abatement plan or who submits an abatement plan pursuant to this part;

PP. "secretary" or "director" means the secretary of the New Mexico department of environment or the director of a constituent agency designated by the commission;

QQ. "sewer system" means pipelines, conduits, pumping stations, force mains, or other structures, devices, appurtenances or facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;

RR. "sewerage system" means a system for disposing of wastes, either by surface or underground methods, and includes sewer systems, treatment works, disposal wells and other systems;

SS. "significant modification of Stage 2 of the abatement plan" means a change in the abatement technology used excluding design and operational parameters, or re-location of 25 percent or more of the compliance sampling stations, for any single medium, as designated pursuant to Paragraph (4) of Subsection E of 20.6.2.4106 NMAC;

TT. "subsurface fluid distribution system" means an assemblage of perforated pipes, drain tiles, or other mechanisms intended to distribute fluids below the surface of the ground;

UU. "subsurface water" means ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or may be utilized by vegetation;

VV. "TDS" means total dissolved solids as determined by the "calculation method" (sum of constituents), by the "residue on evaporation method at 180 degrees" of the "U.S. geological survey techniques of water resource investigations," or by conductivity, as the secretary may determine;

WW. "toxic pollutant" means a water contaminant or combination of water contaminants in concentration(s) which, upon exposure, ingestion, or assimilation either directly from the environment or indirectly by ingestion through food chains, will unreasonably threaten to injure human health, or the health of animals or plants which are commonly hatched, bred, cultivated or protected for use by man for food or economic benefit; as used in this definition injuries to health include death, histopathologic change, clinical symptoms of disease, behavioral abnormalities, genetic

mutation, physiological malfunctions or physical deformations in such organisms or their offspring; in order to be considered a toxic pollutant a contaminant must be one or a combination of the potential toxic pollutants listed below and be at a concentration shown by scientific information currently available to the public to have potential for causing one or more of the effects listed above; any water contaminant or combination of the water contaminants in the list below creating a lifetime risk of more than one cancer per 100,000 exposed persons is a toxic pollutant:

- (1) acrolein
- (2) acrylonitrile
- (3) aldrin
- (4) benzene
- (5) benzidine
- (6) carbon tetrachloride
- (7) chlordane
- (8) chlorinated benzenes
 - (a) monochlorobenzene
 - (b) hexachlorobenzene
 - (c) pentachlorobenzene
 - (9) 1,2,4,5-tetrachlorobenzene
 - (10) chlorinated ethanes
 - (a) 1,2-dichloroethane
 - (b) hexachloroethane
 - (c) 1,1,2,2-tetrachloroethane
 - (d) 1,1,1-trichloroethane
 - (e) 1,1,2-trichloroethane
 - (11) chlorinated phenols
 - (a) 2,4-dichlorophenol
 - (b) 2,4,5-trichlorophenol
 - (c) 2,4,6-trichlorophenol
 - (12) chloroalkyl ethers
 - (a) bis (2-chloroethyl) ether
 - (b) bis (2-chloroisopropyl) ether
 - (c) bis (chloromethyl) ether
 - (13) chloroform
 - (14) DDT
 - (15) dichlorobenzene
 - (16) dichlorobenzidine
 - (17) 1,1-dichloroethylene
 - (18) dichloropropenes
 - (19) dieldrin
 - (20) diphenylhydrazine
 - (21) endosulfan
 - (22) endrin
 - (23) ethylbenzene
 - (24) halomethanes
 - (a) bromodichloromethane
 - (b) bromomethane
 - (c) chloromethane
 - (d) dichlorodifluoromethane
 - (e) dichloromethane
 - (f) tribromomethane
 - (g) trichlorofluoromethane
 - (25) heptachlor
 - (26) hexachlorobutadiene
 - (27) hexachlorocyclohexane

(HCH)

- (a) alpha-HCH
- (b) beta-HCH
- (c) gamma-HCH

- (d) technical HCH
 (28) hexachlorocyclopentadiene
 (29) high explosives (HE)
 (a) 2,4-dinitrotoluene (2,4,DNT)
 (b) 2,6-dinitrotoluene (2,6,DNT)
 (c) octrahydro-1,3,5,7-tetranitro-1,3,5,7 tetrazocine (HMX)
 (d) hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX)
 (e) 2,4,6-trinitrotoluene (TNT)
 (30) isophorone
 (31) methyl tertiary butyl ether
 (32) nitrobenzene
 (33) nitrophenols
 (a) 2,4-dinitro-o-cresol
 (b) dinitrophenols
 (34) nitrosamines
 (a) N-nitrosodiethylamine
 (b) N-nitrosodimethylamine
 (c) N-nitrosodibutylamine
 (d) N-nitrosodiphenylamine
 (e) N-nitrosopyrrolidine
 (35) pentachlorophenol
 (36) perchlorate
 (37) phenol
 (38) phthalate esters
 (a) dibutyl phthalate
 (b) di-2-ethylhexyl phthalate
 (c) diethyl phthalate
 (d) dimethyl phthalate
 (39) polychlorinated biphenyls
 (PCB's)
 (40) polynuclear aromatic hydrocarbons (PAH)
 (a) anthracene
 (b) 3,4-benzofluoranthene
 (c) benzo (k) fluoranthene
 (d) fluoranthene
 (e) fluorene
 (f) phenanthrene
 (g) pyrene
 (41) tetrachloroethylene
 (42) toluene
 (43) toxaphene
 (44) trichloroethylene
 (45) vinyl chloride
 (46) xylenes
 (a) o-xylene
 (b) m-xylene
 (c) p-xylene
 (47) 1,1-dichloroethane
 (48) ethylene dibromide (EDB)
 (49) cis-1,2-dichloroethylene
 (50) trans-1,2-dichloroethylene
 (51) naphthalene
 (52) 1-methylnaphthalene
 (53) 2-methylnaphthalene
 (54) benzo-a-pyrene
 XX. "vadose zone" means earth material below the land surface and above ground water, or in between bodies of ground water;
 YY. "wastes" means sewage, industrial wastes, or any other liquid, gaseous or solid substance which will pollute any waters of the state;
 ZZ. "water" means all

water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water;

AAA. "water contaminant" means any substance that could alter if discharged or spilled the physical, chemical, biological or radiological qualities of water; "water contaminant" does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954;

BBB. "watercourse" means any river, creek, arroyo, canyon, draw, or wash, or any other channel having definite banks and beds with visible evidence of the occasional flow of water;

CCC. "water pollution" means introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property;

DDD. "well" means: (1) A bored, drilled, or driven shaft; (2) A dug hole whose depth is greater than the largest surface dimension; (3) An improved sinkhole; or (4) A subsurface fluid distribution system;

EEE. "well stimulation" means a process used to clean the well, enlarge channels, and increase pore space in the interval to be injected, thus making it possible for fluids to move more readily into the injection zone; well stimulation includes, but is not limited to, (1) surging, (2) jetting, (3) blasting, (4) acidizing, (5) hydraulic fracturing.

[1-4-68, 4-20-68, 11-27-70, 9-3-72, 4-11-74, 8-13-76, 2-18-77, 6-26-80, 7-2-81, 1-29-82, 9-20-82, 11-17-84, 3-3-86, 8-17-91, 8-19-93, 12-1-95; 20.6.2.7 NMAC - Rn, 20 NMAC 6.2.I.1101, 1-15-01; A, 1-15-01; A, 12-1-01; A, 9-15-02; A, 9-26-04; A, 7-16-06; A, 8-1-14]

20.6.2.3105 EXEMPTIONS FROM DISCHARGE PERMIT

REQUIREMENT: Sections 20.6.2.3104 and 20.6.2.3106 NMAC do not apply to the following:

A. Effluent or leachate which conforms to all the listed numerical standards of Section 20.6.2.3103 NMAC and has a total nitrogen concentration of 10 mg/l or less, and does not contain any toxic pollutant. To determine conformance, samples may be taken by the agency before the effluent or leachate is discharged so that it may move directly or indirectly into ground water; provided that if the discharge is by seepage through non-natural or

altered natural materials, the agency may take samples of the solution before or after seepage. If for any reason the agency does not have access to obtain the appropriate samples, this exemption shall not apply;

B. Effluent which is [discharged from a sewerage system used only for disposal of household and other domestic waste which is designed to receive and which receives 2,000 gallons or less of liquid waste per day] regulated pursuant to 20.7.3 NMAC, "Liquid Waste Disposal and Treatment" regulations;

C. Water used for irrigated agriculture, for watering of lawns, trees, gardens or shrubs, or for irrigation for a period not to exceed five years for the revegetation of any disturbed land area, unless that water is received directly from any sewerage system;

D. Discharges resulting from the transport or storage of water diverted, provided that the water diverted has not had added to it after the point of diversion any effluent received from a sewerage system, that the source of the water diverted was not mine workings, and that the secretary has not determined that a hazard to public health may result;

E. Effluent which is discharged to a watercourse which is naturally perennial; discharges to dry arroyos and ephemeral streams are not exempt from the discharge permit requirement, except as otherwise provided in this section;

F. Those constituents which are subject to effective and enforceable effluent limitations in a National Pollutant Discharge Elimination System (NPDES) permit, where discharge onto or below the surface of the ground so that water contaminants may move directly or indirectly into ground water occurs downstream from the outfall where NPDES effluent limitations are imposed, unless the secretary determines that a hazard to public health may result. For purposes of this subsection, monitoring requirements alone do not constitute effluent limitations;

G. Discharges resulting from flood control systems;

H. Leachate which results from the direct natural infiltration of precipitation through disturbed materials, unless the secretary determines that a hazard to public health may result;

I. Leachate which results entirely from the direct natural infiltration of precipitation through undisturbed materials;

J. Leachate from materials disposed of in accordance with the Solid Waste Management Regulations (20 NMAC 9.1) adopted by the New Mexico Environmental Improvement Board;

K. Natural ground water

seeping or flowing into conventional mine workings which re-enters the ground by natural gravity flow prior to pumping or transporting out of the mine and without being used in any mining process; this exemption does not apply to solution mining;

L. Effluent or leachate discharges resulting from activities regulated by a mining plan approved and permit issued by the New Mexico Coal Surface Mining Commission, provided that this exemption shall not be construed as limiting the application of appropriate ground water protection requirements by the New Mexico Coal Surface Mining Commission;

M. Effluent or leachate discharges which are regulated by the Oil Conservation Commission and the regulation of which by the Water Quality Control Commission would interfere with the exclusive authority granted under Section 70-2-12 NMSA 1978, or under other laws, to the Oil Conservation Commission.
[2-18-77, 6-26-80, 7-2-81, 12-24-87, 12-1-95; 20.6.2.3105 NMAC - Rn, 20 NMAC 6.2.III.3105, 1-15-01; A, 12-1-01; A, 8-1-14]

20.6.2.5002 UNDERGROUND INJECTION CONTROL WELL CLASSIFICATIONS:

A. Underground injection control wells include the following.

(1) Any dug hole or well that is deeper than its largest surface dimension, where the principal function of the hole is emplacement of fluids.

(2) Any septic tank or cesspool used by generators of hazardous waste, or by owners or operators of hazardous waste management facilities, to dispose of fluids containing hazardous waste.

(3) Any subsurface distribution system, cesspool or other well which is used for the injection of wastes.

B. Underground injection control wells are classified as follows:

(1) Class I wells inject fluids beneath the lowermost formation that contains 10,000 milligrams per liter or less TDS. Class I hazardous or radioactive waste injection wells inject fluids containing any hazardous or radioactive waste as defined in 74-4-3 and 74-4A-4 NMSA 1978, including any combination of these wastes. Class I non-hazardous waste injection wells inject non-hazardous and non-radioactive fluids, and they inject naturally-occurring radioactive material (NORM) as provided by Section 20.3.1.1407 NMAC.

(2) Class II wells inject fluids associated with oil and gas recovery.

(3) Class III wells inject fluids for extraction of minerals or other natural

resources, including sulfur, uranium, metals, salts or potash by in situ extraction. This classification includes only in situ production from ore bodies that have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V.

(4) Class IV wells inject fluids containing any radioactive or hazardous waste as defined in 74-4-3 and 74-4A-4 NMSA 1978, including any combination of these wastes, above or into a formation that contains 10,000 mg/l or less TDS.

(5) Class V wells inject a variety of fluids and are those wells not included in Class I, II, III or IV. Types of Class V wells include, but are not limited to, the following:

(a) Domestic liquid waste injection wells

(i) domestic liquid waste disposal wells used to inject liquid waste volumes greater than [2,000 gallons-per-day-of-treated-domestic-liquid-waste] that regulated by 20.7.3 NMAC through subsurface fluid distribution systems or vertical wells;

(ii) septic system wells used to emplace liquid waste volumes greater than [2,000-gallons-per-day-of-domestic-liquid-waste] that regulated by 20.7.3 NMAC into the subsurface, which are comprised of a septic tank and subsurface fluid distribution system;

(iii) large capacity cesspools used to inject liquid waste volumes greater than [2,000-gallons-per-day-of-domestic-liquid-waste] that regulated by 20.7.3 NMAC, including drywells that sometimes have an open bottom and/or perforated sides.

(b) Industrial waste injection wells

(i) air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling;

(ii) dry wells used for the injection of wastes into a subsurface formation;

(iii) geothermal energy injection wells associated with the recovery of geothermal energy for heating, aquaculture and production of electrical power;

(iv) stormwater drainage wells used to inject storm runoff from the surface into the subsurface;

(v) motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or maintenance activities;

(vi) car wash waste disposal wells used to inject fluids from motor vehicle washing activities.

(c) Mining injection wells

(i) stopes leaching wells

used for solution mining of conventional mines;

(ii) brine injection wells used to inject spent brine into the same formation from which it was withdrawn after extraction of halogens or their salts;

(iii) backfill wells used to inject a mixture of water and sand, mill tailings or other solids into mined out portions of subsurface mines whether water injected is a radioactive waste or not;

(iv) injection wells used for in situ recovery of lignite, coal, tar sands, and oil shale.

(d) Ground water management injection wells

(i) ground water remediation injection wells used to inject contaminated ground water that has been treated to ground water quality standards;

(ii) in situ ground water remediation wells used to inject a fluid that facilitates vadose zone or ground water remediation.

(iii) recharge wells used to replenish the water in an aquifer, including use to reclaim or improve the quality of existing ground water;

(iv) barrier wells used to inject fluids into ground water to prevent the intrusion of saline or contaminated water into ground water of better quality;

(v) subsidence control wells (not used for purposes of oil or natural gas production) used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water;

(vi) wells used in experimental technologies.

(e) Agricultural injection wells - drainage wells used to inject fluids into ground water to prevent the intrusion of saline or contaminated water into ground water of better quality.

[20.6.2.5002 NMAC - N, 12-1-01; A, 8-1-14]

20.6.2.5101 DISCHARGE PERMIT AND OTHER REQUIREMENTS FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:

A. Class I non-hazardous waste injection wells and Class III wells must meet the requirements of Sections 20.6.2.5000 through 20.6.2.5299 NMAC in addition to other applicable requirements of the commission regulations. The secretary may also require that some Class IV and Class V wells comply with the requirements for Class I non-hazardous waste injection wells in Sections 20.6.2.5000 through 20.6.2.5299 NMAC if the secretary determines that the additional requirements are necessary to prevent the movement of water contaminants from a specified

injection zone into ground water having 10,000 mg/l or less TDS. No Class I non-hazardous waste injection well or Class III well may be approved which allows for movement of fluids into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC, or pursuant to a temporary designation as provided in Paragraph (2) of Subsection C of Section 20.6.2.5101 NMAC.

B. Operation of a Class I non-hazardous waste injection well or Class III well must be pursuant to a discharge permit meeting the requirements of Sections 20.6.2.3000 through 20.6.2.3999 NMAC and Sections 20.6.2.5000 through 20.6.2.5299 NMAC.

C. Discharge permits for Class I non-hazardous waste injection wells, or Class III wells affecting ground water of 10,000 mg/l or less TDS submitted for secretary approval shall:

(1) Receive an aquifer designation if required in Section 20.6.2.5103 NMAC prior to discharge permit issuance; or

(2) For Class III wells only, address the methods or techniques to be used to restore ground water so that upon final termination of operations including restoration efforts, ground water at any place of withdrawal for present or reasonably foreseeable future use will not contain either concentrations in excess of the standards of Section 20.6.2.3103 NMAC or any toxic pollutant. Issuance of a discharge permit or project discharge permit for Class III wells that provides for restoration of ground water in accordance with the requirements of this Subsection shall substitute for the aquifer designation provisions of Section 20.6.2.5103 NMAC. The approval shall constitute a temporary aquifer designation for a mineral bearing or producing aquifer, or portion thereof, to allow injection as provided for in the discharge permit. Such temporary designation shall expire upon final termination of operations including restoration efforts.

D. The exemptions from the discharge permit requirement listed in Section 20.6.2.3105 NMAC do not apply to underground injection control wells except as provided below:

(1) Wells regulated by the Oil Conservation Division under the exclusive authority granted under Section 70-2-12 NMSA 1978 or under other Sections of the "Oil and Gas Act";

(2) Wells regulated by the oil conservation division under the "Geothermal Resources Act";

(3) Wells regulated by the New Mexico coal surface mining bureau under the "Surface Mining Act";

(4) Wells for the disposal of

effluent from systems which [~~receive less than 2,000 gallons per day of domestic sewage effluent and~~] are regulated under the "Liquid Waste Disposal and Treatment" regulations (20 NMAC 7.3) [20.7.3 NMAC] adopted by the environmental improvement board under the "Environmental Improvement Act".

E. Project permits for Class III wells.

(1) The secretary may consider a project discharge permit for Class III wells, if the wells are:

(a) Within the same well field, facility site or similar unit,

(b) Within the same aquifer and ore deposit,

(c) Of similar construction,

(d) Of the same purpose, and

(e) Operated by a single owner or operator.

(2) A project discharge permit does not allow the discharger to commence injection in any individual operational area until the secretary approves an application for injection in that operational area (operational area approval).

(3) A project discharge permit shall:

(a) Specify the approximate locations and number of wells for which operational area approvals are or will be sought with approximate time frames for operation and restoration (if restoration is required) of each area; and

(b) Provide the information required under the following Sections of this Part, except for such additional site-specific information as needed to evaluate applications for individual operational area approvals: Subsection C of Section 20.6.2.3106, Sections 20.6.2.3107, 20.6.2.5204 through 20.6.2.5209, and Subsection B of Section 20.6.2.5210 NMAC.

(4) Applications for individual operational area approval shall include the following:

(a) Site-specific information demonstrating that the requirements of this Part are met, and

(b) Information required under Sections 20.6.2.5202 through 20.6.2.5210 NMAC and not previously provided pursuant to Subparagraph (b) of Paragraph (3) of Subsection E of this Section.

(5) Applications for project discharge permits and for operational area approval shall be processed in accordance with the same procedures provided for discharge permits under Sections 20.6.2.3000 through 20.6.2.3114 NMAC, allowing for public notice on the project discharge permit and on each application for operational area approval pursuant to Section 20.6.2.3108 NMAC with opportunity for public hearing prior to

approval or disapproval.

(6) The discharger shall comply with additional requirements that may be imposed by the secretary pursuant to this Part on wells in each new operational area.

F. If the holder of a discharge permit for a Class I non-hazardous waste injection well, or Class III well submits an application for discharge permit renewal at least 120 days before discharge permit expiration, and the discharger is in compliance with his discharge permit on the date of its expiration, then the existing discharge permit for the same activity shall not expire until the application for renewal has been approved or disapproved. An application for discharge permit renewal must include and adequately address all of the information necessary for evaluation of a new discharge permit. Previously submitted materials may be included by reference provided they are current, readily available to the secretary and sufficiently identified to be retrieved.

G. Discharge Permit Signatory Requirements: No discharge permit for a Class I non-hazardous waste injection well or Class III well may be issued unless:

(1) The application for a discharge permit has been signed as follows:

(a) For a corporation: by a principal executive officer of at least the level of vice-president, or a representative who performs similar policy-making functions for the corporation who has authority to sign for the corporation; or

(b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(c) For a municipality, state, federal, or other public agency: by either a principal executive officer who has authority to sign for the agency, or a ranking elected official; and

(2) The signature is directly preceded by the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

H. Transfer of Class I non-hazardous waste injection well and Class III well Discharge Permits.

(1) The transfer provisions of Section 20.6.2.3111 NMAC do not apply to a discharge permit for a Class I non-hazardous waste injection well or Class III well.

(2) A Class I non-hazardous waste injection well or Class III well discharge permit may be transferred if:

(a) The secretary receives written notice 30 days prior to the transfer date; and

(b) The secretary does not object prior to the proposed transfer date. The secretary may require modification of the discharge permit as a condition of transfer, and may require demonstration of adequate financial responsibility.

(3) The written notice required by Subparagraph (b) of Paragraph (2) of Subsection I above shall:

(a) Have been signed by the discharger and the succeeding discharger, including an acknowledgement that the succeeding discharger shall be responsible for compliance with the discharge permit upon taking possession of the facility; and

(b) Set a specific date for transfer of discharge permit responsibility, coverage and liability; and

(c) Include information relating to the succeeding discharger's financial responsibility required by Paragraph (17) of Subsection B of Section 20.6.2.5210 NMAC.

I. Modification or Termination of a Discharge Permit for a Class I non-hazardous waste injection well or Class III well: If data submitted pursuant to any monitoring requirements specified in the discharge permit or other information available to the secretary indicate that this Part are being or may be violated, the secretary may require modification or, if it is determined by the secretary that the modification may not be adequate, may terminate a discharge permit for a Class I non-hazardous waste injection Well, or Class III well or well field, that was approved pursuant to the requirements of this under Sections 20.6.2.5000 through 20.6.2.5299 NMAC for the following causes:

(1) Noncompliance by the discharger with any condition of the discharge permit; or

(2) The discharger's failure in the discharge permit application or during the discharge permit review process to disclose fully all relevant facts, or the discharger's misrepresentation of any relevant facts at any time; or

(3) A determination that the permitted activity may cause a hazard to public health or undue risk to property and can only be regulated to acceptable levels by discharge permit modification or termination.

[9-20-82, 12-1-95, 11-15-96; 20.6.2.5101 NMAC - Rn, 20 NMAC 6.2.V.5101, 1-15-01; A, 12-1-01; A, 9-15-02; A, 8-1-14]

End of Adopted Rules Section

SIGN-IN SHEET

LWP/GWQB Rulemaking Public Meeting

Date: Feb. 17, 2014

NAME	ORGANIZATION	CONTACT INFORMATION E-MAIL OR MAILING ADDRESS
Bonifacio Vasquez	DP-739 Rienvenidos Resort Inc.	bonifacio@windstream.net
Eugene C Bassett	E.C. Bassett Co. Inc.	bassett.ec@aol.com
RICHARD SHELTER	SHERIFF COUNTY	BOARD SUPER SHERIFF COUNTY
JAN LAVING	Doanese / Lavings Assoc.	jan@laving-assoc.com
Michael Johnson	NMED / C-BAD	Michael.Johnson@State.NM.US
Jim Demick	JCMHP	DTOMASOCAT@AOL.COM
Ben Butlan	Butler Mt. Services	benbutlan4452@igrc.com
Richard Davis	Davis Plumbing	davis.plumbing@yahoo.com

SIGN-IN SHEET

LWP/GWQB Rulemaking Public Meeting

Date: Feb. 17, 2014

NAME	ORGANIZATION	CONTACT INFORMATION E-MAIL OR MAILING ADDRESS
Rosie Harmon	Belknap Bank for Inequity	rosie.harmon@oblegacy.com
PAUL DONOHUE	Eco-Safe Waste Water	PAUL@ECOSAFEWATER.COM
CASPIN KIMBER	PLANNING ENGINEERS	ck@pei3.com
Chris Gonzales	Bernalillo County	(505) 314-0329 gonzales@barnco.gov
Loren Allen	Allen Environmental	loren.allen@environmental.com
Ralph Baker Dotson	POWRA NM	20221124@septic@pnm.com
Edward Montoya	Sandoval County P&Z	emontoya@sandovalcountynm.gov
Maria Encinas	Sandoval County P&Z	EMONTAYA MENCINAS@Sandovalcountynm.gov

SIGN-IN SHEET

LWP/GWQB Rulemaking Public Meeting

Date: Feb. 17, 2014

NAME	ORGANIZATION	CONTACT INFORMATION E-MAIL OR MAILING ADDRESS
DAN MCGRAW	BERNALILLO COURT	dmeijer@berneco.gov
JOE TRUJILLO	PUMP MASTERS	JOE TRUJILLO 471-6169
MARK VISI	PUMP MASTERS	MARKVISI@ATGMAIL.COM (505) 471-6169
KEN GARCIA	CLV	Kgarcia@ci.lasvegas .nm.us
STEPHEN COALE	CONLEWT	CONLEWT@YAHOO.COM
ROBERT BURGHEIMER	Sketch	rob @sketcharchitecture.com rob@sketcharchitecture.com
JAMES McDONICIL	XTC	James_McDonicil@ xtcenergy.com



New Mexico Environment Department



Proposed Rule Change:
Liquid Waste Threshold Limit
20.7.3 NMAC and 20.6.2 NMAC



Today's Meeting:

- I. Introduction
- II. Proposed Rule Change
 - Liquid Waste Regulation at 20.7.3 NMAC
 - Water Quality Regulations at 20.6.2 NMAC
- III. Impact of the Proposed Changes
- IV. Examples
- V. Summary & Conclusions and Project Contacts

I. Introduction

- Introduction of presenters:
 - Jim Vincent, Liquid Waste Program Manager, Environmental Health Bureau
 - Jennifer Pruett, Manager, Ground Water Quality Bureau Pollution Prevention Program
- Programs' regulatory authority & enabling statutes:
 - Environmental Improvement Act
 - Chapter 74, Article 1 NMSA 1978
 - Water Quality Act
 - Chapter 74, Article 6 NMSA 1978



Introduction (continued)

- Why we are here: to change authority for small systems handling disposal of liquid waste.
 - Definition of liquid waste (20.7.3.7(L)(5) NMAC) excludes mining and industrial waste; authority for these permits will stay with the GWQB
 - Many small systems regulated by GWQB now fit within authority of LWP (actual discharge volume is well below 2,000 GPD)
 - Transfers will free up GWQB for regulation of higher volume systems that pose greater threats to ground water quality

Introduction (continued)

- Ground water discharge permits currently based on design flow of more than 2,000 GPD; actual flow may be considerably lower
- Mining and industrial permits will stay with Ground Water Quality Bureau regulation (as exempted from LWP authority)
- Large systems (greater than 5,000 GPD, such as wastewater treatment facilities) will stay with GWQB
- This change will allow GWQB staff to focus on higher volume discharges and discharges containing concentrated contaminants, to protect ground water
- Parallel and related changes in the Liquid Waste Disposal and Treatment Regulations and the Water Quality Control Commission Regulations are shown in the following slides

5

II. Proposed Rule Changes

Liquid Waste Disposal and Treatment Regulations 20.7.3 NMAC



6

Proposed Changes to Liquid Waste Disposal and
Treatment Regulations 20.7.3 NMAC

20.7.3.2 SCOPE:

A. This part, 20.7.3 NMAC, applies to on-site liquid waste systems, and effluent from such systems, that receive [~~two thousand (2,000)~~] five thousand (5,000) gallons or less of liquid waste per day, and that do not generate discharges that require a discharge plan pursuant to 20.6.2 NMAC or a national pollutant discharge elimination system (NPDES) permit.



Proposed Changes to Liquid Waste Disposal and
Treatment Regulations 20.7.3 NMAC

20.7.3.7 Definitions

(C)(6) "cluster system" means a wastewater system that serves more than one unit and treats [~~2000~~] 5,000 gallons per day or less of wastewater;



Proposed Changes to Liquid Waste Disposal and Treatment Regulations 20.7.3 NMAG

20.7.3.7 Definitions

(5) "liquid waste" means wastewater generated from any residential or commercial unit where the total wastewater received by a liquid waste system is [2000] 5000 gallons per day or less; liquid waste includes without limitation human excreta and water carried waste from plumbing fixtures, including, but not limited to, wastes from toilets, sinks, showers, baths, clothes- and dish-washing machines and floor drains; "liquid waste" also includes non-water carried wastes discharged into holding tanks, privies and vaults; specifically excluded from the definition of "liquid waste" are industrial process wastewaters, roof drainage, mine or mill tailings or wastes;



Proposed Changes to Liquid Waste Disposal and Treatment Regulations 20.7.3 NMAG

20.7.3.201(O) Procedures; General Requirements

(f) If a permit is issued and there are meter records for any quarter that indicate the daily wastewater flow exceeds [2000] 5000 gallons per day, quarterly meter records for the following two quarters shall be submitted to the department within 30 days of becoming available to the permittee. If meter data or other information available to department indicates the average daily wastewater flow has exceeded [2000] 5000 gallons per day, the department may void the permit and refer the facility to the ground water quality bureau. The department may require a tamper-proof type meter be installed to verify that future wastewater flows do not exceed [2000] 5000 gallons per day.



Proposed Changes to Liquid Waste Disposal and
Treatment Regulations 20.7.3 NMAC

20.7.3.302(C) Procedures; General Requirements

Multiple liquid waste systems, each with an actual design flow of [~~2000~~] 5000 gallons per day (gpd) or less, may be permitted by the department even if they are located on a single lot provided that the disposal systems are set back from each other by a distance equal to the sum of two radii of adjacent circular areas, each circular area representing certain boundaries of a disposal system.



Proposed Changes to Liquid Waste Disposal and
Treatment Regulations 20.7.3 NMAC

20.7.3.302(F)

Lots with existing liquid waste systems totaling less than [~~2000~~] 5000 gallons per day may be permitted to add additional liquid waste systems provided the individual systems do not exceed [~~2000~~] 5000 gallons per day, meet the setback requirements to the existing systems as allowed above and meet lot size requirements in Subsection C of 20.7.3.301 NMAC.



More Stringent Requirements

20.7.3.201 Procedures; General Requirements

L. Nothing contained in 20.7.3 NMAC shall be construed to prevent the department from requiring compliance with **more stringent requirements** than those contained herein, where the department finds that such more stringent requirements are necessary to prevent a hazard to public health or the degradation of a body of water.



More Stringent Requirements for Liquid Waste Systems which receive 2001-5000 gpd

1. All systems shall be designed and certified by a professional engineer with the exception of conventional treatment systems
2. Installation and completion of the system shall be overseen by a certified professional engineer and a Certificate of Completion shall be certified by a professional engineer and submitted to the department



More Stringent Requirements for Liquid Waste
Systems which receive 2001-5000 gpd

3. Systems must be maintained and operated by the appropriate operator or maintenance service provider:
 - a. If the system is a public wastewater facility (as defined in 20.7.4 NMAC) then a certified operator shall be required. The certified operator shall meet all requirements of 20.7.4 NMAC.
 - b. If the system is not a public wastewater facility and it includes an advanced treatment system, the permittee shall have a maintenance contract with an approved maintenance service provider. This maintenance contract shall be in effect for the life of the system.
 - c. If the system is not a public wastewater facility and it is a conventional treatment system the permittee shall have a maintenance contract with a qualified septage pumper.

More Stringent Requirements for Liquid Waste
Systems which receive 2001-5000 gpd

4. For existing Groundwater Quality Bureau Discharge Permits which are 5000 gpd or less, and do not include industrial waste, the Liquid Waste Program shall register the system with conditions. The conditions of the current Discharge Permit shall remain in effect until the system requires modification. The system will be required to be brought into compliance with the liquid waste regulations in effect at the time of the modification



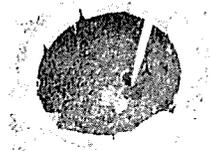
II. B. Water Quality Regulations 20.6.2 NMAC



Water Quality Regulations 20.6.2 NMAC

20.6.2.7 DEFINITIONS: Terms defined in the Water Quality Act, but not defined in this part, will have the meaning given in the act. As used in this part:

H. "cesspool" means a "drywell" that receives untreated domestic liquid waste containing human excreta, and which sometimes has an open bottom and/or perforated sides; a large capacity cesspool means a cesspool that receives waste greater than 2,000 gallons per day of untreated domestic liquid waste as defined in 20.7.3 NMAC;



Water Quality Regulations 20.6.2 NMAC

20.6.2.3105 EXEMPTIONS FROM DISCHARGE PERMIT REQUIREMENT:
Sections 20.6.2.3104 and 20.6.2.3106 NMAC do not apply to the following:

B. ~~Effluent which is discharged from a sewerage system used only for disposal of household and other domestic waste which is designed to receive and which receives 2,000 gallons or less of liquid waste per day;~~

Liquid waste which is regulated pursuant to 20.7.3 NMAC "Liquid Waste Disposal and Treatment" regulations;

- This change dovetails with Liquid Waste Regulations, to ensure no systems fall through the cracks. Systems regulated by the Liquid Waste Regulations are exempt from WQCC Regulations.
- WQCC rules will not need revision if LWP rules change; this reference will automatically include any future rules changes.

Water Quality Regulations 20.6.2 NMAC

20.6.2.5002 UNDERGROUND INJECTION CONTROL WELL
CLASSIFICATIONS:

B. (i) ~~domestic liquid waste disposal wells used to inject liquid waste, as defined by 20.7.3 NMAC, greater than 2,000 gallons per day of treated domestic liquid waste through subsurface fluid distribution systems or vertical wells;~~

(ii) ~~septic system wells used to emplace liquid waste, as defined by 20.7.3 NMAC, greater than 2,000 gallons per day of domestic liquid waste into the subsurface, which are comprised of a septic tank and subsurface fluid distribution system;~~

(iii) ~~large capacity cesspools used to inject liquid waste, as defined by 20.7.3 NMAC, greater than 2,000 gallons per day of domestic liquid waste, including drywells that sometimes have an open bottom and/or perforated sides.~~

Water Quality Regulations 20.6.2 NMAC

20.6.2.5101 DISCHARGE PERMIT AND OTHER REQUIREMENTS FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS: B.

D. The exemptions from the discharge permit requirement listed in Section 20.6.2.3105 NMAC do not apply to underground injection control wells except as provided below:

... (4) Wells for the disposal of effluent from systems which receive less than 2,000 gallons per day of domestic sewage effluent and are regulated under the "Liquid Waste Disposal and Treatment" Regulations (20 NMAC 7.3) [20.7.3 NMAC] adopted by the Environmental Improvement Board under the "Environmental Improvement Act".

III. Impact of the Proposed Changes



III. Impact of the Proposed Changes

- Impact on the regulated community and currently permitted facilities
 - Programs are working together for a smooth transition for the regulated community
 - No new or duplicative fees will be required; facilities that have paid Ground Water Quality Bureau discharge permit fees will not have to pay another fee for a Liquid Waste Permit
 - Program coordination will prevent duplication of effort and double-regulation
 - Any conditions in current Ground Water Quality Bureau discharge permits will be continued in Liquid Waste Permit
- Faster, less expensive permits for some
- No diminishment of ground water protection

Jurisdictional Limits in other Southwestern States

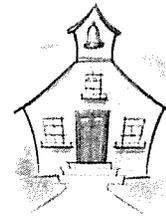
- Arizona – 3,000 gpd
- Utah – 5,000 gpd
- Colorado – 3,000 gpd
- Texas – 5,000 gpd



IV. Examples

- Small elementary school
 - Permitted volume: 5,000 GPD
 - Highest actual quarter discharged: 670 GPD
 - Type of system: 4 septic tank leachfield systems, 1 with grease interceptor
 - Depth to ground water: 413 feet
 - Currently within authority of LWP

- Church in suburban area
 - Permitted volume: 6,000 GPD
 - Highest actual quarter discharged: 1,125 GPD
 - Type of system: 2 septic tank leachfield systems
 - Depth to ground water: 270 feet
 - Currently within authority of LWP



Examples (continued)

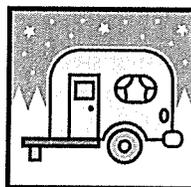
- Custom meat processors (including domestic waste)
 - New permit application proposed volume: 407 GPD
 - Type of system: septic tank leachfield system and holding tank for blood/offal
 - Depth to ground water: 70 feet
 - Currently within authority of LWP

- Rest stop
 - Permitted volume: 2,880 GPD
 - Highest actual quarter discharged: 439 GPD
 - Type of system: 2 septic tank leachfield systems (one each side of highway)
 - Depth to ground water: 280 feet
 - Currently within authority of LWP



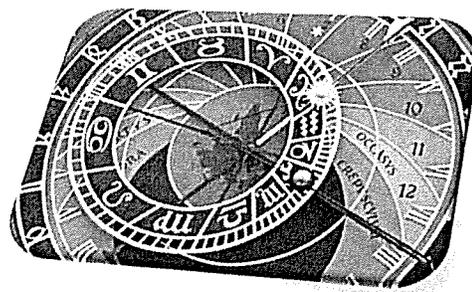
Examples (continued)

- Small mobile home park
 - Permitted volume: 3,950 GPD
 - Maximum discharge volume: 1,610 GPD
 - Type of system: 1 septic tank leachfield system (for 12 2-bedroom mobile homes)
 - Depth to ground water: 75 feet
 - Currently within authority of LWP



V. Summary & Conclusions and Project Contacts

- Timetable for Petitions and Hearings
- Opportunities for continued public input and participation
- Key staff contact information for both programs



Environmental Improvement Board Rulemaking Timetable

Event	Description	Timing
File Petition with EIB	File Petition with EIB	Due 15 days prior to EIB meeting
EIB Meeting	EIB Meeting	Present Petition and request hearing date
60-day Public Notice Period	60-day Public Notice Period	Official Notice of Hearing published and sent to interested parties (in NM Register, newspapers, on LWP and EIB webpages, sent to interested parties, LWP listserv)
EIB Public Hearing	EIB Public Hearing	
Regulations go into Effect	Regulations go into Effect	Estimated date following publication in the New Mexico Register



Water Quality Control Commission Rulemaking Timetable

Event	Description	Timing
File Petition with WQCC	File Petition with WQCC	Due 10 days prior to WQCC meeting
WQCC Meeting	WQCC Meeting	Present petition and request hearing date
30-day Public Notice Period	30-day Public Notice Period	Official Notice of Hearing published and sent to interested parties (in NM Register, newspapers, on GWQB and WQCC webpages, sent to interested parties)
WQCC Public Hearing	WQCC Public Hearing	
Regulations go into Effect	Regulations go into Effect	Estimated date following publication in the New Mexico Register



Additional Information

To view a complete version of the regulations, go to the following sites:

For the Water Quality Regulation, 20.6.2 NMAC:

<http://www.nmcpr.state.nm.us/nmac/parts/title20/20.006.0002.htm>

For the Liquid Waste Regulations, 20.7.3 NMAC:

<http://www.nmcpr.state.nm.us/nmac/parts/title20/20.007.0003.htm>



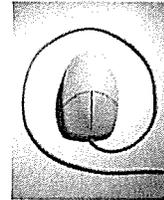
Additional Information

- * To be added to the GWQB interested parties list, contact Diana Sandoval (505-827-2900) or diana.sandoval1@state.nm.us
- * To be added to the WQCC or EIB interested parties list for rulemaking, contact Pam Castaneda (505-827-2425 or Pam.Castaneda@state.nm.us)
- * To be added to the LWP list server, see the LWP web site: <http://www.nmenv.state.nm.us/fod/LiquidWaste/>



Project Contacts

- Jennifer Pruett, Ground Water Quality Bureau
 - Jennifer.Pruett@state.nm.us
 - 505-827-0652
- James Vincent, Liquid Waste Program
 - Jim.Vincent@state.nm.us
 - 505-476-9107
- Pam Castaneda, Administrator for Boards & Commissions
 - 505-827-2425
 - **All comments on both draft rules to:**
 - Pam.Castaneda@state.nm.us



Questions and Comments





SUSANA MARTINEZ
Governor
JOHN A. SANCHEZ
Lieutenant Governor

NEW MEXICO
ENVIRONMENT DEPARTMENT

Office of General Counsel

Harold Runnels Building
1190 Saint Francis Drive (87505)
PO Box 5469, Santa Fe, NM 87502-5469
Phone (505) 827-2990 Fax (505) 827-1628
www.nmenv.state.nm.us



RYAN FLYNN
Cabinet Secretary
BUTCH TONGATE
Deputy Secretary

Jeffrey M. Kendall, General Counsel

March 11, 2014

Via U.S. Mail

Small Business Regulatory Advisory Commission
c/o Ms. Dora Dominguez
New Mexico Economic Development Department
1100 St. Francis Drive
Santa Fe, New Mexico 87505

Re: Proposed Amendments to Liquid Waste and Ground Water Quality Regulations 20.7.3 and 20.6.2 NMAC; Increase in maximum and threshold limits for Liquid Waste; Hearings before the Environmental Improvement Board and Water Quality Control Commission

Dear Chairman and Members of the Small Business Regulatory Advisory Commission:

The New Mexico Environment Department ("Department") hereby provides notice to the Small Business Regulatory Advisory Commission, pursuant to NMSA 1978, Section 14-4A-1, *et. seq.* that the Environmental Health Division, Environmental Health Bureau ("EHB") and the Resource Protection Division, Ground Water Quality Bureau ("GWQB") will petition the Environmental Improvement Board ("EIB") and the Water Quality Control Commission ("WQCC") for regulatory amendments to portions of 20.7.3 NMAC and 20.6.2 NMAC respectively.

The regulatory changes sought to both code sections primarily increase the current liquid waste program maximum discharge limit for residential and commercial facilities from 2,000 gallons per day ("gpd") to 5,000 gpd. Facilities over these limits, or meeting other criteria such as being a mine or industrial facility, will remain subject to the regulations under 20.6.2 NMAC, or GWQB authority. It is believed by the Department's EHB and GWQB technical staff that this action will have no adverse impact on small businesses in and throughout the State of New Mexico. In fact, the Department estimates this action will improve efficiencies within the Department, thus decreasing the overall time and effort necessary for the public to obtain necessary discharge authorizations for facilities discharging greater than 5,000 gpd.

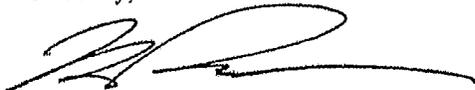
Additionally, for small flow residential and commercial facilities, direct permitting and overall compliance costs will decrease.¹

On February 18, 2014, the Department held a public information meeting regarding the proposed amendments. Over 26 members of the public attended this meeting representing various interests including septic tank and system installers, certified maintenance companies, property development and management companies, plumbers, etc. During the two hour meeting, EHB and GWQB staff presented and responded to numerous questions regarding the rule amendments. Almost all of the smaller business entities expressed their support of the proposed amendments. The Department received and recorded the expressed concerns and has begun reviewing their impact, if any, on the proposed rule amendments.

The EHB staff will file its petition with the EIB prior to its March 21st meeting. Due to public notice and publication requirements, the EHB will request that the EIB hear and rule upon the proposed amendments in June or July of 2014. The effective date will typically be 30 days after adoption, pending any publication notices in the New Mexico Register or appeal by an aggrieved party. Similarly, the GWQB presented its petition to the WQCC at the March 11, 2014 WQCC meeting and the WQCC will hear and potentially rule on the proposed amendments at the May 13, 2014 meeting.

If you have further questions, comments, or would like to have responsible staff meet and discuss this rule change, please feel free to contact me directly at (505) 827-2855 or via email at kevin.powers@state.nm.us.

Sincerely,



Kevin J. Powers, *Esq.*
Assistant General Counsel

KP:kp

Enclosures

cc: Jeff Kendall, General Counsel
Andrew Knight, NMED/OGC
Erika Schwender, NMED/RPD Director
Tom Blaine, NMED/EHD Director
Jerry Schoeppner, NMED/GWQB Chief
Jack King, NMED/EHB Chief
Jennifer Pruet, NMED/GWQB/PPS Manager
James Vincent, NMED/EHB/Liquid Waste Program Manager

¹ Some facilities may incur slightly higher costs as compared to other permitted facilities based on the nature and type of facility, strength and volume of waste discharge, and/or discharge location.



**NEW MEXICO ENVIRONMENTAL
IMPROVEMENT BOARD
NOTICE OF PUBLIC HEARING
TO CONSIDER PROPOSED
AMENDMENTS TO 20.7.3 NMAC**

**LIQUID WASTE DISPOSAL AND
TREATMENT**

The New Mexico Environmental Improvement Board (Board) will hold a public hearing beginning at 9:00 a.m. on Friday, July 11, 2014, and continuing thereafter as necessary at the New Mexico State Capitol Building, Room 307, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The hearing location may change prior to the hearing date, and those interested in attending should check the EIB website, <http://www.nmenv.state.nm.us/eib/> prior to the hearing. The purpose of the hearing is to consider proposed amendments to Liquid Waste Disposal and Treatment Rules, 20.7.3 NMAC (Rules). The New Mexico Environmental Department (NMED) is the proponent of the amendments to the Rules.

The amendments proposed by NMED to 20.7.3 NMAC would increase the scope of the regulations from the current 2,000 gallons per day or less of liquid waste received by an on-site system, to 5,000 gallons per day or less, such that permits for certain larger on-site liquid waste systems that are currently regulated by NMED's Ground Water Quality Bureau would be transferred to the Department's Liquid Waste Program.

In addition, the proposed amendments include several other minor changes and clarifications to current definitions, regulations, and procedures. Please note that formatting and minor technical changes in the regulations other than those proposed by petitioners may be proposed at hearing. In addition, the Board may make other changes as necessary to accomplish the purpose of providing public health and safety in response to public comments and evidence presented at the hearing.

The proposed changes may be reviewed during regular business hours at the office of the Environmental Improvement Board located in the Harold Runnels Building, 1190 St. Francis Drive, Room N-2150 Santa Fe, NM, 87505. In addition, a copy of the NMED proposed amendments is posted on the NMED website at <http://www.nmenv.state.nm.us/fod/LiquidWaste/>.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures - Environmental Improvement Board), the Environmental Improvement Act, Section 74-1-9 NMSA 1978, and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of the hearing.

Pursuant to 20.1.1.302 NMAC, Persons wishing to present technical testimony must file with the Board a written notice of intent to do so on or before 5:00 pm on June 20, 2014. The notice of intent shall:

- Identify the person or entity for whom the witness(es) will testify;
- Identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of his or her education and work background;
- Include a copy of the direct testimony of each technical witness in narrative form;
- Include the text of any recommended modifications to the proposed regulatory change; and
- List and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of the rules.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on June 20, 2014, and should reference the name of the regulation, the date of the hearing, and docket number EIB 14-04(R). Notices of intent to present technical testimony should be submitted to:

Pam Castaneda, Administrator of Boards and Commissions
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Drive
Room N-2150
Santa Fe, NM 87502

Any person who wishes to may offer non-technical public comment at the hearing, or submit a non-technical written statement in lieu of oral testimony at or before the hearing. Written comments regarding the proposed revisions may be addressed to Ms. Pam Castaneda, Administrator of Boards and Commissions, at the above address, and should reference docket number EIB 14-04(R).

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Juan Carlos Borrego by June 11, 2014. The Personnel Services Bureau can be reached at the New Mexico Environmental Department, 1190 St. Francis Drive, Santa Fe, NM 87502, (505) 827-2844, TDD, or TDY, users may access this number via the New Mexico Relay Network (Albuquerque TDD users) (505) 276-7333; outside of Albuquerque: 1-800-659-1779 (voice); TTY users: 1-800-659-8331). Copies of the proposed amendments will be available in alternative forms if requested by June 11, 2014.

The Board may make a decision on the proposed regulatory change at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.
Journal: April 18, 2014

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO
County of Bernalillo SS

Linda MacEachen, being duly sworn, declares and says that she is Classified Advertising Manager of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost; that the notice, copy of which is hereto attached, was published in said paper in the regular daily edition, for 1 times, the first publication being on the 18 day of April, 2014, and the subsequent consecutive publications on _____, 20____.

Linda MacEachen

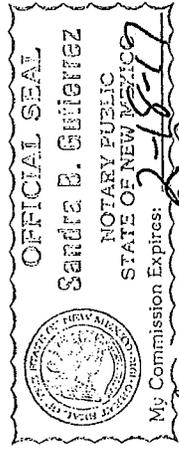
Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this 18 day of April of 2014.

PRICE \$136.17

Statement to come at end of month.

ACCOUNT NUMBER 1007869

CLA-22-A (R-1/93)



Sandra B. Gutierrez

James R. Vincent, BS, MA

<p><u>New Mexico Address:</u> 14A Sarma Lane Santa Fe, New Mexico 87506 (505)603-6009</p>	<p><u>Vermont Address:</u> 1863 Riford Brook Road Braintree, Vermont, 05060 jamesrobertvincent@gmail.com</p>
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Education

<p>Bachelor of Science Civil Engineering <i>Environmental Engineering Minor</i></p>	<p>University of New Hampshire Durham, New Hampshire 1985</p>
<p>Master of Arts Counseling</p>	<p>Lesley College Cambridge, Massachusetts 1999</p>

Professional Environmental and Regulatory Experience

<p>Liquid Waste Program Manager <u>New Mexico Environment Department</u> Santa Fe, New Mexico <i>January 2013-Present</i></p>	<p>Responsible for the overall management of the Liquid Waste Program for the State of New Mexico whose mission is to protect public health and the waters of the state from on-site septic pollution. Job duties include development & implementation of a strategic plan; stakeholder outreach; staff training & supervision; development of regulations; conducting public hearings; coordination of enforcement; conflict resolution; seeking grant funding; prepare budget</p>
<p>Liquid Waste Specialist <u>New Mexico Environment Department</u> Santa Fe, New Mexico <i>2008-Present</i></p>	<p>Technical and regulatory review of complex on-site wastewater systems which require advanced treatment and alternative disposal systems in Northern New Mexico; training of staff and stakeholders; enforcement and conflict resolution; conduct trainings for on-site businesses</p>
<p>Environmental Waterfront Consultant <u>Binder Boland & Associates</u> Provincetown Massachusetts <i>May 1995 – January 2005 (part-time)</i></p>	<p>Waterfront planning and preparation of applications for local, state and federal environmental permitting in the coastal environment; presentation to local, state and federal authorities at public hearings; collaborate with engineers and architects in facility design; consider historic preservation, waterfront access and water-dependent uses</p>
<p>Marine Superintendent Harbormaster <u>Town of Provincetown</u> Provincetown Massachusetts <i>April 1992 - May 1995</i></p>	<p>Responsible for the management of all harbor activities including harbor planning, shellfish propagation, navigation improvement, harbor patrol, search and rescue and seeking grants to fund harbor projects. Position also included the development and enforcement of harbor regulations; conflict resolution between multiple pier/harbor users including commercial fishermen, lobstermen, recreational boaters, cruise ships and whale watch vessels; coordination of the public participation process for all stakeholders in the development of the Municipal Harbor Plan; supervision of assistant harbormasters and shellfish warden; maintenance and repair of town-owned piers; preparation of annual budgets; defense of harbor-related articles at Town Meeting; Coordination with Coastal Zone Management, Army Corps of Engineers for harbor related permitting and dredging</p>

<p>Waterways Regulation Program Assistant Section Chief (Environmental Engineer II-V) <u>Commonwealth of Massachusetts,</u> <u>Department of Environmental Protection</u> Boston Massachusetts <i>March 1987-April 1991</i></p>	<p>Environmental review of complex and multi-use waterfront construction projects for compliance with state Chapter 91 statutes and regulations; conduct on-site compliance inspections; drafting and issuance of Enforcement Orders for violations; provide training and education for local, state and federal agencies; the conducting of public hearings; coordinate permitting with Massachusetts Coastal Zone Management and Environmental Protection Agency; Review of permit applications in designated port areas and for non-water dependent uses in the coastal zone; direct supervision of 15 environmental engineers and scientists</p>
<p>Environmental Engineer I <u>Commonwealth of Massachusetts,</u> <u>Department of Environmental Protection</u> Boston Massachusetts <i>July 1985- March 1987</i></p>	<p>Review of lateral sewer grant applications to verify compliance with engineering plans and specifications and sound engineering practices; conduct on-site inspections with municipal officials and site engineers</p>
<p>Professional Counseling Experience</p>	
<p>President <u>James Robert Vincent Counseling & Consulting Inc.</u> Santa Fe New Mexico <i>August 2005 – present (part-time)</i></p>	<p>President of counseling and consultation practice; provide individual and group counseling to promote behavioral change; conflict resolution counseling; therapeutic orientation is cognitive-behavioral treatment; most clients are felons who are reintegrating back into the community</p>
<p>Program Manager <u>New Mexico Corrections Department</u> Penitentiary of New Mexico Santa Fe New Mexico <i>March 2005 – August 2008</i></p>	<p>Clinical oversight and program development of reintegration treatment program for incarcerated men; conflict resolution and skill-building curriculum; clinical supervision of counselors; hiring and training of staff; development and presentation of trainings to probation officers, police officers and justice department officials</p>
<p>Counselor <u>Clara Martin Center</u> Randolph Vermont <i>January 2003 - March 2005</i></p>	<p>Provide counseling services in a rural community health center; Focus on individuals who are reintegrating back to the community following incarceration</p>
<p>Counselor <u>Fenway Community Health Center</u> Boston Massachusetts <i>May 2001 - January 2003</i></p>	<p>Provide individual and group counseling to individuals in an inner-city community health center;</p>
<p>Prison Unit Counselor <u>Justice Resource Institute</u> Bridgewater Massachusetts <i>January 2000 - May 2001</i></p>	<p>Provide cognitive behavioral counseling to incarcerated men; anger management, conflict resolution, social skill-building</p>
<p>Professional Licenses and Affiliations</p>	
<p>Licensed Professional Counselor</p>	<p>State of New Mexico- LPCC (2005-present) State of Vermont- LCMHC (2003-present)</p>
<p>National Onsite Wastewater Reuse Association (NOWRA)</p>	<p>Board of Directors (2012-present)</p>

Comments Submitted by Link Summers on March 2, 2014

20.7.3.606 Design and Operating requirements for System Discharging 2,001 – 5,000 gpd

All these systems require a New Mexico certified wastewater operator as well as the appropriate contractor's license. Operator's must also meet the other requirements for MSPs.

Transfer inspections of discharge plans can only be performed by a certified operator and licensed contractor who has legally maintained that type of system. Systems that are not currently meeting the effluent standards required in the existing discharge plan must be reviewed by a New Mexico licensed engineer and corrective actions taken and a new permit issued. All purchasers of properties that utilize on site liquid waste system that discharge 2001 – 5,000 gpd must meet with a liquid waste specialist to review the permit requirements prior to the transfer of the property.

Nitrogen (Total Nitrogen) loading is the standard for lot size determination except those systems previously granted to discharge plan that do not meet the total nitrogen in 20.7.3. Those systems are allowed to operate under the nitrogen loading requirements of the discharge plan. These systems can be modified only with regard to replacement of the drain field with the same or larger size without meeting the current standards specified in 20.7.3 for drainfield sizing only. All other requirements must be met.

Reason: Different performance criteria - Ground water disregards lot size and uses 20 mg/l total nitrogen Liquid waste uses proportional numbers based upon septic tank effluent and lot size

Pathogen count as specified in 20.7.3 is the standard for clearance and setback requirements.

The standards for fats, oils, and grease(FOG) found in 20.7.3 apply and all systems that receive such contaminants in quantities higher than residential facilities must, as a permit condition, include an appropriately designed interceptor, have a contract for legal disposal of FOG in place at all times, and must test periodically for FOG in the effluent discharge

Compliance Testing & Reporting Criteria

- Nitrogen
- Flows
- Frequency of testing
- Form – promulgated (on line reporting allowed?)
- 3rd party?

Field testing? Simultaneous certified lab testing once a year with field testing
Field testing results to be submitted to NMED before certified lab results are
received for quality control by NMED
Automation - remote testing allowed
Records retention requirements?

No systems involving hazardous waste, or discharges from any type of oil and gas
exploration, drilling, or production may be permitted under 20.7.3 NMAC.

Knight, Andrew, NMENV

From: Vincent, James, NMENV
Sent: Wednesday, June 18, 2014 10:57 AM
To: Knight, Andrew, NMENV
Subject: FW: Comments on proposed Liquid Waste Threshold Limit

From: PESANTO@aol.com [mailto:PESANTO@aol.com]
Sent: Tuesday, February 25, 2014 11:33 AM
To: Vincent, James, NMENV
Subject: Comments on proposed Liquid Waste Threshold Limit

Jim,
Here's my comments on the proposed Changes:

20.7.3.2 "..... five thousand (5,000) gallons of liquid waste and/or _____ pounds BOD, and/or _____ Nitrogen per day."

20.7.3.7 (C)(6) ".... 5000 gallons per day or less and/or _____ pounds BOD, and/or _____ Nitrogen per day."

20.7.3.7 (5) ".... 5000 gallons per day or less and/or _____ pounds BOD, and/or _____ Nitrogen per day."

20.7.3.201 (O) add section to cover max pounds BOD and max Nitrogen allowed and appropriate retest procedures.

20.7.7.3.302 (C) Same as for 201(O) above

20.7.3.302 (F) Same as for 201(O) above

MORE STRENGENT REQUIREMENTS

3. Systems must be installed, maintained, and operated by an individual approved by the respective equipment manufacturer and NMEIB

b) ... the permittee shall have a maintenance contract with a maintenance service provider approved by the NMED and the respective wastewater facility manufacturer.

Finally, your email address in the next to last page of the power point presentation is apparently wrong.

This concludes my comments at this time.

Thank you,
Paul E. McGinnis, P.E.

P.E. McGinnis & Associates, LLC

email: pesanto@aol.com

505-983-1563

P.O. Box 2351

Santa Fe, New Mexico 87504



concentration allowed for a specific lot size: total nitrogen concentration (in mg/l) = [lot size (in acres) / design flow (in gpd)] x 30,000.

D. The treatment unit shall be operated in accordance with the manufacturer's specifications and department approval conditions.

E. Total nitrogen effluent testing, when required pursuant to Subsection C of 20.7.3.901 NMAC, shall meet the concentration limit calculated pursuant to Subsection C of 20.7.3.603 NMAC. ~~The concentration limit shall be based on a 6 sample rolling average with no single sample exceeding twice the concentration limit.~~
[20.7.3.603 NMAC – Rp, 20.7.3.603 NMAC, 9/1/13; A, 9/1/13]

20.7.3.604 DESIGN; DISINFECTION TREATMENT STANDARDS:

A. Systems requiring disinfection shall provide treated effluent that shall not exceed 126 colony forming units (CFUs) of E. coli bacteria per 100 ml.

B. Disinfection is required to meet the specific site conditions set forth in 20.7.3.605 NMAC.

C. When disinfection is required, the effluent shall be subject to a minimum of secondary treatment prior to disinfection.

[20.7.3.604 NMAC - Rp, 20.7.3.604 NMAC, 9/1/13]

20.7.3.605 DESIGN; MINIMUM REQUIRED TREATMENT LEVELS FOR SITE CONDITIONS:

A. The required level of treatment shall be based on the most restrictive combination of siting conditions.

B. The following treatment levels are required for the soil types as described in Table 703.1:
NMAC;

(1) type Ia - secondary treatment and disinfection except as noted in Subsection F of 20.7.3.703

(2) type Ib, II, and III - primary treatment; and

(3) type IV - primary treatment with an appropriate disposal method as approved by the department.

C. The following treatment levels are required for the depth of suitable soil:

(1) greater than or equal to four feet of suitable soil - primary treatment;

(2) one to less than four feet of suitable soil - secondary treatment and disinfection; and

(3) no discharge with less than one foot of suitable soil to groundwater, karst or fractured bedrock.

D. The following treatment levels are required for hydraulic loading rates and lot size:

(1) less than or equal to 500 gallons per day per acre with a minimum lot size of 0.75 acre - primary treatment; and

(2) greater than 500 gallons per day per acre or less than 0.75 acre - tertiary treatment;

(3) for lots less than 0.75 acre overlaying anoxic groundwater, secondary treatment shall be required and tertiary treatment may be required; to be exempt from tertiary treatment requirements, the permit applicant shall show by clear and convincing evidence that the discharge of liquid waste shall not degrade a body of water.

E. The following are requirements for a reduction in the disposal field setback distance, as set forth in Table 302.1:

(1) Tertiary treatment and disinfection are required for any reduction in setback distance between 50 feet and less than 100 feet from a private drinking water well located on the subject property.

(2) A variance is required and tertiary treatment and disinfection are required for any reduction in setback distance to:

(a) any private drinking water well located on the subject property less than 50 feet from the disposal system;

(b) any private drinking water well not located on the subject property; or

(c) any public drinking water well.

F. A non-discharging system may be used in lieu of advanced treatment.

G. A mound system or elevated system in accordance with 20.7.3.806 NMAC may be used to meet clearance requirements or to overcome soil type limitations in lieu of advanced treatment. A sand-lined trench or bottomless sand filter in accordance with 20.7.3.812 NMAC may be used to meet clearance requirements in lieu of advanced treatment.

H. If the existing level of nitrate-N in the groundwater exceeds 5 mg/l, more stringent requirements pursuant to Subsection L of 20.7.3.201 NMAC may be required.

[20.7.3.605 NMAC - Rp, 20.7.3.605 NMAC, 9/1/13; A, 9/1/13]

20.7.3.606 through 20.7.3.700 [RESERVED]

Bottom width of trench	12 in.	36 in.
Depth of earth cover of lines	9 in.	--
Grade of lines	level	3 inch/100 ft.
Aggregate under drain lines	6 in.	3 ft.
Aggregate over drain lines with:		
geotextile fabric	0 in.	--
other material	2 in.	--

K. Minimum spacing between trenches or absorption beds shall be four feet plus two feet for each additional foot of depth in excess of one foot below the bottom invert of the drain distribution line. Distribution drain lines in absorption beds shall not be more than six feet apart on centers and no part of the perimeter of the bed shall be more than three feet from a distribution drain line.

L. When necessary to prevent line slope in excess of three inches per 100 feet, absorption trenches or beds shall be stepped. The lines between each horizontal section shall be made with watertight joints and shall be designed so each horizontal trench or bed shall be utilized to the maximum capacity before the effluent shall pass to the next lower trench or bed. The lines between each horizontal absorption section shall be made with approved watertight joints and installed on natural or unfilled ground.

M. Sites with type Ia or type IV soils may use soil replacement. Sites with failed disposal systems may also use soil replacement. In addition to other design, setback and clearance requirements of 20.7.3 NMAC, the following conditions are required:

- (1) The replacement soil shall be type Ib, or a higher level, as described in Table 703.1.
- (2) Replacement soil shall be placed to a depth of at least 48 inches below the bottom of each trench.
- (3) Replacement soil is placed to a width of at least 24 inches on both sides and ends of each trench.
- (4) The application rate used for design of the trench shall be 2.00 square feet per gallon per day.

N. Disposal systems, including both conventional and alternative disposal, shall not be paved over or covered by concrete or any material that can reduce or inhibit any possible evaporation of effluent. Disposal systems shall not be subjected to vehicular traffic of any kind.

[20.7.3.701 NMAC - Rp, 20.7.3.701 NMAC, 9/1/13; A, 9/1/13]

[For specifications for drainfield pipe, see the most recent versions of the ASTM standards: For Type PSM Poly (Vinyl Chloride)(PVC) Sewer Pipe and Fittings, for Poly (Vinyl Chloride)(PVC) Pipe and Fittings, for Corrugated Polyethylene (PE) Tubing and Fittings, and for Smoothwall Polyethelene (PE) Pipe for Use in Drainage and Waste Disposal Absorption Fields]

20.7.3.702 DESIGN; SEEPAGE PIT; DESIGN AND CONSTRUCTION: Seepage pits should only be installed on sites where conventional disposal systems cannot be installed due to site restrictions.

- A. The minimum capacity of seepage pits shall conform to the requirements of 20.7.3.703 NMAC.
- B. Multiple seepage pit installations shall be served through an approved distribution box or be connected in series by means of a watertight connection laid on undisturbed or compacted soil. The outlet from each seepage pit shall have an approved vented leg fitting extending at least 12 inches below the inlet fitting.
- C. Each seepage pit shall have an excavated horizontal dimension of not less than four feet and the maximum horizontal dimension shall not exceed the vertical dimension. Each such pit shall be lined with approved type whole, new, hard-burned clay brick, concrete brick, concrete circular type cesspool blocks or other approved materials.
- D. The lining in each seepage pit shall be circular and laid on a firm foundation. Lining materials shall be placed tight together and laid with joints staggered. Except in the case of approved type pre-cast concrete circular sections, no brick or block shall be greater in height than its width and shall be laid flat to form at least a four inch wall. Brick or block greater than 12 inches in length shall have chamfered matching ends and be scored to provide for seepage. Excavation voids behind the brick, block or concrete liner shall have a minimum of six inches of clean 3/4 inch gravel or rock.
- E. All brick or block used in seepage pit construction shall have a minimum compressive strength of 2500 pounds per square inch.
- F. Each seepage pit shall have a minimum sidewall (not including the arch) of 10 feet below the inlet pipe.
- G. The arch, cover or dome of any seepage pit shall be constructed in one of the following three ways.

