



**STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION**

**IN THE MATTER OF PROPOSED REVISIONS TO
THE AMENDMENT OF 20.6.2 NMAC**

No. WQCC 14-03(R)

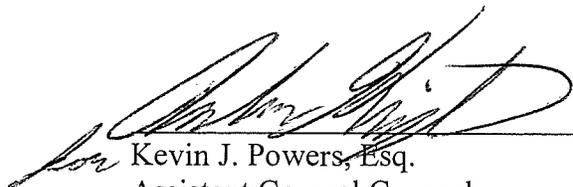
**PETITION FOR REGULATORY CHANGE
AND REQUEST FOR HEARING**

The Ground Water Quality Bureau (“Bureau”) of the Resource Protection Division (“Division”) of the New Mexico Environment Department (“Department”) requests the amendment of certain portions of the Water Quality Control Commission regulations found in 20.6.2 NMAC, (“Rules”). A statement of reasons explaining the purpose of each revision and the proposed amendments are attached. The Water Quality Control Commission (“Commission”) is authorized to amend these rules pursuant to the Water Quality Act, NMSA 1978, Section 74-6-1, *et. seq.*

The Bureau respectfully requests that the Commission, during its regular meeting on March 11, 2014, schedule a hearing on the merits of this matter at its regularly scheduled May 13, 2014 meeting. The Bureau anticipates that its testimony regarding this amendment will require one hour.

Respectfully submitted,

**NEW MEXICO ENVIRONMENT DEPARTMENT
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**GROUND WATER QUALITY BUREAU'S
STATEMENT OF REASONS**

1. INTRODUCTION AND SUMMARY OF PROPOSED AMENDMENTS

The Ground Water Quality Bureau ("Bureau") of the Resource Protection Division of the New Mexico Environment Department ("Department") requests the amendment of certain portions of the Water Quality Control Commission ("Commission") regulations as found in 20.6.2 NMAC, ("Rules"). This petition proposes to amend portions of 20.6.2 NMAC of the Rules, attached hereto as NMED Exhibit 1, to mirror and parallel recent and proposed changes to 20.7.3 NMAC, the "Liquid Waste Disposal and Treatment Regulations."

The Environmental Improvement Board ("EIB") is currently charged with the development and implementation of rules and standards for liquid waste. *See* NMSA 1978, §74-1-8 (A)(3); *see also* NMSA 1978, §74-1-7 (A)(3). The EIB rules and regulations governing "liquid waste" are found in the Liquid Waste Disposal and Treatment Regulations. It is in these regulations that the EIB defines "liquid waste." *See* 20.7.3.7 (L)(5) NMAC. All facilities meeting this definition, among other provisions, are regulated by the Department's Environmental Health Bureau ("EHB").

The EIB recently revised the Liquid Waste Disposal and Treatment Regulations, effective September 1, 2013, and the EHB will soon file another petition to amend specific sections of 20.7.3 NMAC. The EHB will propose to amend the definition of "liquid waste" so that it will increase the volumetric maximum limit of "liquid waste" in 20.7.3.7 (L)(5) NMAC from two thousand (2,000) gallons per day or less to facilities receiving five thousand (5,000) gallons per day or less of liquid waste.

Correspondingly, the Bureau proposes to amend portions of 20.6.2 NMAC to remove and clarify the numerical threshold definitions of "liquid waste" as currently found in 20.6.3.7 (H) NMAC, 20.6.2.3105 (B) NMAC, 20.6.5002 (B)(5)(a) NMAC, and 20.6.2.5101 (D)(4) NMAC. As shown in Exhibit 1, after removing the numerical definition of "liquid

waste,” the amended code provisions will now only refer to the definition of “liquid waste” as found in 20.7.3 NMAC. These amendments, essentially adding an ‘incorporation by reference’ clause, will more clearly delineate the EIB’s jurisdictional authority over “liquid waste” as well as prevent the need to conduct two rule actions when, or if, the EIB amends the characterization or definition of “liquid waste.” The Commission will maintain jurisdiction and authority over residential and commercial facilities not currently, or as may be amended, under the purview and regulation of the EIB and EHB pursuant to NMSA 1978, Section 74-1-1, *et. seq.*, and 20.7.3 NMAC. The Commission will also continue to maintain authority and jurisdiction over all levels of industrial and mining facilities not otherwise exempted.

The proposed amendments were drafted through the collaboration of the Department’s Resource Protection Division, Ground Water Quality Bureau and the Environmental Health Division, Environmental Health Bureau. Each party brought a specific knowledge base to the discussions, which resulted in the drafting of technically sound amendments to the Water Quality Control Commission Regulations that will benefit the State of New Mexico and its residents.

2. CHANGES PROPOSED TO 20.6.2.7 (H) NMAC

The Bureau proposes the following change to 20.6.2.7 (H) NMAC:

Remove the numerical size limitations in the definition of “cesspool” to simply refer to the limits found and regulated by the Liquid Waste Treatment and Disposal Regulations in 20.7.3 NMAC.

3. CHANGE PROPOSED TO 20.6.2.3105 (B) NMAC

The Bureau proposes the following change to 20.6.2.3105 (B) NMAC, “Exemptions from Discharge Permit Requirement”:

Delete the stated volumetric limitation of the exemption to “household and other domestic waste” and instead more clearly refer to the proper legal and programmatic definition of “liquid waste” as is found in 20.7.3 NMAC. This clarifies that the exemption is no broader than, nor smaller than, facilities regulated by the Liquid Waste Program.

4. CHANGES PROPOSED TO 20.6.2.5002 (B)(5)(a) NMAC

The Bureau proposed the following change to Subparagraphs (i), (ii) and (iii) of Paragraph (5)(a) of Subsection B of 20.6.2.5002 NMAC:

Eliminate the specific numerical size of classifications of underground injection control wells (currently 2,000 gallons per day or more), to instead reference wells not regulated by the Liquid Waste Treatment and Disposal Regulations (20.7.3 NMAC). Underground injection control wells classified in this paragraph include domestic liquid waste disposal wells, septic systems for liquid waste, and large capacity cesspools.

5. CHANGES PROPOSED TO 20.6.2.5101 (D)(4) NMAC

The Bureau proposed the following change to Paragraph (4) of Subsection D of 20.6.2.5101 NMAC:

Eliminate the numerical threshold limit, currently set at less than two thousand (2,000) gallons per day, to again refer to the definition of “liquid waste” as defined in 20.7.3 NMAC.

6. CONCLUSION

The Bureau asserts that the proposed amendments meet the rulemaking requirements of NMSA 1978, Section 74-6-4 (E), and will provide testimony that the proposed amendments are: 1) protective of health, wealth, environment and property; 2) in the best interest of the public; 3) technically practical and economically reasonable; 4) protective of successive uses including domestic, commercial, industrial, pastoral, agricultural, wildlife, and recreational uses; 5) feasible for water treatment for current and subsequent users; 6) beneficial regarding regulatory impact on property rights and customary uses; and 7) in compliance with state and federal water quality requirements. NMSA 1978, § 74-6-4 (E)(1)-(7).

In drafting these proposed amendments to the rules, the Bureau has carefully balanced the effects on facility owners and operators, domestic waste system installers, homeowners, and other members of the regulated community, with the need for protection of public health and the environment, particularly New Mexico’s groundwater. The Bureau will provide further and detailed testimony on the amendments, the effects on and to stakeholders, and the necessity for the rule amendments at hearing.

1 TITLE 20 ENVIRONMENTAL PROTECTION
2 CHAPTER 6 WATER QUALITY
3 PART 2 GROUND AND SURFACE WATER PROTECTION
4

5 [20.6.2.1 through 20.6.2.6- No Changes Proposed]
6

7 20.6.2.7 DEFINITIONS: Terms defined in the Water Quality Act, but not defined in this part,
8 will have the meaning given in the act. As used in this part:

9 A. "abandoned well" means a well whose use has been permanently discontinued or which
10 is in a state of disrepair such that it cannot be rehabilitated for its intended purpose or other purposes
11 including monitoring and observation;

12 B. "abate" or "abatement" means the investigation, containment, removal or other
13 mitigation of water pollution;

14 C. "abatement plan" means a description of any operational, monitoring, contingency and
15 closure requirements and conditions for the prevention, investigation and abatement of water pollution, and
16 includes Stage 1, Stage 2, or Stage 1 and 2 of the abatement plan, as approved by the secretary;

17 D. "adjacent properties" means properties that are contiguous to the discharge site or
18 property that would be contiguous to the discharge site but for being separated by a public or private right
19 of way, including roads and highways.

20 E. "background" means, for purposes of ground-water abatement plans only and for no
21 other purposes in this part or any other regulations including but not limited to surface-water standards, the
22 amount of ground-water contaminants naturally occurring from undisturbed geologic sources or water
23 contaminants which the responsible person establishes are occurring from a source other than the
24 responsible person's facility; this definition shall not prevent the secretary from requiring abatement of
25 commingled plumes of pollution, shall not prevent responsible persons from seeking contribution or other
26 legal or equitable relief from other persons, and shall not preclude the secretary from exercising
27 enforcement authority under any applicable statute, regulation or common law;

28 F. "casing" means pipe or tubing of appropriate material, diameter and weight used to
29 support the sides of a well hole and thus prevent the walls from caving, to prevent loss of drilling mud into
30 porous ground, or to prevent fluid from entering or leaving the well other than to or from the injection
31 zone;

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

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

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

1 **J.** “**commission**” means:
2 (1) the New Mexico water quality control commission or
3 (2) the department, when used in connection with any administrative and enforcement activity;

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

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

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

16 **N.** “**department**”, “**agency**”, or “**division**” means the New Mexico environment
17 department or a constituent agency designated by the commission;

18 **O.** “**discharge permit**” means a discharge plan approved by the department;

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

22 **Q.** “**discharge permit renewal**” means the re-issuance of a discharge permit for the same,
23 previously permitted discharge;

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

27 **S.** “**discharge site**” means the entire site where the discharge and associated activities will
28 take place;

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

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

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

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

4 **X.** “**experimental technology**” means a technology which has not been proven feasible
5 under the conditions in which it is being tested;

6 **Y.** “**fluid**” means material or substance which flows or moves whether in a semisolid,
7 liquid, sludge, gas, or any other form or state;

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

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

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

20 **CC.** “**injection**” means the subsurface emplacement of fluids through a well;

21 **DD.** “**injection zone**” means a geological formation, group of formations, or part of a
22 formation receiving fluids through a well;

23 **EE.** “**motor vehicle waste disposal well**” means a well which receives or has received fluids
24 from vehicular repair or maintenance activities;

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

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

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

32 **II.** “**packer**” means a device lowered into a well to produce a fluid-tight seal within the
33 casing;

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

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

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

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

8 **NN.** “**refuse**” includes food, swill, carrion, slops and all substances from the preparation,
9 cooking and consumption of food and from the handling, storage and sale of food products, the carcasses of
10 animals, junked parts of automobiles and other machinery, paper, paper cartons, tree branches, yard
11 trimmings, discarded furniture, cans, oil, ashes, bottles, and all unwholesome material;

12 **OO.** “**responsible person**” means a person who is required to submit an abatement plan or
13 who submits an abatement plan pursuant to this part;

14 **PP.** “**secretary**” or “**director**” means the secretary of the New Mexico department of
15 environment or the director of a constituent agency designated by the commission;

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

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

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

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

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

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

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

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

- 6 (1) acrolein
- 7 (2) acrylonitrile
- 8 (3) aldrin
- 9 (4) benzene
- 10 (5) benzidine
- 11 (6) carbon tetrachloride
- 12 (7) chlordane
- 13 (8) chlorinated benzenes
 - 14 (a) monochlorobenzene
 - 15 (b) hexachlorobenzene
 - 16 (c) pentachlorobenzene
- 17 (9) 1,2,4,5-tetrachlorobenzene
- 18 (10) chlorinated ethanes
 - 19 (a) 1,2-dichloroethane
 - 20 (b) hexachloroethane
 - 21 (c) 1,1,2,2-tetrachloroethane
 - 22 (d) 1,1,1-trichloroethane
 - 23 (e) 1,1,2-trichloroethane
- 24 (11) chlorinated phenols
 - 25 (a) 2,4-dichlorophenol
 - 26 (b) 2,4,5-trichlorophenol
 - 27 (c) 2,4,6-trichlorophenol
- 28 (12) chloroalkyl ethers
 - 29 (a) bis (2-chloroethyl) ether
 - 30 (b) bis (2-chloroisopropyl) ether
 - 31 (c) bis (chloromethyl) ether
- 32 (13) chloroform
- 33 (14) DDT
- 34 (15) dichlorobenzene
- 35 (16) dichlorobenzidine
- 36 (17) 1,1-dichloroethylene
- 37 (18) dichloropropenes

- 1 (19) dieldrin
- 2 (20) diphenylhydrazine
- 3 (21) endosulfan
- 4 (22) endrin
- 5 (23) ethylbenzene
- 6 (24) halomethanes
- 7 (a) bromodichloromethane
- 8 (b) bromomethane
- 9 (c) chloromethane
- 10 (d) dichlorodifluoromethane
- 11 (e) dichloromethane
- 12 (f) tribromomethane
- 13 (g) trichlorofluoromethane
- 14 (25) heptachlor
- 15 (26) hexachlorobutadiene
- 16 (27) hexachlorocyclohexane (HCH)
- 17 (a) alpha-HCH
- 18 (b) beta-HCH
- 19 (c) gamma-HCH
- 20 (d) technical HCH
- 21 (28) hexachlorocyclopentadiene
- 22 (29) high explosives (HE)
- 23 (a) 2,4-dinitrotoluene (2,4,DNT)
- 24 (b) 2,6-dinitrotoluene (2,6,DNT)
- 25 (c) octahydro-1,3,5,7-tetranitro-1,3,5,7 tetrazocine (HMX)
- 26 (d) hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX)
- 27 (e) 2,4,6-trinitrotoluene (TNT)
- 28 (30) isophorone
- 29 (31) methyl tertiary butyl ether
- 30 (32) nitrobenzene
- 31 (33) nitrophenols
- 32 (a) 2,4-dinitro-o-cresol
- 33 (b) dinitrophenols
- 34 (34) nitrosamines
- 35 (a) N-nitrosodiethylamine
- 36 (b) N-nitrosodimethylamine
- 37 (c) N-nitrosodibutylamine

- 1 (d) N-nitrosodiphenylamine
- 2 (e) N-nitrosopyrrolidine
- 3 (35) pentachlorophenol
- 4 (36) perchlorate
- 5 (37) phenol
- 6 (38) phthalate esters
- 7 (a) dibutyl phthalate
- 8 (b) di-2-ethylhexyl phthalate
- 9 (c) diethyl phthalate
- 10 (d) dimethyl phthalate
- 11 (39) polychlorinated biphenyls (PCB's)
- 12 (40) polynuclear aromatic hydrocarbons (PAH)
- 13 (a) anthracene
- 14 (b) 3,4-benzofluoranthene
- 15 (c) benzo (k) fluoranthene
- 16 (d) fluoranthene
- 17 (e) fluorene
- 18 (f) phenanthrene
- 19 (g) pyrene
- 20 (41) tetrachloroethylene
- 21 (42) toluene
- 22 (43) toxaphene
- 23 (44) trichloroethylene
- 24 (45) vinyl chloride
- 25 (46) xylenes
- 26 (a) o-xylene
- 27 (b) m-xylene
- 28 (c) p-xylene
- 29 (47) 1,1-dichloroethane
- 30 (48) ethylene dibromide (EDB)
- 31 (49) cis-1,2-dichloroethylene
- 32 (50) trans-1,2-dichloroethylene
- 33 (51) naphthalene
- 34 (52) 1-methylnaphthalene
- 35 (53) 2-methylnaphthalene
- 36 (54) benzo-a-pyrene

1 **XX.** “**vadose zone**” means earth material below the land surface and above ground water, or
2 in between bodies of ground water;

3 **YY.** “**wastes**” means sewage, industrial wastes, or any other liquid, gaseous or solid substance
4 which will pollute any waters of the state;

5 **ZZ.** “**water**” means all water including water situated wholly or partly within or bordering
6 upon the state, whether surface or subsurface, public or private, except private waters that do not combine
7 with other surface or subsurface water;

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

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

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

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

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

23 [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-
24 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;
25 A, 12-1-01; A, 9-15-02; A, 9-26-04; A, 7-16-06]

26
27 **[20.6.2.7 through 20.6.2.3014 - No Changes Proposed]**

28
29 **20.6.2.3105 EXEMPTIONS FROM DISCHARGE PERMIT REQUIREMENT:** Sections
30 20.6.2.3104 and 20.6.2.3106 NMAC do not apply to the following:

31 **A.** Effluent or leachate which conforms to all the listed numerical standards of Section
32 20.6.2.3103 NMAC and has a total nitrogen concentration of 10 mg/l or less, and does not contain any
33 toxic pollutant. To determine conformance, samples may be taken by the agency before the effluent or
34 leachate is discharged so that it may move directly or indirectly into ground water; provided that if the
35 discharge is by seepage through non-natural or altered natural materials, the agency may take samples of
36 the solution before or after seepage. If for any reason the agency does not have access to obtain the
37 appropriate samples, this exemption shall not apply;

1 **B.** Liquid waste which is regulated pursuant to 20.7.3 NMAC “Liquid Waste Disposal and
2 Treatment” regulations used only for disposal of household and other domestic waste which is designed to
3 receive and which receives 2,000 gallons or less of liquid waste per day;

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

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

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

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

20 **G.** Discharges resulting from flood control systems;

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

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

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

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

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

34 **M.** Effluent or leachate discharges which are regulated by the Oil Conservation Commission
35 and the regulation of which by the Water Quality Control Commission would interfere with the exclusive
36 authority granted under Section 70-2-12 NMSA 1978, or under other laws, to the Oil Conservation
37 Commission.

1
2 [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;
3 A, 12-1-01]

4
5 [20.6.2.3106 through 20.6.2.5001 – No Changes Proposed]

6
7 **20.6.2.5002 UNDERGROUND INJECTION CONTROL WELL CLASSIFICATIONS:**

8
9 **A.** Underground injection control wells include the following.

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

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

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

17
18 **B.** Underground injection control wells are classified as follows:

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

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

26 (3) Class III wells inject fluids for extraction of minerals or other natural resources, including
27 sulfur, uranium, metals, salts or potash by in situ extraction. This classification includes only
28 in situ production from ore bodies that have not been conventionally mined. Solution mining
29 of conventional mines such as stopes leaching is included in Class V.

30 (4) Class IV wells inject fluids containing any radioactive or hazardous waste as defined in
31 74-4-3 and 74-4A-4 NMSA 1978, including any combination of these wastes, above or into
32 a formation that contains 10,000 mg/l or less TDS.

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

35 (a) Domestic liquid waste injection wells

36 (i) domestic liquid waste disposal wells used to inject liquid waste volumes
37 greater than that regulated by 20.7.3 NMAC, 2,000 gallons per day of treated

1 ~~domestic liquid waste~~ through subsurface fluid distribution systems or vertical
2 wells;

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

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

10 (b) Industrial waste injection wells

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

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

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

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

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

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

22 (c) Mining injection wells

23 (i) stopes leaching wells used for solution mining of conventional mines;

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

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

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

31 (d) Ground water management injection wells

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

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

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

- 1 (iv) barrier wells used to inject fluids into ground water to prevent the intrusion
2 of saline or contaminated water into ground water of better quality;
3 (v) subsidence control wells (not used for purposes of oil or natural gas
4 production) used to inject fluids into a non-oil or gas producing zone to reduce
5 or eliminate subsidence associated with the overdraft of fresh water;
6 (vi) wells used in experimental technologies.
7 (e) Agricultural injection wells - drainage wells used to inject fluids into ground water to
8 prevent the intrusion of saline or contaminated water into ground water of better quality.
9

10 [20.6.2.5002 NMAC - N, 12-1-01]
11

12 **[20.6.2.5003 through 20.6.2.5100 – No Changes Proposed]**
13

14 **20.6.2.5101 DISCHARGE PERMIT AND OTHER REQUIREMENTS FOR CLASS I NON-**
15 **HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:**

16 **A.** Class I non-hazardous waste injection wells and Class III wells must meet the
17 requirements of Sections 20.6.2.5000 through 20.6.2.5299 NMAC in addition to other applicable
18 requirements of the commission regulations. The secretary may also require that some Class IV
19 and Class V wells comply with the requirements for Class I non-hazardous waste injection wells
20 in Sections 20.6.2.5000 through 20.6.2.5299 NMAC if the secretary determines that the additional
21 requirements are necessary to prevent the movement of water contaminants from a specified
22 injection zone into ground water having 10,000 mg/l or less TDS. No Class I non-hazardous waste
23 injection well or Class III well may be approved which allows for movement of fluids into ground
24 water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section
25 20.6.2.5103 NMAC, or pursuant to a temporary designation as provided in Paragraph (2) of
26 Subsection C of Section 20.6.2.5101 NMAC.
27

28 **B.** Operation of a Class I non-hazardous waste injection well or Class III well must be
29 pursuant to a discharge permit meeting the requirements of Sections 20.6.2.3000 through
30 20.6.2.3999 NMAC and Sections 20.6.2.5000 through 20.6.2.5299 NMAC.
31

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

- 34 (1) Receive an aquifer designation if required in Section 20.6.2.5103 NMAC prior to
35 discharge permit issuance; or
36 (2) For Class III wells only, address the methods or techniques to be used to restore
37 ground water so that upon final termination of operations including restoration efforts,

1 ground water at any place of withdrawal for present or reasonably foreseeable future use
2 will not contain either concentrations in excess of the standards of Section 20.6.2.3103
3 NMAC or any toxic pollutant. Issuance of a discharge permit or project discharge permit
4 for Class III wells that provides for restoration of ground water in accordance with the
5 requirements of this Subsection shall substitute for the aquifer designation provisions of
6 Section 20.6.2.5103 NMAC. The approval shall constitute a temporary aquifer
7 designation for a mineral bearing or producing aquifer, or portion thereof, to allow
8 injection as provided for in the discharge permit. Such temporary designation shall expire
9 upon final termination of operations including restoration efforts.

10
11 **D.** The exemptions from the discharge permit requirement listed in Section 20.6.2.3105
12 NMAC do not apply to underground injection control wells except as provided below:

- 13 (1) Wells regulated by the Oil Conservation Division under the exclusive authority
14 granted under Section 70-2-12 NMSA 1978 or under other Sections of the "Oil and Gas
15 Act";
16 (2) Wells regulated by the Oil Conservation Division under the "Geothermal Resources
17 Act";
18 (3) Wells regulated by the New Mexico Coal Surface Mining Bureau under the "Surface
19 Mining Act";
20 (4) Wells for the disposal of effluent from ~~systems which receive less than 2,000 gallons~~
21 ~~per day of domestic sewage effluent~~ systems and are regulated under the "Liquid Waste
22 Disposal and Treatment Regulations" (20 NMAC 7.3) [20.7.3 NMAC] adopted by the
23 Environmental Improvement Board under the "Environmental Improvement Act".
24

25 **E.** Project permits for Class III wells.

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

- 28 (a) Within the same well field, facility site or similar unit,
29 (b) Within the same aquifer and ore deposit,
30 (c) Of similar construction,
31 (d) Of the same purpose, and
32 (e) Operated by a single owner or operator.

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

36 (3) A project discharge permit shall:

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

4 (b) Provide the information required under the following Sections of this Part,
5 except for such additional site-specific information as needed to evaluate
6 applications for individual operational area approvals: Subsection C of Section
7 20.6.2.3106, Sections 20.6.2.3107, 20.6.2.5204 through 20.6.2.5209, and
8 Subsection B of Section 20.6.2.5210 NMAC.

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

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

12 (b) Information required under Sections 20.6.2.5202 through 20.6.2.5210
13 NMAC and not previously provided pursuant to Subparagraph (b) of Paragraph

14 (3) of Subsection E of this Section.

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

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

23
24 **F.** If the holder of a discharge permit for a Class I non-hazardous waste injection well, or
25 Class III well submits an application for discharge permit renewal at least 120 days before
26 discharge permit expiration, and the discharger is in compliance with his discharge permit on the
27 date of its expiration, then the existing discharge permit for the same activity shall not expire until
28 the application for renewal has been approved or disapproved. An application for discharge permit
29 renewal must include and adequately address all of the information necessary for evaluation of a
30 new discharge permit. Previously submitted materials may be included by reference provided they
31 are current, readily available to the secretary and sufficiently identified to be retrieved.

32
33 **G.** Discharge Permit Signatory Requirements: No discharge permit for a Class I non-
34 hazardous waste injection well or Class III well may be issued unless:

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

- 1 (a) For a corporation: by a principal executive officer of at least the level of
2 vice-president, or a representative who performs similar policy-making
3 functions for the corporation who has authority to sign for the corporation; or
4 (b) For a partnership or sole proprietorship: by a general partner or the
5 proprietor, respectively; or
6 (c) For a municipality, state, federal, or other public agency: by either a principal
7 executive officer who has authority to sign for the agency, or a ranking elected
8 official; and

9 (2) The signature is directly preceded by the following certification: "I certify under
10 penalty of law that I have personally examined and am familiar with the information submitted in
11 this document and all attachments and that, based on my inquiry of those individuals immediately
12 responsible for obtaining the information, I believe that the information is true, accurate, and
13 complete. I am aware that there are significant penalties for submitting false information including
14 the possibility of fine and imprisonment."
15

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

- 18 (1) The transfer provisions of Section 20.6.2.3111 NMAC do not apply to a discharge
19 permit for a Class I non-hazardous waste injection well or Class III well.
20 (2) A Class I non-hazardous waste injection well or Class III well discharge permit may
21 be transferred if:
22 (a) The secretary receives written notice 30 days prior to the transfer date; and
23 (b) The secretary does not object prior to the proposed transfer date. The
24 secretary may require modification of the discharge permit as a condition of
25 transfer, and may require demonstration of adequate financial responsibility.
26 (3) The written notice required by Subparagraph (b) of Paragraph (2) of Subsection I
27 above shall:
28 (a) Have been signed by the discharger and the succeeding discharger, including
29 acknowledgement that the succeeding discharger shall be responsible for
30 compliance with the discharge permit upon taking possession of the facility; and
31 (b) Set a specific date for transfer of discharge permit responsibility, coverage
32 and liability; and
33 (c) Include information relating to the succeeding discharger's financial
34 responsibility required by Paragraph (17) of Subsection B of Section
35 20.6.2.5210 NMAC.
36

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

- 9 (1) Noncompliance by the discharger with any condition of the discharge permit; or
10 (2) The discharger's failure in the discharge permit application or during the discharge
11 permit review process to disclose fully all relevant facts, or the discharger's
12 misrepresentation of any relevant facts at any time; or
13 (3) A determination that the permitted activity may cause a hazard to public health or
14 undue risk to property and can only be regulated to acceptable levels by discharge permit
15 modification or termination.

16
17 [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-
18 15-02]

19
20 **[20.6.2.5202 through 20.6.2.599 – No Changes Proposed]**