
PROPOSED STATEMENT OF REASONS

The Surface Water Quality Bureau of the New Mexico Environment Department’s Water Protection Division, pursuant to 20.1.6.200(B) NMAC, respectfully submits to the Water Quality Control Commission (“Commission”) this Statement of Reasons as Attachment 1 to the Petition for Regulatory Change to Adopt Amendments to 20.6.2 NMAC and 20.6.5 NMAC, which establish the Surface Water Quality State Permitting Program.

**JURISDICTIONAL AUTHORITY AND
STATUTORY AND REGULATORY REQUIREMENTS**

1. In the 2025 Regular Session, the New Mexico Legislature passed amendments to the New Mexico Water Quality Act, NMSA 1978, §§ 74-6-1 through -17, which were signed into law by Governor Michelle Lujan Grisham on April 8, 2025.
2. The new language under the Water Quality Act provides authority to the Water Quality Control Commission (“Commission”) as follows:

The commission shall adopt rules to be administered by the department for surface water discharges, including:

(1) for discharges from point sources, the rules shall not require a permit for a point source discharge for which a permit is issued under Section 402 of the federal Clean Water Act or the New Mexico Pollutant Discharge Elimination System Act; provided that in adopting rules related to this paragraph, in addition to the factors to be considered under Subsection F of this section, the commission may:

(a) identify exemptions from a discharge permit requirement when water contaminants in discharges are subject to effective and enforceable water quality requirements in a state or federally issued permit, unless there is a hazard to public health or the environment that may result or an applicable state water quality standard will not be achieved; and

(b) consider requirements for permits and general permits that are consistent with the requirements of similar permits issued under Section 402 of the federal Clean Water Act; and

(2) for discharges of dredged or fill material, the rules shall not require a permit for discharges of dredged or filled materials for which a permit or authorization is issued under Section 404 of the federal Clean Water Act; provided that the rules shall include avoidance and minimization to the maximum extent practicable of adverse impacts to wetlands, streams and other aquatic resources and may require compensatory mitigation for unavoidable adverse impacts that remain after appropriate and practicable avoidance and minimization measures have been achieved; and provided further that in adopting rules related to this paragraph, in addition to the factors to be considered under Subsection F of this section, the commission may:

(a) identify exemptions from a discharge permit requirement when a discharge is subject to effective and enforceable water quality requirements in a state or federally issued permit, unless there is a hazard to public health or the environment that may result or an applicable state water quality standard will not be achieved; and

(b) consider the requirements for permits and general permits that are consistent with the requirements of similar permits issued under Section 404 of the federal Clean Water Act;

NMSA 1978, § 74-6-5(R).

3. The Commission is also authorized by NMSA 1978, § 74-6-5 to, by rule:

a. set the dates upon which applications for permits shall be filed and designate the time periods within which the constituent agency shall, after the filing of an administratively complete application for a permit, either grant the permit, grant the permit subject to conditions or deny the permit.... (§ 74-6-5(A));

b. impose reasonable conditions upon permits establishing requirements for permittees. (§ 74-6-5(K)); and

c. provide a schedule of fees for permits and approvals of general permit coverage to support the cost of developing and implementing the permitting rules. (§ 74-6-5 (L)).

4. The federal Clean Water Act (CWA) under 33 U.S.C. § 1342(b) and associated regulations at 40 C.F.R. Part 123 provide a mechanism for states to establish and administer a National Pollutant Discharge Elimination System (NPDES) permit program by promulgating statutes and regulations, submitting required documentation to the U.S. Environmental Protection Agency (EPA), and obtaining EPA approval.

5. The New Mexico Legislature passed the New Mexico Pollutant Discharge Elimination System Act, which was signed into law by Governor Michelle Lujan Grisham on April

8, 2025. The New Mexico Pollutant Discharge Elimination System Act is codified at NMSA 1978, Article 6C, Sections 74-6C-1 through -11.

6. The Commission is authorized and mandated under NMSA 1978, Section 74-6C-4 to adopt, promulgate and publish rules: a) to implement and administer a program authorized by the New Mexico Pollutant Discharge Elimination System Act and approved by EPA, b) for notification procedures, and c) to adopt a schedule of fees to support the cost of implementing the program. NMSA 1978, § 74-6C-4(A)-(C).

SUMMARY OF THE PROPOSED REGULATORY CHANGE

7. The Department's proposed amendments to 20.6.2 NMAC establish rules to implement and administrator a surface water quality state permitting program. The rules include provisions that detail: when a permit is required, exemptions, individual permits, general permits, the process to apply for general permit coverage, permit conditions, public notice and participation, secretary review and approval, public hearing participation, commission review, judicial review, and fees.

8. The Department's proposed amendments at 20.6.2 NMAC do not require a permit for a point source discharge for which a permit is issued under Section 402 of the federal Clean Water Act or the New Mexico Pollutant Discharge Elimination System Act.

9. The Department's proposed amendments to 20.6.2 NMAC do identify exemptions and consider requirements for permits and general permits that are consistent with the requirements of similar permits issued under Section 402 of the federal Clean Water Act.

10. The Department's proposed amendments to 20.6.2 NMAC do not require a permit for discharges of dredged or filled materials for which a permit or authorization is issued under Section 404 of the federal Clean Water Act.

11. For discharges of proposed dredge or fill material, the Department's proposed amendments include provisions that establish avoidance and minimization to the maximum extent practicable of adverse impacts to wetlands, streams and other aquatic resources and that require compensatory mitigation for unavoidable adverse impacts that remain after appropriate and practicable avoidance and minimization measures have been achieved.

12. For discharges of dredged or fill material, the Department's proposed amendments to 20.6.2 NMAC do identify exemptions and consider requirements for permits and general permits that are consistent with the requirements of similar permits issued under Section 404 of the federal Clean Water Act.

13. The Department's proposed new rule at 20.6.5 NMAC establishes corresponding rules to implement and administer a National Pollutant Discharge Elimination System (NPDES) permitting program (in accordance the New Mexico Pollutant Discharge Elimination System Act), including, as required by NMSA 1978, Section 74-6C-4, the standards, requirements, and processes to issue, renew, modify, deny, and terminate permits, including rules that are necessary and appropriate to obtain and sustain authorization from the regional administrator.

14. Additionally, the Department's proposed new rule at 20.6.5 NMAC incorporates by reference those sections or parts of federal regulations the Commission deems necessary and appropriate, as authorized by NMSA 1978, Section 74-6C-4(A).

15. As required by NMSA 1978, Section 74-6C-4(B), the Department's proposed new rule at 20.6.5 NMAC establishes rules for notification procedures that ensure that the public and affected New Mexican Nations, Pueblos, and Tribes, governmental agencies, and downstream states receive notice of each draft permit.

16. As required by NMSA 1978, Section 74-6C-4(C), the new rule at 20.6.5 NMAC adopts a schedule of fees to support the cost of implementing the program, including the review of applications, issuances and enforcement of permits and rules, compliance assistance, monitoring and inspection of facilities and discharges, data stewardship, records management, administrative and legal costs and other costs the commission deems appropriate.

17. The proposed new rule at 20.6.5 NMAC also includes provisions that include: when a permit is required, exemptions, conflicts of interest, individual permits, general permits, the process to apply for general permit coverage, permit review and processing, permit conditions, public notice and participation, secretary review and approval, public hearing participation, commission review, judicial review, enforcement, and fees.

COMPLIANCE WITH STATUTORY RULEMAKING REQUIREMENTS

18. The Commission's adoption of rules must comply with the substantive and procedural requirements of NMSA 1978, § 74-6-6, and with the procedural requirements of 20.1.6 NMAC for rulemaking hearings before the Commission.

19. The Department filed the Petition with the Commission for consideration during its regularly scheduled meeting on December 9, 2025, requesting that the Commission determine that a public hearing should be held on the Petition in June or July of 2026, all in accordance with 20.1.6.200(C) NMAC.

20. Through Petitioner's petition, presentation, and testimony during a public hearing, the Commission will find that the Petition met all procedural requirements under 20.1.6 NMAC.

21. Through the Petitioner's petition, presentation, testimony and admitted exhibits during a public hearing, the Commission will find that the proposed rules establish a

comprehensive state permitting program, including meeting all criteria under the New Mexico Water Quality Act and all EPA requirements under the federal CWA and associated regulations.

22. The Water Quality Act states: “The Commission in making rules, shall give weight it deems appropriate to all relevant facts and circumstances, including:

- (1) the character and degree of injury to or interference with health, welfare, environment and property;
- (2) the public interest, including the social and economic value of the sources of water contaminants;
- (3) the technical practicability and economic reasonableness of reducing or eliminating water contaminants from the sources involved and previous experience with equipment and methods available to control the water contaminants involved;
- (4) the successive uses, including domestic, commercial, industrial, pastoral, agricultural, wildlife and recreational uses;
- (5) feasibility of a user or a subsequent user treating the water before a subsequent use;
- (6) property rights and accustomed uses; and
- (7) federal water quality requirements;”

NMSA 1978, § 74-6-4(F).

23. The Commission will further find that adoption of the proposed rules is justified given the character and degree of injury to or interference with health, welfare, environment and property.

24. The Commission will find that adoption of the proposed rules is in the public interest, including consideration of the social and economic value of the sources of water contaminants.

25. The Commission will find the proposed rules are technically practicable and economically reasonable in the methods the rules employ to reduce and eliminate water contaminants from the sources involved and previous experience with equipment and methods available to control the water contaminants involved.

26. The Commission will find the proposed rules are sound in considering the successive uses, including domestic, commercial, industrial, pastoral, agricultural, wildlife and recreational uses.

27. The Commission will find the proposed rules are pragmatic in considering feasibility of a user or a subsequent user treating the water before a subsequent use.

28. The Commission will find the proposed rules are objective in considering property rights and accustomed uses.

29. The Commission will find the proposed rules are appropriate in considering federal water quality requirements.

30. The proposed rules are drafted to comply with 1.24.10 NMAC, the uniform drafting rules for regulations in the New Mexico Administrative Code.

31. The proposed rule amendments to 20.6.2 NMAC and new rule 20.6.5 NMAC comply with all New Mexico statutory and regulatory rulemaking requirements.