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

20.6.2.1 ISSUING AGENCY: Water Quality Control Commission
[12-1-95; 20.6.2.1 NMAC - Rn, 20 NMAC 6.2.I.1000, 1-15-01]

20.6.2.2 SCOPE: All persons subject to the Water Quality Act, NMSA 1978, Sections 74-6-1 et seq.
[12-1-95; 20.6.2.2 NMAC - Rn, 20 NMAC 6.2.I.1001, 1-15-01]

20.6.2.3 STATUTORY AUTHORITY: Standards and Regulations are adopted by the commission under the authority of the Water Quality Act, NMSA 1978, Sections 74-6-1 through 74-6-17.
[2-18-77, 9-20-82, 12-1-95; 20.6.2.3 NMAC - Rn, 20 NMAC 6.2.I.1002, 1-15-01]

20.6.2.4 DURATION: Permanent.
[12-1-95; 20.6.2.4 NMAC - Rn, 20 NMAC 6.2.I.1003, 1-15-01]

20.6.2.5 EFFECTIVE DATE: December 1, 1995 unless a later date is cited at the end of a section.
[12-1-95, 11-15-96; 20.6.2.5 NMAC - Rn, 20 NMAC 6.2.I.1004, 1-15-01; A, 1-15-01]

20.6.2.6 OBJECTIVE: The objective of this Part is to implement the Water Quality Act, NMSA 1978, Sections 74-6-1 et seq.
[12-1-95; 20.6.2.6 NMAC - Rn, 20 NMAC 6.2.I.1005, 1-15-01]

20.6.2.7 DEFINITIONS: The following terms, as used in this ~~part~~ Part shall have the following meanings; terms defined in the Water Quality Act, but not defined in this ~~part~~ Part, will have the meaning given in the act.

A. Definitions that begin with the letter "A."

(1) **"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;

(2) **"abate" or "abatement"** means the investigation, containment, removal or other mitigation of water pollution;

(3) **"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;

(4) **"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;

(5) **"alternatives analysis"** means a process of analyzing all feasible project alternatives to the maximum extent practicable and selecting the least environmentally damaging alternative considering the project type, spatial location, and extent compatible with achieving the purpose of the project.

(6) **"aquatic resources"** means wetlands, streams, rivers, lakes, playas, and other bodies of water, riparian areas and the organisms that live in them and the ecological functions, services and values they provide.

(7) **"avoidance"** means preventing adverse impacts to aquatic resources acreage or function by not discharging dredged or fill material into a surface water.

B. Definitions that begin with the letter "B."

(1) **"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;

(2) "best management practices" or "BMPs" mean schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution from surface water discharges. BMPs are categorized as non-structural or structural.

(a) for point source discharges, BMPs include treatment requirements, operating procedures and practices to control site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage; and

(b) for dredged and fill discharges, BMPs include methods, measures, practices, or design and performance standards which facilitate compliance with permitting regulations, effluent limitations or prohibitions for toxic pollutants, and applicable water quality standards.

C. Definitions that begin with the letter "C."

(1) "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;

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

(3) "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 liquid waste greater than that regulated by 20.7.3 NMAC;

(4) "collapse" means the structural failure of overlying materials caused by removal of underlying materials;

(5) "commission" means:

(a) the New Mexico water quality control commission or

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

(6) "compensatory mitigation" means the process of restoring, establishing, enhancing, or preserving wetlands, streams, and other aquatic resources to offset unavoidable adverse impacts that remain after avoidance and minimization measures have been applied. Compensatory mitigation includes restoring aquatic resources to improve function and value, re-establishing aquatic resource acreage or functions, enhancing existing aquatic resources to improve their ecological services, and preserving aquatic resources in a refuge or preserve.

(7) "compliance plan" means a continuous multi-step program designed to ensure a facility adheres to water quality regulations and permit conditions and includes written policies and standard operating procedures, training and education plans, monitoring requirements, and recordkeeping and reporting;

(8) "compliance schedule" means a timeline within a permit that gives a facility a specific, set period to meet new or more stringent water quality-based limits.

(9) "concentrated animal feeding operation" means agricultural meat, dairy, or egg operations where animals are kept and raised in confinement;

(6~~1~~0) "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;

(7~~1~~1) "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;

D. Definitions that begin with the letter "D."

(1) "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;

(2) "department", "agency", or **"division"** means the New Mexico environment department or a constituent agency designated by the commission or their authorized representative;

(3) "discharge permit" means:

(a) a discharge plan approved by the department for ground water discharges; or

(b) an authorization to discharge water contaminants to a surface water issued by the department under this Part, which specifies the requirements and conditions that are necessary to discharge.

(4) "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;

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

(6) "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;

(7) "discharge site" means the entire site where the discharge and associated activities will take place;

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

(9) "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;

(10) "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;

(11) "dredged material" means material that is excavated or dredged from a surface water:

(~~11~~12) "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;

E. Definitions that begin with the letter "E."

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

F. Definitions that begin with the letter "F."

(1) "facility" means all contiguous land and structures, other appurtenances and improvements on the land, including any building, installation, equipment, pipe or pipeline, including any pipe into a sewer or publicly owned treatment works, a well, a pit, a pond, a lagoon, an impoundment, a ditch, a landfill, a storage container, a motor vehicle, a rolling stock, an aircraft, a vessel or a watercraft, or any site or area where a water contaminant has been, is currently or is proposed to be managed, treated, deposited, stored, disposed of or placed or has come to be located;

(2) "fill material" means material placed in a surface water where the material has the effect of replacing any portion of the surface water with dry land or changing the bottom elevation of the surface water, but does not include trash, garbage or incidental fallback resulting from excavation activities when small volumes of material fall back to substantially the same place as the initial removal;

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

(4) "functions" means the physical, chemical, biological, and hydrological processes that occur in aquatic ecosystems.

G. Definitions that begin with the letter "G."

(1) "general permit" means a permit that applies to one or more categories or subcategories of discharges, sludge use or disposal practices or facilities within a geographic area, including the state or a region, basin or watershed in the state;

(2) "general permit coverage" means the authorization to discharge pursuant to a general permit and any additional permit conditions required by a constituent agency;

(3) "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;

H. Definitions that begin with the letter "H."

"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 standards of Subsection A of 20.6.2.3103 NMAC, or the naturally occurring concentrations, whichever is higher 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;

I. Definitions that begin with the letter "I."

(1) "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;

(2) "incidental fallback" means the redeposit of small volumes of dredged material that is incidental to dredging and excavation activity in a surface water when such material falls back to substantially the same place as the initial removal.

(~~2~~3) "indirect discharger" means a nondomestic discharger introducing water contaminants to a publicly owned treatment works;

(4) "injection" means the subsurface emplacement of fluids through a well;

(~~3~~5) "injection zone" means a geological formation, group of formations, or part of a formation receiving fluids through a well;

J Definitions that begin with the letter "J." [RESERVED]

K. Definitions that begin with the letter "K." [RESERVED]

L. Definitions that begin with the letter "L." [RESERVED]

M. Definitions that begin with the letter "M."

(1) "minimization" means reducing or managing the severity of a discharge's adverse impact to aquatic resources acreage or functions at the selected site. Minimization is achieved by applying appropriate and practicable measures or technologies to ensure the amount and duration of impacts are limited.

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

N. Definitions that begin with the letter "N."

(1) "new source" means:

(a) any source from which there may be a discharge of water contaminants, the construction of which commenced after the publication of proposed rules prescribing a standard of performance applicable to the source; or

(b) an existing source of water contaminants when modified to treat additional volumes or when there is a change in the character of water contaminants treated;

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

O. Definitions that begin with the letter "O."

(1) "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;

(2) "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;

P. Definitions that begin with the letter "P."

(1) "packer" means a device lowered into a well to produce a fluid-tight seal within the casing;

(2) "pathogen" means a microorganism capable of causing illness in humans;

(~~2~~3) "person" means an individual or any other entity including partnerships, corporation, associations, Indian nations, tribes, or pueblos of New Mexico, 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;

(~~3~~4) "petitioner" means a person seeking a variance from a regulation of the commission pursuant to Section 74-6-4(~~H~~I) NMSA 1978;

(~~4~~5) "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;

(6) "point source" means any discernable, confined or discrete conveyance, including a pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system or vessel or other floating craft from which water contaminants are or may be discharged, but "point source" does not include a discharge composed entirely of return flows from irrigated agriculture or agricultural storm water runoff;

(7) "pollutant minimization plan" means a document that sets forth strategies and actions designed to reduce or eliminate the discharge of pollutants from a facility. A pollutant minimization plan

identifies pollution sources, outlines performance objectives, describes remedial and implementing control measures, and details monitoring and reporting requirements.

(8) "practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes;

(~~5~~9) "project discharge permit" means a ground water discharge permit which describes the operation of similar class III wells or well fields within one or more individual operational areas;

(10) "privately owned treatment works" means a wastewater treatment facility owned by a non-governmental entity that is designed to treat domestic and industrial wastewater;

(11) "publicly owned treatment works" means a wastewater treatment facility owned by a state or municipality that is designed to treat domestic and industrial wastewater;

Q. Definitions that begin with the letter "Q." [RESERVED]

R. Definitions that begin with the letter "R."

(1) "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;

(2) "responsible person" means a person who is required to submit an abatement plan or who submits an abatement plan pursuant to this ~~part~~ Part;

(3) "riparian area" means the transitional area located between the edge of stream channel, shoreline, or wetland and the adjacent upland area.

S. Definitions that begin with the letter "S."

(1) "secretary" or **"director"** means the secretary of the New Mexico department of environment or the director of a constituent agency designated by the commission;

(2) "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;

(3) "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;

(4) "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;

(5) "sludge" means solid, semi-solid, or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant; or a water supply treatment plant or an air pollution control facility that is associated with the treatment of these wastes; "sludge" does not mean treated effluent from a wastewater treatment plant;

(6) "source" means a building, a structure, a facility or an installation from which there is or may be a discharge of water contaminants directly or indirectly into water;

(~~5~~7) "stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage;

(8) "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;

(~~6~~9) "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;

(10) "surface water discharge" means:

(a) the addition of a water contaminant or combination of water contaminants to a surface water from a point source, including surface runoff collected or channeled by human effort; discharges through pipes, sewers or other conveyances owned by the state, a municipality or another person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading to privately owned treatment works; but does not include the addition of water contaminants from an indirect discharger; or

(b) the addition of dredged or fill material into a surface water from excavation of a surface water or from filling in a surface water in a manner that replaces the surface water with dry land or changes the bottom elevation of a surface water but does not include incidental fallback;

(11) "surface water(s)" shall have the same meaning as "surface water(s) of the state" found at 20.6.4.7.S(5) NMAC.

T. Definitions that begin with the letter "T."

(1) "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;

(2) "toxic pollutant" for surface water shall have the same meaning as 20.6.4.7.T(3) NMAC. "Toxic pollutant" for ground water shall have the same meaning as 20.6.2.3103.A(2) NMAC. Toxic pollutants for surface water and ground water include ~~means~~ any water contaminant or combination of the water contaminants in the list below:

- **(a)** acrolein (CAS 107-02-8)
- **(b)** acrylonitrile (CAS 107-13-1)
- **(c)** benzene and alkylbenzenes
  - **(i)** benzene (CAS 71-43-2)
  - **(ii)** toluene (methylbenzene) (CAS 108-88-3)
  - **(iii)** ethylbenzene (CAS 100-41-4)
  - **(iv)** xylenes (dimethyl benzene isomers): o-xylene (CAS 95-47-6); m-xylene (CAS 108-38-3); and p-xylene (CAS 106-42-3)
  - **(v)** styrene (ethenylbenzene) (CAS 100-42-5)
- **(d)** chlorinated benzenes
  - **(i)** monochlorobenzene (CAS 108-90-7)
  - **(ii)** 1,2-dichlorobenzene (ortho-dichlorobenzene) (CAS 95-50-1)
  - **(iii)** 1,4-dichlorobenzene (para-dichlorobenzene) (CAS 106-46-7)
  - **(iv)** 1,2,4-trichlorobenzene (CAS 120-82-1)
  - **(v)** 1,2,4,5-tetrachlorobenzene (CAS 95-94-3)
  - **(vi)** pentachlorobenzene (CAS 608-93-5)
  - **(vii)** hexachlorobenzene (CAS 118-74-1)
- **(e)** chlorinated phenols
  - **(i)** 2,4-dichlorophenol (CAS 120-83-2)
  - **(ii)** 2,4,5-trichlorophenol (CAS 95-95-4)
  - **(iii)** 2,4,6-trichlorophenol (CAS 88-06-2)
  - **(iv)** pentachlorophenol (PCP) (CAS 87-86-5)
- **(f)** chloroalkyl ethers
  - **(i)** bis (2-chloroethyl) ether (CAS 111-44-4)
  - **(ii)** bis (2-chloroisopropyl) ether (CAS 108-60-1)
  - **(iii)** bis (chloromethyl) ether (CAS 542-88-1)
- **(g)** 1,2-dichloropropane (propylene dichloride, PDC) (CAS 78-87-5)
- **(h)** dichloropropenes (CAS 542-75-6)
- **(i)** 1,4-dioxane (CAS 123-91-1)
- **(j)** halogenated ethanes
  - **(i)** 1,2-dibromoethane (ethylene dibromide, EDB) (CAS 106-93-4)
  - **(ii)** 1,1-dichloroethane (1,1-DCA) (CAS 75-34-3)
  - **(iii)** 1,2-dichloroethane (ethylene dichloride, EDC) (CAS 107-06-2)
  - **(iv)** 1,1,1-trichloroethane (TCA) (CAS 71-55-6)
  - **(v)** 1,1,2-trichloroethane (1,1,2-TCA) (CAS 79-00-5)
  - **(vi)** 1,1,2,2-tetrachloroethane (CAS 79-34-5)
  - **(vii)** hexachloroethane (CAS 67-72-1)
- **(k)** halogenated ethenes
  - **(i)** chlorothene (vinyl chloride) (CAS 75-01-4)
  - **(ii)** 1,1-dichloroethene (1,1-DCE) (CAS 75-35-4)
  - **(iii)** cis-1,2-dichloroethene (cis-1,2-DCE) (CAS 156-59-2)
  - **(iv)** trans-1,2-dichloroethene (trans-1,2-DCE) (CAS 156-60-5)
  - **(v)** trichloroethene (trichloroethylene, TCE) (CAS 79-01-6)
  - **(vi)** tetrachloroethene (perchloroethylene, PCE) (CAS 127-18-4)
- **(l)** halogenated methanes
  - **(i)** bromodichloromethane (CAS 75-27-4)
  - **(ii)** bromomethane (CAS 74-83-9)
  - **(iii)** chloromethane (CAS 74-87-3)
  - **(iv)** dichlorodifluoromethane (fluorocarbon-12) (CAS 75-71-8)

(v) dichloromethane (methylene chloride) (CAS 75-09-2)
(vi) tribromomethane (bromoform) (CAS 75-25-2)
(vii) trichloromethane (chloroform) (CAS 67-66-3)
(viii) tetrachloromethane (carbon tetrachloride) (CAS 56-23-5)
(ix) trichlorofluoromethane (fluorocarbon-11) (CAS 75-69-4)

(m) hexachlorobutadiene (CAS 87-68-3)
(n) isophorone (CAS 78-59-1)
(o) methyl tertiary-butyl-ether (MTBE) (CAS 1634-04-4)
(p) nitroaromatics and high explosives (HE)
(i) nitrobenzene (CAS 98-95-3)
(ii) 2,4-dinitrotoluene (2,4-DNT) (CAS 121-14-2)
(iii) 2,6-dinitrotoluene (2,6-DNT) (CAS 606-20-2)
(iv) octrahydro-1,3,5,7-tetranitro-1,3,5,7-tetrazocine (HMX) (CAS 2691-41-0)
(v) hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX) (CAS 121-82-4)
(vi) 2,4,6-trinitrotoluene (TNT) (CAS 118-96-7)
(vii) 2,4-dinitro-o-cresol (CAS 534-52-1)
(viii) dinitrophenols (CAS 51-28-5)
(q) nitrosamines
(i) N-nitrosodiethylamine (CAS 55-18-5)
(ii) N-nitrosodimethylamine (CAS 62-75-9)
(iii) N-nitrosodibutylamine (CAS 924-16-3)
(iv) N-nitrosodiphenylamine (CAS 86-30-6)
(v) N-nitrosopyrrolidine (CAS 930-55-2)
(r) perchlorate (CAS 14797-73-0)
(s) perfluorinated-chemicals (PFCs)
(i) perfluorohexane sulfonic acid (PHHxS) (CAS 355-46-4)
(ii) perfluorooctane sulfonate (PFOS) (CAS 1763-23-1)
(iii) perfluorooctanoic acid (PFOA) (CAS 335-67-1)
(t) pesticides
(i) Aldrin (CAS 309-00-2)
(ii) atrazine (CAS 1912-24-9)
(iii) chlordane (CAS 57-74-9)
(iv) DDT (CAS 50-29-3)
(v) dieldrin (CAS 60-57-1)
(vi) endosulfan (CAS 115-29-7)
(vii) endrin (CAS 72-20-8)
(viii) heptachlor (CAS 76-44-8)
(ix) hexachlorocyclohexane (HCH, lindane): alpha-HCH (CAS 319-84-6); beta-HCH (CAS 319-85-7); gamma-HCH (CAS 58-89-9); and, technical-HCH (CAS 608-73-1)
(x) hexachlorocyclopentadiene (CAS 77-47-4)
(xi) prometon (CAS 1610-18-0)
(xii) toxaphene (CAS 8001-35-2)
(u) phenol (CAS 108-95-2)
(v) phthalate esters
(i) dibutyl phthalate (CAS 84-74-2)
(ii) di-2-ethylhexyl phthalate (DEHP) (CAS 117-81-7)
(iii) diethyl phthalate (DEP) (CAS 84-66-2)
(iv) dimethyl phthalate (DMP) (CAS 131-11-3)
(w) polycyclic compounds
(i) benzidine (CAS 92-87-5)
(ii) dichlorobenzidine (CAS 91-94-1)
(iii) diphenylhydrazine (CAS 122-66-7
(iv) polychlorinated biphenyls (PCBs) (CAS 1336-36-3)
(x) polynuclear aromatic hydrocarbons (PAHs)
(i) anthracene (CAS 120-12-7)

(ii) benzo(a)pyrene (CAS 50-32-8)
(iii) 3,4-benzofluoranthene (CAS 205-99-2)
(iv) benzo(k)fluoranthene (CAS 207-08-9)
(v) fluoranthene (CAS 206-44-0)
(vi) fluorene (CAS 86-73-7)
(vii) naphthalene (CAS 91-20-3)
(viii) 1-methylnaphthalene (CAS 90-12-0)
(ix) 2-methylnaphthalene (CAS 91-57-6)
(x) phenanthrene (CAS 85-01-8)
(xi) pyrene (CAS 129-00-0)

(y) thiolane 1,1 dioxide (sulfolane) (CAS 126-33-0)

(3) "tribal water quality standards" means standards established by the governing body pursuant to Indian nation, tribal, or pueblo law that are applied in tribal water quality programs.

U. Definitions that begin with the letter "U." [RESERVED]

V. Definitions that begin with the letter "V."

(1) "vadose zone" means earth material below the land surface and above ground water, or in between bodies of ground water

W. Definitions that begin with the letter "W."

(1) "wastes" means sewage, industrial wastes, or any other liquid, gaseous or solid substance which will pollute any waters of the state;

(2) "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;

(3) "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;

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

(5) "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;

(6) "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;

(7) "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.

(8) "wetlands" shall have the same meaning as 20.6.4.7.W(4) NMAC.

X. Definitions that begin with the letter "X." [RESERVED]

Y. Definitions that begin with the letter "Y." [RESERVED]

Z. Definitions that begin with the letter "Z." [RESERVED]

[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; A, 12-21-18]

20.6.2.8 SEVERABILITY: If any section, subsection, individual standard or application of these standards or regulations is held invalid, the remainder shall not be affected.
[2-18-77, 12-1-95; 20.6.2.8 NMAC - Rn, 20 NMAC 6.2.I.1007, 1-15-01]

20.6.2.9 DOCUMENTS: Documents referenced in ~~the part~~ this Part may be viewed at the New Mexico environment department, surface or ground water quality bureaus, as applicable, Harold Runnels building, 1190 St. Francis Drive, Santa Fe, New Mexico 8750~~3~~5.
[12-1-95; 20.6.2.9 NMAC - Rn, 20 NMAC 6.2.I.1006, 1-15-01; A, 12-1-01]

20.6.2.10 LIMITATIONS: These regulations do not apply to the following:

A. Except for a surface water discharge for which a permit is required, ~~A~~any activity or condition subject to the authority of the environmental improvement board pursuant to the Hazardous Waste Act, NMSA 1978, Sections 74-4-1 to -14, the Ground Water Protection Act, NMSA 1978, Sections 74-6B-1 to -14, or the Solid Waste Act, NMSA 1978, Sections 74-9-1 to -25, except to abate water pollution or to control the disposal or use of septage and sludge; or

B. Except for a surface water discharge for which a permit is required, any activity or condition subject to the authority of the New Mexico oil conservation commission pursuant to the provisions of the Oil and Gas Act, NMSA 1978, Section 70-2-12 and other laws conferring power on the oil conservation commission and the oil conservation division of the energy, minerals and natural resources department to prevent or abate water pollution.

[N, 12-21-18]

20.6.2.11 EFFECT OF STAY OR INVALIDATION OF FEDERAL REGULATION: The department shall administer and enforce a federal regulation incorporated by reference only to the extent that it is implementable and enforceable by the United States environmental protection agency (EPA).

[N, XX-XX-XX]

20.6.2.12 AVAILABILITY OF FEDERAL REGULATIONS: The public may request to view federal regulations incorporated by reference by contacting the New Mexico Environment Department, Surface Water Quality Bureau, 1190 St. Francis Dr., Santa Fe, New Mexico 87505.

[N, XX-XX-XX]

20.6.2.~~11~~ 13 - 20.6.2.1199: [RESERVED]

[12-1-95; 20.6.2.10 - 20.6.2.1199 NMAC - Rn, 20 NMAC 6.2.I.1008-1100, 1102-1199, 1-15-01]

20.6.2.1200 PROCEDURES

[12-1-95; 20.6.2.1200 NMAC - Rn, 20 NMAC 6.2.I.1200, 1-15-01]

20.6.2.1201 NOTICE OF INTENT TO DISCHARGE TO GROUND WATER:

A. Except for the notices specified in paragraphs (1) and (2) of this subsection, any person intending to make a new water contaminant discharge or alter the character or location of an existing water contaminant discharge, unless the discharge is being made or will be made into a community sewer system or subject to the Liquid Waste Disposal Regulations adopted by the New Mexico environmental improvement board, shall file a notice with the ground water quality bureau of the department for discharges that may affect ground water~~, and/or the surface water quality bureau of the department for discharges that may affect surface water~~.

(1) Notices regarding discharges from facilities for the production, refinement, pipeline transmission of oil and gas or products thereof, the oil field service industry as related to oil and gas production activities, oil field brine production wells, and carbon dioxide facilities shall be filed with the oil conservation division of the energy, minerals and natural resources department.

(2) Notices regarding discharges related to geothermal resources, as defined in Section 71-9-3 of the Geothermal Resources Development Act, NMSA 1978, Sections 71-9-1 to -11 (2016) shall be filed with the energy conservation and management division of the energy, minerals and natural resources department.

B. Except for the notices specified in paragraphs (1) and (2) of this subsection, any person intending to inject fluids into a well, including a subsurface distribution system, unless the injection is being made subject to the Liquid Waste Disposal Regulations adopted by the New Mexico environmental improvement board, shall file a notice with the ground water quality bureau of the department.

(1) Notices regarding injections to wells associated with oil and gas facilities as described in Paragraph (1) of Subsection A of 20.6.2.1201 NMAC shall be filed with the oil conservation division.

(2) Notices regarding injections to wells associated with exploration, development or production of geothermal resources, as described in Paragraph (2) of Subsection A of 20.6.2.1201 NMAC, shall be filed with the energy conservation and management division of the energy, minerals and natural resources department pursuant to the Geothermal Resources Development Act, NMSA 1978, Sections 71-9-1 to -11 (2016).

C. Notices shall state:

(1) the name of the person making the discharge;

(2) the address of the person making the discharge;

(3) the location of the discharge;

(4) an estimate of the concentration of water contaminants in the discharge;

(5) the quantity of the discharge.

D. Based on information provided in the notice of intent, the department will notify the person proposing the discharge as to which of the following apply:

(1) a ground water discharge permit is required;

(2) a ground water discharge permit is not required;

(3) the proposed injection well will be added to the department's underground injection well inventory;

(4) the proposed injection activity or injection well is prohibited pursuant to 20.6.2.5004 NMAC.

[1-4-68, 9-5-69, 9-3-72, 2-17-74, 2-20-81, 12-1-95; 20.6.2.1201 NMAC - Rn, 20 NMAC 6.2.I.1201, 1-15-01; A, 12-1-01; A, 12-21-18]

20.6.2.1202 FILING OF PLANS AND SPECIFICATIONS--SEWERAGE SYSTEMS:

A. Any person proposing to construct a sewerage system or proposing to modify any sewerage system in a manner that will change substantially the quantity or quality of the discharge from the system shall file plans and specifications of the construction or modification with ground water quality bureau of the department for discharges that may affect ground water, and/or the surface water quality bureau of the department for discharges that may affect surface water. Modifications having a minor effect on the character of the discharge from sewerage systems shall be reported as of January 1 and June 30 of each year to the ground water quality bureau of the department for discharges that may affect ground water, or the surface water quality bureau of the department for discharges that may affect surface water.

B. Plans, specifications and reports required by this section, if related to facilities for the production, refinement and pipeline transmission of oil and gas, or products thereof, shall be filed instead with the oil conservation division.

C. Plans and specifications required to be filed under this section must be filed prior to the commencement of construction.

[1-4-68, 9-3-72, 2-20-81, 12-1-95; 20.6.2.1202 NMAC - Rn, 20 NMAC 6.2.I.1202, 1-15-01; A, 12-1-01]

20.6.2.1203 NOTIFICATION OF DISCHARGE-REMOVAL:

A. With respect to any discharge from any facility of oil or other water contaminant, in such quantity as may with reasonable probability injure or be detrimental to human health, animal or plant life, or property, or unreasonably interfere with the public welfare or the use of property, the following notifications and corrective actions are required:

(1) As soon as possible after learning of such a discharge, but in no event more than twenty-four (24) hours thereafter, any person in charge of the facility shall orally notify the chief of the ground water quality bureau ~~of the department~~ for discharges that could affect ground water and the chief of the surface water quality bureau for discharges that could affect a surface water, or the appropriate counterpart in any constituent agency delegated responsibility for enforcement of these rules as to any facility subject to such delegation. To the best of that person's knowledge, the following items of information shall be provided:

(a) the name, address, and telephone number of the person or persons in charge of the facility, as well as of the owner and/or operator of the facility;

(b) the name and address of the facility;

(c) the date, time, location, and duration of the discharge;

(d) the source and cause of discharge;

(e) a description of the discharge, including its chemical composition;

(f) the estimated volume of the discharge; and

(g) any actions taken to mitigate immediate damage from the discharge.

(2) When in doubt as to which constituent agency to notify, the person in charge of the facility shall notify the chief of the ground water quality bureau of the department. If that department does not have authority pursuant to commission delegation, the department shall notify the appropriate constituent agency.

(3) Within one week after the discharger has learned of the discharge, the facility owner and/or operator shall send written notification to the same department official, verifying the prior oral notification as to each of the foregoing items and providing any appropriate additions or corrections to the information contained in the prior oral notification.

(4) The oral and written notification and reporting requirements contained in this Subsection A are not intended to be duplicative of discharge notification and reporting requirements promulgated by the oil conservation commission (OCC) or by the oil conservation division (OCD); therefore, any facility which is subject to OCC or OCD discharge notification and reporting requirements need not additionally comply with the notification and reporting requirements herein.

(5) As soon as possible after learning of such a discharge, the owner/operator of the facility shall take such corrective actions as are necessary or appropriate to contain and remove or mitigate the damage caused by the discharge.

(6) If it is possible to do so without unduly delaying needed corrective actions, the facility owner/operator shall endeavor to contact and consult with the chief of the ground water quality bureau or surface water quality bureau of the department or appropriate counterpart in a delegated constituent agency, in an effort to determine the department's views as to what further corrective actions may be necessary or appropriate to the discharge in question. In any event, no later than fifteen (15) days after the discharger learns of the discharge, the facility owner/operator shall send to said ~~Bureau Chief~~ bureau chief a written report describing any corrective actions taken and/or to be taken relative to the discharge. Upon a written request and for good cause shown, the bureau chief may extend the time limit beyond fifteen (15) days.

(7) The bureau chief or appropriate counterpart in a constituent agency shall approve or disapprove in writing the foregoing corrective action report within thirty (30) days of its receipt by the department. In the event that the report is not satisfactory to the department, the bureau chief shall specify in writing to the facility owner/operator any shortcomings in the report or in the corrective actions already taken or proposed to be taken relative to the discharge, and shall give the facility owner/operator a reasonable and clearly specified time within which to submit a modified corrective action report. The bureau chief shall approve or disapprove in writing the modified corrective action report within fifteen (15) days of its receipt by the department.

(8) In the event that the modified corrective action report also is unsatisfactory to the department, the facility owner/operator has five (5) days from the notification by the bureau chief that it is unsatisfactory to appeal to the department secretary. The department secretary shall approve or disapprove the modified corrective action report within five (5) days of receipt of the appeal from the bureau chief's decision. In the absence of either corrective action consistent with the approved corrective action report or with the decision of the secretary concerning the shortcomings of the modified corrective action report, the department may take whatever enforcement or legal action it deems necessary or appropriate.

(9) If the secretary determines that the discharge causes or may with reasonable probability cause water pollution in excess of the standards and requirements of Section 20.6.2.4103 NMAC, and the water pollution will not be abated within one hundred and eighty (180) days after notice is required to be given pursuant to Paragraph (1) of Subsection A of Section 20.6.2.1203 NMAC, the secretary may notify the facility owner/operator that he is a responsible person and that an abatement plan may be required pursuant to Section 20.6.2.4104 and Subsection A of Section 20.6.2.4106 NMAC.

B. Exempt from the requirements of this section are continuous or periodic discharges which are made:

(1) in conformance with regulations of the commission and rules, regulations or orders of other state or federal agencies; or

(2) in violation of regulations of the commission, but pursuant to an assurance of discontinuance or schedule of compliance approved by the commission or one of its duly authorized constituent agencies.

C. As used in this section and in Sections 20.6.2.4100 through 20.6.2.4115 NMAC, but not in other sections of this ~~part~~ Part:

(1) "discharge" means spilling, leaking, pumping, pouring, emitting, emptying, or dumping into water or in a location and manner where there is a reasonable probability that the discharged substance will reach surface or subsurface water;

(2) "facility" means any structure, installation, operation, storage tank, transmission line, motor vehicle, rolling stock, or activity of any kind, whether stationary or mobile;

(3) "oil" means oil of any kind or in any form including petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes;

(4) "operator" means the person or persons responsible for the overall operations of a facility; and

(5) "owner' means the person or persons who own a facility, or part of a facility.

D. Notification of discharge received pursuant to this ~~part~~ Part or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except for perjury or for giving a false statement.

E. Any person who has any information relating to any discharge from any facility of oil or other water contaminant, in such quantity as may with reasonable probability injure or be detrimental to human health, animal or plant life, or property, or unreasonably interfere with the public welfare or the use of property, is urged to notify the chiefs of the surface water quality and ground water quality bureaus of the department. Upon such notification, the secretary may require an owner/operator or a responsible person to perform corrective actions pursuant to Paragraphs (5) and (9) of Subsection A of Section 20.6.2.1203 NMAC.

[2-17-74, 2-20-81, 12-24-87, 12-1-95; 20.6.2.1203 NMAC - Rn, 20 NMAC 6.2.I.1203, 1-15-01; A, 12-1-01; A, 12-21-18]

20.6.2.1204 - 20.6.2.1209 [RESERVED]

[12-1-95; 20.6.2.1204 - 20.6.2.1209 NMAC - Rn, 20 NMAC 6.2.I.1204-1209, 1-15-01]

20.6.2.1210 VARIANCE PETITIONS:

A. Any person seeking a variance pursuant to Section 74-6-4(I)~~(H)~~ NMSA 1978, shall do so by filing a written petition with the commission. The petitioner may submit with his petition any relevant documents or material which the petitioner believes would support his petition. Petitions shall:

(1) state the petitioner's name and address;

(2) state the date of the petition;

(3) describe the facility or activity for which the variance is sought;

(4) state the address or description of the property upon which the facility is located;

(5) describe the water body or watercourse affected by the discharge for which the variance is sought and provide information on uses of water that may be affected;

(6) identify the regulation of the commission from which the variance is sought;

(7) state in detail the extent to which the petitioner wishes to vary from the regulation;

(8) state why the petitioner believes that compliance with the regulation will impose an unreasonable burden upon his activity; and

(9) state in detail how any water pollution above standards will be abated; and

(10) state the period of time for which the variance is desired including all reasons, data, reports and any other information demonstrating that such time period is justified and reasonable.

B. The variance petition shall be reviewed in accordance with the adjudicatory procedures of 20 NMAC 1.3.

C. The commission may grant the requested variance, in whole or in part, may grant the variance subject to conditions, or may deny the variance. If the variance is granted in whole or in part, or subject to conditions, the commission shall specify the length of time that the variance shall be in place.

D. For variances associated with a discharge permit or abatement plan, the existence and nature of the variance shall be disclosed in all public notices applicable to the discharge permit or abatement plan.

E. For variances granted for a period in excess of five years, the petitioner shall provide to the department for review a variance compliance report at five year intervals to demonstrate that the conditions of the variance are being met, including notification of any changed circumstances or newly-discovered facts that are material to the variance. At such time as the department determines the report is administratively complete, the department shall post the report on its website, and mail or e-mail notice of its availability to those persons on a general and facility-specific list maintained by the department who have requested notice of discharge permit applications, and any person who participated in the variance process. If such conditions are not being met, or there is evidence indicating changed circumstances or newly-discovered facts or conditions that were unknown at the time the variance was initially granted, any person, including the department, may request a hearing before the commission to revoke, modify, or otherwise reconsider the variance within 90 days of the issuance of the notice of availability of the report.

F. An order of the commission is final and bars the petitioner from petitioning for the same variance without special permission from the commission. The commission may consider, among other things, the development of new information and techniques to be sufficient justification for a second petition. If the petitioner, or his authorized representative, fails to appear at the public hearing on the variance petition, the commission shall proceed with the hearing on the basis of the petition. A variance may not be extended or renewed unless a new petition is filed and processed in accordance with the procedures established by this section.

[7-19-68, 11-27-70, 9-3-72, 2-20-81, 11-15-96; 20.6.2.1210 NMAC - Rn, 20 NMAC 6.2.I.1210, 1-15-01; A, 12-21-18]

20.6.2.1211 - 20.6.2.1219: [RESERVED]
[12-1-95; 20.6.2.1211 - 20.6.2.1219 NMAC - Rn, 20 NMAC 6.2.I.1211-1219, 1-15-01]

20.6.2.1220 PENALTIES ENFORCEMENT, COMPLIANCE ORDERS, PENALTIES, ASSURANCE OF DISCONTINUANCE~~.~~:

A. Failure to comply with the Water Quality Act, or any regulation or standard promulgated pursuant to the Water Quality Act is a prohibited act. If the secretary determines that a person has violated or is violating a requirement of the Water Quality Act or any regulation promulgated thereunder or is exceeding any water quality standard or ground water standard contained in commission regulations, or is not complying with a condition or provision of an approved or modified abatement plan, discharge plan, or permit issued pursuant to the Water Quality Act, the secretary may issue a compliance order, assess a penalty, commence a civil action in district court, or accept an assurance of discontinuance in accordance with NMSA 1978, Section 74-6-10 of the Water Quality Act.

B. If credible information obtained by the department or provided to the department by a third party indicates that a facility is not in compliance with the provisions of this Part, that information may be used by the department to establish whether a person has violated or is in violation of this Part.

C. For surface water discharges, if credible information obtained by the department or provided to the department by an Indian nation, tribe, or pueblo government or agency indicates that a facility is not in compliance with the provisions of tribal water quality standards, that information may be used by the department to establish whether a person has violated or is in violation of this Part.

[12-1-95; 20.6.2.1220 NMAC - Rn, 20 NMAC 6.2.I.1220, 1-15-01]

20.6.2.1221 - 20.6.2.1999: [RESERVED]
[12-1-95; 20.6.2.1221 - 20.6.2.1999 NMAC - Rn, 20 NMAC 6.2.I.1221-2099, 1-15-01]

20.6.2.2000 SURFACE WATER PROTECTION:
[12-1-95; 20.6.2.2000 NMAC - Rn, 20 NMAC 6.2.II, 1-15-01]

20.6.2.2001 PROCEDURES FOR CERTIFICATION OF FEDERAL NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS:

A. This section applies to the state certification of draft national pollutant discharge elimination system (NPDES) permits under Section 401 of the federal Clean Water Act. The purpose of such certification is to reasonably ensure that the permitted activities will be conducted in a manner that will comply with applicable water quality standards, including the antidegradation policy, and the statewide water quality management plan.

B. After review of a draft permit, the department will either: (1) certify that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the federal Clean Water Act and with appropriate requirements of state law; (2) certify that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of state law upon inclusion of specified conditions in the permit and include the justification for the conditions; or (3) deny certification and include reasons for the denial. If the department does not act on the certification within the time prescribed by the federal permitting agency for such action, the authority to do so shall be waived.

C. Pursuant to federal regulations at 40 CFR 124.10(c), the U.S. environmental protection agency provides notice of draft NPDES permits to the applicant (except for general permits); various local, state, federal, tribal and pueblo government agencies; and other interested parties, and it allows at least 30 days of public comment. To the extent practicable, the department will provide public notice that the department is reviewing a draft NPDES permit for the purpose of preparing a state certification or denial pursuant to Section 401 of the federal Clean Water Act jointly with the notice provided by the U.S. environmental protection agency. The department will also post notice on its website.

D. When joint notice is impractical, the department shall provide notice that the department is reviewing a draft NPDES permit for purpose of preparing a state certification or denial pursuant to Section 401 of the federal Clean Water Act as follows:

(1) for general permits by:

(a) posting notice on the department's website;

(b) publishing notice in at least one newspaper of general circulation;

(c) mailing or e-mailing notice to those persons on the general mailing list maintained by the department who have requested such notice; and

(d) mailing or e-mailing notice to any affected local, state, federal, tribal, or pueblo government agency, as identified by the department; or

(2) for individual permits by:

(a) posting notice on the department's website;

(b) publishing notice in a newspaper of general circulation in the location of the discharge;

(c) mailing notice to the applicant;

(d) mailing or e-mailing notice to those persons on the general and facility-specific mailing list maintained by the department who have requested such notice; and

(e) mailing notice to any affected local, state, federal, tribal, or pueblo government agency, as identified by the department.

E. Public notices may describe more than one permit or permit action. The notice provided under Subsections C and D of 20.6.2.2001 NMAC shall include:

(1) for general permits:

(a) a statement that the department will accept written comments on the draft permit during the comment period including the address where comments may be submitted;

(b) a brief description of the activities that produce the discharge; and

(c) a description of the geographic area to be covered by the permit; or

(2) for individual permits:

(a) a statement that the department will accept written comments on the draft permit during the comment period including the address where comments may be submitted;

(b) the name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(c) a brief description of the activities that produce the discharge; and

(d) a general description of the location of the discharge and the name of the receiving water.

F. Following the public notice provided under Subsections C or D of 20.6.2.2001 NMAC, there shall be a period of at least 30 days during which interested persons may submit written comments to the department. The 30-day comment period shall begin on the date of the public notice provided under Subsections C or D of 20.6.2.2001 NMAC. The department shall consider all pertinent comments.

G. Following the public comment period provided under Subsection F of 20.6.2.2001 NMAC, the department shall issue a final permit certification including any conditions that the department places on the certification, or issue a statement of denial including the reasons for the denial. The final certification will generally be issued within 45 days from the date a request to grant, deny or waive certification is received by the department, unless the department in consultation with the U.S. environmental protection agency regional administrator finds that unusual circumstances require a longer time. The department shall send a copy of the final permit certification or denial to the U.S. environmental protection agency, the applicant (except for general permits), and those members of the public who submitted comments to the department.

(1) The permit certification shall be in writing and shall include:

(a) the name of the applicant (except for general permits) and the NPDES permit number;

(b) a statement that the department has examined the application or other relevant information and bases its certification upon an evaluation of the information contained in such application or other information which is relevant to water quality considerations;

(c) a statement that there is a reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards;

(d) a statement of any conditions which the department deems necessary or desirable with respect to the discharge of the activity;

(e) identification of any condition more stringent than that in the draft permit required to assure compliance with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of state law citing the Clean Water Act or state law upon which the condition is based;

(f) a statement of the extent to which each condition of the draft permit can be made less stringent without violating the requirements of state law, including water quality standards; and

(g) such other information as the department may determine to be appropriate.

(2) With justification, including any of the reasons listed in the New Mexico Water Quality Act, NMSA 1978, Section 74-6-5(E), the department may deny permit certification. Denial of permit certification shall be in writing and shall include:

(a) the name of the applicant (except for general permits) and the NPDES permit number;

(b) a statement that the department has examined the application or other relevant information and bases its denial upon an evaluation of the information contained in such application or other information which is relevant to water quality considerations;

(c) a statement of denial including the reasons for the denial; and

(d) such other information as the department may determine to be appropriate.

H. Any person who is adversely affected by the certification or denial of a specific permit may appeal such certification or denial by filing a petition for review with the secretary within 30 days after the department issues the final permit certification or statement of denial. Such petition shall be in writing and shall include a concise statement of the reasons for the appeal and the relief requested. The secretary may hold a hearing on the appeal. In any such appeal hearing, the procedures of 20.1.4 NMAC shall not apply. The department shall give notice of the appeal hearing at least 30 days prior to the hearing. The notice shall state the date, time, and location of the appeal hearing and shall include the pertinent information listed in Subparagraphs (b), (c), and (d) of Paragraph (2) of Subsection E of 20.6.2.2001 NMAC. The secretary shall appoint a hearing officer to preside over the appeal hearing. Any person may present oral or written statements, data, technical information, legal arguments, or other information on the permit certification or denial during the appeal hearing. Any person may present oral or written statements, data, technical information, legal arguments, or other information in rebuttal of that presented by another person. Reasonable time limits may be placed on oral statements, and the submission of written statements may be required. The hearing officer may question persons presenting oral testimony. Cross examination of persons presenting oral statements shall not otherwise be allowed. Within 30 days after the completion of the hearing, or such other time as the secretary may order given the complexities of the case, the hearing officer shall submit recommendations to the secretary. The secretary shall issue a final decision on the appeal within 30 days after receiving the recommendation, or such other time as the secretary may order given the complexities of the case.

I. Pursuant to the New Mexico Water Quality Act, NMSA 1978, Section 74-6-5(P)~~(O)~~, any person who is adversely affected by the secretary's final decision may file with the commission a petition for review of that decision based on the administrative record.

[20.6.2.2001 NMAC - N, 5-18-11]

20.6.2.2002 PROCEDURES FOR CERTIFICATION OF FEDERAL PERMITS FOR DISCHARGE OF DREDGED OR FILL MATERIAL:

A. This section applies to the state certification of draft permits or permit applications for the discharge of dredged or fill material under Section 401 of the federal Clean Water Act. The purpose of such certification is to reasonably ensure that the permitted activities will be conducted in a manner that will comply with applicable water quality standards, including the antidegradation policy, and the statewide water quality management plan.

B. After review of a draft permit or permit application, the department will either: (1) certify that the discharge will comply with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the federal Clean Water Act and with appropriate requirements of state law; (2) certify that the discharge will comply with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of state law upon inclusion of specified conditions in the permit and include the justification for the conditions; or (3) deny certification and include reasons for the denial. If the department does not act on the certification within the time prescribed by the federal permitting agency for such action, the authority to do so shall be waived.

C. Pursuant to federal regulations at 33 CFR 325.3 and 33 CFR 330.5, the U.S. army corps of engineers provides notice of draft dredged or fill permits and permit applications to the applicant (except for general or nationwide permits); various local, state, federal, tribal and pueblo government agencies; and other interested parties, and it allows at least 15 days of public comment. To the extent practicable, the department will provide public notice that the department is reviewing a draft permit or permit application for the purpose of preparing a

state certification or denial pursuant to Section 401 of the federal Clean Water Act jointly with the notice provided by the U.S. army corps of engineers. The department will also post notice on its website.

D. When joint notice is impractical, the department shall provide notice that the department is reviewing a draft dredged or fill permit or permit application for purpose of preparing a state certification or denial pursuant to Section 401 of the federal Clean Water Act as follows:

(1) for general permits by:

(a) posting notice on the department's website;

(b) publishing notice in at least one newspaper of general circulation;

(c) mailing or e-mailing notice to those persons on the general mailing list maintained by the department who have requested such notice; and

(d) mailing or e-mailing notice to any affected local, state, federal, tribal, or pueblo government agency, as identified by the department; or

(2) for individual permit applications by:

(a) posting notice on the department's website;

(b) publishing notice in a newspaper of general circulation in the location of the discharge;

(c) mailing notice to the applicant;

(d) mailing or e-mailing notice to those persons on the general and facility-specific mailing list maintained by the department who have requested such notice; and

(e) mailing notice to any affected local, state, federal, tribal, or pueblo government agency, as identified by the department.

E. Public notices may describe more than one permit or permit action. The notice provided under Subsections C and D of 20.6.2.2002 NMAC shall include:

(1) for general permits:

(a) a statement that the department will accept written comments on the draft permit during the comment period including the address where comments may be submitted;

(b) a brief description of the activities that produce the discharge; and

(c) a description of the geographic area to be covered by the permit; or

(2) for individual permit applications:

(a) a statement that the department will accept written comments on the permit application during the comment period including the address where comments may be submitted;

(b) the name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(c) a brief description of the activities that produce the discharge; and

(d) a general description of the location of the discharge and the name of the receiving water.

F. Following the public notice provided under Subsections C or D of 20.6.2.2002 NMAC, there shall be a period of at least 30 days during which interested persons may submit written comments to the department. The 30-day comment period shall begin on the date of the public notice provided under Subsections C or D of 20.6.2.2002 NMAC. The department shall consider all pertinent comments.

G. The public notice provisions in Subsection C and D of Section 20.6.2.2002 NMAC and the public comment provisions in Subsection F of Section 20.6.2.2002 NMAC shall not apply to permits issued using emergency procedures under 33 CFR 325.2(e)(4). However, even in emergency situations, reasonable efforts shall be made to receive comments from interested state and local agencies and the affected public.

H. Following the public comment period provided under Subsection F of 20.6.2.2002 NMAC, the department shall issue a final permit certification including any conditions that the department places on the certification, or issue a statement of denial including the reasons for the denial. The final certification will generally be issued within 60 days from the date a request to grant, deny or waive certification is received by the department, unless the department in consultation with the U.S. army corps of engineers district engineer finds that unusual circumstances require a longer time. The department shall send a copy of the final permit certification or denial to the army corps of engineers, the applicant (except for general or nationwide permits), and those members of the public who submitted comments to the department.

(1) The permit certification or denial shall be in writing and shall include:

(a) the name of the applicant (except for general permits) and the permit number;

(b) a statement that the department has examined the application or other relevant information and bases its certification upon an evaluation of the information contained in such application or other information which is relevant to water quality considerations;

(c) a statement that there is a reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards;

(d) a statement of any conditions which the department deems necessary or desirable with respect to the discharge of the activity; and

(e) such other information as the department may determine to be appropriate.

(2) With justification, including any of the reasons listed in the New Mexico Water Quality Act, NMSA 1978, Section 74-6-5(E), the department may deny permit certification. Denial of permit certification shall be in writing and shall include:

(a) the name of the applicant (except for general permits) and the permit number;

(b) a statement that the department has examined the application or other relevant information and bases its denial upon an evaluation of the information contained in such application or other information which is relevant to water quality considerations;

(c) a statement of denial including the reasons for the denial; and

(d) such other information as the department may determine to be appropriate.

I. Any person who is adversely affected by the certification or denial of a specific permit may appeal such certification or denial by filing a petition for review with the secretary within 30 days after the department issues the final permit certification or statement of denial. Such petition shall be in writing and shall include a concise statement of the reasons for the appeal and the relief requested. The secretary may hold a hearing on the appeal. In any such appeal hearing, the procedures of 20.1.4 NMAC shall not apply. The department shall give notice of the appeal hearing at least 30 days prior to the hearing. The notice shall state the date, time, and location of the appeal hearing and shall include the pertinent information listed in Subparagraphs (b), (c), and (d) of Paragraph (2) of Subsection E of 20.6.2.2002 NMAC. The secretary shall appoint a hearing officer to preside over the appeal hearing. Any person may present oral or written statements, data, technical information, legal arguments, or other information on the permit certification or denial during the appeal hearing. Any person may present oral or written statements, data, technical information, legal arguments, or other information in rebuttal of that presented by another person. Reasonable time limits may be placed on oral statements, and the submission of written statements may be required. The hearing officer may question persons presenting oral testimony. Cross examination of persons presenting oral statements shall not otherwise be allowed. Within 30 days after the completion of the hearing, or such other time as the secretary may order given the complexities of the case, the hearing officer shall submit recommendations to the secretary. The secretary shall issue a final decision on the appeal within 30 days after receiving the recommendation, or such other time as the secretary may order given the complexities of the case.

J. Pursuant to the New Mexico Water Quality Act, NMSA 1978, Section 74-6-5(P)~~(O)~~,, any person who is adversely affected by the secretary's final decision may file with the commission a petition for review of that decision based on the administrative record.

[20.6.2.2002 NMAC - N, 5-18-11]

20.6.2.2003 PROCEDURES FOR CERTIFICATION OF OTHER FEDERAL PERMITS:

A. This section applies to the state certification of draft federal permits, permit applications or licenses under Section 401 of the federal Clean Water Act, except for NPDES permits or permits for the discharge of dredged or fill material. For example, this section applies to certification of permits or licenses issued by the federal energy regulatory commission (FERC) and to permits or licenses issued under the Rivers and Harbors Act of 1899. The purpose of such certification is to reasonably ensure that the permitted activities will be conducted in a manner that will comply with applicable water quality standards, including the antidegradation policy, and the statewide water quality management plan.

B. After review of a draft permit, permit application or license, the department will either: (1) certify that the activity will comply with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the federal Clean Water Act and with appropriate requirements of state law; (2) certify that the activity will comply with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of state law upon inclusion of specified conditions in the permit and include the justification for the conditions; or (3) deny certification and include reasons for the denial. If the department does not act on the certification within the time prescribed by the federal permitting agency for such action, the authority to do so shall be waived.

C. To the extent practicable, the department will provide public notice that the department is reviewing a draft federal permit, permit application or license for the purpose of preparing a state certification or denial jointly with the notice provided by the federal permitting or licensing agency. The department will also post notice on its website.

D. When joint notice is impractical, the department shall provide notice that the department is reviewing a draft federal permit, permit application or license for purpose of preparing a state certification or denial pursuant to Section 401 of the federal Clean Water Act as follows:

(1) for general permits or licenses by:

(a) posting notice on the department's website;

(b) publishing notice in at least one newspaper of general circulation;

(c) mailing or e-mailing notice to those persons on the general mailing list maintained by the department who have requested such notice; and

(d) mailing or e-mailing notice to any affected local, state, federal, tribal, or pueblo government agency, as identified by the department; or

(2) for individual permits or licenses by:

(a) posting notice on the department's website;

(b) publishing notice in a newspaper of general circulation in the location of the permitted or licensed activity;

(c) mailing notice to the applicant;

(d) mailing or e-mailing notice to those persons on the general and facility-specific mailing list maintained by the department who have requested such notice; and

(e) mailing notice to any affected local, state, federal, tribal, or pueblo government agency, as identified by the department.

E. Public notices may describe more than one license, permit or permit action. The notice provided under Subsections C and D of 20.6.2.2003 NMAC shall include:

(1) for general permits or licenses:

(a) a statement that the department will accept written comments on the permit or license during the comment period including the address where comments may be submitted; and

(b) a brief description of the permitted or licensed activities; and

(c) a description of the geographic area to be covered by the permit; or

(2) for individual permits or licenses:

(a) a statement that the department will accept written comments on the permit or license during the comment period including the address where comments may be submitted;

(b) the name and address of the licensee, permittee or permit or license applicant and, if different, of the facility or activity regulated by the permit or license;

(c) a brief description of the permitted or licensed activities; and

(d) a general description of the location of the permitted or licensed activities and the name of the receiving water.

F. Following the public notice provided under Subsections C or D of 20.6.2.2003 NMAC, there shall be a period of at least 30 days during which interested persons may submit written comments to the department. The 30-day comment period shall begin on the date of the public notice provided under Subsections C or D of 20.6.2.2003 NMAC. The department shall consider all pertinent comments.

G. Following the public comment period provided under Subsection F of 20.6.2.2003 NMAC, the department shall issue a final certification including any conditions that the department places on the certification, or issue a statement of denial including the reasons for the denial. The final certification will generally be issued within 60 days from the date a request to grant or deny certification is received by the department, unless the department in consultation with the federal permitting or licensing agency finds that unusual circumstances require a longer time. The department shall send a copy of the final certification or denial to the federal permitting or licensing agency, the applicant (except for general permits), and those members of the public who submitted comments to the department.

(1) The certification or denial shall be in writing and shall include:

(a) the name of the applicant (except for general permits) and the permit or license number;

(b) a statement that the department has examined the application or other relevant information and bases its certification upon an evaluation of the information contained in such application or other information which is relevant to water quality considerations;

(c) a statement that there is a reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards;

(d) a statement of any conditions which the department deems necessary or desirable with respect to the discharge of the activity;

(e) identification of any condition more stringent than that in the draft permit or license required to assure compliance with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of state law citing the Clean Water Act or state law upon which the condition is based;

(f) a statement of the extent to which each condition of the draft permit or license can be made less stringent without violating the requirements of state law, including water quality standards; and

(g) Such other information as the department may determine to be appropriate.

(2) With justification, including any of the reasons listed in the New Mexico Water Quality Act, NMSA 1978, Section 74-6-5(E), the department may deny certification. Denial of certification shall be in writing and shall include:

(a) the name of the applicant (except for general permits) and the permit or license number;

(b) a statement that the department has examined the application or other relevant information and bases its denial upon an evaluation of the information contained in such application or other information which is relevant to water quality considerations;

(c) a statement of denial including the reasons for the denial; and

(d) such other information as the department may determine to be appropriate.

H. Any person who is adversely affected by the certification or denial of a specific permit or license may appeal such certification or denial by filing a petition for review with the secretary within 30 days after the department issues the final certification or statement of denial. Such petition shall be in writing and shall include a concise statement of the reasons for the appeal and the relief requested. The secretary may hold a hearing on the appeal. In any such appeal hearing, the procedures of 20.1.4 NMAC shall not apply. The department shall give notice of the appeal hearing at least 30 days prior to the hearing. The notice shall state the date, time, and location of the appeal hearing and shall include the pertinent information listed in Subparagraphs (b), (c), and (d) of Paragraph (2) of Subsection E of 20.6.2.2003 NMAC. The secretary shall appoint a hearing officer to preside over the appeal hearing. Any person may present oral or written statements, data, technical information, legal arguments, or other information on the certification or denial during the appeal hearing. Any person may present oral or written statements, data, technical information, legal arguments, or other information in rebuttal of that presented by another person. Reasonable time limits may be placed on oral statements, and the submission of written statements may be required. The hearing officer may question persons presenting oral testimony. Cross examination of persons presenting oral statements shall not otherwise be allowed. Within 30 days after the completion of the hearing, or such other time as the secretary may order given the complexities of the case, the hearing officer shall submit recommendations to the secretary. The secretary shall issue a final decision on the appeal within 30 days after receiving the recommendation, or such other time as the secretary may order given the complexities of the case.

I. Pursuant to the New Mexico Water Quality Act, NMSA 1978, Section 74-6-5(P)~~(O)~~,, any person who is adversely affected by the secretary's final decision may file with the commission a petition for review of that decision based on the administrative record.

[20.6.2.2003 NMAC - N, 5-18-11]

20.6.2.2004 - 20.6.2.~~2099~~2199: [RESERVED]

~~**20.6.2.2100 APPLICABILITY:** The requirements of Section 20.6.2.2101 and 20.6.2.2102 NMAC shall not apply to any discharge which is subject to a permit under the National Pollutant Discharge Elimination System of P. L. 92-500; provided that any discharger who is given written notice of National Pollutant Discharge Elimination System permit violation from the Administrator of the Environmental Protection Agency and who has not corrected the violation within thirty days of receipt of said notice shall be subject to Section 20.6.2.2101 and 20.6.2.2102 NMAC until in compliance with the National Pollution Discharge Elimination System permit conditions; provided further that nothing in this Part shall be construed as a deterrent to action under Section 74-6-11 NMSA, 1978. [8-13-76; 20.6.2.2100 NMAC - Rn, 20 NMAC 6.2.II.2100, 1-15-01]~~

~~**20.6.2.2101 GENERAL REQUIREMENTS:**~~

A. Except as otherwise provided in Sections 20.6.2.2000 through 20.6.2.2201 NMAC, no person shall cause or allow effluent to discharge to a watercourse if the effluent as indicated by:

(1) any two consecutive daily composite samples;

(2) more than one daily composite sample in any thirty-day period (in which less than ten (10) daily composite samples are examined);

(3) more than ten percent (10%) of the daily composite samples in any thirty-day period (in which ten (10) or more daily composite samples are examined); or

(4) a grab sample collected during flow from an intermittent or infrequent discharge does not conform to the following:

(a) Bio-chemical Oxygen Demand (BOD) Less than 30 mg/l

(b) Chemical Oxygen Demand (COD) Less than 125 mg/l

(c) Settleable Solids Less than 0.5 mg/l

(d) Fecal Coliform Bacteria Less than 500 organisms per 100 ml

(e) pH Between 6.6 and 8.6

B. Upon application, the secretary may eliminate the pH requirement for any effluent source that the secretary determines does not unreasonably degrade the water into which the effluent is discharged.

C. Subsection A of this Section does not apply to the weight of constituents in the water diverted.

D. Samples shall be examined in accordance with the most current edition of Standard Methods for the Examination of Water and Wastewater published by the American Public Health Association or the most current edition of Methods for Chemical Analysis of Water and Wastes published by the Environmental Protection Agency, where applicable.

[4-20-68, 3-14-71, 10-8-71, 8-13-76, 2-20-81, 12-1-95; 20.6.2.2101 NMAC - Rn, 20 NMAC 6.2.II.2101, 1-15-01]

20.6.2.2102 RIO GRANDE BASIN - COMMUNITY SEWERAGE SYSTEMS:

A. No person shall cause or allow effluent from a community sewerage system to discharge to a watercourse in the Rio Grande Basin between the headwaters of Elephant Butte Reservoir and Angostura Diversion Dam as described in Subsection E of this Section if the effluent, as indicated by:

(1) any two consecutive daily composite samples;

(2) more than one daily composite sample in any thirty-day period (in which less than ten (10) daily composite samples are examined);

(3) more than ten percent (10%) of the daily composite samples in any thirty-day period (in which ten (10) or more daily composite samples are examined); or

(4) a grab sample collected during flow from an intermittent or infrequent discharge does not conform to the following:

(a) Bio-chemical Oxygen Demand (BOD) Less than 30 mg/l

(b) Chemical Oxygen Demand (COD) Less than 80 mg/l

(c) Settleable Solids Less than 0.1 mg/l

(d) Fecal Coliform Bacteria Less than 500 organisms per 100 ml

(e) pH Between 6.6 and 8.6

B. Upon application, the secretary may eliminate the pH requirement for any effluent source that the secretary determines does not unreasonably degrade the water into which the effluent is discharged.

C. Subsection A of this Section does not apply to the weight of constituents in the water diverted.

D. Samples shall be examined in accordance with the most current edition of Standard Methods for the Analysis of Water and Wastewater published by the American Public Health Association or the most current edition of Methods for Chemical Analysis of Water and Wastes published by the Environmental Protection Agency, where applicable.

E. The following is a description of the Rio Grande Basin from the headwaters of Elephant Butte Reservoir to Angostura Diversion Dam as used in this Section. Begin at San Marcial USGS gauging station, which is the headwaters of Elephant Butte Reservoir Irrigation Project, thence northwest to U.S. Highway 60, nine miles + west of Magdalena; thence west along the northeast edge of the San Agustin Plains closed basin; thence north along the east side of the north plains closed basin to the Continental Divide; thence northly along the Continental Divide to the community of Regina on State Highway 96; thence southeasterly along the crest of the San Pedro Mountains to Cerro Toledo Peak; thence southwesterly along the Sierra de Los Valles ridge and the Borrego Mesa to Bodega Butte; thence southerly to Angostura Diversion Dam which is the upper reach of the Rio Grande in this basin; thence southeast to the crest and the crest of the Manzano Mountains and the Los Pinos Mountains; thence southerly along the divide that contributes to the Rio Grande to San Marcial gauging station to the point and place of beginning;

~~excluding all waters upstream of Jemez Pueblo which flow into the Jemez River drainage and the Bluewater Lake. Counties included in the basin are:~~

~~(1) north portion of Socorro County;~~
~~(2) northeast corner of Catron County;~~
~~(3) east portion of Valencia County;~~
~~(4) west portion of Bernalillo County;~~
~~(5) east portion of McKinley County; and~~
~~(6) most of Sandoval County.~~

~~**20.6.2.2103 - 20.6.2.2199: [RESERVED]**~~
~~[12-1-95; 20.6.2.2103 - 20.6.2.2199 NMAC - Rn, 20 NMAC 6.2.II.2103-2199, 1-15-01]~~

20.6.2.2200 WATERCOURSE PROTECTION:
[12-1-95; 20.6.2.2200 NMAC - Rn, 20 NMAC 6.2.II.2200, 1-15-01]

20.6.2.2201 DISPOSAL OF REFUSE: No person shall dispose of any refuse in a natural watercourse or in a location and manner where there is a reasonable probability that the refuse will be moved into a natural watercourse by leaching or otherwise. Solids diverted from the stream and returned thereto are not subject to abatement under this Section.
[4-20-68, 9-3-72; 20.6.2.2201 NMAC - Rn, 20 NMAC 6.2.II.2201, 1-15-01]

20.6.2.2202 - 20.6.2.~~2999~~2299: [RESERVED]

20.6.2.2300 SURFACE WATER PERMITTING: Sections 3000 through 3114 of this Part shall not apply to surface water permitting.

20.6.2.2301 PURPOSE: Sections 20.6.2.2301 through 20.6.2.2399 NMAC establish the requirements for surface water discharge permits to comply with surface water quality standards, including designated uses, water quality criteria to protect those uses, and the state's antidegradation policy, in 20.6.4 NMAC.

20.6.2.2302 SURFACE WATER DISCHARGE PERMIT REQUIRED: Except as provided in 20.6.2.2303 NMAC, no person shall cause or allow a surface water discharge without a permit issued by the secretary or general permit coverage approved by the department.

A. Individual permits: Any person who wishes to discharge water contaminants or dredged or fill materials into a surface water shall apply for an individual permit pursuant to 20.6.2.2304 NMAC . The requirements in Section 2304 shall become effective thirty days after filing with the State Records Center and Archives; however, there shall be a two-month grace period to file an application.

B. General permits: No later than six months after the effective date of the surface water quality permitting regulations (Sections 2300 through 2355 of this Part), the secretary shall issue a general permit for one or more categories of surface water discharges, or sludge use or disposal practices or facilities, within the state or part thereof, such as a watershed, region, or other geographical area. The requirements in Section 20.6.2.2306 NMAC shall become effective upon general permit issuance.

C. Pursuant to Subsection A of Section 74-6-12 NMSA 1978, this Part does not grant to the water quality control commission or to any other entity the power to take away or modify property right in water.

20.6.2.2303 EXEMPTIONS:

A. The surface water permitting regulations do not apply to the following point source discharges:

(1) return flows composed entirely from irrigated agriculture or agricultural stormwater runoff;

(2) stormwater runoff from a mining operation or oil and gas exploration, production, processing, or treatment operation or transmission facility that is composed entirely of flows that are from conveyances or systems of conveyances, including pipes, conduits, ditches and channels, used for collecting and conveying precipitation runoff and that are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste product located on the site of such operation or facility; provided that oil and gas exploration, production, processing or treatment operations or transmission facilities include activities necessary to prepare a site for drilling and for the movement and placement

of drilling equipment, whether or not the field activities or operations may be considered to be construction activities;

(3) runoff resulting from the following silviculture activities conducted in accordance with standard industry practice: nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, and road construction and maintenance; and

(4) discharges and water contaminants that are subject to effective and enforceable surface 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 water quality standard will not be achieved.

B. The surface water permitting regulations do not apply to the following discharges of dredged or fill material:

(1) normal farming, silviculture and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber and forest products or upland soil and water conservation practices;

(2) maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, riprap, breakwaters, causeways and bridge abutments or approaches and transportation structures;

(3) construction or maintenance of farm or stock ponds, acequias or irrigation ditches or the maintenance of drainage ditches;

(4) construction of temporary sedimentation basins on a construction site that does not include placement of fill material into the surface waters;

(5) construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that:

(a) flow and circulation patterns and chemical and biological characteristics of the surface waters are not impaired;

(b) the reach of the surface waters is not reduced; and

(c) any adverse effect on the aquatic environment will be otherwise minimized; and

(6) discharges that are subject to effective and enforceable surface water quality requirements in a state issued 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.

C. The exemptions provided in Subsection B of this section shall not apply if the discharge resulting from the activities contains any toxic pollutant as set forth in rule by the commission or if a new activity brings a surface water of the state into farm production where the area of the surface water has not previously been used for farming.

20.6.2.2304 INDIVIDUAL SURFACE WATER DISCHARGE PERMITS:

A. Applications. To obtain a new individual surface water discharge permit, or to renew, modify, revise, or transfer an existing surface water discharge permit, a person shall submit a complete application in the format required by the surface water quality bureau. Each application shall include the information required by Subsection B of this section, the information required by Subsections C or D of this section, and, as applicable to the type of application, the fee specified in 20.6.2.2350 NMAC. Permittees are encouraged to arrange and participate in pre-application meetings with the department and relevant state, federal, and tribal resource agencies during the development of their application to coordinate with other regulatory processes and consult on potential impacts to aquatic resources and tribal waters.

B. Disclosures. The applicant shall disclose:

(1) the name and contact information for the authorized representative submitting the application;

(2) a statement that the applicant, its officers, and the authorized representative submitting the application have not, within the ten years preceding the date of submission of the application, committed any of the activities identified in Paragraph (6) of Subsection E of 20.6.2.2309 NMAC;

(3) for an application for the disposal or use of septage or sludge, or within a source category designated by the commission, the secretary may require a disclosure statement as specified in NMSA 1978, Section 74-6-5.1; and

(4) a statement signed by the authorized representative certifying that the representative personally examined and is familiar with the application and any information submitted in support thereof and it is

true, accurate, and complete, and that the representative is aware that submitting a false statement may be subject to significant penalties, including fines and imprisonment.

C. New Permits.

(1) For point source discharges, the applicant shall:

(a) identify the quantity, quality, and flow characteristics of the discharge, including discharge volume and industrial classification;

(b) identify the location (latitude and longitude) of the proposed discharge;

(c) provide directions to the project site, discharge location, or facility;

(d) identify the waterbody ("receiving water(s)") where the discharge will occur;

(e) describe the project and nature of the business or activity, including project purpose, products produced or services provided, and reason(s) for the discharge;

(f) include maps, illustrations, drawings, or vicinity maps that properly depict the project and project area, label outstanding national resource waters and impaired waters that may be affected by the discharge, and identify designated critical habitat and historic properties that may be affected by the discharge, if known;

(g) for discharges that may significantly degrade a high-quality surface water pursuant to the state's antidegradation policy and implementation plan in 20.6.4.8 NMAC, identify less degrading or non-degrading alternative pollution control measures that will be used to minimize adverse impacts to aquatic resources, including best management practices or reasonable alternatives;

(h) identify addresses of property owners or lessees whose property adjoins the waterbody; and

(i) list other federal, state, or local environmental permits, certificates, or construction approvals/denials received or applied for under other programs related to the discharge, business, or project and related activity.

(2) For dredged and fill discharges, the applicant shall:

(a) identify the location (latitude and longitude) of the proposed project;

(b) provide directions to the project site;

(c) identify any surface waters within the project area, including surface waters where the dredged or fill material is to be discharged;

(d) describe the project and nature of the activity, including project purpose and services provided, project features, and reason(s) for the discharge;

(e) describe the type of dredged or fill material being discharged and the amount;

(f) report the acreage and linear feet of aquatic resources that will be dredged, filled, or dewatered;

(g) include maps, site plans, illustrations, drawings, or vicinity maps that accurately depict the project and project area, delineate wetlands and other aquatic resources on the project site, label outstanding national resource waters and impaired waters in the project area, and identify designated critical habitat and historic properties that may be affected by the project, if known;

(h) specify the steps that will be taken to avoid and minimize adverse impacts to aquatic resources acreage or functions, including selected control measures chosen for the project in accordance with widely accepted industry standards and guidance for the intended application and any best management practices or reasonable alternatives that are appropriate for the project and have the least adverse impact on aquatic resources;

(i) if the proposed discharge will result in the unavoidable loss of aquatic resource acreage or function, or stream bed, describe how the loss will be compensated for, or provide a statement and supplemental documentation explaining and demonstrating why compensatory mitigation should not be required for the loss;

(j) identify addresses of property owners or lessees whose property adjoins the waterbody; and

(k) list other federal, state, or local environmental permits, certificates, or construction approvals/denials received or applied for under other programs related to the discharge, business, or project and related activity.

D. Existing Permits.

(1) Renewals. A permittee who intends to renew an existing surface water discharge permit shall submit an application for renewal no later than 180 days before the discharge permit expires. An application for

discharge permit renewal must include and adequately address all the information necessary for evaluation of a new discharge permit as identified in Subsection C of this section.

(a) If prior to the expiration date of the permit the department determines that the application is administratively complete, the permit shall continue in full force and effect until the department renews the permit.

(b) If prior to the expiration date of the permit the department determines that the application is not administratively complete, the department shall notify the applicant of the deficiencies in writing and state what additional information is necessary. If the applicant fails to correct the deficiencies and submit additional information, the permit shall be deemed to expire and the person shall be deemed to be discharging without a permit after the expiration date.

(c) If a permittee is out of compliance with the requirements in an existing permit, the permittee shall submit a compliance plan or pollutant minimization plan with its application or as a condition of a renewed permit that identifies actions and measures the permittee will take to control and reduce or eliminate pollutants in the discharge and protect surface water quality.

(2) Modifications. A permittee who intends to discharge a new water contaminant or modify the discharge of an existing water contaminant during the current permit term, including the location or quantity, shall submit an application for discharge permit modification, including all the information necessary for evaluation of a new discharge permit as identified in Subsection C of this section.

(3) Revisions. The secretary may approve a surface water discharge permit revision by providing written notice to the permittee. A permittee or the department may request to revise an existing discharge permit during the permit term for any of the following reasons:

(a) correct typographical errors;

(b) require more frequent monitoring or reporting by the permittee;

(c) change an interim compliance date in a schedule of compliance, provided the new date is not more than 180 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(d) allow for a change in ownership or operational control of a facility where the secretary determines that no other change in the permit is necessary, provided that the permittee submitted an application and a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the department pursuant to paragraph 4 of this subsection; or

(e) delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

(4) Transfers. The secretary may transfer a permit by modification under Paragraph (2) of Subsection D of this section (Existing Permits) upon receipt of a transfer application from the permittee to identify the new permittee ("transferee") and incorporate such other conditions as may be necessary if: the permittee submits the application no later than 30 days before the proposed transfer date, and the application includes a written agreement between the permittee and proposed transferee specifying the date for transfer of permit responsibility, coverage, and liability between them.

(a) The permittee shall be responsible and liable for any discharge covered by the permit until both ownership and possession of the facility have been transferred to the transferee and the secretary approves the transfer.

(b) The permittee shall be responsible and liable for any act or omission that occurred before the secretary approves the transfer.

(c) Upon assuming ownership or possession of the facility, the transferee shall have the same rights and responsibilities under the discharge permit as were applicable to the original permittee.

(d) The transferee is not authorized to discharge under the permit until the secretary approves the transfer.

(e) Nothing in this section or in this Part shall be construed to relieve any person of responsibility or liability for any act or omission which occurred while that person owned, controlled or was in possession of the facility.

E. Permit Terminations.

(1) The secretary may terminate an individual permit for the following:

(a) upon the permittee's request;

(b) the permittee is not in compliance with a condition of the permit;

(c) the permitted activity is determined to endanger human health or the environment and can only be regulated to acceptable levels by permit modification or termination;

(d) violation of a condition of the general permit;

(e) violation of any provisions of the Water Quality Act or any applicable rules, state or tribal water quality standards or regulations, standards of performance, or permit effluent limitations; or

(f) the permittee obtained a permit by misrepresentation or failure to disclose fully all relevant facts.

(2) All requests for termination shall be in writing and shall contain facts and reasons supporting the request.

(3) The secretary shall notify the permittee of the permit termination.

(4) If the permittee does not object within 30 days of receipt of the notification, the secretary shall terminate the permit.

(5) If the permittee objects within 30 days of receipt of the notification, the secretary shall issue a notice of intent to terminate the permit pursuant to 20.6.2.2310 NMAC.

F. Inspections. The department may conduct an inspection of the facility, discharge site, or project site, including the collection and analysis of samples, data, and other information, for the purpose of evaluating the application.

20.6.2.2305 GENERAL PERMITS:

A. The secretary may issue, modify, renew, or terminate a general permit for one or more categories of surface water discharges, or sludge use or disposal practices or facilities, within the state or part thereof, such as a watershed, region, or other geographical area.

B. Categories of discharges under this Section include:

(1) stormwater runoff from municipal separate storm sewer systems, construction activities, industrial activities, and oil and gas activities;

(2) treatment works for municipal, domestic, or industrial wastewater that:

(a) involve the same or substantially similar types of operations;

(b) discharge the same types of waste or engage in the same type of sewage sludge use or disposal practices;

(c) require the same effluent limitations, operating conditions, or standards;

(d) require the same or similar monitoring; and

(e) in the opinion of the secretary, are more appropriately controlled under a general permit than under individual permits;

(3) treatment works for domestic potable water that:

(a) involve the same or substantially similar types of operations;

(b) discharge the same types of waste or engage in the same type of sludge use or disposal practices;

(c) require the same effluent limitations, operating conditions, or standards;

(d) require the same or similar monitoring; and

(e) in the opinion of the secretary, are more appropriately controlled under a general permit than under individual permits;

(4) dredged or fill projects that:

(a) involve the same or substantially similar types of activities;

(b) require the same pollutant controls, operating conditions, or standards;

(c) require the same or similar best management practices and monitoring;

(d) result in no more than minimal adverse environmental effects when performed separately;

(e) result in no more than minimal cumulative adverse effects on water quality and the aquatic environment; and

(f) in the opinion of the secretary are more appropriately controlled under a general permit than under individual permits;

(5) aquaculture, fish hatcheries, or concentrated animal feeding operations that:

(a) involve the same or substantially similar types of operations;

(b) discharge the same types of waste or engage in the same type of sludge use or disposal practices;

(c) require the same effluent limitations, operating conditions, pollution controls, or standards;

(d) require the same or similar monitoring; and

(e) in the opinion of the secretary, are more appropriately controlled under a general permit than under individual permits;

(6) other discharge categories, such as pesticide application, wildfire suppression, hydrostatic testing, or construction dewatering, that:

(a) involve the same or substantially similar types of operations;

(b) discharge the same types of waste or engage in the same type of sludge use or disposal practices;

(c) require the same effluent limitations, operating conditions, or standards;

(d) require the same or similar monitoring; and

(e) in the opinion of the secretary, are more appropriately controlled under a general permit than under individual permits.

C. General permits shall specify:

(1) the requirement to submit a notice of intent or pre-construction notification;

(2) the applicable permit conditions;

(3) requirements to implement appropriate and practicable steps to avoid and minimize adverse impacts to aquatic resources, including best management practices;

(4) actions to minimize adverse effects; or

(5) compensatory mitigation requirements, as applicable, and the date on which a discharge is authorized.

D. If the secretary does not renew a general permit before its expiration date, the current general permit shall be continued, and a person granted general permit coverage shall continue to comply with the general permit until the earlier of:

(1) the secretary renews the general permit, and the person submits a notice of intent or pre-construction notification for such permit;

(2) the secretary decides not to renew the general permit, and the person obtains an individual permit; or

(3) the person submits a notice of termination of general permit coverage.

20.6.2.2306 GENERAL PERMIT COVERAGE:

A. Notice of intent or pre-construction notification. No later than the time specified in the applicable general permit, a person who seeks general permit coverage shall submit one of the following:

(1) for a point source discharge, a notice of intent in the format required by the surface water quality bureau and, as applicable to the type of general permit, the fee specified in 20.6.2.2350 NMAC.

(2) for a discharge of dredged or fill material, a pre-construction notification in the format required by the surface water quality bureau and, as applicable to the type of general permit, the fee specified in 20.6.2.2350 NMAC.

B. Failure to notify. A person who fails to submit a notice of intent or pre-construction notification that complies with the requirements of the applicable general permit shall not be authorized to discharge or to engage in sludge use or disposal.

C. Review of notifications. The department shall review a notice of intent or pre-construction notification as follows:

(1) The department shall review a notification (i.e., notice of intent or pre-construction notification) for completeness based on the requirements for each general permit. A complete notification shall include the applicable application fee as specified in 20.6.2.2350 NMAC.

(2) Within 15 days of receipt, the department shall determine if the notification is complete.

(a) If the department determines the notification is complete, the department shall proceed with assessing whether the activity meets the terms and conditions of the general permit.

(b) If the department determines that the notification is not complete, the department shall notify the applicant of the deficiencies in writing and state what additional information is necessary before general permit coverage may be authorized, and the deadline to submit additional information. Failure to correct the deficiencies and submit additional information by the deadline shall be deemed a withdrawal of the notification.

(3) Within 30 days of determining a notification is complete, the department shall assess whether the activity meets the terms and conditions of the general permit and make a determination with respect to general permit coverage. The department shall respond to the applicant in one of the following ways:

(a) general permit coverage is authorized; or

(b) general permit coverage is not authorized, and the applicant must apply for an individual permit.

(3) If the department denies general permit coverage, the department shall notify the applicant, using certified mail or other method acceptable to the applicant.

(4) A person who fails to submit a timely notification is not authorized to discharge or to engage in sludge use or disposal practice under a general permit.

D. The department shall maintain a list on its website containing the notices of intent and pre-construction notifications submitted for general permit coverage.

E. Transfers.

(1) A permittee who intends to transfer general permit coverage shall submit a notice of intent to transfer no later than 30 days before the proposed transfer date that includes a written agreement between the permittee and proposed transferee specifying the date of transfer of permit responsibility, coverage, and liability between them.

(a) The permittee shall be responsible and liable for any discharge covered by the permit until both ownership and possession of the facility have been transferred to the transferee and the department approves the transfer.

(b) The permittee shall be responsible and liable for any act or omission that occurred before the department approves the transfer.

(2) The person to whom the permittee intends to transfer the general permit coverage ("transferee") shall submit a notice of intent or pre-construction notification, as applicable to the type of discharge.

(a) The transferee shall not be authorized to discharge under the general permit until the department approves the transfer.

(b) Upon assuming ownership or possession of the facility, the transferee shall have the same rights and responsibilities under the general permit coverage as were applicable to the original permittee.

(c) The transfer shall be effective on the date the transferee receives notice from the department that general permit coverage has been authorized.

(3) Nothing in this Section or in this Part shall be construed to relieve any person of responsibility or liability for any act or omission which occurred while that person owned, controlled or was in possession of the facility.

F. Modifications. The secretary may modify general permit coverage in accordance with Subsection N of Section 74-6-5 NMSA 1978.

G. Terminations.

(1) The secretary may terminate general permit coverage for the following:

(a) upon the permittee's request if the discharge has terminated,

(b) an individual permit has been issued;

(c) the general permit coverage has been transferred;

(d) the construction or operation has ceased and the termination conditions in the general permit have been satisfied;

(e) the discharge no longer qualifies for permit coverage;

(f) violation of a condition of the general permit;

(g) violation of this Part or any applicable rules, water quality standards, standards of performance, effluent regulations, or effluent limitations;

(h) the discharge is causing water quality to exceed applicable standards in the receiving or downstream surface water; or

(h) the permittee obtained general permit coverage by misrepresentation or failure to disclose fully all relevant facts.

(2) All requests for termination shall be in writing and shall contain facts and reasons supporting the request.

(3) The secretary shall notify the permittee of the permit coverage termination.

H. Individual Permits in lieu of General Permit Coverage.

(1) A permittee may request an individual surface water discharge permit in lieu of general permit coverage.

(2) The secretary shall require a permittee to obtain an individual surface water discharge permit in lieu of general permit coverage if:

(a) the discharge does not meet dredged and fill general permit thresholds or conditions;

(b) the permittee is not in compliance with the conditions of the general permit;

(c) it is determined that the discharge is a significant contributor of pollutants considering the location, size, quantity, and toxicity or nature of the pollutants);

(d) a change has occurred in the availability of demonstrated technology or practices for the control or minimization of water contaminants applicable to the point source;

(e) effluent limitation guidelines are promulgated for point sources covered by the general permit and the secretary determines that the discharge is more appropriately controlled under an individual permit than under a general permit;

(f) the secretary determines that the discharge is no longer appropriately controlled under the general permit, or a temporary or permanent reduction or elimination of the authorized discharge is necessary; or

(g) the surface water is designated as an outstanding national resource water in 20.6.4.9 NMAC.

(3) The secretary may require an applicant to obtain an individual surface water discharge permit in lieu of general permit coverage by providing notice stating:

(a) the reason(s) for requiring an individual permit;

(b) the deadline for submitting an application for an individual permit;

(c) that the permittee's general permit coverage shall terminate on the effective date of an individual permit; and

(d) that the permittee may request review of the secretary's decision.

(4) The secretary may extend the deadline to submit an application for an individual surface water discharge permit for good cause.

(5) If the permittee fails to submit an administratively complete application for an individual surface water discharge permit by the deadline, the permittee's general permit coverage shall be automatically terminated.

I. Emergency Permits.

(1) The secretary may issue a temporary emergency permit for a discharge of dredged or fill material if harm to life or severe loss of physical property is likely to occur before a discharge permit could be issued or modified under normal procedures. If the situation is deemed an emergency, the applicant shall immediately contact the department and complete the appropriate permit process as soon as practicable or immediately after the emergency.

(2) The emergency permit shall incorporate, to the extent possible and not inconsistent with the emergency, all applicable requirements of 20.6.2.2307 NMAC.

(a) The emergency permit shall be limited to the duration of time required to complete the authorized emergency action, and the action shall be the restricted to minimum necessary to alleviate the emergency.

(b) The emergency permit shall have a condition requiring appropriate restoration of the site.

(3) The emergency permit may be terminated at any time if the secretary determines that termination is necessary to protect human health or the environment.

(4) The secretary shall consult in an expeditious manner with federal or other state agencies, and any nation, tribe, or pueblo government, as appropriate, about issuance of an emergency permit.

20.6.2.2307 PERMIT CONDITIONS FOR INDIVIDUAL AND GENERAL PERMITS:

A. The secretary shall impose individual and general permit conditions that achieve compliance with the Standards for Interstate and Intrastate Surface Waters at 20.6.4 NMAC.

B. Each individual and general permit shall provide for the following as required to protect surface water quality and aquatic resources:

(1) the installation, use, and maintenance of monitoring devices to track and verify water quality, assess treatment or best management practice effectiveness, or track the success of minimization and mitigation efforts;

(2) continuation of monitoring after cessation of operations to confirm there are no residual adverse impacts to water quality or aquatic resources from the discharge or project;

(3) a system of monitoring and reporting of results and information to verify that the discharge is achieving the expected results and confirm permit compliance;

(4) for point source discharges:

(a) the development and implementation of a pollutant minimization plan to control and reduce or eliminate pollutants in surface water discharges, including emerging contaminants or contaminants identified in general criteria under 20.6.4.13 NMAC;

(b) a compliance schedule for a permittee to make treatment facility improvements necessary to comply with water quality-based permit limitations determined to be necessary to implement water quality standards or wasteload allocations. Compliance schedules may be included in surface water discharge permits at the time of permit issuance, renewal, or modification and shall be written to require compliance at the earliest practicable time. Compliance schedules shall specify milestone dates to measure progress towards final project completion (e.g., design completion, construction start, construction completion, date of compliance).

(5) retention of any required monitoring data for a period of at least five years, or the length of the permit term if the term is longer than five years;

(6) procedures for detecting failure of the treatment system or project; or,

(7) contingency plans to cope with failure of the treatment system or project.

C. Sampling and analytical techniques shall conform with 20.6.4.14 NMAC unless otherwise specified by the secretary.

D. The permittee shall notify the secretary of any facility expansion, production increase or process modification that would result in a modification in the quality or quantity of discharge pursuant to Subparagraph (2) of Subsection D of 20.6.2.2304 NMAC.

E. The permittee shall notify the secretary of any project expansion or modification that would result in no longer meeting general permit coverage requirements pursuant to Subsection G of 20.6.2.2306 NMAC, and Paragraph (2) of Subsection C or Paragraph (2) of Subsection D of 20.6.2.2304 NMAC.

F. The secretary shall notify downstream Indian nations, tribes, and pueblos if a permittee notifies the secretary pursuant to Subsections D or E of 20.6.2.2307 NMAC that facility or project modifications will affect the quality or quantity of the permittee's discharge.

G. The following conditions apply to all surface water discharge permits.

(1) **Duty to comply.** The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Water Quality Act and is grounds for an enforcement action, permit termination, revocation and reissuance, modification, or denial of a permit renewal application.

(2) **Duty to reapply.** If the permittee wishes to continue an activity regulated by a surface water discharge permit, the permittee must apply for and obtain a permit renewal pursuant to Paragraph (1) of Subsection D of 20.6.2.2304 NMAC or 20.6.2.2305 NMAC.

(3) **Need to halt or reduce not a defense.** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the conditions of a permit.

(4) **Duty to avoid, minimize, and mitigate.** The permittee shall take all reasonable steps to avoid and minimize any adverse impact on aquatic resources resulting from the surface water discharge and to correct any noncompliance with a surface water discharge permit.

(5) **Proper operations and maintenance.** The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of a surface water discharge permit. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of a surface water discharge permit.

(6) **Permit actions.** A surface water discharge permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(7) **Property rights.** A surface water discharge permit does not convey any property rights of any sort, or any exclusive privilege.

(8) **Duty to provide information.** The permittee shall furnish to the surface water quality bureau, within a time specified, any information which the secretary or department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating a permit, or to determine compliance with a permit.

(9) Duty to provide notice. Public notice, when required, shall be provided as set forth in 20.6.2.2308 NMAC.

(10) Inspection and entry. Any permittee shall allow any authorized representative of the secretary to:

(a) enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records are kept as a condition of a permit;

(b) inspect and copy records required by a discharge permit;

(c) inspect the facility, treatment works, project, activity, project site, discharge site, equipment (including monitoring and control equipment), practices (including best management practices), or operations regulated or required by a discharge permit;

(d) sample influent, effluent, or receiving water before or after discharge, for the purposes of assuring permit compliance; and

(e) use monitoring systems or wells installed pursuant to a discharge permit requirement to collect samples from surface water or ground water.

(11) Monitoring and records.

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) The permittee shall retain records of all data used to complete an application for a surface water discharge permit and any supplemental information submitted, for a period of at least five years from the date the permit is issued; this period may be extended by request of the secretary at any time. The permittee shall retain records of all monitoring information for five years from the date of the sample, measurement or report; this period may be extended by request of the secretary at any time.

(12) Signatory requirements. All applications, reports, or information submitted to the secretary shall be signed and certified by an authorized representative of the permittee.

(13) Reporting requirements.

(a) **Anticipated noncompliance**. The permittee shall give advance notice to the surface water quality bureau of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

(b) **Twenty-four hour reporting**. The permittee shall report any noncompliance which may endanger public health or the environment, including endangerment to a surface water of the state of New Mexico.

(c) **Other information**. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application or submitted incorrect information in a permit application or in any report to the secretary or department, it shall promptly submit such facts or information.

H. The following conditions apply to point source discharges.

(1) Technology-based treatment requirements.

(a) for publicly owned treatment works, effluent limitations based on secondary treatment requirements consistent with federal secondary treatment regulations found in 40 C.F.R. Part 133.

(b) for dischargers other than publicly owned treatment works, conventional pollutant control (biochemical oxygen demand, total suspended solids, pH, E. coli, and oil and grease), toxic pollutant control, and other pollutant control, effluent limitations requiring the best available technology consistent with federal effluent guideline regulations found in 40 C.F.R Chapter I, Subchapter N, which represent the greatest pollutant reductions that are economically achievable for an industry.

(c) in setting technology-based effluent limitations using best professional judgement, the permit writer must consider the age of the equipment and facility, the treatment process employed, the application of various types of control techniques, process changes, the costs of achieving such effluent reduction, and non-water quality impacts such as energy requirements or water consumption.

(2) Other. The secretary may require other specific conditions, including water quality-based effluent limitations or requirements that are consistent with a total maximum daily load, other wasteload allocations, the water quality standards and the state's antidegradation policy, if needed based on the discharge and receiving water quality or condition.

(3) Anti-backsliding. Effluent limitations, permit conditions, or standards less stringent than those established in a previous permit are prohibited except where:

(a) new information is available that was not available at the time of permit issuance and that would have justified a less stringent effluent limitation;

(b) technical mistakes were made in the previous permit;

(c) the less stringent effluent limitation is based on a total maximum daily load or other wasteload allocation and the attainment of water quality standards is ensured; or

(d) the water quality criterion that the original limitation was based on was changed resulting in a less stringent limitation; or

(e) the action is consistent with the state's antidegradation policy.

The anti-backsliding exceptions listed above do not apply when the relaxation of an effluent limitation would result in a violation of water quality standards, including antidegradation requirements.

(4) **Aquaculture projects.** Any pollutants not required by or beneficial to the project purpose and operation shall not exceed applicable standards and limitations when entering the designated project area.

(5) **Cooling water intake structures for new facilities.**

(a) New facilities must select and implement design and construction technologies or operational measures to minimize adverse environmental impacts, such as impingement (organisms caught on screens) or entrainment (organisms pulled into the cooling system) of fish and other aquatic life, or excess water withdrawal and use.

(b) The location, design, construction, and capacity of cooling water intake structures must reflect the best technology available, such as reduced intake flow, improved intake design and entrainment minimization technologies, to minimize adverse environmental impacts.

I. The following conditions apply to discharges of dredged or fill material.

(1) **Pre-construction notification.** A person who seeks general permit coverage for a discharge of dredged or fill material shall submit a pre-construction notification to the surface water quality bureau.

(2) **Avoidance and minimization.** The permittee shall design and construct the activity to avoid and minimize adverse impacts to aquatic resource acreage and functions, both temporary and permanent, to the maximum extent practicable. Appropriate and practicable measures to avoid and minimize adverse impacts to aquatic resources include actions such as:

(a) avoid working in aquatic resources whenever possible;

(b) flag or otherwise mark aquatic resource boundaries, especially wetlands, in order that construction crews can avoid them;

(c) avoid working in wetlands when soils are too saturated to support heavy machinery;

(d) avoid permanent impacts to aquatic resources such as draining, filling, or other hydro-modifications;

(e) install permeable fills to allow natural seepage flows;

(f) use the smallest machinery that can handle the job, preferably non-mechanized equipment;

(g) use wide tires, tracks, or wooden or geotextile construction mats to disperse weight and minimize soil compaction when heavy machinery is required;

(h) minimize impacts by stockpiling and salvaging vegetation and stockpiling hydric soils to be reused during post-construction stabilization; and

(i) avoid and minimize channel and bank erosion by using a single or minimal access point.

(3) **Least environmentally damaging practicable alternative.** No discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

(4) **Impaired water bodies.** If a proposed activity will result in fill material in an impaired surface water, the permittee shall select and implement specific measures, or best management practices, to control the applicable water contaminants and prevent further degradation of the water quality.

(5) **Best management practices (BMPs).** Permittees shall select and implement all practicable and reasonable BMPs that are appropriate for their project. Depending on project-specific requirements or constraints, practicable and reasonable BMPs for New Mexico surface waters may include:

(a) **Scheduling.** Do not carry out the project during times of predictable flooding to avoid working in high water (seasonal monsoons, snowmelt, or releases from dams).

(b) **Crossings.** Limit stream and wetland crossings to a single, narrow location that is perpendicular to the stream or along a contour of a wetland.

(c) **Diversions.** Flowing water that is diverted around the work area must remain within the existing channel and provide for aquatic life movement. Diversions must be non-erodible, such as

sandbags, water bladders, concrete barriers, or berms lined with geotextile or durable plastic sheeting. Unlined berms, cofferdams or trenches are not acceptable diversion structures.

(d) Heavy equipment. Pressure wash and/or steam clean equipment that will be used before the start of the project and inspect daily for leaks to remove contaminants and to avoid introducing invasive species. Complete a written log of inspections and maintenance throughout the project period. Do not use leaking equipment in or near a surface water. Do not park or leave equipment stored within the stream channel, floodplain, or wetland. Operate from the bank or work platforms whenever possible. Heavy equipment should only be operated in flowing or standing water during an emergency or when a diversion or best management practices are not practical to implement..

(e) Fuel. Store fuel, oil, hydraulic fluid, lubricants, and other chemicals outside of the 100-year floodplain within a secondary containment system capable of containing twice the volume of the product. Refuel equipment at least 100 feet from a surface water.

(f) Construction material. Use appropriate fill material. Broken concrete, tires, tire bales, treated lumber, and other refuse material shall not be used as fill material. Properly handle and contain all asphalt, concrete, drilling fluids and other construction materials to prevent releases to a surface water. Fully contain poured concrete in mortar-tight forms and/or placed behind non-erodible cofferdams to prevent contact with surface or ground waters. Use containment measures to prevent wastewater from concrete batching, vehicle and equipment wash-down, or aggregate processing from impacting aquatic resources.

(g) Demolition, repair, and cleaning activities. Keep materials associated with demolition, repair, and cleaning activities of bridges or associated structures out of the stream channel, wetland, and other aquatic resources. Secure impermeable containment material (e.g., durable plastic sheet, canvas, tarpaulins or other catchment devices) under the structure to capture falling debris. Sandblasting must include vacuum systems, or the structures must be completely contained to collect all paint and concrete debris. Properly dispose of any debris that falls onto the containment area or stream channel in accordance with New Mexico's solid waste regulations in 20.9.1 NMAC. Construction debris shall be removed daily and not stored within the channel. Maintain applicable safety data sheets of water repellants and surface finish treatments at the project site and follow safety procedures for use near open water.

(h) Trenching. Backfill and compact excavated trenches to match the adjacent undisturbed soil and topography. Excavated trenches shall not result in draining any surface water including wetlands. Excavated trenches shall include escape ramps for wildlife. Minimize the length and duration of open trenches by using planning and construction practices.

(i) Dewatering discharges. Dewatering discharges shall not contain contaminants, including excessive turbidity and other contaminants associated with the discharge, in concentrations that exceed New Mexico's surface water or ground water standards in 20.6.4 NMAC and 20.6.2 NMAC. Appropriate dewatering best management practices include discharging to a sediment basin within an uplands area behind a vegetative buffer, using fabric, biobag, or hay-bale corrals, or using geotextile filter bags.

(j) Dust control. Water used in dust suppression shall not contain contaminants in concentrations that exceed New Mexico's surface water or ground water standards in 20.6.4 NMAC and 20.6.2 NMAC.

(k) Erosion control. Avoid and minimize channel and bank disturbance and avoid disturbance of vegetation to minimize the amount of bare ground during construction. Establish and maintain upland buffers between upland construction and all surface waters and aquatic resources. Employ silt fences, seed-free straw mulch, hydro-mulch, biodegradable straw wattles, or other erosion control materials and techniques, as appropriate, to protect surface waters from sedimentation and other pollutants. Avoid using jute netting or placing woven wire in contact with the stream without other materials like a rock filled gabion, as these materials have been known to trap and kill fish and wildlife in or near streams or rivers.

(m) Post-construction stabilization. The permittee and its contractors shall take necessary steps to minimize channel and bank erosion after construction. Where possible, disturbed banks shall be reseeded or replanted with native vegetation. Native woody riparian and/or wetland species must be used in areas that support such vegetation. Areas outside stream channels that were disturbed by construction must be reseeded or planted with native vegetation so that vegetative regrowth is functionally equivalent to the pre-disturbed site or reference site. Stabilization measures including vegetation are required at the earliest practicable date. The department will determine the requirements for post-construction monitoring on a case-by-case basis.

(4) Fills within floodplains. The authorized dredged or fill activity shall maintain floodplain connectivity and riparian buffers.

(5) Spills. Appropriate spill cleanup materials such as absorbent pads and spill booms shall be available on-site at all times during construction. The permittee shall report all spills immediately to the department as required by this Part pursuant to 20.6.2.1203 NMAC. For non-emergencies during normal business hours, call 505-428-2500. For non-emergencies after hours, call 866-428-6535. For emergencies only, call 505-827-9329 twenty-four hours a day (New Mexico department of public safety).

(6) Posting. The permittee shall provide all contractors and subcontractors with a copy of the dredged or fill permit and make all contractors and subcontractors aware of the permit conditions prior to initial operation. A copy of the permit must be kept at the project site during all phases of construction.

(7) Other. The secretary may require other specific conditions depending on the project and activity.

J. Compensatory mitigation for unavoidable adverse impacts to aquatic resources resulting from a discharge of dredged or fill material may be required. If the proposed discharge will result in the loss of greater than 1/10 acre of aquatic resources or the loss of greater than 3/100 acre of stream bed, compensatory mitigation shall be required, unless the secretary determines in writing that either some other form of mitigation would be more environmentally appropriate, or the adverse environmental effects of the proposed activity are no more than minimal. For aquatic resource losses of 1/10-acre or less and stream channel losses of 3/100 acre or less, the secretary may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(1) The secretary shall evaluate the duration of impacts, severity and scale of impacts, and the current condition of the impacted aquatic resource(s) when determining if compensatory mitigation is required for a dredged or fill permit.

(2) Compensatory mitigation requirements shall be commensurate with the amount and type of impact, including losses of ecological functions, services and values, that are associated with the permit and the secretary shall determine the appropriate mitigation ratio for the required area of mitigation to the area of aquatic resources impacted.

(3) The permittee shall satisfy compensatory mitigation requirements through the completion of an aquatic resource mitigation project with the prior concurrence of the department. The permittee is responsible for proposing the mitigation project, including an appropriate compensatory mitigation activity, such as restoration, enhancement, preservation and establishment, and location. Mitigation projects shall include monitoring to verify its long-term success in providing the intended outcome(s).

(4) The department shall review a proposed mitigation project plan by assessing the likelihood for ecological success and sustainability, the location of the mitigation site relative to the impact site and their significance within the watershed, and the costs of the project.

(5) All compensatory mitigation projects shall comply with the standards in this Part and the Standards for Interstate and Intrastate Surface Waters in 20.6.4 NMAC.

(6) The department's concurrence with a proposed mitigation project plan shall not be unreasonably withheld.

20.6.2.2308 ADMINISTRATIVE COMPLETENESS OF INDIVIDUAL PERMIT APPLICATIONS:

A. The department shall not process and issue an individual discharge permit before receiving a complete application.

B. Within 30 days of receipt of an application for an individual discharge permit the department shall review the application for administrative completeness.

C. An administratively complete package shall include a complete application and any required supplemental application materials, as specified by the department on the department's website. Each application shall include the information required by Subsection B of 20.6.2.2304 NMAC, Subsections C or D of 20.6.2.2304 NMAC, Paragraphs (1) through (5) of Subsection G of 20.6.2.2308 NMAC, and, as applicable to the type of application, payment of the fee specified in 20.6.2.2350 NMAC.

D. The department shall notify the applicant in writing when the application is deemed administratively complete.

E. If the department determines that the application is not administratively complete, the department shall notify the applicant of the deficiencies in writing within 30 days of receipt of the application and state what additional information is necessary and the deadline to submit additional information. Failure to correct the deficiencies and submit additional information by the deadline shall be deemed a withdrawal of the application.

20.6.2.2309 PROCESSING OF INDIVIDUAL PERMIT APPLICATIONS:

A. The department shall process an administratively complete application for an individual discharge permit in accordance with Sections 20.6.2.2310 through 20.6.2.2313 NMAC.

B. The department may request additional information, including a new or revised application, from an applicant, transferee, or requester to implement this Part, and such additional information shall be considered part of the application. Upon the department's request for additional information, the processing timeframe shall temporarily pause. The department will provide an updated processing timeline to the applicant, transferee, or requestor.

C. The department may conduct an inspection of the site, including the collection and analysis of samples, data, and information, at any time as it deems necessary to implement this Part, and such additional information shall be considered part of the application.

D. In appropriate cases, the secretary may consult with any state or federal agency with jurisdiction over water, fish, wildlife, or public health, and shall consult with any Indian nation, tribe or pueblo government, before issuing a draft permit and may reflect their views in the statement of basis, the fact sheet, or the draft permit.

20.6.2.2310 DRAFT PERMITS, NOTICES OF INTENT TO DENY THE APPLICATION, AND NOTICES OF INTENT TO TERMINATE THE PERMIT:

A. After an application for an individual permit is deemed administratively complete and all required technical information is available, or the secretary notifies the permittee that they intend to deny the application or to modify or terminate the permit under Paragraph (2) of Subsection D of 20.6.2.2304 NMAC or Subsection E of 20.6.2.2304 NMAC, the department shall prepare a draft permit, notice of intent to deny the application for an individual discharge permit, modification, or renewal, or notice of intent to terminate the permit. The draft permit shall include all proposed effluent limitations, conditions that comply with 20.6.2.2307 NMAC, as applicable, and all proposed monitoring, recordkeeping, and reporting requirements deemed appropriate for inclusion in the draft general permit, modification, or renewal by the department.

B. If the department decides to issue a draft general permit or modify or renew a general permit, the department shall prepare a draft general permit, modification, or renewal that contains the information, as applicable, required in Subsection C in Section 20.6.2.2305 NMAC. The draft general permit, modification, or renewal shall also contain all conditions required pursuant to Section 20.6.2.2307 NMAC and deemed appropriate for inclusion in the draft general permit, modification, or renewal by the department.

C. If the secretary decides to terminate a general permit, the department shall prepare a notice of intent to terminate the general permit.

D. A draft permit for an individual or general permit modification shall only include those permit terms, conditions, and other requirements proposed to be modified.

E. The department shall prepare a fact sheet for every draft individual or general permit. The fact sheet shall provide a clear and concise explanation of why the draft permit is being issued, the conditions it places on the discharge and the permittee, and justification for the conditions and effluent limits. The fact sheet shall include the following information, except that for a general permit the facility-specific information in Paragraph (1) of this Subsection shall not be required:

(1) facility information including the name, facility and discharge location, and facility type, and a description of the permitted flow, expected quality and quantity of the discharge, contaminants to be discharged, and treatment processes or best management practices and other practices used;

(2) any proposed effluent limitations including specific limits for expected contaminants, any monitoring and reporting requirements, and substantial changes from the previous permit;

(3) a summary of the rationale for the draft permit conditions, including the statutory and regulatory basis for the permit conditions and references to water quality standards and, as applicable, tribal water quality standards, and pertinent technical details, calculations, and assumptions used to determine the effluent limitations and develop the permit conditions;

(4) how the public can comment on the draft permit, any opportunities for a public hearing, and an explanation of the process for challenging a draft permit; and

(5) a description of the appropriate supporting references to the administrative record, including alternatives or cost analyses provided to justify a discharge, antidegradation and reasonable potential analyses used to calculate limits, functional assessments to identify baseline conditions, compliance or mitigation plans that identify measures the permittee will use to protect water quality and aquatic resources, and other relevant information that support the rational for the draft permit conditions and requirements.

F. For a notice of intent to deny an application for an individual permit or terminate an individual or general permit, the department shall prepare a statement of basis explaining the reasons.

20.6.2.2311 PUBLIC NOTICE AND PARTICIPATION:

A. Within 90 days after the department makes its administrative completeness determination and all technical information is available, the department shall provide a copy of the draft individual permit and fact sheet, or notice of intent to deny an individual permit to the applicant, and require written acknowledgement of receipt, and shall provide to the public notice of the draft individual or general permit or the notice of intent to deny an individual permit as follows, except that for a general permit Paragraphs (2) and (4) of this Subsection shall not be required:

(1) post notice on the department's website;

(2) mail or email notice to affected local, state and federal government agencies, land grant organizations, ditch associations and Indian nations, tribes and pueblos, as identified by the department; and

(3) the department shall also provide notice to the general public and others whom the commission deems appropriate using one or more reasonable and appropriate methods, such as electronic mail to persons who have requested notification via the department's listserv, social media posts, radio announcements or advertisements in a newspaper of general circulation in the location of the discharge or proposed discharge site.

(4) In providing notice of a draft permit, the department shall consider the languages spoken by and the communication methods accessible to the intended recipients of the public notice.

B. Concurrent with the department's notice in Subsection A of this Section, the applicant for an individual surface water discharge permit shall provide notice to the public of the draft permit as follows:

(1) Mail or email notice to adjacent and nearby landowners within a 1/3-mile distance from the discharge location or project site.

(2) For new surface water discharge permits or permit modifications, post notice at a place conspicuous to the public and near the discharge or project site.

(3) In providing notice of a discharge permit, the applicant shall consider the languages spoken by and the communication methods accessible to the intended recipients of the public notice.

C. The public notice provided under Subsections A and B of this Section shall include the following, except that for a general permit Paragraphs (1) through (3) of this Subsection shall not be required:

(1) the name and address of the proposed discharger;

(2) the location of the discharge, including a street address, if available, and sufficient information to locate the facility or project site with respect to surrounding landmarks;

(3) a description of the watershed or sub-watershed, the name of the receiving water for point source discharges or the name of surface waters within the project area for dredged or fill discharges, and the applicable water quality standards segment, including designated uses;

(4) a description of the activities that produce the discharge described in the application;

(5) a description of the expected or actual quality and volume of the discharge;

(6) the address and phone number within the department by which interested persons may obtain information, submit comments, and request to be placed on an interested persons mailing list for future notices;

(7) a statement that the department will accept comments and statements of interest regarding the draft permit and how to register for the interested persons contact list;

(8) a brief description of the procedures to be followed by the secretary in making a final determination;

(9) a statement of the comment period and description of the procedures for a person to request a public hearing on the application; and

(10) how a person may obtain a copy of the draft individual or general permit and fact sheet or the notice of intent to deny an individual permit.

D. Within 15 days of completion of the public notice requirements in Subsection B of this Section, the applicant shall submit to the department proof of notice, including an affidavit of mailing(s) and the list of property owner(s), proof of publication, and an affidavit of posting, as appropriate.

E. Following the public notice of the draft individual or general permit or notice of intent to deny an individual permit, and prior to a final decision by the secretary, there shall be a period of at least 30 days during which written comments may be submitted to the department and a public hearing may be requested in writing. The 30-day public comment period shall begin on the date designated in the notice published on the department's website. All comments will be considered by the department. The department may extend the comment period upon written request. If a public hearing is held, the department shall extend the public comment period to the close of the public hearing.

20.6.2.2312 PUBLIC HEARINGS:

A. Requests for a hearing shall be in writing and shall set forth the reasons why a hearing is being requested.

B. A public hearing shall be held if the secretary determines there is substantial public interest, if an Indian nation, tribe, or pueblo government requests a public hearing, or the department, in its discretion, determines that a hearing may clarify a relevant issue or may clarify a relevant or complex issue raised by comments received by the permittee, public, or tribal government.

C. The department shall notify the applicant for an individual permit and any person requesting a hearing of the decision whether to hold a hearing and the reasons therefore in writing.

D. The hearing shall be held in the area of the discharge site or project area, except that for general permits the hearing shall be held in the affected region, basin, or watershed, or in Santa Fe if the general permit applies statewide.

E. At least 30 days prior to the hearing, the department shall give notice in the manner specified in Subsection A of 20.6.2.2311 NMAC, as applicable. The department may combine this notice with the notice of the draft permit, notice of intent to deny the application, or notice of intent to terminate the permit.

F. The notice shall include the information identified in Paragraphs (1) through (5) and (10) of Subsection C of 20.6.2.2311 NMAC and:

(1) the date of previous notices relating to the draft permit, notice of intent to deny the application, or notice of intent to terminate the permit;

(2) the date, time, and place of the hearing; and

(3) a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

G. The hearing shall be conducted in accordance with 20.1.4 NMAC.

20.3.2.2313 PUBLIC HEARING PARTICIPATION FOR SURFACE WATER PERMITS:

A. The secretary may appoint an impartial hearing officer to preside over the hearing. The hearing officer may be a department employee other than an employee of the bureau evaluating the application.

B. The hearing shall be at a place in the area affected by the facility for which the individual permit proposal, modification, or renewal is sought, or, for general permits, in the affected region, basin, or watershed, or in Santa Fe if the general permit applies statewide.

C. Any person who wishes to present technical evidence at the hearing shall, no later than 10 days prior to the hearing, file with the department, a statement of intent to present technical evidence. If the hearing is on an individual permit, a statement filed by a person who is not the applicant shall also be served on the applicant. A person who does not file a statement of intent to present technical evidence may present a general non-technical statement in support of or in opposition to the proposed individual or general permit, modification, or renewal. The statement of intent to present technical evidence shall include:

(1) the name of the person filing the statement;

(2) whether the person filing the statement supports or opposes the proposed individual or general permit, modification, or renewal;

(3) the name and qualifications of each witness;

(4) an estimate of the length of the direct testimony of each witness;

(5) a list of exhibits, if any, to be offered into evidence at the hearing; and

(6) a summary of the anticipated direct testimony of each witness.

D. At the hearing, the New Mexico Rules of Civil Procedure and the New Mexico Rules of Evidence shall not apply. At the discretion of the hearing officer, the rules may be used as guidance. Any reference to the Rules of Civil Procedure and the Rules of Evidence shall not be construed to extend or otherwise modify the authority and jurisdiction of the department under the Act.

E. The hearing officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, and avoid delay. The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair, and impartial adjudication of issues arising in the proceedings.

F. At the hearing, all persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.

G. Unless otherwise allowed by the hearing officer, testimony shall be presented in the following order:

(1) in a hearing on an individual permit, testimony by and examination of the applicant or permittee proving the facts relied upon to justify the proposed permit, renewal, or modification and meeting the requirements of the rules, or, in a hearing on a general permit, testimony by and examination of the department proving the facts relied upon to justify the proposed general permit, renewal, or modification and meeting the requirements of the rules;

(2) testimony by and examination of technical witnesses supporting or opposing approval, approval subject to conditions, or disapproval of the proposed permit, renewal, or modification, in any reasonable order;

(3) testimony by any Indian nation, tribe, or pueblo government, agency, or representative;

(4) testimony by the general public; and

(5) rebuttal testimony, if appropriate.

H. The secretary may provide translation service at a public hearing conducted in a locale where the department can reasonably expect to receive testimony from non-English speaking people.

I. If determined useful by the hearing officer, within 30 days after the conclusion of the hearing, or within such time as may be fixed by the hearing officer, the hearing officer may allow proposed findings of fact and conclusions of law and closing argument. All such submissions, if allowed, shall be in writing, shall be served upon the applicant or permittee (if applicable), the department, all parties to the proceeding, and all persons who request copies in advance in writing, and shall contain adequate references to the record and authorities relied upon. No new evidence shall be presented unless allowed by the hearing officer.

J. The department shall make an audio recording of the hearing or shall have the hearing transcribed by a court reporter. If the applicant, permittee, or a participant requests a written transcript or certified copy of the audio recording, the requestor shall pay the cost of the transcription or audio copying unless the transcript or certified copy is available pursuant to the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978.

K. The hearing officer shall issue a report within 30 days after the close of the hearing record. The report may include findings of fact, conclusions of law or discretion, and reasons therefore. The report shall be served on the applicant or permittee (if applicable), the department, all parties to the proceeding, and all persons who requested copies in advance in writing. The report will be available for public inspection at the department's office in Santa Fe and at the field office closest to the point of the proposed discharge.

L. Any person who testifies at the hearing or submits a written statement for the record will be considered a participant for purposes of 20.6.2.2313 NMAC and Subsection P of Section 74-6-5 NMSA 1978.

20.6.2.2314 SECRETARY REVIEW AND APPROVAL FOR INDIVIDUAL PERMITS:

A. The department shall evaluate the application for a new individual discharge permit, modification, or renewal based on information contained in the application, additional information required by the department, any additional information submitted by the applicant or permittee or the general public, other relevant information considered by the department including antidegradation or reasonable potential analysis, alternatives analysis, functional assessments, applicable total maximum daily loads, water quality and designated use attainment in the receiving stream, and, if a public hearing is held, any testimony, information, public comment provided, associated hearing officer report, and post hearing submissions. The department shall prepare a final draft discharge permit based on this evaluation for the secretary's review and approval.

B. Within 30 days after the draft individual permit is provided for review with all required information, including the hearing officer's report if applicable, the secretary shall approve, approve with modifications, or deny the draft individual permit, modification, or renewal based on the administrative record. The secretary shall issue a response to comments that shall specify which provisions, if any, in the draft permit were changed and the reasons for the change and shall briefly describe and respond to all significant comments on the draft permit raised during the public comment period or at any hearing. The secretary shall notify the applicant or permittee of the action taken and the reasons for such action and shall include a copy of the response to comments. Notice shall also be given to persons who participated in the permitting action.

C. If data submitted pursuant to any monitoring requirements specified in the individual permit or other information available to the secretary indicates that this Part is being or may be violated or that the Standards for Interstate and Intrastate Waters in 20.6.4 NMAC are being or would be violated as a result of the discharge:

(1) The secretary may require a modification to an individual permit within the shortest reasonable time to achieve compliance with this Part and to require that any exceedance of standards in surface water due to the discharge will be mitigated and prevented.

(2) The secretary may terminate an individual permit when a discharger fails to modify the permit in accordance with Paragraph (2) of Subsection D of 20.6.2.2304 NMAC.

D. If an individual permit is terminated, the secretary shall notify the permittee by certified mail of the action taken and the reasons for that action. Notice of the termination shall also be given by mail or electronic mail to persons who participated in the permitting action and to persons on the facility-specific list maintained by the department.

E. If an individual permit expires or is terminated for any reason and the Standards for Interstate and Intrastate Waters in 20.6.4 NMAC are being or may be violated as a result of the discharge or activities related to the discharge, the secretary may require the permittee to submit a mitigation or corrective action plan pursuant to 20.6.2.1203 NMAC.

F. At the request of the permittee, a discharge permit may be modified in accordance with Paragraph (2) of Subsection D of 20.6.2.2304 NMAC.

G. The secretary shall deny an application for an individual permit, modification, or renewal if:

(1) the discharge would not comply with applicable effluent limitations or standards;

(2) the discharge does not include appropriate and practicable measures to avoid and minimize potential harm to the aquatic resources;

(3) the discharge would cause or contribute to an exceedance of a water quality standard in or violate any requirement of 20.6.4 NMAC – Standards for Interstate and Intrastate Surface Waters;

(4) the discharge would cause or contribute to an exceedance of a downstream state or tribal water quality standard;

(5) the discharge would violate any requirement of state or federal law; or

(6) the applicant has, within the ten years immediately preceding the date of submission of the application:

(a) knowingly misrepresented a material fact in an application for a permit;

(b) refused or failed to disclose any information required under the Clean Water Act or Water Quality Act;

(c) been convicted of a felony or other crime involving moral turpitude;

(d) been convicted of a felony in any court for any crime defined by state or federal law as being a restraint of trade, price-fixing, bribery or fraud;

(e) exhibited a history of willful disregard for environmental laws of any state, Indian tribe, nation or pueblo, or the United States; or

(f) had an environmental permit revoked or permanently suspended for cause under any environmental laws of any state, Indian tribe, nation or pueblo, or the United States.

H. Individual permits may be issued for fixed terms up to 10 years. For a permit term greater than five years, there shall be a demonstration that justifies a longer permit term. Justification may include facilities with a good compliance history, less complex or minor facilities, facilities with state-of-the-art treatment technologies, or similar justifications.

20.6.2.2315 SECRETARY REVIEW AND APPROVAL FOR GENERAL PERMITS:

A. Within 45 days after the draft general permit is provided for review with all required information, the secretary shall approve, approve with modifications, or deny the draft general permit, modification, or renewal based on the administrative record. The secretary shall issue a response to comments that shall specify which provisions, if any, in the draft permit were changed and the reasons for the change and shall briefly describe and respond to all significant comments on the draft permit raised during the public comment period or at any hearing. The secretary shall notify all persons who participated in the permitting action of the action taken and the reasons for such action and shall include a copy of the response to comments, and shall post the general permit on the department's website.

B. General permits may be issued for fixed terms up to ten years.

C. The secretary may terminate a general permit if it is determined that the activities authorized by the general permit have an adverse impact on the environment, endangers human health or environment, or such activities are more appropriately authorized by individual permits.

20.6.2.2316 COMMISSION REVIEW OF SECRETARY'S DECISIONS:

A. If the secretary approves, approves subject to conditions, or denies a proposed individual or general permit, renewal, or modification; modifies an individual or general permit; or terminates an individual or general permit, appeal therefrom shall be in accordance with the provisions of Subsections P, Q, R, S, and T of Section 74-

6-5NMSA 1978. The filing of an appeal does not act as a stay of any provision of the Water Quality Act, the rules, or any permit issued pursuant to the Water Quality Act, unless otherwise ordered by the secretary or the commission.

B. If the secretary determines that a discharger is not exempt from obtaining an individual permit, or that the material to be discharged contains any toxic pollutant listed in 20.6.2.7 NMAC, which is not included in the table of numeric criteria in Paragraph (1) of Subsection J of 20.6.4.900 NMAC, the discharger may appeal such determination by filing with the commission a notice of appeal within 30 days after receiving the secretary's written determination, and the appeal therefrom and any action of the commission thereon shall be in accordance with the provisions of Subsections P, Q, R, S, and T of Section 74-6-5 NMSA 1978.

C. Proceedings before the commission shall be conducted in accordance with the commission's adjudicatory procedures in 20.1.3 NMAC.

20.6.2.2317 JUDICIAL REVIEW OF COMMISSION DECISIONS: An applicant, permittee, or person who participated in an individual or general permitting action and who is adversely affected by such action may appeal the decision of the commission in accordance with the provisions of Section 74-6-7 NMSA 1978.

20.6.2.2318 - 20.6.2.2349: [RESERVED]

20.6.2.2350 FEES:

A. Every person submitting a discharge permit application for a new permit or permit renewal, modification, or transfer shall pay the application and annual fees specified in Table 1 in 20.6.2.2354 NMAC. Every person submitting a request for general permit coverage shall pay the application and annual fees, as applicable, specified in Table 2 in 20.6.2.2354 NMAC.

B. If the secretary requires a discharge permit modification as a component of an enforcement action, the facility shall pay the applicable discharge permit modification fee in addition to the application fee. If the secretary requires a discharge permit modification that is not a component of an enforcement action, the facility shall pay the application fee specified in Table 1 of this section.

C. On or before April 30 of each year, the Department shall calculate the required permit annual fee rate based on the legislative appropriation for the upcoming fiscal year. The annual fee rate shall be determined by dividing the total appropriated amount for the surface water permitting program by the projected total annual program cost for the upcoming fiscal year. The adjusted fee rate, expressed as the annual fee percent discount, shall be published on the Department's website.

D. The secretary may issue a hardship waiver or waive or reduce fees for a discharge permit modification, renewal, or transfer for public schools; small municipalities; charitable, not-for-profit, or religious organizations; or for a permittee who met or surpassed their previous permit conditions and requirements.

E. The owner and operator shall be responsible for payment of the application fee at the time of discharge permit application. The owner and operator shall be responsible for payment of annual fees over the term of the discharge permit. The department shall invoice annual fees in July. Annual fee payments shall be remitted yearly. The discharge permit or discharge permit application review may be suspended or terminated if the owner or operator fails to submit the annual fee by the due date.

F. Every three years, beginning in 2028, the fees specified in Table 1 and 2 of this Section shall be adjusted on January 1 to reflect changes in the consumer price index for all urban consumers ("CPI-U"), which is published monthly by the United States Department of Labor. The change shall be calculated by averaging the CPI-U for the 12-month period ending on August 31 of the previous year, and then multiplying the fees by the percentage of increase or decrease between that figure and the figure from the prior adjustment. These revisions shall be in accordance with Section 74-6-5(L), NMSA 1978. If the United States Department of Labor fails to update the CPI-U, the secretary shall propose an alternative inflation adjustment for the commission's approval.

G. The permittee-initiated hearing fee is a retainer credited against the total cost of a hearing initiated by the applicant for an issuance, renewal, or modification of a permit. Upon completion of the hearing, the department shall invoice the applicant and credit any remaining portion of the fee to future administrative actions.

20.6.2.2351 FEE CALCULATIONS:

A. Application Fee Calculations.

(1) For domestic wastewater treatment discharge permits, the department shall calculate application fees based on design flow, using a progressive bracket system, similar to federal tax brackets. The application fee shall be calculated as follows:

(a) base fee plus design flow multiplied by a size factor [base fee + (design flow x size factor)], where;

(i) the base fee for a minor facility (<1 million gallons per day) is $2,000 and the base fee for a major facility (>1 million gallons per day) is $5,000.

(ii) design flow is the permitted design flow of the facility.

(iii) size factors are:

Design Flow (Gallons)	Size Factor	Category Cap ($)
10,000	0.0125	125
10,001-25,000	0.0115	297.5
25,001-50,000	0.0105	560
50,001-100,000	0.01	1,060
100,001-250,000	0.009	2,410
250,001-500,000	0.008	4,410
500,001-1,000,000	0.0065	7,660
1,000,001-2,500,000	0.004	13,660
2,500,001-5,000,000	0.003	21,160
5,000,001-7,500,000	0.0025	27,410
7,500,001-10,000,000	0.001	29,910
10,000,001-15,000,000	0.0005	32,410
15,000,001-20,000,000	0.00025	33,660
20,000,001-30,000,000	0.0002	35,660
30,000,001-40,000,000	0.00015	37,160
40,000,001-50,000,000	0.000125	38,410
>50,000,000	0.0001	N/A

(2) For industrial wastewater treatment discharge permits, the department shall calculate application fees based on the complexity of the facility and discharge, the number of outfalls to be permitted, and whether the facility is categorized as a major or minor facility. The application fee shall be calculated as follows:

(a) complexity factor multiplied by base fee, plus the number of outfalls multiplied by the base fee, complexity factor, and a constant [(complexity factor x base fee) + (number of outfalls x base fee x complexity factor x 1.3)], where;

(i) the base fee for a minor facility is $3,500 and the base fee for a major facility is $6,500.

(ii) the number of outfalls is the total number of outfalls minus one, with a maximum number of 24.

(iii) complexity factor is a value between one and five with one being the least complex and five being the most complex facilities and permits. The department shall consider various factors when assigning a complexity value, such as level of effort, permit complexity, type and size of the facility, volume and complexity of the wastewater such as facilities with multiple wastewaters, application of effluent limitation guidelines, and number of outfalls.

(3) For discharges of dredged or fill material, the department shall calculate application fees based on complexity of the project, such as the proximity of the project to special aquatic resources or public water supply intake, existence of threatened or endangered species habitat or cultural and historic resources in or near the project area, extent of aquatic resources impacted, the project purpose such as channelization or infrastructure, and the volume or quantity of discharge. The application fee shall be calculated as follows:

(a) base fee multiplied by a complexity factor [(base fee x complexity factor)], where;

(i) the base fee is $5,000, and

(ii) the complexity factor is a value between one and five with one being the least complex and five being the most complex projects and activities.

(4) Application fees for general permit coverage are set as flat fees (Table 2).

B. Annual Fee Calculations.

(1) For domestic wastewater treatment discharge permits, the department shall calculate annual fees based on design flow, using a progressive bracket system. The annual fee shall be calculated as follows:

(a) base fee plus design flow multiplied by a size factor, multiplied by a constant [base fee + ((design flow x size factor) x 4.2)], where;

(i) the base fee for a minor facility (<1 million gallons per day) is $2,000 and the base fee for a major facility (>1 million gallons per day) is $5,000.

(ii) design flow is the permitted design flow of the facility.

(iii) size factors - see table in Paragraph (1) of Subsection A of this section.

(2) For industrial wastewater treatment discharge permits, the department shall calculate annual fees based on the number of outfalls to be permitted. The annual fee shall be calculated as follows:

(a) the number of outfalls plus one multiplied by the base fee [(number of outfalls + 1) x base fee], where:

(i) the base fee for a minor facility is $3,500 and the base fee for a major facility is $7,000, and

(ii) the number of outfalls is the total number of outfalls plus one, with a maximum number of 26.

(3) For discharges of dredged or fill material, the department shall calculate annual fees based on complexity of the project, such as the proximity of the project to special aquatic resources or public water supply intake, existence of threatened or endangered species habitat or cultural and historic resources in or near the project area, extent of aquatic resources impacted, the project purpose such as channelization or infrastructure, and the volume or quantity of discharge. The annual fee shall be calculated as follows:

(a) base fee multiplied by a complexity factor [(base fee x complexity factor)], where;

(i) the base fee is $2,500, and

(ii) the complexity factor is a value between one and five with one being the least complex and five being the most complex projects and activities.

(4) Annual fees for general permit coverage are set as flat fees (Table 2).

20.6.2.2352 PAYMENTS AND DUE DATES:

A. Application Fees.

(1) For individual permits, the department shall invoice the owner or operator for the application fee when the application is deemed administratively complete.

(2) For general permit coverage, the owner or operator shall pay the application fee when they submit a notice of intent or preconstruction notification for general permit coverage.

(3) The owner or operator may submit a written request to the secretary seeking a payment extension, fee reduction, or fee waiver, which the secretary may or may not approve in their discretion. Failure to submit payment with the application, notice of intent, or preconstruction notification may result in the application being denied, general permit coverage being denied, or late charges being assessed.

B. Annual Fees.

(1) For individual permits, the department shall invoice the owner or operator for the annual fee in July for every year of the permit term.

(2) For general permit coverage, the department shall invoice the owner or operator for the annual fee in July and every year thereafter of general permit coverage, as applicable.

(3) Payment of an annual fee shall be due within 60 days of receipt of the invoice. The owner or operator may submit a written request to the secretary at least 14 days prior to the end of the 60-day period seeking a payment extension or fee reduction, which the secretary may or may not approve in their discretion before the payment is due. Failure to submit payment within 60 days, or approved extension or fee reduction, may result in the permit being revoked, assessment of late fees, or further enforcement action.

C. Late Charges and Failure to Pay.

(1) If any fee required by this Part is not paid in full on the date due, the person owing the fee shall pay a billing charge of $100, plus late charges in the amount of an additional one percent of all fees owed for every month or part of a month in which the fees remain unpaid beyond the due date. Billing and late charges shall be credited to the water quality management fund and are independent of any penalties assessed under the Act.

(2) Failure to pay any fee required by this Part may result in enforcement proceedings under the Act including the revocation or suspension of any surface water discharge permit or general permit authorization.

D. Fees are not refundable and do not guarantee that a permit will be issued or a submittal or action will be approved by the department. In addition, payments will not be refunded because of a transfer of ownership or operations to a new owner or operator.

E. All fees shall be paid to the department by certified check or money order payable to the New Mexico environment department or the surface water quality bureau, by electronic funds transfer (with prior notice to department), or by other methods deemed acceptable by the department. Cash payments are not an acceptable method of payment. All payments must include the invoice number and be addressed to the New Mexico environment department – surface water quality bureau.

20.6.2.2353 DEPOSIT IN THE WATER QUALITY MANAGEMENT FUND: All fees collected pursuant to this Part shall be transmitted to the state treasurer for credit to the water quality management fund and used to meet necessary expenses in the administration and operation of the surface water permitting program.

20.6.2.2354 SURFACE WATER DISCHARGE PERMIT FEES.

TABLE 1 – INDIVIDUAL PERMIT FEES	Application Fee	Annual Fee
Domestic Wastewater Permit* – less than 10,000 gal/day	$2,094 - $2,125	$2,394 - $2,525
Domestic Wastewater Permit* – 10,001-100,000 gal/day	$2,125 - $3,060	$2,525 - $3,060
Domestic Wastewater Permit* – 100,001-500,000 gal/day	$3,060 - $6,410	$3,060 - $6,410
Domestic Wastewater Permit* – 500,001-1,000,000 gal/day	$6,410 - $12,660	$6,410 - $12,660
Domestic Wastewater Permit* – 1,000,001-5,000,000 gal/day	$12,660 - $26,160	$12,660 - $26,160
Domestic Wastewater Permit* – 5,000,001-10,000,000 gal/day	$26,160 - $34,910	$26,160 - $34,910
Domestic Wastewater Permit* – 10,000,001-20,000,000 gal/day	$34,910 - $38,660	$34,910 - $38,660
Domestic Wastewater Permit* – 20,000,001-50,000,000 gal/day	$38,660 - $43,410	$38,660 - $43,410
Domestic Wastewater Permit* – 50,000,001-100,000,000 gal/day	$43,410 - $48,410	$43,410 - $187,322
Industrial Wastewater Permit* – least complex/few outfalls	$3,500 - $14,950	$7,000 - $21,000
Industrial Wastewater Permit* – moderately complex/few outfalls	$10,500 – $127,400	$7,000 - $35,000
Industrial Wastewater Permit* – complex/many outfalls	$98,000 - $225,400	$42,000 – 87,500
Industrial Wastewater Permit* – most complex/many outfalls	$364,000 - $563,500	$84,000 - $87,500
Dredged or Fill Individual Permit*	$5,000-$25,000	$2,500-$12,500
Pretreatment Program	$10,000	$15,000
Clean Water Act Section 401 Certification – Dredged or Fill	$5,000	NA
Surface Water Discharge Permit Modification[1]	$25,000	NA
Antidegradation Review – Service Fee	$6,000	NA
Mitigation Plan Review & Coordination – Service Fee	$6,000	NA
Aquatic Resource Delineation – Service Fee	$800	NA
Agency Consultation – Service Fee	$300	NA
Permittee-Initiated Hearing Fee	$10,000	NA

NOTES:

An asterisk (*) means the fee is calculated according to procedures in 20.6.2.2351 NMAC. Domestic wastewater fees shown are ranges of potential calculated application and annual fees for different design flows. Industrial wastewater fees shown are ranges of potential calculated application and annual fees for different industrial facilities with variable complexities and number of outfalls.

1 - See Subsection B of 20.6.2.2350 NMAC.

TABLE 2 – GENERAL PERMIT COVERAGE FEES	Application Fee	Annual Fee
Construction General Permit – Stormwater	$550	$800
Minor Construction General Permit - Stormwater	$0	$0

Multi-Sector General Permit – Stormwater	$550	$800
Oil & Gas General Permit – Stormwater	$550	$800
Municipal Separate Storm Sewer System (MS4)	$2,500	$3,000
Concentrated Animal Feeding Operation (CAFO)	$1,500	$1,500
Hydrostatic Test General Permit	$550	$800
Pesticide General Permit	$550	$800
Wildfire General Permit	$550	$800
Fish Hatchery General Permit – NMDGF	$550	$800
Minor Dredged or Fill General Permit	$0	NA
Statewide Dredged or Fill General Permits	$550	$800
Emergency Dredged or Fill Permit	$0	NA
Other General Permits	$550	$800

20.6.2.2355 EFFECTIVE DATE OF RULES: For purposes of the rules adopted under Section 2300 of this Part, the rules shall become effective 30 days after filing with the State Records Center and Archives, in accordance with NMSA 1978, Section 74-6-6.

20.6.2.2356- 20.6.2.2999: [RESERVED]

20.6.2.3000 GROUND WATER PERMITTING AND GROUND WATER STANDARDS: Sections 2300 through 2355 of this Part shall not apply to ground water discharge permitting.

20.6.2.3001 - 20.6.2.3100: [RESERVED]
[12-1-95; 20.6.2.3001 - 20.6.2.3100 NMAC - Rn, 20 NMAC 6.2.II.2202-3100, 1-15-01]

20.6.2.3101 PURPOSE:

A. The purpose of Sections 20.6.2.3000 through 20.6.2.3114 NMAC controlling discharges onto or below the surface of the ground is to protect all ground water of the state of New Mexico which has an existing concentration of 10,000 mg/l or less TDS, for present and potential future use as domestic and agricultural water supply, and to protect those segments of surface waters which are gaining because of ground water inflow, for uses designated in the New Mexico Water Quality Standards. Sections 20.6.2.3000 through 20.6.2.3114 NMAC are written so that in general:

(1) if the existing concentration of any water contaminant in ground water is in conformance with the standard of 20.6.2.3103 NMAC, degradation of the ground water up to the limit of the standard will be allowed; and

(2) if the existing concentration of any water contaminant in ground water exceeds the standard of Section 20.6.2.3103 NMAC, no degradation of the ground water beyond the existing concentration will be allowed.

B. Ground water standards are numbers that represent the pH range and maximum concentrations of water contaminants in the ground water which still allow for the present and future use of ground water resources.

C. The standards are not intended as maximum ranges and concentrations for use, and nothing herein contained shall be construed as limiting the use of waters containing higher ranges and concentrations.
[2-18-77; 20.6.2.3101 NMAC - Rn, 20 NMAC 6.2.III.3101, 1-15-01]

20.6.2.3102: [RESERVED]
[12-1-95; 20.6.2.3102 NMAC - Rn, 20 NMAC 6.2.III.3102, 1-15-01]

20.6.2.3103 STANDARDS FOR GROUND WATER OF 10,000 mg/l TDS CONCENTRATION OR LESS: The following standards are the allowable pH range and the maximum allowable concentration in ground water for the contaminants specified unless the existing condition exceeds the standard or unless otherwise provided in Subsection E of Section 20.6.2.3109 NMAC. Regardless of whether there is one contaminant or more than one contaminant present in ground water, when an existing pH or concentration of any water contaminant exceeds the standard specified in Subsection A, B, or C of this section, the existing pH or concentration shall be the allowable limit, provided that the discharge at such concentrations will not result in concentrations at any place of withdrawal

for present or reasonably foreseeable future use in excess of the standards of this section. These standards shall apply to the dissolved portion of the contaminants specified with a definition of dissolved being that given in the publication "*methods for chemical analysis of water and waste of the U.S. environmental protection agency*," with the exception that standards for mercury, organic compounds and non-aqueous phase liquids shall apply to the total nonfiltered concentrations of the contaminants. If the secretary determines that there is a reasonable probability of facilitated contaminant transport by colloids or organic macromolecules, or that proper filtration procedures are not being followed, the discharger may be required to test for both filtered and nonfiltered portions of inorganic contaminants to develop appropriate protocol for monitoring contaminants that have the potential to migrate through the aquifer.

A. Human Health Standards

(1) Numerical Standards

(a) Antimony (Sb) (CAS 7440-36-0)……..……..0.006 mg/l

(b) Arsenic (As) (CAS 7440-38-2)……..……..……0.01 mg/l

(c) Barium (Ba) (CAS 7440-39-3)……..……..…...2 mg/l

(d) Beryllium (be) (CAS 7440-41-7)……0.004 mg/l

(e) Cadmium (Cd) (CAS 7440-43-9)……..…...0.005 mg/l

(f) Chromium (Cr) (CAS 7440-47-3)…… ……0.05 mg/l

(g) Cyanide (CN) (CAS 57-12-5)……..0.2 mg/l

(h) Fluoride (F) (CAS 16984-48-8)……1.6 mg/l

(i) Lead (Pb) (CAS 7439-92-1)…….0.015 mg/l

(j) Total Mercury (Hg) (CAS 7439-97-6)……...0.002 mg/l

(k) Nitrate (NO_3 as N) (CAS 14797-55-8)……...10.0 mg/l

(l) Nitrite (NO_2 as N) (CAS 10102-44-0)…….1.0 mg/l

(m) Selenium (Se) (CAS 7782-49-2)……..0.05 mg/l

(n) Silver (Ag) (CAS 7440-224)…….0.05 mg/l

(o) Thallium (Tl) (CAS 7440-28-0)……..0.002 mg/l

(p) Uranium (U) (CAS 7440-61-1)……0.03 mg/l

(q) Radioactivity: Combined Radium-226 (CAS 13982-63-3) and Radium-228 (CAS 15262-20-1)……5 pCi/l

(r) Benzene (CAS 71-43-2)……0.005 mg/l

(s) Polychlorinated biphenyls (PCB's) (CAS 1336-36-3).0.0005 mg/l

(t) Toluene (CAS 108-88-3)……...1 mg/l

(u) Carbon Tetrachloride (CAS 56-23-5)……..0.005 mg/l

(v) 1,2-dichloroethane (EDC) (CAS 107-06-2)……0.005 mg/l

(w) 1,1-dichloroethylene (1,1-DCE) (CAS 75-35-4)…….0.007 mg/l

(x) tetrachloroethylene (PCE) (CAS 127-18-4)……..0.005 mg/l

(y) trichloroethylene (TCE) (CAS 79-01-6)……...0.005 mg/l

(z) ethylbenzene (CAS 100-41-4)…….……0.7 mg/l

(aa) total xylenes (CAS 1330-20-7)…….....0.62 mg/l

(bb) methylene chloride (CAS 75-09-2)…….……0.005 mg/l

(cc) chloroform (CAS 67-66-3)…..……0.1 mg/l

(dd) 1,1-dichloroethane (CAS 75-34-3)…….……0.025 mg/l

(ee) ethylene dibromide (EDB) (CAS 106-93-4)……..…0.00005 mg/l

(ff) 1,1,1-trichloroethane (CAS 71-55-6)…….……..…0.2 mg/l

(gg) 1,1,2-trichloroethane (CAS 79-00-5)…..……...0.005 mg/l

(hh) 1,1,2,2-tetrachloroethane (CAS 79-34-5)…….…….0.01 mg/l

(ii) vinyl chloride (CAS 75-01-4)…..…….0.002 mg/l

(jj) PAHs: total naphthalene (CAS 91-20-3) plus monomethylnaphthalenes …0.03 mg/l

(kk) benzo-a-pyrene (CAS 50-32-8)…..……0.0002 mg/l

(ll) cis-1,2-dichloroethene (CAS 156-59-2)……0.07 mg/l

(mm) trans-1,2-dichloroethene (CAS 156-60-5)…….0.1 mg/l

(nn) 1,2-dichloropropane (PDC) (CAS 78-87-5)……0.005 mg/l

(oo) styrene (CAS 100-42-5)……...0.1 mg/l

(pp) 1,2-dichlorobenzene (CAS 95-50-1)……..0.6 mg/l

(qq) 1,4-dichlorobenzene (CAS 106-46-7)……..0.075 mg/l

(rr) 1,2,4-trichlorobenzene (CAS 120-82-1)……..0.07 mg/l

(ss) pentachlorophenol (CAS 87-86-5)……..0.001 mg/l
(tt) atrazine (CAS 1912-24-9)……0.003 mg/l

(2) Standards for Toxic Pollutants. A toxic pollutant shall not be present at a concentration shown by credible scientific data and other evidence appropriate under the Water Quality Act, currently available to the public, to have potential for causing one or more of the following effects upon exposure, ingestion, or assimilation either directly from the environment or indirectly by ingestion through food chains: (1) unreasonably threatens 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; or (2) creates a lifetime risk of more than one cancer per 100,000 exposed persons.

(3) Standards for Non-Aqueous Phase Liquids. Non-aqueous phase liquid shall not be present floating atop of or immersed within ground water, as can be reasonably measured.

B. Other Standards for Domestic Water Supply

(1) Chloride (Cl) (CAS 16887-00-6)……...250.0 mg/l
(2) Copper (Cu) (CAS 7440-50-8)……....1.0 mg/l
(3) Iron (Fe) (CAS 7439-89-6)……..…1.0 mg/l
(4) Manganese (Mn) (CAS 7439-96-5)……..…0.2 mg/l
(5) Phenols ……..…0.005 mg/l
(6) Sulfate (SO_4) (CAS 14808-79-8)……..600.0 mg/l
(7) Total Dissolved Solids (TDS) TDS……..……1000.0 mg/l
(8) Zinc (Zn) (CAS 7440-66-6)……..……10.0 mg/l
(9) pH……..…….between 6 and 9
(10) Methyl tertiary-butyl ether (MTBE) (CAS 1634-04-4)……0.1 mg/l

C. Standards for Irrigation Use - Ground water shall meet the standards of Subsection A, B, and C of this section unless otherwise provided.

(1) Aluminum (Al) (CAS 7429-90-5)……..…5.0 mg/l
(2) Boron (B) (CAS 7440-42-8)……...0.75 mg/l
(3) Cobalt (Co) (CAS 7440-48-4)…….0.05 mg/l
(4) Molybdenum (Mo) (CAS 7439-98-7)……...1.0 mg/l
(5) Nickel (Ni) (CAS 7440-02-0)……....0.2 mg/l

D. For purposes of application of the amended numeric standards for arsenic, cadmium, lead, combined radium-226 & radium-228; benzene, PCBs, carbon tetrachloride, EDC, PCE, TCE, ethylbenzene, methylene chloride, EDB, 1,1,2-trichloroethane and benzo-a-pyrene, to past and current water discharges (as of July 1, 2017), the new standards will not become effective until July 1, 2020. With regard to sites for which the secretary has approved an abatement completion report as of the effective date of this rule pursuant to 20.6.2.4112 NMAC, the amended numeric standards for arsenic, cadmium, lead, combined radium-226 & radium-228; benzene, PCBs, carbon tetrachloride, EDC, PCE, TCE, ethylbenzene, methylene chloride, EDB, 1,1,2-trichloroethane and benzo-a-pyrene shall not apply unless the secretary notifies the responsible person that the site is a source of these contaminants in ground water that pose a hazard to public health.

[2-18-77, 1-29-82, 11-17-83, 3-3-86, 12-1-95; 20.6.2.3103 NMAC - Rn, 20 NMAC 6.2.III.3103, 1-15-01; A, 9-26-04; A, 12-21-18]

[Note: For purposes of application of the amended numeric uranium standard to past and current water discharges (as of 9-26-04), the new standard will not become effective until June 1, 2007.]

20.6.2.3104 GROUND WATER DISCHARGE PERMIT REQUIRED: Unless otherwise provided by this Part, no person shall cause or allow effluent or leachate to discharge so that it may move directly or indirectly into ground water unless he is discharging pursuant to a discharge permit issued by the secretary. When a permit has been issued, discharges must be consistent with the terms and conditions of the permit. In the event of a transfer of the ownership, control, or possession of a facility for which a discharge permit is in effect, the transferee shall have authority to discharge under such permit, provided that the transferee has complied with Section 20.6.2.3111 NMAC, regarding transfers.

[2-18-77, 12-24-87, 12-1-95; Rn & A, 20.6.2.3104 NMAC - 20 NMAC 6.2.III.3104, 1-15-01; A, 12-1-01]

20.6.2.3105 EXEMPTIONS FROM GROUND WATER 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 standards in Subsections A, B, and C of Section 20.6.2.3103 NMAC and has a total nitrogen concentration of 10 mg/l or less. 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 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. 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;

K. Effluent or leachate discharges resulting from activities regulated by permit issued by the mining and minerals division of the energy, minerals and natural resources department pursuant to the Surface Mining Act, NMSA 1978, Sections 69-25A-1 to 36, provided that this exemption shall not be construed as limiting the application of appropriate ground water protection requirements by the mining and minerals division and the New Mexico Coal Surface Mining Commission; or

L. Discharges resulting from activities regulated by the energy conservation and management division of the energy, minerals and natural resources department under the authority of the Geothermal Resources Development Act, NMSA 1978, Sections 71-9-1 to -11 (2016).

[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; A, 12-21-18]

20.6.2.3106 APPLICATION FOR GROUND WATER DISCHARGE PERMITS, RENEWALS, AND MODIFICATIONS:

A. Any person who, before or on June 18, 1977, is discharging any of the water contaminants listed in 20.6.2.3103 NMAC or any toxic pollutant so that they may move directly or indirectly into ground water shall, within 120 days of receipt of written notice from the secretary that a discharge permit is required, or such longer time as the secretary shall for good cause allow, submit a discharge plan to the secretary for approval; such person may discharge without a discharge permit until 240 days after written notification by the secretary that a discharge permit is required or such longer time as the secretary shall for good cause allow.

B. Any person who intends to begin, after June 18, 1977, discharging any of the water contaminants listed in 20.6.2.3103 NMAC or any toxic pollutant so that they may move directly or indirectly into ground water shall notify the secretary giving the information enumerated in Subsection B of 20.6.2.1201 NMAC; the secretary shall, within 60 days, notify such person if a discharge permit is required; upon submission of a discharge plan, the secretary shall review the discharge plan pursuant to 20.6.2.3108 and 20.6.2.3109 NMAC. For good cause shown the secretary may allow such person to discharge without a discharge permit for a period not to exceed 120 days.

C. Any person who intends to modify the discharge of any of the water contaminants listed in 20.6.2.3103 NMAC or any toxic pollutant in a manner that is a discharge permit modification as defined in this part shall submit a discharge plan for modification that contains the information required in Subsection D of 20.6.2.3106 NMAC; upon submission of a discharge plan for modification, the secretary shall review the discharge plan for modification pursuant to 20.6.2.3108 and 20.6.2.3109 NMAC.

D. A proposed discharge plan shall set forth in detail the methods or techniques the discharger proposes to use or processes expected to naturally occur which will ensure compliance with this part. At least the following information shall be included in the plan:

(1) quantity, quality and flow characteristics of the discharge;

(2) location of the discharge and of any bodies of water, watercourses and ground water discharge sites within one mile of the outside perimeter of the discharge site, and existing or proposed wells to be used for monitoring;

(3) depth to and TDS concentration of the ground water most likely to be affected by the discharge;

(4) flooding potential of the site;

(5) location and design of site(s) and method(s) to be available for sampling, and for measurement or calculation of flow;

(6) depth to and lithological description of rock at base of alluvium below the discharge site if such information is available;

(7) any additional information that may be necessary to demonstrate that the discharge permit will not result in concentrations in excess of the standards of 20.6.2.3103 NMAC at any place of withdrawal of water for present or reasonably foreseeable future use; detailed information on site geologic and hydrologic conditions may be required for a technical evaluation of the applicant's proposed discharge plan; and

(8) additional detailed information required for a technical evaluation of underground injection control wells as provided in 20.6.2.5000 through 20.6.2.5399 NMAC.

E. An applicant for a discharge permit shall pay fees as specified in 20.6.2.3114 and 20.6.2.5302 NMAC.

F. An applicant for a permit to dispose of or use septage or sludge, or within a source category designated by the commission, may be required by the secretary to file a disclosure statement as specified in 74-6-5.1 of the Water Quality Act.

G. If the holder of a discharge permit submits an application for discharge permit renewal at least 120 days before the discharge permit expires, and the discharger is not in violation of the 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. A discharge permit continued under this provision remains fully effective and enforceable. 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. [2-18-77, 6-26-80, 7-2-81, 9-20-82, 8-17-91, 12-1-95; 20.6.2.3106 NMAC - Rn, 20 NMAC 6.2.III.3106, 1-15-01; A, 12-1-01; A, 9-15-02; A, 8-31-15; A, 12-21-18]

20.6.2.3107 GROUND WATER DISCHARGE PERMIT MONITORING, REPORTING, AND OTHER REQUIREMENTS:

A. Each discharge plan shall provide for the following as the secretary may require:

(1) the installation, use, and maintenance of effluent monitoring devices;

(2) the installation, use, and maintenance of monitoring devices for the ground water most likely to be affected by the discharge;

(3) monitoring in the vadose zone;

(4) continuation of monitoring after cessation of operations;

(5) periodic submission to the secretary of results obtained pursuant to any monitoring requirements in the discharge permit and the methods used to obtain these results;

(6) periodic reporting to the secretary of any other information that may be required as set forth in the discharge permit;

(7) the discharger to retain for a period of at least five years any monitoring data required in the discharge permit;

(8) a system of monitoring and reporting to verify that the permit is achieving the expected results;

(9) procedures for detecting failure of the discharge system;

(10) contingency plans to cope with failure of the discharge permit or system;

(11) a closure plan to prevent the exceedance of standards of 20.6.2.3103 NMAC in ground water after the cessation of operation which includes: a description of closure measures, maintenance and monitoring plans, post-closure maintenance and monitoring plans, financial assurance, and other measures necessary to prevent or abate such contamination; the obligation to implement the closure plan as well as the requirements of the closure plan, if any is required, survives the termination or expiration of the permit; a closure plan for any underground injection control well must also incorporate the applicable requirements of 20.6.2.5005, 20.6.2.5209, and 20.6.2.5361 NMAC.

B. Sampling and analytical techniques shall conform with the following references unless otherwise specified by the secretary:

(1) standard methods for the examination of water and wastewater, latest edition, American public health association; or

(2) methods for chemical analysis of water and waste, and other publications of the analytical quality laboratory, EPA; or

(3) techniques of water resource investigations of the U.S. geological survey; or

(4) annual book of ASTM standards; Part 31; water, latest edition, American society for testing and materials; or

(5) federal register, latest methods published for monitoring pursuant to Resource Conservation and Recovery Act regulations; or

(6) national handbook of recommended methods for water-data acquisition, latest edition, prepared cooperatively by agencies of the United States government under the sponsorship of the U.S. geological survey.

C. The discharger shall notify the secretary of any facility expansion, production increase or process modification that would result in any significant modification in the discharge of water contaminants.

D. Any discharger of effluent or leachate shall allow any authorized representative of the secretary to:

(1) inspect and copy records required by a discharge permit;

(2) inspect any treatment works, monitoring and analytical equipment;

(3) sample any effluent before or after discharge;

(4) use monitoring systems and wells installed pursuant to a discharge permit requirement in order to collect samples from ground water or the vadose zone.

E. Each discharge permit for an underground injection control well shall incorporate the applicable requirements of 20.6.2.5000 through 20.6.2.5399 NMAC.

[2-18-77, 9-20-82, 11-17-83, 12-1-95; 20.6.2.3107 NMAC - Rn, 20 NMAC 6.2.III.3107, 1-15-01; A, 12-1-01; A, 8-31-15; A, 12-21-18]

20.6.2.3108 PUBLIC NOTICE AND PARTICIPATION FOR GROUND WATER DISCHARGE PERMITS:

A. Within 15 days of receipt of an application for a discharge permit, modification or renewal, the department shall review the application for administrative completeness. To be deemed administratively complete, an application shall provide all of the information required by Paragraphs (1) through (5) of Subsection F of 20.6.2.3108 NMAC and shall indicate, for department approval, the proposed locations and newspaper for providing notice required by Paragraphs (1) and (4) of Subsection B or Paragraph (2) of Subsection C of 20.6.2.3108 NMAC. The department shall notify the applicant in writing when the application is deemed administratively complete. If the department determines that the application is not administratively complete, the department shall notify the applicant of the deficiencies in writing within 30 days of receipt of the application and state what additional information is necessary.

B. Within 30 days of the department deeming an application for discharge permit or discharge permit modification administratively complete, the applicant shall provide notice, in accordance with the requirements of Subsection F of 20.6.2.3108 NMAC, to the general public in the locale of the proposed discharge in a form provided by the department by each of the methods listed below:

(1) for each 640 contiguous acres or less of a discharge site, prominently posting a synopsis of the public notice at least 2 feet by 3 feet in size, in English and in Spanish, at a place conspicuous to the public, approved by the department, at or near the proposed facility for 30 days; one additional notice, in a form approved by and may be provided by the department, shall be posted at a place located off the discharge site, at a place

conspicuous to the public and approved by the department; the department may require a second posting location for more than 640 contiguous acres or when the discharge site is not located on contiguous properties;

(2) providing written notice of the discharge by mail or electronic mail, to owners of record of all properties within a 1/3 mile distance from the boundary of the property where the discharge site is located; if there are no properties other than properties owned by the discharger within a 1/3 mile distance from the boundary of property where the discharge site is located, the applicant shall provide notice to owners of record of the next nearest adjacent properties not owned by the discharger;

(3) providing notice by certified mail, return receipt requested, to the owner of the discharge site if the applicant is not the owner; and

(4) publishing a synopsis of the notice in English and in Spanish, in a display ad at least three inches by four inches not in the classified or legal advertisements section, in a newspaper of general circulation in the location of the proposed discharge.

C. Within 30 days of the department deeming an application for discharge permit renewal administratively complete, the applicant shall provide notice, in accordance with the requirements of Subsection F of 20.6.2.3108 NMAC, to the general public in the locale of the proposed discharge in a form provided by the department by each of the methods listed below:

(1) providing notice by certified mail to the owner of the discharge site if the applicant is not the owner; and

(2) publishing a synopsis of the notice, in English and in Spanish, in a display ad at least two inches by three inches, not in the classified or legal advertisements section, in a newspaper of general circulation in the location of the discharge.

D. Within 15 days of completion of the public notice requirements in Subsections B or C of 20.6.2.3108 NMAC, the applicant shall submit to the department proof of notice, including an affidavit of mailing(s) and the list of property owner(s), proof of publication, and an affidavit of posting, as appropriate.

E. Within 30 days of determining an application for a discharge permit, modification or renewal is administratively complete, the department shall post a notice on its website and shall mail notice to any affected local, state, federal, tribal or pueblo governmental agency, political subdivisions, ditch associations and land grants, as identified by the department. The department shall also mail or e-mail notice to those persons on a general and facility-specific list maintained by the department who have requested notice of discharge permit applications. The notice shall include the information listed in Subsection F of 20.6.2.3108 NMAC.

F. The notice provided under Subsection B, C and E of 20.6.2.3108 NMAC shall include:

(1) the name and address of the proposed discharger;

(2) the location of the discharge, including a street address, if available, and sufficient information to locate the facility with respect to surrounding landmarks;

(3) a brief description of the activities that produce the discharge described in the application;

(4) a brief description of the expected quality and volume of the discharge;

(5) the depth to and total dissolved solids concentration of the ground water most likely to be affected by the discharge;

(6) the address and phone number within the department by which interested persons may obtain information, submit comments, and request to be placed on a facility-specific mailing list for future notices; and

(7) a statement that the department will accept comments and statements of interest regarding the application and will create a facility-specific mailing list for persons who wish to receive future notices.

G. All persons who submit comments or statements of interest to the department or previously participated in a public hearing and who provide a mail or e-mail address shall be placed on a facility-specific mailing list and the department shall send those persons the public notice issued pursuant to Subsection J of 20.6.2.3108 NMAC, and notice of any public meeting or hearing scheduled on the application. All persons who contact the department to inquire about a specific facility shall be informed of the opportunity to be placed on the facility-specific mailing list.

H. Within 60 days after the department makes its administrative completeness determination and all required technical information is available, the department shall make available a draft permit or a notice of intent to deny an application for a discharge permit, modification or renewal. The draft permit shall include all proposed effluent limitations or other conditions on proposed discharge, and all proposed monitoring, recordkeeping, and reporting requirements. A draft permit for a permit modification shall only include those permit conditions proposed to be modified.

I. The department shall prepare a fact sheet for every draft permit for a discharge at a federal facility, except for discharges comprised solely of domestic liquid waste, and for other draft permits as determined by the Secretary. The fact sheet shall include:

(1) the information in Paragraphs 1 - 4 of Subsection F of 20.6.2.3108 NMAC;

(2) the information in Subsection J of 20.6.2.3108 NMAC; and

(3) a brief summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record.

J. The department shall mail by certified mail a copy of the draft permit and fact sheet or notice of intent to deny to the applicant and shall provide notice of the draft permit or the notice of intent to deny by:

(1) posting on the department's website;

(2) publishing notice in a newspaper of general circulation in this state and a newspaper of general circulation in the location of the facility;

(3) mailing or e-mailing to those persons on a facility-specific mailing list;

(4) mailing to any affected local, state, or federal governmental agency, ditch associations and land grants, as identified by the department; and

(5) mailing to the governor, chairperson, or president of each Indian tribe, pueblo or nation within the state of New Mexico, as identified by the department.

K. The public notice issued under Subsection H shall include the information in Subsection F of 20.6.2.3108 NMAC and the following information:

(1) a brief description of the procedures to be followed by the secretary in making a final determination;

(2) a statement of the comment period and description of the procedures for a person to request a hearing on the application; and

(3) the address, telephone number, and email address at which interested persons may obtain a copy of the draft permit and fact sheet or the notice of intent to deny.

L. In the event that the draft permit or notice of intent to deny is available for review within 30 days of deeming the application administratively complete, the department may combine the public notice procedures of Subsections E and H of 20.6.2.3108 NMAC.

M. Following the public notice of the draft permit or notice of intent to deny, and prior to a final decision by the secretary, there shall be a period of at least 30 days during which written comments may be submitted to the department and/or a public hearing may be requested in writing. The 30-day comment period shall begin on the date of publication of notice in the newspaper. All comments will be considered by the department. Requests for a hearing shall be in writing and shall set forth the reasons why a hearing should be held. A public hearing shall be held if the secretary determines there is substantial public interest. The department shall notify the applicant and any person requesting a hearing of the decision whether to hold a hearing and the reasons therefore in writing.

N. If a hearing is held, pursuant to Subsection M of 20.6.2.3108 NMAC, notice of the hearing shall be given by the department at least 30 days prior to the hearing in accordance with Subsection H of 20.6.2.3108 NMAC. The notice shall include the information identified in Subsection F of 20.6.2.3108 NMAC in addition to the time and place of the hearing and a brief description of the hearing procedures. The hearing shall be held pursuant to 20.6.2.3110 NMAC.

[2-18-77, 12-24-87, 12-1-95, 11-15-96; 20.6.2.3108 NMAC - Rn, 20 NMAC 6.2.III.3108, 1-15-01; A, 12-1-01; A, 9-15-02; A, 7-16-06; A, 12-21-18]

20.6.2.3109 SECRETARY APPROVAL, DISAPPROVAL, MODIFICATION OR TERMINATION OF GROUND WATER DISCHARGE PERMITS, AND REQUIREMENT FOR ABATEMENT PLANS:

A. The department shall evaluate the application for a discharge permit, modification or renewal based on information contained in the department's administrative record. The department may request from the discharger, either before or after the issuance of any public notice, additional information necessary for the evaluation of the application. The administrative record shall consist of the application, any additional information required by the department, any information submitted by the discharger or the general public, other information considered by the department, the proposed approval or disapproval of an application for a discharge permit, modification or renewal prepared pursuant to Subsection H of 20.6.2.3108 NMAC, and, if a public hearing is held, all of the documents filed with the hearing clerk, all exhibits offered into evidence at the hearing, the written transcript or tape recording of the hearing, any hearing officer report, and any post hearing submissions.

B. The secretary shall, within 30 days after the administrative record is complete and all required information is available, approve, approve with conditions or disapprove the proposed discharge permit, modification or renewal based on the administrative record. The Secretary shall issue a response to comments which shall specify which provisions, if any, in the draft permit were changed and the reasons for the change, and shall briefly describe and respond to all significant comments on the draft permit raised during the public comment period or at any hearing. The secretary shall notify the applicant or permittee by certified mail of the action taken and the reasons for such action and shall include a copy of the response to comments. Notice shall also be given by mail or email to persons who participated in the permitting action.

C. Provided that the other requirements of this part are met and the proposed discharge plan, modification or renewal demonstrates that neither a hazard to public health nor undue risk to property will result, the secretary shall approve the proposed discharge plan, modification or renewal if the following requirements are met:

(1) ground water that has a TDS concentration of 10,000 mg/l or less will not be affected by the discharge; or

(2) the person proposing to discharge demonstrates that approval of the proposed discharge plan, modification or renewal will not result in either concentrations in excess of the standards of 20.6.2.3103 NMAC at any place of withdrawal of water for present or reasonably foreseeable future use, except for contaminants in the water diverted as provided in Subsection E of 20.6.2.3109 NMAC; or

(3) the proposed discharge plan conforms to either Subparagraph (a) or (b) below and Subparagraph (c) below:

(a) municipal, other domestic discharges, and discharges from sewerage systems handling only animal wastes: the effluent is entirely domestic, is entirely from a sewerage system handling only animal wastes or is from a municipality and conforms to the following:

(i) the discharge is from an impoundment or a leach field existing on February 18, 1977 which receives less than 10,000 gallons per day and the secretary has not found that the discharge may cause a hazard to public health; or

(ii) the discharger has demonstrated that the total nitrogen in effluent that enters the subsurface from a leach field or surface impoundment will not exceed 200 pounds per acre per year and that the effluent will meet the standards of 20.6.2.3103 NMAC except for nitrates and except for contaminants in the water diverted as provided in Subsection E of 20.6.2.3109 NMAC; or

(iii) the total nitrogen in effluent that is applied to a crop which is harvested shall not exceed by more than 25 percent the maximum amount of nitrogen reasonably expected to be taken up by the crop and the effluent shall meet the standards of 20.6.2.3103 NMAC except for nitrates and except for contaminants in the water diverted as provided in Subsection E of 20.6.2.3109 NMAC;

(b) discharges from industrial, mining or manufacturing operations:

(i) the discharger has demonstrated that the amount of effluent that enters the subsurface from a surface impoundment will not exceed 0.5 acre-feet per acre per year; or

(ii) the discharger has demonstrated that the total nitrogen in effluent that enters the subsurface from a leach field or surface impoundment shall not exceed 200 pounds per acre per year and the effluent shall meet the standards of 20.6.2.3103 NMAC except for nitrate and contaminants in the water diverted as provided in Subsection E of 20.6.2.3109 NMAC; or

(iii) the total nitrogen in effluent that is applied to a crop that is harvested shall not exceed by more than 25 percent the maximum amount of nitrogen reasonably expected to be taken up by the crop and the effluent shall meet the standards of 20.6.2.3103 NMAC except for nitrate and contaminants in the water diverted as provided in Subsection D of 20.6.2.3109 NMAC;

(c) all discharges:

(i) the monitoring system proposed in the discharge plan includes adequate provision for sampling of effluent and adequate flow monitoring so that the amount being discharged onto or below the surface of the ground can be determined;

(ii) the monitoring data is reported to the secretary at a frequency determined by the secretary.

D. The secretary shall allow the following unless he determines that a hazard to public health may result:

(1) the weight of water contaminants in water diverted from any source may be discharged provided that the discharge is to the aquifer from which the water was diverted or to an aquifer containing a greater concentration of the contaminants than contained in the water diverted; and provided further that contaminants

added as a result of the means of diversion shall not be considered to be part of the weight of water contaminants in the water diverted;

(2) the water contaminants leached from undisturbed natural materials may be discharged provided that:

(a) the contaminants were not leached as a product or incidentally pursuant to a solution mining operation; and

(b) the contaminants were not leached as a result of direct discharge into the vadose zone from municipal or industrial facilities used for the storage, disposal, or treatment of effluent;

(3) the water contaminants leached from undisturbed natural materials as a result of discharge into ground water from lakes used as a source of cooling water.

E. If data submitted pursuant to any monitoring requirements specified in the discharge permit or other information available to the secretary indicates that this part is being or may be violated or that the standards of 20.6.2.3103 NMAC are being or will be exceeded in ground water at any place of withdrawal for present or reasonably foreseeable future use, or that the water quality standards for interstate and intrastate streams in New Mexico are being or may be violated in surface water, due to the discharge, except as provided in Subsection D of 20.6.2.3109 NMAC.

(1) The secretary may require a discharge permit modification within the shortest reasonable time so as to achieve compliance with this part and to provide that any exceeding of standards in ground water at any place of withdrawal for present or reasonably foreseeable future use, or in surface water, due to the discharge except as provided in Subsection E of 20.6.2.3109 NMAC will be abated or prevented. If the secretary requires a discharge permit modification to abate water pollution:

(a) the abatement shall be consistent with the requirements and provisions of 20.6.2.4101, 20.6.2.4103, Subsections C and E of 20.6.2.4106, 20.6.2.4107, 20.6.2.4108 and 20.6.2.4112 NMAC; and

(b) the discharger may request of the secretary approval to carry out the abatement under 20.6.2.4000 through 20.6.2.4115 NMAC, in lieu of modifying the discharge permit; the discharger shall make the request in writing and shall include the reasons for the request.

(2) The secretary may terminate a discharge permit when a discharger fails to modify the permit in accordance with Paragraph (1) of Subsection E of 20.6.2.3109 NMAC.

(3) The secretary may require modification, or may terminate a discharge permit for a Class I well, a Class III well or other type of well specified in Subsection A of 20.6.2.5101 NMAC, pursuant to the requirements of Subsection I of 20.6.2.5101 NMAC.

(4) If a discharge permit is terminated, the secretary shall notify the permittee by certified mail of the action taken and the reasons for that action. Notice of the termination shall also be given by mail or electronic mail to persons who participated in the permitting action and to those persons on the facility-specific list maintained by the department.

F. If a discharge permit expires or is terminated for any reason and the standards of 20.6.2.3103 NMAC are being or will be exceeded in ground water, or that the water quality standards for interstate and intrastate streams in New Mexico are being or may be violated, the secretary may require the discharger to submit an abatement plan pursuant to 20.6.2.4104 and Subsection A of 20.6.2.4106 NMAC.

G. At the request of the discharger, a discharge permit may be modified in accordance with 20.6.2.3000 through 20.6.2.3114 NMAC.

H. The secretary shall not approve a proposed discharge plan, modification, or renewal for:

(1) any discharge for which the discharger has not provided a site and method for flow measurement and sampling;

(2) any discharge that will cause any stream standard to be violated;

(3) the discharge of any water contaminant which may result in a hazard to public health; or

(4) a period longer than five years, except that for new discharges, the term of the discharge permit approval shall commence on the date the discharge begins, but in no event shall the term of the approval exceed seven years from the date the permit was issued; for those permits expiring more than five years from the date of issuance, the discharger shall give prior written notification to the department of the date the discharge is to commence; the term of the permit shall not exceed five years from that date.

[2-18-77, 6-26-80, 9-20-82, 7-2-81, 3-3-86, 12-1-95, 11-15-96; 20.6.2.3109 NMAC - Rn, 20 NMAC 6.2.III.3109, 1-15-01; A, 12-1-01; A, 9-15-02; A, 7-16-06; A, 8-31-15; A, 12-21-18]

20.6.2.3110 PUBLIC HEARING PARTICIPATION FOR GROUND WATER DISCHARGE PERMITS:

A. The secretary may appoint an impartial hearing officer to preside over the hearing. The hearing officer may be a department employee other than an employee of the bureau evaluating the application.

B. The hearing shall be at a place in the area affected by the facility for which the discharge permit proposal, modification or renewal is sought.

C. Any person who wishes to present technical evidence at the hearing shall, no later than ten (10) days prior to the hearing, file with the department, and if filed by a person who is not the applicant, serve on the applicant, a statement of intent to present evidence. A person who does not file a statement of intent to present evidence may present a general non-technical statement in support of or in opposition to the proposed discharge plan, modification or renewal. The statement of intent to present technical evidence shall include:

(1) the name of the person filing the statement;

(2) indication of whether the person filing the statement supports or opposes the proposed discharge plan proposal, modification or renewal;

(3) the name of each witness;

(4) an estimate of the length of the direct testimony of each witness;

(5) a list of exhibits, if any, to be offered into evidence at the hearing; and

(6) a summary or outline of the anticipated direct testimony of each witness.

D. At the hearing, the New Mexico Rules of Civil Procedure, SCRA 1986, 1-001 to 1-102 and the New Mexico Rules of Evidence, SCRA 1986, 11-101 to 11-1102 shall not apply. At the discretion of the hearing officer, the rules may be used as guidance. Any reference to the Rules of Civil Procedure and the Rules of Evidence shall not be construed to extend or otherwise modify the authority and jurisdiction of the department under the Act.

E. The hearing officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, and avoid delay. The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in the proceedings.

F. At the hearing, all persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.

G. Unless otherwise allowed by the hearing officer, testimony shall be presented in the following order:

(1) testimony by and examination of the applicant or permittee proving the facts relied upon to justify the proposed discharge plan, renewal or modification and meeting the requirements of the regulations;

(2) testimony by and examination of technical witnesses supporting or opposing approval, approval subject to conditions, or disapproval of the proposed discharge plan, renewal or modification, in any reasonable order;

(3) testimony by the general public; and

(4) rebuttal testimony, if appropriate.

H. The secretary may provide translation service at a public hearing conducted in a locale where the Department can reasonably expect to receive testimony from non-English speaking people.

I. If determined useful by the hearing officer, within thirty (30) days after conclusion of the hearing, or within such time as may be fixed by the hearing officer, the hearing officer may allow proposed findings of fact and conclusions of law and closing argument. All such submissions, if allowed, shall be in writing, shall be served upon the applicant or permittee, the department and all persons who request copies in advance in writing, and shall contain adequate references to the record and authorities relied on. No new evidence shall be presented unless specifically allowed by the hearing officer.

J. The department shall make an audio recording of the hearing. If the applicant or permittee, or a participant requests a written transcript or certified copy of the audio recording, the requestor shall pay the cost of the transcription or audio copying.

K. The hearing officer shall issue a report within thirty (30) days after the close of the hearing record. The report may include findings of fact, conclusions regarding all material issues of law or discretion, as well as reasons therefore. The report shall be served on the applicant or permittee, the department, and all persons who request copies in advance in writing. The report will be available for public inspection at the department's office in Santa Fe and at the field office closest to the point of the proposed discharge.

L. The secretary shall issue a decision in the matter no later than thirty (30) days of receipt of the hearing report. The decision shall be served and made available for inspection pursuant to Subsection K of this section.

M. Any person who testifies at the hearing or submits a written statement for the record will be considered a participant for purposes of Subsection 20.6.2.3113 NMAC and NMSA 1978, Section 74-6-5[~~.N~~](P).

[2-18-77, 12-1-95, 11-15-96; 20.6.2.3110 NMAC - Rn, 20 NMAC 6.2.III.3110, 1-15-01; A, 12-1-01]

20.6.2.3111 TRANSFER OF GROUND WATER DISCHARGE PERMIT: No purported transfer of any discharge permit shall be effective to create, alter or extinguish any right or responsibility of any person subject to this Part, unless the following transfer requirements are met:

A. Prior to any transfer of ownership, control, or possession (whether by lease, conveyance or otherwise) of a facility with a discharge permit, the transferor shall notify the transferee in writing of the existence of the discharge permit, and shall deliver or send by certified mail to the department a copy of such written notification, together with a certification or other proof that such notification has in fact been received by the transferee.

B. Upon receipt of such notification, the transferee shall have the duty to inquire into all of the provisions and requirements contained in such discharge permit, and the transferee shall be charged with notice of all such provisions and requirements as they appear of record in the department's file or files concerning such discharge permit.

C. Until both ownership and possession of the facility have been transferred to the transferee, the transferor shall continue to be responsible for any discharge from the facility.

D. Upon assuming either ownership or possession of the facility, the transferee shall have the same rights and responsibilities under the discharge permit as were applicable to the transferor.

E. Nothing in this section or in this part shall be construed to relieve any person of responsibility or liability for any act or omission which occurred while that person owned, controlled or was in possession of the facility.

[2-18-77, 12-24-87, 12-1-95, 11-15-96; 20.6.2.3111 NMAC - Rn, 20 NMAC 6.2.III.3111, 1-15-01; A, 12-1-01]

20.6.2.3112 APPEALS OF SECRETARY'S DECISIONS:

A. If the secretary approves, approves subject to conditions, or disapproves a proposed discharge plan, renewal or modification, or modifies or terminates a discharge permit, appeal therefrom shall be in accordance with the provisions of Sections 74-6-5(P), (Q), and (R)[~~(N), (O) and (P)~~], NMSA 1978. The filing of an appeal does not act as a stay of any provision of the Act, the regulations, or any permit issued pursuant to the Act, unless otherwise ordered by the secretary or the commission.

B. If the secretary determines that a discharger is not exempt from obtaining a discharge permit, or that the material to be discharged contains any toxic pollutant listed in 20.6.2.7 NMAC, which is not included in the numerical standards of Paragraph (1) of Subsection A of 20.6.2.3103 NMAC, then the discharger may appeal such determination by filing with the commission's secretary a notice of appeal to the commission within thirty days after receiving the secretary's written determination, and the appeal therefrom and any action of the commission thereon shall be in accordance with the provisions of Sections 74-6-5(P), (Q), (R), (S), and (T), [~~(O), (P), (Q), (R) and (S)~~] NMSA 1978.

C. Proceedings before the commission shall be conducted in accordance with the commission's adjudicatory procedures, 20 NMAC 1.3.

[2-18-77, 7-2-81, 12-1-95, 11-15-96; 20.6.2.3112 NMAC - Rn, 20 NMAC 6.2.III.3112, 1-15-01; A, 12-1-01; A, 7-16-06; A, 12-21-18]

20.6.2.3113 APPEALS OF COMMISSION DECISIONS: An applicant, permittee or a person who participated in a permitting action and who is adversely affected by such action may appeal the decision of the commission in accordance with the provisions of Section 74-6-7(A), NMSA 1978.

[2-18-77, 12-1-95, 11-15-96; 20.6.2.3113 NMAC - Rn, 20 NMAC 6.2.III.3113, 1-15-01; A, 12-1-01]

20.6.2.3114 FEES:

A. FEE AMOUNT AND SCHEDULE OF PAYMENT - Every facility submitting a discharge permit application for approval or renewal shall pay the permit fees specified in Table 1 of this section and shall pay a filing fee as specified in Table 2 of this section to the Water Quality Management Fund. Every facility submitting a request for temporary permission to discharge pursuant to Subsection B of Section 20.6.2.3106 NMAC, or financial assurance pursuant to Paragraph 11 of Subsection A of Section 20.6.2.3107 NMAC shall pay the fees specified in Table 2 of this section to the Water Quality Management Fund.

B. Facilities applying for discharge permits which are subsequently withdrawn or denied shall pay one-half of the permit fee at the time of denial or withdrawal.

C. Every facility submitting an application for discharge permit modification will be assessed a filing fee plus one-half of the permit fee. Applications for both renewal and modification will pay the filing fee plus the permit fee.

D. If the secretary requires a discharge permit modification as a component of an enforcement action, the facility shall pay the applicable discharge permit modification fee. If the secretary requires a discharge permit modification outside the context of an enforcement action, the facility shall not be assessed a fee.

E. The secretary may waive or reduce fees for discharge permit modifications or renewals which require little or no cost for investigation or issuance.

F. Facilities shall pay the filing fee at the time of discharge permit application. The filing fee is nonrefundable. The required permit fees may be paid in a single payment at the time of discharge permit approval or in equal installments over the term of the discharge permit. Installment payments shall be remitted yearly, with the first installment due on the date of discharge permit approval. Subsequent installment payments shall be remitted yearly thereafter. The discharge permit or discharge permit application review of any facility shall be suspended or terminated if the facility fails to submit an installment payment by its due date.

G. Every three years beginning in 2004, the department shall review the fees specified in Table 1 and 2 of this section and shall provide a report to the commission. The department shall revise the fees as necessary in accordance with Section 74-6-5(L)[~~(J)~~], NMSA 1978.

20.6.2.3114 TABLE 1 (gpd=gallons per day)	**Permit Fee**
Agriculture <10,000 gpd	$ 1,150
Agriculture 10,000 to 49,999 gpd	$ 2,300
Agriculture 50,000 to 99,999 gpd	$ 3,450
Agriculture 100,000 gpd or greater	$ 4,600
Domestic Waste <10,000 gpd	$ 1,150
Domestic Waste 10,000 to 49,999 gpd	$ 2,300
Domestic Waste 50,000 to 99,999 gpd	$ 3,450
Domestic Waste 100,000 to 999,999 gpd	$ 4,600
Domestic Waste 1,000,000 to 9,999,999 gpd	$ 7,000
Domestic Waste 10,000,000 gpd or greater	$ 9,200
Food Processing <10,000 gpd	$ 1,150
Food Processing 10,000 to 49,999 gpd	$ 2,300
Food Processing 50,000 to 99,999 gpd	$ 3,450
Food Processing 100,000 to 999,999 gpd	$ 4,600
Food Processing 1,000,000 or greater	$ 7,000
Grease/Septage surface disposal <10,000 gpd	$ 1,725
Grease/Septage surface disposal 10,000 gpd or greater	$ 3,450
Industrial <10,000 gpd; or <10,000 yd^3 of contaminated solids	$ 1,725
Industrial 10,000 to 99,999 gpd; or 10,000 to 99,999 yd^3 of contaminated solids	$ 3,450
Industrial 100,000 to 999,999 gpd; or 100,000 to 999,999 yd^3 of contaminated solids or greater	$ 6,900
Industrial 1,000,000 gpd or greater; or 1,000,000 yd^3 of contaminated solids or greater	$10,350
Discharge of remediation system effluent - remediation plan approved under separate regulatory authority	$ 1,600
Mining dewatering	$ 3,250
Mining leach dump	$13,000
Mining tailings	$13,000
Mining waste rock	$13,000
Mining in-situ leach (except salt) and old stope leaching	$13,000
Mining other (mines with minimal environmental impact, post closure operation and maintenance, evaporation lagoons and land application at uranium mines)	$ 4,750

Gas Compressor Stations 0 to 1000 Horsepower	$ 400
Gas Compressor Stations >1001 Horsepower	$ 1,700
Gas Processing Plants	$ 4,000
Injection Wells: Class I (non-hazardous)	$ 4,500
Injection Wells: Class III and Geothermal	$ 1,700
Oil and Gas Service Companies	$ 1,700
Refineries	$ 8,400
Crude Pump Station	$ 1,200
Underground Gas Storage	$ 1,700
Abatement of ground water and vadose zone contamination	$ 2,600
General permit	$ 600

20.6.2.3114 Table 2

	Fee Amount
Filing fee	$100
Temporary permission	$50
Financial assurance: approval of instrument	greater of $250 or .01%
Financial assurance: annual review	greater of $100 or .001%

[8-17-91, 12-1-95; 20.6.2.3114, Rn & A, 20 NMAC 6.2.III.3114, 01-01-01; A, 12-21-18]

20.6.2.3115 - 20.6.2.3999: [RESERVED]
[12-1-95; 20.6.2.3115 - 20.6.2.3999 NMAC - Rn, 20 NMAC 6.2.III.3115-4100, 1-15-01]

20.6.2.4000 PREVENTION AND ABATEMENT OF WATER POLLUTION:
[12-1-95; 20.6.2.4000 NMAC - Rn, 20 NMAC 6.2.IV, 1-15-01]

20.6.2.4001 - 20.6.2.4100: [RESERVED]
[12-1-95; 20.6.2.4001 - 20.6.2.4100 NMAC - Rn, 20 NMAC 6.2.III.3115-4100, 1-15-01]

20.6.2.4101 PURPOSE:

A. The purposes of Sections 20.6.2.4000 through 20.6.2.4115 NMAC are to:

(1) Abate pollution of subsurface water so that all ground water of the State of New Mexico which has a background concentration of 10,000 mg/L or less TDS, is either remediated or protected for use as domestic and agricultural water supply, and to remediate or protect those segments of surface waters which are gaining because of subsurface water inflow, for uses designated in the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20.6.4 NMAC); and

(2) Abate surface water pollution so that all surface waters of the State of New Mexico are remediated or protected for designated or attainable uses as defined in the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20.6.4 NMAC).

B. If the background concentration of any water contaminant exceeds the standard or requirement of Subsections A, B, and C of Section 20.6.2.4103 NMAC, pollution shall be abated by the responsible person to the background concentration.

C. The standards and requirements set forth in Section 20.6.2.4103 NMAC are not intended as maximum ranges and concentrations for use, and nothing herein contained shall be construed as limiting the use of waters containing higher ranges and concentrations.

[12-1-95; 20.6.2.4101 NMAC - Rn, 20 NMAC 6.2.IV.4101, 1-15-01; A, 12-21-18]

20.6.2.4102: [RESERVED]
[12-1-95; 20.6.2.4102 NMAC - Rn, 20 NMAC 6.2.IV.4102, 1-15-01]

20.6.2.4103 ABATEMENT STANDARDS AND REQUIREMENTS:

A. The vadose zone shall be abated as follows:

(1) water contaminants in the vadose zone shall not be capable of contaminating ground water or surface water, in excess of the standards in Subsections B and C below, through leaching, percolation or as the water table elevation fluctuates; and

(2) any constituent listed in 20.6.2.3103 NMAC or any toxic pollutant in the vadose zone shall be abated so that it is not capable of endangering human health due to inhalation of vapors that may accumulate in structures, utility infrastructure, or construction excavations.

B. Ground water pollution at any place of withdrawal for present or reasonably foreseeable future use, where the TDS concentration is 10,000 mg/L or less, shall be abated to meet the standards of Subsections A, B, and C of Section 20.6.2.3103 NMAC.

C. Surface water pollution shall be abated to conform to the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20.6.4 NMAC).

D. Subsurface water and surface water abatement shall not be considered complete until a minimum of eight (8) consecutive sampling events collected from all compliance sampling stations approved by the secretary, with a minimum of ninety (90) days between sampling events spanning a time period no greater than four (4) years, meet the abatement standards of Subsections A, B, and C of this section. Abatement of water contaminants measured in solid-matrix samples of the vadose zone shall be considered complete after one-time sampling from compliance stations approved by the secretary.

E. Alternative Abatement Standards: If the person abating water pollution pursuant to an approved abatement plan, or pursuant to the exemptions of 20.6.2.4105 NMAC, is unable to fully meet an abatement standard set forth in Subsections A and C of this section, the person may file a petition with the commission seeking approval of an alternative abatement standard.

(1) A petition for an alternative abatement standard shall demonstrate at least one of the following criteria:

(a) compliance with the standard set forth in Subsections A and B of this section would not be feasible by the maximum use of commercially accepted abatement technology;

(b) compliance with the standard set forth in Subsections A and B of this section would not be feasible by the maximum use of technology within the economic capability of the person;

(c) there is no reasonable relationship between the economic and social costs and benefits of attainment of the standard set forth in Subsections A and B of this section; or

(d) compliance with the standard set forth in Subsections A and B of this section is technically infeasible following the maximum use of commercially accepted abatement technology, as demonstrated by a statistically valid extrapolation of the decrease in concentration of any water contaminant over a twenty (20) year period, such that projected future reductions during that time would be less than 20 percent of the concentration at the time technical infeasibility is proposed. Technical infeasibility proposals that involved the use of experimental abatement technology shall be considered at the discretion of the commission. A statistically valid decrease cannot be demonstrated by fewer than eight (8) consecutive sampling events. Sampling events demonstrating a statistically valid decrease shall be collected with a minimum of ninety (90) days between sampling events and shall not span a time period greater than four (4) years.

(2) A petition for alternative abatement standards shall specify, in addition to the information required by Subsection A of 20.6.2.1210 NMAC the following:

(a) the water contaminant for which the alternative abatement standard is proposed;

(b) the alternative abatement standard proposed;

(c) the three-dimensional body of water pollution for which approval is sought;

(d) a summary of all actions taken to abate water pollution to standards; and

(e) other information as deemed necessary, which may include a transport, fate and risk assessment in accordance with accepted methods.

(3) The commission may approve an alternative abatement standard if the petitioner demonstrates that:

(a) at least one of the criteria set forth in Paragraph 1 of Subsection E of this Section has been met;

(b) the proposed alternative abatement standard is technically achievable and cost benefit justifiable; and

(c) compliance with the proposed alternative abatement standard will not create a present or future hazard to public health or undue damage to property.

(4) An alternative abatement standard shall only be granted after a public hearing, as required by NMSA 1978, Section 74-6-4(I)[~~(H)~~] of the water Quality Act.

(5) The commission shall review petitions for alternative abatement standards in accordance with the procedures for review of variance petitions provided in the commission's adjudicatory procedures, 20.1.3 NMAC.

F. For a site where abatement activities include post-completion monitoring, maintenance of engineering controls, remediation systems, affirmation of non-residential use, or port-closure care, institutional controls such as well drilling restrictions under 19.27.5 NMAC, deed restrictions, easements or other legal restrictions binding on successors in interest to the site may be required by the secretary.

[12-1-95, 11-15-96; 20.6.2.4103 NMAC - Rn, 20 NMAC 6.2.IV.4103, 1-15-01; A, 12-21-18]

20.6.2.4104 ABATEMENT PLAN REQUIRED:

A. Unless otherwise provided by this Part, all responsible persons who are abating, or who are required to abate, water pollution in excess of the standards and requirements set forth in Section 20.6.2.4103 NMAC of this Part shall do so pursuant to an abatement plan approved by the secretary. When an abatement plan has been approved, all actions leading to and including abatement shall be consistent with the terms and conditions of the abatement plan.

B. In the event of a transfer of the ownership, control or possession of a facility for which an abatement plan is required or approved, where the transferor is a responsible person, the transferee also shall be considered a responsible person for the duration of the abatement plan, and may jointly share the responsibility to conduct the actions required by this Part with other responsible persons. The transferor shall notify the transferee in writing, at least thirty (30) days prior to the transfer, that an abatement plan has been required or approved for the facility, and shall deliver or send by certified mail to the secretary a copy of such notification together with a certificate or other proof that such notification has in fact been received by the transferee. The transferor and transferee may agree to a designated responsible person who shall assume the responsibility to conduct the actions required by this Part. The responsible persons shall notify the secretary in writing if a designated responsible person is agreed upon. If the secretary determines that the designated responsible person has failed to conduct the actions required by this Part, the secretary shall notify all responsible persons of this failure in writing and allow them thirty (30) days, or longer for good cause shown, to conduct the required actions before issuing a compliance order pursuant to Section 20.6.2.1220 NMAC.

C. The secretary may require the responsible person(s) to submit a financial assurance plan which covers the estimated costs to conduct the actions required by the abatement plan. Such a financial assurance plan shall be consistent with any financial assurance requirements adopted by the commission.

D. The Secretary may require an oversight funding agreement with the responsible person for abatement plans which compensates the department for reasonable costs associated with the oversight of activities.

[12-1-95; 20.6.2.4104 NMAC - Rn, 20 NMAC 6.2.IV.4104, 1-15-01; A, 12-21-18]

20.6.2.4105 EXEMPTIONS FROM ABATEMENT PLAN REQUIREMENTS:

A. Except as provided in Subsection B of this Section, Sections 20.6.2.4104 and 20.6.2.4106 NMAC do not apply to a person who is abating water pollution:

(1) from a storage tank, under the authority of the Petroleum Storage Tank Regulations (20.5 NMAC) adopted by the New Mexico Environmental Improvement Board, or in accordance with the New Mexico Ground Water Protection Act;

(2) under the authority of the U.S. Environmental Protection Agency pursuant to either the federal Comprehensive Environmental Response, Compensation and Liability Act, and amendments, or the Resource Conservation and Recovery Act;

(3) under the authority of the secretary pursuant to the Hazardous Waste Management Regulations (20.4.1 NMAC) adopted by the New Mexico Environmental Improvement Board;

(4) under the authority of the U.S. Nuclear Regulatory Commission or the U.S. Department of Energy pursuant to the Atomic Energy Act;

(5) from a solid waste landfill, under the authority of the secretary pursuant to the Solid Waste Management Regulations (20.9.1 NMAC) adopted by the N.M. Environmental Improvement Board;

(6) under the authority of a ground water discharge plan approved by the secretary, provided that such abatement is consistent with the requirements and provisions of Sections 20.6.2.4101, 20.6.2.4103, Subsections C and E of Section 20.6.2.4106, Sections 20.6.2.4107 and 20.6.2.4112 NMAC;

(7) under the authority of a Letter of Understanding, Settlement Agreement or Administrative Order on Consent signed by the secretary prior to December 1, 1995, provided that abatement is being performed in full compliance with the terms of the Letter of Understanding, Settlement Agreement or Administrative Order on Consent; and

(8) on an emergency basis, or while abatement plan approval is pending, or in a manner that will result in compliance with the standards and requirements set forth in Section 20.6.2.4103 NMAC within one hundred and eighty (180) days after notice is required to be given pursuant to Paragraph (1) of Subsection A of Section 20.6.2.1203 NMAC, provided that the delegated agency does not object to the abatement action pursuant to Paragraphs (6) and (7) of Subsection A of Section 20.6.2.1203 NMAC.

B. If the secretary determines that abatement of water pollution subject to Subsection A of this section will not meet the standards of Subsections A, B, and C of Section 20.6.2.4103 NMAC, or that additional action is necessary to protect health, welfare, environment or property, the secretary may notify a responsible person, by certified mail, to submit an abatement plan pursuant to Section 20.6.2.4104 and Subsection A of Section 20.6.2.4106 NMAC. The notification shall state the reasons for the secretary's determination. In any appeal of the secretary's determination under this Section, the secretary shall have the burden of proof.

C. Sections 20.6.2.4104 and 20.6.2.4106 NMAC do not apply to the following activities:

(1) Discharges subject to an effective and enforceable National Pollutant Discharge Elimination System (NPDES) permit;

(2) Land application of ground water contaminated with nitrogen originating from human or animal waste and not otherwise exceeding the standards of Subsection A of Section 20.6.2.3103 NMAC, provided that it is done in compliance with a discharge plan approved by the secretary;

(3) Abatement of water pollution resulting from the withdrawal and decontamination or blending of polluted water for use as a public or private drinking-water supply, by any person other than a responsible person, unless the secretary determines that a hazard to public health may result; and

(4) Reasonable operation and maintenance of irrigation and flood control facilities.

[12-1-95; 20.6.2.4105 NMAC - Rn, 20 NMAC 6.2.IV.4105, 1-15-01; A, 10-15-03; A, 12-21-18]

20.6.2.4106 ABATEMENT PLAN PROPOSAL:

A. Except as provided for in Section 20.6.2.4105 NMAC, a responsible person shall, within sixty (60) days of receipt of written notice from the secretary that an abatement plan is required, submit an abatement plan proposal to the secretary for approval. For good cause shown, the secretary may allow for a total of one hundred and twenty (120) days to prepare and submit the abatement plan proposal.

B. Voluntary Abatement:

(1) Any person wishing to abate water pollution in excess of the standards and requirements set forth in Section 20.6.2.4103 NMAC may submit a Stage 1 abatement plan proposal to the secretary for approval. Following approval by the secretary of a final site investigation report prepared pursuant to Stage 1 of an abatement plan, any person may submit a Stage 2 abatement plan proposal to the secretary for approval.

(2) Following approval of a Stage 1 or Stage 2 abatement plan proposal under Paragraph (1) of Subsection B of this Section, the person submitting the approved plan shall be a responsible person under Sections 20.6.2.4000 through 20.6.2.4115 NMAC for the purpose of performing the approved Stage 1 or Stage 2 abatement plan. Nothing in this Section shall preclude the secretary from applying Paragraph (9) of Subsection A of Section 20.6.2.1203 NMAC to a responsible person if applicable.

C. Stage 1 Abatement Plan: The purpose of Stage 1 of the abatement plan shall be to design and conduct a site investigation that will adequately define site conditions, and provide the data necessary to select and design an effective abatement option. Stage 1 of the abatement plan may include, but not necessarily be limited to, the following information depending on the media affected, and as reasonably needed to select and implement an expeditious abatement option:

(1) Descriptions of the site, including a site map, and of site history including the nature of the discharge that caused the water pollution, and a summary of previous investigations;

(2) Site investigation workplan to define:

(a) site geology and hydrogeology, the vertical and horizontal extent and magnitude of vadose-zone and ground water contamination, subsurface hydraulic parameters including hydraulic conductivity, transmissivity, storativity, and rate and direction of contaminant migration, inventory of water wells inside and

within one (1) mile from the perimeter of the three-dimensional body where the standards set forth in Subsection B of Section 20.6.2.4103 NMAC are exceeded, and location and number of such wells actually or potentially affected by the pollution; and

(b) surface water hydrology, seasonal stream flow characteristics, ground water/surface water relationships, the vertical and horizontal extent and magnitude of contamination and impacts to surface water and stream sediments. The magnitude of contamination and impacts on surface water may be, in part, defined by conducting a biological assessment of fish, benthic macroinvertebrates and other wildlife populations. Seasonal variations should be accounted for when conducting these assessments.

(3) Monitoring program, including sampling stations and frequencies, for the duration of the abatement plan that may be modified, after approval by the secretary, as additional sampling stations are created;

(4) Quality assurance plan, consistent with the sampling and analytical techniques listed in Subsection B of Section 20.6.2.3107 NMAC and with Section 20.6.4.10 NMAC of the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20.6.4 NMAC), for all work to be conducted pursuant to the abatement plan;

(5) Site health and safety plan for all work to be performed pursuant to the abatement plan;

(6) A schedule for all Stage 1 abatement plan activities, including the submission of summary quarterly progress reports, and the submission, for approval by the secretary, of a detailed final site investigation report; and

(7) Any additional information that may reasonably be required to design and perform an adequate site investigation.

D. Stage 2 Abatement Plan: Any responsible person shall submit a Stage 2 abatement plan proposal to the secretary for approval within sixty (60) days after approval by the secretary of the final site investigation report prepared pursuant to Stage 1 of the abatement plan. The secretary may grant approval for an extension of time to submit a State 2 abatement plan for good cause shown.

E. The purpose of Stage 2 of the abatement plan shall be to select and design, if necessary, an abatement option that, when implemented, will result in attainment of the abatement standards and requirements set forth in Section 20.6.2.4103 NMAC, including post-closure maintenance activities. Stage 2 of the abatement plan should include, at a minimum, the following information:

(1) Brief description of the current situation at the site;

(2) Development and assessment of abatement options;

(3) Description, justification and design, if necessary, of preferred abatement option;

(4) Modification, if necessary, of the monitoring program approved pursuant to Stage 1 of the abatement plan, including the designation of pre and post abatement-completion sampling stations and sampling frequencies to be used to demonstrate compliance with the standards and requirements set forth in Section 20.6.2.4103 NMAC;

(5) Site maintenance activities, if needed, proposed to be performed after termination of abatement activities;

(6) A schedule for the duration of abatement activities, including the submission of summary quarterly progress reports;

(7) A public notification proposal designed to satisfy the requirements of Subsections B and C of Sections 20.6.2.4108 and 20.6.2.4108 NMAC; and

(8) Any additional information that may be reasonably required to select, describe, justify and design an effective abatement option.

[12-1-95; 20.6.2.4106 NMAC - Rn, 20 NMAC 6.2.IV.4106, 1-15-01; A, 12-21-18]

20.6.2.4107 OTHER REQUIREMENTS:

A. Any responsible person shall allow any authorized representative of the secretary to:

(1) upon presentation of proper credentials, enter the facility at reasonable times;

(2) inspect and copy records required by an abatement plan;

(3) inspect any treatment works, monitoring and analytical equipment;

(4) sample any wastes, ground water, surface water, stream sediment, plants, animals, or vadose-zone material including vadose-zone vapor;

(5) use monitoring systems and wells under such responsible person's control in order to collect samples of any media listed in Paragraph (4) of Subsection A of this section; and

(6) gain access to off-site property not owned or controlled by such responsible person, but accessible to such responsible person through a third-party access agreement, provided that it is allowed by the agreement.

B. Any responsible person shall provide the secretary, or a representative of the secretary, with at least four (4) working days advance notice of any sampling to be performed pursuant to an abatement plan, or any well plugging, abandonment or destruction at any facility where an abatement plan has been required.

C. Any responsible person wishing to plug, abandon or destroy a monitoring or water supply well within the perimeter of the 3-dimensional body where the standards set forth in Subsection B of Section 20.6.2.4103 NMAC are exceeded, at any facility where an abatement plan has been required, shall propose such action by certified mail to the secretary for approval, unless such approval is required from the State Engineer. The proposed action shall be designed to prevent water pollution that could result from water contaminants migrating through the well or borehole. The proposed action shall not take place without written approval from the secretary, unless written approval or disapproval is not received by the responsible person within thirty (30) days of the date of receipt of the proposal.

[12-1-95; 20.6.2.4107 NMAC - Rn, 20 NMAC 6.2.IV.4107, 1-15-01]

20.6.2.4108 PUBLIC NOTICE AND PARTICIPATION:

A. Within thirty (30) days of filing of a Stage 1 abatement plan proposal, the secretary shall issue a news release summarizing:

(1) the source, extent, magnitude and significance of water pollution, as known at that time;

(2) the proposed Stage 1 abatement plan investigation; and

(3) the name and telephone number of an agency contact who can provide additional information.

B. Any person proposing a Stage 2 abatement plan, a significant modification to a Stage 2 abatement plan, or an alternative abatement standard shall provide notice of the proposal to the following persons:

(1) the public, who shall be notified through publication of a notice in newspapers of general circulation in this state and in the county where the abatement will occur or where the water body that would be affected by a proposed alternative abatement standard is located, and, in areas with large percentages of non-English speaking people, through the mailing of the public notice in English to a bilingual radio station serving the area where the abatement will occur with a request that it be aired as a public service announcement in the predominant non-English language of the area;

(2) those persons, as identified by the secretary, who have requested notification, who shall be notified by mail or email;

(3) the New Mexico Trustee for Natural Resources, and any other local, state or federal governmental agency affected, as identified by the secretary, which shall be notified by certified mail;

(4) owners and residents of surface property located inside, and within one (1) mile from, the perimeter of the geographic area where the standards and requirements set forth in Section 20.6.2.4103 NMAC are exceeded who shall be notified by a means approved by the secretary; and

(5) the Governor or President of each Indian Tribe, Pueblo or Nation within the state of New Mexico, as identified by the secretary, who shall be notified by mail or email.

C. The public notice proposal for a Stage 2 abatement plan proposal or significant modification of a Stage 2 abatement plan shall be submitted to the secretary for approval with a proposed Stage 2 abatement plan, or significant modification of a Stage 2 abatement plan, and shall include:

(1) name and address of the responsible person;

(2) location of the proposed abatement;

(3) brief description of the nature of the water pollution and of the proposed abatement action;

(4) brief description of the procedures followed by the secretary in making a final determination;

(5) statement on the comment period;

(6) statement that a copy of the abatement plan can be viewed by the public at the department's main office or at the department field office for the area in which the discharge occurred;

(7) statement that written comments on the abatement plan, and requests for a public meeting or hearing that include the reasons why a meeting or hearing should be held, will be accepted for consideration if sent to the secretary within sixty (60) days after the date of public notice; and

(8) address and phone number at which interested persons may obtain further information.

D. The public notice proposal for a proposed alternative abatement standard shall be submitted to the secretary for approval thirty (30) days prior to the filing of a petition for alternative abatement standards, and shall include:

(1) name and address of the responsible person;

(2) location of the proposed alternative abatement standards;

(3) brief description of the nature of the water pollution and of the proposed alternative abatement standards;

(4) brief description of the procedures followed by the commission in making a final determination on a petition for alternate abatement standards;

(5) statement that a copy of the petition for alternate abatement standards petition can be viewed by the public at the department's main office or at the department field office for the area in which the affected water body is occurring;

(6) statement on how the public can request to be placed on a facility-specific mailing list for notification of any hearing conducted on the petition for alternate abatement standards pursuant to 20.1.3 NMAC; and,

(7) address and phone number at which interested persons may obtain further information.

E. Within thirty (30) days of the secretary's approval of a Stage 2 abatement plan public notice proposal, any responsible person shall provide to the secretary proof of public notice to the persons listed in Subsection B of 20.6.2.4108 NMAC.

F. For a proposed Stage 2 abatement plan or significant modification of a Stage 2 abatement plan, a public meeting or hearing may be held if the secretary determines there is significant public interest. Notice of the time and place of the meeting or hearing shall be given at least thirty (30) days prior to the meeting or hearing pursuant to Subsections A and B above. The secretary may appoint a meeting facilitator or hearing officer. The secretary may require the responsible person to prepare for approval by the secretary a fact sheet, to be distributed at the public meeting or hearing and afterwards upon request, written in English and Spanish, describing site history, the nature and extent of water pollution, and the proposed abatement. The record of the meeting or hearing, requested under this Section, consists of a tape recorded or transcribed session, provided that the cost of a court recorder shall be paid by the person requesting the transcript. If requested by the secretary, the responsible person will provide a translator approved by the secretary at a public meeting or hearing conducted in a locale where testimony from non-English speaking people can reasonably be expected. At the meeting or hearing, all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing, and to ask questions of the secretary or the secretary's designee and of the responsible person, or their authorized representatives.

G. An alternative abatement standard shall only be granted after a public hearing before the commission, as required by NMSA 1978, Section 74-6-4(I)[~~(H)~~] of the Water Quality Act. The commission shall review petitions for alternative abatement standards in accordance with the procedures for review of variance petitions provided in the commission's adjudicatory procedures, 20.1.3 NMAC.

[12-1-95; 20.6.2.4108 NMAC - Rn, 20 NMAC 6.2.IV.4108, 1-15-01; A, 12-21-18]

20.6.2.4109 SECRETARY APPROVAL OR NOTICE OF DEFICIENCY OF SUBMITTALS:

A. The secretary shall, within sixty (60) days of receiving a Stage 1 abatement plan proposal, a site investigation report, or an abatement completion report, approve the document, or notify the responsible person of the document's deficiency, based upon the information available.

B. The secretary shall, within thirty (30) days of receiving a fact sheet, or Stage 2 abatement plan public notice proposal, approve or notify the responsible person of the document's deficiency, based upon the information available.

C. If no public meeting or hearing is held pursuant to Subsection E of Section 20.6.2.4108 NMAC, then the secretary shall, within 120 days of receiving a Stage 2 abatement plan proposal, approve the plan, or notify the responsible person of the plan's deficiency, based upon the information available.

D. If a public meeting or hearing is held pursuant to Subsection E of Section 20.6.2.4108, then the secretary shall, within sixty (60) days of receipt of all required information, approve Stage 2 of the abatement plan proposal, or notify the responsible person of the plan's deficiency, based upon the information contained in the plan and information submitted at the meeting or hearing.

E. If the secretary notifies a responsible person of any deficiencies in a site investigation report, or in a Stage 1 or Stage 2 abatement plan proposal, the responsible person shall submit a modified document to cure the deficiencies specified by the secretary within thirty (30) days of receipt of the notice of deficiency. The responsible

person shall be in violation of Sections 20.6.2.4000 through 20.6.2.4115 NMAC if he fails to submit a modified document within the required time, or if the modified document does not make a good faith effort to cure the deficiencies specified by the secretary.

F. Provided that the other requirements of this Part are met and provided further that Stage 2 of the abatement plan, if implemented, will result in the standards and requirements set forth in Section 20.6.2.4103 NMAC being met within a schedule that is reasonable given the particular circumstances of the site, the secretary shall approve the plan.

[12-1-95; 20.6.2.4109 NMAC - Rn, 20 NMAC 6.2.IV.4109, 1-15-01; A, 12-21-18]

20.6.2.4110 INVESTIGATION AND ABATEMENT: Any responsible person who receives approval for Stage 1 and/or Stage 2 of an abatement plan shall conduct all investigation, abatement, monitoring and reporting activity in full compliance with Sections 20.6.2.4000 through 20.6.2.4115 NMAC and according to the terms and schedules contained in the approved abatement plans.

[12-1-95; 20.6.2.4110 NMAC - Rn, 20 NMAC 6.2.IV.4110, 1-15-01]

20.6.2.4111 ABATEMENT PLAN MODIFICATION:

A. Any approved abatement plan may be modified, at the written request of the responsible person, in accordance with Sections 20.6.2.4000 through 20.6.2.4115 NMAC, and with written approval of the secretary.

B. If data submitted pursuant to any monitoring requirements specified in the approved abatement plan or other information available to the secretary indicates that the abatement action is ineffective, or is creating unreasonable injury to or interference with health, welfare, environment or property, the secretary may require a responsible person to modify an abatement plan within the shortest reasonable time so as to effectively abate water pollution which exceeds the standards and requirements set forth in Section 20.6.2.4103 NMAC, and to abate and prevent unreasonable injury to or interference with health, welfare, environment or property.

[12-1-95; 20.6.2.4111 NMAC - Rn, 20 NMAC 6.2.IV.4111, 1-15-01]

20.6.2.4112 COMPLETION AND TERMINATION:

A. Abatement shall be considered complete when the standards and requirements set forth in Section 20.6.2.4103 NMAC are met. At that time, the responsible person shall submit an abatement completion report, documenting compliance with the standards and requirements set forth in Section 20.6.2.4103 NMAC, to the secretary for approval. The abatement completion report also shall propose any changes to long term monitoring and site maintenance activities, if needed, to be performed after termination of the abatement plan.

B. Provided that the other requirements of this Part are met and provided further that the standards and requirements set forth in Section 20.6.2.4103 NMAC have been met, the secretary shall approve the abatement completion report. When the secretary approves the abatement completion report, he shall also notify the responsible person in writing that the abatement plan is terminated.

[12-1-95; 20.6.2.4112 NMAC - Rn, 20 NMAC 6.2.IV.4112, 1-15-01]

20.6.2.4113 DISPUTE RESOLUTION: In the event of any technical dispute regarding the requirements of Paragraph (9) of Subsection A and Subsection E of Section 20.6.2.1203, Sections 20.6.2.4103, 20.6.2.4105, 20.6.2.4106, 20.6.2.4111 or 20.6.2.4112 NMAC, including notices of deficiency, the responsible person may notify the secretary by certified mail that a dispute has arisen, and desires to invoke the dispute resolution provisions of this Section, provided that such notification must be made within thirty (30) days after receipt by the responsible person of the decision of the secretary that causes the dispute. Upon such notification, all deadlines affected by the technical dispute shall be extended for a thirty (30) day negotiation period, or for a maximum of sixty (60) days if approved by the secretary for good cause shown. During this negotiation period, the secretary or his/her designee and the responsible person shall meet at least once. Such meeting(s) may be facilitated by a mutually agreed upon third party, but the third party shall assume no power or authority granted or delegated to the secretary by the Water Quality Act or by the commission. If the dispute remains unresolved after the negotiation period, the decision of secretary shall be final.

[12-1-95; 20.6.2.4113 NMAC - Rn, 20 NMAC 6.2.IV.4113, 1-15-01]

20.6.2.4114 APPEALS FROM SECRETARY'S DECISIONS:

A. If the secretary determines that an abatement plan is required pursuant to Paragraph (9) of Subsection A of 20.6.2.1203, Subsection F of 20.6.2.3109, or Subsection B of 20.6.2.4105 NMAC, approves or provides notice of deficiency of a proposed abatement plan, or abatement completion report, or modifies or

terminates an approved abatement plan, he shall provide written notice of such action by certified mail to the responsible person and any person who participated in the action.

B. Any person who participated in the action before the secretary and who is adversely affected by the action listed in Subsection A of 20.6.2.4114 NMAC may file a petition requesting a review before the commission.

C. The petition shall be made in writing to the commission and shall be filed with the commission's secretary within thirty (30) days after receiving notice of the secretary's action. The petition shall specify the portions of the action to which the petitioner objects, certify that a copy of the petition has been mailed or hand-delivered to the secretary, and to the applicant or permittee if the petitioner is not the applicant or permittee, and attach a copy of the action for which review is sought. Unless a timely petition for hearing is made, the secretary's action is final.

D. The proceedings before the commission shall be conducted as provided in the commission's adjudicatory procedures, 20 NMAC 1.3.

E. The cost of the court reporter for the hearing shall be paid by the petitioner.

F. The appeal provisions do not relieve the owner, operator or responsible person of their obligations to comply with any federal or state laws or regulations.

[12-1-95, 11-15-96; 20.6.2.4114 NMAC - Rn, 20 NMAC 6.2.IV.4114, 1-15-01; A, 7-16-06; A, 12-21-18]

20.6.2.4115 COURT REVIEW OF COMMISSION DECISIONS: Court review of commission decisions shall be as provided by law.

[12-1-95; 20.6.2.4115 NMAC - Rn, 20 NMAC 6.2.IV.4115, 1-15-01]

20.6.2.4116 - 20.6.2.4999: [RESERVED]

[12-1-95; 20.6.2.4116 - 20.6.2.4999 NMAC - Rn, 20 NMAC 6.2.IV.4116-5100, 1-15-01]

20.6.2.5000 UNDERGROUND INJECTION CONTROL:

[12-1-95; 20.6.2.5000 NMAC - Rn, 20 NMAC 6.2.V, 1-15-01]

20.6.2.5001 PURPOSE: The purpose of 20.6.2.5000 through 20.6.2.5399 NMAC controlling discharges from underground injection control wells is to protect all ground water of the state of New Mexico which has an existing concentration of 10,000 mg/l or less TDS, for present and potential future use as domestic and agricultural water supply, and to protect those segments of surface waters which are gaining because of ground water inflow for uses designated in the New Mexico water quality standards. 20.6.2.5000 through 20.6.2.5399 NMAC include notification requirements, and requirements for discharges directly into the subsurface through underground injection control wells.

[20.6.2.5001 NMAC - N, 12-1-01; A, 8-31-15]

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 or 20.4.1.200 NMAC (incorporating 40 C.F.R. Section 261.3), 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 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 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 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 that regulated by 20.7.3 NMAC, including drywells that sometimes have an open bottom 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) 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; A, 8-31-15; A, 12-21-18]

20.6.2.5003 NOTIFICATION AND GENERAL OPERATION REQUIREMENTS FOR ALL UNDERGROUND INJECTION CONTROL WELLS: All operators of underground injection control wells, except those wells regulated under the Oil and Gas Act, the Geothermal Resources Development Act, and the Surface Mining Act, shall:

A. for existing underground injection control wells, submit to the secretary the information enumerated in Subsection C of 20.6.2.1201 NMAC of this part; provided, however, that if the information in Subsection C of 20.6.2.1201 NMAC has been previously submitted to the secretary and acknowledged by him, the information need not be resubmitted; and

B. operate and continue to operate in conformance with 20.6.2.1 through 20.6.2.5399 NMAC;

C. for new underground injection control wells, submit to the secretary the information enumerated in Subsection C of 20.6.2.1201 NMAC of this part at least 120 days prior to well construction.

[9-20-82, 12-1-95; 20.6.2.5300 NMAC - Rn, 20 NMAC 6.2.V.5300, 1-15-01; 20.6.2.5003 NMAC - Rn, 20.6.2.5300 NMAC, 12-1-01; A, 12-1-01; A, 9-15-02; A, 8-31-15; A, 12-21-18]

20.6.2.5004 PROHIBITED UNDERGROUND INJECTION CONTROL ACTIVITIES AND WELLS:

A. No person shall perform the following underground injection activities nor operate the following underground injection control wells.

(1) The injection of fluids into a motor vehicle waste disposal well is prohibited. Motor vehicle waste disposal wells are prohibited. Any person operating a new motor vehicle waste disposal well (for which construction began after April 5, 2000) must close the well immediately. Any person operating an existing motor vehicle waste disposal well must cease injection immediately and must close the well by December 31, 2002, except as provided in this subsection.

(2) The injection of fluids into a large capacity cesspool is prohibited. Large capacity cesspools are prohibited. Any person operating a new large capacity cesspool (for which construction began after April 5, 2000) must close the cesspool immediately. Any person operating an existing large capacity cesspool must cease injection immediately and must close the cesspool by December 31, 2002.

(3) The injection of any hazardous or radioactive waste into a well is prohibited, except as provided in 20.6.2.5300 through 20.6.2.5399 NMAC or this subsection.

(a) Class I radioactive waste injection wells are prohibited, except naturally-occurring radioactive material (NORM) regulated under 20.3.1.1407 NMAC is allowed as a Class I non-hazardous waste injection well pursuant to Paragraph (1) of Subsection B of 20.6.2.5002 NMAC.

(b) Class IV wells are prohibited, except for wells re-injecting treated ground water into the same formation from which it was drawn as part of a removal or remedial action if the injection has prior approval from the environmental protection agency (EPA) or the department under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA).

(4) Barrier wells, drainage wells, recharge wells, return flow wells, and motor vehicle waste disposal wells are prohibited, except when the discharger can demonstrate that the discharge will not adversely affect the health of persons, and

(a) the injection fluid does not contain a constituent or exhibit a physical parameter (which could include pH, redox condition or temperature) which may cause an exceedance at any place of present or reasonable foreseeable future use of any primary state drinking water maximum contaminant level as specified in the water supply regulations, “Drinking Water” (20.7.10 NMAC), adopted by the environmental improvement board under the Environmental Improvement Act or the standard of 20.6.2.3103 NMAC, whichever is more stringent;

(b) the discharger can demonstrate that the injection will result in an overall or net improvement in water quality as determined by the secretary.

B. Closure of prohibited underground injection control wells shall be in accordance with 20.6.2.5005 and 20.6.2.5209 NMAC.

[20.6.2.5004 NMAC - N, 12-1-01; A, 8-31-15; A, 12-21-18]

20.6.2.5005 PRE-CLOSURE NOTIFICATION AND CLOSURE REQUIREMENTS:

A. Any person proposing to close a Class I, III, IV or V underground injection control well must submit pre-closure notification to the department at least 30 days prior to closure. Pre-closure notification must include the following information:

(1) Name of facility.

(2) Address of facility.

(3) Name of Owner/Operator.

(4) Address of Owner/Operator.

(5) Contact Person.

(6) Phone Number.

(7) Type of Well(s).
(8) Number of Well(s).
(9) Well Construction (e.g. drywell, improved sinkhole, septic tank, leachfield, cesspool, other…).
(10) Type of Discharge.
(11) Average Flow (gallons per day).
(12) Year of Well Construction.
(13) Proposed Well Closure Activities (e.g. sample fluids/sediment, appropriate disposal of remaining fluids/sediments, remove well and any contaminated soil, clean out well, install permanent plug, conversion to other type well, ground water and vadose zone investigation, other).
(14) Proposed Date of Well Closure.
(15) Name of Preparer.
(16) Date.
(17) Well plugging plan as submitted to the Office of the State Engineer pursuant to 19.27.4 NMAC.

B. Proposed well closure activities must be approved by the department prior to implementation.
[20.6.2.5005 NMAC - N, 12-1-01; A; 12-21-18]

20.6.2.5006 DISCHARGE PERMIT REQUIREMENTS FOR CLASS V INJECTION WELLS: Class V injection wells must meet the requirements of Sections 20.6.2.3000 through 20.6.2.3999 NMAC and Sections 20.6.2.5000 through 20.6.2.5006 NMAC. Class V injection wells or surface impoundments constructed as recharge basins used to replenish the water in an aquifer, including use to reclaim or improve the quality of existing water must additionally provide documentation of compliance with 19.25.8 NMAC (Underground Storage and Recovery) and shall not be subject to the exemptions of 20.6.2.3105 NMAC.
[20.6.2.5006 NMAC - N, 12-1-01; A, 12-21-18]

20.6.2.5007 - 20.6.2.5100: [RESERVED]
[12-1-95; 20.6.2.5001 - 20.6.2.5100 NMAC - Rn, 20 NMAC 6.2.IV.4116-5100, 1-15-01; 20.6.2.5007 -20.6.2.5100 NMAC - Rn 20.6.2.5001 - 20.6.2.5100 NMAC, 12-1-01]

20.6.2.5101 DISCHARGE PERMIT AND OTHER REQUIREMENTS FOR CLASS I WELLS AND CLASS III WELLS:

A. Class I wells and Class III wells must meet the requirements of 20.6.2.5000 through 20.6.2.5399 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 wells in 20.6.2.5000 through 20.6.2.5399 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 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 20.6.2.5103 NMAC, or pursuant to a temporary designation as provided in Paragraph (2) of Subsection C of 20.6.2.5101 NMAC.

B. Operation of a Class I well or Class III well must be pursuant to a discharge permit meeting the requirements of 20.6.2.3000 through 20.6.2.3999 NMAC and 20.6.2.5000 through 20.6.2.5399 NMAC.

C. Discharge permits for Class I 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 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 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 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 20.6.2.3105 NMAC do not apply to underground injection control wells except as provided below:

(1) wells regulated by the energy conservation management division of the energy, minerals and natural resources department under the "Geothermal Resources Development Act";

(2) wells regulated by the mining and minerals division of the energy, minerals and natural resources department under the "Surface Mining Act";

(3) wells for the disposal of effluent from systems which are regulated under the "Liquid Waste Disposal and Treatment" regulations (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 20.6.2.3106, 20.6.2.3107, 20.6.2.5204 through 20.6.2.5209, and Subsection B of 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 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 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 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 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 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) all reports required by Class I hazardous waste injection well permits and other information requested by the director pursuant to a Class I hazardous waste injection well permit shall be signed by a person described in Paragraph (1) of this subsection, or by a duly authorized representative of that person; a person is a duly authorized representative only if:

(a) the authorization is made in writing by a person described in Paragraph (1) of this subsection;

(b) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility; (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(c) the written authorization is submitted to the director.

(3) *Changes to authorization.* If an authorization under Paragraph (2) of this subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Paragraph (2) of this subsection must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) The signature on an application, report or other information requested by the director must be 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 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 (a) of Paragraph (2) of Subsection H 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 20.6.2.5210 NMAC.

I. Modification or termination of a discharge permit for a Class I 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 well, or Class III well or well field, that was approved pursuant to the requirements of this under 20.6.2.5000 through 20.6.2.5399 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; A, 8-31-15; A, 12-21-18]

20.6.2.5102 PRE-CONSTRUCTION REQUIREMENTS FOR CLASS I WELLS AND CLASS III WELLS:

A. Discharge permit requirement for Class I wells.

(1) Prior to construction of a Class I well or conversion of an existing well to a Class I well, an approved discharge permit is required that incorporates the requirements of 20.6.2.5000 through 20.6.2.5399 NMAC, except Subsection C of 20.6.2.5210 NMAC. As a condition of discharge permit issuance, the operation of the Class I well under the discharge permit will not be authorized until the secretary has:

(a) reviewed the information submitted for his consideration pursuant to Subsection C of 20.6.2.5210 NMAC; and

(b) determined that the information submitted demonstrates that the operation will be in compliance with this part and the discharge permit.

(2) If conditions encountered during construction represent a substantial change which could adversely impact ground water quality from those anticipated in the discharge permit, the secretary shall require a discharge permit modification or may terminate the discharge permit pursuant to Subsection I of 20.6.2.5101 NMAC, and the secretary shall publish public notice and allow for comments and hearing in accordance with 20.6.2.3108 NMAC.

B. Notification requirement for Class III wells.

(1) The discharger shall notify the secretary in writing prior to the commencement of drilling or construction of wells which are expected to be used for in situ extraction, unless the discharger has previously received a discharge permit or project discharge permit for the Class III well operation.

(a) Any person proposing to drill or construct a new Class III well or well field, or convert an existing well to a Class III well, shall file plans, specifications and pertinent documents regarding such construction or conversion, with the ground water quality bureau of the environment department.

(b) Plans, specifications, and pertinent documents required by this section, if pertaining to carbon dioxide facilities, or facilities for the exploration, production, refinement or pipeline transmission of oil and natural gas, shall be filed instead with the oil conservation division of the energy, minerals and natural resources department.

(c) Plans, specifications and pertinent documents required to be filed under this section must be filed 90 days prior to the planned commencement of construction or conversion.

(d) The following plans, specifications and pertinent documents shall be provided with the notification:

(i) information required in Subsection C of 20.6.2.3106 NMAC;

(ii) a map showing the Class III wells which are to be constructed; the map must also show, in so far as is known or is reasonably available from the public records, the number, name, and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells and other pertinent surface features, including residences and roads, that are within the expected area of review (20.6.2.5202 NMAC) of the Class III well or well field perimeter;

(iii) maps and cross-sections indicating the general vertical and lateral limits of all ground water having 10,000 mg/l or less TDS within one mile of the site, the position of such ground water within this area relative to the injection formation, and the direction of water movement, where known, in each zone of ground water which may be affected by the proposed injection operation;

(iv) maps and cross-sections detailing the geology and geologic structure of the local area, including faults, if known or suspected;

(v) the proposed formation testing program to obtain an analysis or description, whichever the secretary requires, of the chemical, physical, and radiological characteristics of, and other information on, the receiving formation;

(vi) the proposed stimulation program;

(vii) the proposed injection procedure;

(viii) schematic or other appropriate drawings of the surface and subsurface construction details of the well;

(ix) proposed construction procedures, including a cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program;

(x) information, as described in Paragraph (17) of Subsection B of 20.6.2.5210 NMAC, showing the ability of the discharger to undertake measures necessary to prevent ground water contamination; and

(xi) a plugging and abandonment plan showing that the requirements of Subsections B, C and D of 20.6.2.5209 NMAC will be met.

(2) Prior to construction, the discharger shall have received written notice from the secretary that the information submitted under item 10 of Subparagraph (d) of Paragraph (1) of Subsection B of 20.6.2.5102 NMAC is acceptable. Within 30 days of submission of the above information the secretary shall notify the discharger that the information submitted is acceptable or unacceptable.

(3) Prior to construction, the secretary shall review said plans, specifications and pertinent documents and shall comment upon their adequacy of design for the intended purpose and their compliance with pertinent sections of this part. Review of plans, specifications and pertinent documents shall be based on the criteria contained in 20.6.2.5205, Subsection E of 20.6.2.5209, and Subparagraph (d) of Paragraph (1) of Subsection B of 20.6.2.5102 NMAC.

(4) Within 30 days of receipt, the secretary shall issue public notice, consistent with Subsection B of 20.6.2.3108 NMAC, that notification was submitted pursuant to Subsection B of 20.6.2.5102 NMAC. The secretary shall allow a period of at least 30 days during which comments may be submitted. The public notice shall include:

(a) name and address of the proposed discharger;

(b) location of the discharge;

(c) brief description of the proposed activities;

(d) statement of the public comment period; and

(e) address and telephone number at which interested persons may obtain further information.

(5) The secretary shall comment in writing upon the plans and specifications within 60 days of their receipt by the secretary.

(6) Within 30 days after completion, the discharger shall submit written notice to the secretary that the construction or conversion was completed in accordance with submitted plans and specifications, or shall submit as-built plans detailing changes from the originally submitted plans and specifications.

(7) In the event a discharge permit application is not submitted or approved, all wells which may cause ground water contamination shall be plugged and abandoned by the applicant pursuant to the plugging and abandonment plan submitted in the notification; these measures shall be consistent with any comments made by the secretary in his review. If the wells are not to be permanently abandoned and the discharger demonstrates that plugging at this time is unnecessary to prevent ground water contamination, plugging pursuant to the notification is not required. Financial responsibility established pursuant to 20.6.2.5000 through 20.6.2.5299 NMAC will remain in effect until the discharger permanently abandons and plugs the wells in accordance with the plugging and abandonment plan.

[9-20-82, 12-24-87, 12-1-95; 20.6.2.5102 NMAC - Rn, 20 NMAC 6.2.V.5102, 1-15-01; A, 12-1-01; A, 8-31-15; A, 12-21-18]

20.6.2.5103 DESIGNATED AQUIFERS FOR CLASS I WELLS AND CLASS III WELLS:

A. Any person may file a written petition with the secretary seeking commission consideration of certain aquifers or portions of aquifers as "designated aquifers". The purpose of aquifer designation is:

(1) for Class I wells, to allow as a result of injection, the addition of water contaminants into ground water, which before initiation of injection has a concentration between 5,000 and 10,000 mg/l TDS; or

(2) for Class III wells, to allow as a result of injection, the addition of water contaminants into ground water, which before initiation of injection has a concentration between 5,000 and 10,000 mg/l TDS, and not provide for restoration or complete restoration of that ground water pursuant to Paragraph (2) of Subsection C of 20.6.2.5101 NMAC.

B. The applicant shall identify (by narrative description, illustrations, maps or other means) and describe such aquifers, in geologic and geometric terms (such as vertical and lateral limits and gradient) which are clear and definite.

C. An aquifer or portion of an aquifer may be considered for aquifer designation under Subsection A of this section, if the applicant demonstrates that the following criteria are met:

(1) it is not currently used as a domestic or agricultural water supply; and

(2) there is no reasonable relationship between the economic and social costs of failure to designate and benefits to be obtained from its use as a domestic or agricultural water supply because:

(a) it is situated at a depth or location which makes recovery of water for drinking or agricultural purposes economically or technologically impractical at present and in the reasonably foreseeable future; or

(b) it is already so contaminated that it would be economically or technologically impractical to render that water fit for human consumption or agricultural use at present and in the reasonably foreseeable future.

D. The petition shall state the extent to which injection would add water contaminants to ground water and why the proposed aquifer designation should be approved. For Class III wells, the applicant shall state whether and to what extent restoration will be carried out.

E. The secretary shall either transmit the petition to the commission within 60 recommending that a public hearing be held, or refuse to transmit the petition and notify the applicant in writing citing reasons for such refusal.

F. If the secretary transmits the petition to the commission, the commission shall review the petition and determine to either grant or deny a public hearing on the petition. If the commission grants a public hearing, it shall issue a public notice, including the following information:

(1) name and address of the applicant;

(2) location, depth, TDS, areal extent, general description and common name or other identification of the aquifer for which designation is sought;

(3) nature of injection and extent to which the injection will add water contaminants to ground water; and

(4) address and telephone number at which interested persons may obtain further information.

G. If the secretary refuses to transmit the petition to the commission, then the applicant may appeal the secretary's disapproval of the proposed aquifer designation to the commission within 30 days, and address the issue of whether the proposed aquifer designation meets the criteria of Subsections A, B, C, and D of this section.

H. If the commission grants a public hearing, the hearing shall be held in accordance with the provisions of Section 74-6-6 NMSA 1978.

I. If the commission does not grant a public hearing on the petition, the aquifer designation shall not be approved.

J. After public hearing and consideration of all facts and circumstances included in Section 74-6-4(D) NMSA 1978, the commission may authorize the secretary to approve a proposed designated aquifer if the commission determines that the criteria of Subsections A, B, C, and D of this section are met.

K. Approval of a designated aquifer petition does not alleviate the applicant from complying with other sections of 20.6.2.5000 through 20.6.2.5399 NMAC, or of the responsibility for protection, pursuant to this part, of other nondesignated aquifers containing ground water having 10,000 mg/l or less TDS.

L. Persons other than the petitioner may add water contaminants as a result of injection into an aquifer designated for injection, provided the person receives a discharge permit pursuant to the requirements of 20.6.2.5000 through 20.6.2.5399 NMAC. Persons, other than the original petitioner or his designee, requesting addition of water contaminants as a result of injection into aquifers previously designated only for injection with partial restoration shall file a petition with the commission pursuant to the requirements of Subsections A, B, C, and D of this section.

[9-20-82, 12-1-95; 20.6.2.5103 NMAC - Rn, 20 NMAC 6.2.V.5103, 1-15-01; A, 12-1-01; A, 8-31-15]

20.6.2.5104 WAIVER OF REQUIREMENT BY SECRETARY FOR CLASS I WELLS AND CLASS III WELLS:

A. Where a Class I well or a Class III well or well field, does not penetrate, or inject into or above, and which will not affect, ground water having 10,000 mg/l of less TDS, the secretary may:

(1) issue a discharge permit for a well or well field with less stringent requirements for area of review, construction, mechanical integrity, operation, monitoring, and reporting than required by 20.6.2.5000 through 20.6.2.5399 NMAC; or

(2) for Class III wells only, issue a discharge permit pursuant to the requirements of 20.6.2.3000 through 20.6.2.3114 NMAC.

B. Authorization of a reduction in requirements under Subsection A of this section shall be granted only if injection will not result in an increased risk of movement of fluids into ground water having 10,000 mg/l or less TDS, except for fluid movement approved pursuant to 20.6.2.5103 NMAC.

[9-20-82, 12-1-95; 20.6.2.5104 NMAC - Rn & A, 20 NMAC 6.2.V.5104, 1-15-01; A, 12-1-01; A, 8-31-15]

20.6.2.5105 - 20.6.2.5199: [RESERVED]

[12-1-95; 20.6.2.5105 - 20.6.2.5199 NMAC - Rn, 20 NMAC 6.2.V.5105-5199, 1-15-01]

20.6.2.5200 TECHNICAL CRITERIA AND PERFORMANCE STANDARDS FOR CLASS I WELLS AND CLASS III WELLS:
[12-1-95; 20.6.2.5200 NMAC - Rn, 20 NMAC 6.2.V.5200, 1-15-01; A, 12-1-01; A, 8-31-15]

20.6.2.5201 PURPOSE: 20.6.2.5200 through 20.6.2.5210 NMAC provide the technical criteria and performance standards for Class I wells and Class III wells. (20.6.2.5300 through 20.6.2.5399 NMAC provide certain additional technical and performance standards for Class I hazardous waste injection wells.)
[9-20-82; 20.6.2.5201 NMAC - Rn, 20 NMAC 6.2.V.5201, 1-15-01; A, 12-1-01; A, 8-31-15; A, 12-21-18]

20.6.2.5202 AREA OF REVIEW:

A. The area of review is the area surrounding a Class I non-hazardous waste injection well or Class III well or the area within and surrounding a well field that is to be examined to identify possible fluid conduits, including the location of all known wells and fractures which may penetrate the injection zone.

B. The area of review for each Class I non-hazardous waste injection well, or each Class III well or well field shall be an area which extends:

(1) two and one half (2 1/2) miles from the well, or well field; or

(2) one-quarter (1/4) mile from a well or well field where the area of review is calculated to be zero pursuant to Paragraph (3) of Subsection B below, or where the well field production at all times exceeds injection to produce a net withdrawal; or

(3) a suitable distance, not less than one-quarter (1/4) mile, proposed by the discharger and approved by the secretary, based upon a mathematical calculation to determine the area of review; computations to determine the area of review may be based upon the parameters listed below and should be calculated for an injection time period equal to the expected life of the Class I non-hazardous waste injection well, or Class III well or well field; the following modified Theis equation illustrates one form which the mathematical model may take to compute the area of review; the discharger must demonstrate that any equation or simulation used to compute the area of review applies to the hydrogeologic conditions in the area of review.

$$r = \left(\frac{2.25\,K\,H\,t}{S\,10^{x}} \right)^{1/2}$$

Where:

$4BKH\,(H_w - H_{bo})x\,S_pG_b$

r = Radius of the area of review for a Class I non-hazardous waste injection well or Class III well (length)

K = Hydraulic conductivity of the injection zone (length/time)

H = Thickness of the injection zone (length)

t = Time of injection (time)

S = Storage coefficient (dimensionless)

Q = Injection rate (volume/time)

H_{bo} = Observed original hydrostatic head of injection zone (length) measured from the base of the lowest aquifer containing ground water of 10,000 mg/l or less TDS

H_w = Hydrostatic head of underground source of drinking water (length) measured from the base of the lowest aquifer containing ground water of 10,000 mg/l or less TDS

S_pG_b = Specific gravity of fluid in the injection zone (dimensionless)

B = 3.142 (dimensionless)

(4) The above equation is based on the following assumptions:

(a) the injection zone is homogenous and isotropic;

(b) the injection zone has infinite areal extent;

(c) the Class I non-hazardous waste injection well or Class III well penetrates the entire thickness of the injection zone;

(d) the well diameter is infinitesimal compared to "r" when injection time is longer than a few minutes; and

(e) the emplacement of fluid into the injection zone creates an instantaneous increase in pressure.

C. The secretary shall require submittal by the discharger of information regarding the area of review including the information to be considered by the secretary in Subsection B of Section 20.6.2.5210 NMAC.

[9-20-82, 12-1-95; 20.6.2.5202 NMAC - Rn, 20 NMAC 6.2.V.5202, 1-15-01; A, 12-1-01; A, 12-21-18]

20.6.2.5203 CORRECTIVE ACTION FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:

A. Persons applying for approval of a Class I non-hazardous waste injection well, or a Class III well or well field shall identify the location of all known wells, drill holes, shafts, stopes and other conduits within the area of review which may penetrate the injection zone, in so far as is known or is reasonably available from the public records. For such wells or other conduits which are improperly sealed, completed, or abandoned, or otherwise provide a pathway for the migration of contaminants, the discharger shall address in the proposed discharge plan such steps or modifications (corrective action) as are necessary to prevent 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.

B. Prior to operation, or continued operation of a well for which corrective action is required pursuant to Subsections A or D of Section 20.6.2.5203 NMAC, the discharger must demonstrate that:

(1) all required corrective action has been taken; or

(2) injection pressure is to be limited so that pressure in the injection zone does not cause fluid movement through any well or other conduit within the area of review into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC; this pressure limitation may be removed after all required corrective action has been taken.

C. In determining the adequacy of corrective action proposed in the discharge permit application, the following factors will be considered by the secretary:

(1) chemical nature and volume of the injected fluid;

(2) chemical nature of native fluids and by-products of injection;

(3) geology and hydrology;

(4) history of the injection and production operation;

(5) completion and plugging records;

(6) abandonment procedures in effect at the time a well, drill hole, or shaft was abandoned; and

(7) hydraulic connections with waters having 10,000 mg/l or less TDS

D. In the event that, after approval for a Class I non-hazardous waste injection well or Class III well has been granted, additional information is submitted or it is discovered that a well or other conduit within the applicable area of review might allow 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, the secretary may require action in accordance with Subsection I of Section 20.6.2.5101 and Subsection B Section 20.6.2.5203 NMAC.

[9-20-82, 12-1-95; 20.6.2.5203 NMAC - Rn, 20 NMAC 6.2.V.5203, 1-15-01; A, 12-1-01]

20.6.2.5204 MECHANICAL INTEGRITY FOR CLASS I WELLS AND CLASS III WELLS:

A. A Class I well or Class III well has mechanical integrity if there is no detectable leak in the casing, tubing or packer which the secretary considers to be significant at maximum operating temperature and pressure; and no detectable conduit for fluid movement out of the injection zone through the well bore or vertical channels adjacent to the well bore which the secretary considers to be significant.

B. Prior to well injection and at least once every five years or more frequently as the secretary may require for good cause during the life of the well, the discharger must demonstrate that a Class I well or Class III well has mechanical integrity. The demonstration shall be made through use of the following tests:

(1) for evaluation of leaks:

(a) monitoring of annulus pressure (after an initial pressure test with liquid or gas before operation commences); or

(b) pressure test with liquid or gas;

(2) for determination of conduits for fluid movement:

(a) the results of a temperature or noise log; or

(b) where the nature of the casing used for Class III wells precludes use of these logs, cementing records and an appropriate monitoring program as the secretary may require which will demonstrate the presence of adequate cement to prevent such movement;

(3) other appropriate tests as the secretary may require.

C. The secretary may consider the use by the discharger of equivalent alternative test methods to determine mechanical integrity. The discharger shall submit information on the proposed test and all technical data supporting its use. The secretary may approve the request if it will reliably demonstrate the mechanical integrity of wells for which its use is proposed. For Class III wells this demonstration may be made by submission of adequate monitoring data after the initial mechanical integrity tests.

D. In conducting and evaluating the tests enumerated in this section or others to be allowed by the secretary, the discharger and the secretary shall apply methods and standards generally accepted in the affected industry. When the discharger reports the results of mechanical integrity tests to the secretary, he shall include a description of the test(s), the method(s) used, and the test results. In making an evaluation, the secretary's review shall include monitoring and other test data submitted since the previous evaluation.

[9-20-82, 12-1-95; 20.6.2.5204 NMAC - Rn, 20 NMAC 6.2.V.5204, 1-15-01; A, 12-1-01; A, 8-31-15]

20.6.2.5205 CONSTRUCTION REQUIREMENTS FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:

A. General Construction Requirements Applicable to Class I non-hazardous waste injection wells and Class III wells.

(1) Construction of all Class I non-hazardous waste injection wells and all new Class III wells shall include casing and cementing. Prior to well injection, the discharger shall demonstrate that the construction and operation of:

(a) Class I non-hazardous waste injection wells will not cause or allow 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;

(b) Class III wells will not cause or allow movement of fluids out of the injection zone into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC.

(2) The construction of each newly drilled well shall be designed for the proposed life expectancy of the well.

(3) In determining if the discharger has met the construction requirements of this section and has demonstrated adequate construction, the secretary shall consider the following factors:

(a) depth to the injection zone;

(b) injection pressure, external pressure, annular pressure, axial loading, and other stresses that may cause well failure;

(c) hole size;

(d) size and grade of all casing strings, including wall thickness, diameter, nominal weight, length, joint specification, and construction material;

(e) type and grade of cement;

(f) rate, temperature, and volume of injected fluid;

(g) chemical and physical characteristics of the injected fluid, including corrosiveness, density, and temperature;

(h) chemical and physical characteristics of the formation fluids including pressure and temperature;

(i) chemical and physical characteristics of the receiving formation and confining zones including lithology and stratigraphy, and fracture pressure; and

(j) **d**epth, thickness and chemical characteristics of penetrated formations which may contain ground water.

(4) To demonstrate adequate construction, appropriate logs and other tests shall be conducted during the drilling and construction of new Class I non-hazardous waste injection wells or Class III wells or during work-over of existing wells in preparation for reactivation or for change to injection use. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the secretary for review prior to well injection. The logs and tests appropriate to each type of injection well shall be based on the intended function, depth, construction and other characteristics of the well, availability of similar data in the area of the drilling site and the need for additional information that may arise from time to time as the construction of the well progresses.

(a) The discharger shall demonstrate through use of sufficiently frequent deviation checks, or another equivalent method, that a Class I non-hazardous waste injection well or Class III well drilled using a pilot hole then enlarged by reaming or another method, does not allow a vertical avenue for fluid migration in the form of diverging holes created during drilling.

(b) The secretary may require use by the discharger of the following logs to assist in characterizing the formations penetrated and to demonstrate the integrity of the confining zones and the lack of vertical avenues for fluid migration:

(i) for casing intended to protect ground water having 10,000 mg/l or less TDS: resistivity, spontaneous potential, and caliper logs before the casing is installed; and a cement bond, or temperature log after the casing is set and cemented.

(ii) **f**or intermediate and long strings of casing intended to facilitate injection: resistivity, spontaneous potential, porosity, and gamma ray logs before the casing is installed; and fracture finder or spectral logs; and a cement bond or temperature log after the casing is set and cemented.

(5) In addition to the requirements of Section 20.6.2.5102 NMAC, the discharger shall provide notice prior to commencement of drilling, cementing and casing, well logging, mechanical integrity tests, and any well work-over to allow opportunity for on-site inspection by the secretary or his representative.

B. Additional construction requirements for Class I non-hazardous waste injection wells.

(1) All Class I non-hazardous waste injection wells shall be sited in such a manner that they inject into a formation which is beneath the lowermost formation containing, within one quarter mile of the well bore, ground water having 10,000 mg/l TDS or less except as approved pursuant to Section 20.6.2.5103 NMAC.

(2) All Class I non-hazardous waste injection wells shall be cased and cemented by circulating cement to the surface.

(3) All Class I non-hazardous waste injection wells, except those municipal wells injecting noncorrosive wastes, shall inject fluids through tubing with a packer set in the annulus immediately above the injection zone, or tubing with an approved fluid seal as an alternative. The tubing, packer, and fluid seal shall be designed for the expected length of service.

(a) The use of other alternatives to a packer may be allowed with the written approval of the secretary. To obtain approval, the operator shall submit a written request to the secretary which shall set forth the proposed alternative and all technical data supporting its use. The secretary may approve the request if the alternative method will reliably provide a comparable level of protection to ground water. The secretary may approve an alternative method solely for an individual well or for general use.

(b) In determining the adequacy of the specifications proposed by the discharger for tubing and packer, or a packer alternative, the secretary shall consider the following factors:

(i) depth of setting;

(ii) characteristics of injection fluid (chemical nature or characteristics, corrosiveness, and density);

(iii) injection pressure;

(iv) annular pressure;

(v) rate, temperature and volume of injected fluid; and

(vi) size of casing.

C. Additional construction requirements for Class III wells.

(1) Where injection is into a formation containing ground water having 10,000 mg/l or less TDS, monitoring wells shall be completed into the injection zone and into the first formation above the injection zone containing ground water having 10,000 mg/l or less TDS which could be affected by the extraction operation. If ground water having 10,000 mg/l or less TDS below the injection zone could be affected by the extraction operation, monitoring of such ground water may be required. These wells shall be of sufficient number, located and constructed so as to detect any excursion of injection fluids, process byproducts, or formation fluids outside the extraction area or injection zone. The requirement for monitoring wells in aquifers designated pursuant to Section 20.6.2.5103 NMAC may be waived by the secretary, provided that the absence of monitoring wells does not result in an increased risk of movement of fluids into protected ground waters having 10,000 mg/l or less TDS.

(2) Where injection is into a formation which does not contain ground water having 10,000 mg/l or less TDS, no monitoring wells are necessary in the injection zone. However, monitoring wells may be necessary in adjoining zones with ground water having 10,000 mg/l or less TDS that could be affected by the extraction operation.

(3) In an area that the secretary determines is subject to subsidence or collapse, the required monitoring wells may be required to be located outside the physical influence of that area.

(4) In determining the adequacy of monitoring well location, number, construction and frequency of monitoring proposed by the discharger, the secretary shall consider the following factors:

(a) the local geology and hydrology;

(b) the operating pressures and whether a negative pressure gradient to the monitor well is being maintained;

(c) the nature and volume of injected fluid, formation water, and process by-products; and

(d) the number and spacing of Class III wells in the well field.

[9-20-82, 12-1-95; 20.6.2.5205 NMAC - Rn, 20 NMAC 6.2.V.5205, 1-15-01; A, 12-1-01]

20.6.2.5206 OPERATING REQUIREMENTS FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:

A. General operating requirements applicable to Class I non-hazardous waste injection wells and Class III wells.

(1) The maximum injection pressure at the wellhead shall not initiate new fractures or propagate existing fractures in the confining zone, or cause the movement of injection or formation 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.

(2) Injection between the outermost casing and the well bore is prohibited in a zone other than the authorized injection zone.

B. Additional operating requirements for Class I non-hazardous waste injection wells.

(1) Except during well stimulation, the maximum injection pressure shall not initiate new fractures or propagate existing fractures in the injection zone.

(2) Unless an alternative to a packer has been approved under Subparagraph (c) of Paragraph (3) of Subsection B of Section 20.6.2.5205 NMAC, the annulus between the tubing and the long string of casing shall be filled with a fluid approved by the secretary and a pressure, also approved by the secretary shall be maintained on the annulus.

C. Additional operating requirements for Class III wells: Initiation of new fractures or propagation of existing fractures in the injection zone will not be approved by the secretary as part of a discharge permit unless it is done during well stimulation and the discharger demonstrates:

(1) that such fracturing will not cause movement of fluids out of the injection zone into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC; and

(2) that the provisions of Subsection D of Section 20.6.2.3109 and Subsection C of Section 20.6.2.5101 NMAC for protection of ground water are met.

[9-20-82, 12-1-95; 20.6.2.5206 NMAC - Rn, 20 NMAC 6.2.V.5206, 1-15-01; A, 12-1-01; A, 12-21-18]

20.6.2.5207 MONITORING REQUIREMENTS FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:

A. The discharger shall demonstrate mechanical integrity for each Class I non-hazardous waste injection well or Class III well at least once every five years during the life of the well pursuant to Section 20.6.2.5204 NMAC.

B. Additional monitoring requirements for Class I non-hazardous waste injection wells.

(1) The discharger shall provide analysis of the injected fluids at least quarterly or, if necessary, more frequently to yield data representative of their characteristics.

(2) Continuous monitoring devices shall be used to provide a record of injection pressure, flow rate, flow volume, and pressure on the annulus between the tubing and the long string of casing.

(3) The discharger shall provide wells within the area of review as required by the discharge permit to be used by the discharger to monitor pressure in, and possible fluid movement into, ground water having 10,000 mg/l or less TDS except for such ground waters designated pursuant to Section 20.6.2.5103 NMAC. This Section does not require monitoring wells for Class I non-hazardous waste injection wells unless monitoring wells are necessary due to possible flow paths within the area of review.

C. Additional monitoring requirements for Class III wells.

(1) The discharger shall provide an analysis or description, whichever the secretary requires, of the injected fluids at least quarterly or, if necessary, more frequently to yield representative data.

(2) The discharger shall perform:

(a) appropriate monitoring of injected and produced fluid volumes by whichever of the following methods the secretary requires:

(i) recording injection pressure and either flow rate or volume every two weeks; or

(ii) metering and daily recording of fluid volumes;

(b) monitoring every two weeks, or more frequently as the secretary determines, of the monitor wells, required in Subsection C of Section 20.6.2.5205 NMAC for:

(i) water chemistry parameters used to detect any migration from the injection zone;

(ii) fluid levels adjacent to the injection zone; and

(c) other necessary monitoring as the secretary for good cause may require to detect movement of fluids from the injection zone into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC.

(3) With the approval of the secretary, all Class III wells may be monitored on a well field basis by manifold monitoring rather than on an individual well basis. Manifold monitoring to determine the quality, pressure, and flow rate of the injected fluid may be approved in cases of facilities consisting of more than one Class III well, operating with a common manifold, provided that the discharger demonstrates that manifold monitoring is comparable to individual well monitoring.

[9-20-82, 12-1-95; 20.6.2.5207 NMAC - Rn, 20 NMAC 6.2.V.5207, 1-15-01; A, 12-1-01]

20.6.2.5208 REPORTING REQUIREMENTS FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:

A. Reporting requirements for Class I non-hazardous waste injection wells.

(1) If a Class I non-hazardous waste injection well is found to be discharging or is suspected of discharging fluids into a zone or zones other than the permitted or authorized injection zone, the discharger shall within 24 hours notify the secretary of the circumstances and action taken. The discharger shall provide subsequent written reports as required by the secretary.

(2) The discharger shall provide reports quarterly to the secretary on:

(a) the physical, chemical and other relevant characteristics of injection fluids;

(b) monthly average, maximum and minimum values for injection pressure, flow rate and volume, and annular pressure; and

(c) the results of monitoring prescribed under Subsection B of Section 20.6.2.5207 NMAC.

(3) The discharger shall report, no later than the first quarterly report after completion, the results of:

(a) periodic tests of mechanical integrity as required in Sections 20.6.2.5204 and 20.6.2.5207 NMAC;

(b) any other test of the Class I non-hazardous waste injection well conducted by the discharger if required by the secretary;

(c) any well work-over; and

(d) any changes within the area of review which might impact subsurface conditions.

B. Reporting requirements for Class III wells.

(1) The discharger shall notify the secretary within 48 hours of the detection or suspected detection of a leachate excursion, and provide subsequent reports as required by the secretary.

(2) The discharger shall provide to the secretary:

(a) reports on required monitoring quarterly, or more frequently as required by the secretary; and

(b) results of mechanical integrity testing as required in Sections 20.6.2.5204 and 20.6.2.5207 NMAC and any other periodic tests required by the secretary; these results are to be reported no later than the first regular report after the completion of the test.

(3) Where manifold monitoring is permitted, monitoring results may be reported on a well field basis, rather than individual well basis.

C. Report signatory requirements.

(1) All reports submitted pursuant to this section shall be signed and certified as provided in Subsection G of Section 20.6.2.5101 NMAC, or by a duly authorized representative.

(2) For a person to be a duly authorized representative, authorization must:

(a) be made in writing by a signatory described in Paragraph (1) of Subsection G of Section 20.6.2.5101 NMAC;

(b) specify either an individual or a position having responsibility for the overall operation of that regulated facility or activity, such as the position of plant manager, operator of a well or well field, superintendent, or position of equivalent responsibility; and

(c) have been submitted to the secretary.

[9-20-82, 12-1-95; 20.6.2.5208 NMAC - Rn, 20 NMAC 6.2.V.5208, 1-15-01; A, 12-1-01]

20.6.2.5209 PLUGGING AND ABANDONMENT FOR CLASS I WELLS AND CLASS III WELLS:

A. The discharger shall submit as part of the discharge permit application, a plan for plugging and abandonment of a Class I well or a Class III well that meets the requirements of Subsection D of 20.6.2.3109, Subsection C of 20.6.2.5101, and 20.6.2.5005 NMAC for protection of ground water. If requested, a revised or updated abandonment plan shall be submitted for approval prior to closure. The obligation to implement the plugging and abandonment plan as well as the requirements of the plan survives the termination or expiration of the permit.

B. Prior to abandonment of a well used in a Class I well or Class III well operation, the well shall be plugged in a manner which will not allow the movement of fluids through the well bore out of the injection zone or between other zones of ground water. Cement plugs shall be used unless a comparable method has been approved by the secretary for the plugging of Class III wells at that site.

C. Prior to placement of the plugs, the well to be abandoned shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method approved by the secretary.

D. Placement of the plugs shall be accomplished by one of the following:

(1) the balance method; or

(2) the dump bailer method; or

(3) the two-plug method; or

(4) an equivalent method with the approval of the secretary.

E. The following shall be considered by the secretary in determining the adequacy of a plugging and abandonment plan:

(1) the type and number of plugs to be used;

(2) the placement of each plug, including the elevation of the top and bottom;

(3) the type, grade and quantity of cementing slurry to be used;

(4) the method of placement of the plugs;

(5) the procedure to be used to plug and abandon the well; and

(6) such other factors that may affect the adequacy of the plan.

F. The discharger shall retain all records concerning the nature and composition of injected fluids until five years after completion of any plugging and abandonment procedures.

[9-20-82, 12-1-95; 20.6.2.5209 NMAC - Rn, 20 NMAC 6.2.V.5209, 1-15-01; A, 12-1-01; A, 8-31-15; A, 12-21-18]

20.6.2.5210 INFORMATION TO BE CONSIDERED BY THE SECRETARY FOR CLASS I WELLS AND CLASS III WELLS:

A. This section sets forth the information to be considered by the secretary in authorizing construction and use of a Class I well or Class III well or well field. Certain maps, cross-sections, tabulations of all wells within the area of review, and other data may be included in the discharge permit application submittal by reference provided they are current, readily available to the secretary and sufficiently identified to be retrieved.

B. Prior to the issuance of a discharge permit or project discharge permit allowing construction of a new Class I well, operation of an existing Class I well, or operation of a new or existing Class III well or well field, or conversion of any well to injection use, the secretary shall consider the following:

(1) information required in Subsection C of 20.6.2.3106 NMAC;

(2) a map showing the Class I well, or Class III well or well fields, for which approval is sought and the applicable area of review; within the area of review, the map must show, in so far as is known or is reasonably available from the public records, the number, name, and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells and other pertinent surface features, including residences and roads;

(3) a tabulation of data on all wells within the area of review which may penetrate into the proposed injection zone; such data shall include, as available, a description of each well's type, the distance and direction to the injection well or well field, construction, date drilled, location, depth, record of plugging or completion, and any additional information the secretary may require;

(4) for wells within the area of review which penetrate the injection zone, but are not properly completed or plugged, the corrective action proposed to be taken under 20.6.2.5203 NMAC;

(5) maps and cross-sections indicating the general vertical and lateral limits of all ground water having 10,000 mg/l or less TDS within the area of review, the position of such ground water within the area of review relative to the injection formation, and the direction of water movement, where known, in each zone of ground water which may be affected by the proposed injection operation;

(6) maps and cross-sections detailing the geology and geologic structure of the local area, including faults, if known or suspected;

(7) generalized maps and cross-sections illustrating the regional geologic setting;

(8) proposed operating data, including:

(a) average and maximum daily flow rate and volume of the fluid to be injected;

(b) average and maximum injection pressure;

(c) source of injection fluids and an analysis or description, whichever the secretary requires, of their chemical, physical, radiological and biological characteristics;

(9) results of the formation testing program to obtain an analysis or description, whichever the secretary requires, of the chemical, physical, and radiological characteristics of, and other information on, the receiving formation, provided that the secretary may issue a conditional approval of a discharge permit if he finds that further formation testing is necessary for final approval;

(10) expected pressure changes, native fluid displacement, and direction of movement of the injected fluid;

(11) proposed stimulation program;

(12) proposed or actual injection procedure;

(13) schematic or other appropriate drawings of the surface and subsurface construction details of the well;

(14) construction procedures, including a cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program;

(15) contingency plans to cope with all shut-ins or well failures so as to prevent movement of fluids into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to 20.6.2.5103 NMAC;

(16) plans, including maps, for meeting the monitoring requirements of 20.6.2.5207 NMAC; and

(17) the ability of the discharger to undertake measures necessary to prevent contamination of ground water having 10,000 mg/l or less TDS after the cessation of operation, including the proper closing, plugging and abandonment of a well, ground water restoration if applicable, and any post-operational monitoring as may be needed; methods by which the discharger shall demonstrate the ability to undertake these measures shall include submission of a surety bond or other adequate assurances, such as financial statements or other materials acceptable

to the secretary, such as: (1) a surety bond; (2) a trust fund with a New Mexico bank in the name of the state of New Mexico, with the state as beneficiary; (3) a non-renewable letter of credit made out to the state of New Mexico; (4) liability insurance specifically covering the contingencies listed in this paragraph; or (5) a performance bond, generally in conjunction with another type of financial assurance; such bond or materials shall be approved and executed prior to discharge permit issuance and shall become effective upon commencement of construction; if an adequate bond is posted by the discharger to a federal or another state agency, and this bond covers all of the measures referred to above, the secretary shall consider this bond as satisfying the bonding requirements of 20.6.2.5000 through 20.6.2.5299 NMAC wholly or in part, depending upon the extent to which such bond is adequate to ensure that the discharger will fully perform the measures required hereinabove.

C. Prior to the secretary's approval that allows the operation of a new or existing Class I well or Class III well or well field, the secretary shall consider the following:

(1) update of pertinent information required under Subsection B of 20.6.2.5210 NMAC;

(2) all available logging and testing program data on the well;

(3) the demonstration of mechanical integrity pursuant to 20.6.2.5204 NMAC;

(4) the anticipated maximum pressure and flow rate at which the permittee will operate;

(5) the results of the formation testing program;

(6) the physical, chemical, and biological interactions between the injected fluids and fluids in the injection zone, and minerals in both the injection zone and the confining zone; and

(7) the status of corrective action on defective wells in the area of review.

[9-20-82, 12-24-87, 12-1-95; 20.6.2.5210 NMAC - Rn, 20 NMAC 6.2.V.5210, 1-15-01; A, 12-1-01; A, 8-31-15]

20.6.2.5211 - 20.6.2.5299: [RESERVED]

[12-1-95; 20.6.2.5211 - 20.6.2.5299 NMAC - Rn, 20 NMAC 6.2.V.5211-5299, 1-15-01]

20.6.2.5300 REQUIREMENTS FOR CLASS I HAZARDOUS WASTE INJECTION WELLS:

A. Except as otherwise provided for in 20.6.2.5300 through 20.6.2.5399 NMAC, Class I hazardous waste wells are subject to the minimum permit requirements for all Class I wells in 20.6.2.5000 through 20.6.2.5299 NMAC, in addition to the requirements of 20.6.2.5300 through 20.6.2.5399 NMAC. To the extent any requirement in 20.6.2.5300 through 20.6.2.5399 NMAC conflicts with a requirement of 20.6.2.5000 through 20.6.2.5299 NMAC, Class I hazardous waste injection wells must comply with 20.6.2.5300 through 20.6.2.5399 NMAC.

B. Class I hazardous waste injection wells are only authorized for use by petroleum refineries for the waste generated by the refinery ("generator").

C. The New Mexico energy, minerals and natural resources department, oil conservation division will administer and oversee all permitting of Class I hazardous waste wells pursuant to 20.6.2.5300 through 20.6.2.5399 NMAC.

[20.6.2.5300 NMAC - N, 8-31-15]

20.6.2.5301 DEFINITIONS: As used in 20.6.2.5300 through 20.6.2.5399 NMAC:

A. "**cone of influence**" means that area around the well within which increased injection zone pressures caused by injection into the hazardous waste injection well would be sufficient to drive fluids into groundwater of the state of New Mexico;

B. "**director**" means the director of the New Mexico energy, minerals and natural resources department, oil conservation division or his/her designee;

C. "**existing well**" means a Class I hazardous waste injection well which has become a Class I hazardous waste injection well as a result of a change in the definition of the injected waste which would render the waste hazardous under 20.4.1.200 NMAC (incorporating 40 C.F.R. Section 261.3);

D. "**ground water of the state of New Mexico**" means, consistent with 20.6.2.5001 NMAC, an aquifer that contains ground water having a TDS concentration of 10,000 mg/l or less;

E. "**injection interval**" means that part of the injection zone in which the well is screened, or in which the waste is otherwise directly emplaced;

F. "**new well**" means any Class I hazardous waste injection well which is not an existing well;

G. "**transmissive fault or fracture**" is a fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

[20.6.2.5301 NMAC - N, 8-31-15]

20.6.2.5302 FEES FOR CLASS I HAZARDOUS WASTE INJECTION WELLS: For the purposes of Class I hazardous waste wells, this section shall apply to the exclusion of 20.6.2.3114 NMAC.

A. *Filing Fee.* Every facility submitting a discharge permit application for approval of a Class I hazardous waste injection well shall pay a filing fee of $100 to the water quality management fund at the time the permit application is submitted. The filing fee is nonrefundable.

B. *Permit fee.*

(1) Every facility submitting a discharge permit application for approval of a Class I hazardous waste injection well shall pay a permit fee of $30,000 to the water quality management fund. The permit fee may be paid in a single payment at the time of permit approval or in equal installments over the term of the permit. Installment payments shall be remitted yearly, with the first installment due on the date of permit approval. Subsequent installments shall be remitted yearly thereafter. The permit or permit application review of any facility shall be suspended or terminated if the facility fails to submit an installment payment by its due date.

(2) Facilities applying for permits which are subsequently withdrawn or denied shall pay one-half of the permit fee at the time of denial or withdrawal.

C. *Annual administration fee.* Every facility that receives a Class I hazardous waste injection well permit shall pay an annual administrative fee of $20,000 to the water quality management fund. The initial administrative fee shall be remitted one year after commencement of disposal operations pursuant to the permit. Subsequent administrative fees shall be remitted annually thereafter.

D. *Renewal fee.*

(1) Every facility submitting a discharge permit application for renewal of a Class I hazardous waste injection well shall pay a renewal fee of $10,000 to the water quality management fund. The renewal fee may be paid in a single payment at the time of permit renewal or in equal installments over the term of the permit. Installment payments shall be remitted yearly, with the first installment due on the date of permit renewal. Subsequent installments shall be remitted yearly thereafter. The permit or permit renewal review of any facility shall be suspended or terminated if the facility fails to submit an installment payment by its due date.

(2) The director may waive or reduce fees for discharge permit renewals which require little or no cost for investigation or issuance.

E. *Modification fees.*

(1) Every facility submitting an application for a discharge permit modification of a Class I hazardous waste injection well will be assessed a filing fee plus a modification fee of $10,000 to the water quality management fund.

(2) Every facility submitting an application for other changes to a Class I hazardous waste injection well discharge permit will be assessed a filing fee plus a minor modification fee of $1,000 to the water quality management fund.

(3) Applications for both renewal and modification shall pay a filing fee plus renewal fee.

(4) If the director requires a discharge permit change as a component of an enforcement action, the facility shall pay the applicable modification fee. If the director requires a discharge permit change outside the context of an enforcement action, the facility shall not be assessed a fee.

(5) The director may waive or reduce fees for discharge permit changes which require little or no cost for investigation or issuance.

F. *Financial assurance fees.*

(1) Facilities with approved Class I hazardous waste injection well permits shall pay the financial assurance fees specified in Table 2 of 20.6.2.3114 NMAC.

(2) Facilities relying on the corporate guarantee for financial assurance shall pay an additional fee of $5,000 to the water quality management fund.

[20.6.2.5302 NMAC - N, 8-31-15]

20.6.2.5303 CONVERSION OF EXISTING INJECTION WELLS: An existing Class I non-hazardous waste injection well may be converted to a Class I hazardous waste injection well provided the well meets the modeling, design, compatibility, and other requirements set forth in 20.6.2.5300 through 20.6.2.5399 NMAC and the permittee receives a Class I hazardous waste permit pursuant to those sections.

[20.6.2.5303 NMAC - N, 8-31-15]

20.6.2.5304 - 20.6.2.5309: [RESERVED]

20.6.2.5310 REQUIREMENTS FOR WELLS INJECTING HAZARDOUS WASTE REQUIRED TO BE ACCOMPANIED BY A MANIFEST:

A. *Applicability*. The regulations in this section apply to all generators of hazardous waste, and to the owners or operators of all hazardous waste management facilities, using any class of well to inject hazardous wastes accompanied by a manifest. (See also Subparagraph (b) of Paragraph (3) of Subsection A of 20.6.2.5004 NMAC.)

B. *Authorization*. The owner or operator of any well that is used to inject hazardous waste required to be accompanied by a manifest or delivery document shall apply for authorization to inject as specified in 20.6.2.5102 NMAC within six months after the approval or promulgation of the state UIC program.

C. *Requirements*. In addition to complying with the applicable requirements of this part, the owner or operator of each facility meeting the requirements of Subsection B of this section, shall comply with the following.

(1) *Notification*. The owner or operator shall comply with the notification requirements of 42 U.S.C. Section 6930.

(2) *Identification number*. The owner or operator shall comply with the requirements of 20.4.1.500 NMAC (incorporating 40 CFR Section 264.11).

(3) *Manifest system*. The owner or operator shall comply with the applicable recordkeeping and reporting requirements for manifested wastes in 20.4.1.500 NMAC (incorporating 40 CFR Section 264.71).

(4) *Manifest discrepancies*. The owner or operator shall comply with 20.4.1.500 NMAC (incorporating 40 CFR Section 264.72).

(5) *Operating record*. The owner or operator shall comply with 20.4.1.500 NMAC (incorporating 40 CFR Sections 264.73(a), (b)(1), and (b)(2)).

(6) *Annual report*. The owner or operator shall comply with 20.4.1.500 NMAC (incorporating 40 CFR Section 264.75).

(7) *Unmanifested waste report*. The owner or operator shall comply with 20.4.1.500 NMAC (incorporating 40 CFR Section 264.75).

(8) *Personnel training*. The owner or operator shall comply with the applicable personnel training requirements of 20.4.1.500 NMAC (incorporating 40 CFR Section 264.16).

(9) *Certification of closure*. When abandonment is completed, the owner or operator must submit to the director certification by the owner or operator and certification by an independent registered professional engineer that the facility has been closed in accordance with the specifications in 20.6.2.5209 NMAC.

[20.6.2.5310 NMAC - N, 8-31-15]

20.6.2.5311 - 20.6.2.5319: [RESERVED]

20.6.2.5320 ADOPTION OF 40 CFR PART 144, SUBPART F (FINANCIAL RESPONSIBILITY: CLASS I HAZARDOUS WASTE INJECTION WELLS): Except as otherwise provided, the regulations of the United States environmental protection agency set forth in 40 CFR Part 144, Subpart F are hereby incorporated by reference.

[20.6.2.5320 NMAC - N, 8-31-15]

20.6.2.5321 MODIFICATIONS, EXCEPTIONS, AND OMISSIONS: Except as otherwise provided, the following modifications, exceptions, and omissions are made to the incorporated federal regulations.

A. The following term defined in 40 CFR Section 144.61 has the meaning set forth herein, in lieu of the meaning set forth in 40 CFR Section 144.61: "plugging and abandonment plan" means the plan for plugging and abandonment prepared in accordance with the requirements of 20.6.2.5341 NMAC.

B. The following terms not defined in 40 CFR Part 144, Subsection F have the meanings set forth herein when the terms are used in this part:

(1) "administrator," "regional administrator" and other similar variations means the director of the New Mexico energy, minerals and natural resources department, oil conservation division or his/her designee;

(2) "United States environmental protection agency" or "EPA" means New Mexico energy, minerals and natural resources department, oil conservation division or OCD, except when used in 40 CFR Section 144.70(f).

C. The following provisions of 40 CFR Part 144, Subpart F are modified in 20.6.2.5321 NMAC:

(1) cross references to 40 CFR Part 144 shall be replaced by cross references to 20.6.2.5300 through 20.6.2.5399 NMAC;

(2) the cross reference to Sections 144.28 and 144.51 in Section 144.62(a) shall be replaced by a cross reference to 20.6.2.5341 NMAC;

(3) the cross references to 40 CFR Parts 264, Subpart H and 265, Subpart H shall be modified to include cross references to 40 CFR Parts 264, Subpart H and 265, Subpart H and 20.4.1.500 and 20.4.1.600 NMAC;

(4) references to EPA identification numbers in financial assurance documents shall be replaced by references to API well numbers (US well numbers);

(5) the first sentence of 40 CFR Section 144.63(f)(1) shall be replaced with the following sentence: "An owner or operator may satisfy the requirements of this section by obtaining a guarantee from a corporate parent that meets the requirements of 40 CFR Section 144.63(f)(10), including the guarantor meeting the requirements for the owner or operator under the financial test specified in this paragraph.";

(6) trust agreements prepared in accordance with 40 CFR Section 144.70(a) must state that they will be administered, construed, and enforced according to the laws of New Mexico;

(7) surety companies issuing bonds prepared in accordance with 40 CFR Section 144, Subpart F must be registered with the New Mexico office of superintendent of insurance;

D. The following provisions of 40 CFR Part 144, Subpart F are omitted from 20.6.2.5320 NMAC:

(1) Section 144.65;

(2) Section 144.66;

(3) the third sentence in 40 CFR Section 144.63(h).

[20.6.2.5321 NMAC - N, 8-31-15]

20.6.2.5322 - 20.6.2.5340 [RESERVED]

20.6.2.5341 CONDITIONS APPLICABLE TO ALL PERMITS: The following conditions apply to all Class I hazardous permits. All conditions applicable to all permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit.

A. *Duty to comply.* The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the New Mexico Water Quality Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application; except that the permittee need not comply with the provisions of this permit to the extent and for the duration such noncompliance is authorized in a variance issued under 20.6.2.1210 NMAC.

B. *Duty to reapply.* If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a permit renewal pursuant to Subsection F of 20.6.2.3106 NMAC.

C. *Need to halt or reduce activity not a defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.

E. *Proper operation and maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

F. *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

G. *Property rights.* This permit does not convey any property rights of any sort, or any exclusive privilege.

H. *Duty to provide information.* The permittee shall furnish to the director, within a time specified, any information which the director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the director, upon request, copies of records required to be kept by this permit.

I. *Duty to provide notice.* Public notice, when required, shall be provided as set forth in 20.6.2.3108 NMAC except that the following notice shall be provided in lieu of the notice required by Paragraph (2) of

Subsection B of 20.6.2.3108 NMAC: a written notice must be sent by certified mail, return receipt requested, to all surface and mineral owners of record within a ½ mile radius of the proposed well or wells.

J. *Inspection and entry.* The permittee shall allow the director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(1) enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the 20.6.2.5300 through 20.6.2.5399 NMAC, any substances or parameters at any location.

K. *Monitoring and records.*

(1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) The permittee shall retain records of all monitoring information, including the following:

(a) calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, or application; this period may be extended by request of the director at any time; and

(b) the nature and composition of all injected fluids until three years after the completion of any plugging and abandonment procedures specified under 20.6.2.5351 through 20.6.2.5363 NMAC; the director may require the owner or operator to deliver the records to the director at the conclusion of the retention period.

(3) Records of monitoring information shall include:

(a) the date, exact place, and time of sampling or measurements;

(b) the individual(s) who performed the sampling or measurements;

(c) the date(s) analyses were performed;

(d) the individual(s) who performed the analyses;

(e) the analytical techniques or methods used; and

(f) the results of such analyses.

L. *Signatory requirement.* All applications, reports, or information submitted to the director shall be signed and certified. (See Subsection G of 20.6.2.5101 NMAC.)

M. *Reporting requirements.*

(1) *Planned changes.* The permittee shall give notice to the director as soon as possible of any planned physical alterations or additions to the permitted facility.

(2) *Anticipated noncompliance.* The permittee shall give advance notice to the director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(3) *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(4) *Compliance schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 30 days following each schedule date.

(5) *Twenty-four hour reporting.* The permittee shall report any noncompliance which may endanger health or the environment, including:

(a) any monitoring or other information which indicates that any contaminant may cause an endangerment to ground water of the state of New Mexico; or

(b) any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between ground water of the state of New Mexico; any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances; a written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances; the written submission shall contain a description of the noncompliance and its cause; the area affected by the noncompliance, including any ground water of the state of New Mexico; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to

continue; the date and time the permittee became aware of the noncompliance; and steps taken or planned to reduce, remediate, eliminate, and prevent reoccurrence of the noncompliance.

(6) *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under Paragraphs (3), (4), and (5) of Subsection M of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in Paragraph (5) of Subsection M of this section.

(7) *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the director, it shall promptly submit such facts or information.

N. *Requirements prior to commencing injection.* A new injection well may not commence injection until construction is complete; and

(1) the permittee has submitted notice of completion of construction to the director; and

(2) the director has inspected or otherwise reviewed the new injection well and finds it is in compliance with the conditions of the permit; or the permittee has not received notice from the director of his or her intent to inspect or otherwise review the new injection well within 13 days of the date of the notice in Paragraph (1) of Subsection N of this section, in which case prior inspection or review is waived and the permittee may commence injection; the director shall include in his notice a reasonable time period in which he shall inspect the well.

O. The permittee shall notify the director at such times as the permit requires before conversion or abandonment of the well.

P. The permittee shall meet the requirements of 20.6.2.5209 NMAC.

Q. *Plugging and abandonment report.* Within 60 days after plugging a well or at the time of the next quarterly report (whichever is less) the owner or operator shall submit a report to the director. If the quarterly report is due less than 15 days before completion of plugging, then the report shall be submitted within 60 days. The report shall be certified as accurate by the person who performed the plugging operation. Such report shall consist of either:

(1) a statement that the well was plugged in accordance with the plan previously submitted to the director; or

(2) where actual plugging differed from the plan previously submitted, and updated version of the plan on the form supplied by the director, specifying the differences.

R. *Duty to establish and maintain mechanical integrity.*

(1) The permittee shall meet the requirements of 20.6.2.5204 NMAC.

(2) When the director determines that a Class I hazardous well lacks mechanical integrity pursuant to 20.6.2.5204 NMAC, the director shall give written notice of the director's determination to the owner or operator. Unless the director requires immediate cessation, the owner or operator shall cease injection into the well within 48 hours of receipt of the director's determination. The director may allow plugging of the well pursuant to the requirements of 20.6.2.5209 NMAC or require the permittee to perform such additional construction, operation, monitoring, reporting and corrective action as is necessary to prevent the movement of fluid into or between ground water of the state of New Mexico caused by the lack of mechanical integrity. The owner or operator may resume injection upon written notification from the director that the owner or operator has demonstrated mechanical integrity pursuant to 20.6.2.5204 and 20.6.2.5358 NMAC.

(3) The director may allow the owner or operator of a well which lacks mechanical integrity pursuant to Subsection A of 20.6.2.5204 NMAC to continue or resume injection, if the owner or operator has made a satisfactory demonstration that there is no movement of fluid into or between groundwater of the state of New Mexico.

S. *Transfer of a permit.* The operator shall not transfer a permit without the director's prior written approval. A request for transfer of a permit shall identify officers, directors and owners of 25% or greater in the transferee. Unless the director otherwise orders, public notice or hearing are not required for the transfer request's approval. If the director denies the transfer request, it shall notify the operator and the proposed transferee of the denial by certified mail, return receipt requested, and either the operator or the proposed transferee may request a hearing with 10 days after receipt of the notice. Until the director approves the transfer and the required financial assurance is in place, the director shall not release the transferor's financial assurance.

[20.6.2.5341 NMAC - N, 8-31-15]

20.6.2.5342 ESTABLISHING PERMIT CONDITIONS:

A. In addition to conditions required in 20.6.2.5341 NMAC, the director shall establish conditions, as required on a case-by-case basis under Subsection I of 20.6.2.3109 NMAC, Subsection A of 20.6.2.5343 NMAC, and 20.6.2.5344 NMAC. Permits for owners or operators of hazardous waste injection wells shall also include

conditions meeting the requirements of 20.6.2.5310 NMAC, Paragraphs (1) and (2) of Subsection A of this section, and 20.6.2.5351 through 20.6.2.5363 NMAC.

(1) *Financial responsibility.*

(a) The permittee, including the transferor of a permit, is required to demonstrate and maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the director until:

(i) the well has been plugged and abandoned in accordance with an approved plugging and abandonment plan pursuant to Subsection P of 20.6.2.5341 NMAC, and 20.6.2.5209 NMAC, and submitted a plugging and abandonment report pursuant to Subsection Q of 20.6.2.5341 NMAC; or

(ii) the well has been converted in compliance with the requirements of Subsection O of 20.6.2.5341 NMAC; or

(iii) the transferor of a permit has received notice from the director that the transfer has been approved and that the transferee's required financial assurance is in place.

(b) The owner or operator of a well injecting hazardous waste must comply with the financial responsibility requirements of 20.6.2.5320 NMAC.

(2) *Additional conditions.* The director shall impose on a case-by-case basis such additional conditions as are necessary to prevent the migration of fluids into ground water of the state of New Mexico.

B. *Applicable requirements.*

(1) In addition to conditions required in all permits the director shall establish conditions in permits as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of this part.

(2) An applicable requirement is a state statutory or regulatory requirement which takes effect prior to final administrative disposition of the permit. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit.

(3) New or renewed permits, and to the extent allowed under 20.6.2.3109 NMAC modified or terminated permits, shall incorporate each of the applicable requirements referenced in 20.6.2.5342 NMAC.

C. *Incorporation.* All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

[20.6.2.5342 NMAC - N, 8-31-15]

20.6.2.5343 SCHEDULE OF COMPLIANCE:

A. *General.* The permit may, when appropriate, specify a schedule of compliance leading to compliance with this part.

(1) *Time for compliance.* Any schedules of compliance shall require compliance as soon as possible, and in no case later than three years after the effective date of the permit.

(2) *Interim dates.* Except as provided in Subparagraph (b) of Paragraph (1) of Subsection B of this section, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(a) The time between interim dates shall not exceed one year.

(b) If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(3) *Reporting.* The permit shall be written to require that if Paragraph (1) of Subsection A of this section is applicable, progress reports be submitted no later than 30 days following each interim date and the final date of compliance.

B. *Alternative schedules of compliance.* A permit applicant or permittee may cease conducting regulated activities (by plugging and abandonment) rather than continue to operate and meet permit requirements as follows.

(1) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(a) the permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(b) the permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(2) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements.

(3) If the permittee is undecided whether to cease conducting regulated activities, the director may issue or modify a permit to contain two schedules as follows:

(a) both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(b) one schedule shall lead to timely compliance with applicable requirements;

(c) the second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements;

(d) each permit containing two schedules shall include a requirement that after the permittee has made a final decision under Subparagraph (a) of Paragraph (3) of Subsection B of this section it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(4) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the director, such as a resolution of the board of directors of a corporation.

[20.6.2.5343 NMAC - N, 8-31-15]

20.6.2.5344 REQUIREMENTS FOR RECORDING AND REPORTING OF MONITORING RESULTS: All permits shall specify:

A. requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

B. required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including when appropriate, continuous monitoring;

C. applicable reporting requirements based upon the impact of the regulated activity and as specified in 20.6.2.5359 NMAC; reporting shall be no less frequent than specified in the above regulations.

[20.6.2.5344 NMAC - N, 8-31-15]

20.6.2.5345 - 20.6.2.5350: [RESERVED]

20.6.2.5351 APPLICABILITY: 20.6.2.5351 through 20.6.2.5363 NMAC establish criteria and standards for underground injection control programs to regulate Class I hazardous waste injection wells. Unless otherwise noted, these sections supplement the requirements of 20.6.2.5000 through 20.6.2.5299 NMAC and apply instead of any inconsistent requirements for Class I non-hazardous waste injection wells.

[20.6.2.5351 NMAC - N, 8-31-15]

20.6.2.5352 MINIMUM CRITERIA FOR SITING:

A. All Class I hazardous waste injection wells shall be sited such that they inject into a formation that is beneath the lowermost formation containing within one quarter mile of the well bore groundwater of the state of New Mexico.

B. The siting of Class I hazardous waste injection wells shall be limited to areas that are geologically suitable. The director shall determine geologic suitability based upon:

(1) an analysis of the structural and stratigraphic geology, the hydrogeology, and the seismicity of the region;

(2) an analysis of the local geology and hydrogeology of the well site, including, at a minimum, detailed information regarding stratigraphy, structure and rock properties, aquifer hydrodynamics and mineral resources; and

(3) a determination that the geology of the area can be described confidently and that limits of waste fate and transport can be accurately predicted through the use of models.

C. Class I hazardous waste injection wells shall be sited such that:

(1) the injection zone has sufficient permeability, porosity, thickness and areal extent to prevent migration of fluids into ground water of the state of New Mexico; and

(2) the confining zone:

(a) is laterally continuous and free of transecting, transmissive faults or fractures over an area sufficient to prevent the movement of fluids into ground water of the state of New Mexico; and

(b) contains at least one formation of sufficient thickness and with lithologic and stress characteristics capable of preventing vertical propagation of fractures.

D. The owner or operator shall demonstrate to the satisfaction of the director that:

(1) the confining zone is separated from the base of the lowermost ground water of the state of New Mexico by at least one sequence of permeable and less permeable strata that will provide an added layer of protection for ground water of the state of New Mexico in the event of fluid movement in an unlocated borehole or transmissive fault; or

(2) within the area of review, the piezometric surface of the fluid in the injection zone is less than the piezometric surface of the lowermost groundwater of the state of New Mexico, considering density effects, injection pressures and any significant pumping in the overlying ground water of the state of New Mexico; or

(3) there is no ground water of the state of New Mexico present.

(4) The director may approve a site which does not meet the requirements in Paragraphs (1), (2), or (3) of Subsections D of this section if the owner or operator can demonstrate to the director that because of the geology, nature of the waste, or other considerations, abandoned boreholes or other conduits would not cause endangerment of ground water of the state of New Mexico.

[20.6.2.5352 NMAC - N, 8-31-15]

20.6.2.5353 AREA OF REVIEW: For the purposes of Class I hazardous waste wells, this section shall apply to the exclusion of 20.6.2.5202 NMAC. The area of review for Class I hazardous waste injection wells shall be a two-mile radius around the well bore. The director may specify a larger area of review based on the calculated cone of influence of the well.

[20.6.2.5353 NMAC - N, 8-31-15]

20.6.2.5354 CORRECTIVE ACTION FOR WELLS IN THE AREA OF REVIEW: For the purposes of Class I hazardous waste wells, this section shall apply to the exclusion of 20.6.2.5203 NMAC.

A. The owner or operator of a Class I hazardous waste well shall as part of the permit application submit a plan to the director outlining the protocol used to:

(1) identify all wells penetrating the confining zone or injection zone within the area of review; and

(2) determine whether wells are adequately completed or plugged.

B. The owner or operator of a Class I hazardous waste well shall identify the location of all wells within the area of review that penetrate the injection zone or the confining zone and shall submit as required in Subsection A of 20.6.2.5360 NMAC:

(1) a tabulation of all wells within the area of review that penetrate the injection zone or the confining zone; and

(2) a description of each well or type of well and any records of its plugging or completion.

C. For wells that the director determines are improperly plugged, completed, or abandoned, or for which plugging or completion information is unavailable, the applicant shall also submit a plan consisting of such steps or modification as are necessary to prevent movement of fluids into or between groundwater of the state of New Mexico. Where the plan is adequate, the director shall incorporate it into the permit as a condition. Where the director's review of an application indicates that the permittee's plan is inadequate (based at a minimum on the factors in Subsection E of this section), the director shall:

(1) require the applicant to revise the plan;

(2) prescribe a plan for corrective action as a condition of the permit; or

(3) deny the application.

D. Requirements.

(1) Existing injection wells. Any permit issued for an existing Class I hazardous waste injection well requiring corrective action other than pressure limitations shall include a compliance schedule requiring any corrective action accepted or prescribed under Subsection C of this section. Any such compliance schedule shall provide for compliance no later than two years following issuance of the permit and shall require observance of appropriate pressure limitations under Paragraph (3) of Subsection D until all other corrective action measures have been implemented.

(2) New injection wells. No owner or operator of a new Class I hazardous waste injection well may begin injection until all corrective actions required under this section have been taken.

(3) The director may require pressure limitations in lieu of plugging. If pressure limitations are used in lieu of plugging, the director shall require as a permit condition that injection pressure be so limited that pressure in the injection zone at the site of any improperly completed or abandoned well within the area of review would not be sufficient to drive fluids into or between groundwater of the state of New Mexico. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such injection pressure limitation may be made part of a compliance schedule and may be required to be maintained until all other required corrective actions have been implemented.

E. In determining the adequacy of corrective action proposed by the applicant under Subsection C of this section and in determining the additional steps needed to prevent fluid movement into and between groundwater of the state of New Mexico, the following criteria and factors shall be considered by the director:

(1) nature and volume of injected fluid;
(2) nature of native fluids or byproducts of injection;
(3) geology;
(4) hydrology;
(5) history of the injection operation;
(6) completion and plugging records;
(7) closure procedures in effect at the time the well was closed;
(8) hydraulic connections with groundwater of the state of New Mexico;
(9) reliability of the procedures used to identify abandoned wells; and
(10) any other factors which might affect the movement of fluids into or between ground water of the state of New Mexico.

[20.6.2.5354 NMAC - N, 8-31-15]

20.6.2.5355 CONSTRUCTION REQUIREMENTS:

A. *General.* All existing and new Class I hazardous waste injection wells shall be constructed and completed to:

(1) prevent the movement of fluids into or between ground water of the state of New Mexico or into any unauthorized zones;
(2) permit the use of appropriate testing devices and workover tools; and
(3) permit continuous monitoring of injection tubing and long string casing as required pursuant to Subsection F of 20.6.2.5357 NMAC.

B. *Compatibility.* All well materials must be compatible with fluids with which the materials may be expected to come into contact. A well shall be deemed to have compatibility as long as the materials used in the construction of the well meet or exceed standards developed for such materials by the American petroleum institute, ASTM, or comparable standards acceptable to the director.

C. *Casing and cementing of new wells.*

(1) Casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well, including the post-closure care period. The casing and cementing program shall be designed to prevent the movement of fluids into or between ground water of the state of New Mexico, and to prevent potential leaks of fluids from the well. In determining and specifying casing and cementing requirements, the director shall consider the following information as required by 20.6.2.5360 NMAC:

(a) depth to the injection zone;
(b) injection pressure, external pressure, internal pressure and axial loading;
(c) hole size;
(d) size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification and construction material);
(e) corrosiveness of injected fluid, formation fluids and temperature;
(f) lithology of injection and confining zones;
(g) type or grade of cement; and
(h) quantity and chemical composition of the injected fluid.

(2) One surface casing string shall, at a minimum, extend into the confining bed below the lowest formation that contains ground water of the state of New Mexico and be cemented by circulating cement from the base of the casing to the surface, using a minimum of 120% of the calculated annual volume. The director may require more than 120% when the geology or other circumstances warrant it.

(3) At least one long string casing, using a sufficient number of centralizers, shall extend to the injection zone and shall be cemented by circulating cement to the surface in one or more stages:

(a) of sufficient quantity and quality to withstand the maximum operating pressure; and

(b) in a quantity no less than 120% of the calculated volume necessary to fill the annular space; the director may require more than 120% when the geology or other circumstances warrant it.

(4) Circulation of cement may be accomplished by staging. The director may approve an alternative method of cementing in cases where the cement cannot be recirculated to the surface, provided the owner or operator can demonstrate by using logs that the cement is continuous and does not allow fluid movement behind the well bore.

(5) Casings, including any casing connections, must be rated to have sufficient structural strength to withstand, for the design life of the well:

(a) the maximum burst and collapse pressures which may be experienced during the construction, operation and closure of the well; and

(b) the maximum tensile stress which may be experienced at any point along the length of the casing during the construction, operation, and closure of the well.

(6) At a minimum, cement and cement additives must be of sufficient quality and quantity to maintain integrity over the design life of the well.

D. *Tubing and packer.*

(1) All Class I hazardous waste injection wells shall inject fluids through tubing with a packer set at a point specified by the director.

(2) In determining and specifying requirements for tubing and packer, the following factors shall be considered:

(a) depth of setting;

(b) characteristics of injection fluid (chemical content, corrosiveness, temperature and density);

(c) injection pressure;

(d) annular pressure;

(e) rate (intermittent or continuous), temperature and volume of injected fluid;

(f) size of casing; and

(g) tubing tensile, burst, and collapse strengths.

(3) The director may approve the use of a fluid seal if he determines that the following conditions are met:

(a) the operator demonstrates that the seal will provide a level of protection comparable to a packer;

(b) the operator demonstrates that the staff is, and will remain, adequately trained to operate and maintain the well and to identify and interpret variations in parameters of concern;

(c) the permit contains specific limitations on variations in annular pressure and loss of annular fluid;

(d) the design and construction of the well allows continuous monitoring of the annular pressure and mass balance of annular fluid; and

(e) a secondary system is used to monitor the interface between the annulus fluid and the injection fluid and the permit contains requirements for testing the system every three months and recording the results.

[20.6.2.5355 NMAC - N, 8-31-15]

20.6.2.5356 LOGGING, SAMPLING, AND TESTING PRIOR TO NEW WELL OPERATION:

A. During the drilling and construction of a new Class I hazardous waste injection well, appropriate logs and tests shall be run to determine or verify the depth, thickness, porosity, permeability, and rock type of, and the salinity of any entrained fluids in, all relevant geologic units to assure conformance with performance standards in 20.6.2.5355 NMAC, and to establish accurate baseline data against which future measurements may be compared. A descriptive report interpreting results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the director. At a minimum, such logs and tests shall include:

(1) deviation checks during drilling on all holes constructed by drilling pilot holes which are enlarged by reaming or another method; such checks shall be at sufficiently frequent intervals to determine the location of the borehole and to assure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling; and

(2) such other logs and tests as may be needed after taking into account the availability of similar data in the area of the drilling site, the construction plan, and the need for additional information that may arise from time to time as the construction of the well progresses; at a minimum, the following logs shall be required in the following situations:

(a) upon installation of the surface casing:

(i) resistivity, spontaneous potential, and caliper logs before the casing is installed; and

(ii) a cement bond and variable density log, and a temperature log after the casing is set and cemented;

(b) upon installation of the long string casing:

(i) resistivity, spontaneous potential, porosity, caliper, gamma ray, and fracture finder logs before the casing is installed; and

(ii) a cement bond and variable density log, and a temperature log after the casing is set and cemented;

(c) the director may allow the use of an alternative to the above logs when an alternative will provide equivalent or better information; and

(3) a mechanical integrity test consisting of:

(a) a pressure test with liquid or gas;

(b) a radioactive tracer survey;

(c) a temperature or noise log;

(d) a casing inspection log, if required by the director; and

(e) any other test required by the director.

B. Whole cores or sidewall cores of the confining and injection zones and formation fluid samples from the injection zone shall be taken. The director may accept cores from nearby wells if the owner or operator can demonstrate that core retrieval is not possible and that such cores are representative of conditions at the well. The director may require the owner or operator to core other formations in the borehole.

C. The fluid temperature, pH, conductivity, pressure and the static fluid level of the injection zone must be recorded.

D. At a minimum, the following information concerning the injection and confining zones shall be determined or calculated for Class I hazardous waste injection wells:

(1) fracture pressure;

(2) other physical and chemical characteristics of the injection and confining zones; and

(3) physical and chemical characteristics of the formation fluids in the injection zone.

E. Upon completion, but prior to operation, the owner or operator shall conduct the following tests to verify hydrogeologic characteristics of the injection zone:

(1) a pump test; or

(2) injectivity tests.

F. The director shall have the opportunity to witness all logging and testing required by 20.6.2.5351 through 20.6.2.5363 NMAC. The owner or operator shall submit a schedule of such activities to the director 30 days prior to conducting the first test.

[20.6.2.5356 NMAC - N, 8-31-15]

20.6.2.5357 OPERATING REQUIREMENTS:

A. Except during stimulation, the owner or operator shall assure that injection pressure at the wellhead does not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. The owner or operator shall assure that the injection pressure does not initiate fractures or propagate existing fractures in the confining zone, nor cause the movement of injection or formation fluids into ground water of the state of New Mexico.

B. Injection between the outermost casing protecting ground water of the state of New Mexico and the well bore is prohibited.

C. The owner or operator shall maintain an annulus pressure that exceeds the operating injection pressure, unless the director determines that such a requirement might harm the integrity of the well. The fluid in the annulus shall be noncorrosive, or shall contain a corrosion inhibitor.

D. The owner or operator shall maintain mechanical integrity of the injection well at all times.

E. Permit requirements for owners or operators of hazardous waste wells which inject wastes which have the potential to react with the injection formation to generate gases shall include:

(1) conditions limiting the temperature, pH or acidity of the injected waste; and

(2) procedures necessary to assure that pressure imbalances which might cause a backflow or blowout do not occur.

F. The owner or operator shall install and use continuous recording devices to monitor: the injection pressure; the flow rate, volume, and temperature of injected fluids; and the pressure on the annulus between the tubing and the long string casing, and shall install and use:

(1) automatic alarm and automatic shut-off systems, designed to sound and shut-in the well when pressures and flow rates or other parameters approved by the director exceed a range or gradient specified in the permit; or

(2) automatic alarms, designed to sound when the pressures and flow rates or other parameters approved by the director exceed a rate or gradient specified in the permit, in cases where the owner or operator certifies that a trained operator will be on-site at all times when the well is operating.

G. If an automatic alarm or shutdown is triggered, the owner or operator shall immediately investigate and identify as expeditiously as possible the cause of the alarm or shutoff. If, upon such investigation, the well appears to be lacking mechanical integrity, or if monitoring required under Subsection F of this section otherwise indicates that the well may be lacking mechanical integrity, the owner or operator shall:

(1) cease injection of waste fluids unless authorized by the director to continue or resume injection;

(2) take all necessary steps to determine the presence or absence of a leak; and

(3) notify the director within 24 hours after the alarm or shutdown.

H. If a loss of mechanical integrity is discovered pursuant to Subsection G of this section or during periodic mechanical integrity testing, the owner or operator shall:

(1) immediately cease injection of waste fluids;

(2) take all steps reasonably necessary to determine whether there may have been a release of hazardous wastes or hazardous waste constituents into any unauthorized zone;

(3) notify the director within 24 hours after loss of mechanical integrity is discovered;

(4) notify the director when injection can be expected to resume; and

(5) restore and demonstrate mechanical integrity to the satisfaction of the director prior to resuming injection of waste fluids.

I. Whenever the owner or operator obtains evidence that there may have been a release of injected wastes into an unauthorized zone:

(1) the owner or operator shall immediately case injection of waste fluids, and:

(a) notify the director within 24 hours of obtaining such evidence;

(b) take all necessary steps to identify and characterize the extent of any release;

(c) comply with any remediation plan specified by the director;

(d) implement any remediation plan approved by the director; and

(e) where such release is into ground water of the state of New Mexico currently serving as a water supply, place a notice in a newspaper of general circulation.

(2) The director may allow the operator to resume injection prior to completing cleanup action if the owner or operator demonstrates that the injection operation will not endanger groundwater of the state of New Mexico.

J. The owner or operator shall notify the director and obtain his approval prior to conducting any well workover.

[20.6.2.5357 NMAC - N, 8-31-15]

20.6.2.5358 TESTING AND MONITORING REQUIREMENTS: Testing and monitoring requirements shall at a minimum include.

A. Monitoring of the injected wastes.

(1) The owner or operator shall develop and follow an approved written waste analysis plan that describes the procedures to be carried out to obtain a detailed chemical and physical analysis of a representative sample of the waste, including the quality assurance procedures used. At a minimum, the plan shall specify:

(a) the parameters for which the waste will be analyzed and the rationale for the selection of these parameters;

(b) the test methods that will be used to test for these parameters; and

(c) the sampling method that will be used to obtain a representative sample of the waste to be analyzed.

(2) The owner or operator shall repeat the analysis of the injected wastes as described in the waste analysis plan at frequencies specified in the waste analysis plan and when process or operating changes occur that may significantly alter the characteristics of the waste stream.

(3) The owner or operator shall conduct continuous or periodic monitoring of selected parameters as required by the director.

(4) The owner or operator shall assure that the plan remains accurate and the analyses remain representative.

B. Hydrogeologic compatibility determination. The owner or operator shall submit information demonstrating to the satisfaction of the director that the waste stream and its anticipated reaction products will not alter the permeability, thickness or other relevant characteristics of the confining or injection zones such that they would no longer meet the requirements specified in 20.6.2.5352 NMAC.

C. Compatibility of well materials.

(1) The owner or operator shall demonstrate that the waste stream will be compatible with the well materials with which the waste is expected to come into contact, and submit to the director a description of the methodology used to make that determination. Compatibility for purposes of this requirement is established if contact with injected fluids will not cause the well materials to fail to satisfy any design requirement imposed under Subsection B of 20.6.2.5355 NMAC.

(2) The director shall require continuous corrosion monitoring of the construction materials used in the well for wells injecting corrosive waste, and may require such monitoring for other waste, by:

(a) placing coupons of the well construction materials in contact with the waste stream; or

(b) routing the waste stream through a loop constructed with the material used in the well; or

(c) using an alternative method approved by the director.

(3) If a corrosion monitoring program is required:

(a) the test shall use materials identical to those used in the construction of the well, and such materials must be continuously exposed to the operating pressures and temperatures (measured at the well head) and flow rates of the injection operation; and

(b) the owner or operator shall monitor the materials for loss of mass, thickness, cracking, pitting and other signs of corrosion on a quarterly basis to ensure that the well components meet the minimum standards for material strength and performance set forth in Subsection B of 20.6.2.5355 NMAC.

D. Periodic mechanical integrity testing. In fulfilling the requirements of 20.6.2.5204 NMAC, the owner or operator of a Class I hazardous waste injection well shall conduct the mechanical integrity testing as follows:

(1) the long string casing, injection tube, and annular seal shall be tested by means of an approved pressure test with a liquid or gas annually and whenever there has been a well workover;

(2) the bottom-hole cement shall be tested by means of an approved radioactive tracer survey annually;

(3) an approved temperature, noise, or other approved log shall be run at least once every five years to test for movement of fluid along the borehole; the director may require such tests whenever the well is worked over;

(4) casing inspection logs shall be run whenever the owner or operator conducts a workover in which the injection string is pulled, unless the director waives this requirement due to well construction or other factors which limit the test's reliability, or based upon the satisfactory results of a casing inspection log run within the previous five years; the director may require that a casing inspection log be run every five years, if he has reason to believe that the integrity of the long string casing of the well may be adversely affected by naturally-occurring or man-made events;

(5) any other test approved by the director in accordance with the procedures in 40 CFR Section 146.8(d) may also be used.

E. Ambient monitoring.

(1) Based on a site-specific assessment of the potential for fluid movement from the well or injection zone, and on the potential value of monitoring wells to detect such movement, the director shall require the owner or operator to develop a monitoring program. At a minimum, the director shall require monitoring of the

pressure buildup in the injection zone annually, including at a minimum, a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve.

(2) When prescribing a monitoring system the director may also require:

(a) continuous monitoring for pressure changes in the first aquifer overlying the confining zone; when such a well is installed, the owner or operator shall, on a quarterly basis, sample the aquifer and analyze for constituents specified by the director;

(b) the use of indirect, geophysical techniques to determine the position of the waste front, the water quality in a formation designated by the director, or to provide other site specific data;

(c) periodic monitoring of the ground water quality in the first aquifer overlying the injection zone;

(d) periodic monitoring of the ground water quality in the lowermost ground water of the state of New Mexico; and

(e) any additional monitoring necessary to determine whether fluids are moving into or between ground water of the state of New Mexico.

F. The director may require seismicity monitoring when he has reason to believe that the injection activity may have the capacity to cause seismic disturbances.

[20.6.2.5358 NMAC - N, 8-31-15]

20.6.2.5359 REPORTING REQUIREMENTS: Reporting requirements shall, at a minimum, include:

A. quarterly reports to the director containing:

(1) the maximum injection pressure;

(2) a description of any event that exceeds operating parameters for annulus pressure or injection pressure as specified in the permit;

(3) a description of any event which triggers an alarm or shutdown device required pursuant to Subsection F of 20.6.2.5357 NMAC and the response taken;

(4) the total volume of fluid injected;

(5) any change in the annular fluid volume;

(6) the physical, chemical and other relevant characteristics of injected fluids; and

(7) the results of monitoring prescribed under 20.6.2.5358 NMAC;

B. reporting, within 30 days or with the next quarterly report whichever comes later, the results of:

(1) periodic tests of mechanical integrity;

(2) any other test of the injection well conducted by the permittee if required by the director; and

(3) any well workover.

[20.6.2.5359 NMAC - N, 8-31-15]

20.6.2.5360 INFORMATION TO BE EVALUATED BY THE DIRECTOR: This section sets forth the information which must be evaluated by the director in authorizing Class I hazardous waste injection wells. For a new Class I hazardous waste injection well, the owner or operator shall submit all the information listed below as part of the permit application. For an existing or converted Class I hazardous waste injection well, the owner or operator shall submit all information listed below as part of the permit application except for those items of information which are current, accurate, and available in the existing permit file. For both existing and new Class I hazardous waste injection wells, certain maps, cross-sections, tabulations of wells within the area of review and other data may be included in the application by reference provided they are current and readily available to the director (for example, in the permitting agency's files) and sufficiently identifiable to be retrieved.

A. Prior to the issuance of a permit for an existing Class I hazardous waste injection well to operate or the construction or conversion of a new Class I hazardous waste injection well, the director shall review the following to assure that the requirements of 20.6.2.5000 through 20.6.2.5399 NMAC are met:

(1) information required in 20.6.2.5102 NMAC;

(2) a map showing the injection well for which a permit is sought and the applicable area of review; within the area of review, the map must show the number or name and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells and other pertinent surface features, including residences and roads; the map should also show faults, if known or suspected;

(3) a tabulation of all wells within the area of review which penetrate the proposed injection zone or confining zone; such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging or completion and any additional information the director may require;

(4) the protocol followed to identify, locate and ascertain the condition of abandoned wells within the area of review which penetrate the injection or the confining zones;

(5) maps and cross-sections indicating the general vertical and lateral limits of all ground water of the state of New Mexico within the area of review, their position relative to the injection formation and the direction of water movement, where known, in each groundwater of the state of New Mexico which may be affected by the proposed injection;

(6) maps and cross-sections detailing the geologic structure of the local area;

(7) maps and cross-sections illustrating the regional geologic setting;

(8) proposed operating data:

(a) average and maximum daily rate and volume of the fluid to be injected; and

(b) average and maximum injection pressure;

(9) proposed formation testing program to obtain an analysis of the chemical, physical and radiological characteristics of and other information on the injection formation and the confining zone;

(10) proposed stimulation program;

(11) proposed injection procedure;

(12) schematic or other appropriate drawings of the surface and subsurface construction details of the well;

(13) contingency plans to cope with all shut-ins or well failures so as to prevent migration of fluids into any ground water of the state of New Mexico;

(14) plans (including maps) for meeting monitoring requirements of 20.6.2.5358 NMAC;

(15) for wells within the area of review which penetrate the injection zone or the confining zone but are not properly completed or plugged, the corrective action to be taken under 20.6.2.5354 NMAC;

(16) construction procedures including a cementing and casing program, well materials specifications and their life expectancy, logging procedures, deviation checks, and a drilling, testing and coring program; and

(17) a demonstration pursuant to 20.6.2.5320 NMAC, that the applicant has the resources necessary to close, plug or abandon the well and for post-closure care.

B. Prior to the director's granting approval for the operation of a Class I hazardous waste injection well, the owner or operator shall submit and the director shall review the following information, which shall be included in the completion report:

(1) all available logging and testing program data on the well;

(2) a demonstration of mechanical integrity pursuant to 20.6.2.5358 NMAC;

(3) the anticipated maximum pressure and flow rate at which the permittee will operate;

(4) the results of the injection zone and confining zone testing program as required in Paragraph (9) of Subsection A of 20.6.2.5360 NMAC;

(5) the actual injection procedure;

(6) the compatibility of injected waste with fluids in the injection zone and minerals in both the injection zone and the confining zone and with the materials used to construct the well;

(7) the calculated area of review based on data obtained during logging and testing of the well and the formation, and where necessary revisions to the information submitted under Paragraphs (2) and (3) of Subsection A of 20.6.2.5360 NMAC;

(8) the status of corrective action on wells identified in Paragraph (15) of Subsection A of 20.6.2.5360 NMAC; and

(9) evidence that the permittee has obtained an exemption under 40 C.F.R. Part 148, Subpart C for the hazardous wastes permitted for disposal through underground injection.

C. Prior to granting approval for the plugging and abandonment (*i.e.*, closure) of a Class I hazardous waste injection well, the director shall review the information required in Paragraph (4) of Subsection A of 20.6.2.5361 NMAC and Subsection A of 20.6.2.5362 NMAC.

D. Any permit issued for a Class I hazardous waste injection well for disposal on the premises where the waste is generated shall contain a certification by the owner or operator that:

(1) the generator of the hazardous waste has a program to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) injection of the waste is that practicable method of disposal currently available to the generator which minimizes the present and future threat to human health and the environment.
[20.6.2.5360 NMAC - N, 8-31-15]

20.6.2.5361 CLOSURE:

A. *Closure plan.* The owner or operator of a Class I hazardous waste injection well shall prepare, maintain, and comply with a plan for closure of the well that meets the requirements of Subsection D of this section and is acceptable to the director. The obligation to implement the closure plan survives the termination of a permit or the cessation of injection activities. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.

(1) The owner or operator shall submit the plan as a part of the permit application and, upon approval by the director, such plan shall be a condition of any permit issued.

(2) The owner or operator shall submit any proposed significant revision to the method of closure reflected in the plan for approval by the director no later than the date on which notice of closure is required to be submitted to the director under Subsection B of this section.

(3) The plan shall assure financial responsibility as required in Paragraph (1) of Subsection A of 20.6.2.5342 NMAC.

(4) The plan shall include the following information:

(a) the type and number of plugs to be used;

(b) the placement of each plug including the elevation of the top and bottom of each plug;

(c) the type and grade and quantity of material to be used in plugging;

(d) the method of placement of the plugs;

(e) any proposed test or measure to be made;

(f) the amount, size, and location (by depth) of casing and any other materials to be left in the well;

(g) the method and location where casing is to be parted, if applicable;

(h) the procedure to be used to meet the requirements of Paragraph (5) of Subsection D of this section;

(i) the estimated cost of closure; and

(j) any proposed test or measure to be made.

(5) The director may modify a closure plan following the procedures of 20.6.2.3109 NMAC.

(6) An owner or operator of a Class I hazardous waste injection well who ceases injection temporarily, may keep the well open provided he:

(a) has received authorization from the director; and

(b) has described actions or procedures, satisfactory to the director, that the owner or operator will take to ensure that the well will not endanger ground water of the state of New Mexico during the period of temporary disuse; these actions and procedures shall include compliance with the technical requirements applicable to active injection wells unless waived by the director.

(7) The owner or operator of a well that has ceased operations for more than two years shall notify the director 30 days prior to resuming operation of the well.

B. *Notice of intent to close.* The owner or operator shall notify the director at least 60 days before closure of a well. At the discretion of the director, a shorter notice period may be allowed.

C. *Closure report.* Within 60 days after closure or at the time of the next quarterly report (whichever is less) the owner or operator shall submit a closure report to the director. If the quarterly report is due less than 15 days after completion of closure, then the report shall be submitted within 60 days after closure. The report shall be certified as accurate by the owner or operator and by the person who performed the closure operation (if other than the owner or operator). Such report shall consist of either:

(1) a statement that the well was closed in accordance with the closure plan previously submitted and approved by the director; or

(2) where actual closure differed from the plan previously submitted, a written statement specifying the differences between the previous plan and the actual closure.

D. *Standards for well closure.*

(1) Prior to closing the well, the owner or operator shall observe and record the pressure decay for a time specified by the director. The director shall analyze the pressure decay and the transient pressure

observations conducted pursuant to Paragraph (1) of Subsection E of 20.6.2.5358 NMAC and determine whether the injection activity has conformed with predicted values.

(2) Prior to well closure, appropriate mechanical integrity testing shall be conducted to ensure the integrity of that portion of the long string casing and cement that will be left in the ground after closure. Testing methods may include:

(a) pressure tests with liquid or gas;

(b) radioactive tracer surveys;

(c) noise, temperature, pipe evaluation, or cement bond logs; and

(d) any other test required by the director.

(3) Prior to well closure, the well shall be flushed with a buffer fluid.

(4) Upon closure, a Class I hazardous waste well shall be plugged with cement in a manner that will not allow the movement of fluids into or between groundwater of the state of New Mexico.

(5) Placement of the cement plugs shall be accomplished by one of the following:

(a) the balance method;

(b) the dump bailer method;

(c) the two-plug method; or

(d) an alternate method, approved by the director, that will reliably provide a comparable level of protection.

(6) Each plug used shall be appropriately tagged and tested for seal and stability before closure is completed.

(7) The well to be closed shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method prescribed by the director, prior to the placement of the cement plug(s).

[20.6.2.5361 NMAC - N, 8-31-15]

20.6.2.5362 POST-CLOSURE CARE:

A. The owner or operator of a Class I hazardous waste well shall prepare, maintain, and comply with a plan for post-closure care that meets the requirements of Subsection B of this section and is acceptable to the director. The obligation to implement the post-closure plan survives the termination of a permit or the cessation of injection activities. The requirement to maintain an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.

(1) The owner or operator shall submit the plan as a part of the permit application and, upon approval by the director, such plan shall be a condition of any permit issued.

(2) The owner or operator shall submit any proposed significant revision to the plan as appropriate over the life of the well, but no later than the date of the closure report required under Subsection C of 20.6.2.5361 NMAC.

(3) The plan shall assure financial responsibility as required in 20.6.2.5363 NMAC.

(4) The plan shall include the following information:

(a) the pressure in the injection zone before injection began;

(b) the anticipated pressure in the injection zone at the time of closure;

(c) the predicted time until pressure in the injection zone decays to the point that the well's cone of influence no longer intersects the base of the lowermost ground water of the state of New Mexico;

(d) predicted position of the waste front at closure;

(e) the status of any cleanups required under 20.6.2.5354 NMAC; and

(f) the estimated cost of proposed post-closure care.

(5) At the request of the owner or operator, or on his own initiative, the director may modify the post-closure plan after submission of the closure report following the procedures in 20.6.2.3109 NMAC.

B. The owner or operator shall:

(1) continue and complete any cleanup action required under 20.6.2.5354 NMAC, if applicable;

(2) continue to conduct any ground water monitoring required under the permit until pressure in the injection zone decays to the point that the well's cone of influence no longer intersects the base of the lowermost ground water of the state of New Mexico; the director may extend the period of post-closure monitoring if he determines that the well may endanger ground water of the state of New Mexico;

(3) submit a survey plat to the local zoning authority designated by the director; the plat shall indicate the location of the well relative to permanently surveyed benchmarks; a copy of the plat shall be submitted to the director;

(4) provide appropriate notification and information to such state and local authorities as have cognizance over drilling activities to enable such state and local authorities to impose appropriate conditions on subsequent drilling activities that may penetrate the well's confining or injection zone;

(5) retain, for a period of three years following well closure, records reflecting the nature, composition and volume of all injected fluids; the director shall require the owner or operator to deliver the records to the director at the conclusion of the retention period, and the records shall thereafter be retained at a location designated by the director for that purpose.

C. Each owner of a Class I hazardous waste injection well, and the owner of the surface or subsurface property on or in which a Class I hazardous waste injection well is located, must record a notation on the deed to the facility property or on some other instrument which is normally examined during title search that will in perpetuity provide any potential purchaser of the property the following information:

(1) the fact that land has been used to manage hazardous waste;

(2) the name of the state agency or local authority with which the plat was filed, as well as the address of the director;

(3) the type and volume of waste injected, the injection interval or intervals into which it was injected, and the period over which injection occurred.

[20.6.2.5362 NMAC - N, 8-31-15]

20.6.2.5363 FINANCIAL RESPONSIBILITY FOR POST-CLOSURE CARE: The owner or operator shall demonstrate and maintain financial responsibility for post-closure by using a trust fund, surety bond, letter of credit, financial test, insurance or corporate guarantee that meets the specifications for the mechanisms and instruments revised as appropriate to cover closure and post-closure care in 20.6.2.5320 NMAC. The amount of the funds available shall be no less than the amount identified in Subparagraph (f) of Paragraph (4) of Subsection A of 20.6.2.5362 NMAC. The obligation to maintain financial responsibility for post-closure care survives the termination of a permit or the cessation of injection. The requirement to maintain financial responsibility is enforceable regardless of whether the requirement is a condition of the permit.

[20.6.2.5363 NMAC - N, 8-31-15]

20.6.2.5364 - 20.6.2.5399: [RESERVED]

HISTORY of 20.6.2 NMAC:

Pre-NMAC History:

Material in this Part was derived from that previously filed with the commission of public records - state records center and archives:

WQC 67-2, Regulations Governing Water Pollution Control in New Mexico, filed 12-5-67, effective 1-4-68
WQC 72-1, Water Quality Control Commission Regulations, filed 8-4-72, effective 9-3-72
WQC 77-1, Amended Water Quality Control Commission Regulations, filed 1-18-77, effective 2-18-77
WQC 81-2, Water Quality Control Commission Regulations, filed 6-2-81, effective 7-2-81
WQC 82-1, Water Quality Control Commission Regulations, filed 8-19-82, effective 9-20-82

History of Repealed Material: [Reserved]

Other History:

20 NMAC 6.2, Water Quality - Ground and Surface Water Protection, filed 10-27-95, effective 12-1-95
20 NMAC 6.2, Water Quality - Ground and Surface Water Protection, filed 10-15-96, effective 11-15-96
20 NMAC 6.2, Water Quality - Ground and Surface Water Protection, filed 11-30-00, effective 1-15-01
20 NMAC 6.2, Water Quality - Ground and Surface Water Protection, filed 9-16-01, effective 12-1-01
20 NMAC 6.2, Water Quality - Ground and Surface Water Protection, filed 8-1-02, effective 9-15-02
20 NMAC 6.2, Water Quality – Ground and Surface Water Protection, filed 11-21-18, effective 12-21-18