



SURFACE WATER PERMITTING RULES

Draft Amendments to 20.6.2 NMAC
Public Review Draft

Public Comment Period: August 29 – October 28, 2025

The New Mexico Environment Department is holding a 60-day public comment period on this document. Please see the preamble for information on submitting comments.

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20.6.2 NMAC – Ground and Surface Water Protection: Surface Water Permitting Regulations

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Preamble

NMED is developing a new State Permitting Program to protect the water quality of New Mexico's surface waters.

Rivers, streams, lakes, wetlands, and other surface waters sustain the state's culture, economy, and natural ecosystems. Governor Lujan Grisham and the state legislature have directed the New Mexico Environment Department (NMED) to create a state permitting program to protect surface waters from pollution.

Currently, New Mexico relies on the U.S. Environmental Protection Agency in Dallas to administer and enforce water protections in New Mexico. New Mexico is seeking to obtain primacy and gain control over its permitting program to protect waters as it sees fit. Senate Bill 21 (SB21) was passed in the 2025 Regular Legislative Session and signed into law by Governor Lujan Grisham on April 8, 2025. SB21 gives authority to the New Mexico Environment Department to administer and enforce a permitting program to regulate discharges of pollutants into our rivers, streams, lakes, and wetlands.

NMED is proposing amendments to 20.6.2 NMAC to create a new state surface water permitting program that controls the discharge of pollutants, including dredged and fill materials, into surface waters of the state under the authority of the New Mexico Water Quality Act. The program will not apply to discharges to tribal waters, but NMED will be responsive to tribal concerns and ensure that permitted discharges do not adversely affect tribal water quality programs.

Deleted materials are indicated by strikethrough, and new text are indicated by underlined blue font. Only the portions of the rule (sections, subsections, paragraphs, etc.) with draft amendments (i.e., changes) are provided below, unless needed for context and clarity of scope.

Comments may be submitted via email at swq.spp@env.nm.gov or the Department's public comment portal (<https://nmed.commentinput.com/comment/search>) through October 28, 2025. More information about the State Surface Water Permitting Program may be found at <https://www.env.nm.gov/surface-water-quality/spp/>.

PUBLIC REVIEW DRAFT

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) “aquatic resources” means wetlands, streams, rivers and other bodies of water, riparian habitats and the organisms that live in them and the ecological functions, services and values they provide.

(6) “avoidance” means avoiding adverse impacts to aquatic resources by not discharging dredge or fill material into a surface water or analyzing all feasible alternatives to the maximum extent practicable and selecting the least environmentally damaging project type, spatial location, and extent compatible with achieving the purpose of the project.

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 pollution from surface water discharges. BMPs include methods, measures, operating procedures, practices, design and performance standards, treatment requirements, and structural and nonstructural controls which facilitate compliance with discharge guidelines, effluent limitations or prohibitions, 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 mitigating an aquatic resource impact by replacing or providing substitute aquatic resources for impacts that remain after avoidance and minimization measures have been applied, and is achieved through appropriate and practicable restoration, establishment, enhancement, and/or preservation of aquatic resource functions and services.;

(67) “**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;

(78) “**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 groundwater 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;

(112) “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 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;

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, such as soil that is

disturbed when dirt is shoveled and the backspill that comes off a bucket when a small volume of soil or dirt falls into substantially the same place from which it was initially removed;

(23) **“injection”** means the subsurface emplacement of fluids through a well;

(34) **“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 mitigating or managing the severity of a discharge's impact to aquatic resources 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 and that no indirect impacts will occur.

(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, the construction of which is commenced after the publication of proposed rules prescribing a standard of performance applicable to the source; or

(b) an existing source when modified to treat substantial additional volumes or when there is a substantial 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;

(23) **“person”** means an individual or any other entity including partnerships, corporation, associations, responsible business or association agents or officers, responsible corporate 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;

(34) **“petitioner”** means a person seeking a variance from a regulation of the commission pursuant to Section 74-6-4(~~H~~) NMSA 1978;

(45) **“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) **“POTW”** means a “publicly owned treatment works” or a wastewater treatment facility owned by a state or municipality that is designed to treat domestic and some industrial wastewater;

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

(59) **“project discharge permit”** means a groundwater discharge permit which describes the operation of similar class III wells or well fields within one or more individual operational areas;

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;

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, a commercial or an industrial wastewater treatment plant, 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;

(57) “**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;

(68) “**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;

(9) “**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;

(10) “**surface water(s)**” shall have the same meaning as 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)(2) 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)
78-87-5)	(g)	1,2-dichloropropane (propylene dichloride, PDC) (CAS
	(h)	dichloropropenes (CAS 542-75-6)
	(i)	1,4-dioxane (CAS 123-91-1)
	(j)	halogenated ethanes
(CAS 106-93-4)	(i)	1,2-dibromoethane (ethylene dibromide, EDB)
	(ii)	1,1-dichloroethane (1,1-DCA) (CAS 75-34-3)
(CAS 107-06-2)	(iii)	1,2-dichloroethane (ethylene dichloride, EDC)
	(iv)	1,1,1-trichloroethane (TCA) (CAS 71-55-6)
5)	(v)	1,1,2-trichloroethane (1,1,2-TCA) (CAS 79-00-
	(vi)	1,1,2,2-tetrachloroethane (CAS 79-34-5)
	(vii)	hexachloroethane (CAS 67-72-1)
	(k)	halogenated ethenes
	(i)	chloroethene (vinyl chloride) (CAS 75-01-4)
	(ii)	1,1-dichloroethene (1,1-DCE) (CAS 75-35-4)
156-59-2)	(iii)	cis-1,2-dichloroethene (cis-1,2-DCE) (CAS
(CAS 156-60-5)	(iv)	trans-1,2-dichloroethene (trans-1,2-DCE)
79-01-6)	(v)	trichloroethene (trichloroethylene, TCE) (CAS
(CAS 127-18-4)	(vi)	tetrachloroethene (perchloroethylene, PCE)
	(l)	halogenated methanes
	(i)	bromodichloromethane (CAS 75-27-4)
	(ii)	bromomethane (CAS 74-83-9)
(CAS 75-71-8)	(iii)	chloromethane (CAS 74-87-3)
75-09-2)	(iv)	dichlorodifluoromethane (fluorocarbon-12)
	(v)	dichloromethane (methylene chloride) (CAS
	(vi)	tribromomethane (bromoform) (CAS 75-25-2)
	(vii)	trichloromethane (chloroform) (CAS 67-66-3)

56-23-5)	(viii)	tetrachloromethane (carbon tetrachloride) (CAS
(CAS 75-69-4)	(ix)	trichlorofluoromethane (fluorocarbon-11)
	(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)
(HMX) (CAS 2691-41-0)	(iv)	octahydro-1,3,5,7-tetranitro-1,3,5,7-tetrazocine
(CAS 121-82-4)	(v)	hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX)
	(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)
355-46-4)	(i)	perfluorohexane sulfonic acid (PHHxS) (CAS
23-1)	(ii)	perfluorooctane sulfonate (PFOS) (CAS 1763-
1)	(iii)	perfluorooctanoic acid (PFOA) (CAS 335-67-
	(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)
- 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 [this part-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 8750335. [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. 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 FEDERAL REGULATIONS INCORPORATED BY REFERENCE

A. Effect of invalidation. The department shall enforce a federal regulation incorporated by reference only to the extent that it is enforceable by the United States environmental protection agency.

B. Availability for review. Federal regulations incorporated by reference may be reviewed at 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 - 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:

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 discharge pursuant to an existing surface water discharge general permit, 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 of intent, or pre-construction notification for discharges of dredge or fill materials, in the format required by the department 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~~ Except for a discharge to a surface water, 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 of intent in the format required by the department 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 or level of water contaminants in the discharge or the nature of dredged or fill material;

(5) the quantity of the discharge;

(6) the designated uses and attainment status of the receiving water(s) from the State of New Mexico Clean Water Act §303(d)/§305(b) Integrated Report;

(7) for pre-construction notifications, a list of all practicable and reasonable best management practices (BMPs) that the project proponent will implement to avoid, minimize, rectify, or reduce potential impacts to water quality that may occur as a result of the project; and

(8) the information required by a general permit, if applicable.

(9) The department may request additional information from the person filing the notice, as required to determine the nature and impact of a potential discharge to a surface water.

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) an individual surface water discharge permit is required;

(3) general permit coverage is authorized;

(4) a discharge permit is not required;

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

(6) 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 – NO CHANGES

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 and the chief of the surface water quality bureau of the department, 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 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 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 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 - 20.6.2.1219 – NO CHANGES

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 evidence or information obtained by the department or provided to the department by a third party indicates that a source is not in compliance with the provisions of this Part, that evidence or information may be used by the department for purposes of establishing 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 – 20.6.2.2003 – NO CHANGES

20.6.2.2004 - 20.6.2.20992199: [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]~~

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~~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 - 20.6.2.2201 – NO CHANGES

20.6.2.2202 - 20.6.2.29992299: [RESERVED]

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

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 (Standards for Interstate and Intrastate Surface Waters).

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

20.6.2.2303 EXEMPTIONS:

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

- (1) return flows composed entirely from irrigated agriculture;
- (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;
- (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 quality permitting regulations do not apply to the following discharges of dredge 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 contains any toxic pollutant as set forth in rule by the commission or if a new

discharge 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. To obtain a new 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 20.6.2.2304 NMAC (Surface Water Discharge Permits), the information required by Subsections (C) or (D) of 20.6.4.2304 NMAC (Surface Water Discharge Permits), and, as applicable to the type of application, the fee specified in specified in 20.6.2.2350 NMAC (Fees).

B. 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 Subsection E of 20.6.2.2309 NMAC (Secretary Review and Approval);

(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. As applicable to the type of surface water discharge permit, the applicant shall:

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

(2) describe the type of dredge or fill material being discharged and the amount;

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

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

(5) identify any surface water where the discharge will occur (i.e., receiving water or receiving waters);

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

(7) 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, and identify designated critical habitat, outstanding national resource waters, impaired waters, and historic properties that may be affected by the project;

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

(9) for point source discharges that may significantly degrade a high-quality surface water or for discharges of dredged or fill materials, identify less degrading or non-

degrading alternative pollution control measures and specify the steps that will be taken to avoid and minimize adverse impacts to aquatic resources, including:

(a) selected control measures chosen for the project in accordance with widely accepted industry standards and guidance. The control measures must be selected, designed, installed and adequately sized in accordance with sound engineering, hydrologic and pollution control practices for the intended application. Sound engineering, hydrologic and pollution control practices are methods, procedures, and practices that:

(i) are based on basic scientific facts;
(ii) reflect best industry practices and standards;
(iii) are appropriate for the conditions and pollutant sources; and
(iv) provide appropriate solutions to meet the associated permit requirements, including practice-based effluent limits; and

(b) all practicable and reasonable best management practices or reasonable alternatives that are appropriate for the project.

(c) The applicant bears the burden of providing an alternatives analysis sufficient to determine which practicable alternative has the least adverse impact on aquatic resources. The alternatives analysis shall provide all the underlying information necessary to support the considerations under 20.6.2.2309 NMAC (Secretary Review and Approval) and shall be consistent with New Mexico's antidegradation policy and implementation procedure in the water quality management plan pursuant to 20.6.4.8 NMAC.

(10) if the proposed discharge will result in the unavoidable loss of aquatic resources or stream bed, describe how impacts to aquatic resources will be compensated for, or provide a statement explaining why compensatory mitigation should not be required for those impacts;

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

(12) 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) 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 effluent limitations in an existing permit, the permittee shall be required to submit a compliance plan or pollutant

minimization plan with their application or as a condition of a renewed permit in order to control and reduce or eliminate pollutants in the discharge and protect surface water quality.

(2) 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) 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) The secretary may transfer a permit by modification under Paragraph (2) of Subsection D of this section (Existing Permits) upon receipt of an 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. 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 discharges or sludge use or disposal practices or facilities within the state or part thereof, such as a watershed, region, or other geographical area or general permits for one or more categories of discharges to surface waters.

B. The discharges within a category include:

(1) storm water runoff from municipal separate storm sewer systems (MS4s), construction activities, industrial activities, and oil and gas activities;

(2) treatment works for municipal 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 effluent limitations, operating conditions, or standards;

(c) require the same or similar BMPs 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) wildfire suppression;

(6) aquaculture and fish hatcheries;

(7) pesticide applications;

(8) hydrostatic testing;

(9) construction dewatering; and

(10) concentrated animal feeding operations.

C. General permits shall specify the requirement to submit a notice of intent or pre-construction notification, the applicable permit conditions, including requirements to implement appropriate and practicable steps to avoid and minimize impacts to aquatic resources, including best management practices, actions to minimize adverse effects, or compensatory mitigation requirements as identified, 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 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.

E. The secretary's decision to issue, modify, renew, or terminate a general permit shall be subject to 20.6.2.2305 NMAC (Permit Conditions), 20.6.2.2308 NMAC (Public Notice and Participation), 20.6.2.2309 NMAC (Secretary Review and Approval), 20.6.2.2310 NMAC (Public Hearing Participation), 20.6.2.2311 NMAC (Appeals of Secretary Decisions), 20.6.2.2312 NMAC (Appeals of Commission Decisions), 20.6.2.2313 NMAC (Federal Regulations Incorporated by Reference), and 20.6.2.2350 NMAC (Fees).

20.6.2.2306 GENERAL PERMIT COVERAGE:

A. A person who seeks general permit coverage for a point source discharge shall submit 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 specified in 20.6.2.2350 NMAC (Fees).

B. A person who seeks general permit coverage for a discharge of dredge or fill material shall submit 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 specified in 20.6.2.2350 NMAC (Fees).

C. 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.

D. The department shall maintain a list on its website containing the 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 and shall comply with Paragraph (4) of Subsection D of 20.6.2.2304 NMAC.

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

(3) The transfer shall be effective on the date specified in the general permit.

E. Terminations. The secretary may terminate general permit coverage upon the permittee's request if the discharge has terminated, an individual permit has been issued, the general permit coverage has been transferred, the permittee is noncompliant with the general

permit requirements and conditions, the construction or operation has ceased and the termination conditions in the general permit have been satisfied, or the discharge is causing water quality to exceed applicable standards in the receiving or downstream water body.

F. Surface Water Discharge Permits.

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

(2) The secretary may require a permittee 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) a statement that the permittee's general permit coverage shall terminate on the effective date of an individual permit; and

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

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

(4) 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.

G. Emergency Permits.

(1) The secretary may issue a temporary emergency permit for a discharge of dredge or fill material if unacceptable harm to life or severe loss of physical property is likely to occur before a general permit could be issued or modified under normal procedures. The applicant shall complete the appropriate permit process during 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 20.6.2.2305 NMAC (Permit Conditions).

(a) The emergency permit shall be limited to the duration of time required to complete the authorized emergency action, and the action shall be 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, as appropriate, about issuance of an emergency permit.

20.6.2.2307 PERMIT CONDITIONS:

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

B. Each discharge permit shall provide for the following as the secretary may require to protect surface water quality:

(1) the installation, use, and maintenance of effluent monitoring devices;

(2) the installation, use, and maintenance of monitoring devices for the receiving and downstream waters that may be influenced by the discharge;

- (3) continuation of monitoring after cessation of operations;
- (4) a system of monitoring and reporting of results and information that may be required in the discharge permit and to verify that the discharge is achieving the expected results;
- (5) 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 (General Criteria);
- (6) a schedule of compliance for the purpose of providing a permittee with adequate time 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 also specify milestone dates so as to measure progress towards final project completion (e.g., design completion, construction start, construction completion, date of compliance).
- (7) retention of any monitoring data required in the discharge permit for a period of at least five years, or the length of the permit term if the term is longer than five years;
- (8) procedures for detecting failure of the treatment system; or,
- (9) 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 (Sampling and Analysis) 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 following conditions apply to all surface water discharge permits.

(1) 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) 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 (Surface Water Discharge Permit).

(3) 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) 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) 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 which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of a surface water discharge permit.

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

(8) 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) Public notice, when required, shall be provided as set forth in 20.6.2.2308 NMAC.

(10) 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 monitoring information, copies of all reports, and records of all data used to complete an application for a surface water discharge permit, for at least five years after issuance of the permit, or 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) All applications, reports, or information submitted to the secretary shall be signed and certified.

(13) Reporting requirements.

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

(b) 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; or

(c) 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.

- F. 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, fecal coliform, 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) 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.
- (3) 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;
- (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) Any pollutants not required by or beneficial to the aquaculture crop shall not exceed applicable standards and limitations when entering the designated project area.
- (5) 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.
- (6) 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.
- G. The following conditions apply to discharges of dredge or fill material.
- (1) For dredge or fill general permits, the project proponent shall submit a pre-construction notification to the surface water quality bureau.

(2) If a proposed activity will result in fill material in water bodies listed as impaired under the state's section 303(d) list, the project proponent shall select and implement specific measures, or best management practices, to prevent further degradation of the water quality.

(3) Project proponents shall select and implement all practicable and reasonable BMPs that are appropriate for their project. Practicable and reasonable BMPs for New Mexico surface waters include:

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

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

(c) 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) Pressure wash and/or steam clean 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 BMPs are not practical to implement..

(e) 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) 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) 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) 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 shall not contain contaminants, including excessive turbidity and other contaminants associated with the discharge, in concentrations that exceed New Mexico's surface water or groundwater standards in 20.6.4 NMAC and 20.6.2 NMAC. Appropriate dewatering BMPs 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) Water used in dust suppression shall not contain contaminants in concentrations that exceed New Mexico's surface water or groundwater standards in 20.6.4 NMAC and 20.6.2 NMAC.

(k) Avoid disturbance to 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, and other erosion control materials and techniques, as appropriate, to protect waters from sedimentation and other pollutants. Avoid using jute netting or placing woven wire in contact with the stream, as these materials have been known to trap and kill fish and wildlife in or near streams or rivers.

(l) Design and construct the activity to avoid and minimize adverse effects to aquatic resources, both temporary and permanent, to the maximum extent practicable. Appropriate and practicable measures to avoid and minimize impacts to aquatic resources include actions such as:

(i) avoid working in aquatic resources whenever possible;
(ii) flag or otherwise mark aquatic resource boundaries especially wetlands, so construction crews can avoid them;

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

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

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

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

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

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

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

(m) The project proponent and their contractors shall take necessary steps to minimize channel and bank erosion after construction. Where applicable, reseed disturbed banks or replant with native vegetation. Areas outside stream channels that were disturbed by construction must be reseeded or planted with native vegetation so that species regrowth is functionally equivalent to the pre-disturbed site or a reference site. Stabilization measures including vegetation are required at the earliest practicable date. Native woody riparian and/or

wetland species must be used in areas that support such vegetation. The department will determine the requirements for post-construction monitoring on a case-by-case basis.

(4) The authorized dredge or fill activity shall maintain floodplain connectivity and riparian buffers.

(5) The project proponent shall select and implement low impact development practices (e.g. native landscaping, green stormwater infrastructure, and constructed green spaces) to the extent practicable.

(6) Appropriate spill cleanup materials such as absorbent pads and spill booms shall be available on-site at all times during construction. The project proponent 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).

(7) The project proponent shall provide all contractors and subcontractors with a copy of the dredge 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.

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

H. Compensatory mitigation for unavoidable impacts to aquatic resources resulting from a discharge of dredge 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 will 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, degree (i.e., severity) and scale of impacts, and the current condition of the impacted aquatic resource(s) when determining if compensatory mitigation is required for a dredge or fill permit.

(2) Compensatory mitigation requirements shall be commensurate with the amount and type of impact that is associated with the permit.

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

(4) The department will 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 PUBLIC NOTICE AND PARTICIPATION:

A. Within 60 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 E of 20.6.2.2308 NMAC (Public Notice and Participation). 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 60 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.

B. Within 90 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, and all proposed monitoring, recordkeeping, and reporting requirements. A draft permit for a permit modification shall only include those permit terms, conditions, and other requirements proposed to be modified.

C. The department shall prepare a fact sheet for every draft 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, except that for a general permit the facility-specific information in Paragraph (1) shall not be required:

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

(2) the 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 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, any alternatives or cost analyses provided to justify a discharge, and other relevant information that support the rationale for the draft permit conditions and requirements.

D. The department shall provide a copy of the draft permit and fact sheet or notice of intent to deny to the applicant, and require written acknowledgement of receipt, and shall provide to the public notice of the draft permit or the notice of intent to deny as follows, except that for a general permit Paragraphs (2) and (4) 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.

E. Concurrent with the department's notice in Subsection D of 20.6.4.2308 NMAC (Public Notice and Participation), 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.

F. The public notice provided under Subsection D and Subsection E of 20.6.2.2308 NMAC (Public Notice and Participation) shall include, except that for a general permit Paragraphs (1) through (3) 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, 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 permit and fact sheet or the notice of intent to deny.

G. Within 15 days of completion of the public notice requirements in Subsection E of 20.6.2.2308 NMAC (Public Notice and Participation), 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.

H. 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 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. 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 or a tribal government has raised a significant issue. 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.

I. If a hearing is held, pursuant to Subsection F of 20.6.2.2308 NMAC (Public Notice and Participation), notice of the hearing shall be given by the department at least 30 days prior to the hearing in accordance with Subsection D of 20.6.2.2308 NMAC (Public Notice and Participation). The notice shall include the information identified in Paragraphs (1) through (5) and (10) of Subsection E of 20.6.2.2308 NMAC (Public Notice and Participation) 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 20.6.2.2310 NMAC (Public Hearing Participation).

20.6.2.2309 SECRETARY REVIEW AND APPROVAL:

A. The department shall evaluate the application for a new discharge permit, modification, or renewal based on information contained in the application, additional information required by the department, any additional information submitted by the discharger or the general public, other relevant information considered by the department including antidegradation or reasonable potential analyses, 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, and public comment provided, associated hearing officer report and post hearing submissions, if any. The department shall prepare a revised draft discharge permit based on this evaluation for the secretary's review and approval.

B. The secretary shall, within 45 days after the draft permit is provided for review with all required information, approve or deny the draft discharge 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 discharge 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 may be violated as a result of the discharge:

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

(2) The secretary may terminate a discharge permit when a discharger fails to modify the permit in accordance with Paragraph (2) of Subsection D of 20.6.2.2304 NMAC (Surface Water Discharge Permit).

(3) 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.

(4) If a discharge 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 mitigation or corrective action plan pursuant to 20.6.2.1203 NMAC (Notification of Discharge Removal).

D. 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 (Surface Water Discharge Permit).

E. The secretary shall deny a surface water discharge permit if:

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

(2) the discharge does not include all 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 or the United States; or

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

F. Surface water discharge permits may be issued for fixed terms up to ten years. Longer permit terms may be applied to discharges for justified reasons including facilities with a good compliance history, less complex or minor facilities, facilities with state-of-the-art treatment technologies, certain general permits, or similar justifications. For new discharges, the term of the discharge permit approval shall commence on the date the discharge begins. The

permittee shall give prior written notification to the department of the date the new discharge is to commence to determine the expiration date.

20.6.2.2310 PUBLIC HEARING PARTICIPATION:

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 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 technical evidence. 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 discharge 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 discharge permit, 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 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) testimony by and examination of the applicant or permittee proving the facts relied upon to justify the proposed discharge permit, 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 permit, 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 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, the department, 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 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 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 30 days of receipt of the hearing report. The decision shall be served and made available for inspection pursuant to Subsection K of this 20.6.2.2310 (Public Hearing Participation).

M. Any person who testifies at the hearing or submits a written statement for the record will be considered a participant for purposes of 20.6.2.2312 NMAC (Appeals of Commission Decisions) and Subsection P of Section 74-6-5 NMSA 1978.

20.6.2.2311 COMMISSION REVIEW OF SECRETARY'S DECISIONS:

A. If the secretary approves, approves subject to conditions, or denies a proposed discharge permit, renewal, or modification, or modifies or terminates a discharge permit, appeal therefrom shall be in accordance with the provisions of Subsections O, P, and Q of Section 74-6-5 NMSA 1978. The filing of an appeal does not act as a stay of any provision of the Water Quality Act, the regulations, 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 a discharge permit, or that the material to be discharged contains any toxic pollutant listed in 20.6.2.7 NMAC (Definitions), which is not included in the table of numeric criteria in Paragraph (1) of Subsection J of 20.6.4.900 NMAC (Criteria Applicable to Existing, Designated or Attainable Uses Unless Otherwise Specified in 20.6.4.97 through 20.6.4.899 NMAC), then the discharger may appeal such determination by filing with the commission 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 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.

20.6.2.2312 JUDICIAL REVIEW 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 NMSA 1978.

20.6.2.2313 - 20.6.2.2349: [RESERVED]

20.6.2.2350 FEES:

A. Every person submitting a discharge permit application for new permits or permit renewals, modifications, or transfers 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. If the secretary requires a discharge permit modification outside of an enforcement action, the facility shall pay the application fee specified in Table 1 of this section.

C. The secretary may waive or reduce fees for discharge permit modifications, renewals, or transfers, as appropriate and justified.

D. 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 in equal installments over the term of the discharge permit. Annual fee payments shall be remitted yearly, with the first installment due on the date of discharge permit issuance. Subsequent installment payments shall be remitted yearly thereafter. 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.

E. 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 will be calculated by averaging the CPI-U for the 12-month period ending on August 31 of the previous year, 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.

F. 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 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. Major facilities (>1 million gallons per day) have higher base fees for applications because they are often more complex permits and, because of their size and discharge volume, they have greater potential to harm the environment and thus demand greater consideration and oversight by the department. 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:

Discharge (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 considered 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.

(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, threatened or endangered habitat, and/or cultural and historic resources, extent of aquatic resources impacted, and the volume or quantity of discharge.

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

(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, threatened or endangered habitat, and/or cultural and historic resources, extent of aquatic resources impacted, and the volume or quantity of discharge. The annual fee shall be calculated as follows

(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. The secretary must approve the request to extend the time for payment, or to reduce or waive the fee. 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 on date of permit issuance and every year thereafter of the permit term.

(2) For general permit coverage, the department shall invoice the owner or operator for the annual fee one year after the date of general permit coverage authorization 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 fourteen days prior to the end of the 60-day period seeking a payment extension or fee reduction. The secretary must approve the request to extend the time for payment or reduce the fee 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 for meeting 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* – 10 th Percentile	\$2,371	\$3,558
Domestic Wastewater Permit* – 25 th Percentile	\$3,060	\$6,542
Domestic Wastewater Permit* – 50 th Percentile	\$7,060	\$23,252
Domestic Wastewater Permit* – 75 th Percentile	\$16,660	\$53,972
Domestic Wastewater Permit* – 90 th Percentile	\$29,500	\$107,900
Domestic Wastewater Permit* – 100 th Percentile	\$46,010	\$117,242
Industrial Wastewater Permit* – 10 th Percentile	\$3,500	\$7,000
Industrial Wastewater Permit* – 25 th Percentile	\$3,500	\$7,000
Industrial Wastewater Permit* – 50 th Percentile	\$6,500	\$7,000
Industrial Wastewater Permit* – 75 th Percentile	\$50,750	\$38,500
Industrial Wastewater Permit* – 90 th Percentile	\$146,562	\$91,000
Industrial Wastewater Permit* – 100 th Percentile	\$293,125	\$91,000
Dredge or Fill Individual Permit	\$4,000-\$20,000	\$8,000
Pretreatment Program	\$10,000	\$15,000
Clean Water Act Section 401 Certification – Dredge or Fill	\$5,000	NA
Surface Water Discharge Permit Modification ¹	\$25,000	NA

TABLE 1 – INDIVIDUAL PERMIT FEES	Application Fee	Annual Fee
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 20.6.5.602 NMAC. Fees shown are selected values of calculated application and annual fees.

1 - See Paragraph B of 20.6.2.2350 NMAC.

TABLE 2 – GENERAL PERMIT FEES	Application Fee	Annual Fee
Construction General Permit – Stormwater	\$550	\$800
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 Dredge or Fill General Permit	\$0	NA
Statewide Dredge or Fill General Permits	\$550	\$800
Emergency Dredge or Fill Permit	\$0	NA
Other General Permits	\$550	\$800

20.6.2.2355 - 20.6.2.2999: [RESERVED]

20.6.2.3000 GROUND WATER PERMITTING AND GROUND WATER STANDARDS:

20.6.2.3001 - 20.6.2.3104 – *NO CHANGES*

20.6.2.3104 GROUND WATER DISCHARGE PERMIT REQUIRED – *NO OTHER CHANGES*

20.6.2.3105 EXEMPTIONS FROM GROUND WATER DISCHARGE PERMIT REQUIREMENT – *NO OTHER CHANGES*

20.6.2.3106 APPLICATION FOR GROUND WATER DISCHARGE PERMITS, RENEWALS, AND MODIFICATIONS – *NO OTHER CHANGES*

20.6.2.3107 GROUND WATER DISCHARGE PERMIT MONITORING, REPORTING, AND OTHER REQUIREMENTS – *NO OTHER CHANGES*

20.6.2.3108 – *NO CHANGES*

**20.6.2.3109 SECRETARY APPROVAL, DISAPPROVAL, MODIFICATION OR
TERMINATION OF GROUND WATER DISCHARGE PERMITS, AND
REQUIREMENT FOR ABATEMENT PLANS – *NO OTHER CHANGES***

20.6.2.3110 – *NO CHANGES*

**20.6.2.3111 TRANSFER OF GROUND WATER DISCHARGE PERMIT – *NO
OTHER CHANGES***

20.6.2.3112 - 20.6.2.5399 – *NO CHANGES*