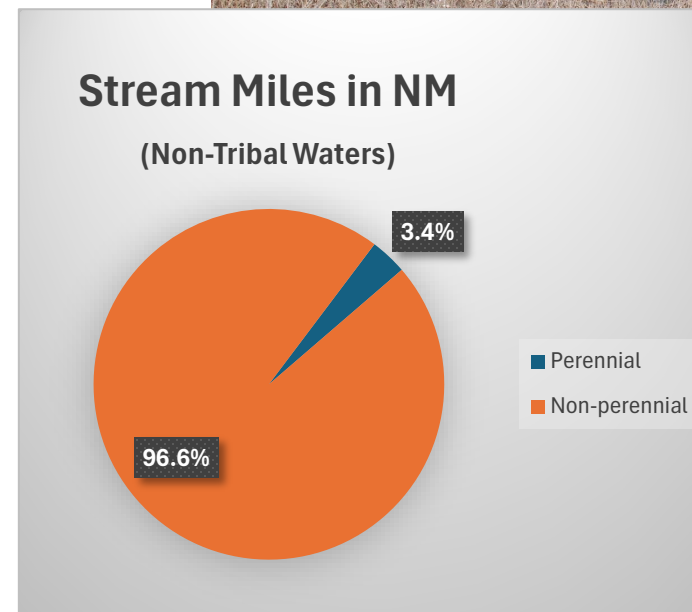


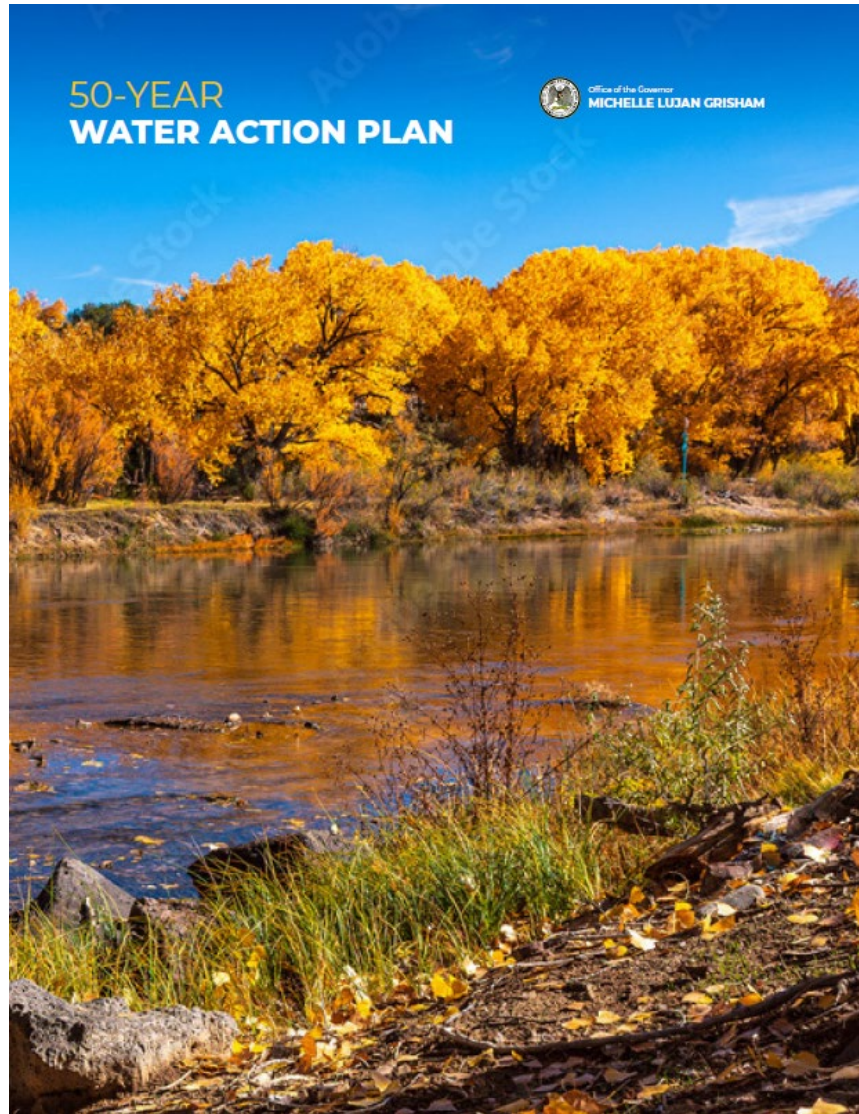
NPDES Program Authorization

Impact of Sackett on New Mexico

- ▶ The *Sackett v. EPA* ruling in May 2023 by the Supreme Court scaled back which waters are under the jurisdiction of the CWA/NPDES program.
- ▶ Programs created by the CWA focus on Waters of the United States (WOTUS), however many waters in New Mexico are not considered WOTUS.
 - ❑ Ephemeral waters that flow in response to rain or snowmelt
 - ❑ Wetlands without continuous surface connection, for example, where a dike or road has been built
 - ❑ Isolated ponds, lakes, and wetlands, including playas and springs
 - ❑ Drier reaches of interrupted streams, where the water goes underground
 - ❑ Intermittent waters that flow seasonally could be at risk in future court challenges



State 50-Year Water Action Plan



Action C2:

“Develop and implement a State surface water discharge permitting program to protect watersheds and reduce the amount of pollution entering New Mexico’s rivers, lakes, streams and wetlands ...

... a state program would ensure protection of all waters of the State and the communities and ecosystems that rely on them.”

Immediate Next Steps:

“In 2025, enact legislation to remove any statutory barriers to full program development and assumption of federal program authorization.”



Benefits of State Delegation



Benefits can New Mexicans expect from NPDES delegation?

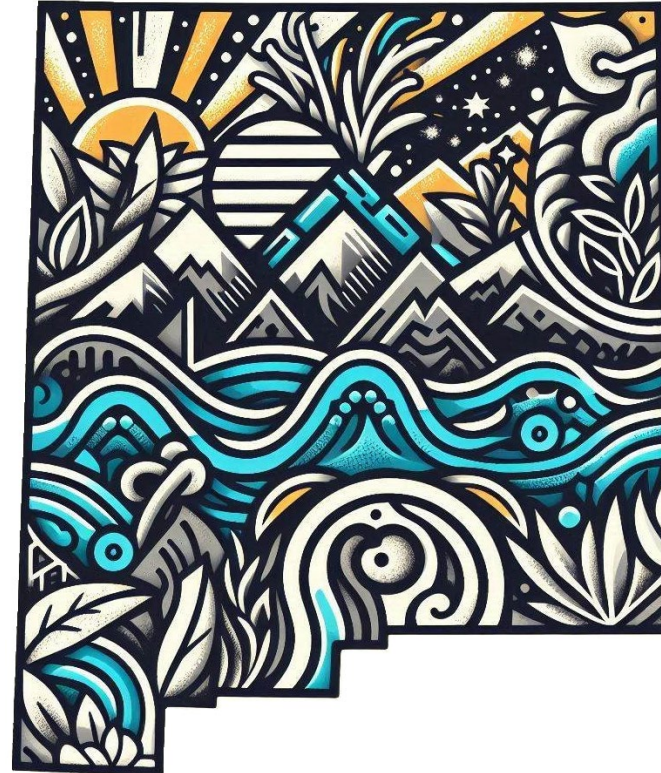
- Obtaining delegation allow New Mexico to prioritize water quality protection regardless of shifting federal policy or Supreme Court decisions.
- New Mexico will integrate NPDES delegation with a state permitting program to proactively protect ALL the state's surface waters from discharges of pollution.
- Staff will be on-the-ground in New Mexico, more responsive to permittees and the public.
- By incorporating local knowledge and expertise, permits will be better tailored for site-specific New Mexico conditions.



Benefits of State Delegation

Benefits can New Mexicans expect from NPDES delegation?

- New Mexico will have increased flexibility to implement the program to best address water quality issues in this state.
- Water quality permitting will be unified and integrated: one permitting authority, one permitting process.
- Permitting and enforcement decisions will be made in New Mexico, not by a federal agency in Dallas.
- The program will be accountable to New Mexico's Governor and legislature.

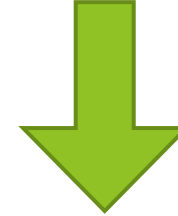


Either U.S. EPA or a State/Territory/Tribe Administers the NPDES Program

U.S. EPA administers the NPDES permit program

unless a state, territory, or tribal government seeks and receives authorization:

- **Request:** State/territory/tribe [hereafter “state”] must submit a detailed request to EPA for approval [40 CFR Part 123]
- **Content:** The request must include requisite legal authority, resource commitment, and implementation procedures
- **Authority:** Upon EPA approval of the state program, exclusive authority for permitting transfers to the state
- **Oversight:** EPA assumes oversight role and reviews and objects to permits as necessary to assure consistency with federal requirements



NMED

State Program Requirements

Requirements Defined at 40 CFR 123

1. Governor's Letter: A request from the Governor for the State's program submission.
2. Attorney General's Statement: A statement from the AG certifying that adequate authority exists under State law to administer the program. The basis for the certification of authority must be provided.
3. Statutes and Regulations: Copies of all statutes and regulations that form the basis of the State program, including all authorities cited by the AG. Must also include judicial decisions that may impact the adequacy of those authorities.



State Program Requirements

Requirements Defined at 40 CFR 123

4. Program Description: Description of the procedures the State will follow to implement the program. This description must discuss organization, program and enforcement procedures, and State resources and funding. In addition, the State must submit copies of all forms to be used in the program.
5. Memorandum of Agreement: A Memorandum of Agreement (MOA) between the State and EPA. This document shall outline the respective program responsibilities of EPA and the State. The State must comply with all terms of the MOA.

State Program Requirements

Requirements Defined at 40 CFR 123 (Cont.)

Program Description: Description of the procedures the State will follow to implement the program. This description must discuss organization, program and enforcement procedures, and State resources and funding. In addition, the State must submit copies of all forms to be used in the program.

1. Funding
2. Management Structure/Organization
3. Quality Management Program
4. Workflow
5. Enforcement Procedures
6. Tools and Guidance
7. Templates/Forms
8. Training
9. Staffing
10. Implementation
11. Program Maintenance



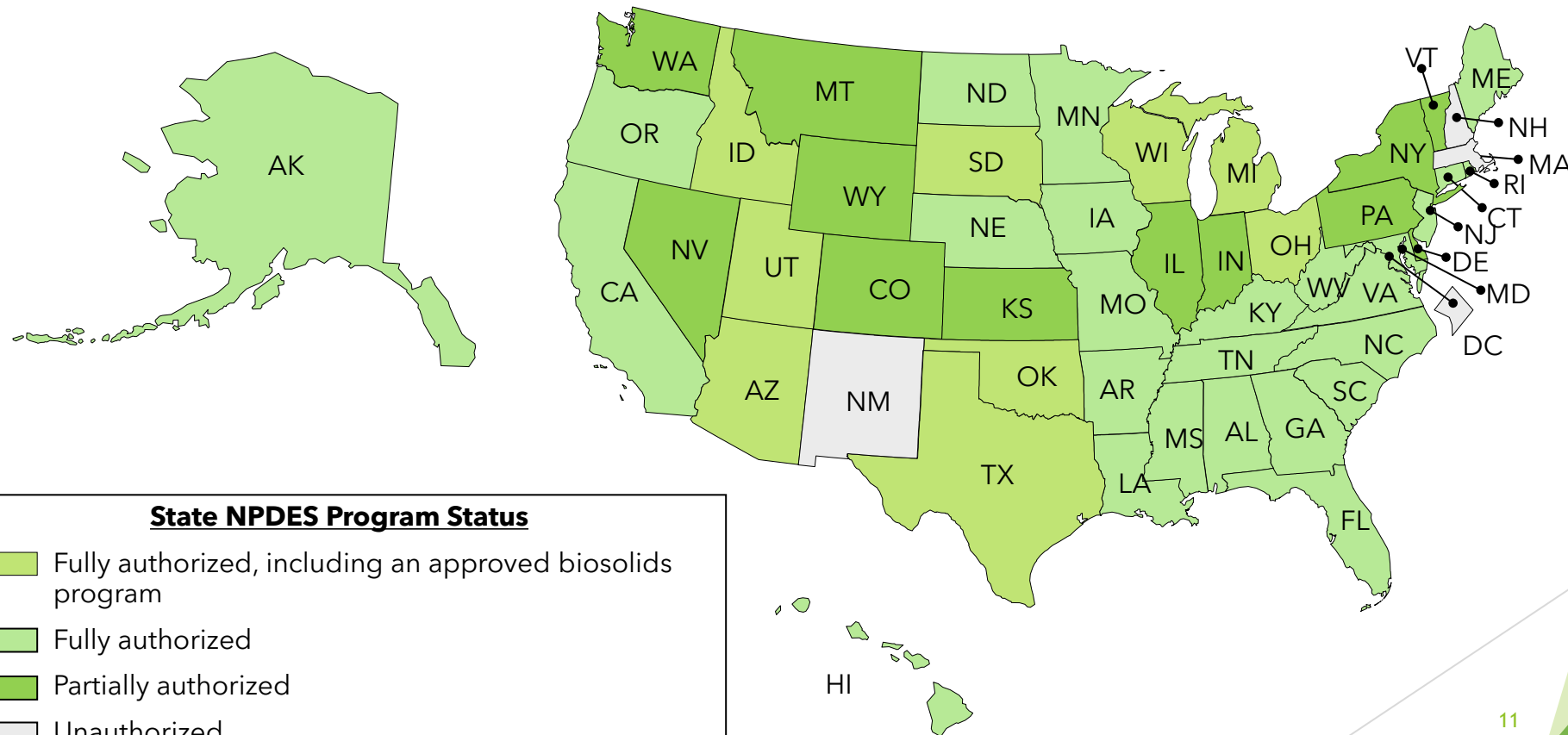
Key Components of the Federal NPDES Program

- ▶ Basic Municipal and Industrial Permit Program
- ▶ Pretreatment Program
- ▶ Federal Facilities Program
- ▶ General Permit Program
- ▶ Sewage Sludge (Biosolids) Permit Program

Note: Stormwater and Confined Animal Feeding Operations are part of the core program

US EPA or State Administers the NPDES Program

US EPA administers the NPDES program unless a state, territory, or tribe seeks and receives authorization

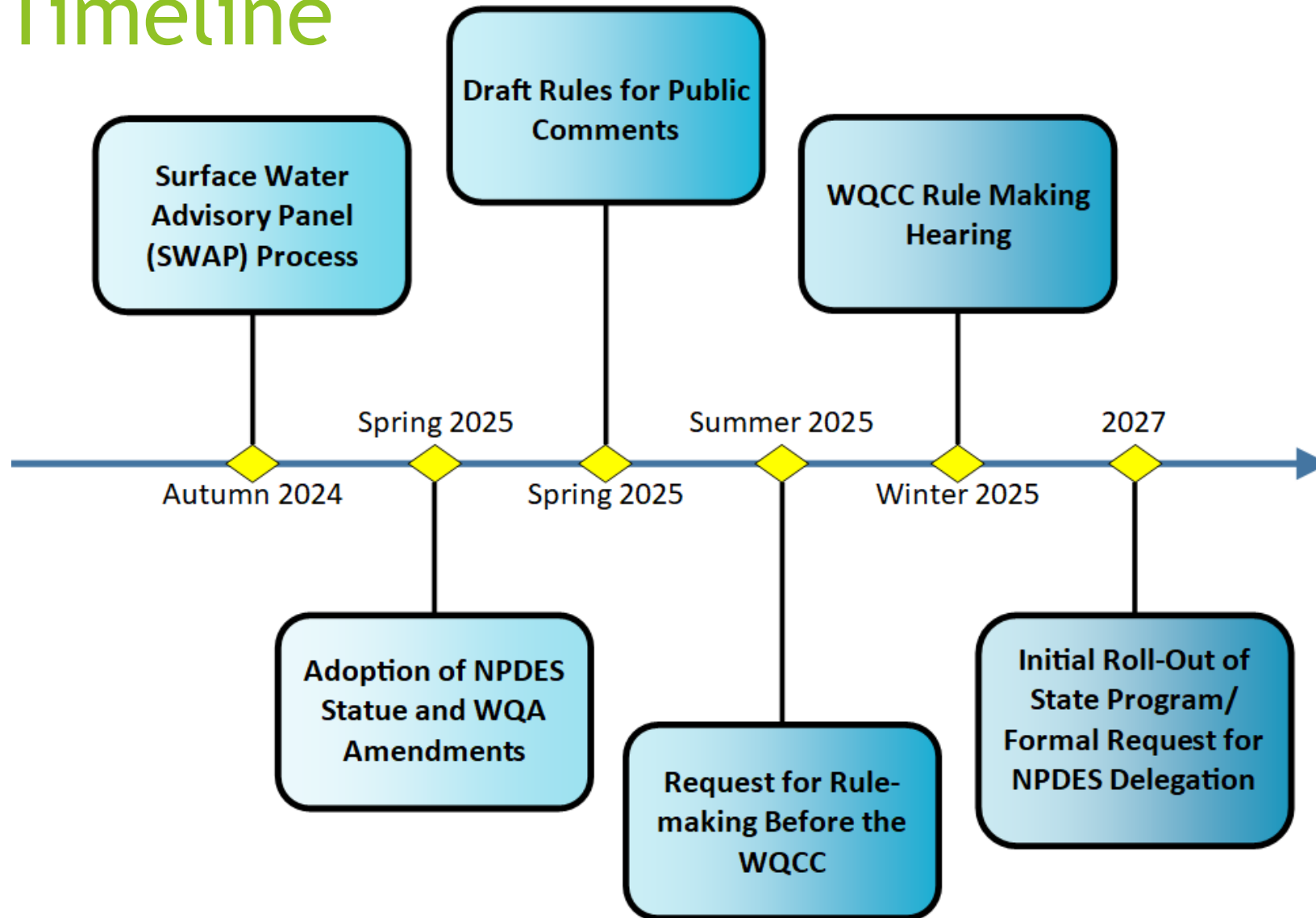


NMED Steps to Program Approval

State Program	NPDES Delegation
1. Engage Stakeholders	1. Engage Stakeholders
2. Amend the NM Water Quality Act	2. Enact NMPDES Delegation Act
3. Conduct Rulemaking Hearing	3. Conduct Rulemaking Hearing
4. Effective Upon Rule Adoption	4. Prepare and Submit Program Application to EPA
5. Phased Implementation	5. Effective Upon EPA Approval
	6. Phased Implementation

Successful implementation will require capacity building, which includes hiring and training staff, developing a permitting database, and creating guidance and procedures.

Timeline



Additional Resources

More information about NPDES Program Authorization can be found at:
<https://www.epa.gov/npdes/npdes-state-program-information>

NMED specific information can be found at: <https://www.env.nm.gov/surface-water-quality/spp/>

The image displays two web pages side-by-side. The top page is the EPA's NPDES State Program Information page. It features the EPA logo and navigation links at the top. The main heading is 'NPDES State Program Information'. A sidebar on the left lists various topics like 'About NPDES', 'Permit Basics', and 'State Program Information'. The main content area lists topics such as 'Authorization Information', 'Authority', and 'Withdrawal Petitions'. The bottom page is the NMED's Surface Water Quality State Permitting Program page. It includes the NMED logo and a navigation menu. The main heading is 'Surface Water Quality State Permitting Program'. A contact box on the right provides a phone number and a link to find staff contacts. Below the heading is a large image of a forest landscape.

EPA United States Environmental Protection Agency

Search EPA.gov

Environmental Topics ▾ Laws & Regulations ▾ Report a Violation ▾ About EPA ▾

National Pollutant Discharge Elimination System (NPDES) CONTACT US

NPDES Home

About NPDES

Permit Basics

State Program Information

Permit Limits

Program Management and Oversight

NPDES Regulations

Other Federal Laws that Apply to the NPDES Permit Program

All NPDES Program Areas

NPDES State Program Information

Topics:

- [Authorization Information](#)
- [Authority](#)
- [Withdrawal Petitions](#)

Phone: 505-827-2855 | 1-800-219-6157 | Environmental Emergencies: 505-827-9329 (24 hours)

NMED New Mexico Environment Department

English ▾

HOME | ABOUT | LICENSES AND PERMITS | COMPLIANCE AND ENFORCEMENT | FUNDING | ONLINE SERVICES | LIBRARY | PUBLIC PARTICIPATION

Home / Surface Water Quality Bureau

Surface Water Quality State Permitting Program

Contact us
Ph: 505-827-0187 Find a list of Surface Water Quality staff contacts [here](#).