

**D R A F T**

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 6 WATER QUALITY**  
**PART 5 NEW MEXICO POLLUTANT DISCHARGE ELIMINATION**  
**SYSTEM**

**20.6.5.1 ISSUING AGENCY:** Water Quality Control Commission.

**20.6.5.2 SCOPE:** This Part applies to all persons who discharge a pollutant from a point source to a water of the United States.

**20.6.5.3 STATUTORY AUTHORITY:** These regulations are adopted by the commission under the authority of the New Mexico Pollutant Discharge Elimination System Delegation Act, NMSA 1978, Sections 74-6C-1 et seq.

**20.6.5.4 DURATION:** Permanent.

**20.6.5.5 EFFECTIVE DATE:** [DATE] unless a later date is cited at the end of a section.

**20.6.5.6 OBJECTIVE:** This Part implements the New Mexico Pollutant Discharge System Delegation Act, NMSA 1978, Sections 74-6C-1 et seq.

**20.6.5.7 DEFINITIONS:** Terms defined in the New Mexico Pollutant Discharge Elimination System Delegation Act shall have the meaning given therein. Unless defined in the New Mexico Elimination System Delegation Act, terms used in federal regulations adopted by reference in this Part shall have the meaning given therein.

A. “**applicant**” means a person who owns or operates a site; when a site is owned by one person but operated by another person, either both persons shall be co-applicants or the person who operates the site shall be the applicant;

B. “**C.F.R.**” means the code of federal regulations;

CD. “**general permit coverage**” means the authorization to discharge pursuant to a general permit;

F. “**secretary**” means the secretary of the department and “**director**” in a federal regulation incorporated by reference; and

G. “**TWTDS**” means treatment works treating domestic sewage as defined in 40 C.F.R. § 122.2.

**20.6.5.8-20.6.5.99: [RESERVED]**

**20.6.5.101: PERMIT REQUIRED:** No person shall discharge a pollutant to a water of the United States from a point source without a permit approved by the department under this Part.

**20.6.5.102 PERMIT NOT REQUIRED:**

A. The exceptions in 40 C.F.R. § 122.3 are incorporated by reference.

**B.** The New Mexico Pollutant Discharge Elimination System Act does not authorize the commission or secretary to require a permit that:

(1) takes away or modifies a property right in water, provided that the discharge of a pollutant to a water of the United States without a permit shall not be a property right in water;

(2) affects the relation between employers and employees with respect to or arising out of any condition of water quality;

(3) supersedes or limits the applicability of a law relating to industrial health, safety or sanitation;

(4) applies to a discharge composed entirely of return flows from irrigated agriculture;

(5) applies to a discharge of 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 but not limited to pipes, conduits, ditches and channels, used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operation or facility; or

(6) applies to a discharge of 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, or road construction and maintenance.

#### **20.6.5.103 CONFLICTS OF INTEREST**

**A.** No member of the commission or the secretary shall approve a permit, or portion thereof, either initially or on review, who receives or received during the previous 2 years a significant portion of income directly or indirectly from permit holders or applicants for a permit.

**B.** For the purpose of this section:

(1) "Significant portion of income" means 10 percent or more of gross personal income for a calendar year, except that it means 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement, pension, or similar arrangement;

(2) "Income" means earnings of any type, including retirement benefits, consultant fees, and stock dividends, but does not include earnings from mutual funds or other diversified investments.

(3) "Permit holders or applicants" do not include a department or agency of state government.

#### **20.6.5.105-20.6.5.199: [RESERVED]**

**20.6.5.201 FEDERAL REGULATIONS INCORPORATED BY REFERENCE:** The following federal regulations adopted through [DATE] are incorporated by reference:

**A. 40 C.F.R. PART 122:**

(1) Federal regulations cited in 20.6.5 NMAC;

(2) 40 C.F.R. 122.2, 122.23, 122.24, 122.25, 122.26, 122.27, 122.29(a), 122.29(b), 122.29(d), 122.33, and 122.34; and

- (3) Appendices A, C, D, E, F, G, H, I, and J;
- B. 40 C.F.R. 125 Subparts A, B, D, H, I, and J;
- C. 40 C.F.R. Part 129;
- D. 40 C.F.R. Part 133;
- E. 40 C.F.R. Part 136;
- F. 40 C.F.R. Subchapter N; and
- G. 40 C.F.R. Part 503.

**20.6.5.202 EFFECT OF STAY OR INVALIDATION OF FEDERAL REGULATION:** The department shall enforce a federal regulation incorporated by reference only to the extent that it is enforceable by the U.S. Environmental Protection Agency.

**20.6.5.203 AVAILABILITY OF FEDERAL REGULATIONS:** 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.

**20.6.5.204- 20.6.5.299 [RESERVED]:**

**20.6.5.301 INDIVIDUAL PERMITS:**

**A. APPLICATIONS.**

(1) Any person who requires a new individual permit or the renewal, modification, or transfer of an existing individual permit, shall submit a complete application in the format specified by the department.

(2) Any person who submits an application shall retain records of all data used to prepare the application for 5 years after issuance of the permit.

**B. NEW PERMITS.** Any person who requires a new individual permit shall submit an application at least 180 days before the date on which the person intends to commence the discharge.

**C. PERMIT RENEWALS.**

(1) Any person proposing to renew a permit shall submit an application no later than 180 days prior to the expiration date of the permit.

(2) 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.

(3) If prior to the expiration date of the permit the department determines that the application is not administratively complete, the permit shall be deemed to expire and the person shall be deemed to be discharging without a permit after the expiration date.

**D. PERMIT MODIFICATIONS.**

(1) The secretary may modify a permit for a reason specified in 40 C.F.R. §§ 122.62(a) or 122.63:

- (a) upon receipt of an application from the permittee;
- (b) upon receipt of a written request from any person; or
- (c) upon the secretary's own initiative.

(2) The secretary shall notify the permittee of permit modifications under 20.6.5.301(D)(1)(b) or (c) NMAC.

(3) For an application under 20.6.5.301(D)(1)(a) NMAC, the secretary shall modify only those conditions requested in the application or which the secretary determines are necessary and appropriate to grant the request.

(4) For a written request under 20.6.5.301(D)(1)(b) NMAC, if the secretary decides that the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision, which shall not be subject to public notice, comment, or hearing.

(5) During the processing of the application, the permittee shall comply with the existing permit, including any term or condition proposed for modification.

(6) The secretary may grant a modification for a reason listed in 40 C.F.R. § 122.63 by providing written notice to the permittee, and such modification shall not be subject to the requirements of 20.6.5.403-406 NMAC.

**E. PERMIT TERMINATIONS:**

(1) The secretary may terminate a permit:

(a) upon receipt of a written request from the permittee; or

(b) for a reason specified in 40 C.F.R. § 122.64(a);

(i) upon receipt of a written request from any person; or

(ii) upon the secretary's own initiative.

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

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

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

(5) For a written request under 20.6.5.301(E)(1)(b)(i) NMAC, if the secretary decides that the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision, which shall not be subject to public notice, comment, or hearing.

**F. PERMIT TRANSFERS:**

(1) The secretary may transfer a permit by modification:

(a) under 20.6.5.301(D)(1)(a) NMAC to identify the new permittee and incorporate such other conditions as may be necessary; or

(b) under 20.6.5.301(D)(6) NMAC if:

(i) the permittee submits the application no later than 30 days before the proposed transfer date;

(ii) the application contains a written agreement between the permittee and proposed transferee specifying the date for transfer of responsibility, coverage, and liability for the permit; and

(iii) the secretary determines that the permittee is not required to submit an application under 20.6.5.301(D)(1)(a) NMAC.

(2) The permittee shall be responsible and liable for any discharge covered by the permit until the secretary approves the transfer.

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

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

**G. SPECIAL PROVISIONS FOR TWTDS.**

(1) A TWTDS must submit to the department the information identified in 40 C.F.R. 122.21(c) (2)(ii)(A) through (E) within one year after publication of a standard applicable

to its sewage sludge use or disposal practice(s), and based thereon, the secretary shall determine whether the TWTDS must submit an application.

(2) The secretary may require a TWTDS to submit a permit application at any time he or she determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

(3) A TWTDS that commences operation after promulgation of a standard applicable to its sewage sludge use or disposal practice(s) shall submit an application at least 180 days prior to the date proposed for commencing operations.

**H. VARIANCES:**

(1) The secretary may grant or deny an application for a variance in whole or part for:

(a) an extension under 33 U.S.C. § 1311(i) based on delay in completion of a publicly owned treatment works;

(b) after consultation with the Regional Administrator, an extension under 33 U.S.C. § 1311(k) based on the use of innovative technology; or

(c) 33 U.S.C. § 1326(a) for thermal pollution.

(2) The secretary may deny an application for, or forward an application to the EPA with a written proposal to grant, a variance based on:

(a) the economic capability of the applicant under 33 U.S.C. § 1311(c);

(b) water quality related effluent limitations under 33 U.S.C. § 1313(b)(2);

(c) the presence of “fundamentally different factors” from those on which an effluent limitations guideline was based; or

(d) certain water quality factors under 33 U.S.C. § 1311(g).

(3) For an application for a variance under 20.6.5.301(H)(2) NMAC:

(a) if the EPA approves the application, the secretary shall prepare a draft permit incorporating the variance; or

(b) if the EPA denies the application, the secretary shall deny the application.

(4) A variance shall not exceed five years and shall not be extended or renewed unless the secretary grants a new application for a variance.

**20.6.5.302 GENERAL PERMITS:**

**A.** The secretary may issue or renew a general permit for one or more categories or subcategories of discharges, sludge use or disposal practices, or facilities, except those covered by individual permits, within a geographic area as described in 40 C.F.R. § 122.28(a)(1) for either:

(1) storm water point sources; or

(2) other point sources or TWTDS if all of the sources in the category or subcategory satisfy 40 C.F.R. § 122.28(a)(2).

**B.** Where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed pursuant to 40 C.F.R. § 122.44, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

**C.** The secretary may modify or terminate a general permit for a reason specified in 40 C.F.R. §§ 122.62 or 122.64.

**D.** Any person may request that the secretary modify or terminate a general permit for a reason specified in 40 C.F.R. §§ 122.62(a) or 122.64(a). The request shall be in writing and shall

contain facts and reasons supporting the request. If the secretary decides that the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision, which shall not be subject to public notice, comment, or hearing.

**20.6.5.303 GENERAL PERMIT COVERAGE:**

**A. NOTICE OF INTENT.**

(1) No later than the time specified in the applicable general permit, a person who seeks general permit coverage shall submit to the department a notice of intent containing the information required by the general permit on the applicable form.

(2) A person who fails to submit a timely notice of intent that complies with 20.6.5.303(A)(1) NMAC is not authorized to discharge or to engage in a sludge use or disposal practice under a general permit.

**B. LIST.** The department shall maintain a list on its website containing the notices of intent submitted and approved for general permit coverage.

**C. TRANSFERS.**

(1) No later than 30 days before the proposed transfer:

(a) the permittee shall submit a notice of termination as described in 20.6.5.303(D)(3) NMAC; and

(b) the transferee shall comply with the notice of intent requirement in 20.6.5.303(A)(1) NMAC.

(2) The general permit coverage shall not transfer until the secretary notifies the permittee and transferee that the termination and general permit coverage are approved.

(3) The permittee shall be responsible and liable for any discharge covered by the general permit until the secretary provides the notice in 20.6.5.303(C)(2) NMAC.

(4) The permittee shall be responsible and liable for any act or omission that occurred before the secretary provides the notice in 20.6.5.303(C)(2) NMAC.

(5) The transferee is not authorized to discharge under the general permit until the secretary provides the notice in 20.6.5.303(C)(2) NMAC.

**D. TERMINATIONS.**

(1) The secretary may terminate general permit coverage for any reason listed in 40 C.F.R. §122.64(a).

(2) General permit coverage shall terminate automatically upon the department's issuance of an individual permit for the discharge, or sewage sludge use or disposal practice(s).

(3) The permittee may terminate general permit coverage by submitting a notice of termination when:

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

(b) the general permit coverage is being transferred; or

(c) the discharge has terminated.

(4) The notice of termination shall contain the information required by the general permit in the format specified by the department.

(5) No later than 30 days after receipt, the secretary shall approve or deny the notice of termination.

(6) The secretary shall deny the notice of termination if the permittee is or may be in violation of the general permit, the construction or operation has not ceased, the termination

conditions in the general permit have not been satisfied, the transfer of general permit coverage is denied, or the discharge has not been terminated.

**E.** If the secretary does not renew a general permit before its expiration date, the current general permit shall be continued, and a permittee who has general permit coverage shall continue to comply with the general permit until the earlier of:

(1) the permittee submits a notice of intent for general permit coverage under the renewed general permit; or

(2) the permittee obtains an individual permit.

**F. INDIVIDUAL PERMIT REQUIRED.**

(1) The secretary may require a person to obtain an individual permit for the following reasons:

(a) the discharge does not qualify for general permit coverage;

(b) the secretary terminates general permit coverage; or

(c) a reason listed in 40 C.F.R. §122.28(b)(3).

(2) Any person may request the secretary to require a person to obtain an individual permit for a reason listed in 20.6.5.303(F)(1) NMAC. The request shall be in writing and shall contain facts and reasons supporting the request. If the secretary decides that the request is not justified, he shall send the requester a brief written response giving a reason for the decision, which shall not be subject to public notice, comment, or hearing.

(3) The secretary shall provide notification to a person required to obtain an individual permit, including:

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

(b) how to obtain an application;

(c) the deadline for submitting an administratively complete application;

(d) a statement that general permit coverage shall terminate on the effective date of the individual permit, if applicable; and

(e) a statement that the person notified under this paragraph may request review by the commission pursuant to 20.6.5.601 NMAC.

(4) The secretary may extend the deadline to submit an administratively complete application for good cause.

(5) If a person with general permit coverage fails to submit an administratively complete application by the initial or extended deadline, the general permit coverage shall be automatically terminated.

**20.6.5.304- 20.6.5.399: [RESERVED]**

**20.6.5.401 ADMINISTRATIVE COMPLETENESS:**

**A.** The department shall review an application for administrative completeness.

**B.** To be deemed administratively complete, an application shall:

(1) be complete and in the format specified by the department;

(2) for a new or renewed permit, provide the information required by 40 C.F.R. § 122.21;

(3) for a modification, provide the supporting facts and reasons required by 40 C.F.R. § 124.5(a);

(4) meet the signatory and certification requirements of 40 C.F.R. §

122.22; and

(5) include the applicable fee.

C. Within 60 days of receipt of an application, the department shall notify the applicant in writing whether the application is deemed administratively complete.

(1) If the application is deemed administratively complete, the notification shall include a schedule identifying the estimated dates for the public notice, public comment, draft permit decision, public hearing, and final action, and the date of the notice shall be deemed the application's effective date.

(2) if the application is not deemed to be administratively complete, the notification shall identify the deficiencies and the deadline to correct the deficiencies and submit additional information. Failure to correct the deficiencies and submit additional information by the deadline shall be deemed a withdrawal of the application.

#### **20.6.5.402 PROCESSING:**

A. The department shall process an administratively complete application, a notice of intent to deny the application, or a notice of intent to terminate a permit in accordance with 20.6.5.403-406 NMAC.

B. The department may request additional information, including a new or revised application, from an applicant, transferee, or requester at any time as it deems necessary to implement this Part, and such additional information shall be considered part of the application.

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

D. The department may consult with any state or federal agency or tribal government with jurisdiction over fish, wildlife, or public health, and incorporate their comments in accordance with 40 C.F.R. § 124.59.

#### **20.6.5.403 DRAFT PERMITS, NOTICES OF INTENT TO DENY THE APPLICATION, AND NOTICES OF INTENT TO TERMINATE THE PERMIT:**

A. After an application is deemed administratively complete or the secretary notifies the permittee that he or she intends to modify or terminate the permit under 20.6.5.301(D)(2) NMAC or 20.6.5.301(E)(4) NMAC, the department shall prepare either a draft permit, a notice of intent to deny the application, or a notice of intent to terminate the permit.

B. If the secretary decides to issue, renew, modify, or terminate a general permit, the department shall prepare a draft permit or notice of intent to terminate the permit.

C. If the secretary determines that a source or discharger is new under 40 C.F.R. § 122.29, the department shall prepare a written determination.

D. A draft permit shall contain the information identified in 40 C.F.R. § 124.6(d) and include conditions that comply with 20.6.5.406(A)(1) NMAC.

E. For draft permits for the following facilities or activities, the department shall prepare a fact sheet that briefly sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered, and contains the information identified in 40 C.F.R. §§ 124.8(b) 124.56, 124.57, as applicable:

(1) major facilities;

(2) Class I sludge management facilities;

(3) variances;

- (4) facilities for which an explanation is required by 40 C.F.R. § 124.56(b);
- (5) sewage sludge land application plans under 40 C.F.R. § 501(a)(2)(ix);
- (6) in the secretary's sole discretion, widespread public interest or major issues;

and

- (7) general permits.

**F.** For any facility or activity that does not require a fact sheet under 20.6.5.403(E) NMAC, the department shall prepare a statement of basis that briefly describes the derivation of the conditions in the draft permit and the reasons for them.

**G.** For a notice of intent to deny an application or terminate a permit, the department shall prepare a statement of basis explaining the reasons.

**H.** The department shall give notice of the availability of the draft permit, notice of intent to deny the application, or notice of intent to terminate the permit, fact sheet, statement of basis, or new source or new discharger determination, as applicable, by:

- (1) mail (or email if requested) to the applicant, except for general permits;
- (2) mail or email to:

the site will be located;

- (a) units of local government having jurisdiction over the area where
- (b) affected land grant organizations and ditch associations;
- (c) governments of affected Indian nations, tribes, and pueblos;
- (d) affected states;
- (e) state agencies that have authority with respect to the construction or

operation of the site;

(f) EPA, U.S. Army Corps of Engineers, New Mexico Game and Fish Department, U.S. Fish and Wildlife Service, State Historic Preservation Officer, and Advisory Council on Historic Preservation;

(g) other agencies that the department knows have issued or are required to issue an air, water, or hazardous waste permit for the same facility or activity under state or federal law;

(h) users identified in the application of a privately owned treatment works;

(i) persons who requested notice of draft permits in general or for the site; and

- (3) posting on the department's website for the duration of the comment period.

**I.** In addition to the notice described in 20.6.5.403(H) NMAC, the department shall mail or email, as applicable, the application, draft permit, notice of intent to deny the application, or notice of intent to terminate the permit to those persons identified in 20.6.5.403(H)(1) NMAC and 20.6.5.403(H)(2)(c), (d), (f), and (g) NMAC.

**J.** The notice shall include:

- (1) the name and address of the department;
- (2) the mail and e-mail addresses and telephone number of the department's representative who can provide further information, including copies of the draft permit, notice of intent to deny the application, or notice of intent to terminate the permit, fact sheet, and application;
- (3) the name and address of the permittee or applicant and the site, except for general permits;
- (4) a brief description of the business conducted at the site, except for general permits;

(5) a brief description of the procedures that the department will follow to make a final decision on the draft permit, notice of intent to deny an application, or notice of intent to terminate a permit;

(6) a brief description of the procedures to submit a public comment, request a hearing, or participate in the final decision on the draft permit, notice of intent to deny an application, or notice of intent to terminate a permit;

(7) the time and place of a hearing if already scheduled;

(8) the location of each existing or proposed discharge point;

(9) the name of the receiving water;

(10) the sludge use and disposal practices(s) and location of each TWTDS and use and disposal sites known at the time of the application;

(11) the requirements for cooling water intake structures under 40 C.F.R. 125, Appendices I, J, and N;

(12) for a draft permit for which a thermal variance request under 33 U.S.C. § 1326 has been filed, the statements required by 40 C.F.R. § 124.57(a); and

(13) a statement that the department will send future notices regarding the draft permit, notice of intent to deny an application, or notice of intent to terminate a permit to persons who request them.

#### **20.6.5.404 PUBLIC COMMENTS AND REQUESTS FOR PUBLIC HEARING:**

A. The department shall accept written public comments and requests for public hearing for a draft permit, notice of intent to deny the application, or notice of intent to terminate the permit from any person for a period of at least 30 days.

B. The department may extend the public comment period upon written request.

C. The department shall extend the public comment period to the close of a public hearing.

D. A request for public hearing shall set forth the nature of the issues to be raised in the hearing.

#### **20.6.5.405 PUBLIC HEARINGS:**

A. The department shall hold a public hearing for a draft permit, notice of intent to deny the application, or notice of intent to terminate the permit, if:

(1) the applicant or another person requests a hearing and the secretary determines there is a significant degree of public interest; or

(2) the department in its discretion determines that a hearing might clarify a relevant issue.

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

C. No later than 30 days prior to the hearing, the department shall give notice in the manner specified in 20.6.2.403(H) NMAC, provided however, the department may combine this notice with the notice of the draft permit, notice of intent to deny the application, or notice of intent to terminate the permit.

D. The notice shall include the information required by 20.6.5.403(J) NMAC, and:

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

- (2) the date, time, and place of the hearing; and
- (3) a description of the nature and purpose of the hearing, including the applicable rules and procedures.

**E.** The hearing shall be conducted in accordance with the following provisions of 20.1.4 NMAC - *Permit Procedures- Environment Department*:

- (1) 20.1.4.100 NMAC;
- (2) 20.1.4.200(A)(2), (B), (C)(1) and (3), and (D) NMAC;
- (3) 20.1.4.300 NMAC;
- (4) 20.1.4.400 NMAC; and
- (5) 20.1.4.500 NMAC, provided the hearing officer's report and the secretary's final decision shall:

(a) describe and respond to all significant comments raised during the public comment period and hearing; and

(b) identify the provisions of the draft permit, notice of intent to deny the application, or notice of intent to terminate the permit, if any, for which the hearing officer recommends a change, and the reasons for the change.

#### **20.6.5.406 FINAL ACTIONS:**

**A.** The secretary shall take final action by:

- (1) issuing a new, renewed or modified permit that:
  - (a) includes the conditions required by 40 C.F.R. §§ 122.21(p), 41(a)(1) and (b-n), 42, 43, 44, 45, 48, and 50, and 124.59(a);
  - (b) in the secretary's discretion, includes the conditions requested by a state or federal agency with jurisdiction over fish, wildlife, or public health pursuant to 40 C.F.R. § 124.59(b);
  - (c) in the secretary's discretion, includes a compliance schedule consistent with 40 C.F.R. § 122.47; and
  - (d) shall be effective for a fixed term not to exceed 5 years, which shall not be extended except by renewal; or
- (2) denying a new, renewed or modified permit for a reason listed in 40 C.F.R. § 122.4; or
- (3) terminating or refusing to terminate a permit.

**B.** The department shall give notice of the secretary's final action to the applicant and to any person who submitted a public comment, participated in the hearing, or requested such notice.

**C.** A new, renewed or modified permit shall become effective 30 days after the department gives notice to the applicant under 20.6.5.406(B) NMAC unless a later date is specified in the permit or a timely petition for review is filed.

**D.** At the time of final action, the department shall prepare and make available a response to comments containing the information required by 40 C.F.R. § 124.17(a)(1) and (2) to the applicant, any person who submitted a public comment, participated in the hearing, or requested such notice, and the public.

#### **20.6.5.407-20.6.5.499: [RESERVED]**

#### **20.6.5.501 ENFORCEMENT:**

**A. COMPLIANCE ORDERS.** The department shall conduct the public hearing on a compliance order in accordance with 20.1.5 NMAC - *Adjudicatory Procedures - Environment Department*.

**B. CITIZEN PARTICIPATION.** The department shall:

- (1) investigate and provide written responses to citizen complaints;
- (2) not oppose intervention by any citizen when permissive intervention may be authorized by statute or regulation; and
- (3) publish notice and allow at least 30 days for public comment on any proposed settlement of an enforcement action.

**C. DEFENSES.**

- (1) Except for the toxic effluent standards and prohibitions of Section 307 and 405(d) of the Clean Water Act, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with Sections 301, 302, 306, 307, 318, 403, and 405(a)-(b) of the Clean Water Act, as incorporated by reference herein.

- (2) Compliance with a permit condition which implements a standard for sewage sludge use or disposal shall be an affirmative defense in an enforcement action brought for a violation of that standard, as incorporated by reference herein.

**20.6.5.502-20.6.5.599: [RESERVED]**

**20.6.5.601 FEES: [TBD]**

**20.6.5.602- 20.6.5.699: [RESERVED]**

**20.6.5.701 COMPLIANCE WITH OTHER REGULATIONS:** Compliance with this Part shall not relieve a person of the obligation to comply with any other applicable state and federal law or regulation.

**20.6.5.702 CONSTRUCTION:** This Part shall be liberally construed to effectuate the purposes of the New Mexico Pollutant Discharge Elimination Delegation Act and this Part.

**20.6.5.703 SEVERABILITY:** If any provision or application of this Part is held invalid, the remainder or its application to another situation or person shall not be affected.

**20.6.5.704 SAVINGS CLAUSE:** The amendment and supersession of this Part shall not affect any enforcement action pending on the effective date of such amendment or supersession or the validity of any permit issued under this Part.

**20.6.5.705-20.6.5.799: [RESERVED]**