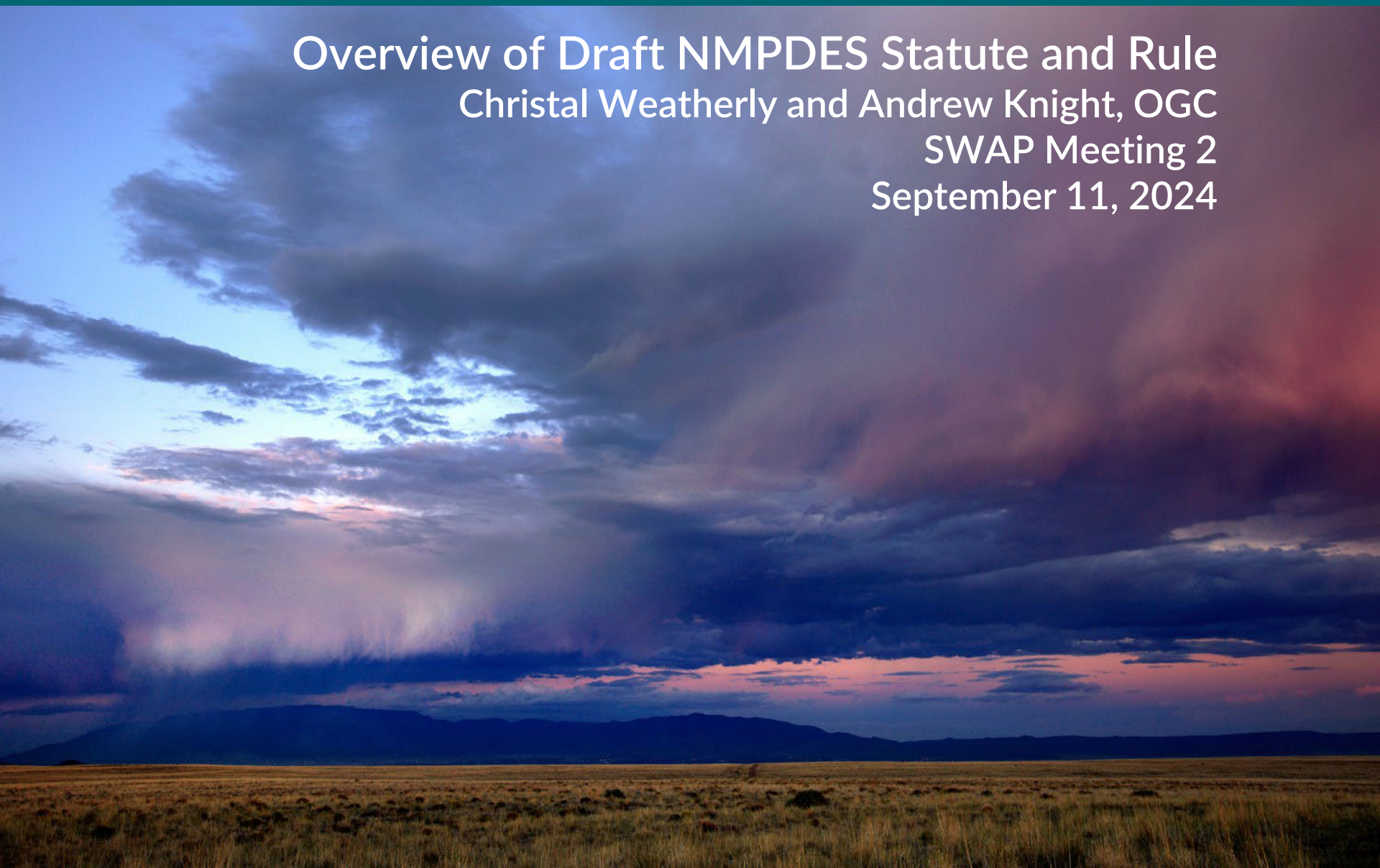




# New Mexico Environment Department

Overview of Draft NMPDES Statute and Rule  
Christal Weatherly and Andrew Knight, OGC  
SWAP Meeting 2  
September 11, 2024



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# Outline

Introduction

State Program Requirements

Crosswalk

Draft NMPDES Delegation Statute

Draft NMPDES Rule



# State Program Requirements

## Requirements for Program Submission - 40 CFR 123.21

- ❑ Governor's Letter: A request from the Governor for the State's program approval.
- ❑ 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.
- ❑ 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. Must include judicial decisions that may impact the adequacy of those authorities.
- ❑ 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.
- ❑ Statutes and Regulations: Copies of statutes and regulations that form the basis of the State program, including those governing state administrative procedures.



# State Program Requirements

Title 40 / Chapter I / Subchapter D / Part 123

[Previous](#) / [Next](#) / [Top](#)

▶▶ ECFR CONTENT

## ENHANCED CONTENT - TABLE OF CONTENTS

▼ Part 123 State Program Requirements	123.1 – 123.64
▶ Subpart A General	123.1 – 123.3
▶ Subpart B State Program Submissions	123.21 – 123.36
▶ Subpart C Transfer of Information and Permit Review	123.41 – 123.46
▶ Subpart D Program Approval, Revision, and Withdrawal	

### § 123.25 Requirements for permitting.

- (a) All State Programs under this part must have legal authority to implement each of the following provisions and must be administered in conformance with each, except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements:
- (1) § 122.4—(Prohibitions);
  - (2) § 122.5(a) and (b)—(Effect of permit);
  - (3) § 122.7(b) and (c)—(Confidential information);
  - (4) § 122.21 (a)-(b), (c)(2), (e)-(k), (m)-(p), (q), and (r)—(Application for a permit);
  - (5) § 122.22—(Signatories);
  - (6) § 122.23—(Concentrated animal feeding operations);
  - (7) § 122.24—(Concentrated aquatic animal production facilities);

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
STATE PROGRAM GUIDANCE  
for 1986  
Development and Review of State Program Applications  
and  
Evaluation of State Legal Authorities  
(40 C.F.R. Parts 122 - 125 and 403)

### § 122.3 Exclusions.

§ 122.43 Establishing permit conditions (applicable to State programs, see § 123.25).



# Crosswalk

## NMED CROSSWALK FOR DRAFT NMPDES STATUTE AND RULE

July 1, 2024

40 CFR 123.25(a): "All State Programs under this part must have legal authority to implement each of the following provisions and must be administered in conformance with each, except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements."

Note: Except for [electronic reporting in Parts 3 and 27], States need not implement [identical] provisions. Implemented provisions must, however, establish requirements at least as stringent as the corresponding listed provisions. State programs may, if they have adequate legal authority, implement any of the provisions of parts 122 and 124. See, for example, §§ 122.5(d) (continuation of permits) and 124.4 (consolidation of permit processing).... For example, a State may impose more stringent requirements in an NPDES program by omitting the upset provision of § 122.41 of this chapter or by requiring more prompt notice of an upset."

Section 74-6C-5(A) authorizes WQCC to adopt rules to implement NPDES program, including federal regulations incorporated by reference.

40 CFR §	Statute/Rule	NMED Note
122.2 Definitions	74-6C-3  20.6.2.7 NMAC	terms are either defined in NMPDES Act or rule with the same meaning as CFR or incorporated by reference
122.3 Exclusions	74-6C-11(D) 20.6.5.102(A) NMAC	not required; return flows from irrigated agriculture incorporated by reference
122.4 Prohibitions	20.6.5.406(A)(2) NMAC	incorporated by reference
122.5(a)(1) Effect of Permit	20.6.5.501(C) NMAC 20.6.5.301(D) NMAC 20.6.5.301(E) NMAC	permit may be modified for reasons listed in 122.62; permit may be terminated for reasons listed in 122.64; there is no process for revocation/reissuance
122.5(a)(2) Effect of Permit	20.6.5.501(C) NMAC	
122.5(b) No Property Right or Privilege	74-6C-4(B)	
122.5(c) No Right to Injure/Infringe	74-6C-4(B)	not required
122.6 Permit Continuance	20.6.5.301(C) NMAC	not required but 20.6.5 NMAC provides for permit continuance; if permit has expired, then any discharge violates the prohibition on discharging without a permit; if permit has not expired, then the terms and conditions of permit are enforceable
122.7(b-c) Denial of Confidentiality Claims	74-6C-12(A)	122.7(a) applies to EPA only; 74-6C-12(B), (C), and (D) are standard requirements in NM environmental statutes



# NMPDES Delegation Act

Draft dated July 1, 2024

- **New Mexico Pollutant Discharge Elimination System Delegation Act**
- **Guiding principles**
  - Stand alone instead of interpolated into the WQA
    - Easier for EPA to review
    - Avoids creating conflicts within the WQA
  - Assumes the state will request delegation for all 5 components: municipal and industrial, general permits, federal facilities, pretreatment, and biosolids
  - General - concise – familiar structure
    - Establishes purpose, delegates and limits authorities, addresses other matters that need to be in statute instead of rule, e.g., appellate procedures.
    - Leaves details to the rule
    - Follows familiar outline





# NMPDES Delegation Act

Draft dated July 1, 2024

What is included  
in the draft  
statute?

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Title

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Purpose

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Definitions

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Permit required

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Duties and powers of commission

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Duties and powers of department

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Civil enforcement

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Criminal enforcement

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Petitions for review by commission

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Petitions for review by court of appeals

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Limitations

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Confidential information

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# NMPDES Delegation Act

Draft dated July 1, 2024



Clarification of jurisdiction for discharges from oil and gas facilities



Limitation on stringency



Civil suit provision

What is not included in the draft statute?





# NMPDES Rule – 20.6.5 NMAC

Draft Rule dated July 1, 2024

- **Guiding Principles**
  - Articulate the procedural requirements
  - Incorporate by reference federal regulations specifying application content, permit conditions, effluent limitations
  - Start with mandatory requirements
  - Add optional requirements with deliberation



# NMPDES Rule – 20.6.5 NMAC

Draft Rule dated July 1, 2024

100s. Permit requirements

200s. Incorporation of federal regulations

301. Individual permits.

Applications, new permits, renewals, modifications, terminations, transfers, special provisions, variances

302. General permits

303. General permit coverage.

NOIs, list, transfers, terminations, individual permit required

401. Administrative completeness.

402. Processing

403. Draft permits, NOI to deny, NOI to terminate the permit (public notice)

404. Public comments and requests for public hearings

405. Public Hearings

406. Final actions

501. Enforcement

601. Fees



# Full Incorporation by Reference in Draft Rule

Draft Rule dated July 1, 2024

Subparts of 40 CFR 125 (Criteria and Standards for NPDES)

40 CFR 129 (Toxic Pollutant Effluent Standards)

40 CFR 133 (Secondary Treatment – BOD5, suspended solids, pH)

40 CFR 136 (Test procedures for analysis of pollutants)

40 CFR Subchapter N (Parts 400-471, Effluent Guidelines and Standards)

40 CFR 503 (Standards for Use or Disposal of Sewage Sludge)



# Partial Incorporation by Reference in Draft Rule

Draft Rule dated July 1, 2024

## Required portions of 40 CFR 122 (NPDES permitting requirements)

EXAMPLE

**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;

**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;



# Feedback Requested

We have requested but not yet received feedback from EPA

Your feedback is requested:  
redline edits and discussion  
at SWAP Meeting 3