

New Mexico Environment Department

Surface Water Quality State Permitting Program General Principles Shelly Lemon – Surface Water Quality Bureau Chief Surface Water Advisory Panel

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OUTLINE – General Principles

General Principles of a Surface Water Quality State Permitting Program

- Scope
- Design
- Implementation



Scope of Proposed Program

"The commission ... may adopt regulations to be administered by the department of environment for surface water discharges."

NM Water Quality Act, Section 74-6-4(Q)

"Commission" refers to the Water Quality Control Commission (WQCC)

- 1. Waters of the U.S.
 - Seek delegation from EPA for the NPDES program for point source discharges
 - Do not seek delegation for the Section 404 discharge program: U.S. Army Corps of Engineers will continue to regulate discharges of dredged and fill materials to waters of the U.S.
- 2. Surface waters of the state
 - Create a State program that covers both point source discharges and discharges of dredged and fill materials in surface waters of the state
 - The program will not apply to tribal waters, but NMED will be responsive to tribal concerns

"All calculations based on experience elsewhere, fail in NM." – NM Territorial Governor, Lew Wallace



Point Source Discharges

 Any single identifiable source of pollution from which pollutants are discharged, such as a pipe, ditch, ship or factory smokestack.



- Examples include sewage treatment plants, industrial facilities, stormwater drainage systems, livestock operations, and other dischargers.
- Under Section 402 of the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES) permit program helps address water pollution by regulating point sources that discharge pollutants to waters of the United States.



Dredge or Fill Discharges

 40 CFR 232.2 defines Dredge Material as "material that is excavated or dredged from waters of the US"



- Fill Material is defined as "material placed in waters of the United States where the material has the effect of:
 - replacing any portion of a surface water with dry land or
 - changing the bottom elevation of a surface water.
 - Examples include: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining, etc.
 - Does not include trash or garbage.
- Section 404 of the Clean Water Act establishes a program to regulate the discharge of dredged and fill materials into waters of the United States, including wetlands.
- NMED is creating a surface water discharge permitting program that includes discharges of dredged or fill materials to SWOTS.



Non-Point Source Pollution

- Non-discreet source, not easily identifiable
- Generally caused by rainfall and snowmelt moving over or through the ground
- Many surface water quality problems are caused by nonpoint source pollution, but it is not regulated







General Principles

The discharge of pollutants into a surface water of the state is not a right.

- Cover all discharges (point source and dredge or fill) to surface waters of the state including isolated wetlands and ephemeral waters (arroyos, washes, gulches) unless expressly exempted.
- Provide an equivalent level of water quality protection to surface waters (WOTUS and non-WOTUS), even if the methods vary.
- □ Achieve **no net loss of wetlands** as a result of permitting actions.
- □ A discharge permit will:
 - a. Limit the amounts of pollutants that can be discharged, including dredge/fill, conventional, non-conventional, and priority pollutants, as appropriate.
 - **b.** Prohibit the discharge of toxic pollutants in toxic amounts.
 - c. Require **monitoring and reporting on emerging contaminants** to evaluate risk and need for additional measures to protect water quality/uses, for certain discharges.



Exemptions/Exclusions

- Normal established/ongoing farming, ranching, and silviculture activities.
- Construction and maintenance of farm and forest roads.
- Maintenance of existing drainage ditches.
- Construction or maintenance of irrigation ditches.
- Construction or maintenance of farm or stock ponds.
- Artificially irrigated areas that would revert to dry land should irrigation cease.
- Artificial lakes, ponds, and pools created in dry land.
- Erosional features that do not meet the definition of a SWOTS (e.g., swales, puddles, gullies, rills, etc.).
- Discharges incidental to the normal operation of a vessel or boat.
- Waste treatment systems.
- Prior converted cropland.

Others? De minimis discharges? Residential property maintenance?
Conservation? Restoration? Outdoor recreation uses? Industrial stormwater "no exposure" conditional exclusion? Water transfers? Already permitted activities?
Discharges in compliance with an approved plan?



- Retain familiar features of the federal programs in the state (WQA) program - use the same or similar definitions, exemptions, standards, permit types, and processes.
- Use holistic watershed management approaches when practicable.



- Cumulative impacts within a watershed or subwatershed (impact the chemical, physical, or biological integrity of downstream waters)
- Small discharge, minimal impacts (self-certification consistent with BMPs)
- Temporary permissions (short-term activities)
- Buffer protections



- Integrate state (WQA) rule into and use the existing administrative processes in 20.6.2 NMAC where reasonable.
- Use the same/similar public notice and participation process for NMPDES and the state (WQA) permits.



- Develop an efficient and low-cost procedure for dischargers to determine whether and what type of permit is required.
- Prioritize the use of general permits in the WQA program.
- Individual permits will be used for discharges that significantly impact or have the potential to significantly impact/impair a surface water.
- Disturb the smallest area as possible (1. Avoid, 2. Minimize, and/or 3. Mitigate for unavoidable impacts).



IMPLEMENTATION

- Designate a single agency to implement the state program and the NMPDES program to maximize consistency, efficiency, and cost-effectiveness.
- Use state-of-the-art electronic platform to facilitate online applications, reporting, status tracking, data integration, and program management.
- Develop outreach and technical assistance strategy to ensure that the regulated community knows that they are regulated and how to comply.
- Establish internal/external training programs and guidelines.
- Identify and determine a sustainable and adequate funding mechanism to adequately support the program, and the processes needed for financial management (SWAP #6).



GENERAL PRINCIPLES

Surface Water Quality State Permitting Program

Member Discussion: What are your thoughts on the general principles suggested – do you have others to suggest?

SCOPE DESIGN IMPLEMENTATION

