



New Mexico Environment Department

Surface Water Quality State Permitting Program Process – Meeting 3 Intro

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Surface Water Advisory Panel
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OUTLINE – PROCESS

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Implementation Goals



Authorities

NMPDES Delegation Act:

- authorize a permit program that complies with the Clean Water Act, 33 U.S.C. § 1251 et seq.

NM Water Quality Act amendments:

- authorize the use of general permits
- update/modernize public notification requirements
- require mitigation for unavoidable adverse impacts
- incorporate antidegradation provision

Retain familiar features of the federal programs in the state (WQA) program - use the same or similar definitions, exemptions, standards, permit types, and processes.



Notices of Intent #1

- ✓ Develop an efficient and low-cost procedure for dischargers to determine whether and what type of permit is required.
- ✓ Is a permit needed? Which permit is needed?
 - ✓ WOTUS vs. SWOTS
 - ✓ WOTUS = NPDES (point source)
 - ✓ SWOTS = point source vs. dredge/fill
 - ✓ Surface water vs. ground water discharge permit
 - ✓ General vs. Individual
- ✓ Integrate state (WQA) rule into and use the existing administrative processes in 20.6.2 NMAC where reasonable.



Exemptions/Exclusions?

*Like existing federal programs:
NPDES - 40 CFR 122.3 and
404 Dredge/Fill - 40 CFR 232.3*

- Prior converted cropland.
- Normal established/ongoing farming, ranching, and silviculture activities.
- Construction or maintenance of farm or forest roads.
- Construction or maintenance of farm or stock ponds or irrigation ditches.
- Maintenance of existing drainage ditches.
- Return flow from irrigated agriculture.
- 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.).
- Waste treatment systems.
- Discharges incidental to the normal operation of a vessel or boat.
- Others? De minimis discharges? Residential property maintenance? Conservation? Restoration? Outdoor recreation uses? Industrial stormwater “no exposure” conditional exclusion? Discharges from a water transfer? Already permitted activities? Discharges in compliance with an approved plan?



Notices of Intent #2

- ✓ Integrate state (WQA) rule into and use the existing administrative processes in 20.6.2 NMAC where reasonable.
- ✓ Notice of Intent (20.6.2.1201 NMAC)
 - ✓ Discharge of new water contaminant, including dredge/fill material
 - ✓ Alter character or location of an existing discharge
 - ✓ Request General Permit coverage (point source or dredge/fill)
 - ✓ Terminate a permit
- ✓ NMED website for NOIs/applications, etc. with clear instructions and a way for permittees to ask questions.
 - ✓ State-of-the-art electronic platform to facilitate NOI submittals, online applications, reporting, status tracking, data integration, etc.



Applications

- ✓ Integrate state (WQA) rule into and use the existing administrative processes in 20.6.2 NMAC where reasonable.
- ✓ Applications - Types of Actions:
 - ✓ New permits
 - ✓ Existing Permits – renewal, modification (major), revision (40 CFR § 122.63; minor), transfer, or terminate
 - ✓ Disclosures (information/data required)
 - ✓ Timelines
- ✓ NMED website with clear instructions and a way for permittees to ask questions.
 - ✓ State-of-the-art electronic platform to facilitate online applications, reporting, status tracking, data integration, etc.



Review and Approval



- ❑ NMED will evaluate the application based on:
 - ❖ information in the application,
 - ❖ additional information required by NMED,
 - ❖ any additional information submitted by the permittee or public,
 - ❖ other relevant information such as antidegradation or reasonable potential analyses, applicable total maximum daily loads, water quality and designated use attainment in the receiving stream, etc., and,
 - ❖ any available testimony, information, and public comment provided, associated hearing officer report and post hearing submissions, if a public hearing is held.
- ❑ NMED will prepare a draft permit based on the evaluation for the Secretary's review and approval.
- ❑ Timeline for decision



Public Notice and Comment



- ✓ Use the same public notice and participation process for NMPDES and the state (WQA) permits.
- ✓ Integrate state (WQA) rule into and use the existing administrative processes in 20.6.2 NMAC where reasonable.
- ✓ Update/Modernize 20.6.2 NMAC – Public Notice and Participation – consistent with any Water Quality Act amendments. Same process for surface water and ground water?
- ✓ One notice? -- post applications/NOIs received; public notice the draft permits
- ✓ Modernize notification requirements – who, what, when, how?
- ✓ Additional/Needed Environmental Justice (EJ), tribal, and downstream user considerations and notifications?



Hearings



- ✓ Use the same process for NMPDES and the state (WQA) permits.
- ✓ Integrate state (WQA) rule into and use the existing administrative processes in 20.6.2 NMAC where reasonable:
 - 20.6.2.3108(M) NMAC hearing requests.
 - 20.6.2.3110 NMAC hearing participation.
- ✓ Update 20.6.2 NMAC consistent with any Water Quality Act amendments.
- ✓ Timelines
- ✓ Any Environmental Justice (EJ), tribal, downstream user considerations?



Appeals-WQCC Review



- ✓ Use the same process for NMPDES and the state (WQA) permits.
- ✓ Integrate into and use the existing administrative processes in 20.6.2 NMAC where reasonable:
 - 20.6.2.3112 NMAC appeals of Secretary's decisions.
- ✓ 20.1.3 NMAC Commission adjudicatory procedures. Use the existing administrative processes in 20.6.2 NMAC where reasonable:
 - 20.6.2.3113 NMAC appeals of Commission decisions.
- ✓ Update 20.6.2 NMAC consistent with any Water Quality Act amendments.
- ✓ Timelines



IMPLEMENTATION Goals

- ❑ Maximize consistency, efficiency, and cost-effectiveness.
- ❑ Use state-of-the-art electronic platform to facilitate online NOIs, 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.



PROCESS

Surface Water Quality State Permitting Program

Questions for Member Discussion – Meeting 3:

1. How can we make the process of determining whether/which permit is needed easy to navigate?
2. What are effective and reasonable methods for public notice and addressing environmental justice?
3. What other comments do you have on the proposed process elements?

