

## New Mexico Environment Department



**Authorities Notices of Intent Exemptions/Exclusions Applications** Review and Approval **Public Notice and Comment** Hearings **Appeals-WQCC Review Implementation Goals** 



#### **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**

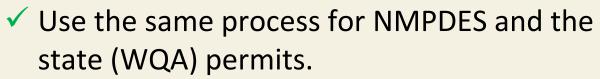
- □ NMED will evaluate the application based on:
  - information in the application,
  - additional information required by NMED,
  - any additional information submitted by the permittee or public,
  - other relevant information such as antidegradation or reasonable potential analyses, applicable total 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

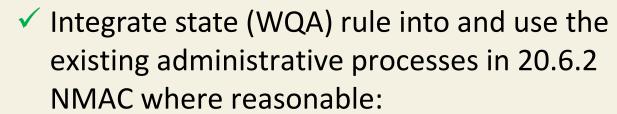


### **Public Notice and Comment**

- ✓ 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?







- 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 costeffectiveness.
- 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.

#### 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?

