

PROPOSED WATER QUALITY ACT AMENDMENTS FOR SURFACE WATER
DRAFT October 25, 2024

For the full text of the Water Quality Act, click [here](#).

74-6-2. Definitions.

Section 74-6-2 NMSA 1978 is amended to read:

Q. [NEW MATERIAL] "General permit" means a permit that applies to one or more categories or subcategories of discharges, sludge use or disposal practices, or facilities within a geographic area, including the state or region, basin, or watershed thereof.

R. [NEW MATERIAL] "General permit coverage" means authorization to discharge pursuant to a general permit and any additional permit conditions required by a constituent agency.

74-6-4. Duties and powers of commission.

Section 74-6-4 NMSA 1978 is amended to read:

The Commission:

E. shall adopt, promulgate and publish regulations to prevent, ~~or~~ abate, or mitigate water pollution in the state or in any specific geographic area, aquifer or watershed of the state or in any part thereof, or for any class of waters, and to govern the disposal of septage and sludge and the use of sludge for various beneficial purposes.

J. By regulation, the commission may impose reasonable conditions upon permits requiring permittees to:

- (1) install, use and maintain ~~effluent~~ monitoring devices;
- (2) sample effluents and receiving waters for any known or suspected water contaminants in accordance with methods and at locations and intervals as may be prescribed by the commission;
- (3) establish and maintain records of the nature and amounts of effluents and the performance of effluent control devices;
- (4) provide any other information relating to the discharge or direct or indirect release of water contaminants;
- (5) require mitigation to compensate for unavoidable adverse effects to a surface water; and
- ~~(5)~~ (6) notify a constituent agency of the introduction of new water contaminants from a new source and of a substantial change in volume or character of water contaminants being introduced from sources in existence at the time of the issuance of the permit.

74-6-5. Permits; certification; appeals to commission.

Section 74-6-5 NMSA 1978 is amended to read:

A. By regulation, the commission may require persons to obtain from a constituent agency designated by the commission a permit or general permit coverage for the discharge of any water contaminant or for the disposal or reuse of septage or sludge.

C. Prior to the issuance of a permit or approval of general permit coverage, the constituent agency may require the submission of plans, specifications and other relevant information that it deems necessary.

E. The constituent agency shall deny any application for a permit or request for general permit coverage or deny the certification of a federal water quality permit if:

- (1) the effluent would not meet applicable state or federal effluent regulations, standards of performance or limitations;
- (2) any provision of the Water Quality Act would be violated;
- (3) the discharge would cause or contribute to water contaminant levels in excess of any state or federal standard. Determination of the discharge's effect on ground water shall be measured at any place of withdrawal of water for present or reasonably foreseeable future use. Determination of the discharge's effect on surface waters shall be measured at the point of discharge; or
- (4) the applicant has, within the ten years immediately preceding the date of submission of the permit application or request for general permit coverage:
 - (a) knowingly misrepresented a material fact in an application for a permit or request;
 - (b) refused or failed to disclose any information required under the Water Quality Act;
 - (c) been convicted of a felony or other crime involving moral turpitude;
 - (d) been convicted of a felony in any court for any crime defined by state or federal law as being a restraint of trade, price-fixing, bribery or fraud;
 - (e) exhibited a history of willful disregard for environmental laws of any state or the United States; or
 - (f) had an environmental permit revoked or permanently suspended for cause under any environmental laws of any state or the United States.

F. The commission shall by regulation develop procedures that ensure that the public, affected governmental agencies and any other state whose water may be affected shall receive notice of each ~~[application for issuance, renewal or modification of a]~~ draft permit. Public notice shall include the following, except that for a general permit, paragraphs (1) and (3) shall not be required:

- (1) ~~[for issuance or modification of a permit:]~~

~~[(a)]~~ notice ~~[by mail]~~ to adjacent and nearby landowners using postal mail, electronic mail, text messages, or a combination of these methods;

(2) notice to potentially affected local, state and federal government[s] agencies, [;] land grant organizations, [;] ditch associations, [;] and Indian nations, tribes or pueblos [;] using postal or electronic mail;

(3) ~~[b)]~~ posting at a place conspicuous to the public and near the discharge or proposed discharge site; and

(4[e]) notice to the general public and others the commission deems appropriate using one or more reasonable and appropriate methods such as electronic mail to persons who have requested notification, social media posts, radio announcements, and [a display] advertisements [in English and Spanish] in a newspaper of general circulation in the location of the discharge or proposed discharge; [provided, however, that the advertisement shall not be displayed in the classified or legal advertisement sections;] and

(5) consideration of the languages spoken by and the communication methods accessible to the intended recipients of the public notice.

~~(2) for issuance of renewals of permits:~~

~~—— (a) notice by mail to the interested public, municipalities, counties, land grant organizations, ditch associations and Indian nations, tribes or pueblos; and~~

~~—— (b) a display advertisement in English and Spanish in a newspaper of general circulation in the location of the discharge; provided, however, that the advertisement shall not be displayed in the classified or legal advertisement sections.]~~

G. No ruling shall be made on any ~~[application for a]~~draft permit without opportunity for a public hearing at which all interested persons shall be given a reasonable chance to submit evidence, data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. The hearing shall be recorded. Any person submitting evidence, data, views or arguments shall be subject to examination at the hearing.

K. The Commission shall provide by regulation a schedule of fees for permits and approvals of general permit coverage ~~[, not exceeding the estimated cost of investigation and issuance, modification and renewal of permits]~~ sufficient to pay for the cost of implementing the Discharge Permit program, including but not limited to the preparation and adoption of rules, review of applications, issuance and enforcement of permits and rules, compliance assistance, monitoring and inspection of facilities and discharges, data stewardship, records management, and administrative and legal costs. Fees collected pursuant to this section shall be deposited in the water quality management fund.

L. The issuance of a permit or approval of general permit coverage does not relieve any person from the responsibility of complying with the provisions of the Water Quality Act, any applicable regulations or water quality standards of the commission or any applicable federal laws, regulations or standards.

M. A permit or general permit coverage may be terminated or modified by the constituent agency that issued the permit or approved the general permit coverage prior to its date of expiration for any of the following causes:

- (1) violation of any condition of the permit;
- (2) obtaining the permit or general permit coverage by misrepresentation or failure to disclose fully all relevant facts;
- (3) violation of any provisions of the Water Quality Act or any applicable regulations, standard of performance or water quality standards;
- (4) violation of any applicable state or federal effluent regulations or limitations; or
- (5) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

N. If the constituent agency denies, terminates or modifies a permit or general permit coverage or grants a permit subject to condition, the constituent agency shall notify the applicant or permittee by certified mail or other method acceptable to the applicant or permittee of the action taken and the reasons. Notice shall also be given by postal or electronic mail to persons who participated in the permitting action.

74-6-10. Penalties enforcement; compliance orders; penalties; assurance of discontinuance.

Section 74-6-10 is amended to read:

K. Penalties collected pursuant to this section for surface waters shall be deposited in the general fund.

74-6-12. Limitations.

Section 74-6-12 is amended to read:

F. Except as required by federal law or for a surface water discharge permit issued pursuant to the Water Quality Act, in the adoption of regulations and water quality standards and in an action for enforcement of the Water Quality Act and regulations adopted pursuant to that act, reasonable degradation of water quality resulting from beneficial use shall be allowed. Such degradation shall not result in impairment of water quality to the extent that water quality standards are exceeded.

G. Except for the discharge of a water contaminant to a surface water, the ~~The~~ Water Quality Act does not apply to any activity or condition subject to the authority of the oil conservation commission pursuant to provisions of the Oil and Gas Act [Chapter 70, Article 2 NMSA 1978], Section 70-2-12 NMSA 1978 and other laws conferring power on the oil conservation commission to prevent or abate water pollution.