

NMPDES Statute and Rule

NMOGA Representative

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Proposed NMPDES Statute and Rule

- The draft statute and rule appear to meet the requirements of 40 CFR 123 for state authorization to issue NPDES permits for discharges to WOTUS.
- The state delegation act should address and resolve jurisdiction for oil and gas production discharges that are subject to NPDES permits.
 - The separate jurisdiction in Texas (now resolved) was cumbersome for permittees and the state.
- NPDES permits for all discharges to WOTUS should be issued by NMED.

Proposed NMPDES Statute and Rule

- Proposed 20.6.5.102 NMAC B.(5) exempts stormwater runoff discharges from oil and gas exploration, production, processing, treatment operation or transmission facilities.
- Proposed 20.6.5.102 NMAC B.(5) does not include the exemption at 40 CFR 122.26(a)(2)(ii) for sediment discharges from “... activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities”.
- This exemption, adopted by EPA in 2006, codified an amendment to the Clean Water Act that was enacted in the Energy Policy Act of 2005. The exemption should be added to proposed 20.6.5.102 NMAC B.(5).

Proposed NMPDES Statute and Rule

- Proposed 20.6.5.102 NMAC A. This proposed provision states that the submittal schedule for a Notice of Intent (NOI) required for General Permit coverage will be specified in each permit when it is adopted.
- The regulation should include a provision limiting the maximum length of time between filing of the NOI and the permit effective date (e.g., 30 days as specified for a proposed permit transfer).

Proposed NMPDES Statute and Rule

- Civil suit provisions are unnecessary.
 - NPDES permit enforcement should be by NMED, as provided for in 40 CFR 123.27.
 - The U.S. Environmental Protection Agency (EPA) has the authority to enforce noncompliance with individual permit limits and conditions if the state is determined to be inadequately enforcing its NPDES permits.
 - The Clean Water Act (CWA) authorizes civil suits against EPA if the agency does not adequately enforce NPDES permits, including those issued by authorized states, so citizens have recourse if state/EPA enforcement is inadequate.