



NMPDES Draft Statute & Rule

- ❑ SWAP Meeting – Oct. 1, 2024
- ❑ Statutory discussion - section-by-section feedback
- ❑ Regulatory discussion – overall/big picture concerns so far
- ❑ NMOGA presentation
- ❑ Please submit redline edits or other written comments to swq.pp@env.nm.gov by Oct. 11, 2024

P.S. Don't worry about formatting. NMED will be sure to do a final edit that conforms to legislative formatting requirements. 😊



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Section 3. Definitions

- A. Act
- B. commission
- C. department
- D. discharge
- E. federal act
- F. federal regulations
- G. New Mexico Pollutant Discharge Elimination System
- H. National Pollutant Discharge Elimination System
- I. permit
- J. person
- K. point source
- L. pollutant
- M. Regional Administrator
- N. Water of the United States

Section 4. Permit Required

Language in this presentation is paraphrased from the draft statute dated 7/1/2024.



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Section 5. Duties and powers of commission

- A. Adopt rules which are necessary to obtain authorization
- B. Adopt a sched of fees sufficient to pay the cost of implementation
- C. Hear and decide petitions for review of final actions

Section 6. Duties and power of department

- A. For the discharge of a pollutant to a water of the United States, notwithstanding Subsection G of Section 74-6-12 NMSA 1978, the department shall be authorized to implement this Act, pursuant to rules adopted by the commission. [New language not included in 7/1/2024 draft]
- B. All necessary and appropriate to implement NMPDES
 - 1) Propose rules
 - 2) Conduct investigations
 - 3) Require monitoring, sampling, reporting
 - 4) Require keeping and production of records and information
 - 5) Review applications
 - 6) Require, grant, renew, modify, deny, terminate permits
 - 7) Conduct inspections
 - 8) Issue compliance orders and file actions for enforcement

Language in this presentation is paraphrased from the draft statute dated 7/1/2024.



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- **Section 7. Civil enforcement**
 - A. Issue a compliance order or commence a civil action
 - B. Minimum civil penalty \$5,000 per day on noncompliance
 - C. Considerations in setting penalty amount
 - D. Final unless person requests hearing
 - E. Conduct hearing within 90 days of request
 - F. Issue written decision constituting final action
 - G. Next steps if the person fails to comply
 - H. Civil penalties into general fund
- **Section 8. Criminal enforcement**
 - List of violations
 - Description of felony types – 4th, 3rd, 2nd degree
 - Minimum penalty \$10,000 per day on noncompliance
 - Considerations in setting penalty amount

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- **Section 9. Petitions for review by commission**
 - A. Who may file and when (permitting actions, compliance orders)
 - B. Petitioner may request a stay – commission may grant
 - C. Petition must be timely filed or final action is not subject to review

- **Section 10. Petitions for review by court of appeals**

(Typo in paragraph numbering)

 - A. Who may file and when (department final actions, commission regulations)
 - B. Decided solely on basis of record before the commission
 - C. Injunctions per NM Rules of Civil Procedure
 - D. Reasons for setting aside commission's decision

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□ Section 11. Limitations.

Permits may not be required if they would:

- A. Take /modify property right in water
- B. Affect labor relations
- C. Supercede or limit applicability of industrial health, sanitation or safety law
- D. Apply to a discharge of return flows from irrigated agriculture
- E. Apply to a discharge of stormwater runoff from mining or oil and gas facility if not in contact with contaminants
- F. For a discharge of runoff from certain silviculture activities

□ Section 12. Confidential Information

Language in this presentation is paraphrased from the draft statute dated 7/1/2024.



NMPDES Draft Rule

Overall big-picture concerns
on the draft rule