NEW MEXICO
ENVIRONMENT DEPARTMENT

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Michelle Lujan Grisham
Governor

Howie C. Morales
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James C. Kenney
Cabinet Secretary

Jennifer J. Pruett
Deputy Secretary

Original via FedEx-Copy via Electronic Mail

August 17, 2020

Mr. Charles Maguire, Director
Water Quality Protection Division (6WD)
U. S. Environmental Protection Agency
1201 Elm Street, Suite 500
Dallas, Texas 75202

Re: Revoke and Reissue State Certification for the 2020 Multi Sector General Permit (NMR050000)

Dear Director Maguire:

In order to provide clear and consistent permit language to address conditions for incorporation into the final permit in New Mexico, the New Mexico Environment Department (NMED) finds it necessary to revoke the previous Clean Water Act (CWA) Section 401 Certification of the proposed National Pollutant Discharge Elimination System (NPDES) permit:

2020 Multi Sector General Permit (MSGP) – NMR050000

In NMED's original certification, it reserved the right to amend or revoke the certification if such action is necessary to ensure compliance with the State's water quality standards and water quality management plan. As such, and after consultation with U.S. Environmental Protection Agency (USEPA) and our sister agencies, NMED revised and hereby reissues the CWA §401 State Certification for the 2020 MSGP, NPDES Permit No. NMR050000. In this reissued certification, NMED clarified that reporting under Condition #1 should be to the Department, provided tables in Condition #2 to identify the benchmark values that should be used for sector-specific monitoring in the MSGP, and refined Condition #5 to identify state requirements for impounding or discharging stormwater.

If any, comments and conditions are enclosed on separate sheets.

The USEPA proposes to regulate discharges under the above-referenced NPDES Permit. A state Water Quality Certification is required by the federal CWA §401 to ensure that the action is consistent with state law (New Mexico Water Quality Act, NMSA 1978, §§ 74-6-1 to -17) and complies with State of New Mexico Water Quality Standards, the Water Quality Management Plan and Continuing Planning Process, including Total Maximum Daily Loads (TMDLs), and the Antidegradation Policy.

Pursuant to state regulations for permit certification (20.6.2.2001 NMAC), USEPA jointly with NMED issued a public notice of the draft permit and announced a public comment period posted on the NMED website at https://www.env.nm.gov/surface-water-quality/public-notices/ on February 29, 2020. NMED

published notices in the Las Cruces Sun News and Santa Fe New Mexican. The public comment period ended on April 1, 2020. NMED received no comments.

Sincerely,

Shelly Lemon Digitally signed by Shelly Lemon
Date: 2020.08.17 10:59:44 -06'00'

Shelly Lemon, Bureau Chief
Surface Water Quality Bureau

cc: (w/ enclosures)
Evelyn Rosborough, USEPA (6WDPN) via e-mail
Brent Larsen, USEPA (6WDPE) via e-mail
Emily Halter, USEPA (4203M) via e-mail
Rebecca Roose, Director, Water Protection Division, NMED, via e-mail
Sarah Holcomb, Manager, Point Source Regulation Section, NMED, via email
Michelle Hunter, Chief, Ground Water Quality Bureau, NMED, via e-mail
Kurt Vollbrecht, Manager, Mining Environmental Compliance, NMED, via e-mail
John Romero, Water Rights Program Director, NM Office of the State Engineer, via e-mail

Mr. Ken Mc Queen, Regional Administrator
Environmental Protection Agency
1201 Elm Street, Suite 500
Dallas, TX 75202

August 17, 2020

STATE CERTIFICATION

RE: Multi-Sector General Permit (MSGP) For Stormwater Discharges Associated with Industrial Activity, NPDES Permit No. NMR050000

Dear Regional Administrator McQueen:

The Cabinet Secretary of the New Mexico Environment Department (NMED) has delegated signatory authority for state certifications of federal Clean Water Act permits to the Surface Water Quality Bureau Chief. NMED examined the proposed NPDES permit referenced above. The following conditions are necessary to assure compliance with the applicable provisions of the Clean Water Act Sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law. Compliance with the terms and conditions of the permit and this certification will provide reasonable assurance that the permitted activities will be conducted in a manner that will not violate applicable water quality standards and the water quality management plan and will be in compliance with the antidegradation policy.

The State of New Mexico:

( ) certifies that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law

(x) certifies that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law upon inclusion of the following conditions in the permit (see attachments)

( ) denies certification for the reasons stated in the attachment

( ) waives its right to certify

In order to meet the requirements of State law, including water quality standards and appropriate basin plan as may be amended by the water quality management plan, each of the conditions cited in the draft permit and the State certification shall not be made less stringent.

The Department reserves the right to amend or revoke this certification if such action is necessary to ensure compliance with the State's water quality standards and water quality management plan.

Please contact Sarah Holcomb at (505) 827-2798, if you or your staff have any questions concerning this certification. Conditions pertaining to this draft permit are attached. Comments pertaining to this draft permit were submitted via the Regulations.gov website on May 29, 2020.

Sincerely,

Shelly Lemon Digitally signed by Shelly Lemon
Date: 2020.08.17 11:00:35 -06'00'

Shelly Lemon
Bureau Chief
Surface Water Quality Bureau

State of New Mexico Conditions on the Proposed
Multi-Sector General Permit (MSGP) For Stormwater Discharges Associated with Industrial Activity
NMR050000
August 17, 2020

The following conditions are necessary to ensure that discharges allowed under the National Pollutant Discharge Elimination System (NPDES) permit protect State of New Mexico surface water quality standards (WQS) adopted in accordance with Section 303 of the Clean Water Act (CWA) and the New Mexico Water Quality Act [NMSA 1978, §§ 74-6-1 to -17]. State of New Mexico (State) WQS are published in Title 20, Chapter 6, Part 4 of the New Mexico Administrative Code (20.6.4 NMAC), *Standards for Interstate and Intrastate Surface Waters*, as amended by the New Mexico Water Quality Control Commission (WQCC) and approved by the U.S. Environmental Protection Agency (EPA) on September 12, 2018. Additional state WQS are published in Title 20, Chapter 6, Part 2 of the New Mexico Administrative Code (20.6.2 NMAC), *Ground and Surface Water Protection*, as amended by the WQCC on December 21, 2018.

NPDES regulations at 40 C.F.R. 122.44(d)(1)(i) require that permit "…limitations must control all pollutants or pollutant parameters... which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard…"

40 C.F.R. 124.53(e) states that, "State certification shall be in writing and shall include: (1) Conditions which are necessary to assure compliance with the applicable provisions of CWA Sections 208(e), 301, 302, 303, 306 and 307 and with appropriate requirements of State law…"

Conditions of Certification:

Background for Condition #1:
New Mexico regulations (Standards for Interstate and Intrastate Surface Waters) under 20.6.4.13.F NMAC state: Except as provided in 20.6.4.16 NMAC, surface waters of the state shall be free of toxic pollutants from other than natural causes in amounts, concentrations or combinations that affect the propagation of fish or that are toxic to humans, livestock or other animals, fish or other aquatic organisms, wildlife using aquatic environments for habitations or aquatic organisms for food, or that will or can reasonably be expected to bioaccumulate in tissues of fish, shellfish and other aquatic organisms to levels that will impair the health of aquatic organisms or wildlife or result in unacceptable tastes, odors or health risks to human consumers of aquatic organisms.

New Mexico regulations (Ground and Surface Water Protection) under 20.6.2.7.T(2)(s) NMAC lists the following perfluorinated chemicals (PFCs) as toxic chemicals: perfluorohexane sulfonic acid (PHHxS), perfluorooctane sulfonate (PFOS), and perfluorooctanoic acid (PFOA).

EPA revised the Emergency Planning and Community Right-to-Know Act (EPCRA) Section 313 list of reportable chemicals covered by the Toxics Release Inventory (TRI) to include the 172 per- and polyfluoroalkyl substances (PFAS) added by the National Defense Authorization Act.[1]

The following is a list of North American Industrial Classification System (NAICS) codes from EPA's Advanced Notice of Proposed Rulemaking (December 4, 2019) that may be potentially affected by TRI reporting requirements:[2]

- *Facilities included in the following NAICS manufacturing codes (corresponding to Standard Industrial Classification (SIC) codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211130*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512230*, 512250*, 519130*, 541713*, 541715* or 811490*. *Exceptions and/or limitations exist for these NAICS codes.*
- *Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (corresponds to SIC code 12, Coal Mining (except 1241)); or 212221, 212222, 212230, 212299 (corresponds to SIC code 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221118, 221121, 221122, 221330 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (corresponds to SIC codes 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (limited to facilities previously classified in SIC code 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC code 5171, Petroleum Bulk Terminals and Plants); or 562112 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC code 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 et seq.) (corresponds to SIC code 4953, Refuse Systems).*
- *Federal facilities.*

Information prepared by the EPA and the Agency for Toxic Substances and Disease Registry (ATSDR) demonstrates that PFAS are toxic and can pose hazards to human health and the environment.[3,4] In EPA's PFAS Action Plan[5] program update dated February 2020, the Agency recommends using a screening level of 40 parts per trillion (0.040 ug/L) to determine if PFOA and/or PFOS is present at a site and may warrant further attention.

PFAS has been detected in nearly all environmental media. However, there is very limited data on industrial wastewater discharges of PFAS into the environment, in part due to the fact that relatively few facilities have NPDES permit limits or monitoring requirements for PFAS. The EPA identified only 13 industrial facilities that reported PFAS discharges on discharge monitoring reports (DMRs) in 2016 even though the EPA has identified several categories of industry that are likely to discharge PFAS, such as airports, military bases, fire-fighting equipment manufacturers, organic chemical manufacturers, paper and paperboard manufacturers, tanneries and leather treaters, textiles and carpet manufacturers, semiconductor manufacturers, household cleaning product manufacturers, petroleum refining, and landfills.[6]

Other states' PFAS guidance for various surface and groundwater screening levels are indicated in the tables below.[7,8]

Surface Water PFAS Guidelines in Other States				
	Oregon (ug/L)*	Michigan (ug/L)** DWS/not DWS	Minnesota (ug/L) Rivers	Alaska, Montana (ug/L)***
PFHpA	300	-	-	-
PFOA	24	0.420/12	2.7	0.070
PFOS	300	0.011/0.012	0.007	0.070
PFOSA	0.2	-	-	-
PFNA	1	-	-	-

* The Oregon DEQ wastewater initiation levels were adopted into rule (OAR 340-045-0100, Table A) in 2011. The PFAS are 5 chemicals on a list of 118 persistent priority pollutants for water that Oregon DEQ developed in response to state legislation. *Municipal wastewater treatment plants with effluent exceeding initiation levels are required to develop a pollution prevention plan that becomes a part of their NPDES permit*.
** Michigan's advisory levels are designed to protect human health (non-cancer values) and are based on whether the surface water is a drinking water source (DWS) or not.
*** For these states, concentrations of PFOA and PFOS are summed before being compared to the screening level.

Groundwater PFAS Guidelines in Other States						
	Maine (ug/L)*	New Jersey (ug/L)	New Hampshire (ug/L)**	Colorado, Rhode Island, Delaware (ug/L)*	Illinois (ug/L) ***	Minnesota (ug/L) ****
PFHpA	-	-	-	-	-	-
PFOA	0.400	0.010	0.012	0.070	0.021	0.035
PFOS	0.400	0.010	0.015	0.070	0.014	0.027
PFOSA	-	-	-	-	-	-
PFNA	-	-	0.011	-	0.021	-

* For these states, concentrations of PFOA and PFOS are summed before being compared to the screening level.
** Proposed rulemaking in New Hampshire covers 4 PFAS, and includes PFHxS = 0.018 ug/L.
*** Proposed rulemaking in Illinois covers 5 PFAS, and includes PFHxS = 0.140 ug/L and PFBS = 140 ug/L.
**** Health-based values (not maximum contaminant levels, or MCLs).

States use a variety of methods to test PFAS analytes in different media. The most widely used are EPA Method 537 (2008, applies to 14 PFAS) and EPA Method 537.1 (2018, applies to 18 PFAS). Some labs perform modifications, like using isotope dilution, to these methods for use in other matrices besides drinking water to account for lower reporting limits or greater accuracy. For example, modifications to Method 537.1 can be applied for non-drinking water media.[7]

Monitoring these toxic contaminants helps provide information about whether they are present in stormwater discharges to better control and mitigate PFAS in the environment. As stated on EPA's PFAS website,[9] *"PFAS can be found in living organisms, including fish, animals, and humans, where PFAS have the ability to build up and persist over time." Due to the characteristics of these contaminants (i.e., persistence in the environment and the human body, and evidence that exposure to PFAS can lead to adverse human health effects), NMED advocates for taking a proactive approach and establish PFAS sampling and reporting requirements to assure protection of New Mexico's surface waters, public health and the environment.*

1 *https://www.epa.gov/toxics-release-inventory-tri-program/list-pfas-added-tri-ndaa*
2 *https://www.federalregister.gov/documents/2019/12/04/2019-26034/addition-of-certain-per--and-polyfluoroalkyl-substances-community-right-to-know-toxic-chemical*
3 *https://www.epa.gov/ground-water-and-drinking-water/drinking-water-health-advisories-pfoa-and-pfos*
4 *https://www.atsdr.cdc.gov/pfas/pfas_fact_sheet.html*
5 *https://www.epa.gov/sites/production/files/2020-01/documents/pfas_action_plan_feb2020.pdf*
6 *EPA Office of Water, Preliminary Effluent Guidelines Program Plan 14, October 2019, EPA-821-R-19-005*
7 *https://www.ecos.org/documents/ecos-white-paper-processes-and-considerations-for-setting-state-pfas-standards/*
8 *http://pfas-1.itrcweb.org*
9 *https://www.epa.gov/pfas/basic-information-pfas#health*

Condition # 1:

Except as specified below, all NAICS codes listed in the December 4, 2019 Advanced Notice of Proposed Rulemaking for TRI Reporting (noted above) and covered under this MSGP shall monitor and report PFAS in effluent once during the first year of MSGP coverage, or when the facility discharges if no discharge occurs during the first year. Samples shall be analyzed by an accredited lab for all 18 PFAS analytes using EPA Method 537.1 (EPA 2018), and the DoD

Quality Systems Manual Method 5.3 (2019) as guidance. Method and analysis shall be sufficiently sensitive to evaluate the New Mexico screening level for PFOA and PFOS.

The PFAS screening level in New Mexico is indicated below. The screening level is not a standard of quality and purity for the surface waters of New Mexico but allows detection and further evaluation of the existence of PFAS in stormwater discharges to determine if more attention is warranted.

PFAS Screening Level for New Mexico*	
PFOA + PFOS	0.070 ug/L

* Concentrations of PFOA and PFOS are summed before being compared to the screening level.

If PFOA and/or PFOS are detected above the New Mexico screening level, additional monitoring and reporting shall occur annually and in accordance with the same parameters and methods as required for the first sampling event. In addition, the permittee should take corrective action and identify ways to minimize, reduce, and eliminate PFAS from the industrial activity through product substitution and/or additional best management practices and operational controls. Results of past monitoring and any corrective actions taken should be included in the Stormwater Pollution Prevention Plan (SWPPP).

The permittee shall submit monitoring results for all 18 PFAS analytes under EPA Method 537.1, as required, to NMED at the following address:

Point Source Program Manager
Surface Water Quality Bureau
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502-5469

NMED may suspend the requirement to monitor and report PFAS under the following circumstances:
(A) If the permittee determines it is not technically practicable to measure PFAS in their stormwater discharge; or
(B) If additional sampling determines that it is unlikely that PFAS exist in a permittee's stormwater discharge, if the permittee provides facility data that demonstrate PFAS are unlikely to be present in the stormwater discharge, or there are no available, accredited laboratories capable of performing the required PFAS analysis; or
(C) If additional sampling demonstrates that the pollutant concentration is lower than the screening level or the permittee is subject to duplicative or more stringent PFAS requirements. However, to be exempted for these reasons, the permittee must submit documentation to NMED for approval.

Background for Condition #2:
20.6.4.8 NMAC - Antidegradation:
A. Antidegradation Policy: This antidegradation policy applies to all surface waters of the state.
(1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected in all surface waters of the state.
(2) Where the quality of a surface water of the state exceeds levels necessary to support the propagation of fish, shellfish, and wildlife, and recreation in and on the water, that quality shall be maintained and protected...

20.6.4.900 NMAC - Criteria Applicable to Existing, Designated or Attainable Uses:
…
(I) Hardness-dependent acute and chronic aquatic life criteria for metals are… expressed as a function of dissolved hardness (as mg CaCO3/L). With the exception of aluminum, the equations are valid only for dissolved hardness concentrations of 0-400 mg/L. For dissolved hardness concentrations above 400 mg/L, the criteria for 400 mg/L apply. For aluminum the equations are valid only for dissolved hardness concentrations of 0-220 mg/L. For dissolved hardness concentrations above 220 mg/L, the aluminum criteria for 220 mg/L apply.

*(1) **Acute aquatic life criteria for metals**: The equation to calculate acute criteria in µg/L is exp(mA[ln(hardness)] + bA)(CF). Except for aluminum, the criteria are based on analysis of dissolved metal. For aluminum, the criteria are based on analysis of total recoverable aluminum in a sample that is filtered to minimize mineral phases as specified by the department. The EPA has disapproved the hardness-based equation for total recoverable aluminum in waters where the pH is less than 6.5 in the receiving stream for federal purposes of the Clean Water Act. The equation parameters are as follows:*

Metal	**m_A**	**b_A**	**Conversion factor (CF)**
Aluminum (Al)	1.3695	1.8308	
Cadmium (Cd)	0.8968	-3.5699	1.136672-[(ln hardness)(0.041838)]
Chromium (Cr) III	0.819	3.7256	0.316
Copper (Cu)	0.9422	-1.7	0.96
Lead (Pb)	1.273	-1.46	1.46203-[(ln hardness)(0.145712)]
Manganese (Mn)	0.3331	6.4676	
Nickel (Ni)	0.846	2.255	0.998
Silver (Ag)	1.72	-6.59	0.85
Zinc (Zn)	0.9094	0.9095	0.978

For waters with a pH of less than 6.5, the previously approved acute dissolved aluminum criterion of 750 ug/L applies for CWA purposes. (https://www.epa.gov/wqs-tech/water-quality-standards-regulations-new-mexico)

*(2) **Chronic aquatic life criteria for metals**: The equation to calculate chronic criteria in µg/L is exp(mC[ln(hardness)] + bC)(CF). Except for aluminum, the criteria are based on analysis of dissolved metal. For aluminum, the criteria are based on analysis of total recoverable aluminum in a sample that is filtered to minimize mineral phases as specified by the department. The EPA has disapproved the hardness-based equation for total recoverable aluminum in waters where the pH is less than 6.5 in the receiving stream for federal purposes of the Clean Water Act. The equation parameters are as follows:*

Metal	**mC**	**bC**	**Conversion factor (CF)**
Aluminum (Al)	1.3695	0.9161	
Cadmium (Cd)	0.7647	-4.218	1.101672-[(ln hardness)(0.041838)]
Chromium (Cr) III	0.819	0.6848	0.86
Copper (Cu)	0.8545	-1.702	0.96
Lead (Pb)	1.273	-4.705	1.46203-[(ln hardness)(0.145712)]
Manganese (Mn)	0.3331	5.8743	
Nickel (Ni)	0.846	0.0584	0.997
Zinc (Zn)	0.9094	0.6235	0.986

For waters with a pH of less than 6.5, the previously approved chronic dissolved aluminum criterion of 87 ug/L applies for CWA purposes (see https://www.epa.gov/wqs-tech/water-quality-standards-regulations-new-mexico).

Condition #2:

The benchmark values for pollutants must be modified to reflect New Mexico WQS for the facilities in New Mexico based on water quality criteria approved in the *Standards for Interstate and Intrastate Surface Waters*, 20.6.4.900 NMAC. Consistent with the language in this permit, exceedances of a benchmark value, even if that value is based on New Mexico WQS, are not immediately a violation of the permit unless the permittee does not take appropriate action to improve best management practices or otherwise mitigate the discharge of the detected pollutant. A full Tier 2 Antidegradation Review (significant degradation analysis; reasonable alternatives identification; economic and social importance; etc.) does not translate to projects covered under this general permit. Therefore, this condition is necessary to ensure that New Mexico's antidegradation policy is upheld and surface waters of the state are protected from degradation.

The following tables lay out the benchmark values that should be used for sector-specific monitoring in the MSGP.

MSGP Benchmark Values and Sources		
Most restrictive value (highlighted below) must be chosen.		
Pollutant	**2020 proposed MSGP Benchmark**	**New Mexico MSGP Benchmark**
Total Recoverable Beryllium	130 µg/L	
Biochemical Oxygen Demand (5- day)	30 mg/L	
pH	6.0 – 9.0 s.u.	6.6 – 9.0 s.u.
Chemical Oxygen Demand	120 mg/L	
Total Phosphorus	2.0 mg/L	
Total Suspended Solids (TSS)	100 mg/L	
Ammonia	2.14 mg/L	
Nitrate and Nitrite Nitrogen	0.68 mg/L	
Turbidity	50 NTU	
Total Recoverable Antimony	640 µg/L	640 µg/L (dissolved)
Total Recoverable Arsenic	150 µg/L	9 µg/L (dissolved)
Total Recoverable Cadmium	1.8 µg/L	See below
Chromium (III)	570 µg/L	See below
Chromium (VI)	16 µg/L	16 µg/L (dissolved)
Total Recoverable Copper	14 µg/L	See below
Total Recoverable Cyanide	22 µg/L	5.2 µg/L
Total Recoverable Lead	8.2 µg/L	14 µg/L (dissolved)
Total Recoverable Mercury	1.4 µg/L	0.77 µg/L
Total Recoverable Nickel	47 µg/L	See below
Total Recoverable Selenium	5 µg/L	5 µg/L
Total Recoverable Silver	3.8 µg/L	See below
Total Recoverable Zinc	120 µg/L	See below

	Hardness dependent criteria - Dissolved (µg/L)						
Concurrent Hardness as $CaCO_3$, dissolved (mg/L)	**Cd**	**Cr III**	**Cu**	**Pb**	**Ni**	**Ag**	**Zn**
25	0.51	180	4	14	140	0.3	45
30	0.59	210	4	17	170	0.4	54
40	0.76	270	6	24	220	0.7	70
50	0.91	320	7	30	260	1.0	85
60	1.07	370	8	37	300	1.3	101
70	1.22	430	10	44	350	1.7	116
80	1.37	470	11	51	390	2.2	131
90	1.51	520	12	58	430	2.7	145
100	1.65	570	13	65	470	3.2	160
200	2.98	1,010	26	140	840	11	301
220	3.23	1,087	28	151	912	13	328
300	4.21	1,400	38	210	1190	21	435
400 and above	5.38	1,770	50	280	1510	35	564

<u>Background for Condition #3:</u>
20.6.4.8 NMAC - Antidegradation:
A. Antidegradation Policy: This antidegradation policy applies to all surface waters of the state.
…
(3) No degradation shall be allowed in waters designated by the commission as outstanding national resource waters (ONRWs), except as provided in Subparagraphs (a) through (e) of this paragraph and in Paragraph (4) of this Subsection A.
(a) After providing a minimum 30-day public review and comment period, the commission determines that allowing temporary and short-term degradation of water quality is necessary to accommodate public health or safety activities in the area in which the ONRW is located. Examples of public health or safety activities include but are not limited to replacement or repair of a water or sewer pipeline or a roadway bridge. In making its decision, the commission shall consider whether the activity will interfere with activities implemented to restore or maintain the chemical, physical or biological integrity of the water. In approving the activity, the commission shall require that:
(i) the degradation shall be limited to the shortest possible time and shall not exceed six months;
(ii) the degradation shall be minimized and controlled by best management practices or in accordance with permit requirements as appropriate; all practical means of minimizing the duration, magnitude, frequency and cumulative effects of such degradation shall be utilized;
(iii) the degradation shall not result in water quality lower than necessary to protect any existing use in the ONRW; and
(iv) the degradation shall not alter the essential character or special use that makes the water an ORNW.
(b) Prior to the commission making a determination, the department or appropriate oversight agency shall provide a written recommendation to the commission. If the commission approves the activity, the department or appropriate oversight agency shall oversee implementation of the activity.
(c) Where an emergency response action that may result in temporary and short-term degradation to an ONRW is necessary to mitigate an immediate threat to public health or safety, the emergency response action may proceed prior to providing notification required by Subparagraph (a) of this paragraph in accordance with the following:

(i) only actions that mitigate an immediate threat to public health or safety may be undertaken pursuant to this provision; non-emergency portions of the action shall comply with the requirements of Subparagraph (a) of this paragraph;
(ii) the discharger shall make best efforts to comply with requirements (i) through (iv) of Subparagraph (a) of this paragraph;
(iii) the discharger shall notify the department of the emergency response action in writing within seven days of initiation of the action;
(iv) within 30 days of initiation of the emergency response action, the discharger shall provide a summary of the action taken, including all actions taken to comply with requirements (i) through (iv) of Subparagraph (a) of this paragraph.
(d) Preexisting land-use activities, including grazing, allowed by federal or state law prior to designation as an ONRW, and controlled by best management practices (BMPs), shall be allowed to continue so long as there are no new or increased discharges resulting from the activity after designation of the ONRW.
(e) Acequia operation, maintenance, and repairs are not subject to new requirements because of ONRW designation. However, the use of BMPs to minimize or eliminate the introduction of pollutants into receiving waters is strongly encouraged.
(4) This antidegradation policy does not prohibit activities that may result in degradation in surface waters of the state when such activities will result in restoration or maintenance of the chemical, physical or biological integrity of the water.

Condition #3:

Operators are not eligible to obtain authorization under this permit for stormwater discharges to outstanding national resource waters (ONRWs, also referred to as "Tier 3" waters). Although State WQS provide for temporary and short-term degradation of water quality in an ONRW under very limited circumstances, if approved by the New Mexico Water Quality Control Commission as specified at 20.6.4.8.A NMAC, the approval process required for these activities does not translate to projects covered under this general permit. This condition is necessary to ensure that no degradation is allowed in ONRWs by requiring proposed stormwater discharges to be reviewed under the individual permit process. Tier 3 waters are defined in Appendix F of the proposed permit.

<u>*Background for Condition #4:*</u>
20.6.4.13 NMAC General Criteria:
…Surface waters of the state shall be free of any water contaminant in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or unreasonably interfere with public welfare or use with property.
A. Bottom Deposits and Suspended or Settleable Solids:
(1) Surface waters of the state shall be free of water contaminants including fine sediment particles (less than two millimeters in diameter), precipitates or organic or inorganic solids from other than natural causes that have settled to form layers on or fill the interstices of the natural or dominant substrate in quantities that damage or impair the normal growth, function or reproduction of aquatic life or significantly alter the physical or chemical properties of the bottom.
(2) Suspended or settleable solids from other than natural causes shall not be present in surface waters of the state in quantities that damage or impair the normal growth, function or reproduction of aquatic life or adversely affect other designated uses.
B. Floating Solids, Oil and Grease: *Surface waters of the state shall be free of oils, scum, grease and other floating materials resulting from other than natural causes that would cause the formation of a visible sheen or visible deposits on the bottom or shoreline, or would damage or impair the normal growth, function or reproduction of human, animal, plant or aquatic life.*
C. Color: *Color-producing materials resulting from other than natural causes shall not create an aesthetically undesirable condition nor shall color impair the use of the water by desirable aquatic*

life presently common in surface waters of the state.

F. Toxic Pollutants:

(1) Except as provided in 20.6.4.16 NMAC, surface waters of the state shall be free of toxic pollutants from other than natural causes in amounts, concentrations or combinations that affect the propagation of fish or that are toxic to humans, livestock or other animals, fish or other aquatic organisms, wildlife using aquatic environments for habitation or aquatic organisms for food, or that will or can reasonably be expected to bioaccumulate in tissues of fish, shellfish and other aquatic organisms to levels that will impair the health of aquatic organisms or wildlife or result in unacceptable tastes, odors or health risks to human consumers of aquatic organisms.

J. Turbidity: *Turbidity attributable to other than natural causes shall not reduce light transmission to the point that the normal growth, function or reproduction of aquatic life is impaired or that will cause substantial visible contrast with the natural appearance of the water. Activities or discharges shall not cause turbidity to increase more than 10 NTU over background turbidity when the background turbidity, measured at a point immediately upstream of the activity, is 50 NTU or less, nor to increase more than 20 percent when the background turbidity is more than 50 NTU. However, limited-duration turbidity increases caused by dredging, construction or other similar activities may be allowed provided all practicable turbidity control techniques have been applied and all appropriate permits, certifications and approvals have been obtained.*

K. Total Dissolved Solids (TDS): *TDS attributable to other than natural causes shall not damage or impair the normal growth, function or reproduction of animal, plant or aquatic life. TDS shall be measured by either the "calculation method" (sum of constituents) or the filterable residue method. Approved test procedures for these determinations are set forth in 20.6.4.14 NMAC.*

L. Dissolved Gases: *Surface waters of the state shall be free of nitrogen and other dissolved gases at levels above 110 percent saturation when this supersaturation is attributable to municipal, industrial or other discharges.*

And, in 20.6.4.52 NMAC:

PECOS RIVER BASIN: In order to protect existing and designated uses, it is a goal of the state of New Mexico to prevent increases in TDS in the Pecos River above the following benchmark values, which are expressed as flow-weighted, annual average concentrations, at three USGS gauging stations: at Santa Rosa 500 mg/L; near Artesia 2,700 mg/L; and near Malaga 3,600 mg/L. The benchmark values serve to guide state action. They are adopted pursuant to the New Mexico Water Quality Act, not the Clean Water Act.

And, in 20.6.4.54 NMAC:

COLORADO RIVER BASIN: For the tributaries of the Colorado river system, the state of New Mexico will cooperate with the Colorado river basin states and the federal government to support and implement the salinity policy and program outlined in the most current "review, water quality standards for salinity, Colorado river system" or equivalent report by the Colorado river salinity control forum.

Segment-specific criteria across the state specify numeric limits for TDS, sulfate and chloride depending on the receiving waterbody, and numeric constituent specific values in 20.6.4.900 NMAC also apply depending on the designated use of the waterbody.

Part 1.2.2.1.h of the proposed permit allows for discharge of uncontaminated groundwater or spring water.

With respect to the discharge of groundwater or spring water, especially in urban areas, there is potential to tap into an existing shallow groundwater contaminant plume and exceed State WQS. Without testing of the ground or spring water, it is impossible to determine whether the dewatering activity would cause or contribute to surface water quality impairments.

Condition #4:

Information on how the permittee knows the groundwater or spring water is uncontaminated must be documented in the facility SWPPP.

EPA must amend the NOI to include a question for the permittee to indicate whether they anticipate to discharge groundwater or spring water from their site. The permittee must be able to indicate on the NOI: flow rate, whether the ground or spring water source is nearby potential pollutant sources, and if the ground or spring water has been tested and is not contaminated by the potential pollutant source.

If discharge of groundwater or spring water is anticipated at a facility, permittees must complete the following steps to determine if it is potentially contaminated:

1. Indicate on the NOI that dewatering activities are anticipated. Provide information on flow and potential to encounter impacted ground or spring water.
2. Refer to the Mapper tool at https://gis.web.env.nm.gov/oem and check if the following groundwater pollutant sources are located nearby the anticipated source of groundwater or spring water such that there is a potential for contamination:

Project Location Relative to a Source of Potential Groundwater Contamination	**Constituents likely to be required for testing**
Within 0.5 mile of an open Leaking Tank site	BTEX (Benzene, Toluene, Ethylbenzene, and Xylene) plus additional parameters depending on site conditions.
Within 0.5 mile of an open Voluntary Remediation site	All parameters listed in 20.6.4.900 NMAC, hardness and pH (or an alternate list approved by the NMED SWQB)
Within 0.5 mile of an open RCRA Corrective Action Site	All parameters listed in 20.6.4.900 NMAC, hardness and pH (or an alternate list approved by the NMED SWQB)
Within 0.5 mile of an open Abatement Site	All parameters listed in 20.6.4.900 NMAC, hardness and pH (or an alternate list approved by the NMED SWQB)
Within 0.5 mile of an open Brownfield Site	All parameters listed in 20.6.4.900 NMAC, hardness and pH (or an alternate list approved by the NMED SWQB)
Within 1.0 mile of a Superfund site with associated groundwater contamination.	All parameters listed in 20.6.4.900 NMAC, hardness and pH (or an alternate list approved by the NMED SWQB)
EPA approved-sufficiently sensitive methods must be used – approved methods are listed in 40 C.F.R. 136.3.	

3. If within the distances listed above, Permittee must provide test data indicating the quality of the groundwater or spring water to be discharged according to the table above.

   Permittee must send test result data to EPA Region 6 and the NMED Surface Water Quality Bureau. If the test data exceed State WQS, the ground or spring water cannot be discharged from the facility into surface waters under this permit. Discharge to surface waters must be conducted under a separate NPDES individual permit to ensure proper treatment and disposal. If disposal will be to the ground surface or in an unlined pond, the permittee must

submit a Notice of Intent to Discharge (NOI) to the NMED Ground Water Quality Bureau. For further assistance determining whether your facility may encounter impacted groundwater, the permittee may contact the NMED Ground Water Quality Bureau at (505) 827-2965.

4. Investigative information and data demonstrating that water is not contaminated must be documented in the facility SWPPP.

Background for Condition 5:
19.26.2.15.B NMAC PONDS AND OTHER IMPOUNDMENTS: A permit is required to capture or store surface water in an impoundment. An application to capture and store surface water shall be filed pursuant to 19.26.2.10 NMAC or 19.26.2.11 NMAC unless the impoundment of water is authorized as a livestock watering impoundment under 19.26.2.14 NMAC.

B. Flood control: *No permit to appropriate water is required for an impoundment when the primary purpose of the impoundment is flood control, provided the outlet drains the impoundment (from the spillway crest) in 96 hours. The water shall not be detained in the impoundment in excess of 96 hours unless the state engineer has issued a waiver to the owner of the impoundment.*

Condition #5:

Per the New Mexico Office of the State Engineer requirements above, impoundments must drain or infiltrate within 96 hours. The facility must transfer a valid water right to impound and retain the stormwater longer than 96 hours or request a variance from the State Engineer.

If the facility intends to discharge stormwater that contains a "water contaminant" as defined in 20.6.2.7 NMAC, a State of New Mexico Notice of Intent to Discharge must be submitted to NMED in accordance with 20.6.2.1201 NMAC ***prior to discharge***. This includes infiltration of stormwater or a discharge to the ground surface that may move directly or indirectly into groundwater.

In the event impounded stormwater contains a "water contaminant" as defined in 20.6.2.7 NMAC, the stormwater must meet benchmark values in order to be discharged to a surface water of the State.

Comments that are not Conditions of Certification:
NMED comments on the proposed MSGP were submitted to Docket ID # EPA-HQ-OW-2019-0372 via the Regulations.gov website on May 29, 2020.