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QUESTIONS, ANSWERS AND COMMENTS
From the NPDES Primacy meeting held in Albuquerque – May 24, 2004

QUESTION: Will there be additional charges to permittees?

ANSWER: Unknown at this time. Likely funding options are permit fees and legislative appropriations.

Q: What additional protection will we (the state) get with state primacy?

A: New Mexico will be able to take charge of its limited water resources. We are also concerned that the federal government is moving toward loosening protections for surface water quality. Primacy would allow the state to keep the maintain the level of protection that it feels is necessary to protect human health, aquatic life, agriculture and other surface water uses.

Q: Will you be introducing this at the interim legislative session?

A: Yes. We plan to introduce this legislation at the next possible venue, which would be the interim session.

Q: The recent changes to the general permit for storm water were mishandled. Will this be handled in the same way?

A: No. The way the recent storm water permit changes were handled was unexpected and outside of the state's control. We will also work with EPA to ensure that future permits are public noticed in advance of finalization.

Q: State primacy should include a consultation division (without regulation) and an informal hearing process (without court). Can that happen?

A: Yes. We agree that these components are critical. We believe the state should offer a more helpful approach to compliance. Hopefully, state primacy will allow permittees better access to such services.

Q: Regarding the Multi-sector General Permit (MSGP) and Construction General Permit (CGP), in the mining sector, when will each permit be required and how will they overlap or relate?

A: The question is too detailed at this point. We will not be looking at this level until after we have an indication from EPA that primacy is authorized.

Q: If someone is in the process of renewing permits at the time of the primacy switch, what will happen?

A: Permits in process will continue to be issued by EPA. Even after authorization, we will still work closely with EPA and EPA will certify state issued permits.

Q: Where along the line will we have a checkpoint for funding? Will we be sure of the funding before we begin the process of shifting primacy?

A: The state will not take on primacy without sufficient funding. EPA will not authorize the process without proof that we are financially prepared to manage the NPDES program.

Q: The estimate of yearly costs is currently 1 million dollars. This seems too low.

A: The estimates are based on the program in Utah and are an initial estimate of minimum funding levels. Utah's model was chosen as a representative due to similarities in our workloads. We are currently putting together more detailed funding proposals that will be made public as soon as they are completed.

Q: Currently, construction permits include both owner and operator components. With a new system and permit fees, will a site be charged for both parties on the permit?

A: The question is too detailed to answer at this point. We do intend to keep the program reasonable in regard to costs.

Q: Is the Utah based cost model based on the NPDES model or a personnel structure? And, did you look at Texas as a model as well?

A: We modeled after Utah's whole structure. We worked with EPA to choose Utah as the closest match to our state. Yes, we took Texas into account, but Utah was a closer match in terms of permit demographics.

Q: Will contractors have a separate set of regulations/permits for tribal lands (federally regulated) and the state lands (state regulated)?

A: Yes, we will not have authority over tribal lands, therefore tribal regulations/permits may differ from the state regulations/permits.

Q: If the state's proposal to EPA has already been turned in, is it more or equally stringent to federal regulations?

A: The initial legislative proposal to EPA only covered the minor changes that we believe are needed for the state to acquire primacy, specific regulations have not yet been proposed.

Q: What are the benefits and pitfalls to individual permit holders for changing to state primacy?

A: Discussed in presentation. Overall, the feedback we have received via telephone has been supportive of the program. We believe state primacy will allow for a program that is more responsive to permittees and other state concerns.

Q: Will the state have a relationship with MS4 sites and municipalities, or will they still be federally regulated?

A: Ultimately, the state will take them on.

Q: What motivated other states to do this? Have they realized benefits?

A: Reasons for other states becoming delegated vary, but are generally driven by the state's desire to control the quality of its water resources.

Q: Once we take over, will EPA be able to come in and regulate when necessary?

A: EPA can take over the program if we aren't doing a good job. However, in general, the state will be responsible for ensuring that the program is successful.

- Q: Will there be more steps added to the permitting process with this program?**
A: No. Basically, EPA and NMED will be swapping roles, but the process will remain essentially the same.
- COMMENT: Representative of Dairy Producers stated they get a better deal from the Groundwater Quality Bureau than from EPA. However, they do not agree with a fee increase.**
- Q: Will NPDES upstream have to comply with downstream tribal land?**
A: Upstream permits have to protect the standards of the downstream state (or tribal land). The home state will enforce so those standards are met.
- Q: For discharge of well pump test water, EPA says you can discharge before the permit is issued if a permit is in process. Will this be true if the state is in charge?**
A: This is too detailed. We cannot answer at this time.
- Q: What does the state program 5 year phase-in look like? Will the state take significant chunks at a time?**
A: The state will be required to phase in significant categories of permits. The details are not yet known at this time.
- Q: For the permits in place now, are they ready to take over as-is, or will they change?**
A: We would keep EPA permits as-is until they expire. At the time of reapplication, state changes could be reflected.
- C: Thank you for the opportunity for public comment.**
- C: Regarding construction phase permits; NMED did a poor job of informing the public on the permit changes. Small MS-4s and construction companies would benefit from a direct meeting to address these problems.**
Response: A public meeting to discuss this issue will be scheduled in the near future.
- Q: What will cause this primacy process to be ended? Anything? Or is this a matter of the governor wanting it to happen so it WILL happen?**
A: We have a number of hurdles to pass. The first is the legislature. Then we have to get regulations and funding proposals in place. And last we need EPA approval. Failure in any one of these areas could result in an end to our primacy quest.
- Q: How will the SWQB's primacy role compare to the role taken by the Hazardous Waste Bureau (who also have primacy and are very aggressive in their approach)?**
A: We cannot answer this without knowing more about the process used by the HWB. However, we plan to approach our new role as reasonable and effective regulators.
- C: Regarding the mining industry, EPA is easier to work with than the state at this point, especially when it comes to deciding which permit is appropriate. We (the mining industry) need a better relationship with the state than we have now.**
- Q: If the state takes primacy, will there be a shift from Best Management Practices to Water**

Quality Standard-based limits for storm water?

A: It is likely that we will not make many changes along these lines.

Q: **Regarding small MS-4 permits, if permits are not yet issued in '06 or '07 and the state takes over, will there be a further delay in issuance?**

A: EPA will finish permits that are in process before we take on the permit. Primacy wouldn't affect what is in process now.

C: **You must be careful when using the word "engineering". You cannot use this word unless a Practicing Engineer is hired to do the work. Engineers will take the state to court if they use engineering without intending to require licensed work.**

Q: **EPA requires that the state has a permit review time period. Will the state incorporate this type of deadline?**

A: It is doubtful that EPA will impose a deadline and the state won't likely impose one either. However, our plan is to ensure that we have sufficient resources to operate a timely and efficient permitting program.

Q: **Will the state arrange a stakeholders committee to design the primacy regulations?**

A: Due to time constraints, the state will more likely write a draft plan and open it for public comment.

Q: **Does the Utah model include a fee structure?**

A: The Utah program is funded by general funds.

C: **This seems like a tight deadline to complete a plan. There is concern that there will not be proper input. So far, it seems the state has received some positive input, but has not received input from those who are against the idea.**

C: **Regarding developing regulations internally and then going to the stakeholder; the state will have more support if the stakeholders are part of the regulation development.**

Q: **By the end of 2006, will the state have general regulations in place?**

A: We must have a primacy package to the EPA by 2006. This includes regulations, and our plan for implementation.

C: **Please create a link on your web site that will connect to specific information on construction permits and state primacy.**