

**New Mexico Environment Department
Surface Water Quality Bureau
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**Draft Revisions to the Water Quality Management Plan
Public Meeting Notes and Responses to Questions**

Listed below are some questions/issues, along with responses, that were raised during the public meetings held February 4-7, 2002. These are not complete minutes of the entire content of the meeting presentations, but a brief synopsis of the public discussion meant to ensure that the Surface Water Quality Bureau (SWQB) understood and addressed the questions that were asked. If you attended the meeting and feel any information has been left out, please contact the SWQB. For more information on the items below or the content of the public meeting, please contact Stephanie Stringer at 505-827-0418. Additionally, copies of SWQB reports and general information on our programs are available at the New Mexico Environment Department's (NMED) website at www.nmenv.state.nm.us/swqb/swqb.html.

Las Cruces Meeting, February 4, 2002

QUESTION/ISSUE

Did the Environmental Protection Agency (EPA) ask the SWQB to update the Water Quality Management Plan (WQMP)?

RESPONSE

Yes. The Code of Federal Regulations [40CFR130.6(e)] states, in part:

[S]tate and/or areawide agency WQM plans shall be updated as needed to reflect changing water quality conditions, results of implementation actions, new requirements or to remove conditions in prior conditional or partial plan approvals. Regional Administrators may require that State WQM plans be updated as needed.

The Surface Water Quality Bureau was in agreement with EPA that the WQMP warranted update.

QUESTION/ISSUE

In the presentation the Nonpoint Source Management Program was listed as a required work element, yet it is being eliminated through this update. Please explain.

RESPONSE

No – the presentation did not say this – rather, the work element is being updated. Previously the Nonpoint Source Management was a defined work element within the WQMP that included a number of now outdated strategies. Since the last update to the WQMP, the Clean Water Act section 319 Nonpoint Source Management Program has evolved into an administratively separate program, which is now incorporated into the WQMP by reference to the Nonpoint Source Water Quality Program planning document.

QUESTION/ISSUE

Have the planning documents which are being incorporated into this draft document been approved by the Water Quality Control Commission (WQCC)?

RESPONSE

Yes, the planning documents that are referenced, such as the Nonpoint Source Management Program, or the Total Maximum Daily Load (TMDL) documents have all been approved by the WQCC. Referenced documents adopted by the WQCC were adopted after public participation appropriate to the individual document. There are, however, other documents that are referenced in the WQMP, such as approval letters from the EPA, legislative references, and other documents that are not subject to approval by the WQCC.

QUESTION/ISSUE

What does it mean when you say that a work element is “inactive”?

RESPONSE

An “inactive” work element can mean a few different things. First, an inactive work element can be an element that is actively being pursued under another program, such as the Nonpoint Source Management Program. In such a case, the work element is not technically being removed, but updated by removing the old, outdated text and referencing the appropriate program’s planning document. The second type of inactive work elements are those that have been completed and need to be “taken off the books”, such as Work Element 5.3 Study of Biological Availability of Nitrogen and Phosphorus from Cochiti to Elephant Butte. Finally, other inactive work elements include elements that are not required by federal regulations and are no longer considered to be a priority under the current WQMP. The 1998 New Mexico Continuing Planning Process document adopted by the WQCC identified a number of “inactive” WQMP work elements that needed to be formally removed from the WQMP.

QUESTION/ISSUE

Where do storm water discharges for Phase II of the National Pollution Discharge Elimination System (NPDES) fit into the updated WQMP?

RESPONSE

Work Element 2 - Effluent Limitations would cover Phase II of NPDES. The City of Albuquerque was the only Phase I (cities with >100,000 people) permit, and the EPA is just now

Response to Public Comments

getting around to issuing the permit. It is important to note that storm water permits are not technology based and do not have effluent limits, but give target load reductions and are done through the implementation of Best Management Practices (BMPs).

QUESTION/ISSUE

Does the timetable presented tonight for the WQMP update process allow time to address the public comments?

RESPONSE

Yes, the public comment period that opened on January 18th will close on March 19th, 2002. The SWQB will then have until April 9th to address and incorporate the comments received from the public. If excessive comments are received, or there is sufficient public interest in holding a hearing on these matters, then the timetable could be significantly altered to accommodate either a hearing with its concomitant notice requirements or to allow further action issues raised through the public participation process.

QUESTION/ISSUE

Work Element 9 - Groundwater is included in the WQMP, however, EPA does not have jurisdiction over groundwater-surface water regulations. How is this dealt with in the revised WQMP?

RESPONSE

The document in Work Element 9 provides references to the federal regulatory requirements (40 CFR 130.6(c)(9)) and explains who has jurisdiction over the responsibilities of this required work element.

QUESTION/ISSUE

Are the referenced documents open for public comment?

RESPONSE

No. The referenced documents are either stand-alone documents not subject to public comment, such as approval letters, or are planning documents that have each already undergone a separate public participation process prior to approval by the WQCC. The revisions proposed are in essence a reorganization or recompilation of existing current documents (e.g., TMDLs and the Nonpoint Source Management Plan) and a “housekeeping” effort to remove or retire outdated or completed work elements.

QUESTION/ISSUE

Is the previous, or original, WQMP available?

RESPONSE

Response to Public Comments

The original WQMP was not available at the public meetings; however, the document is available upon request by contacting the SWQB.

Roswell Meeting, February 5, 2002

QUESTION/ISSUE

Once changes have been made as a result of the public participation process, how will people get the updated copy of the WQMP?

RESPONSE

Once the WQMP is finalized through adoption by the WQCC and approval by the EPA, the document will be available on the SWQB's website at: www.nmenv.state.nm.us/swqb/swqb.html. The document will also be available upon request by contacting the SWQB.

QUESTION/ISSUE

Was the SWQB required by EPA to update this document?

RESPONSE

Yes. (See previous explanation under Las Cruces Meeting Heading.)

QUESTION/ISSUE

Are any regulatory changes being made as part of this revision to the WQMP?

RESPONSE

No.

QUESTION/ISSUE

What is a Total Maximum Daily Load (TMDL)?

RESPONSE

A TMDL is a calculation of the amount of pollutants that can enter a system while still maintaining New Mexico's Water Quality Standards (i.e., without causing impairment). It is the sum of the Waste Load Allocation (WLA), the Load Allocation (LA), and a Margin of Safety (MOS). The TMDL document is a water quality planning document with specific water quality goals and a means for recommending controls needed to meet water quality standards. The Surface Water Quality Bureau published in 1997 a Questions and Answers document on TMDLs that can be viewed on the Environment Department's website at <http://www.nmenv.state.nm.us/swqb/QandA.htm>. An update to the Q&A document was published in 2000 and can be viewed on the website at http://www.nmenv.state.nm.us/swqb/QandA_2000.html. Copies may also be obtained by contacting the Surface Water Quality Bureau.

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Every two years the state is required to develop a list of its impaired waterbodies, or waterbodies that do not meet water quality standards. This list is called the “303(d) List,” or the “List of Impaired Waterbodies.” A TMDL must be developed for each waterbody included on this list. The current “303(d) list” is available on the Environment Department’s website at http://www.nmenv.state.nm.us/swqb/2000-2002_New_Mexico_303d_List.pdf.

QUESTION/ISSUE

Does the WQCC set water quality standards that are similar to EPA recommended standards?

RESPONSE

For the most part the WQCC does base their standards on EPA recommendations; however, there are instances where it is necessary to identify segment-specific standards due to the uniqueness of particular environmental setting. For example, Sulphur Creek in the Jemez Mountains required the development of segment-specific standards because of the geological setting.

Santa Fe Meeting, February 6, 2002

QUESTION/ISSUE

Is the state of New Mexico required by federal law to have a WQMP?

RESPONSE

Yes. The Clean Water Act requires each state to develop a WQMP and to update it appropriately.

QUESTION/ISSUE

The New Mexico Water Quality Act addresses both surface and ground water. Does this plan deal with ground water?

RESPONSE

Yes. The WQMP has 9 required work elements, one of which includes ground water. The new Work Element 9 - Groundwater addresses groundwater, however, groundwater permits and concerns are handled through the Groundwater Bureau of the New Mexico Environment Department and the New Mexico Oil Conservation Division. Work Element 9 incorporates these programs by reference.

QUESTION/ISSUE

Some work elements that are being eliminated seem as though they should be ongoing projects, such as the population projections work element, yet they are being eliminated. Why?

RESPONSE

Many elements were defined as far back as 1978, and, as a result, many elements have been completed but never removed from the WQMP, others are inactive and being administered by individual programs, and other elements are simply outdated. This is the case with the population projection work element referred to in the question. When the WQMP was written there was not a simple process in place to determine population projections. With the advances in technology and the convenience of the Internet, population projections are readily available to be used in various types of analyses, and there is no longer a need for a detailed work element to explain how to derive the projections.

QUESTION/ISSUE

This draft WQMP is not user-friendly nor can it be understood by the general public. For example, the regulation for Work Element 6 requires “identification of implementation measures necessary to carry out the plan, including financing, the time needed to carry out the plan, and the economic, social, and environmental impact of carrying out the plan in accordance with section 208(b)(2)(E),” yet there is no real description of how the implementation will be financed aside from saying “utilize funding sources appropriate to the task.”

RESPONSE

The WQMP will be revised as necessary to accommodate all appropriate comments received through this public participation process. It was the intention of the SWQB to make the WQMP a document that is readily accessible and understandable to the general public, and based on this comment, perhaps this task has not been fully accomplished. The Surface Water Quality Bureau concurs portions of the document, especially explanatory sections such as the introduction could be expanded to provide more information. During this revision process the WQMP will be reviewed and expanded where appropriate to make it more clear and understandable. [Please see comments from the Farmington meeting suggesting the document be pared down.]

Suggestions from the audience for ways to improve Work Element 6 were to expand the section to include information about available grants and funding sources, and to add more information on the social and economic impacts of implementing this work element.

QUESTION/ISSUE

Why isn't the Anti-degradation policy addressed in the WQMP?

RESPONSE

The Anti-degradation policy is addressed in the Water Quality Standards (20.6.4NMAC) and Continuous Planning Process Document, therefore not in the WQMP.

QUESTION/ISSUE

Numerous references are included on the compact disk handed out tonight, but one reference that is missing is the Clean Water Act. Perhaps this can be included in the future.

RESPONSE

This is a very good suggestion and the Clean Water Act will be added to the compilation of references.

QUESTION/ISSUE

Creating this document in an electronic format makes it more accessible to the public via the Internet, however, smaller communities, such as Farmington, may not have good Internet access capabilities. The SWQB should investigate the internet capabilities of Farmington and other small communities in NM to ensure that the public does have access.

RESPONSE

While the SWQB strongly encourages the public to utilize the website, we also recognize that this technology is not accessible to everyone. Various media outlets are utilized to inform the public of priority issues and invite the public to participate. All documents produced by the SWQB are available upon request to any member of the public and SWQB staff would be glad to answer any questions. In response to this comment the SWQB developed an electronic version of the documents that is self-contained on a computer compact disk. This “disk version” will allow the same electronic access to the document(s) but will not require Internet access. The SWQB will provide a copy of the disk upon request.

While in Farmington, the SWQB did investigate what type of internet access was available at the local public library. The Farmington library was equipped with a high-speed internet access “T-1” line, and this technology was currently being installed in the Shiprock public library.

QUESTION/ISSUE

An audience member suggested that the WQMP be broken down into chapters to make downloading sections of the plan a little easier for people with slower internet access.

RESPONSE

Please see the above response regarding development of a “disk version” of the WQMP.

Farmington Meeting, February 7, 2002

QUESTION/ISSUE

Will the WQMP be available after the revisions are complete and it has been approved by the WQCC and the EPA?

RESPONSE

Yes, the final, approved version of the WQMP will be posted on our website at: www.nmenv.state.nm.us/swqb/swqb.html, or is available upon request by contacting the SWQB.

QUESTION/ISSUE

Usually planning documents are written looking forward into future activities. Why does this document seem to focus more on the history of developing the document and the history of some of the work elements?

RESPONSE

The current structure of the WQMP incorporates numerous other planning documents by reference. For example, the TMDLs are all incorporated into the WQMP via reference and each TMDL includes an implementation strategy which outline goals and future activities which would lead to an improved aquatic habitat. The SWQB felt that including the planning language in both the planning document and the WQMP would be redundant.

QUESTION/ISSUE

An audience member suggested that some of the background information included in the WQMP is not necessary and the document could be scaled down. They also didn't see the need to include each individual TMDL, and thought they could be included by reference to the TMDL Program, rather than each TMDL document.

RESPONSE

The SWQB feels that the background information and incorporation of various documents are useful to a reader unfamiliar with the programs defined in the WQMP. (It was suggested at a previous public meeting that we greatly expand the background sections). Through this revision process the SWQB will review the document and try to strike a balance between having too much information versus not enough. It is also important to note that we must meet the expectations of the EPA who approves the plan, and some guidelines have already been established, such as the inclusion of individual TMDL documents.

QUESTION/ISSUE

It was also suggested that placeholders for future TMDLs be included in the document, otherwise it gives the impression that there are no plans/TMDLs for the basins not covered as of yet.

RESPONSE

This suggestion is worth consideration. The SWQB is striving to develop a useful document on one hand but on the other does not want the document to become excessively large and therefore unwieldy.

QUESTION/ISSUE

It was noted that under Work Element 5 – Management Agencies includes tribal entities. If all of these entities are designated to receive funding from various grant and loan programs, and tribes consider themselves sovereign nations, is it the practice of the state to lend money to different nations?

RESPONSE

Two tribal entities have been accepted as designated management agencies and therefore do currently qualify to receive Section 201 construction grants funding.

QUESTION/ISSUE

Consider the following scenario: A stream was identified as impaired during a stream survey and a TMDL was written for the stream which identified potential sources of the impairment and recommended controls such as Best Management Practices (BMPs) that would need to be implemented to improve the stream and reduce the pollutant loading. Numerous landowners live along the stream, but a select few are not willing to voluntarily implement the BMPs. Would the SWQB hold the cooperating landowners responsible for reducing the pollutant loading attributed to the uncooperative landowners?

RESPONSE

No. Currently nonpoint sources are not regulated under the federal Clean Water Act thereby preventing TMDLs from being regulatory documents (although the point source load allocations calculated in the TMDL are regulated through the National Pollution Elimination Discharge System). In New Mexico, nonpoint sources are NOT regulated through a permit program. The NMED has for several years advocated and implemented a voluntary approach to nonpoint source pollution prevention. This approach has proven to be very effective in creating awareness of the nonpoint source pollution problem and consequently getting people to think about how they can actively prevent this type of pollution by making small and often simple and inexpensive changes in their behavior and/or management practices. For larger more expensive projects the NMED, in conjunction with the EPA, awards grants to fund innovative demonstration projects. It is, however, in the best interest of everyone throughout the state to begin thinking about the problem and actively try to decrease nonpoint source pollution.

QUESTION/ISSUE

Are there any significant changes to Work Element 2 – Effluent Limitations or Work Element 3 – Municipal and Industrial Waste?

RESPONSE

Essentially no. With this revision, the work elements referred to in the question have just been moved to different locations. However, as a result of this revision all current and upcoming approved TMDLs are incorporated into the WQMP by reference. As NPDES permits are reviewed or issued they must meet all federal permitting requirements as well as the allocations established in a TMDL if applicable.

QUESTION/ISSUE

If EPA was consistent with their guidelines for this WQMP, then why isn't each individual permit listed in the WQMP to be incorporated by reference (i.e. why can't TMDLs be treated in the same manner as permits and have the WQMP refer only to the Program, rather than each document)?

RESPONSE

The SWQB cannot speak for the EPA, but we are working closely with them to ensure the WQMP will meet their standards. We can speculate that the EPA requires TMDLs to be included because they are such a hot topic right now and a very high priority for all states. At this point including each TMDL is not a cumbersome task. It should also be noted that NPDES permits are federal regulatory documents issued by the EPA whereas the WQMP and TMDLs are state adopted planning documents.

QUESTION/ISSUE

Will the SWQB send a revised version of the WQMP which incorporates the comments received during the public comment period to the EPA prior to bringing it before the WQCC?

RESPONSE

Only if there are substantive changes that might affect EPA's ultimate approval of the document. The EPA reviewed the draft WQMP prior to public notice and provided a letter indicating the draft was technically acceptable (i.e., it met federal requirements).

QUESTION/ISSUE

Is there consistency between the water quality sampling methods utilized by the state versus those used by EPA?

RESPONSE

Yes. Our methods for water quality sampling are defined in the New Mexico Quality Assurance Project Plan, which must be approved by the EPA. Further, the New Mexico Water Quality Standards state in 20.6.4.13.A NMAC require (in part) "[a]ll methods of sample collection, preservation, and analysis used in determining water quality and maintenance of these standards shall be in accordance with approved or accepted test procedures published in ... 40 CFR 136, or any test procedure approved or accepted by EPA using procedures provided in 40 CFR 136.3(d), 136.4 and 136.5."

QUESTION/ISSUE

To follow up on the previous question, if the sampling methods are consistent with EPA's, why did they find some of the 24 toxic pollutants not previously detected in New Mexico (referring to an article in the Albuquerque Journal on an upcoming hearing to revise the state's surface water quality standards)? And why is New Mexico the only state not adopting these priority toxic pollutants?

RESPONSE

[It must be noted that the news article in question was not related to the Water Quality Management Plan.]

Response to Public Comments

The issue in question was not a result in differences in sampling technique. In the problem cited, the EPA had access to sample data that the Surface Water Quality Bureau had not previously seen. The EPA subsequently provided their data to the SWQB. Upon review, EPA's data became an element in the SWQB's separate initiative to revise New Mexico's Water Quality Standards. The SWQB's proposal in that matter was to adopt numerous priority toxic pollutant standards for the protection of human health.

QUESTION/ISSUE

The Soil Conservation Service receives numerous calls regarding the dredging and filling of wetlands. It is often difficult to determine whether a permit has been issued for these small projects. It also often takes an extended amount of time before someone from the NMED arrives to investigate. Is there a descriptive telephone directory for whom to call when these situations arise?

RESPONSE

Both the NMED website and the SWQB website do have information on who to contact regarding spills into watercourses. Currently there is not information available on either website to address suspicious dredging and filling activities, however, the Army Corps of Engineers does have this information available on their website, and based on this comment the SWQB will look into adding the information to the SWQB's website as well. Please keep in mind that there are limited staff resources to address this issue throughout the entire state.

The web address for the Army Corps of Engineers is: <http://www.spa.usace.army.mil/reg/>

The web address for the NMED is: <http://www.nmenv.state.nm.us/index.html>