

ATTACHMENT 1

PROPOSED AMENDMENTS TO 20.6.4.7 AND 20.6.4.8 NMAC

20.6.4.7 DEFINITIONS: Terms defined in the New Mexico Water Quality Act, but not defined in this part will have the meaning given in the Water Quality Act.

A. “Acute toxicity” means toxicity involving a stimulus severe enough to induce a response in 96 hours of exposure or less. Acute toxicity is not always measured in terms of lethality, but may include other toxic effects that occur within a short time period.

B. “Adjusted gross alpha” means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample, including radium-226, but excluding radon-222 and uranium. Also excluded are source, special nuclear and by-product material as defined by the Atomic Energy Act of 1954.

C. “Aquatic life” means any plant or animal life that uses surface water as primary habitat for at least a portion of its life cycle, but does not include avian or mammalian species.

D. “Attainable” means achievable by the imposition of effluent limits required under sections 301(b) and 306 of the Clean Water Act and implementation of cost-effective and reasonable best management practices for nonpoint source control.

E. “Best management practices” or “BMPs”:

(1) for national pollutant discharge elimination system (NPDES) permitting purposes means schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the pollution of “waters of the United States;” BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage; or

(2) for nonpoint source pollution control purposes means methods, measures or practices selected by an agency to meet its nonpoint source control needs; BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures; BMPs can be applied before, during and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters; BMPs for nonpoint source pollution control purposes shall not be mandatory except as required by state or federal law.

F. “Bioaccumulation” refers to the uptake and retention of a substance by an organism from its surrounding medium and food.

G. “Bioaccumulation factor” is the ratio of a substance’s concentration in tissue versus its concentration in ambient water, in situations where the organism and the food chain are exposed.

H. “Biomonitoring” means the use of living organisms to test the suitability of effluents for discharge into receiving waters or to test the quality of surface waters of the state.

I. “CAS number” means an assigned number by chemical abstract service (CAS) to identify a substance. CAS numbers index information published in chemical abstracts by the American chemical society.

J. “cfs” means cubic feet per second.

K. “cfu” means colony forming units.

L. “Chronic toxicity” means toxicity involving a stimulus that lingers or continues for a relatively long period relative to the life span of an organism. Chronic effects include, but are not limited to, lethality, growth impairment, behavioral modifications, disease and reduced reproduction.

M. “Classified water of the state” means a surface water of the state, or reach of a surface water of the state, for which the commission has adopted a segment description and has designated a use or uses and applicable water quality criteria in 20.6.4.101 through 20.6.4.899 NMAC.

N. “Coldwater” in reference to an aquatic life use means a surface water of the state where the water temperature and other characteristics are suitable for the support or propagation or both of coldwater aquatic life.

O. “Commission” means the New Mexico water quality control commission.

P. “Criteria” are elements of state water quality standards, expressed as constituent concentrations, levels or narrative statements, representing a quality of water that supports a use. When criteria are met, water quality will protect the designated use.

Q. “DDT and derivatives” means 4,4’-DDT (CAS number 50293), 4,4’-DDE (CAS number 72559) and 4,4’-DDD (CAS number 72548).

R. “Department” means the New Mexico environment department.

S. “Designated management agency” means an agency as defined by 40 C.F.R. Section 130.9(d).

[S]T. “Designated use” means a use specified in Sections 20.6.4.101 through 20.6.4.899 NMAC for a surface water of the state whether or not it is being attained.

[F]U. “Dissolved” means a constituent of a water sample that will pass through a 0.45-micrometer pore-size membrane filter under a pressure differential not exceeding one atmosphere. The “dissolved” fraction is also termed “filterable residue.”

[U]V. “**Domestic water supply**” means a surface water of the state that could be used for drinking or culinary purposes after disinfection.

[V]W. “**Escherichia coli**” or “**E. coli**” means a bacterial species that inhabits the intestinal tract of humans and other warm-blooded animals, the presence of which indicates the potential presence of pathogenic microorganisms capable of producing disease.

[W]X. “**Ephemeral**” when used to describe a surface water of the state means a water body that flows only in direct response to precipitation or snowmelt in the immediate locality; its bed is always above the water table of the adjacent region.

[X]Y. “**Existing use**” means a use actually attained in a surface water of the state on or after November 28, 1975, whether or not it is a designated use.

[Y]Z. “**Fecal coliform bacteria**” means the portion of the coliform group of bacteria present in the gut or the feces of warmblooded animals. It generally includes organisms capable of producing gas from lactose broth in a suitable culture medium within 24 hours at $44.5 \pm 0.2^{\circ}\text{C}$.

[Z]AA. “**Fish culture**” means production of coldwater or warmwater fishes in a hatchery or rearing station.

[AA]BB. “**Fish early life stages**” means the egg and larval stages of development of fish ending when the fish has its full complement of fin rays and loses larval characteristics.

[BB]CC. “**High quality coldwater**” in reference to an aquatic life use means a perennial surface water of the state in a minimally disturbed condition with considerable aesthetic value and superior coldwater aquatic life habitat. A surface water of the state to be so categorized must have water quality, stream bed characteristics and other attributes of habitat sufficient to protect and maintain a propagating coldwater aquatic life population.

[CC]DD. “**Intermittent**” when used to describe a surface water of the state means a water body that contains water only at certain times of the year, such as when it receives flow from springs, melting snow or precipitation.

[DD]EE. “**Interstate waters**” means all surface waters of the state that cross or form a part of the border between states.

[EE]FF. “**Intrastate waters**” means all surface waters of the state that are not interstate waters.

[FF]GG. “**Irrigation**” means application of water to land areas to supply the water needs of beneficial plants.

[GG]HH. “**LC-50**” means the concentration of a substance that is lethal to 50 percent of the test organisms within a defined time period. The length of the time period, which may vary from 24 hours to one week or more, depends on the test method selected to yield the information desired.

[HH]II. “**Limited aquatic life**” as a designated use, means the surface water is capable of supporting only a limited community of aquatic life. This subcategory includes surface waters that support aquatic species selectively adapted to take advantage of naturally occurring rapid environmental changes, ephemeral or intermittent water, high turbidity, fluctuating temperature, low dissolved oxygen content or unique chemical characteristics.

[II]JJ. “**Livestock watering**” means the use of a surface water of the state as a supply of water for consumption by livestock.

[JJ]KK. “**Marginal coldwater**” in reference to an aquatic life use means that natural intermittent or low flows, or other natural habitat conditions severely limit maintenance of a coldwater aquatic life population or historical data indicate that the maximum temperature in the surface water of the state may exceed 25°C (77°F).

[KK]LL. “**Marginal warmwater**” in reference to an aquatic life use means natural intermittent or low flow or other natural habitat conditions severely limit the ability of the surface water of the state to sustain a natural aquatic life population on a continuous annual basis; or historical data indicate that natural water temperature routinely exceeds 32.2°C (90°F).

[LL]MM. “**Micrograms per liter ($\mu\text{g/L}$)**” means micrograms of solute per liter of solution; equivalent to parts per billion when the specific gravity of the solution = 1.000.

[MM]NN. “**Milligrams per liter (mg/L)**” means milligrams of solute per liter of solution; equivalent to parts per million when the specific gravity of the solution = 1.000.

[NN]OO. “**Minimum quantification level**” means the minimum quantification level for a constituent determined by official published documents of the United States environmental protection agency.

[OO]PP. “**Natural causes**” means those causal agents that would affect water quality and the effect is not caused by human activity but is due to naturally occurring conditions.

[PP]QQ. “**Nonpoint source**” means any source of pollutants not regulated as a point source that degrades the quality or adversely affects the biological, chemical or physical integrity of surface waters of the state.

[QQ]RR. “**NTU**” means nephelometric turbidity units based on a standard method using formazin polymer or its equivalent as the standard reference suspension. Nephelometric turbidity measurements expressed in units of NTU are numerically identical to the same measurements expressed in units of FTU (formazin turbidity units).

[RR]SS. “**Organoleptic**” means the capability to produce a detectable sensory stimulus such as odor or taste.

[SS]TT. “**Playa**” means a shallow closed basin lake typically found in the high plains and deserts.

[TT]UU. “**Perennial**” when used to describe a surface water of the state means the water body contains water continuously throughout the year in all years; its upper surface, generally, is lower than the water table of the region adjoining the stream.

[UU]VV. “**Picocurie (pCi)**” means a measure of radioactivity equal to the quantity of a radioactive substance in which the rate of disintegrations is 2.22 per minute.

[VV]WW. “**Point source**” means any discernible, confined and discrete conveyance from which pollutants are or may be discharged into a surface water of the state, but does not include return flows from irrigated agriculture.

[WW]XX. “**Practicable**” means that which may be done, practiced or accomplished; that which is performable, feasible, possible.

[XX]YY. “**Primary contact**” means any recreational or other water use in which there is prolonged and intimate human contact with the water, such as swimming and water skiing, involving considerable risk of ingesting water in quantities sufficient to pose a significant health hazard. Primary contact also means any use of surface waters of the state for cultural, religious or ceremonial purposes in which there is intimate human contact with the water, including but not limited to ingestion or immersion, that could pose a significant health hazard.

[YY]ZZ. “**Secondary contact**” means any recreational or other water use in which human contact with the water may occur and in which the probability of ingesting appreciable quantities of water is minimal, such as fishing, wading, commercial and recreational boating and any limited seasonal contact.

[ZZ]AAA. “**Segment**” means a classified surface water of the state described in 20.6.4.101 through 20.6.4.899 NMAC. The water within a segment should have the same uses, similar hydrologic characteristics or flow regimes, and natural physical, chemical and biological characteristics and exhibit similar reactions to external stresses, such as the discharge of pollutants.

[AAA]BBB. “**Specific conductance**” means conductivity adjusted to 25°C.

[BBB]CCC. “**State**” means the state of New Mexico.

[CCC]DDD. “**Surface water(s) of the state**” means all surface waters situated wholly or partly within or bordering upon the state, including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, reservoirs or natural ponds. Surface waters of the state also means all tributaries of such waters, including adjacent wetlands, any manmade bodies of water that were originally created in surface waters of the state or resulted in the impoundment of surface waters of the state, and any “waters of the United States” as defined under the Clean Water Act that are not included in the preceding description. Surface waters of the state does not include private waters that do not combine with other surface or subsurface water or any water under tribal regulatory jurisdiction pursuant to Section 518 of the Clean Water Act. Waste treatment systems, including treatment ponds or lagoons designed and actively used to meet requirements of the Clean Water Act (other than cooling ponds as defined in 40 CFR Part 423.11(m) that also meet the criteria of this definition), are not surface waters of the state, unless they were originally created in surface waters of the state or resulted in the impoundment of surface waters of the state.

[DDD]EEE. “**TDS**” means total dissolved solids, also termed “total filterable residue.”

[EEE]FFF. “**Technology-based limitations**” means the application of technology-based effluent limitations as required under Section 301(b) of the federal Clean Water Act.

[FFF]GGG. “**Total**” means a constituent of a water sample that is analytically determined without filtration.

[GGG]HHH. “**Total PCBs**” means the sum of all homolog, all isomer, all congener or all aroclor analyses.

[HHH]III. “**Toxic pollutant**” means those pollutants, or combination of pollutants, including disease-causing agents, that after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will cause death,

shortened life spans, disease, adverse behavioral changes, reproductive or physiological impairment or physical deformations in such organisms or their offspring.

~~[HH]~~JJJ. **“Tributary”** means a perennial, intermittent or ephemeral waterbody that flows into a larger waterbody, and includes a tributary of a tributary.

~~[JJ]~~KKK. **“Turbidity”** is an expression of the optical property in water that causes incident light to be scattered or absorbed rather than transmitted in straight lines.

~~[KKK]~~LLL. **“Warmwater”** with reference to an aquatic life use means that water temperature and other characteristics are suitable for the support or propagation or both of warmwater aquatic life.

~~[LLL]~~MMM. **“Water contaminant”** means any substance that could alter if discharged or spilled the physical, chemical, biological or radiological qualities of water. “Water contaminant” does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, but may include all other radioactive materials, including but not limited to radium and accelerator-produced isotopes.

~~[MMM]~~NNN. **“Water pollutant”** means a water contaminant in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property.

~~[NNN]~~OOO. **“Water quality-based controls”** means effluent limitations, as provided under Section 301(b)(1)(C) of the federal Clean Water Act, that are developed and imposed on point-source dischargers in order to protect and maintain applicable water quality standards. These controls are more stringent than the technology-based effluent limitations required under other paragraphs of Section 301(b).

~~[OOO]~~PPP. **“Wetlands”** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico. Wetlands that are constructed outside of a surface water of the state for the purpose of providing wastewater treatment and that do not impound a surface water of the state are not included in this definition.

~~[PPP]~~QQQ. **“Wildlife habitat”** means a surface water of the state used by plants and animals not considered as pathogens, vectors for pathogens or intermediate hosts for pathogens for humans or domesticated livestock and plants.

[20.6.4.7 NMAC - Rp 20 NMAC 6.1.1007, 10-12-00; A, 7-19-01; A, 05-23-05; A, 07-17-05]

20.6.4.8 ANTIDegradation Policy and Implementation Plan:

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 unless the commission finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the state’s continuing planning process, that allowing lower water quality is necessary to accommodate important economic and social development in the area in which the water is located. In allowing such degradation or lower water quality, the state shall assure water quality adequate to protect existing uses fully. Further, the state shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable BMPs for nonpoint source control. Additionally, the state shall encourage the use of watershed planning as a further means to protect surface waters of the state.

(3) No degradation shall be allowed in ~~[high quality]~~ waters designated by the commission as outstanding national resource waters (ONRWs), except as provided in subparagraphs (a) through (d) of this paragraph.

(a) Temporary and short-term degradation of water quality shall be allowed only when such degradation is necessary to restore or maintain the chemical, physical or biological integrity of the ONRW and is consistent with the objectives in 20.6.4.6 NMAC.

(b) Temporary and short-term degradation of water quality shall last no longer than 12 months, unless a demonstration is made to the commission, the department or designated management agency, as appropriate, that longer term degradation is necessary to restore or maintain the chemical, physical or biological integrity of the ONRW.

(c) Temporary and short-term degradation shall only be approved on a case-by-case basis by the commission, the department or a designated management agency as appropriate. Temporary and short-term

degradation resulting from applications under 20.6.4.16 NMAC shall be considered and may be approved by the commission. All other temporary and short-term degradation shall be considered and may be approved by the department or by a designated management agency pursuant to a memorandum of agreement between the department and the designated management agency. In approving temporary and short-term degradation, the commission, the department or the designated management agency shall consider and minimize the frequency and cumulative effects of such degradation. The approval of temporary and short-term degradation shall not result in permanent degradation of water quality in the ONRW or water quality lower than necessary to protect existing uses in the ONRW.

(d) In implementing activities that may result in temporary and short-term degradation of water quality, all practical means of minimizing such temporary and short-term degradation shall be utilized.

(4) In those cases where potential water quality impairment associated with a thermal discharge is involved, this antidegradation policy and implementing method shall be consistent with Section 316 of the federal Clean Water Act.

(5) In implementing this section, the commission through the appropriate regional offices of the United States environmental protection agency will keep the administrator advised and provided with such information concerning the surface waters of the state as he or she will need to discharge his or her responsibilities under the federal Clean Water Act.

B. Implementation Plan: The department, acting under authority delegated by the commission, implements the water quality standards, including the antidegradation policy, by describing specific methods and procedures in the continuing planning process and by establishing and maintaining controls on the discharge of pollutants to surface waters of the state. The steps summarized in the following paragraphs, which may not all be applicable in every water pollution control action, list the implementation activities of the department. These implementation activities are supplemented by detailed antidegradation review procedures developed under the state's continuing planning process. The department:

(1) obtains information pertinent to the impact of the effluent on the receiving water and advises the prospective discharger of requirements for obtaining a permit to discharge;

(2) reviews the adequacy of existing data and conducts a water quality survey of the receiving water in accordance with an annually reviewed, ranked priority list of surface waters of the state requiring total maximum daily loads pursuant to Section 303(d) of the federal Clean Water Act;

(3) assesses the probable impact of the effluent on the receiving water relative to its attainable or designated uses and numeric and narrative criteria;

(4) requires the highest and best degree of wastewater treatment practicable and commensurate with protecting and maintaining the designated uses and existing water quality of surface waters of the state;

(5) develops water quality based effluent limitations and comments on technology based effluent limitations, as appropriate, for inclusion in any federal permit issued to a discharger pursuant to Section 402 of the federal Clean Water Act;

(6) requires that these effluent limitations be included in any such permit as a condition for state certification pursuant to Section 401 of the federal Clean Water Act;

(7) coordinates its water pollution control activities with other constituent agencies of the commission, and with local, state and federal agencies, as appropriate;

(8) develops and pursues inspection and enforcement programs to ensure that dischargers comply with state regulations and standards, and complements EPA's enforcement of federal permits;

(9) ensures that the provisions for public participation required by the New Mexico Water Quality Act and the federal Clean Water Act are followed;

(10) provides continuing technical training for wastewater treatment facility operators through the utility operators training and certification programs;

(11) provides funds to assist the construction of publicly owned wastewater treatment facilities through the wastewater construction program authorized by Section 601 of the federal Clean Water Act, and through funds appropriated by the New Mexico legislature;

(12) conducts water quality surveillance of the surface waters of the state to assess the effectiveness of water pollution controls, determines whether water quality standards are being attained, and proposes amendments to improve water quality standards;

(13) encourages, in conjunction with other state agencies, implementation of the best management practices set forth in the New Mexico statewide water quality management plan and the nonpoint source management program, such implementation shall not be mandatory except as provided by federal or state law;

(14) evaluates the effectiveness of BMPs selected to prevent, reduce or abate sources of water pollutants;

(15) develops procedures for assessing use attainment as required by 20.6.4.15 NMAC and establishing site-specific standards; and

(16) develops list of surface waters of the state not attaining designated uses, pursuant to Sections 305(b) and 303(d) of the federal Clean Water Act.

[20.6.4.8 NMAC - Rp 20 NMAC 6.1.1101, 10-12-00; A, 05-23-05]