

**MICHELLE LUJAN GRISHAM, GOVERNOR**

James C. Kenney, Cabinet Secretary

NEWS RELEASE*For Immediate Release***June 22, 2023**

The Environment Department's mission is to protect and restore the environment and to foster a healthy and prosperous New Mexico for present and future generations.

Contact: Matthew Maez, Communications Director
New Mexico Environment Department
505.670.8911 | matthew.maez@env.nm.gov

Environment Department shares potential state regulatory impacts resulting from the *Sackett v. U.S. Environmental Protection Agency* Supreme Court decision

Permit holders urged to progress carefully before implementing changes

SANTA FE — The New Mexico Environment Department (NMED) released a notice Thursday to industry and municipalities holding a federally issued Clean Water Act (CWA) discharge permit of the possible regulatory implications due to the recent U.S. Supreme Court decision in the matter of *Sackett v. EPA (Sackett)*. NMED's notice comes within one month of the U.S. Supreme Court's decision and is intended to protect New Mexico's water by alerting such permittees of important state laws and their requirements if the federally issued discharge no longer applies.

In *Sackett*, the court ruled wetlands that do not have a continuous, indistinguishable surface connection with "waters of the United States" (WOTUS) are not federally protected under the CWA. Consequently, industry and municipalities holding such permits may have questions regarding jurisdictional issues, including whether they are required to retain their federally issued CWA discharge permit based on the *Sackett* decision.

The U.S. Environmental Protection Agency (EPA) currently issues CWA discharge permits in New Mexico. There are approximately 3,950 active discharge permits in the state, including over 3,600 stormwater discharge permits and 350 industrial, feed lot, or other types of discharge permits.

If a discharge permit is no longer required because of the *Sackett* decision, New Mexico state laws may apply to wastewater treatment facilities, units and discharges as follows:

- An industrial or municipal wastewater treatment facility may be required to obtain a groundwater discharge permit pursuant to New Mexico Ground and Surface Water Protection regulations.
- An industrial or municipal wastewater treatment facility may be required to meet new terms and conditions of an existing groundwater discharge permit or require the issuance of a new groundwater discharge permit.
- An industrial or municipal wastewater treatment facility may be required to meet federal and state hazardous waste requirements.

"While regulatory questions may abound as a result the U.S. Supreme Court's decision, science and New Mexico law dictate that New Mexico must increase its protections of our limited and precious water

supply,” said **Environment Cabinet Secretary James Kenney**. “Aridification resulting from climate change and contamination from emerging contaminants like PFAS are examples of the many threats to New Mexico’s vital surface and groundwaters.”

NMED’s notice will inform industry and municipalities of potential environmental liabilities following the *Sackett* decision. The department anticipates additional guidance and state rules may be necessary to address the implications of the *Sackett* decision. NMED anticipates that the U.S. EPA may further clarify the regulatory framework resulting from the *Sackett* decision in the coming months. NMED will continue to update its website and social media on federal and state implications of the *Sackett* decision.

The notice provided to federally issued CWA discharge permittees is available [here](#).

###

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED’s non-discrimination programs, policies or procedures, you may contact: Kate Cardenas, Non-Discrimination Coordinator | NMED | 1190 St. Francis Dr., Suite N4050 | P.O. Box 5469 | Santa Fe, NM 87502 or (505) 827-2855 or nd.coordinator@env.nm.gov. If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator.

###