

December 1, 2023

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NMED Public Comment Portal
Proposed Water Reuse Regulation comments submitted to
<https://nmed.commentinput.com/?id=5mQracCuW>
and pw.environment@env.nm.gov

RE: ABCWUA Public Comment for proposed draft rule NMAC 20.6.8 Supplemental Requirements for Water Reuse

The Albuquerque Bernalillo County Water Utility Authority (Water Authority) appreciates the opportunity to comment on NMAC 20.6.8 regulations drafted by NM Environment Department (NMED) and posted for public comment during the period of November 1-December 1, 2023. The Water Authority is an active stakeholder in the water reuse permitting process and has been issued NMED discharge permits for non-potable, and potable water use purposes under the NM Administrative Code (NMAC) Title 20 Chapter 6 regulations.

The draft NMAC 20.6.8 regulations were issued for public comment as incomplete with section titles included but the text left blank to indicate future regulations will be developed. Definitions of terms are included for regulations that are not written. It is important for the clarity of public and stakeholder interpretation and understanding of the approved, published regulations that only the titles and definitions of the completed regulations are included for enforcement purposes. Regulations take years to draft, get approved and implement and it is not helpful to have incomplete requirements published for enforcement. Due to the extensive nature and need for consistent requirements statewide to meet the needs of both large and small utilities working to diversify water supplies for public consumption, the Water Authority supports collaborative regulation development with the stakeholders whenever possible.

The objective in NMAC 20.6.8.6 of the proposed part 8 should be structured like the supplemental discharge permitting requirements in parts 6 and 7, where the content is limited to the supplemental discharge permitting requirements for water reuse permit applications. General requirements outside of supplemental permitting requirements should be updated in the appropriate sections of NMAC 20.6.2 to maintain clear and organized requirements for permittees. The NM Environment Department with the Water Quality Control Commission's approval maintains primacy requirements for the Environmental Protection Agency's (EPA) Safe Drinking Water Act Underground Injection Control (UIC) federal regulations, such that any further state regulations on class V injection wells, including those for groundwater remediation or aquifer storage purposes should be developed under the primacy program for UIC already defined in NMAC 20.6.2.5000.

The definitions listed in draft NMAC 20.6.8.7 are problematic and unclear. Most of the definitions listed have no relevance to the regulations drafted and some can easily create inappropriate interpretation. The Water Authority recommends that all words defined that are not listed in the regulations should be removed from the definitions section of the draft for clarity. Specifically, the Water Authority is concerned with the implication of terms in the definitions section of regulation such as "commercial or industrial application", where the application defined does not include water being discharged to the ground with the ability to impact surface or ground water and therefore should not be included in the scope of these regulations. Another

problematic term is “defacto application”, which is vague in purpose or how it relates to other defined applications and seems irrelevant to the regulations as written.

The definitions listed in draft NMAC 20.6.8.7 that are expected to be included in the regulatory language also require revisions. The term “fit for purpose” is not well defined or measurable and does not add any clarity to the regulation that it is used in. This term as defined brings value or economic assessment beyond water quality to the regulations that is not appropriate or helpful. The NM Office of the State Engineer uses the legal term “beneficial use” to be able to prioritize how quantities of water are distributed throughout New Mexico, especially in times of shortage. In water reuse regulations, the NMED objective is to protect surface and groundwaters of the state from contamination, not to further assess the value of reuse discharges when they are meeting water quality compliance requirements. Communities should be allowed to decide how non-potable water reuse can be applied locally in a beneficial way based on the local needs and resources available when the overall water quality requirements are met. The Water Authority recommends that the term “fit for purpose” is removed from the definitions and regulatory language in draft NMAC 20.6.8.400. The defined term “direct potable” has an error that should be corrected, the word “community” should be changed to “public” to match the intended use of an EPA defined public water system.

The draft NMAC 20.6.8.201 Direct and Indirect Potable Applications section is incomplete and unclear. Like the commercial or industrial applications definitions described previously, the direct potable application of reuse water by definition does not include any application of treated water onto the land, which could impact the quality of surface and ground waters of the state and should not be included. The regulations in this section should be removed or clarified that the treated water being applied to the ground is the only context where these regulations apply. Similarly, the indirect potable reuse discharge permit relevant to this regulation section would also define any additional water quality requirements to discharge treated wastewater onto the ground or to a watercourse. It is unclear from the regulatory language listed here why or when a feasibility study is required before applying for a NMED ground water discharge permit (NMAC 20.6.2.3104) or surface water discharge requirements covered by NMAC 20.6.2.2100. There is no process or criteria defined that will allow approval of the feasibility study to submit the subsequent discharge permit application to NMED. These regulations or the definitions section should define and explain why discharge permits should have different or more stringent requirements when public water systems are using the well or surface water for potable supply purposes. Today the Water Authority and other utilities utilize both of these types of drinking water supply sources already and groundwater wells are drilled and used routinely for residential drinking water purposes statewide. Treatment techniques required to meet drinking water standards for public water systems are defined under the EPA Safe Drinking Water Act and NM primacy requirement maintenance is managed by the NMED Drinking Water Bureau with approval of the NM Environmental Improvement Board. Public water system requirements should not be addressed in this section of the NMAC.

The title for draft NMAC 20.6.8.300 is Industrial Wastewater Reuse, however only industrial application or industrial supply water is addressed in the definitions. If future development of this section of the regulations is intended to add specific requirements to ground water discharge permits that include mixed or industrial sources of water prior to treatment and discharge, it should be defined more clearly. Typical mixed source, large municipality wastewater includes some industrial sources of wastewater discharge into the sewer systems, but for example the Water Authority also has NPDES pretreatment programs to manage for any prohibited discharges before it reaches the environment.

Finally in draft NMAC 20.6.8.400 Produced Water Reuse as described in the definitions section comments, the term "fit for purpose" has subjective meaning and does not add value to the regulations as listed. The Water Authority recommends the deletion of the term "fit for purpose" from these regulations.

The Water Authority appreciates the opportunity to participate in the public comment process for NMED regulation development. Water reclamation and reuse is highly valued as an important component of diversifying the community water supply to be able to plan for future demands. I can be reached at dshuryn@abcwua.org or 505-803-1970 for any further information on the comments provided.

Respectfully,

A handwritten signature in blue ink, appearing to read "Danielle Shuryn". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Danielle Shuryn
Compliance Division Manager