

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION



No. WQCC-17-03

IN THE MATTER OF PROPOSED)
AMENDMENTS TO GROUND)
AND SURFACE WATER)
PROTECTION REGULATIONS)
20.6.2 NMAC)

ENVIRONMENTAL QUALITY ASSOCIATION SUBSECTION, NEW MEXICO
MUNICIPAL LEAGUE COMMENTS ON NEW MEXICO ENVIRONMENT
DEPARTMENT'S PETITION TO AMEND GROUND AND SURFACE WATER
PROTECTION REGULATIONS (20.6.2 NMAC)

In the matter of WQCC-17-03, the Environmental Quality Association Subsection of the New Mexico Municipal League (NMML) does not support the following changes included in the New Mexico Environment Department (NMED) petition.

Regarding 20.6.2.7.T NMAC – Definition “toxic pollutant”:

- NMED proposed to add two new pollutants that were not included in previous drafts. Prometon and sulfolane (thiolane 1,1 dioxide) are two examples.

NMED explains in Paragraph #4 in the Statement of Reasons:

“In the Definitions section, the Department proposes to add several toxic pollutants in order to enable regulation of these dangerous constituents for the protection of human health....”

These pollutants are not currently regulated by the Safe Drinking Water program. The process for determining “standards for toxic pollutants” as described by the current rule language is very general. The actual “standards” are not subject to public comment. According to the New Mexico Statute, the commission:

“D. shall adopt water quality standards for surface and ground waters of the state based on credible scientific data and other evidence appropriate under the Water Quality Act. ...” 74-6-4 NMSA 1978

“Scientific information currently available to the public” needs to be peer reviewed before translating to a regulatory standard outside of the rulemaking process. The NMED should propose numeric standards to regulate them instead of merely adding them to the list of toxic pollutants. The numeric standards provide a process for consistent regulation of contaminants not previously included in the rule. If additional pollutants are added to the list of toxic pollutants, NMED should provide specific reasons to justify the addition for each new pollutant.

45 Regarding 20.6.2.3103 NMAC – Standards for Ground Water of 10,000 mg/L TDS or less.

- 46 • NMED's petition includes revisions to some numeric standards to match the federal Safe
47 Drinking Water program Maximum Contaminant Levels (MCLs). However, NMED was
48 not consistent with changing existing standards to match MCLs. NMED stated in
49 paragraph #7 of the statement of reasons:

50 *"..the Department proposes changes to the numeric standards to bring those*
51 *standards in line with the Maximum Contaminant Levels for each pollutant as*
52 *specified by the U.S. Environmental Protection Agency ("EPA") under the*
53 *federal Clean Water Act. The Department is not proposing changes to certain*
54 *existing standards that are more stringent than current EPA standards in order to*
55 *protect public health and welfare...."*

56 NMED did not list which "certain existing standards" were not changed to protect public
57 health and welfare. NMED was not consistent with that position. The numeric standards
58 for barium, toluene, 1,1-dichloroethylene (1,1 DCE), and vinyl chloride were increased to
59 the MCLs, but the numeric standards for chromium, fluoride and total xylenes remain the
60 same. The changes should be consistent. Therefore, the numeric standards for chromium,
61 fluoride and total xylenes should be increased to match the MCLs (0.1 mg/L, 4.0 mg/L
62 and 10, 000 mg/L, respectively).

- 63 • NMED proposes to strike some of the language in the definition of "toxic pollutants"
64 20.6.2.7.WW NMAC and move the bulk of that language to Subsection 20.6.2.3103.A.
65 NMAC to create "narrative" standards.

66 ~~"20.6.2.7.[WW]T(2) "toxic pollutant: means [a water contaminant or~~
67 ~~combination of water contaminants in concentration(s) which, upon exposure,~~
68 ~~ingestion, or assimilation either directly from the environment or indirectly by~~
69 ~~ingestion through food chains, will unreasonably threaten to injure human health,~~
70 ~~or the health of animals or plants which are commonly hatched, bred, cultivated~~
71 ~~or protected for use by man for food or economic benefit; as used in this~~
72 ~~definition injuries to health include death, histopathologic change, clinical~~
73 ~~symptoms of disease, behavioral abnormalities, genetic mutation, physiological~~
74 ~~malfunctions or physical deformations in such organisms or their offspring; in~~
75 ~~order to be considered a toxic pollutant a contaminant must be one or a~~
76 ~~combination of the potential toxic pollutants listed below and be at a~~
77 ~~concentration shown by scientific information currently available to the public to~~
78 ~~have potential for causing one or more of the effects listed above;] any water~~
79 ~~contaminant or combination of the water contaminants in the list below[creating~~
80 ~~a lifetime risk of more than one cancer per 100,000 exposed persons is a toxic~~
81 ~~pollutant]:...."~~

82
83 **20.6.2.3103.A. Human Health Standards**~~[-Ground water shall meet the~~
84 ~~standards of Subsection A and B of this section unless otherwise provided. If~~
85 ~~more than one water contaminant affecting human health is present, the toxic~~
86 ~~pollutant criteria as set forth in the definition of toxic pollutant in Section~~
87 ~~20.6.2.1101 NMAC for the combination of contaminants, or the Human Health~~

~~Standard of Subsection A of Section 20.6.2.3103 NMAC for each contaminant shall apply, whichever is more stringent. Non aqueous phase liquid shall not be present floating atop of or immersed within ground water, as can be reasonably measured.]~~

(1) Numerical Standards....

(2) Standards for Toxic Pollutants. A concentration shown by existing scientific information currently available to the public to have potential for causing one or more of the following effects upon exposure, ingestion, or assimilation either directly from the environment or indirectly by ingestion through food chains: (1) unreasonably threatens to injure human health, or the health of animals or plants which are commonly hatched, bred, cultivated or protected for use by man for food or economic benefit; as used in this definition injuries to health include death, histopathologic change, clinical symptoms of disease, behavioral abnormalities, genetic mutation, physiological malfunctions or physical deformations in such organisms or their offspring; or (2) creates a lifetime risk of more than one cancer per 100,000 exposed persons.

NMED explains in Paragraph #7 in the Statement of Reasons:

"... The Department also proposes to move the narrative standard for toxic pollutants to 20.6.2.3103 NMAC."

This change is significant. The language, in the current location (20.6.2.7.WW), applied solely to the toxic pollutants contained within the definition of "toxic pollutant." By moving the language to a new subsection for "Standards for Toxic Pollutants", this has the potential to expand beyond the list within the definition. NMED needs to codify the approach it follows for coming up with the "standards" to prevent those health effects. The general language circumvents the public participation process. If this proposal is retained, this provision should only be applied to the list of pollutants contained within the definition of "toxic pollutants".

- NMED proposes to add language to the note at the end of the section to describe the implementation timeline for the more stringent standards and clarification for sites with approved abatement plans based on the current standards. The language regarding the clarification of sites with approved abatement plans should be included within the rule, not within a note. The NMML proposes that the last sentence of the note be deleted and the following text be added to the newly formatted Section 20.6.2.4103.C. NMAC.

20.6.2.4103 ABATEMENT STANDARDS AND REQUIREMENTS:

C. Ground-water pollution at any place of withdrawal for present or reasonably foreseeable future use, where the TDS concentration is 10,000 mg/L or less, shall be abated to meet:

(1) the standards of Section 20.6.2.3103 NMAC,

(2) the standards specified in an abatement completion report pursuant to Section 20.6.2.4112 NMAC approved by the NMED Secretary prior to [the effective date of the revisions to Section 20.6.2.3103 NMAC], or

(3) if the NMED Secretary notified the responsible person that the site is a source of contaminants in ground water at a place of withdrawal for

134 present or reasonably foreseeable future use at concentrations in excess of
135 the standards of 20.6.2.3103 NMAC, then the applicable standards of
136 Section 20.6.2.3103 NMAC shall apply.

137 ~~[conform to the following standards:~~

138 ~~(1) toxic pollutant(s) as defined in Section 20.6.2.1101 NMAC~~
139 ~~shall not be present; and~~

140 ~~(2) the standards of Section 20.6.2.3103 NMAC shall be met.]~~

141 Regarding 20.6.2.3105.A. NMAC - Exemptions form Discharge Permit Requirement.

142 • NMED proposes to require a discharge permit if "treatment and blending is required to
143 achieve" the numerical standards listed in 20.6.2.3103 NMAC. In Paragraph #8 of the
144 Statement of Reasons, NMED stated that this "clarification" is necessary:

145 *"...because the existing language, which was adopted in 1977, does not account*
146 *for modern wastewater treatment technology, thus leaving a potential loophole*
147 *for certain dischargers to avoid regulation, contrary to the intent of the original*
148 *Rules. This language also codifies historical and current practice. Discharge*
149 *permits establish conditions that ensure that the treatment and blending necessary*
150 *to achieve the numeric standards of 20.6.2.3103 NMAC are met."*

151 If this caveat is added to Section 20.6.2.3105 NMAC, it is likely that no scenarios would
152 qualify for this exemption. The NMML proposes additional language for this exemption
153 in the following section.

154 Regarding 20.6.2.5006 NMAC - Discharge Permits for Class V Injection Wells.

155 • NMED proposes to eliminate the exemption for recharge projects (i.e. requiring a ground
156 water discharge permit for recharge projects). In Paragraph #18 of the Statement of
157 Reasons, NMED stated:

158 *"...the Department proposes eliminating the exemptions of 20.6.2.3105 NMAC*
159 *for Underground Storage and Recovery Projects, in order to provide more*
160 *protection for New Mexico's aquifers and provide for public involvement in the*
161 *permitting process."*

162
163 Underground storage of excess water in times of plenty is a key technology for
164 addressing the strain climate change will put on water resources in the Southwest and
165 because permitting and monitoring requirements can make these projects financially
166 untenable, the NMML proposes that the exemption should be as follows:

167
168 20.6.2.3105 EXEMPTIONS FROM DISCHARGE PERMIT
169 REQUIREMENT: Sections 20.6.2.3104 and 20.6.2.3106 NMAC do not apply to
170 the following:
171 A. Effluent or leachate which conforms to all the listed ~~[numerical]~~ standards
172 of Section 20.6.2.3103 NMAC and has a total nitrogen concentration of 10 mg/l
173 or less~~[, and does not contain any toxic pollutant]~~. If treatment or blending is
174 required to achieve these standards this exemption does not apply except for

175 recharge projects used to replenish the water in an aquifer where the source water
176 meets all drinking water standards and the source water chemistry is shown to be
177 compatible with the chemistry of the ground water. To determine conformance,
178 samples may be taken by the agency before the effluent, [ø] leachate or other
179 source water is discharged so that it may move directly or indirectly into ground
180 water; provided that if the discharge is by seepage through non-natural or altered
181 natural materials, the agency may take samples of the solution before or after
182 seepage. If for any reason the agency does not have access to obtain the
183 appropriate samples, this exemption shall not apply;

184
185 20.6.2.5006 DISCHARGE PERMIT REQUIREMENTS FOR CLASS V
186 INJECTION WELLS: Class V injection wells must meet the requirements of
187 Sections 20.6.2.3000 through 20.6.2.3999 and Sections 20.6.2.5000 through
188 20.6.2.[5006]5005 NMAC. Class V injection wells or surface impoundments
189 constructed as recharge basins used to replenish the water in an aquifer, including
190 use to reclaim or improve the quality of existing water, must additionally provide
191 documentation of compliance with 19.25.5 NMAC (Underground Storage and
192 Recovery) and shall not be subject to the exemptions of 20.6.2.3105 NMAC. If
193 the exemption in Section 20.6.2.3105.A. does not apply for a recharge basin
194 project, a discharge permit shall be required as follows:

195 A. Monitoring will be required for only those contaminants shown to be
196 present in the source water or which have the potential to be mobilized during
197 injection or infiltration; and

198 B. The permittee shall have the opportunity to petition to eliminate or reduce
199 sampling requirements after two years or four rounds of sampling, whichever
200 comes first.

201
202 The NMML proposes the above change to Section 20.6.2.3105.A NMAC because when
203 the source water is drinking water it is already highly regulated by the Safe Drinking
204 Water Act. This exemption is similar to discharges permitted by the National Pollutant
205 Discharge Elimination System (NPDES) that are covered by Section 20.6.2.3105.F.
206 NMAC. The owner/operator would only need to verify that the source water is
207 compatible with the ground water. Without this exemption, the additional costs for
208 permitting and monitoring are significant disincentives to recharging projects.

209
210 In addition, the NMML proposes the above changes to Section 20.6.2.5006 NMAC to
211 narrow the scope of monitoring requirements to only contaminants contained in the
212 source water.