

NMAC Transmittal Form

Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address: Agency DFA code:

Contact person's name: Phone number: E-mail address:

Type of rule action: (ALD Use Only) Most recent filing date:
New Amendment Repeal Emergency Renumber

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

Amendment description (If filing an amendment): Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes No Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes No Public domain

Concise Explanatory Statement For Rulemaking Adoption:

Specific statutory or other authority authorizing rulemaking:

Water Quality Act, Subsection E of Section 74-6-4, NMSA 1978; Section 74-6-6, NMSA 1978; State Rules Act, Sections 14-4-1 through -11, NMSA 1978.

Notice date(s): Hearing date(s): Rule adoption date: Rule effective date:

Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

In accordance with the authority vested in it by Subsection D of Section 74-6-4, NMSA 1978 to adopt water quality standards for surface and ground waters of the state, and Subsection E of Section 74-6-4, NMSA 1978 to adopt regulations to prevent and abate water pollution, the New Mexico Water Quality Control Commission (the "Commission") held a public hearing beginning on November 14, 2017 and ending on November 17, 2017, to amend Rule 20.6.2 NMAC, which sets forth regulations governing ground

Continued on next page

Findings required for rulemaking adoption:

continued

and surface water quality. The hearing was held on a rulemaking petition filed by the Ground Water Quality Bureau of the New Mexico Environment Department (the "Department") requesting the Commission to amend Rule 20.6.2 NMAC to incorporate important regulatory updates in the Rule, which was originally adopted in 1977 and had not been substantially amended since 2001. Following the hearing, the Commission adopted numerous substantive and technical amendments to the Rule, including the following key provisions:

- Addition of several toxic pollutants to the definition of "toxic pollutants" in 20.6.2.7 NMAC to enable regulation of these dangerous constituents for the protection of human health.
- Moving the narrative standard for toxic pollutants from the "definitions" section in 20.6.2.7 NMAC to the groundwater standards section in 20.6.2.3103 NMAC.
- Addition of a new "Limitations" section at 20.6.2.10 NMAC that mirrors the limitations set forth in Section 74-6-12 of the Water Quality Act.
- Amendments throughout the Rule to align with the recently adopted Geothermal Resources Development Act, Sections 71-9-1 to -11, NMSA 1978, recognizing geothermal energy as a resource in excess of 250 degrees Fahrenheit regulated by the Energy Conservation and Management Division of the Energy, Minerals and Natural Resources Department.
- Modifications to 20.6.2.1210 NMAC to allow variances for periods longer than five (5) years if approved by the Commission, while providing that any variance must be reviewed by the Department at five (5) year intervals.
- Changes to most of the numeric groundwater standards at 20.6.2.3103 NMAC to bring those standards in line with the Maximum Contaminant Levels ("MCLs") for each pollutant as specified by the U.S. Environmental Protection Agency ("EPA") under the federal Clean Water Act. Existing standards for fluoride, chromium, and xylenes that are more stringent than current EPA standards were retained in order to protect public health.
- Changes to 20.6.2.3108 and 3109 NMAC extending the time period for the Department to determine whether a discharge permit application is administratively complete; requiring the Department to include certain information in draft discharge permits; requiring the Department to issue fact sheets in connection with draft permits for certain permits for Federal facilities; and requiring the Secretary to issue a response to comments containing specified information in connection with the approval or disapproval of a discharge permit, modification, or renewal.
- Addition of a provision in Subsection A of 20.6.2.4103 NMAC recognizing the Department's authority to regulate vapor intrusion under the Water Quality Act.
- Restructuring of the provisions on technical infeasibility and alternative abatement standards in 20.6.2.4103 NMAC to recognize technical infeasibility as one basis for obtaining an alternative abatement standard; related to changes to 20.6.2.4108, requiring public notice of petitions for alternative abatement standards, as well as a public hearing before the Commission before any alternative abatement standards are approved, in conformance with the Water Quality Act.
- At Subsections D and E of 20.6.2.4103 NMAC, changes to required sampling frequency for demonstrating completion of abatement and technical infeasibility for alternative abatement petitions.
- Changes to 20.6.2.4104 recognizing the Secretary's authority to require financial assurance for all abatement plans, as well as a funding mechanism for complex sites in order to assure that abatement plans approved by the Commission are financially viable.
- Changes to 20.6.2.5004 NMAC of the Underground Injection Control ("UIC") regulations to include geochemical and geophysical parameters that must be met to allow operation of certain types of UIC wells.
- Addition of language at 20.6.2.5006 NMAC clarifying that ASR projects are not exempt from the UIC permitting regulations.

On July 10 and September 11, 2018, the Commission deliberated on the proposed amendments, voting to approve the amendments on September 11, 2018. On November 8, 2018, the Commission issued a signed order and statement of reasons amending 20.6.2 NMAC, formally adopting the amendments. The order and statement of reasons "is the official version of the commission's action" pursuant to Subsection F of 20.1.6.306 NMAC. The statement of reasons includes the findings required by law, the Commission's independent analysis, an explanation of the differences between the amendments first proposed and the amendments eventually adopted, and an explanation of the consideration given all substantive arguments. The Rule will become effective 30 days after it is filed in accordance with the State Rules Act, pursuant to Subsection E of Section 74-6-6, NMSA 1978.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Larry Dominguez

Check if authority has been delegated

Title:

Chair, New Mexico Water Quality Control Commission

Signature: (BLACK ink only)

Larry J. Dominguez

Date signed:

11-16-18

2018 NOV 21 AM 9:13

This is an amendment to Sections 7, 10, 1203, 1210, 3102, 3105 through 3109, 3112, 3114, 4101, 4103 through 4106, 4108, 4109, 4114, 5002 through 5006, 5101, 5102, 5202, 5206, and 5209 of 20.6.2 NMAC, effective December 21, 2018.

Throughout this part, the word “groundwater” was replaced with the words “ground water” and spelling errors were corrected.

20.6.2.7 DEFINITIONS: ~~[Terms]~~ The following terms, as used in this part shall have the following meanings; terms defined in the Water Quality Act, but not defined in this part, will have the meaning given in the act. ~~[As used in this part:]~~

A. ~~_____~~ Definitions that begin with the letter “A.”

~~_____~~ (1) **“abandoned well”** means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be rehabilitated for its intended purpose or other purposes including monitoring and observation;

~~[B.]~~ (2) **“abate” or “abatement”** means the investigation, containment, removal or other mitigation of water pollution;

~~[C.]~~ (3) **“abatement plan”** means a description of any operational, monitoring, contingency and closure requirements and conditions for the prevention, investigation and abatement of water pollution, and includes Stage 1, Stage 2, or Stage 1 and 2 of the abatement plan, as approved by the secretary;

~~[D.]~~ (4) **“adjacent properties”** means properties that are contiguous to the discharge site or property that would be contiguous to the discharge site but for being separated by a public or private right of way, including roads and highways.

~~[E.]~~ **B. Definitions that begin with the letter “B.”** **“background”** means, for purposes of ground water abatement plans only and for no other purposes in this part or any other regulations including but not limited to surface water standards, the amount of ground water contaminants naturally occurring from undisturbed geologic sources or water contaminants which the responsible person establishes are occurring from a source other than the responsible person's facility; this definition shall not prevent the secretary from requiring abatement of commingled plumes of pollution, shall not prevent responsible persons from seeking contribution or other legal or equitable relief from other persons, and shall not preclude the secretary from exercising enforcement authority under any applicable statute, regulation or common law;

~~[F.]~~ **C. Definitions that begin with the letter “C.”**

~~_____~~ (1) **“casing”** means pipe or tubing of appropriate material, diameter and weight used to support the sides of a well hole and thus prevent the walls from caving, to prevent loss of drilling mud into porous ground, or to prevent fluid from entering or leaving the well other than to or from the injection zone;

~~[G.]~~ (2) **“cementing”** means the operation whereby a cementing slurry is pumped into a drilled hole and/or forced behind the casing;

~~[H.]~~ (3) **“cesspool”** means a **“drywell”** that receives untreated domestic liquid waste containing human excreta, and which sometimes has an open bottom and/or perforated sides; a large capacity cesspool means a cesspool that receives liquid waste greater than that regulated by 20.7.3 NMAC;

~~[I.]~~ (4) **“collapse”** means the structural failure of overlying materials caused by removal of underlying materials;

~~[J.]~~ (5) **“commission”** means:

~~[(1)]~~ (a) the New Mexico water quality control commission or

~~[(2)]~~ (b) the department, when used in connection with any administrative and enforcement activity;

~~[K.]~~ (6) **“confining zone”** means a geological formation, group of formations, or part of a formation that is capable of limiting fluid movement from an injection zone;

~~[L.]~~ (7) **“conventional mining”** means the production of minerals from an open pit or underground excavation; underground excavations include mine shafts, workings and air vents, but does not include excavations primarily caused by in situ extraction activities;

M.D. Definitions that begin with the letter “D.”

(1) **“daily composite sample”** means a sample collected over any twenty-four hour period at intervals not to exceed one hour and obtained by combining equal volumes of the effluent collected, or means a sample collected in accordance with federal permit conditions where a permit has been issued under the national pollutant discharge elimination system or for those facilities which include a waste stabilization pond in the treatment process where the retention time is greater than twenty (20) days, means a sample obtained by

compositing equal volumes of at least two grab samples collected within a period of not more than twenty-four (24) hours;

[N.] (2) “department”, “agency”, or “division” means the New Mexico environment department or a constituent agency designated by the commission;

[O.] (3) “discharge permit” means a discharge plan approved by the department;

[P.] (4) “discharge permit modification” means a change to the requirements of a discharge permit that result from a change in the location of the discharge, a significant increase in the quantity of the discharge, a significant change in the quality of the discharge; or as required by the secretary;

[Q.] (5) “discharge permit renewal” means the re-issuance of a discharge permit for the same, previously permitted discharge;

[R.] (6) “discharge plan” means a description of any operational, monitoring, contingency, and closure requirements and conditions for any discharge of effluent or leachate which may move directly or indirectly into ground water;

[S.] (7) “discharge site” means the entire site where the discharge and associated activities will take place;

[T.] (8) “disposal” means to abandon, deposit, inter or otherwise discard a fluid as a final action after its use has been achieved;

[U.] (9) “domestic liquid waste” means human excreta and water-carried waste from typical residential plumbing fixtures and activities, including but not limited to waste from toilets, sinks, bath fixtures, clothes or dishwashing machines and floor drains;

[V.] (10) “domestic liquid waste treatment unit” means a watertight unit designed, constructed and installed to stabilize only domestic liquid waste and to retain solids contained in such domestic liquid waste, including but not limited to aerobic treatment units and septic tanks;

[W.] (11) “drywell” means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids;

[X.]E. Definitions that begin with the letter “E.” “experimental technology” means a technology which has not been proven feasible under the conditions in which it is being tested;

[Y.]F. Definitions that begin with the letter “F.” “fluid” means material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state;

[Z.]G. Definitions that begin with the letter “G.” “ground water” means interstitial water which occurs in saturated earth material and which is capable of entering a well in sufficient amounts to be utilized as a water supply;

[AA.]H. Definitions that begin with the letter “H.” “hazard to public health” exists when water which is used or is reasonably expected to be used in the future as a human drinking water supply exceeds at the time and place of such use, one or more of the [numerical] standards of Subsection A of 20.6.2.3103 NMAC, or the naturally occurring concentrations, whichever is higher ~~[, or if any toxic pollutant affecting human health is present in the water;]~~ in determining whether a discharge would cause a hazard to public health to exist, the secretary shall investigate and consider the purification and dilution reasonably expected to occur from the time and place of discharge to the time and place of withdrawal for use as human drinking water;

[BB.]I. Definitions that begin with the letter “I.”

(1) “improved sinkhole” means a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface;

[CC.] (2) “injection” means the subsurface emplacement of fluids through a well;

[DD.] (3) “injection zone” means a geological formation, group of formations, or part of a formation receiving fluids through a well;

[EE.]J. Definitions that begin with the letter “J.” [RESERVED]

K. Definitions that begin with the letter “K.” [RESERVED]

L. Definitions that begin with the letter “L.” [RESERVED]

M. Definitions that begin with the letter “M.” “motor vehicle waste disposal well” means a well which receives or has received fluids from vehicular repair or maintenance activities;

[FF.]N. Definitions that begin with the letter “N.” “non-aqueous phase liquid” means an interstitial body of liquid oil, petroleum product, petrochemical, or organic solvent, including an emulsion containing such material;

[GG.]O. Definitions that begin with the letter “O.”

(1) **“operational area”** means a geographic area defined in a project discharge permit where a group of wells or well fields in close proximity comprise a single class III well operation;

[HH.] (2) **“owner of record”** means an owner of property according to the property records of the tax assessor in the county in which the discharge site is located at the time the application was deemed administratively complete;

[H.]P. Definitions that begin with the letter “P.”

 (1) **“packer”** means a device lowered into a well to produce a fluid-tight seal within the casing;

[JJ.] (2) **“person”** means an individual or any other entity including partnerships, corporation, associations, responsible business or association agents or officers, the state or a political subdivision of the state or any agency, department or instrumentality of the United States and any of its officers, agents or employees;

[KK.] (3) **“petitioner”** means a person seeking a variance from a regulation of the commission pursuant to Section 74-6-4~~(G)~~(H) NMSA 1978;

[LL.] (4) **“plugging”** means the act or process of stopping the flow of water, oil or gas into or out of a geological formation, group of formations or part of a formation through a borehole or well penetrating these geologic units;

[MM.] (5) **“project discharge permit”** means a discharge permit which describes the operation of similar class III wells or well fields within one or more individual operational areas;

[NN.]Q. Definitions that begin with the letter “Q.” [RESERVED]

R. Definitions that begin with the letter “R.”

 (1) **“refuse”** includes food, swill, carrion, slops and all substances from the preparation, cooking and consumption of food and from the handling, storage and sale of food products, the carcasses of animals, junked parts of automobiles and other machinery, paper, paper cartons, tree branches, yard trimmings, discarded furniture, cans, oil, ashes, bottles, and all unwholesome material;

[OO.] (2) **“responsible person”** means a person who is required to submit an abatement plan or who submits an abatement plan pursuant to this part;

[PP.]S. Definitions that begin with the letter “S.”

 (1) **“secretary”** or **“director”** means the secretary of the New Mexico department of environment or the director of a constituent agency designated by the commission;

[QQ.] (2) **“sewer system”** means pipelines, conduits, pumping stations, force mains, or other structures, devices, appurtenances or facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;

[RR.] (3) **“sewerage system”** means a system for disposing of wastes, either by surface or underground methods, and includes sewer systems, treatment works, disposal wells and other systems;

[SS.] (4) **“significant modification of Stage 2 of the abatement plan”** means a change in the abatement technology used excluding design and operational parameters, or re-location of 25 percent or more of the compliance sampling stations, for any single medium, as designated pursuant to Paragraph (4) of Subsection E of 20.6.2.4106 NMAC;

[TT.] (5) **“subsurface fluid distribution system”** means an assemblage of perforated pipes, drain tiles, or other mechanisms intended to distribute fluids below the surface of the ground;

[UU.] (6) **“subsurface water”** means ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or may be utilized by vegetation;

[VV.]T. Definitions that begin with the letter “T.”

 (1) **“TDS”** means total dissolved solids as determined by the "calculation method" (sum of constituents), by the "residue on evaporation method at 180 degrees" of the "*U.S. geological survey techniques of water resource investigations*," or by conductivity, as the secretary may determine;

[WW.] (2) **“toxic pollutant”** means ~~[a water contaminant or combination of water contaminants in concentration(s) which, upon exposure, ingestion, or assimilation either directly from the environment or indirectly by ingestion through food chains, will unreasonably threaten 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; in order to be considered a toxic pollutant a contaminant must be one or a combination of the potential toxic pollutants listed below and be at a concentration shown by scientific information currently available to the public to have potential for causing one or more of the effects listed above;] any water contaminant or~~

combination of the water contaminants in the list below [creating a lifetime risk of more than one cancer per 100,000 exposed persons is a toxic pollutant:

- _____ (1) acrolein
- _____ (2) acrylonitrile
- _____ (3) aldrin
- _____ (4) benzene
- _____ (5) benzidine
- _____ (6) carbon tetrachloride
- _____ (7) chlordane
- _____ (8) chlorinated benzenes
 - _____ (a) monochlorobenzene
 - _____ (b) hexachlorobenzene
 - _____ (c) pentachlorobenzene
- _____ (9) 1,2,4,5 tetrachlorobenzene
- _____ (10) chlorinated ethanes
 - _____ (a) 1,2 dichloroethane
 - _____ (b) hexachloroethane
 - _____ (c) 1,1,2,2 tetrachloroethane
 - _____ (d) 1,1,1 trichloroethane
 - _____ (e) 1,1,2 trichloroethane
- _____ (11) chlorinated phenols
 - _____ (a) 2,4 dichlorophenol
 - _____ (b) 2,4,5 trichlorophenol
 - _____ (c) 2,4,6 trichlorophenol
- _____ (12) chloroalkyl ethers
 - _____ (a) bis (2-chloroethyl) ether
 - _____ (b) bis (2-chloroisopropyl) ether
 - _____ (c) bis (chloromethyl) ether
- _____ (13) chloroform
- _____ (14) DDT
- _____ (15) dichlorobenzene
- _____ (16) dichlorobenzidine
- _____ (17) 1,1 dichloroethylene
- _____ (18) dichloropropenes
- _____ (19) dieldrin
- _____ (20) diphenylhydrazine
- _____ (21) endosulfan
- _____ (22) endrin
- _____ (23) ethylbenzene
- _____ (24) halomethanes
 - _____ (a) bromodichloromethane
 - _____ (b) bromomethane
 - _____ (c) chloromethane
 - _____ (d) dichlorodifluoromethane
 - _____ (e) dichloromethane
 - _____ (f) tribromomethane
 - _____ (g) trichlorofluoromethane
- _____ (25) heptachlor
- _____ (26) hexachlorobutadiene
- _____ (27) hexachlorocyclohexane (HCH)
 - _____ (a) alpha-HCH
 - _____ (b) beta-HCH
 - _____ (c) gamma-HCH
 - _____ (d) technical HCH
- _____ (28) hexachlorocyclopentadiene
- _____ (29) high explosives (HE)

- _____ (a) 2,4 dinitrotoluene (2,4,DNT)
- _____ (b) 2,6 dinitrotoluene (2,6,DNT)
- _____ (c) octahydro 1,3,5,7 tetranitro 1,3,5,7 tetrazocine (HMX)
- _____ (d) hexahydro 1,3,5 trinitro 1,3,5 triazine (RDX)
- _____ (e) 2,4,6 trinitrotoluene (TNT)
- _____ (30) isophorone
- _____ (31) methyl tertiary butyl ether
- _____ (32) nitrobenzene
- _____ (33) nitrophenols
 - _____ (a) 2,4 dinitro o-cresol
 - _____ (b) dinitrophenols
- _____ (34) nitrosamines
 - _____ (a) N-nitrosodiethylamine
 - _____ (b) N-nitrosodimethylamine
 - _____ (c) N-nitrosodibutylamine
 - _____ (d) N-nitrosodiphenylamine
 - _____ (e) N-nitrosopyrrolidine
- _____ (35) pentachlorophenol
- _____ (36) perchlorate
- _____ (37) phenol
- _____ (38) phthalate esters
 - _____ (a) dibutyl phthalate
 - _____ (b) di-2-ethylhexyl phthalate
 - _____ (c) diethyl phthalate
 - _____ (d) dimethyl phthalate
- _____ (39) polychlorinated biphenyls (PCB's)
- _____ (40) polynuclear aromatic hydrocarbons (PAH)
 - _____ (a) anthracene
 - _____ (b) 3,4-benzofluoranthene
 - _____ (c) benzo(k) fluoranthene
 - _____ (d) fluoranthene
 - _____ (e) fluorene
 - _____ (f) phenanthrene
 - _____ (g) pyrene
- _____ (41) tetrachloroethylene
- _____ (42) toluene
- _____ (43) toxaphene
- _____ (44) trichloroethylene
- _____ (45) vinyl chloride
- _____ (46) xylenes
 - _____ (a) o-xylene
 - _____ (b) m-xylene
 - _____ (c) p-xylene
- _____ (47) 1,1-dichloroethane
- _____ (48) ethylene dibromide (EDB)
- _____ (49) cis-1,2-dichloroethylene
- _____ (50) trans-1,2-dichloroethylene
- _____ (51) naphthalene
- _____ (52) 1-methylnaphthalene
- _____ (53) 2-methylnaphthalene
- _____ (54) benzo-a-pyrene]
 - _____ (a) acrolein (CAS 107-02-8)
 - _____ (b) acrylonitrile (CAS 107-13-1)
 - _____ (c) benzene and alkylbenzenes
 - _____ (i) benzene (CAS 71-43-2)
 - _____ (ii) toluene (methylbenzene) (CAS 108-88-3)

- (iii) ethylbenzene (CAS 100-41-4)
- (iv) xylenes (dimethyl benzene isomers): o-xylene (CAS 95-47-6); m-xylene (CAS 108-38-3); and p-xylene (CAS 106-42-3)
- (v) styrene (ethenylbenzene) (CAS 100-42-5)
- (d) chlorinated benzenes**
 - (i) monochlorobenzene (CAS 108-90-7)
 - (ii) 1,2-dichlorobenzene (ortho-dichlorobenzene) (CAS 95-50-1)
 - (iii) 1,4-dichlorobenzene (para-dichlorobenzene) (CAS 106-46-7)
 - (iv) 1,2,4-trichlorobenzene (CAS 120-82-1)
 - (v) 1,2,4,5-tetrachlorobenzene (CAS 95-94-3)
 - (vi) pentachlorobenzene (CAS 608-93-5)
 - (vii) hexachlorobenzene (CAS 118-74-1)
- (e) chlorinated phenols**
 - (i) 2,4-dichlorophenol (CAS 120-83-2)
 - (ii) 2,4,5-trichlorophenol (CAS 95-95-4)
 - (iii) 2,4,6-trichlorophenol (CAS 88-06-2)
 - (iv) pentachlorophenol (PCP) (CAS 87-86-5)
- (f) chloroalkyl ethers**
 - (i) bis (2-chloroethyl) ether (CAS 111-44-4)
 - (ii) bis (2-chloroisopropyl) ether (CAS 108-60-1)
 - (iii) bis (chloromethyl) ether (CAS 542-88-1)
- (g) 1,2-dichloropropane (propylene dichloride, PDC) (CAS 78-87-5)
- (h) dichloropropenes (CAS 542-75-6)
- (i) 1,4-dioxane (CAS 123-91-1)
- (j) halogenated ethanes**
 - (i) 1,2-dibromoethane (ethylene dibromide, EDB) (CAS 106-93-4)
 - (ii) 1,1-dichloroethane (1,1-DCA) (CAS 75-34-3)
 - (iii) 1,2-dichloroethane (ethylene dichloride, EDC) (CAS 107-06-2)
 - (iv) 1,1,1-trichloroethane (TCA) (CAS 71-55-6)
 - (v) 1,1,2-trichloroethane (1,1,2-TCA) (CAS 79-00-5)
 - (vi) 1,1,2,2-tetrachloroethane (CAS 79-34-5)
 - (vii) hexachloroethane (CAS 67-72-1)
- (k) halogenated ethenes**
 - (i) chloroethene (vinyl chloride) (CAS 75-01-4)
 - (ii) 1,1-dichloroethene (1,1-DCE) (CAS 75-35-4)
 - (iii) cis-1,2-dichloroethene (cis-1,2-DCE) (CAS 156-59-2)
 - (iv) trans-1,2-dichloroethene (trans-1,2-DCE) (CAS 156-60-5)
 - (v) trichloroethene (trichloroethylene, TCE) (CAS 79-01-6)
 - (vi) tetrachloroethene (perchloroethylene, PCE) (CAS 127-18-4)
- (l) halogenated methanes**
 - (i) bromodichloromethane (CAS 75-27-4)
 - (ii) bromomethane (CAS 74-83-9)
 - (iii) chloromethane (CAS 74-87-3)
 - (iv) dichlorodifluoromethane (fluorocarbon-12) (CAS 75-71-8)
 - (v) dichloromethane (methylene chloride) (CAS 75-09-2)
 - (vi) tribromomethane (bromoform) (CAS 75-25-2)
 - (vii) trichloromethane (chloroform) (CAS 67-66-3)
 - (viii) tetrachloromethane (carbon tetrachloride) (CAS 56-23-5)
 - (ix) trichlorofluoromethane (fluorocarbon-11) (CAS 75-69-4)
- (m) hexachlorobutadiene (CAS 87-68-3)**
- (n) isophorone (CAS 78-59-1)**
- (o) methyl tertiary-butyl-ether (MTBE) (CAS 1634-04-4)**
- (p) nitroaromatics and high explosives (HE)**
 - (i) nitrobenzene (CAS 98-95-3)
 - (ii) 2,4-dinitrotoluene (2,4-DNT) (CAS 121-14-2)
 - (iii) 2,6-dinitrotoluene (2,6-DNT) (CAS 606-20-2)

- (iv) octrahydro-1,3,5,7-tetranitro-1,3,5,7-tetrazocine(HMX)(CAS 2691-41-0)
- (v) hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX) (CAS 121-82-4)
- (vi) 2,4,6-trinitrotoluene (TNT) (CAS 118-96-7)
- (vii) 2,4-dinitro-o-cresol (CAS 534-52-1)
- (viii) dinitrophenols (CAS 51-28-5)
- (q) nitrosamines
 - (i) N-nitrosodiethylamine (CAS 55-18-5)
 - (ii) N-nitrosodimethylamine (CAS 62-75-9)
 - (iii) N-nitrosodibutylamine (CAS 924-16-3)
 - (iv) N-nitrosodiphenylamine (CAS 86-30-6)
 - (v) N-nitrosopyrrolidine (CAS 930-55-2)
- (r) perchlorate (CAS 14797-73-0)
- (s) perfluorinated-chemicals (PFCs)
 - (i) perfluorohexane sulfonic acid (PHxS) (CAS 355-46-4)
 - (ii) perfluorooctane sulfonate (PFOS) (CAS 1763-23-1)
 - (iii) perfluorooctanoic acid (PFOA) (CAS 335-67-1)
- (t) pesticides
 - (i) Aldrin (CAS 309-00-2)
 - (ii) atrazine (CAS 1912-24-9)
 - (iii) chlordane (CAS 57-74-9)
 - (iv) DDT (CAS 50-29-3)
 - (v) dieldrin (CAS 60-57-1)
 - (vi) endosulfan (CAS 115-29-7)
 - (vii) endrin (CAS 72-20-8)
 - (viii) heptachlor (CAS 76-44-8)
 - (ix) hexachlorocyclohexane (HCH, lindane): alpha-HCH (CAS 319-84-6); beta-HCH (CAS 319-85-7); gamma-HCH (CAS 58-89-9); and, technical-HCH (CAS 608-73-1)
 - (x) hexachlorocyclopentadiene (CAS 77-47-4)
 - (xi) prometon (CAS 1610-18-0)
 - (xii) toxaphene (CAS 8001-35-2)
- (u) phenol (CAS 108-95-2)
- (v) phthalate esters
 - (i) dibutyl phthalate (CAS 84-74-2)
 - (ii) di-2-ethylhexyl phthalate (DEHP) (CAS 117-81-7)
 - (iii) diethyl phthalate (DEP) (CAS 84-66-2)
 - (iv) dimethyl phthalate (DMP) (CAS 131-11-3)
- (w) polycyclic compounds
 - (i) benzidine (CAS 92-87-5)
 - (ii) dichlorobenzidine (CAS 91-94-1)
 - (iii) diphenylhydrazine (CAS 122-66-7)
 - (iv) polychlorinated biphenyls (PCBs) (CAS 1336-36-3)
- (x) polynuclear aromatic hydrocarbons (PAHs)
 - (i) anthracene (CAS 120-12-7)
 - (ii) benzo(a)pyrene (CAS 50-32-8)
 - (iii) 3,4-benzofluoranthene (CAS 205-99-2)
 - (iv) benzo(k)fluoranthene (CAS 207-08-9)
 - (v) fluoranthene (CAS 206-44-0)
 - (vi) fluorene (CAS 86-73-7)
 - (vii) naphthalene (CAS 91-20-3)
 - (viii) 1-methylnaphthalene (CAS 90-12-0)
 - (ix) 2-methylnaphthalene (CAS 91-57-6)
 - (x) phenanthrene (CAS 85-01-8)
 - (xi) pyrene (CAS 129-00-0)
- (y) thiolane 1,1 dioxide (sulfolane) (CAS 126-33-0)

U. Definitions that begin with the letter "U." [RESERVED]

~~[XX.]~~ **V. Definitions that begin with the letter "V."** "vadose zone" means earth material below the land surface and above ground water, or in between bodies of ground water

~~[YY.]~~ **W. Definitions that begin with the letter "W."**

~~(1)~~ "wastes" means sewage, industrial wastes, or any other liquid, gaseous or solid substance which will pollute any waters of the state;

~~[ZZ.]~~ **(2)** "water" means all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water;

~~[AAA.]~~ **(3)** "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;

~~[BBB.]~~ **(4)** "watercourse" means any river, creek, arroyo, canyon, draw, or wash, or any other channel having definite banks and beds with visible evidence of the occasional flow of water;

~~[CCC.]~~ **(5)** "water pollution" means introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants 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;

~~[DDD.]~~ **(6)** "well" means: (1) A bored, drilled, or driven shaft; (2) A dug hole whose depth is greater than the largest surface dimension; (3) An improved sinkhole; or (4) A subsurface fluid distribution system;

~~[EEE.]~~ **(7)** "well stimulation" means a process used to clean the well, enlarge channels, and increase pore space in the interval to be injected, thus making it possible for fluids to move more readily into the injection zone; well stimulation includes, but is not limited to, (1) surging, (2) jetting, (3) blasting, (4) acidizing, (5) hydraulic fracturing.

X. Definitions that begin with the letter "X." [RESERVED]

Y. Definitions that begin with the letter "Y." [RESERVED]

Z. Definitions that begin with the letter "Z." [RESERVED]

[1-4-68, 4-20-68, 11-27-70, 9-3-72, 4-11-74, 8-13-76, 2-18-77, 6-26-80, 7-2-81, 1-29-82, 9-20-82, 11-17-84, 3-3-86, 8-17-91, 8-19-93, 12-1-95; 20.6.2.7 NMAC - Rn, 20 NMAC 6.2.I.1101, 1-15-01; A, 1-15-01; A, 12-1-01; A, 9-15-02; A, 9-26-04; A, 7-16-06; A, 8-1-14; A, 12-21-18]

20.6.2.10 LIMITATIONS: These regulations do not apply to the following:

A. Any activity or condition subject to the authority of the environmental improvement board pursuant to the Hazardous Waste Act, NMSA 1978, Sections 74-4-1 to -14, the Ground Water Protection Act, NMSA 1978, Sections 74-6B-1 to -14, or the Solid Waste Act, NMSA 1978, Sections 74-9-1 to -25, except to abate water pollution or to control the disposal or use of septage and sludge; or

B. Any activity or condition subject to the authority of the oil conservation commission pursuant to the provisions of the Oil and Gas Act, NMSA 1978, Section 70-2-12 and other laws conferring power on the oil conservation commission and the oil conservation division of the energy, minerals and natural resources department to prevent or abate water pollution.

[N, 12-21-18]

20.6.2.1201 NOTICE OF INTENT TO DISCHARGE:

A. ~~[Any] Except for the notices specified in paragraphs (1) and (2) of this subsection, any person intending to make a new water contaminant discharge or to alter the character or location of an existing water contaminant discharge, unless the discharge is being made or will be made into a community sewer system or subject to the Liquid Waste Disposal Regulations adopted by the New Mexico environmental improvement board, shall file a notice with the ground water quality bureau of the department for discharges that may affect ground water, and/ or the surface water quality bureau of the department for discharges that may affect surface water. [However, notice regarding discharges from facilities for the production, refinement, pipeline transmission of oil and gas or products thereof, the oil field service industry, oil field brine production wells, geothermal installations and carbon dioxide facilities shall be filed instead with the oil conservation division.]~~

(1) Notices regarding discharges from facilities for the production, refinement, pipeline transmission of oil and gas or products thereof, the oil field service industry as related to oil and gas production activities, oil field brine production wells, and carbon dioxide facilities shall be filed with the oil conservation division of the energy, minerals and natural resources department,

(2) Notices regarding discharges related to geothermal resources, as defined in Section 71-9-3 of the Geothermal Resources Development Act, NMSA 1978, Sections 71-9-1 to -11 (2016) shall be filed with the energy conservation and management division of the energy, minerals and natural resources department.

B. ~~[A]Except for the notices specified in paragraphs (1) and (2) of this subsection any person intending to inject fluids into a well, including a subsurface distribution system, unless the injection is being made subject to the Liquid Waste Disposal Regulations adopted by the New Mexico environmental improvement board, shall file a notice with the ground water quality bureau of the department. [However notice regarding injection to wells associated with oil and gas facilities as described in Subsection A of Section 20.6.2.1201 NMAC shall be filed instead with the oil conservation division.]~~

(1) Notices regarding injections to wells associated with oil and gas facilities as described in Paragraph (1) of Subsection A of 20.6.2.1201 NMAC shall be filed with the oil conservation division.

(2) Notices regarding injections to wells associated with exploration, development or production of geothermal resources, as described in Paragraph (2) of Subsection A of 20.6.2.1201 NMAC, shall be filed with the energy conservation and management division of the energy, minerals and natural resources department pursuant to the Geothermal Resources Development Act, Sections 71-9-1 to -11, NMSA 1978 (2016).

C. Notices shall state:

- (1) the name of the person making the discharge;
- (2) the address of the person making the discharge;
- (3) the location of the discharge;
- (4) an estimate of the concentration of water contaminants in the discharge; and
- (5) the quantity of the discharge.

D. Based on information provided in the notice of intent, the department will notify the person proposing the discharge as to which of the following apply:

- (1) a discharge permit is required;
- (2) a discharge permit is not required;
- (3) the proposed injection well will be added to the department's underground injection well inventory;
- (4) the proposed injection activity or injection well is prohibited pursuant to 20.6.2.5004

NMAC.

[1-4-68, 9-5-69, 9-3-72, 2-17-74, 2-20-81, 12-1-95; 20.6.2.1201 NMAC - Rn, 20 NMAC 6.2.I.1201, 1-15-01; A, 12-1-01; A, 12-21-18]

20.6.2.1203 NOTIFICATION OF DISCHARGE-REMOVAL:

A. With respect to any discharge from any facility of oil or other water contaminant, in such quantity as may with reasonable probability injure or be detrimental to human health, animal or plant life, or property, or unreasonably interfere with the public welfare or the use of property, the following notifications and corrective actions are required:

(1) As soon as possible after learning of such a discharge, but in no event more than twenty-four (24) hours thereafter, any person in charge of the facility shall orally notify the chief of the ground water quality bureau of the department, or ~~his~~the appropriate counterpart in any constituent agency delegated responsibility for enforcement of these rules as to any facility subject to such delegation. To the best of that person's knowledge, the following items of information shall be provided:

- (a) the name, address, and telephone number of the person or persons in charge of the facility, as well as of the owner and/or operator of the facility;
- (b) the name and address of the facility;
- (c) the date, time, location, and duration of the discharge;
- (d) the source and cause of discharge;
- (e) a description of the discharge, including its chemical composition;
- (f) the estimated volume of the discharge; and
- (g) any actions taken to mitigate immediate damage from the discharge.

(2) When in doubt as to which agency to notify, the person in charge of the facility shall notify the chief of the ground water quality bureau of the department. If that department does not have authority pursuant to commission delegation, the department shall notify the appropriate constituent agency.

(3) Within one week after the discharger has learned of the discharge, the facility owner and/or operator shall send written notification to the same department official, verifying the prior oral notification as

to each of the foregoing items and providing any appropriate additions or corrections to the information contained in the prior oral notification.

(4) The oral and written notification and reporting requirements contained in this Subsection A are not intended to be duplicative of discharge notification and reporting requirements promulgated by the oil conservation commission (OCC) or by the oil conservation division (OCD); therefore, any facility which is subject to OCC or OCD discharge notification and reporting requirements need not additionally comply with the notification and reporting requirements herein.

(5) As soon as possible after learning of such a discharge, the owner/operator of the facility shall take such corrective actions as are necessary or appropriate to contain and remove or mitigate the damage caused by the discharge.

(6) If it is possible to do so without unduly delaying needed corrective actions, the facility owner/operator shall endeavor to contact and consult with the chief of the ground water quality bureau of the department or appropriate counterpart in a delegated agency, in an effort to determine the department's views as to what further corrective actions may be necessary or appropriate to the discharge in question. In any event, no later than fifteen (15) days after the discharger learns of the discharge, the facility owner/operator shall send to said Bureau Chief a written report describing any corrective actions taken and/or to be taken relative to the discharge. Upon a written request and for good cause shown, the bureau chief may extend the time limit beyond fifteen (15) days.

(7) The bureau chief shall approve or disapprove in writing the foregoing corrective action report within thirty (30) days of its receipt by the department. In the event that the report is not satisfactory to the department, the bureau chief shall specify in writing to the facility owner/operator any shortcomings in the report or in the corrective actions already taken or proposed to be taken relative to the discharge, and shall give the facility owner/operator a reasonable and clearly specified time within which to submit a modified corrective action report. The bureau chief shall approve or disapprove in writing the modified corrective action report within fifteen (15) days of its receipt by the department.

(8) In the event that the modified corrective action report also is unsatisfactory to the department, the facility owner/operator has five (5) days from the notification by the bureau chief that it is unsatisfactory to appeal to the department secretary. The department secretary shall approve or disapprove the modified corrective action report within five (5) days of receipt of the appeal from the bureau chief's decision. In the absence of either corrective action consistent with the approved corrective action report or with the decision of the secretary concerning the shortcomings of the modified corrective action report, the department may take whatever enforcement or legal action it deems necessary or appropriate.

(9) If the secretary determines that the discharge causes or may with reasonable probability cause water pollution in excess of the standards and requirements of Section 20.6.2.4103 NMAC, and the water pollution will not be abated within one hundred and eighty (180) days after notice is required to be given pursuant to Paragraph (1) of Subsection A of Section 20.6.2.1203 NMAC, the secretary may notify the facility owner/operator that he is a responsible person and that an abatement plan may be required pursuant to Section 20.6.2.4104 and Subsection A of Section 20.6.2.4106 NMAC.

B. Exempt from the requirements of this section are continuous or periodic discharges which are made:

(1) in conformance with regulations of the commission and rules, regulations or orders of other state or federal agencies; or

(2) in violation of regulations of the commission, but pursuant to an assurance of discontinuance or schedule of compliance approved by the commission or one of its duly authorized constituent agencies.

C. As used in this section and in Sections 20.6.2.4100 through 20.6.2.4115 NMAC, but not in other sections of this part:

(1) "discharge" means spilling, leaking, pumping, pouring, emitting, emptying, or dumping into water or in a location and manner where there is a reasonable probability that the discharged substance will reach surface or subsurface water;

(2) "facility" means any structure, installation, operation, storage tank, transmission line, motor vehicle, rolling stock, or activity of any kind, whether stationary or mobile;

(3) "oil" means oil of any kind or in any form including petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes;

(4) "operator" means the person or persons responsible for the overall operations of a facility; and

(5) "owner" means the person or persons who own a facility, or part of a facility.

D. Notification of discharge received pursuant to this part or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except for perjury or for giving a false statement.

E. Any person who has any information relating to any discharge from any facility of oil or other water contaminant, in such quantity as may with reasonable probability injure or be detrimental to human health, animal or plant life, or property, or unreasonably interfere with the public welfare or the use of property, is urged to notify the chief of the ground water quality bureau of the department. Upon such notification, the secretary may require an owner/operator or a responsible person to perform corrective actions pursuant to Paragraphs (5) and (9) of Subsection A of Section 20.6.2.1203 NMAC.

[2-17-74, 2-20-81, 12-24-87, 12-1-95; 20.6.2.1203 NMAC - Rn, 20 NMAC 6.2.I.1203, 1-15-01; A, 12-1-01; A, 12-21-18]

20.6.2.1210 VARIANCE PETITIONS:

A. Any person seeking a variance pursuant to Subsection H of Section 74-6-4[-(G)] NMSA 1978, shall do so by filing a written petition with the commission. The petitioner may submit with his petition any relevant documents or material which the petitioner believes would support his petition. Petitions shall:

- (1) state the petitioner's name and address;
- (2) state the date of the petition;
- (3) describe the facility or activity for which the variance is sought;
- (4) state the address or description of the property upon which the facility is located;
- (5) describe the water body or watercourse affected by the discharge for which the variance

is sought and provide information on uses of water that may be affected;

- (6) identify the regulation of the commission from which the variance is sought;
- (7) state in detail the extent to which the petitioner wishes to vary from the regulation;
- (8) state why the petitioner believes that compliance with the regulation will impose an

unreasonable burden upon his activity; and

- (9) ~~[state the period of time for which the variance is desired.]~~ state in detail how any water pollution above standards will be abated; and

(10) state the period of time for which the variance is desired including all reasons, data, reports and any other information demonstrating that such time period is justified and reasonable.

B. The variance petition shall be reviewed in accordance with the adjudicatory procedures of 20 NMAC 1.3.

C. The commission may grant the requested variance, in whole or in part, may grant the variance subject to conditions, or may deny the variance. ~~[The]~~If the variance is granted in whole or in part, or subject to conditions, the commission shall [not grant a] specify the length of time that the variance [for a period of time in excess of five years.] shall be in place.

D. For variances associated with a discharge permit or abatement plan, the existence and nature of the variance shall be disclosed in all public notices applicable to the discharge permit or abatement plan.

E. For variances granted for a period in excess of five years, the petitioner shall provide to the department for review a variance compliance report at five year intervals to demonstrate that the conditions of the variance are being met, including notification of any changed circumstances or newly-discovered facts that are material to the variance. At such time as the department determines the report is administratively complete, the department shall post the report on its website, and mail or e-mail notice of its availability to those persons on a general and facility-specific list maintained by the department who have requested notice of discharge permit applications, and any person who participated in the variance process. If such conditions are not being met, or there is evidence indicating changed circumstances or newly-discovered facts or conditions that were unknown at the time the variance was initially granted, any person, including the department, may request a hearing before the commission to revoke, modify, or otherwise reconsider the variance within 90 days of the issuance of the notice of availability of the report.

F. An order of the commission is final and bars the petitioner from petitioning for the same variance without special permission from the commission. The commission may consider, among other things, the development of new information and techniques to be sufficient justification for a second petition. If the petitioner, or his authorized representative, fails to appear at the public hearing on the variance petition, the commission shall proceed with the hearing on the basis of the petition. A variance may not be extended or renewed unless a new petition is filed and processed in accordance with the procedures established by this section.

[7-19-68, 11-27-70, 9-3-72, 2-20-81, 11-15-96; 20.6.2.1210 NMAC - Rn, 20 NMAC 6.2.I.1210, 1-15-01; A, 12-21-18]

20.6.2.3103 STANDARDS FOR GROUND WATER OF 10,000 mg/l TDS CONCENTRATION OR

LESS: The following standards are the allowable pH range and the maximum allowable concentration in ground water for the contaminants specified unless the existing condition exceeds the standard or unless otherwise provided in Subsection ~~[D]~~ E of Section 20.6.2.3109 NMAC. Regardless of whether there is one contaminant or more than one contaminant present in ground water, when an existing pH or concentration of any water contaminant exceeds the standard specified in Subsection A, B, or C of this section, the existing pH or concentration shall be the allowable limit, provided that the discharge at such concentrations will not result in concentrations at any place of withdrawal for present or reasonably foreseeable future use in excess of the standards of this section. These standards shall apply to the dissolved portion of the contaminants specified with a definition of dissolved being that given in the publication "*methods for chemical analysis of water and waste of the U.S. environmental protection agency*," with the exception that standards for mercury, organic compounds and non-aqueous phase liquids shall apply to the total ~~[unfiltered]~~ nonfiltered concentrations of the contaminants. If the secretary determines that there is a reasonable probability of facilitated contaminant transport by colloids or organic macromolecules, or that proper filtration procedures are not being followed, the discharger may be required to test for both filtered and nonfiltered portions of inorganic contaminants to develop appropriate protocol for monitoring contaminants that have the potential to migrate through the aquifer.

A. Human Health Standards [Ground water shall meet the standards of Subsection A and B of this section unless otherwise provided. If more than one water contaminant affecting human health is present, the toxic pollutant criteria as set forth in the definition of toxic pollutant in Section 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
	(a) Antimony (Sb) (CAS 7440-36-0).....0.006 mg/l
[14]	(b) Arsenic (As) (CAS 7440-38-2).....[0+]0.01 mg/l
[2]	(c) Barium (Ba) (CAS 7440-39-3).....[1-0]2 mg/l
	(d) Beryllium (be) (CAS 7440-41-7).....0.004 mg/l
[3]	(e) Cadmium (Cd) (CAS 7440-43-9).....[0-0+]0.005 mg/l
[4]	(f) Chromium (Cr) (CAS 7440-47-3).....0.05 mg/l
[5]	(g) Cyanide (CN) (CAS 57-12-5).....0.2 mg/l
[6]	(h) Fluoride (F) (CAS 16984-48-8).....1.6 mg/l
[7]	(i) Lead (Pb) (CAS 7439-92-1).....[0-05]0.015 mg/l
[8]	(j) Total Mercury (Hg) (CAS 7439-97-6).....0.002 mg/l
[9]	(k) Nitrate (NO ₃ as N) (CAS 14797-55-8).....10.0 mg/l
	(l) Nitrite (NO ₂ as N) (CAS 10102-44-0).....1.0 mg/l
[10]	(m) Selenium (Se) (CAS 7782-49-2).....0.05 mg/l
[11]	(n) Silver (Ag) (CAS 7440-224).....0.05 mg/l
	(o) Thallium (Tl) (CAS 7440-28-0).....0.002 mg/l
	(p) Uranium (U) (CAS 7440-61-1).....0.03 mg/l
[13]	(q) Radioactivity: Combined Radium-226 (CAS 13982-63-3) and Radium-228 (CAS 15262-20-1).....[30]5 pCi/l
[14]	(r) Benzene (CAS 71-43-2).....[0-0+]0.005 mg/l
[15]	(s) Polychlorinated biphenyls (PCB's) (CAS 1336-36-3).[0-00+]0.0005 mg/l
[16]	(t) Toluene (CAS 108-88-3).....[0-75]1 mg/l
[17]	(u) Carbon Tetrachloride (CAS 56-23-5).....[0-0+]0.005 mg/l
[18]	(v) 1,2-dichloroethane (EDC) (CAS 107-06-2).....[0-0+]0.005 mg/l
[19]	(w) 1,1-dichloroethylene (1,1-DCE) (CAS 75-35-4).....[0-005]0.007 mg/l
[20]	(x) [1,1,2,2]tetrachloroethylene (PCE) (CAS 127-18-4).....[0-02]0.005 mg/l
[21]	(y) [1,1,2]trichloroethylene (TCE) (CAS 79-01-6).....[0+]0.005 mg/l
[22]	(z) ethylbenzene (CAS 100-41-4).....[0-75]0.7 mg/l
[23]	(aa) total xylenes (CAS 1330-20-7).....0.62 mg/l
[24]	(bb) methylene chloride (CAS 75-09-2).....[0+]0.005 mg/l
[25]	(cc) chloroform (CAS 67-66-3).....0.1 mg/l

(26)	(dd)	1,1-dichloroethane (CAS 75-34-3)	0.025 mg/l
(27)	(ee)	ethylene dibromide (EDB) (CAS 106-93-4)	[0.0001] 0.00005 mg/l
(28)	(ff)	1,1,1-trichloroethane (CAS 71-55-6)	[0.06] 0.2 mg/l
(29)	(gg)	1,1,2-trichloroethane (CAS 79-00-5)	[0.04] 0.005 mg/l
(30)	(hh)	1,1,2,2-tetrachloroethane (CAS 79-34-5)	0.01 mg/l
(31)	(ii)	vinyl chloride (CAS 75-01-4)	[0.004] 0.002 mg/l
(32)	(jj)	PAHs: total naphthalene (CAS 91-20-3) plus monomethylnaphthalenes	0.03 mg/l
(33)	(kk)	benzo-a-pyrene (CAS 50-32-8)	[0.0007] 0.0002 mg/l
	(ll)	cis-1,2-dichloroethene (CAS 156-59-2)	0.07 mg/l
	(mm)	trans-1,2-dichloroethene (CAS 156-60-5)	0.1 mg/l
	(nn)	1,2-dichloropropane (PDC) (CAS 78-87-5)	0.005 mg/l
	(oo)	styrene (CAS 100-42-5)	0.1 mg/l
	(pp)	1,2-dichlorobenzene (CAS 95-50-1)	0.6 mg/l
	(qq)	1,4-dichlorobenzene (CAS 106-46-7)	0.075 mg/l
	(rr)	1,2,4-trichlorobenzene (CAS 120-82-1)	0.07 mg/l
	(ss)	pentachlorophenol (CAS 87-86-5)	0.001 mg/l
	(tt)	atrazine (CAS 1912-24-9)	0.003 mg/l

(2) **Standards for Toxic Pollutants.** A toxic pollutant shall not be present at a concentration shown by credible scientific data and other evidence appropriate under the Water Quality Act, 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.

(3) **Standards for Non-Aqueous Phase Liquids.** Non-aqueous phase liquid shall not be present floating atop of or immersed within ground water, as can be reasonably measured.

B. Other Standards for Domestic Water Supply

(1)	Chloride (Cl) (CAS 16887-00-6)	250.0 mg/l
(2)	Copper (Cu) (CAS 7440-50-8)	1.0 mg/l
(3)	Iron (Fe) (CAS 7439-89-6)	1.0 mg/l
(4)	Manganese (Mn) (CAS 7439-96-5)	0.2 mg/l
(6) (5)	Phenols	0.005 mg/l
(7) (6)	Sulfate (SO ₄) (CAS 14808-79-8)	600.0 mg/l
(8) (7)	Total Dissolved Solids (TDS) TDS	1000.0 mg/l
(9) (8)	Zinc (Zn) (CAS 7440-66-6)	10.0 mg/l
(10) (9)	pH	between 6 and 9
(10)	Methyl tertiary-butyl ether (MTBE) (CAS 1634-04-4)	0.1 mg/l

C. Standards for Irrigation Use - Ground water shall meet the standards of Subsection A, B, and C of this section unless otherwise provided.

(1)	Aluminum (Al) (CAS 7429-90-5)	5.0 mg/l
(2)	Boron (B) (CAS 7440-42-8)	0.75 mg/l
(3)	Cobalt (Co) (CAS 7440-48-4)	0.05 mg/l
(4)	Molybdenum (Mo) (CAS 7439-98-7)	1.0 mg/l
(5)	Nickel (Ni) (CAS 7440-02-0)	0.2 mg/l

D. For purposes of application of the amended numeric standards for arsenic, cadmium, lead, combined radium-226 & radium-228; benzene, PCBs, carbon tetrachloride, EDC, PCE, TCE, ethylbenzene, methylene chloride, EDB, 1,1,2-trichloroethane and benzo-a-pyrene, to past and current water discharges (as of July 1, 2017), the new standards will not become effective until July 1, 2020. With regard to sites for which the secretary has approved an abatement completion report as of the effective date of this rule pursuant to 20.6.2.4112 NMAC, the amended numeric standards for arsenic, cadmium, lead, combined radium-226 & radium-228; benzene, PCBs, carbon tetrachloride, EDC, PCE, TCE, ethylbenzene, methylene chloride, EDB, 1,1,2-trichloroethane and benzo-a-pyrene shall not apply unless the secretary notifies the responsible person that the site is a source of these contaminants in ground water that pose a hazard to public health.

[2-18-77, 1-29-82, 11-17-83, 3-3-86, 12-1-95; 20.6.2.3103 NMAC - Rn, 20 NMAC 6.2.III.3103, 1-15-01; A, 9-26-04; A 12-21-18]

[Note: For purposes of application of the amended numeric uranium standard to past and current water discharges (as of 9-26-04), the new standard will not become effective until June 1, 2007.]

20.6.2.3105 EXEMPTIONS FROM DISCHARGE PERMIT REQUIREMENT: Sections 20.6.2.3104 and 20.6.2.3106 NMAC do not apply to the following:

A. Effluent or leachate which conforms to all the ~~[listed numerical]~~ standards in Subsections A, B, and C of Section 20.6.2.3103 NMAC and has a total nitrogen concentration of 10 mg/l or less ~~and does not contain any toxic pollutant~~. To determine conformance, samples may be taken by the agency before the effluent or leachate is discharged so that it may move directly or indirectly into ground water; provided that if the discharge is by seepage through non-natural or altered natural materials, the agency may take samples of the solution before or after seepage. If for any reason the agency does not have access to obtain the appropriate samples, this exemption shall not apply;

B. Effluent which is regulated pursuant to 20.7.3 NMAC, "Liquid Waste Disposal and Treatment" regulations;

C. Water used for irrigated agriculture, for watering of lawns, trees, gardens or shrubs, or for irrigation for a period not to exceed five years for the revegetation of any disturbed land area, unless that water is received directly from any sewerage system;

D. Discharges resulting from the transport or storage of water diverted, provided that the water diverted has not had added to it after the point of diversion any effluent received from a sewerage system, that the source of the water diverted was not mine workings, and that the secretary has not determined that a hazard to public health may result;

E. Effluent which is discharged to a watercourse which is naturally perennial; discharges to dry arroyos and ephemeral streams are not exempt from the discharge permit requirement, except as otherwise provided in this section;

F. Those constituents which are subject to effective and enforceable effluent limitations in a National Pollutant Discharge Elimination System (NPDES) permit, where discharge onto or below the surface of the ground so that water contaminants may move directly or indirectly into ground water occurs downstream from the outfall where NPDES effluent limitations are imposed, unless the secretary determines that a hazard to public health may result. For purposes of this subsection, monitoring requirements alone do not constitute effluent limitations;

G. Discharges resulting from flood control systems;

H. Leachate which results from the direct natural infiltration of precipitation through disturbed materials, unless the secretary determines that a hazard to public health may result;

I. Leachate which results entirely from the direct natural infiltration of precipitation through undisturbed materials;

~~**J.** Leachate from materials disposed of in accordance with the Solid Waste Management Regulations (20 NMAC 9.1) adopted by the New Mexico Environmental Improvement Board;~~

~~**K.**~~ **J.** Natural ground water seeping or flowing into conventional mine workings which re-enters the ground by natural gravity flow prior to pumping or transporting out of the mine and without being used in any mining process; this exemption does not apply to solution mining;

~~**L.**~~ **K.** Effluent or leachate discharges resulting from activities regulated by ~~[a mining plan approved and] permit issued by the [New Mexico Coal] mining and minerals division of the energy, minerals and natural resources department pursuant to the Surface Mining [Commission,] Act, NMSA 1978, Sections 69-25A-1 to 36,~~ provided that this exemption shall not be construed as limiting the application of appropriate ground water protection requirements by the mining and minerals division and the New Mexico Coal Surface Mining Commission; or

~~**M.**~~ **L.** ~~[Effluent or leachate discharges which are regulated by under the Oil Conservation Commission and Gas Act and the regulation of which by the Water Quality Control Commission would interfere with the exclusive authority granted under Section 70 2-12 NMSA 1978, or under other laws, to the Oil Conservation Commission and the oil conservation division.] Discharges resulting from activities regulated by the energy conservation and management division of the energy, minerals and natural resources department under the authority of the Geothermal Resources Development Act, NMSA 1978, Sections 71-9-1 to -11 (2016).~~

[2-18-77, 6-26-80, 7-2-81, 12-24-87, 12-1-95; 20.6.2.3105 NMAC - Rn, 20 NMAC 6.2.III.3105, 1-15-01; A, 12-1-01; A, 8-1-14; A, 12-21-18]

20.6.2.3106 APPLICATION FOR DISCHARGE PERMITS, RENEWALS, AND MODIFICATIONS:

A. Any person who, before or on June 18, 1977, is discharging any of the water contaminants listed in 20.6.2.3103 NMAC or any toxic pollutant so that they may move directly or indirectly into ground water shall, within 120 days of receipt of written notice from the secretary that a discharge permit is required, or such longer time as the secretary shall for good cause allow, submit a discharge plan to the secretary for approval; such person may discharge without a discharge permit until 240 days after written notification by the secretary that a discharge permit is required or such longer time as the secretary shall for good cause allow.

B. Any person who intends to begin, after June 18, 1977, discharging any of the water contaminants listed in 20.6.2.3103 NMAC or any toxic pollutant so that they may move directly or indirectly into ground water shall notify the secretary giving the information enumerated in Subsection B of 20.6.2.1201 NMAC; the secretary shall, within 60 days, notify such person if a discharge permit is required; upon submission of a discharge plan, the secretary shall review the discharge plan pursuant to 20.6.2.3108 and 20.6.2.3109 NMAC. For good cause shown the secretary may allow such person to discharge without a discharge permit for a period not to exceed 120 days.

C. Any person who intends to modify the discharge of any of the water contaminants listed in 20.6.2.3103 NMAC or any toxic pollutant in a manner that is a discharge permit modification as defined in this part shall submit a discharge plan for modification that contains the information required in Subsection D of 20.6.2.3106 NMAC; upon submission of a discharge plan for modification, the secretary shall review the discharge plan for modification pursuant to 20.6.2.3108 and 20.6.2.3109 NMAC.

~~C.~~ D. A proposed discharge plan shall set forth in detail the methods or techniques the discharger proposes to use or processes expected to naturally occur which will ensure compliance with this part. At least the following information shall be included in the plan:

- (1) quantity, quality and flow characteristics of the discharge;
- (2) location of the discharge and of any bodies of water, watercourses and ground water discharge sites within one mile of the outside perimeter of the discharge site, and existing or proposed wells to be used for monitoring;
- (3) depth to and TDS concentration of the ground water most likely to be affected by the discharge;
- (4) flooding potential of the site;
- (5) location and design of site(s) and method(s) to be available for sampling, and for measurement or calculation of flow;
- (6) depth to and lithological description of rock at base of alluvium below the discharge site if such information is available;
- (7) any additional information that may be necessary to demonstrate that the discharge permit will not result in concentrations in excess of the standards of 20.6.2.3103 NMAC ~~[or the presence of any toxic pollutant]~~ at any place of withdrawal of water for present or reasonably foreseeable future use; detailed information on site geologic and hydrologic conditions may be required for a technical evaluation of the applicant's proposed discharge plan; and
- (8) additional detailed information required for a technical evaluation of underground injection control wells as provided in 20.6.2.5000 through 20.6.2.5399 NMAC.

~~D.~~ E. An applicant for a discharge permit shall pay fees as specified in 20.6.2.3114 and 20.6.2.5302 NMAC.

~~E.~~ F. An applicant for a permit to dispose of or use septage or sludge, or within a source category designated by the commission, may be required by the secretary to file a disclosure statement as specified in 74-6-5.1 of the Water Quality Act.

~~F.~~ G. If the holder of a discharge permit submits an application for discharge permit renewal at least 120 days before the discharge permit expires, and the discharger is not in violation of the discharge permit on the date of its expiration, then the existing discharge permit for the same activity shall not expire until the application for renewal has been approved or disapproved. A discharge permit continued under this provision remains fully effective and enforceable. An application for discharge permit renewal must include and adequately address all of the information necessary for evaluation of a new discharge permit. Previously submitted materials may be included by reference provided they are current, readily available to the secretary and sufficiently identified to be retrieved. [2-18-77, 6-26-80, 7-2-81, 9-20-82, 8-17-91, 12-1-95; 20.6.2.3106 NMAC - Rn, 20 NMAC 6.2.III.3106, 1-15-01; A, 12-1-01; A, 9-15-02; A, 8-31-15; A, 12-21-18]

20.6.2.3107 MONITORING, REPORTING, AND OTHER REQUIREMENTS:

- A. Each discharge plan shall provide for the following as the secretary may require:
- (1) the installation, use, and maintenance of effluent monitoring devices;

- (2) the installation, use, and maintenance of monitoring devices for the ground water most likely to be affected by the discharge;
- (3) monitoring in the vadose zone;
- (4) continuation of monitoring after cessation of operations;
- (5) periodic submission to the secretary of results obtained pursuant to any monitoring requirements in the discharge permit and the methods used to obtain these results;
- (6) periodic reporting to the secretary of any other information that may be required as set forth in the discharge permit;
- (7) the discharger to retain for a period of at least five years any monitoring data required in the discharge permit;
- (8) a system of monitoring and reporting to verify that the permit is achieving the expected results;
- (9) procedures for detecting failure of the discharge system;
- (10) contingency plans to cope with failure of the discharge permit or system;
- (11) a closure plan to prevent the exceedance of standards of 20.6.2.3103 NMAC [~~or the presence of a toxic pollutant~~] in ground water after the cessation of operation which includes: a description of closure measures, maintenance and monitoring plans, post-closure maintenance and monitoring plans, financial assurance, and other measures necessary to prevent or abate such contamination; the obligation to implement the closure plan as well as the requirements of the closure plan, if any is required, survives the termination or expiration of the permit; a closure plan for any underground injection control well must also incorporate the applicable requirements of 20.6.2.5005, 20.6.2.5209, and 20.6.2.5361 NMAC.

B. Sampling and analytical techniques shall conform with the following references unless otherwise specified by the secretary:

- (1) standard methods for the examination of water and wastewater, latest edition, American public health association; or
- (2) methods for chemical analysis of water and waste, and other publications of the analytical quality laboratory, EPA; or
- (3) techniques of water resource investigations of the U.S. geological survey; or
- (4) annual book of ASTM standards; Part 31; water, latest edition, American society for testing and materials; or
- (5) federal register, latest methods published for monitoring pursuant to Resource Conservation and Recovery Act regulations; or
- (6) national handbook of recommended methods for water-data acquisition, latest edition, prepared cooperatively by agencies of the United States government under the sponsorship of the U.S. geological survey.

C. The discharger shall notify the secretary of any facility expansion, production increase or process modification that would result in any significant modification in the discharge of water contaminants.

D. Any discharger of effluent or leachate shall allow any authorized representative of the secretary to:

- (1) inspect and copy records required by a discharge permit;
- (2) inspect any treatment works, monitoring and analytical equipment;
- (3) sample any effluent before or after discharge;
- (4) use monitoring systems and wells installed pursuant to a discharge permit requirement in order to collect samples from ground water or the vadose zone.

E. Each discharge permit for an underground injection control well shall incorporate the applicable requirements of 20.6.2.5000 through 20.6.2.5399 NMAC.

[2-18-77, 9-20-82, 11-17-83, 12-1-95; 20.6.2.3107 NMAC - Rn, 20 NMAC 6.2.III.3107, 1-15-01; A, 12-1-01; A, 8-31-15; A, 12-21-18]

20.6.2.3108 PUBLIC NOTICE AND PARTICIPATION:

A. Within 15 days of receipt of an application for a discharge permit, modification or renewal, the department shall review the application for administrative completeness. To be deemed administratively complete, an application shall provide all of the information required by Paragraphs (1) through (5) of Subsection F of 20.6.2.3108 NMAC and shall indicate, for department approval, the proposed locations and newspaper for providing notice required by Paragraphs (1) and (4) of Subsection B or Paragraph (2) of Subsection C of 20.6.2.3108 NMAC. The department shall notify the applicant in writing when the application is deemed administratively complete. If the department determines that the application is not administratively complete, the department shall notify the

applicant of the deficiencies in writing within ~~[15]~~30 days of receipt of the application and state what additional information is necessary.

B. Within 30 days of the department deeming an application for discharge permit or discharge permit modification administratively complete, the applicant shall provide notice, in accordance with the requirements of Subsection F of 20.6.2.3108 NMAC, to the general public in the locale of the proposed discharge in a form provided by the department by each of the methods listed below:

(1) for each 640 contiguous acres or less of a discharge site, prominently posting a synopsis of the public notice at least 2 feet by 3 feet in size, in English and in Spanish, at a place conspicuous to the public, approved by the department, at or near the proposed facility for 30 days; one additional notice, in a form approved by and may be provided by the department, shall be posted at a place located off the discharge site, at a place conspicuous to the public and approved by the department; the department may require a second posting location for more than 640 contiguous acres or when the discharge site is not located on contiguous properties;

(2) providing written notice of the discharge by mail or electronic mail, to owners of record of all properties within a 1/3 mile distance from the boundary of the property where the discharge site is located; if there are no properties other than properties owned by the discharger within a 1/3 mile distance from the boundary of property where the discharge site is located, the applicant shall provide notice to owners of record of the next nearest adjacent properties not owned by the discharger;

(3) providing notice by certified mail, return receipt requested, to the owner of the discharge site if the applicant is not the owner; and

(4) publishing a synopsis of the notice in English and in Spanish, in a display ad at least three inches by four inches not in the classified or legal advertisements section, in a newspaper of general circulation in the location of the proposed discharge.

C. Within 30 days of the department deeming an application for discharge permit renewal administratively complete, the applicant shall provide notice, in accordance with the requirements of Subsection F of 20.6.2.3108 NMAC, to the general public in the locale of the proposed discharge in a form provided by the department by each of the methods listed below:

(1) providing notice by certified mail to the owner of the discharge site if the applicant is not the owner; and

(2) publishing a synopsis of the notice, in English and in Spanish, in a display ad at least two inches by three inches, not in the classified or legal advertisements section, in a newspaper of general circulation in the location of the discharge.

D. Within 15 days of completion of the public notice requirements in Subsections B or C of 20.6.2.3108 NMAC, the applicant shall submit to the department proof of notice, including an affidavit of mailing(s) and the list of property owner(s), proof of publication, and an affidavit of posting, as appropriate.

E. Within 30 days of determining an application for a discharge permit, modification or renewal is administratively complete, the department shall post a notice on its website and shall mail notice to any affected local, state, federal, tribal or pueblo governmental agency, political subdivisions, ditch associations and land grants, as identified by the department. The department shall also mail or e-mail notice to those persons on a general and facility-specific list maintained by the department who have requested notice of discharge permit applications. The notice shall include the information listed in Subsection F of 20.6.2.3108 NMAC.

F. The notice provided under Subsection B, C and E of 20.6.2.3108 NMAC shall include:

- (1) the name and address of the proposed discharger;
- (2) the location of the discharge, including a street address, if available, and sufficient information to locate the facility with respect to surrounding landmarks;
- (3) a brief description of the activities that produce the discharge described in the application;
- (4) a brief description of the expected quality and volume of the discharge;
- (5) the depth to and total dissolved solids concentration of the ground water most likely to be affected by the discharge;
- (6) the address and phone number within the department by which interested persons may obtain information, submit comments, and request to be placed on a facility-specific mailing list for future notices; and
- (7) a statement that the department will accept comments and statements of interest regarding the application and will create a facility-specific mailing list for persons who wish to receive future notices.

G. All persons who submit comments or statements of interest to the department or previously participated in a public hearing and who provide a mail or e-mail address shall be placed on a facility-specific

mailing list and the department shall send those persons the public notice issued pursuant to Subsection ~~[H]~~ I of 20.6.2.3108 NMAC, and notice of any public meeting or hearing scheduled on the application. All persons who contact the department to inquire about a specific facility shall be informed of the opportunity to be placed on the facility-specific mailing list.

H. Within 60 days after the department makes its administrative completeness determination and all required technical information is available, the department shall make available a ~~[proposed approval or disapproval of the]~~ draft permit or a notice of intent to deny an application for a discharge permit, modification or renewal, ~~including conditions for approval proposed by the department or the reasons for disapproval~~. The draft permit shall include all proposed effluent limitations or other conditions on proposed discharge, and all proposed monitoring, recordkeeping, and reporting requirements. A draft permit for a permit modification shall only include those permit conditions proposed to be modified.

I. The department shall prepare a fact sheet for every draft permit for a discharge at a federal facility, except for discharges comprised solely of domestic liquid waste, and for other draft permits as determined by the Secretary. The fact sheet shall include:

- (1) the information in Paragraphs 1 - 4 of Subsection F of 20.6.2.3108 NMAC;
- (2) the information in Subsection J of 20.6.2.3108 NMAC; and
- (3) a brief summary of the basis for the draft permit conditions, including references to

applicable statutory or regulatory provisions and appropriate supporting references to the administrative record.

~~[(4)]~~J. The department shall mail by certified mail a copy of the ~~[proposed approval or notice of proposed disapproval]~~ draft permit and fact sheet or notice of intent to deny to the applicant and shall provide notice of the ~~[proposed approval or disapproval of the application for a discharge permit, modification or renewal]~~ draft permit or the notice of intent to deny by:

- (1) posting on the department's website;
- (2) publishing notice in a newspaper of general circulation in this state and a newspaper of general circulation in the location of the facility;
- (3) mailing or e-mailing to those persons on a facility-specific mailing list;
- (4) mailing to any affected local, state, or federal governmental agency, ditch associations and land grants, as identified by the department; and
- (5) mailing to the governor, chairperson, or president of each Indian tribe, pueblo or nation within the state of New Mexico, as identified by the department.

~~[I.]~~K. The public notice issued under Subsection H shall include the information in Subsection F of 20.6.2.3108 NMAC and the following information:

- (1) a brief description of the procedures to be followed by the secretary in making a final determination;
- (2) a statement of the comment period and description of the procedures for a person to request a hearing on the application; and
- (3) the address, ~~and~~ telephone number, and email address at which interested persons may obtain a copy of the ~~[proposed approval or disapproval of an application for a discharge permit, modification or renewal]~~ draft permit and fact sheet or the notice of intent to deny.

~~[J.]~~L. In the event that the ~~[proposed approval or disapproval of an application for a discharge permit, modification or renewal]~~ draft permit or notice of intent to deny is available for review within 30 days of deeming the application administratively complete, the department may combine the public notice procedures of Subsections E and H of 20.6.2.3108 NMAC.

~~[K.]~~M. Following the public notice of the ~~[proposed approval or disapproval of an application for a discharge permit, modification or renewal]~~ draft permit or notice of intent to deny, and prior to a final decision by the secretary, there shall be a period of at least 30 days during which written comments may be submitted to the department and/or a public hearing may be requested in writing. The 30-day comment period shall begin on the date of publication of notice in the newspaper. All comments will be considered by the department. Requests for a hearing shall be in writing and shall set forth the reasons why a hearing should be held. A public hearing shall be held if the secretary determines there is substantial public interest. The department shall notify the applicant and any person requesting a hearing of the decision whether to hold a hearing and the reasons therefore in writing.

~~[L.]~~N. If a hearing is held, pursuant to Subsection ~~[K]~~ M of 20.6.2.3108 NMAC, notice of the hearing shall be given by the department at least 30 days prior to the hearing in accordance with Subsection H of 20.6.2.3108 NMAC. The notice shall include the information identified in Subsection F of 20.6.2.3108 NMAC in addition to the time and place of the hearing and a brief description of the hearing procedures. The hearing shall be held pursuant to 20.6.2.3110 NMAC.

[2-18-77, 12-24-87, 12-1-95, 11-15-96; 20.6.2.3108 NMAC - Rn, 20 NMAC 6.2.III.3108, 1-15-01; A, 12-1-01; A, 9-15-02; A, 7-16-06; A, 12-21-18]

20.6.2.3109 SECRETARY APPROVAL, DISAPPROVAL, MODIFICATION OR TERMINATION OF DISCHARGE PERMITS, AND REQUIREMENT FOR ABATEMENT PLANS:

A. The department shall evaluate the application for a discharge permit, modification or renewal based on information contained in the department's administrative record. The department may request from the discharger, either before or after the issuance of any public notice, additional information necessary for the evaluation of the application. The administrative record shall consist of the application, any additional information required by the department, any information submitted by the discharger or the general public, other information considered by the department, the proposed approval or disapproval of an application for a discharge permit, modification or renewal prepared pursuant to Subsection H of 20.6.2.3108 NMAC, and, if a public hearing is held, all of the documents filed with the hearing clerk, all exhibits offered into evidence at the hearing, the written transcript or tape recording of the hearing, any hearing officer report, and any post hearing submissions.

B. The secretary shall, within 30 days after the administrative record is complete and all required information is available, approve, approve with conditions or disapprove the proposed discharge permit, modification or renewal based on the administrative record. The Secretary shall issue a response to comments which shall specify which provisions, if any, in the draft permit were changed and the reasons for the change, and shall briefly describe and respond to all significant comments on the draft permit raised during the public comment period or at any hearing. The secretary shall ~~give written notice of the action taken to~~ notify the applicant or permittee [and any other person] by certified mail of the action taken and the reasons for such action and shall include a copy of the response to comments. Notice shall also be given by mail or email to persons who participated in the permitting action[who requests a copy in writing].

C. Provided that the other requirements of this part are met and the proposed discharge plan, modification or renewal demonstrates that neither a hazard to public health nor undue risk to property will result, the secretary shall approve the proposed discharge plan, modification or renewal if the following requirements are met:

(1) ground water that has a TDS concentration of 10,000 mg/l or less will not be affected by the discharge; or

(2) the person proposing to discharge demonstrates that approval of the proposed discharge plan, modification or renewal will not result in either concentrations in excess of the standards of 20.6.2.3103 NMAC ~~[or the presence of any toxic pollutant]~~ at any place of withdrawal of water for present or reasonably foreseeable future use, except for contaminants in the water diverted as provided in Subsection ~~[D]~~E of 20.6.2.3109 NMAC; or

(3) the proposed discharge plan conforms to either Subparagraph (a) or (b) below and Subparagraph (c) below:

(a) municipal, other domestic discharges, and discharges from sewerage systems handling only animal wastes: the effluent is entirely domestic, is entirely from a sewerage system handling only animal wastes or is from a municipality and conforms to the following:

(i) the discharge is from an impoundment or a leach field existing on February 18, 1977 which receives less than 10,000 gallons per day and the secretary has not found that the discharge may cause a hazard to public health; or

(ii) the discharger has demonstrated that the total nitrogen in effluent that enters the subsurface from a leach field or surface impoundment will not exceed 200 pounds per acre per year and that the effluent will meet the standards of 20.6.2.3103 NMAC except for nitrates and except for contaminants in the water diverted as provided in Subsection ~~[D]~~E of 20.6.2.3109 NMAC; or

(iii) the total nitrogen in effluent that is applied to a crop which is harvested shall not exceed by more than 25 percent the maximum amount of nitrogen reasonably expected to be taken up by the crop and the effluent shall meet the standards of 20.6.2.3103 NMAC except for nitrates and except for contaminants in the water diverted as provided in Subsection ~~[D]~~E of 20.6.2.3109 NMAC;

(b) discharges from industrial, mining or manufacturing operations:

(i) the discharger has demonstrated that the amount of effluent that enters the subsurface from a surface impoundment will not exceed 0.5 acre-feet per acre per year; or

(ii) the discharger has demonstrated that the total nitrogen in effluent that enters the subsurface from a leach field or surface impoundment shall not exceed 200 pounds per acre per year and the effluent shall meet the standards of 20.6.2.3103 NMAC except for nitrate and contaminants in the water diverted as provided in Subsection ~~[D]~~E of 20.6.2.3109 NMAC; or

(iii) the total nitrogen in effluent that is applied to a crop that is harvested shall not exceed by more than 25 percent the maximum amount of nitrogen reasonably expected to be taken up by the crop and the effluent shall meet the standards of 20.6.2.3103 NMAC except for nitrate and contaminants in the water diverted as provided in Subsection D of 20.6.2.3109 NMAC;

(c) all discharges:

(i) the monitoring system proposed in the discharge plan includes adequate provision for sampling of effluent and adequate flow monitoring so that the amount being discharged onto or below the surface of the ground can be determined;

(ii) the monitoring data is reported to the secretary at a frequency determined by the secretary.

D. The secretary shall allow the following unless he determines that a hazard to public health may result:

(1) the weight of water contaminants in water diverted from any source may be discharged provided that the discharge is to the aquifer from which the water was diverted or to an aquifer containing a greater concentration of the contaminants than contained in the water diverted; and provided further that contaminants added as a result of the means of diversion shall not be considered to be part of the weight of water contaminants in the water diverted;

(2) the water contaminants leached from undisturbed natural materials may be discharged provided that:

(a) the contaminants were not leached as a product or incidentally pursuant to a solution mining operation; and

(b) the contaminants were not leached as a result of direct discharge into the vadose zone from municipal or industrial facilities used for the storage, disposal, or treatment of effluent;

(3) the water contaminants leached from undisturbed natural materials as a result of discharge into ground water from lakes used as a source of cooling water.

E. If data submitted pursuant to any monitoring requirements specified in the discharge permit or other information available to the secretary indicates that this part is being or may be violated or that the standards of 20.6.2.3103 NMAC are being or will be exceeded~~[, or a toxic pollutant as defined in 20.6.2.7 NMAC is present,]~~ in ground water at any place of withdrawal for present or reasonably foreseeable future use, or that the water quality standards for interstate and intrastate streams in New Mexico are being or may be violated in surface water, due to the discharge, except as provided in Subsection D of 20.6.2.3109 NMAC.

(1) The secretary may require a discharge permit modification within the shortest reasonable time so as to achieve compliance with this part and to provide that any exceeding of standards in ground water at any place of withdrawal for present or reasonably foreseeable future use, or in surface water, due to the discharge except as provided in Subsection ~~[D]~~E of 20.6.2.3109 NMAC will be abated or prevented. If the secretary requires a discharge permit modification to abate water pollution:

(a) the abatement shall be consistent with the requirements and provisions of 20.6.2.4101, 20.6.2.4103, Subsections C and E of 20.6.2.4106, 20.6.2.4107, 20.6.2.4108 and 20.6.2.4112 NMAC; and

(b) the discharger may request of the secretary approval to carry out the abatement under 20.6.2.4000 through 20.6.2.4115 NMAC, in lieu of modifying the discharge permit; the discharger shall make the request in writing and shall include the reasons for the request.

(2) The secretary may terminate a discharge permit when a discharger fails to modify the permit in accordance with Paragraph (1) of Subsection E of 20.6.2.3109 NMAC.

(3) The secretary may require modification, or may terminate a discharge permit for a Class I well, a Class III well or other type of well specified in Subsection A of 20.6.2.5101 NMAC, pursuant to the requirements of Subsection I of 20.6.2.5101 NMAC.

(4) If a discharge permit is terminated, the secretary shall notify the permittee by certified mail of the action taken and the reasons for that action. Notice of the termination shall also be given by mail or electronic mail to persons who participated in the permitting action and to those persons on the facility-specific list maintained by the department.

F. If a discharge permit expires or is terminated for any reason and the standards of 20.6.2.3103 NMAC are being or will be exceeded~~[, or a toxic pollutant as defined in 20.6.2.7 NMAC is present]~~ in ground water, or that the water quality standards for interstate and intrastate streams in New Mexico are being or may be violated, the secretary may require the discharger to submit an abatement plan pursuant to 20.6.2.4104 and Subsection A of 20.6.2.4106 NMAC.

G. At the request of the discharger, a discharge permit may be modified in accordance with 20.6.2.3000 through 20.6.2.3114 NMAC.

H. The secretary shall not approve a proposed discharge plan, modification, or renewal for:

- (1) any discharge for which the discharger has not provided a site and method for flow measurement and sampling;

- (2) any discharge that will cause any stream standard to be violated;

- (3) the discharge of any water contaminant which may result in a hazard to public health; or

- (4) a period longer than five years, except that for new discharges, the term of the discharge permit approval shall commence on the date the discharge begins, but in no event shall the term of the approval exceed seven years from the date the permit was issued; for those permits expiring more than five years from the date of issuance, the discharger shall give prior written notification to the department of the date the discharge is to commence; the term of the permit shall not exceed five years from that date.

[2-18-77, 6-26-80, 9-20-82, 7-2-81, 3-3-86, 12-1-95, 11-15-96; 20.6.2.3109 NMAC - Rn, 20 NMAC 6.2.III.3109, 1-15-01; A, 12-1-01; A, 9-15-02; A, 7-16-06; A, 8-31-15; A, 12-21-18]

20.6.2.3112 APPEALS OF SECRETARY'S DECISIONS:

A. If the secretary approves, approves subject to conditions, or disapproves a proposed discharge plan, renewal or modification, or modifies or terminates a discharge permit, appeal therefrom shall be in accordance with the provisions of Sections 74-6-5(N), (O) and (P), NMSA 1978. The filing of an appeal does not act as a stay of any provision of the Act, the regulations, or any permit issued pursuant to the Act, unless otherwise ordered by the secretary or the commission.

B. If the secretary determines that a discharger is not exempt from obtaining a discharge permit, or that the material to be discharged contains any toxic pollutant [as defined] listed in 20.6.2.7 NMAC, which is not included in the numerical standards of Paragraph (1) of Subsection A of 20.6.2.3103 NMAC, then the discharger may appeal such determination by filing with the commission's secretary a notice of appeal to the commission within thirty days after receiving the secretary's written determination, and the appeal therefrom and any action of the commission thereon shall be in accordance with the provisions of Subsections (O) through (S) of Section 74-6-5, NMSA 1978.

C. Proceedings before the commission shall be conducted in accordance with the commission's adjudicatory procedures, 20 NMAC 1.3.

[2-18-77, 7-2-81, 12-1-95, 11-15-96; 20.6.2.3112 NMAC - Rn, 20 NMAC 6.2.III.3112, 1-15-01; A, 12-1-01; A, 7-16-06; A, 12-21-18]

20.6.2.3114 FEES:

A. FEE AMOUNT AND SCHEDULE OF PAYMENT - Every facility submitting a discharge permit application for approval or renewal shall pay the permit fees specified in Table 1 of this section and shall pay a filing fee as specified in Table 2 of this section to the Water Quality Management Fund. Every facility submitting a request for temporary permission to discharge pursuant to Subsection B of Section 20.6.2.3106 NMAC, or financial assurance pursuant to Paragraph 11 of Subsection A of Section 20.6.2.3107 NMAC shall pay the fees specified in Table 2 of this section to the Water Quality Management Fund.

B. Facilities applying for discharge permits which are subsequently withdrawn or denied shall pay one-half of the permit fee at the time of denial or withdrawal.

C. Every facility submitting an application for discharge permit modification will be assessed a filing fee plus one-half of the permit fee. Applications for both renewal and modification will pay the filing fee plus the permit fee.

D. If the secretary requires a discharge permit modification as a component of an enforcement action, the facility shall pay the applicable discharge permit modification fee. If the secretary requires a discharge permit modification outside the context of an enforcement action, the facility shall not be assessed a fee.

E. The secretary may waive or reduce fees for discharge permit modifications or renewals which require little or no cost for investigation or issuance.

F. Facilities shall pay the filing fee at the time of discharge permit application. The filing fee is nonrefundable. The required permit fees may be paid in a single payment at the time of discharge permit approval or in equal installments over the term of the discharge permit. Installment payments shall be remitted yearly, with the first installment due on the date of discharge permit approval. Subsequent installment payments shall be remitted yearly thereafter. The discharge permit or discharge permit application review of any facility shall be suspended or terminated if the facility fails to submit an installment payment by its due date.

G. Every three years beginning in 2004, the department shall review the fees specified in Table 1 and 2 of this section and shall provide a report to the commission. The department shall revise the fees as necessary in accordance with Section 74-6-5(J), NMSA 1978.

20.6.2.3114 TABLE 1 (gpd=gallons per day)

	Permit Fee
Agriculture <10,000 gpd	\$ 1,150
Agriculture 10,000 to 49,999 gpd	\$ 2,300
Agriculture 50,000 to 99,999 gpd	\$ 3,450
Agriculture 100,000 gpd or greater	\$ 4,600
Domestic Waste <10,000 gpd	\$ 1,150
Domestic Waste 10,000 to 49,999 gpd	\$ 2,300
Domestic Waste 50,000 to 99,999 gpd	\$ 3,450
Domestic Waste 100,000 to 999,999 gpd	\$ 4,600
Domestic Waste 1,000,000 to 9,999,999 gpd	\$ 7,000
Domestic Waste 10,000,000 gpd or greater	\$ 9,200
Food Processing <10,000 gpd	\$ 1,150
Food Processing 10,000 to 49,999 gpd	\$ 2,300
Food Processing 50,000 to 99,999 gpd	\$ 3,450
Food Processing 100,000 to 999,999 gpd	\$ 4,600
Food Processing 1,000,000 or greater	\$ 7,000
Grease/Septage surface disposal <10,000 gpd	\$ 1,725
Grease/Septage surface disposal 10,000 gpd or greater	\$ 3,450
Industrial <10,000 gpd; or <10,000 yd ³ of contaminated solids	\$ 1,725
Industrial 10,000 to 99,999 gpd; or 10,000 to 99,999 yd ³ of contaminated solids	\$ 3,450
Industrial 100,000 to 999,999 gpd; or 100,000 to 999,999 yd ³ of contaminated solids or greater	\$ 6,900
Industrial 1,000,000 gpd or greater; or 1,000,000 yd ³ of contaminated solids or greater	\$10,350
Discharge of remediation system effluent - remediation plan approved under separate regulatory authority	\$ 1,600
Mining dewatering	\$ 3,250
Mining leach dump	\$13,000
Mining tailings	\$13,000
Mining waste rock	\$13,000
Mining in-situ leach (except salt) and old stope leaching	\$13,000
Mining other (mines with minimal environmental impact, post closure operation and maintenance, evaporation lagoons and land application at uranium mines)	\$ 4,750
Gas Compressor Stations 0 to 1000 Horsepower	\$ 400
Gas Compressor Stations >1001 Horsepower	\$ 1,700
Gas Processing Plants	\$ 4,000
Injection Wells: Class I (non-hazardous)	\$ 4,500
Injection Wells: Class III and Geothermal	\$ 1,700
Oil and Gas Service Companies	\$ 1,700
Refineries	\$ 8,400
Crude Pump Station	\$ 1,200
Underground Gas Storage	\$ 1,700
Abatement of ground water and vadose zone	\$ 2,600

contamination [at oil and gas Sites]	
General permit	\$ 600

20.6.2.3114 Table 2

	Fee Amount
Filing fee	\$100
Temporary permission	\$50
Financial assurance: approval of instrument	greater of \$250 or .01%
Financial assurance: annual review	greater of \$100 or .001%

[8-17-91, 12-1-95; 20.6.2.3114, Rn & A, 20 NMAC 6.2.III.3114, 01-01-01; A, 12-21-18]

20.6.2.4103 ABATEMENT STANDARDS AND REQUIREMENTS:

A. The vadose zone shall be abated as follows:

(1) ~~so that~~ water contaminants in the vadose zone shall not be capable of contaminating ground water or surface water, in excess of the standards in Subsections B and C below, through leaching, percolation or as the water table elevation fluctuates; and

(2) any constituent listed in 20.6.2.3103 NMAC or any toxic pollutant in the vadose zone shall be abated so that it is not capable of endangering human health due to inhalation of vapors that may accumulate in structures, utility infrastructure, or construction excavations.

B. 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 ~~conform to the following standards:~~

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

(2) ~~the standards of Section 20.6.2.3103 NMAC shall be met.] meet the standards of Subsections A, B, and C of Section 20.6.2.3103 NMAC:~~

C. Surface water pollution shall be abated to conform to the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20.6.4 NMAC).

D. Subsurface water and surface water abatement shall not be considered complete until a minimum of eight (8) consecutive ~~quarterly samples~~ sampling events collected from all compliance sampling stations approved by the secretary, with a minimum of ninety (90) days between sampling events spanning a time period no greater than four (4) years, meet the abatement standards of Subsections A, B, and C of this section. Abatement of water contaminants measured in solid-matrix samples of the vadose zone shall be considered complete after one-time sampling from compliance stations approved by the secretary.

E. ~~Technical Infeasibility.~~

(1) ~~If any responsible person is unable to fully meet the abatement standards set forth in Subsections A and B of this section using commercially accepted abatement technology pursuant to an approved abatement plan, he may propose that abatement standards compliance is technically infeasible. Technical infeasibility proposals involving the use of experimental abatement technology shall be considered at the discretion of the secretary. Technical infeasibility may be demonstrated by a statistically valid extrapolation of the decrease in concentration(s) of any water contaminant(s) over the remainder of a twenty (20) year period, such that projected future reductions during that time would be less than 20 percent of the concentration(s) at the time technical infeasibility is proposed. A statistically valid decrease cannot be demonstrated by fewer than eight (8) consecutive quarters. The technical infeasibility proposal shall include a substitute abatement standard(s) for those contaminants that is/are technically feasible. Abatement standards for all other water contaminants not demonstrated to be technically infeasible shall be met.~~

(2) ~~In no event shall a proposed technical infeasibility demonstration be approved by the secretary for any water contaminant if its concentration is greater than 200 percent of the abatement standard for that contaminant.~~

(3) ~~If the secretary cannot approve any or all portions of a proposed technical infeasibility demonstration because the water contaminant concentration(s) is/are greater than 200 percent of the abatement standard(s) for each contaminant, the responsible person may further pursue the issue of technical infeasibility by filing a petition with the commission seeking:~~

(a) ~~approval of alternate abatement standard(s) pursuant to Subsection F of this section; or~~

~~(b) granting of a variance pursuant to Section 20.6.2.1210 NMAC.~~

~~F. Alternative Abatement Standards.~~

~~(1) At any time during or after the submission of a Stage 2 abatement plan, the responsible person may file a petition seeking approval of alternative abatement standard(s) for the standards set forth in Subsections A and B of this section. The commission may approve alternative abatement standard(s) if the petitioner demonstrates that:~~

~~(a) compliance with the abatement standard(s) is/are not feasible, by the maximum use of technology within the economic capability of the responsible person; OR there is no reasonable relationship between the economic and social costs and benefits (including attainment of the standard(s) set forth in Section 20.6.2.4103 NMAC) to be obtained;~~

~~(b) the proposed alternative abatement standard(s) is/are technically achievable and cost-benefit justifiable; and~~

~~(c) compliance with the proposed alternative abatement standard(s) will not create a present or future hazard to public health or undue damage to property.~~

~~(2) The petition shall be in writing, filed with the secretary. The petition shall specify, in addition to the information required by Subsection A of Section 20.6.2.1210 NMAC, the water contaminant(s) for which alternative standard(s) is/are proposed, the alternative standard(s) proposed, the three-dimensional body of water pollution for which approval is sought, and the extent to which the abatement standard(s) set forth in Section 20.6.2.4103 NMAC is/are now, and will in the future be, violated. The petition may include a transport, fate and risk assessment in accordance with accepted methods, and other information as the petitioner deems necessary to support the petition.~~

~~(3) The commission shall review a petition for alternative abatement standards in accordance with the procedures for review of a variance petition provided in the commission's adjudicatory procedures, 20.1.3 NMAC.] Alternative Abatement Standards: If the person abating water pollution pursuant to an approved abatement plan, or pursuant to the exemptions of 20.6.2.4105 NMAC, is unable to fully meet an abatement standard set forth in Subsections A and C of this section, the person may file a petition with the commission seeking approval of an alternative abatement standard.~~

~~(1) A petition for an alternative abatement standard shall demonstrate at least one of the following criteria:~~

~~(a) compliance with the standard set forth in Subsections A and B of this section would not be feasible by the maximum use of commercially accepted abatement technology;~~

~~(b) compliance with the standard set forth in Subsections A and B of this section would not be feasible by the maximum use of technology within the economic capability of the person;~~

~~(c) there is no reasonable relationship between the economic and social costs and benefits of attainment of the standard set forth in Subsections A and B of this section; or~~

~~(d) compliance with the standard set forth in Subsections A and B of this section is technically infeasible following the maximum use of commercially accepted abatement technology, as demonstrated by a statistically valid extrapolation of the decrease in concentration of any water contaminant over a twenty (20) year period, such that projected future reductions during that time would be less than 20 percent of the concentration at the time technical infeasibility is proposed. Technical infeasibility proposals that involved the use of experimental abatement technology shall be considered at the discretion of the commission. A statistically valid decrease cannot be demonstrated by fewer than eight (8) consecutive sampling events. Sampling events demonstrating a statistically valid decrease shall be collected with a minimum of ninety (90) days between sampling events and shall not span a time period greater than four (4) years.~~

~~(2) A petition for alternative abatement standards shall specify, in addition to the information required by Subsection A of 20.6.2.1210 NMAC the following:~~

~~(a) the water contaminant for which the alternative abatement standard is proposed;~~

~~(b) the alternative abatement standard proposed;~~

~~(c) the three-dimensional body of water pollution for which approval is sought;~~

~~(d) a summary of all actions taken to abate water pollution to standards; and~~

~~(e) other information as deemed necessary, which may include a transport, fate and risk assessment in accordance with accepted methods.~~

~~(3) The commission may approve an alternative abatement standard if the petitioner demonstrates that:~~

~~(a) at least one of the criteria set forth in Paragraph 1 of Subsection E of this Section has been met;~~

(b) the proposed alternative abatement standard is technically achievable and cost benefit justifiable; and

(c) compliance with the proposed alternative abatement standard will not create a present or future hazard to public health or undue damage to property.

(4) An alternative abatement standard shall only be granted after a public hearing, as required by NMSA 1978, Section 74-6-4(H) of the water Quality Act.

(5) The commission shall review petitions for alternative abatement standards in accordance with the procedures for review of variance petitions provided in the commission's adjudicatory procedures, 20.1.3 NMAC.

F. For a site where abatement activities include post-completion monitoring, maintenance of engineering controls, remediation systems, affirmation of non-residential use, or port-closure care, institutional controls such as well drilling restrictions under 19.27.5 NMAC, deed restrictions, easements or other legal restrictions binding on successors in interest to the site may be required by the secretary.

[12-1-95, 11-15-96; 20.6.2.4103 NMAC - Rn, 20 NMAC 6.2.IV.4103, 1-15-01; A, 12-21-18]

20.6.2.4104 ABATEMENT PLAN REQUIRED:

A. Unless otherwise provided by this Part, all responsible persons who are abating, or who are required to abate, water pollution in excess of the standards and requirements set forth in Section 20.6.2.4103 NMAC of this Part shall do so pursuant to an abatement plan approved by the secretary. When an abatement plan has been approved, all actions leading to and including abatement shall be consistent with the terms and conditions of the abatement plan.

B. In the event of a transfer of the ownership, control or possession of a facility for which an abatement plan is required or approved, where the transferor is a responsible person, the transferee also shall be considered a responsible person for the duration of the abatement plan, and may jointly share the responsibility to conduct the actions required by this Part with other responsible persons. The transferor shall notify the transferee in writing, at least thirty (30) days prior to the transfer, that an abatement plan has been required or approved for the facility, and shall deliver or send by certified mail to the secretary a copy of such notification together with a certificate or other proof that such notification has in fact been received by the transferee. The transferor and transferee may agree to a designated responsible person who shall assume the responsibility to conduct the actions required by this Part. The responsible persons shall notify the secretary in writing if a designated responsible person is agreed upon. If the secretary determines that the designated responsible person has failed to conduct the actions required by this Part, the secretary shall notify all responsible persons of this failure in writing and allow them thirty (30) days, or longer for good cause shown, to conduct the required actions before issuing a compliance order pursuant to Section 20.6.2.1220 NMAC.

C. ~~[If the source of the water pollution to be abated is a facility that operated under a discharge plan,~~ The secretary may require the responsible person(s) to submit a financial assurance plan which covers the estimated costs to conduct the actions required by the abatement plan. Such a financial assurance plan shall be consistent with any financial assurance requirements adopted by the commission.

D. The Secretary may require an oversight funding agreement with the responsible person for abatement plans which compensates the department for reasonable costs associated with the oversight of activities.
[12-1-95; 20.6.2.4104 NMAC - Rn, 20 NMAC 6.2.IV.4104, 1-15-01; A, 12-21-18]

20.6.2.4105 EXEMPTIONS FROM ABATEMENT PLAN REQUIREMENTS:

A. Except as provided in Subsection B of this Section, Sections 20.6.2.4104 and 20.6.2.4106 NMAC do not apply to a person who is abating water pollution:

(1) from a storage tank, under the authority of the Petroleum Storage Tank Regulations (20.5 NMAC) adopted by the New Mexico Environmental Improvement Board, or in accordance with the New Mexico Ground Water Protection Act;

(2) under the authority of the U.S. Environmental Protection Agency pursuant to either the federal Comprehensive Environmental Response, Compensation and Liability Act, and amendments, or the Resource Conservation and Recovery Act;

(3) under the authority of the secretary pursuant to the Hazardous Waste Management Regulations (20.4.1 NMAC) adopted by the New Mexico Environmental Improvement Board;

(4) under the authority of the U.S. Nuclear Regulatory Commission or the U.S. Department of Energy pursuant to the Atomic Energy Act;

- (5) from a solid waste landfill, under the authority of the secretary pursuant to the Solid Waste Management Regulations (20.9.1 NMAC) adopted by the N.M. Environmental Improvement Board;
- (6) under the authority of a ground water discharge plan approved by the secretary, provided that such abatement is consistent with the requirements and provisions of Sections 20.6.2.4101, 20.6.2.4103, Subsections C and E of Section 20.6.2.4106, Sections 20.6.2.4107 and 20.6.2.4112 NMAC;
- (7) under the authority of a Letter of Understanding, Settlement Agreement or Administrative Order on Consent signed by the secretary prior to December 1, 1995, provided that abatement is being performed in full compliance with the terms of the Letter of Understanding, Settlement Agreement or Administrative Order on Consent; and
- (8) on an emergency basis, or while abatement plan approval is pending, or in a manner that will result in compliance with the standards and requirements set forth in Section 20.6.2.4103 NMAC within one hundred and eighty (180) days after notice is required to be given pursuant to Paragraph (1) of Subsection A of Section 20.6.2.1203 NMAC, provided that the delegated agency does not object to the abatement action pursuant to Paragraphs (6) and (7) of Subsection A of Section 20.6.2.1203 NMAC.

B. If the secretary determines that abatement of water pollution subject to Subsection A of this section will not meet the standards of Subsections A, B, and C of Section 20.6.2.4103 NMAC, or that additional action is necessary to protect health, welfare, environment or property, the secretary may notify a responsible person, by certified mail, to submit an abatement plan pursuant to Section 20.6.2.4104 and Subsection A of Section 20.6.2.4106 NMAC. The notification shall state the reasons for the secretary's determination. In any appeal of the secretary's determination under this Section, the secretary shall have the burden of proof.

C. Sections 20.6.2.4104 and 20.6.2.4106 NMAC do not apply to the following activities:

- (1) Discharges subject to an effective and enforceable National Pollutant Discharge Elimination System (NPDES) permit;
 - (2) Land application of ground water contaminated with nitrogen originating from human or animal waste and not otherwise exceeding the standards of Subsection A of Section 20.6.2.3103 NMAC [~~and not containing a toxic pollutant as defined in Section 20.6.2.1101 NMAC~~], provided that it is done in compliance with a discharge plan approved by the secretary;
 - (3) Abatement of water pollution resulting from the withdrawal and decontamination or blending of polluted water for use as a public or private drinking-water supply, by any person other than a responsible person, unless the secretary determines that a hazard to public health may result; and
 - (4) Reasonable operation and maintenance of irrigation and flood control facilities.
- [12-1-95; 20.6.2.4105 NMAC - Rn, 20 NMAC 6.2.IV.4105, 1-15-01; A, 10/15/03; A, 12-21-18]

20.6.2.4106 ABATEMENT PLAN PROPOSAL:

A. Except as provided for in Section 20.6.2.4105 NMAC, a responsible person shall, within sixty (60) days of receipt of written notice from the secretary that an abatement plan is required, submit an abatement plan proposal to the secretary for approval. For good cause shown, the secretary may allow for a total of one hundred and twenty (120) days to prepare and submit the abatement plan proposal.

B. Voluntary Abatement:

(1) Any person wishing to abate water pollution in excess of the standards and requirements set forth in Section 20.6.2.4103 NMAC may submit a Stage 1 abatement plan proposal to the secretary for approval. Following approval by the secretary of a final site investigation report prepared pursuant to Stage 1 of an abatement plan, any person may submit a Stage 2 abatement plan proposal to the secretary for approval.

(2) Following approval of a Stage 1 or Stage 2 abatement plan proposal under Paragraph (1) of Subsection B of this Section, the person submitting the approved plan shall be a responsible person under Sections 20.6.2.4000 through 20.6.2.4115 NMAC for the purpose of performing the approved Stage 1 or Stage 2 abatement plan. Nothing in this Section shall preclude the secretary from applying Paragraph (9) of Subsection A of Section 20.6.2.1203 NMAC to a responsible person if applicable.

C. Stage 1 Abatement Plan: The purpose of Stage 1 of the abatement plan shall be to design and conduct a site investigation that will adequately define site conditions, and provide the data necessary to select and design an effective abatement option. Stage 1 of the abatement plan may include, but not necessarily be limited to, the following information depending on the media affected, and as reasonably needed to select and implement an expeditious abatement option:

- (1) Descriptions of the site, including a site map, and of site history including the nature of the discharge that caused the water pollution, and a summary of previous investigations;
- (2) Site investigation workplan to define:

(a) site geology and hydrogeology, the vertical and horizontal extent and magnitude of vadose-zone and ground water contamination, subsurface hydraulic parameters including hydraulic conductivity, transmissivity, storativity, and rate and direction of contaminant migration, inventory of water wells inside and within one (1) mile from the perimeter of the three-dimensional body where the standards set forth in Subsection B of Section 20.6.2.4103 NMAC are exceeded, and location and number of such wells actually or potentially affected by the pollution; and

(b) surface water hydrology, seasonal stream flow characteristics, ground water/surface water relationships, the vertical and horizontal extent and magnitude of contamination and impacts to surface water and stream sediments. The magnitude of contamination and impacts on surface water may be, in part, defined by conducting a biological assessment of fish, benthic macroinvertebrates and other wildlife populations. Seasonal variations should be accounted for when conducting these assessments.

(3) Monitoring program, including sampling stations and frequencies, for the duration of the abatement plan that may be modified, after approval by the secretary, as additional sampling stations are created;

(4) Quality assurance plan, consistent with the sampling and analytical techniques listed in Subsection B of Section 20.6.2.3107 NMAC and with Section 20.6.4.10 NMAC of the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20.6.4 NMAC), for all work to be conducted pursuant to the abatement plan;

(5) Site health and safety plan for all work to be performed pursuant to the abatement plan;

(6) A schedule for all Stage 1 abatement plan activities, including the submission of summary quarterly progress reports, and the submission, for approval by the secretary, of a detailed final site investigation report; and

(7) Any additional information that may reasonably be required to design and perform an adequate site investigation.

D. Stage 2 Abatement Plan: Any responsible person shall submit a Stage 2 abatement plan proposal to the secretary for approval within sixty (60) days~~[-, or up to one hundred and twenty (120) days for good cause shown,]~~ after approval by the secretary of the final site investigation report prepared pursuant to Stage 1 of the abatement plan. The secretary may grant approval for an extension of time to submit a State 2 abatement plan for good cause shown.

E. The purpose of Stage 2 of the abatement plan shall be to select and design, if necessary, an abatement option that, when implemented, will result in attainment of the abatement standards and requirements set forth in Section 20.6.2.4103 NMAC, including post-closure maintenance activities. Stage 2 of the abatement plan should include, at a minimum, the following information:

(1) Brief description of the current situation at the site;

(2) Development and assessment of abatement options;

(3) Description, justification and design, if necessary, of preferred abatement option;

(4) Modification, if necessary, of the monitoring program approved pursuant to Stage 1 of the abatement plan, including the designation of pre and post abatement-completion sampling stations and sampling frequencies to be used to demonstrate compliance with the standards and requirements set forth in Section 20.6.2.4103 NMAC;

(5) Site maintenance activities, if needed, proposed to be performed after termination of abatement activities;

(6) A schedule for the duration of abatement activities, including the submission of summary quarterly progress reports;

(7) A public notification proposal designed to satisfy the requirements of Subsections B and C of Sections 20.6.2.4108 and 20.6.2.4108 NMAC; and

(8) Any additional information that may be reasonably required to select, describe, justify and design an effective abatement option.

[12-1-95; 20.6.2.4106 NMAC - Rn, 20 NMAC 6.2.IV.4106, 1-15-01; A, 12-21-18]

20.6.2.4108 PUBLIC NOTICE AND PARTICIPATION:

A. Within thirty (30) days of filing of a Stage 1 abatement plan proposal, the secretary shall issue a news release summarizing:

(1) the source, extent, magnitude and significance of water pollution, as known at that time;

(2) the proposed Stage 1 abatement plan investigation; and

(3) the name and telephone number of an agency contact who can provide additional

information.

B. ~~[Within thirty (30) days of filing of]~~ Any person proposing a Stage 2 abatement plan, [proposal, or proposed] a significant modification [of] to a Stage 2 abatement plan, or an alternative abatement standard [any responsible person] shall provide ~~[to the secretary proof of public-]~~ notice of the ~~[abatement plan-]~~ proposal to the following persons:

(1) the public, who shall be notified through publication of a notice in newspapers of general circulation in this state and in the county where the abatement will occur or where the water body that would be affected by a proposed alternative abatement standard is located, and, in areas with large percentages of non-English speaking people, through the mailing of the public notice in English to a bilingual radio station serving the area where the abatement will occur with a request that it be aired as a public service announcement in the predominant non-English language of the area;

(2) those persons, as identified by the secretary, who have requested notification, who shall be notified by mail or email;

(3) the New Mexico Trustee for Natural Resources, and any other local, state or federal governmental agency affected, as identified by the secretary, which shall be notified by certified mail;

(4) owners and residents of surface property located inside, and within one (1) mile from, the perimeter of the geographic area where the standards and requirements set forth in Section 20.6.2.4103 NMAC are exceeded who shall be notified by a means approved by the secretary; and

(5) the Governor or President of each Indian Tribe, Pueblo or Nation within the state of New Mexico, as identified by the secretary, who shall be notified by mail or email.

C. The public notice proposal for a Stage 2 abatement plan proposal or significant modification of a Stage 2 abatement plan shall [include, as approved in advance by-] be submitted to the secretary for approval with a proposed Stage 2 abatement plan, or significant modification of a Stage 2 abatement plan, and shall include:

(1) name and address of the responsible person;

(2) location of the proposed abatement;

(3) brief description of the nature of the water pollution and of the proposed abatement action;

(4) brief description of the procedures followed by the secretary in making a final determination;

(5) statement on the comment period;

(6) statement that a copy of the abatement plan can be viewed by the public at the department's main office or at the department field office for the area in which the discharge occurred;

(7) statement that written comments on the abatement plan, and requests for a public meeting or hearing that include the reasons why a meeting or hearing should be held, will be accepted for consideration if sent to the secretary within sixty (60) days after the ~~[determination of administrative completeness; and]~~ date of public notice; and

(8) address and phone number at which interested persons may obtain further information.

D. The public notice proposal for a proposed alternative abatement standard shall be submitted to the secretary for approval thirty (30) days prior to the filing of a petition for alternative abatement standards, and shall include:

(1) name and address of the responsible person;

(2) location of the proposed alternative abatement standards;

(3) brief description of the nature of the water pollution and of the proposed alternative abatement standards;

(4) brief description of the procedures followed by the commission in making a final determination on a petition for alternate abatement standards;

(5) statement that a copy of the petition for alternate abatement standards petition can be viewed by the public at the department's main office or at the department field office for the area in which the affected water body is occurring;

(6) statement on how the public can request to be placed on a facility-specific mailing list for notification of any hearing conducted on the petition for alternate abatement standards pursuant to 20.1.3 NMAC; and

(7) address and phone number at which interested persons may obtain further information.

E. Within thirty (30) days of the secretary's approval of a Stage 2 abatement plan public notice proposal, any responsible person shall provide to the secretary proof of public notice to the persons listed in Subsection B of 20.6.2.4108 NMAC.

~~[D]~~ E. [A] For a proposed Stage 2 abatement plan or significant modification of a Stage 2 abatement plan a public meeting or hearing may be held if the secretary determines there is significant public interest. Notice of the time and place of the meeting or hearing shall be given at least thirty (30) days prior to the meeting or hearing pursuant to Subsections A and B above. The secretary may appoint a meeting facilitator or hearing officer. The secretary may require the responsible person to prepare for approval by the secretary a fact sheet, to be distributed at the public meeting or hearing and afterwards upon request, written in English and Spanish, describing site history, the nature and extent of water pollution, and the proposed abatement. The record of the meeting or hearing, requested under this Section, consists of a tape recorded or transcribed session, provided that the cost of a court recorder shall be paid by the person requesting the transcript. If requested by the secretary, the responsible person will provide a translator approved by the secretary at a public meeting or hearing conducted in a locale where testimony from non-English speaking people can reasonably be expected. At the meeting or hearing, all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing, and to ask questions of the secretary or the secretary's designee and of the responsible person, or their authorized representatives.

G. An alternative abatement standard shall only be granted after a public hearing before the commission, as required by NMSA 1978, Section 74-6-4(H) of the Water Quality Act. The commission shall review petitions for alternative abatement standards in accordance with the procedures for review of variance petitions provided in the commission's adjudicatory procedures. 20.1.3 NMAC.
[12-1-95; 20.6.2.4108 NMAC - Rn, 20 NMAC 6.2.IV.4108, 1-15-01; A, 12-21-18]

20.6.2.4109 SECRETARY APPROVAL OR NOTICE OF DEFICIENCY OF SUBMITTALS:

A. The secretary shall, within sixty (60) days of receiving a Stage 1 abatement plan proposal, a site investigation report, ~~[a technical infeasibility demonstration,]~~ or an abatement completion report, approve the document, or notify the responsible person of the document's deficiency, based upon the information available.

B. The secretary shall, within thirty (30) days of receiving a fact sheet, or Stage 2 abatement plan public notice proposal, approve or notify the responsible person of the document's deficiency, based upon the information available.

C. If no public meeting or hearing is held pursuant to Subsection ~~[D]~~ E of Section 20.6.2.4108 NMAC, then the secretary shall, within ~~[ninety (90)]~~ 120 days of receiving a Stage 2 abatement plan proposal, approve the plan, or notify the responsible person of the plan's deficiency, based upon the information available.

D. If a public meeting or hearing is held pursuant to Subsection ~~[D]~~ E of Section 20.6.2.4108, then the secretary shall, within sixty (60) days of receipt of all required information, approve Stage 2 of the abatement plan proposal, or notify the responsible person of the plan's deficiency, based upon the information contained in the plan and information submitted at the meeting or hearing.

E. If the secretary notifies a responsible person of any deficiencies in a site investigation report, or in a Stage 1 or Stage 2 abatement plan proposal, the responsible person shall submit a modified document to cure the deficiencies specified by the secretary within thirty (30) days of receipt of the notice of deficiency. The responsible person shall be in violation of Sections 20.6.2.4000 through 20.6.2.4115 NMAC if he fails to submit a modified document within the required time, or if the modified document does not make a good faith effort to cure the deficiencies specified by the secretary.

F. Provided that the other requirements of this Part are met and provided further that Stage 2 of the abatement plan, if implemented, will result in the standards and requirements set forth in Section 20.6.2.4103 NMAC being met within a schedule that is reasonable given the particular circumstances of the site, the secretary shall approve the plan.

[12-1-95; 20.6.2.4109 NMAC - Rn, 20 NMAC 6.2.IV.4109, 1-15-01; A, 12-21-18]

20.6.2.4114 APPEALS FROM SECRETARY'S DECISIONS:

A. If the secretary determines that an abatement plan is required pursuant to Paragraph (9) of Subsection A of 20.6.2.1203, ~~[Paragraph (4) of]~~ Subsection ~~[E]~~ F of 20.6.2.3109, or Subsection B of 20.6.2.4105 NMAC, approves or provides notice of deficiency of a proposed abatement plan, ~~[technical infeasibility demonstration]~~ or abatement completion report, or modifies or terminates an approved abatement plan, he shall provide written notice of such action by certified mail to the responsible person and any person who participated in the action.

B. Any person who participated in the action before the secretary and who is adversely affected by the action listed in Subsection A of 20.6.2.4114 NMAC may file a petition requesting a review before the commission.

C. The petition shall be made in writing to the commission and shall be filed with the commission's secretary within thirty (30) days after receiving notice of the secretary's action. The petition shall specify the portions of the action to which the petitioner objects, certify that a copy of the petition has been mailed or hand-delivered to the secretary, and to the applicant or permittee if the petitioner is not the applicant or permittee, and attach a copy of the action for which review is sought. Unless a timely petition for hearing is made, the secretary's action is final.

D. The proceedings before the commission shall be conducted as provided in the commission's adjudicatory procedures, 20 NMAC 1.3.

E. The cost of the court reporter for the hearing shall be paid by the petitioner.

F. The appeal provisions do not relieve the owner, operator or responsible person of their obligations to comply with any federal or state laws or regulations.

[12-1-95, 11-15-96; 20.6.2.4114 NMAC - Rn, 20 NMAC 6.2.IV.4114, 1-15-01; A, 7-16-06; A, 12-21-18]

20.6.2.5002 UNDERGROUND INJECTION CONTROL WELL CLASSIFICATIONS:

A. Underground injection control wells include the following.

(1) Any dug hole or well that is deeper than its largest surface dimension, where the principal function of the hole is emplacement of fluids.

(2) Any septic tank or cesspool used by generators of hazardous waste, or by owners or operators of hazardous waste management facilities, to dispose of fluids containing hazardous waste.

(3) Any subsurface distribution system, cesspool or other well which is used for the injection of wastes.

B. Underground injection control wells are classified as follows:

(1) Class I wells inject fluids beneath the lowermost formation that contains 10,000 milligrams per liter or less TDS. Class I hazardous or radioactive waste injection wells inject fluids containing any hazardous or radioactive waste as defined in 74-4-3 and 74-4A-4 NMSA 1978 or 20.4.1.200 NMAC (incorporating 40 C.F.R. Section 261.3), including any combination of these wastes. Class I non-hazardous waste injection wells inject non-hazardous and non-radioactive fluids, and they inject naturally-occurring radioactive material (NORM) as provided by 20.3.1.1407 NMAC.

(2) Class II wells inject fluids associated with oil and gas recovery;

(3) Class III wells inject fluids for extraction of minerals or other natural resources, including sulfur, uranium, metals, salts or potash by in situ extraction. This classification includes only in situ production from ore bodies that have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V.

(4) Class IV wells inject fluids containing any radioactive or hazardous waste as defined in 74-4-3 and 74-4A-4 NMSA 1978, including any combination of these wastes, above or into a formation that contains 10,000 mg/l or less TDS.

(5) Class V wells inject a variety of fluids and are those wells not included in Class I, II, III or IV. Types of Class V wells include, but are not limited to, the following:

(a) domestic liquid waste injection wells:

(i) domestic liquid waste disposal wells used to inject liquid waste volumes greater than that regulated by 20.7.3 NMAC through subsurface fluid distribution systems or vertical wells;

(ii) septic system wells used to emplace liquid waste volumes greater than that regulated by 20.7.3 NMAC into the subsurface, which are comprised of a septic tank and subsurface fluid distribution system;

(iii) large capacity cesspools used to inject liquid waste volumes greater than that regulated by 20.7.3 NMAC, including drywells that sometimes have an open bottom or perforated sides;

(b) industrial waste injection wells:

(i) air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling;

(ii) dry wells used for the injection of wastes into a subsurface formation;

(iii) [geothermal energy-] injection wells associated with the recovery of geothermal energy for heating, aquaculture and production of electrical power;

(iv) stormwater drainage wells used to inject storm runoff from the surface into the subsurface;

(v) motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or maintenance activities;

- washing activities;
- (vi) car wash waste disposal wells used to inject fluids from motor vehicle washing activities;
 - (c) mining injection wells:
 - (i) stopes leaching wells used for solution mining of conventional mines;
 - (ii) brine injection wells used to inject spent brine into the same formation from which it was withdrawn after extraction of halogens or their salts;
 - (iii) backfill wells used to inject a mixture of water and sand, mill tailings or other solids into mined out portions of subsurface mines whether water injected is a radioactive waste or not;
 - (iv) injection wells used for in situ recovery of lignite, coal, tar sands, and oil shale;
 - (d) ground water management injection wells:
 - (i) ground water remediation injection wells used to inject contaminated ground water that has been treated to ground water quality standards;
 - (ii) in situ ground water remediation wells used to inject a fluid that facilitates vadose zone or ground water remediation.
 - (iii) recharge wells used to replenish the water in an aquifer, including use to reclaim or improve the quality of existing ground water;
 - (iv) barrier wells used to inject fluids into ground water to prevent the intrusion of saline or contaminated water into ground water of better quality;
 - (v) subsidence control wells (not used for purposes of oil or natural gas production) used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water;
 - (vi) wells used in experimental technologies;
 - (e) agricultural injection wells - drainage wells used to inject fluids into ground water to prevent the intrusion of saline or contaminated water into ground water of better quality.
- [20.6.2.5002 NMAC - N, 12-1-01; A, 8-1-14; A, 8-31-15; A, 12-21-18]

20.6.2.5003 NOTIFICATION AND GENERAL OPERATION REQUIREMENTS FOR ALL UNDERGROUND INJECTION CONTROL WELLS: All operators of underground injection control wells, except those wells regulated under the Oil and Gas Act, the Geothermal Resources [~~Conservation~~] Development Act, and the Surface Mining Act, shall:

- A. for existing underground injection control wells, submit to the secretary the information enumerated in Subsection C of 20.6.2.1201 NMAC of this part; provided, however, that if the information in Subsection C of 20.6.2.1201 NMAC has been previously submitted to the secretary and acknowledged by him, the information need not be resubmitted; and
 - B. operate and continue to operate in conformance with 20.6.2.1 through 20.6.2.5399 NMAC;
 - C. for new underground injection control wells, submit to the secretary the information enumerated in Subsection C of 20.6.2.1201 NMAC of this part at least 120 days prior to well construction.
- [9-20-82, 12-1-95; 20.6.2.5300 NMAC - Rn, 20 NMAC 6.2.V.5300, 1-15-01; 20.6.2.5003 NMAC - Rn, 20.6.2.5300 NMAC, 12-1-01; A, 12-1-01; A, 9-15-02; A, 8-31-15; A, 12-21-18]

20.6.2.5004 PROHIBITED UNDERGROUND INJECTION CONTROL ACTIVITIES AND WELLS:

- A. No person shall perform the following underground injection activities nor operate the following underground injection control wells.
 - (1) The injection of fluids into a motor vehicle waste disposal well is prohibited. Motor vehicle waste disposal wells are prohibited. Any person operating a new motor vehicle waste disposal well (for which construction began after April 5, 2000) must close the well immediately. Any person operating an existing motor vehicle waste disposal well must cease injection immediately and must close the well by December 31, 2002, except as provided in this subsection.
 - (2) The injection of fluids into a large capacity cesspool is prohibited. Large capacity cesspools are prohibited. Any person operating a new large capacity cesspool (for which construction began after April 5, 2000) must close the cesspool immediately. Any person operating an existing large capacity cesspool must cease injection immediately and must close the cesspool by December 31, 2002.
 - (3) The injection of any hazardous or radioactive waste into a well is prohibited, except as provided in 20.6.2.5300 through 20.6.2.5399 NMAC or this subsection.

(a) Class I radioactive waste injection wells are prohibited, except naturally-occurring radioactive material (NORM) regulated under 20.3.1.1407 NMAC is allowed as a Class I non-hazardous waste injection well pursuant to Paragraph (1) of Subsection B of 20.6.2.5002 NMAC.

(b) Class IV wells are prohibited, except for wells re-injecting treated ground water into the same formation from which it was drawn as part of a removal or remedial action if the injection has prior approval from the environmental protection agency (EPA) or the department under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA).

(4) Barrier wells, drainage wells, recharge wells, return flow wells, and motor vehicle waste disposal wells are prohibited, except when the discharger can demonstrate that the discharge will not adversely affect the health of persons, and

(a) the injection fluid does not contain a ~~[contaminant]~~ constituent or exhibit a physical parameter (which could include pH, redox condition or temperature) which may cause an exceedance at any place of present or reasonable foreseeable future use of any primary state drinking water maximum contaminant level as specified in the water supply regulations, "Drinking Water" (20.7.10 NMAC), adopted by the environmental improvement board under the Environmental Improvement Act or the standard of 20.6.2.3103 NMAC, whichever is more stringent;

(b) the discharger can demonstrate that the injection will result in an overall or net improvement in water quality as determined by the secretary.

B. Closure of prohibited underground injection control wells shall be in accordance with 20.6.2.5005 and 20.6.2.5209 NMAC.

[20.6.2.5004 NMAC - N, 12-1-01; A, 8-31-15; A, 12-21-18]

20.6.2.5005 PRE-CLOSURE NOTIFICATION AND CLOSURE REQUIREMENTS:

A. Any person proposing to close a Class I, III, IV or V underground injection control well must submit pre-closure notification to the department at least 30 days prior to closure. Pre-closure notification must include the following information:

- (1) Name of facility.
- (2) Address of facility.
- (3) Name of Owner/Operator.
- (4) Address of Owner/Operator.
- (5) Contact Person.
- (6) Phone Number.
- (7) Type of Well(s).
- (8) Number of Well(s).
- (9) Well Construction (e.g. drywell, improved sinkhole, septic tank, leachfield, cesspool, other...).
- (10) Type of Discharge.
- (11) Average Flow (gallons per day).
- (12) Year of Well Construction.
- (13) Proposed Well Closure Activities (e.g. sample fluids/sediment, appropriate disposal of remaining fluids/sediments, remove well and any contaminated soil, clean out well, install permanent plug, conversion to other type well, ground water and vadose zone investigation, other).
- (14) Proposed Date of Well Closure.
- (15) Name of Preparer.
- (16) Date.
- (17) Well plugging plan as submitted to the Office of the State Engineer pursuant to 19.27.4 NMAC.

B. Proposed well closure activities must be approved by the department prior to implementation. [20.6.2.5005 NMAC - N, 12-1-01; A; 12-21-18]

20.6.2.5006 DISCHARGE PERMIT REQUIREMENTS FOR CLASS V INJECTION WELLS: Class V injection wells must meet the requirements of Sections 20.6.2.3000 through 20.6.2.3999 NMAC and Sections 20.6.2.5000 through 20.6.2.5006 NMAC. Class V injection wells or surface impoundments constructed as recharge basins used to replenish the water in an aquifer, including use to reclaim or improve the quality of existing water

must additionally provide documentation of compliance with 19.25.8 NMAC (Underground Storage and Recovery) and shall not be subject to the exemptions of 20.6.2.3105 NMAC.
[20.6.2.5006 NMAC - N, 12-1-01; A, 12-21-18]

20.6.2.5101 DISCHARGE PERMIT AND OTHER REQUIREMENTS FOR CLASS I WELLS AND CLASS III WELLS:

A. Class I wells and Class III wells must meet the requirements of 20.6.2.5000 through 20.6.2.5399 NMAC in addition to other applicable requirements of the commission regulations. The secretary may also require that some Class IV and Class V wells comply with the requirements for Class I wells in 20.6.2.5000 through 20.6.2.5399 NMAC if the secretary determines that the additional requirements are necessary to prevent the movement of water contaminants from a specified injection zone into ground water having 10,000 mg/l or less TDS. No Class I well or Class III well may be approved which allows for movement of fluids into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to 20.6.2.5103 NMAC, or pursuant to a temporary designation as provided in Paragraph (2) of Subsection C of 20.6.2.5101 NMAC.

B. Operation of a Class I well or Class III well must be pursuant to a discharge permit meeting the requirements of 20.6.2.3000 through 20.6.2.3999 NMAC and 20.6.2.5000 through 20.6.2.5399 NMAC.

C. Discharge permits for Class I wells, or Class III wells affecting ground water of 10,000 mg/l or less TDS submitted for secretary approval shall:

(1) receive an aquifer designation if required in 20.6.2.5103 NMAC prior to discharge permit issuance; or

(2) for Class III wells only, address the methods or techniques to be used to restore ground water so that upon final termination of operations including restoration efforts, ground water at any place of withdrawal for present or reasonably foreseeable future use will not contain either concentrations in excess of the standards of 20.6.2.3103 NMAC or any toxic pollutant; issuance of a discharge permit or project discharge permit for Class III wells that provides for restoration of ground water in accordance with the requirements of this subsection shall substitute for the aquifer designation provisions of 20.6.2.5103 NMAC; the approval shall constitute a temporary aquifer designation for a mineral bearing or producing aquifer, or portion thereof, to allow injection as provided for in the discharge permit; such temporary designation shall expire upon final termination of operations including restoration efforts.

D. The exemptions from the discharge permit requirement listed in 20.6.2.3105 NMAC do not apply to underground injection control wells except as provided below:

~~[(1)] wells regulated by the oil conservation division of the energy, minerals and natural resources department under the exclusive authority granted under Section 70-2-12 NMSA 1978 or under other sections of the "Oil and Gas Act";~~

~~[(2)]~~(1) wells regulated by the ~~[oil conservation division]~~ energy conservation management division of the energy, minerals and natural resources department under the "Geothermal Resources Development Act";

~~[(3)]~~(2) wells regulated by the ~~[New Mexico coal surface mining bureau]~~ mining and minerals division of the energy, minerals and natural resources department under the "Surface Mining Act";

~~[(4)]~~(3) wells for the disposal of effluent from systems which are regulated under the "Liquid Waste Disposal and Treatment" regulations (20.7.3 NMAC) adopted by the environmental improvement board under the "Environmental Improvement Act".

E. Project permits for Class III wells.

(1) The secretary may consider a project discharge permit for Class III wells, if the wells are:

- (a) within the same well field, facility site or similar unit;
- (b) within the same aquifer and ore deposit;
- (c) of similar construction;
- (d) of the same purpose; and
- (e) operated by a single owner or operator.

(2) A project discharge permit does not allow the discharger to commence injection in any individual operational area until the secretary approves an application for injection in that operational area (operational area approval).

(3) A project discharge permit shall:

(a) specify the approximate locations and number of wells for which operational area approvals are or will be sought with approximate time frames for operation and restoration (if restoration is required) of each area; and

(b) provide the information required under the following sections of this part, except for such additional site-specific information as needed to evaluate applications for individual operational area approvals: Subsection C of 20.6.2.3106, 20.6.2.3107, 20.6.2.5204 through 20.6.2.5209, and Subsection B of 20.6.2.5210 NMAC.

(4) Applications for individual operational area approval shall include the following:

(a) site-specific information demonstrating that the requirements of this part are met; and

(b) information required under 20.6.2.5202 through 20.6.2.5210 NMAC and not previously provided pursuant to Subparagraph (b) of Paragraph (3) of Subsection E of this section.

(5) Applications for project discharge permits and for operational area approval shall be processed in accordance with the same procedures provided for discharge permits under 20.6.2.3000 through 20.6.2.3114 NMAC, allowing for public notice on the project discharge permit and on each application for operational area approval pursuant to 20.6.2.3108 NMAC with opportunity for public hearing prior to approval or disapproval.

(6) The discharger shall comply with additional requirements that may be imposed by the secretary pursuant to this part on wells in each new operational area.

F. If the holder of a discharge permit for a Class I well, or Class III well submits an application for discharge permit renewal at least 120 days before discharge permit expiration, and the discharger is in compliance with his discharge permit on the date of its expiration, then the existing discharge permit for the same activity shall not expire until the application for renewal has been approved or disapproved. An application for discharge permit renewal must include and adequately address all of the information necessary for evaluation of a new discharge permit. Previously submitted materials may be included by reference provided they are current, readily available to the secretary and sufficiently identified to be retrieved.

G. Discharge permit signatory requirements: No discharge permit for a Class I well or Class III well may be issued unless:

(1) the application for a discharge permit has been signed as follows:

(a) for a corporation: by a principal executive officer of at least the level of vice-president, or a representative who performs similar policy-making functions for the corporation who has authority to sign for the corporation; or

(b) for a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(c) for a municipality, state, federal, or other public agency: by either a principal executive officer who has authority to sign for the agency, or a ranking elected official; and

(2) all reports required by Class I hazardous waste injection well permits and other information requested by the director pursuant to a Class I hazardous waste injection well permit shall be signed by a person described in Paragraph (1) of this subsection, or by a duly authorized representative of that person; a person is a duly authorized representative only if:

(a) the authorization is made in writing by a person described in Paragraph (1) of this subsection;

(b) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility; (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(c) the written authorization is submitted to the director.

(3) *Changes to authorization.* If an authorization under Paragraph (2) of this subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Paragraph (2) of this subsection must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) The signature on an application, report or other information requested by the director must be directly preceded by the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

H. Transfer of Class I non-hazardous waste injection well and Class III well discharge permits.

(1) The transfer provisions of 20.6.2.3111 NMAC do not apply to a discharge permit for a Class I non-hazardous waste injection well or Class III well.

(2) A Class I non-hazardous waste injection well or Class III well discharge permit may be transferred if:

(a) the secretary receives written notice 30 days prior to the transfer date; and
(b) the secretary does not object prior to the proposed transfer date; the secretary may require modification of the discharge permit as a condition of transfer, and may require demonstration of adequate financial responsibility.

(3) The written notice required by Subparagraph (a) of Paragraph (2) of Subsection H above shall:

(a) have been signed by the discharger and the succeeding discharger, including an acknowledgement that the succeeding discharger shall be responsible for compliance with the discharge permit upon taking possession of the facility; and

(b) set a specific date for transfer of discharge permit responsibility, coverage and liability; and

(c) include information relating to the succeeding discharger's financial responsibility required by Paragraph (17) of Subsection B of 20.6.2.5210 NMAC.

I. Modification or termination of a discharge permit for a Class I well or Class III well: If data submitted pursuant to any monitoring requirements specified in the discharge permit or other information available to the secretary indicate that this part are being or may be violated, the secretary may require modification or, if it is determined by the secretary that the modification may not be adequate, may terminate a discharge permit for a Class I well, or Class III well or well field, that was approved pursuant to the requirements of this under 20.6.2.5000 through 20.6.2.5399 NMAC for the following causes:

(1) noncompliance by the discharger with any condition of the discharge permit; or
(2) the discharger's failure in the discharge permit application or during the discharge permit review process to disclose fully all relevant facts, or the discharger's misrepresentation of any relevant facts at any time; or

(3) a determination that the permitted activity may cause a hazard to public health or undue risk to property and can only be regulated to acceptable levels by discharge permit modification or termination.

[9-20-82, 12-1-95, 11-15-96; 20.6.2.5101 NMAC - Rn, 20 NMAC 6.2.V.5101, 1-15-01; A, 12-1-01; A, 9-15-02; A, 8-1-14; A, 8-31-15; A, 12-21-18]

20.6.2.5102 PRE-CONSTRUCTION REQUIREMENTS FOR CLASS I WELLS AND CLASS III WELLS:

A. Discharge permit requirement for Class I wells.

(1) Prior to construction of a Class I well or conversion of an existing well to a Class I well, an approved discharge permit is required that incorporates the requirements of 20.6.2.5000 through 20.6.2.5399 NMAC, except Subsection C of 20.6.2.5210 NMAC. As a condition of discharge permit issuance, the operation of the Class I well under the discharge permit will not be authorized until the secretary has:

(a) reviewed the information submitted for his consideration pursuant to Subsection C of 20.6.2.5210 NMAC; and

(b) determined that the information submitted demonstrates that the operation will be in compliance with this part and the discharge permit.

(2) If conditions encountered during construction represent a substantial change which could adversely impact ground water quality from those anticipated in the discharge permit, the secretary shall require a discharge permit modification or may terminate the discharge permit pursuant to Subsection I of 20.6.2.5101 NMAC, and the secretary shall publish public notice and allow for comments and hearing in accordance with 20.6.2.3108 NMAC.

B. Notification requirement for Class III wells.

(1) The discharger shall notify the secretary in writing prior to the commencement of drilling or construction of wells which are expected to be used for in situ extraction, unless the discharger has previously received a discharge permit or project discharge permit for the Class III well operation.

(a) Any person proposing to drill or construct a new Class III well or well field, or convert an existing well to a Class III well, shall file plans, specifications and pertinent documents regarding such construction or conversion, with the ground water quality bureau of the environment department.

(b) Plans, specifications, and pertinent documents required by this section, if pertaining to ~~[geothermal installations,]~~ carbon dioxide facilities, or facilities for the exploration, production, refinement or pipeline transmission of oil and natural gas, shall be filed instead with the oil conservation division of the energy, minerals and natural resources department.

(c) Plans, specifications and pertinent documents required to be filed under this section must be filed 90 days prior to the planned commencement of construction or conversion.

(d) The following plans, specifications and pertinent documents shall be provided with the notification:

- (i) information required in Subsection C of 20.6.2.3106 NMAC;
- (ii) a map showing the Class III wells which are to be constructed; the map must also show, in so far as is known or is reasonably available from the public records, the number, name, and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells and other pertinent surface features, including residences and roads, that are within the expected area of review (20.6.2.5202 NMAC) of the Class III well or well field perimeter;
- (iii) maps and cross-sections indicating the general vertical and lateral limits of all ground water having 10,000 mg/l or less TDS within one mile of the site, the position of such ground water within this area relative to the injection formation, and the direction of water movement, where known, in each zone of ground water which may be affected by the proposed injection operation;
- (iv) maps and cross-sections detailing the geology and geologic structure of the local area, including faults, if known or suspected;
- (v) the proposed formation testing program to obtain an analysis or description, whichever the secretary requires, of the chemical, physical, and radiological characteristics of, and other information on, the receiving formation;
- (vi) the proposed stimulation program;
- (vii) the proposed injection procedure;
- (viii) schematic or other appropriate drawings of the surface and subsurface construction details of the well;
- (ix) proposed construction procedures, including a cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program;
- (x) information, as described in Paragraph (17) of Subsection B of 20.6.2.5210 NMAC, showing the ability of the discharger to undertake measures necessary to prevent ground water contamination; and
- (xi) a plugging and abandonment plan showing that the requirements of Subsections B, C and D of 20.6.2.5209 NMAC will be met.

(2) Prior to construction, the discharger shall have received written notice from the secretary that the information submitted under item 10 of Subparagraph (d) of Paragraph (1) of Subsection B of 20.6.2.5102 NMAC is acceptable. Within 30 days of submission of the above information the secretary shall notify the discharger that the information submitted is acceptable or unacceptable.

(3) Prior to construction, the secretary shall review said plans, specifications and pertinent documents and shall comment upon their adequacy of design for the intended purpose and their compliance with pertinent sections of this part. Review of plans, specifications and pertinent documents shall be based on the criteria contained in 20.6.2.5205, Subsection E of 20.6.2.5209, and Subparagraph (d) of Paragraph (1) of Subsection B of 20.6.2.5102 NMAC.

(4) Within 30 days of receipt, the secretary shall issue public notice, consistent with Subsection B of 20.6.2.3108 NMAC, that notification was submitted pursuant to Subsection B of 20.6.2.5102 NMAC. The secretary shall allow a period of at least 30 days during which comments may be submitted. The public notice shall include:

- (a) name and address of the proposed discharger;
- (b) location of the discharge;
- (c) brief description of the proposed activities;
- (d) statement of the public comment period; and
- (e) address and telephone number at which interested persons may obtain further information.

(5) The secretary shall comment in writing upon the plans and specifications within 60 days of their receipt by the secretary.

(6) Within 30 days after completion, the discharger shall submit written notice to the secretary that the construction or conversion was completed in accordance with submitted plans and specifications, or shall submit as-built plans detailing changes from the originally submitted plans and specifications.

(7) In the event a discharge permit application is not submitted or approved, all wells which may cause ground water contamination shall be plugged and abandoned by the applicant pursuant to the plugging and abandonment plan submitted in the notification; these measures shall be consistent with any comments made by the secretary in his review. If the wells are not to be permanently abandoned and the discharger demonstrates that plugging at this time is unnecessary to prevent ground water contamination, plugging pursuant to the notification is not required. Financial responsibility established pursuant to 20.6.2.5000 through 20.6.2.5299 NMAC will remain in effect until the discharger permanently abandons and plugs the wells in accordance with the plugging and abandonment plan.

[9-20-82, 12-24-87, 12-1-95; 20.6.2.5102 NMAC - Rn, 20 NMAC 6.2.V.5102, 1-15-01; A, 12-1-01; A, 8-31-15; A, 12-21-18]

20.6.2.5202 AREA OF REVIEW:

A. The area of review is the area surrounding a Class I non-hazardous waste injection well or Class III well or the area within and surrounding a well field that is to be examined to identify possible fluid conduits, including the location of all known wells and fractures which may penetrate the injection zone.

B. The area of review for each Class I non-hazardous waste injection well, or each Class III well or well field shall be an area which extends:

(1) two and one half (2 1/2) miles from the well, or well field; or

(2) one-quarter (1/4) mile from a well or well field where the area of review is calculated to be zero pursuant to Paragraph (3) of Subsection B below, or where the well field production at all times exceeds injection to produce a net withdrawal; or

(3) a suitable distance, not less than one-quarter (1/4) mile, proposed by the discharger and approved by the secretary, based upon a mathematical calculation to determine the area of review; computations to determine the area of review may be based upon the parameters listed below and should be calculated for an injection time period equal to the expected life of the Class I non-hazardous waste injection well, or Class III well or well field; the following modified This equation illustrates one form which the mathematical model may take to compute the area of review; the discharger must demonstrate that any equation or simulation used to compute the area of review applies to the hydrogeologic conditions in the area of review.

$$r = \left(\frac{2.25KHt}{S10^x} \right)^{1/2}$$

Where:

$$\left[\frac{4BKH(H_w - H_{bo})x S_p G_b}{S10^x} \right]^{1/2} \quad 2.3 Q]$$

r = Radius of the area of review for a Class I non-hazardous waste injection well or Class III well (length)

K = Hydraulic conductivity of the injection zone (length/time)

H = Thickness of the injection zone (length)

t = Time of injection (time)

S = Storage coefficient (dimensionless)

Q = Injection rate (volume/time)

H_{bo} = Observed original hydrostatic head of injection zone (length) measured from the base of the lowest aquifer containing ground water of 10,000 mg/l or less TDS

H_w = Hydrostatic head of underground source of drinking water (length) measured from the base of the lowest aquifer containing ground water of 10,000 mg/l or less TDS

$S_p G_b$ = Specific gravity of fluid in the injection zone (dimensionless)

B = 3.142 (dimensionless)

(4) The above equation is based on the following assumptions:

- (a) the injection zone is homogenous and isotropic;
- (b) the injection zone has infinite areal extent;
- (c) the Class I non-hazardous waste injection well or Class III well penetrates the entire thickness of the injection zone;
- (d) the well diameter is infinitesimal compared to "r" when injection time is longer than a few minutes; and
- (e) the emplacement of fluid into the injection zone creates an instantaneous increase in pressure.

C. The secretary shall require submittal by the discharger of information regarding the area of review including the information to be considered by the secretary in Subsection B of Section 20.6.2.5210 NMAC. [9-20-82, 12-1-95; 20.6.2.5202 NMAC - Rn, 20 NMAC 6.2.V.5202, 1-15-01; A, 12-1-01; A, 12-21-18]

20.6.2.5206 OPERATING REQUIREMENTS FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:

A. General operating requirements applicable to Class I non-hazardous waste injection wells and Class III wells.

(1) The maximum injection pressure at the wellhead shall not initiate new fractures or propagate existing fractures in the confining zone, or cause the movement of injection or formation fluids into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC.

(2) Injection between the outermost casing and the well bore is prohibited in a zone other than the authorized injection zone.

B. Additional operating requirements for Class I non-hazardous waste injection wells.

(1) Except during well stimulation, the maximum injection pressure shall not initiate new fractures or propagate existing fractures in the injection zone.

(2) Unless an alternative to a packer has been approved under Subparagraph (c) of Paragraph (3) of Subsection B of Section 20.6.2.5205 NMAC, the annulus between the tubing and the long string of casing shall be filled with a fluid approved by the secretary and a pressure, also approved by the secretary shall be maintained on the annulus.

C. Additional operating requirements for Class III wells: Initiation of new fractures or propagation of existing fractures in the injection zone will not be approved by the secretary as part of a discharge permit unless it is done during well stimulation and the discharger demonstrates:

(1) that such fracturing will not cause movement of fluids out of the injection zone into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC; and

(2) that the provisions of Subsection [C]D of Section 20.6.2.3109 and Subsection C of Section 20.6.2.5101 NMAC for protection of ground water are met.

[9-20-82, 12-1-95; 20.6.2.5206 NMAC - Rn, 20 NMAC 6.2.V.5206, 1-15-01; A, 12-1-01; A, 12-21-18]

20.6.2.5209 PLUGGING AND ABANDONMENT FOR CLASS I WELLS AND CLASS III WELLS:

A. The discharger shall submit as part of the discharge permit application, a plan for plugging and abandonment of a Class I well or a Class III well that meets the requirements of Subsection [C]D of 20.6.2.3109,

Subsection C of 20.6.2.5101, and 20.6.2.5005 NMAC for protection of ground water. If requested, a revised or updated abandonment plan shall be submitted for approval prior to closure. The obligation to implement the plugging and abandonment plan as well as the requirements of the plan survives the termination or expiration of the permit.

B. Prior to abandonment of a well used in a Class I well or Class III well operation, the well shall be plugged in a manner which will not allow the movement of fluids through the well bore out of the injection zone or between other zones of ground water. Cement plugs shall be used unless a comparable method has been approved by the secretary for the plugging of Class III wells at that site.

C. Prior to placement of the plugs, the well to be abandoned shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method approved by the secretary.

D. Placement of the plugs shall be accomplished by one of the following:

- (1) the balance method; or
- (2) the dump bailer method; or
- (3) the two-plug method; or
- (4) an equivalent method with the approval of the secretary.

E. The following shall be considered by the secretary in determining the adequacy of a plugging and abandonment plan:

- (1) the type and number of plugs to be used;
- (2) the placement of each plug, including the elevation of the top and bottom;
- (3) the type, grade and quantity of cementing slurry to be used;
- (4) the method of placement of the plugs;
- (5) the procedure to be used to plug and abandon the well; and
- (6) such other factors that may affect the adequacy of the plan.

F. The discharger shall retain all records concerning the nature and composition of injected fluids until five years after completion of any plugging and abandonment procedures.

[9-20-82, 12-1-95; 20.6.2.5209 NMAC - Rn, 20 NMAC 6.2.V.5209, 1-15-01; A, 12-1-01; A, 8-31-15; A, 12-21-18]