



NEW MEXICO ENVIRONMENT DEPARTMENT

Public Involvement Plan (PIP) for the Implementation of House Bill 546, the Produced Water Act

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APPROVAL PAGE

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Date

I. Produced Water Public Involvement Plan (PIP) Overview

Large volumes of produced water are generated in the oil and gas industry, and projections show that these volumes are increasing. In 2018, New Mexico became the third largest oil producer in the United States and generated over one billion barrels of produced water. Currently, only about 10% of all produced water generated in New Mexico is being reused or recycled in oil and gas operations but eventually, all produced water is currently treated as wastewater and is disposed of through permitted underground injection control (UIC) wells. The limits of managing produced water solely via disposal by underground injection are becoming evident in other areas outside of New Mexico where oil and gas development is prolific; consequently, identifying new approaches to how produced water should be managed in New Mexico is becoming a necessity. Pursuant to HB 546, the Produced Water Act, New Mexico is considering what steps would be necessary to treat and reuse produced water for uses both on and off the oil field.

The New Mexico Environment Department (Department or NMED) developed this Public Involvement Plan (PIP) for activities and proceedings related to NMED's implementation of the Produced Water Act, HB 546. The Produced Water Act mandates that the WQCC adopt regulations to be administered by the Department "for the discharge, handling, transport, storage, recycling or treatment for the disposition of treated produced water, including disposition in road construction maintenance, roadway ice or dust control or other construction, or in the application of treated produced water to land, for activities unrelated to the exploration, drilling, production, treatment or refinement of oil or gas." NMSA 1978, Section 74-6-4(P). Additionally, the WQCC may adopt regulations to be administered by the Department for surface water discharges. NMSA 1978, Section 74-6-4(Q).

The Department is hosting a series of public engagement meetings across the State to inform the public on current issues surrounding produced water generation and management in New Mexico, to discuss the possibility of using treated produced water outside of the oil field, and to hear public concerns and ideas about this topic. These meetings are being held ahead of a formal NMED rulemaking process that will lead to regulations governing the reuse and treatment of produced water outside the oil field. NMED has not set a timeline by which formal rulemaking will commence. Any regulations that are drafted must go through a formal rulemaking process before the New Mexico Water Quality Control Commission (WQCC), including the opportunity for the public to comment.

The purpose of this PIP is to provide public participation opportunities and information that may be needed to participate in the Department's produced water reuse planning, rule development, and implementation. The PIP also identifies Department staff and resources needed to accomplish these activities. This PIP integrates information about the community and identifies resources needed by the Department to successfully incorporate community participation activities into the decision-making process. The Department will meet public participation requirements for produced water reuse planning, rule development, and implementation by following this PIP, which includes all applicable policy, regulatory and statutory public participation requirements.

In developing this PIP, community participation needs were assessed to ensure appropriate promotion of public outreach by identifying whether there is a combination of environmental and demographic factors (i.e., low income community, minority community, limited English proficiency individuals,

Linguistically Isolated Households, etc.) that may impact public participation.¹ This assessment identifies community outreach needs and provides for public access opportunities and adequate public access to information regarding this activity.

As much as possible, public participation and informational activities related to development of produced water regulations will be held within the timelines outlined in the table below. This timeline is tentative and subject to change; activities subject to statutory or regulatory deadlines are noted. It is very important to ensure widespread distribution and involvement from the public because of the importance of the oil and gas industry in New Mexico, the regulation of produced water to protect public health and the environment, and the potential for produced water reuse to meet water demands in a water scarce state. Planning, rule-making and implementation are state-wide activities applicable to a relatively large community of Spanish speakers, therefore the Department will provide pertinent information in both English and Spanish in public meeting notices, public comment notices, and other announcements (radio broadcasts, brochures, signs, postcards, fact sheets, etc.), as necessary. Other language translation will be provided, as the Department can reasonably accommodate, in coordination with the Department’s Tribal Liaison and upon request with two-weeks advance notice. During public comment periods, relevant documents may be reviewed on the Department’s website, provided upon request by email/hard copy, or reviewed during normal business hours in hard copy at the Harold Runnels Building, 1190 St. Francis Dr., Santa Fe.

More detailed information about planned Department outreach is available in this PIP.

Activity	Dates**
PHASE 1: PUBLIC ENGAGEMENT & COLLABORATION	
Notice PIP (invite public input)	October 2019
Phase 1: Public Engagement Meetings	October 2019 – November 2019
Phase 1: Tribal Outreach and Consultation	On-going
Phase 1: Produced Water Research Consortium	On-going
Public announcements (radio, television, brochures, signs, postcards, factsheets, etc.)	As needed or requested
PHASE 2: RULE DEVELOPMENT & FORMAL RULEMAKING	
Phase 2: Rule Development	TBD – dependent on Phase 1
Phase 2: Stakeholder Engagement on Draft Rules	TBD – dependent on Phase 1
Phase 2: Request for Water Quality Control Commission (WQCC) Hearing	TBD – dependent on Phase 1
Phase 2: Hearing Notice Period (Publish in NM Register, Newspapers, NMED website, and Email announcements)	TBD – dependent on Phase 1
Phase 2: WQCC Hearing	TBD – dependent on Phase 1
Phase 2: Submit to Records for Publication	TBD – dependent on Phase 1
Public announcements (radio, television, brochures, signs, postcards, factsheets, etc.)	TBD – dependent on Phase 1

** Dates are tentative and may be subject to change.

This PIP is a “living” document that may be amended after considering public comments and feedback. The Division Director and NMED General Counsel provide final approval of the PIP and amendments.

¹ See IV. Location and Demographics – Demographic Summary below.

II. Contacts

Department contacts for questions regarding produced water reuse planning and implementation, public review and approval, the Department's website, or this PIP are listed below:

Rebecca Roose
New Mexico Environment Department
1190 St. Francis Dr.
Santa Fe, NM 87505
Phone: (505) 827-1758
Phone: (505) 827-2855
Email: Rebecca.Roose@state.nm.us

Annie Maxfield
New Mexico Environment Department
1190 St. Francis Dr.
Santa Fe, NM 87505
Phone: (505) 222-9592
Fax: (505) 383-2064
Email: Annie.Maxfield@state.nm.us

A. Non-English Language Speaker Assistance and Accommodations

A Spanish interpreter will be available at all five of the October – November 2019 public engagement meetings. Persons who need non-Spanish language services (e.g., assistance from an interpreter) at these meetings or persons with disabilities who need services to participate in this public process should contact:

Michaelene Kyrala
PO Box 5469
Santa Fe, NM 87502
Telephone: (505) 827-2855
Email: pw.environment@state.nm.us

TDD or TTY users please access the number via the New Mexico Relay Network, 1-800-659- 1779 (voice); TTY users: 1-800-659-8331.

Un(a) intérprete de español estará disponible en las reuniones. Las personas que necesiten servicios de idiomas que no sea en español (por ejemplo, asistencia de un intérprete) o las personas con discapacidades que necesiten servicios para participar en este proceso público deben comunicarse con:

Michaelene Kyrala
P.O. Box 5469
Santa Fe, NM 87502
Teléfono: (505) 827-2855
Correo electrónico: pw.environment@state.nm.us

Los usuarios de TDD o TTY deben acceder al número a través de la New Mexico Relay Network, 1-800-659- 1779 (voz); usuarios de TTY: 1-800-659-8331.

B. Department Websites

New Mexico Environment Department - <https://www.env.nm.gov/>
Produced Water Webpage - <https://www.env.nm.gov/new-mexico-produced-water/>

III. Regulatory Framework

House Bill 546 created the Produced Water Act which gave authority to the WQCC to regulate produced water as provided in the Water Quality Act (NMSA 1978, §§ 74-6-1 to-17). HB 546 responds to policy interests in encouraging the oil and natural gas industry to favor reuse, recycling and treatment options to reduce demand for New Mexico's limited fresh water resources.

The HB 546 regulatory instruction for NMED is mostly captured in these two sections:

NMSA 1978, Section 74-6-4(P): [The water quality control commission] shall adopt regulations to be administered by the department of environment for the discharge, handling, transport, storage, recycling or treatment for the disposition of treated produced water, including disposition in road construction maintenance, roadway ice or dust control or other construction, or in the application of treated produced water to land, for activities unrelated to the exploration, drilling, production, treatment or refinement of oil or gas; and

NMSA 1978, Section 74-6-4(Q): [The water quality control commission] may adopt regulations to be administered by the department of environment for surface water discharges.

Relevant definitions in HB 546 include:

- *Produced water* is a fluid that is an incidental byproduct from drilling for, or the production of, oil and gas.
- *Treated produced water* is water reconditioned by mechanical or chemical processes into a reusable form.
- *Recycled produced water* is water reconditioned by a recycling facility permitted by the Oil Conservation Division of the Energy, Minerals and Natural Resources Department (EMNRD)

The new law gives jurisdiction over produced water reused or recycled for use in the oil and gas industry to the EMNRD. NMED has jurisdiction over water that is treated by mechanical or chemical processes into a reusable form and used outside of the oil and gas industry. Those seeking to do so must obtain a permit from NMED before using the produced water, the recycled or treated water or treated product or any byproduct of the produced water to ensure protection of public health and the environment.

NMED's goal is to create regulations that are protective of human health and the environment, reduce industry reliance on fresh water and encourage science-based and innovative solutions in our water scarce state.

IV. Location and Demographics

Produced water reuse planning and implementation activities are applicable statewide, and thus address public engagement and outreach, rule development, and implementation strategies for the entire state.

Demographic Summary

Using the US Census Bureau, 2012-2016 American Community Survey (ACS) report, New Mexico has an estimated population of 2,082,669; 48.8 percent identify as Hispanic or Latino (which may be of mixed race) and 9 percent identify exclusively as American Indian, with 61 percent of the total population being "minority." Thirty-five (35) percent of persons age 5 and older communicate in a language other than English (non-English) at home, compared to 21.1 percent for the United States. Of the estimated 690,523 individuals that speak a language other than English at home an estimated 545,986 individuals

(79%) speak Spanish and 97,977 individuals (14%) speak Navajo and other Native American languages. In addition, an estimated 174,344 individuals over the age of 5 speak English “less than very well.”

The per capita income for New Mexico is \$24,459 as compared to the national per capita income of \$32,205, with 19.7% of New Mexico’s population living in poverty. These results indicate that for the state of New Mexico, the percentage of non-English speaking communication is considerable (i.e., substantially greater than the state or national percentage) and there are demographic factors (i.e., low income community, minority community, limited English proficiency individuals, Linguistically Isolated Households, etc.) that may impact public participation.

It is important for the Department to incorporate the linguistic and communication needs of the State when conducting public outreach and participation activities for statewide issues. Therefore, the Department will provide information in Spanish and in English for public comment notices, public meeting notices, and other announcements (radio broadcasts, brochures, signs, postcards, etc.) as needed, and strive to make public participation efforts as inclusive as possible within Department budget and time limitations. Specific repository addresses that may be used depending on the need, are provided in this PIP in Section V.F, below.

V. Public Participation and Outreach Activities

NMED is in the process of planning five public engagement meetings throughout the state in October and November 2019. These meetings, which NMED will host along with representatives from the EMNRD and the Office of the State Engineer (OSE), will provide stakeholders with information on produced water and the rulemaking process and an opportunity to share input. The public engagement process will provide opportunities for state officials to engage with community members on the range of critical environmental, natural resource and human health considerations involved in implementation of the Produced Water Act.

The public may ask questions about the proposed produced water reuse planning and rule development at any time. Interested community members do not need to wait for a formal public comment period to contact the Department. However, the Department emphasizes that to be included in the administrative record, comments solicited by public notices about the proposed regulations must be submitted during the noticed comment periods, and in accordance with the public notice.

Specific outreach related to Phase 1 of the Department’s produced water engagement activities include:

- Creating and maintaining a specific web page with attachments and links to pertinent documents (<https://www.env.nm.gov/new-mexico-produced-water/>);
- Developing a press release announcing Phase 1: Public Engagement and Outreach
- Posting this press release to the Department’s website;
- Emailing the press release to interested parties and stakeholders who requested such notice during the initial outreach campaign; and,
- Sending the press release to the Department’s Tribal Liaison for distribution.

Relevant information and supporting documents may be obtained via download from the Department's website at <https://www.env.nm.gov/new-mexico-produced-water/>, or by contacting Rebecca Roose at (505) 827-1758, Rebecca.Roose@state.nm.us, NMED, P.O. Box 5469, Santa Fe, New Mexico, 87502-5469. Additionally, the public may request to review documents at the Department or one of the information repositories listed below.

During and after Phase 1 (public engagement and outreach), NMED will synthesize the public input received and collate and analyze the information and data provided by the produced water technical consortium to inform Phase 2, the rule development process.

Specific outreach related to Phase 2 of the Department's produced water rulemaking include:

- Maintaining and updating the Department's produced water webpage with attachments and links to pertinent documents (<https://www.env.nm.gov/new-mexico-produced-water/>);
- Developing draft rules for produced water regulation and implementation;
- Publishing a public notice to announce the public comment period for the proposed rules;
- Posting the notice to the Department's website;
- Emailing the notice to interested parties and stakeholders who requested such notice; and,
- Sending the notice to the Department's Public Information Officer and Tribal Liaison for distribution.

Before going into effect, the produced water regulations that are drafted must go through a formal rulemaking process before the state's WQCC, including public notice, comment period, and hearing.

Based on the demographics report discussed in the PIP, basic information about public involvement opportunities will be in both English and Spanish. This information will include how to request materials in Spanish or another language, or to speak with Department staff through an interpreter. Further details about public participation for this activity are outlined below.

A. E-Mailing of Notices and Updates

The Department maintains an email list through GovDelivery that includes individuals interested in water quality issues and activities. This list is maintained for all interested persons who requested the Department provide them with information about water quality issues. Additional individuals, organizations, and other interested parties are added to the list as requested. The Department regularly maintains contact information which is updated or supplemented if additional information is found.

To electronically sign up for Produced Water updates click on the "*Subscribe to Listserv*" button on the bottom of the produced water home page at <https://www.env.nm.gov/new-mexico-produced-water/>.

B. Public Notices

Based on the Department's evaluation, public notices will be translated into Spanish. In addition, notices will be posted on the Department's Produced Water webpage and sent to the Department's Produced Water listserv.

Additional efforts to communicate with pueblos and tribes will be made through the Agency's Tribal Liaison in fulfillment of the Department's Tribal Communication and Collaboration Policy.

C. Informational Pamphlets

The Department will develop factsheets for produced water in both English and Spanish that briefly explain what is happening relative to outreach, rule development, and next steps. To the extent such informational pamphlets are created, the Department may determine whether they will be available in additional languages, online (e.g., Department website) and in print (hardcopy) at the document repositories listed in the PIP. They may also be distributed via email to interested organizations and individuals.

D. Public Comment Period

The public comment period on the proposed produced water regulations will be after Phase 1: public engagement and outreach and is “to be determined.” The Department is anticipating developing draft regulations in 2021. Before going into effect, the produced water regulations that are drafted must go through a formal rulemaking process before the state’s WQCC, which includes a public notice, comment period, and hearing.

The Department will post updates, notices, and relevant information on its produced water website found at: <https://www.env.nm.gov/new-mexico-produced-water/>.

E. Other Outreach

Other means of outreach such as flyers announcing public comment periods may be posted in more local locations throughout the State (e.g., local businesses, schools, libraries, NMED field offices) and on our website, at the Department’s discretion after consideration of public interest and input.

F. Information Repositories

Copies of the proposed produced water regulations (once drafted) and any of the above-mentioned supporting documents and information may be obtained via download from the Department’s website at <https://www.env.nm.gov/new-mexico-produced-water/> or by contacting:

Rebecca Roose, NMED
P.O. Box 5469
Santa Fe, New Mexico 87502-5469
Phone: (505) 827-2855
Email: Rebecca.Roose@state.nm.us

Hard copies of relevant documents can be obtained from the following NMED offices:

New Mexico Environment Department
1190 St. Francis Dr.
Santa Fe, NM 87505
Phone (505) 827-2855

Carlsbad (NMED Field Office)
406 N. Guadalupe, Suite C
Carlsbad, NM 88220
Phone (575) 885-9023

Albuquerque (NMED District I Office)
121 Tijeras Ave. NE, Suite 1000
Albuquerque, NM 87102-3400
Phone (505) 222-9500

Hobbs (NMED Field Office)
2120 N. Alto
Hobbs, NM 88240
Phone (575) 397-6910

Farmington (NMED Field Office)
1800 E. 30th St. Suite B
Farmington, NM 87401
Phone (505) 566-9741

Roswell (NMED Field Office)
1914 W. Second
Roswell, NM 88201
Phone (575) 624-6046

Las Cruces (NMED District III Office)
2301 Entrada Del Sol
Las Cruces, NM 88001
Phone (575) 288-2050

G. PHASE 2: Produced Water Rulemaking, Outcomes and Responses to Comments

To address stakeholder and community members submitted comments on the proposed produced water rules, the Department will prepare the final draft regulation as amended, which will include a Response to Comments, following the close of the public comment period. The Department is required to present the proposed regulations at a hearing conducted by the WQCC. The proposed regulations and all supporting documentation will be available to the public via download from the Department website², or upon request. WQCC hearings are open to the public. Their exact schedule and proposed agendas are maintained on the WQCC website.³ The Department will also send a copy of responses to comments directly to the commenter, at least 10 days prior to the WQCC hearing. Upon approval by the WQCC, the final, approved regulation will be published in the New Mexico Register.

² <https://www.env.nm.gov/new-mexico-produced-water/>

³ <https://www.env.nm.gov/water-quality-control-commission/wqcc/>