



**20.6.2.NMAC**

**NEW MEXICO  
WATER QUALITY CONTROL COMMISSION  
REGULATIONS**

January 15, 2001

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PART 2**

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**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 6 WATER QUALITY**  
**PART 2 GROUND AND SURFACE WATER PROTECTION**

**20.6.2.1 ISSUING AGENCY:** Water Quality Control Commission.  
[12-1-95; 20.6.2.1 NMAC – Rn, 20 NMAC 6.2.I.1000, 1-15-01]

**20.6.2.2 SCOPE:** All persons subject to the Water Quality Act, NMSA 1978, Sections 74-6-1 et seq.  
[12-1-95; 20.6.2.2 NMAC – Rn, 20 NMAC 6.2.I.1001, 1-15-01]

**20.6.2.3 STATUTORY AUTHORITY:** Standards and Regulations are adopted by the commission under the authority of the Water Quality Act, NMSA 1978, Sections 74-6-1 through 74-6-17.  
[2-18-77, 9-20-82, 12-1-95; 20.6.2.3 NMAC – Rn, 20 NMAC 6.2.I.1002, 1-15-01]

**20.6.2.4 DURATION:** Permanent.  
[12-1-95; 20.6.2.4 NMAC – Rn, 20 NMAC 6.2.I.1003, 1-15-01]

**20.6.2.5 EFFECTIVE DATE:** December 1, 1995 unless a later date is cited at the end of a section.  
[12-1-95, 11-15-96; 20.6.2.5 NMAC – Rn, 20 NMAC 6.2.I.1004, 1-15-01; A, 1-15-01]

**20.6.2.6 OBJECTIVE:** The objective of this Part is to implement the Water Quality Act, NMSA 1978, Sections 74-6-1 et seq.  
[12-1-95; 20.6.2.6 NMAC – Rn, 20 NMAC 6.2.I.1005, 1-15-01]

**20.6.2.7 DEFINITIONS:** 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. "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. "abate" or "abatement" means the investigation, containment, removal or other mitigation of water pollution;

C. "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. "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.

E. "barrier well" means a well used to inject fluids into ground water to prevent the intrusion of saline or contaminated water into ground water of better quality;

F. "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. "cementing" means the operation whereby a cementing slurry is pumped into a drilled hole and/or forced behind the casing;

H. "collapse" means the structural failure of overlying materials caused by removal of underlying materials;

I. "commission" means:  
(1) the New Mexico Water Quality Control Commission or



(2) the Department, when used in connection with any administrative and enforcement activity;

J. "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;

K. "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;

L. "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;

M. "department", "agency", or "division" means the New Mexico Environment Department or a constituent agency designated by the commission.

N. "discharge permit modification" means a change in requirements of a discharge permit as requested by the discharger as a result of past, present or anticipated changes in the quality or quantity of effluent or the location of the discharge; or as required by the secretary.

O. "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.

P. "disposal" means to abandon, deposit, inter or otherwise discard a fluid as a final action after its use has been achieved;

Q. "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;

R. "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;

S. "drainage well" means a well used to drain storm runoff into a subsurface formation;

T. "effluent disposal well" means a well which is used for the disposal of fluids which may have the potential to cause water pollution. Wells used in the following practices are not effluent disposal wells: conventional mining, old stope leaching and sand backfilling. Wells where the emplacement of fluids is limited to natural ground water seeping or flowing into conventional mine workings are not effluent disposal wells. Barrier wells, drainage wells, recharge wells, and return flow wells are not effluent disposal wells if the discharger can demonstrate that the discharge will not adversely affect the health of persons, and

(1) the injection fluid does not contain a contaminant 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" (20.7.1 NMAC) adopted by the Environmental Improvement Board under the Environmental Improvement Act; or

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

U. "experimental technology" means a technology which has not been proven feasible under the conditions in which it is being tested;

V. "fluid" means material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state;

W. "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;

X. "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;

**Y.** "injection" means the subsurface emplacement of fluids through a well;

**Z.** "injection zone" means a geological formation, group of formations, or part of a formation receiving fluids through a well;

**AA.** "in situ extraction well" means a well which injects fluids for mineral extraction, except 1) conventional mines, 2) old stope leaching, 3) the extraction of oil, natural gas, or gas extracted from coal gasification, 4) wells for which the discharger can demonstrate use as part of an experimental technology;

**BB.** "non-aqueous phase liquid" means an interstitial body of liquid oil, petroleum product, petrochemical, or organic solvent, including an emulsion containing such material;

**CC.** "old stope leaching" means the circulation of waters through the mined areas of conventional mines with or without the addition of chemicals, for the purpose of extraction of minerals;

**DD.** "operational area" means a geographic area defined in a project discharge plan where a group of wells or well fields in close proximity comprise a single in situ extraction well operation;

**EE.** "packer" means a device lowered into a well to produce a fluid-tight seal within the casing;

**FF.** "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;

**GG.** "petitioner" means a person seeking a variance from a regulation of the commission pursuant to Section 74-6-4(G) NMSA 1978;

**HH.** "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;

**II.** "project discharge plan" means a discharge plan which describes the operation of similar in situ extraction wells or well fields within one or more individual operational areas;

**JJ.** "recharge well" means a well used to inject fluids for the replenishment of ground water, including use to reclaim or improve the quality of existing ground water, or to eliminate subsidence associated with the overdraft of fresh water;

**KK.** "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;

**LL.** "responsible person" means a person who is required to submit an abatement plan or who submits an abatement plan pursuant to this Part;

**MM.** "return flow well" means a well used to return to the supply aquifer, or to other ground water, the water used for heating or cooling for any purpose provided that the water does not receive any additional chemical or biological water contaminants other than heat or the absence thereof;

**NN.** "sand backfilling" means the injection of a mixture of water and sand, mill tailings or other solids into underground conventional mines;

**OO.** "secretary" or "director" means the secretary of the New Mexico Department of Environment or the director of a constituent agency designated by the commission;

**PP.** "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;

**QQ.** "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;

**RR.** "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;

**SS.** "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;

**TT.** "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;

**UU.** "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) 2,4-dinitrotoluene
- (21) diphenylhydrazine
- (22) endosulfan
- (23) endrin
- (24) ethylbenzene
- (25) halomethanes
  - (a) bromodichloromethane
  - (b) bromomethane

- (c) chloromethane
- (d) dichlorodifluoromethane
- (e) dichloromethane
- (f) tribromomethane
- (g) trichlorofluoromethane
- (26) heptachlor
- (27) hexachlorobutadiene
- (28) hexachlorocyclohexane (HCH)
  - (a) alpha-HCH
  - (b) beta-HCH
  - (c) gamma-HCH
  - (d) technical HCH
- (29) hexachlorocyclopentadiene
- (30) isophorone
- (31) nitrobenzene
- (32) nitrophenols
  - (a) 2,4-dinitro-o-cresol
  - (b) dinitrophenols
- (33) nitrosamines
  - (a) N-nitrosodiethylamine
  - (b) N-nitrosodimethylamine
  - (c) N-nitrosodibutylamine
  - (d) N-nitrosodiphenylamine
  - (e) N-nitrosopyrrolidine
- (34) pentachlorophenol
- (35) phenol
- (36) phthalate esters
  - (a) dibutyl phthalate
  - (b) di-2-ethylhexyl phthalate
  - (c) diethyl phthalate
  - (d) dimethyl phthalate
- (37) polychlorinated biphenyls (PCB's)
- (38) polynuclear aromatic hydrocarbons (PAH)
  - (a) anthracene
  - (b) 3,4-benzofluoranthene
  - (c) benzo (k) fluoranthene
  - (d) fluoranthene
  - (e) fluorene
  - (f) phenanthrene
  - (g) pyrene
- (39) tetrachloroethylene
- (40) toluene
- (41) toxaphene
- (42) trichloroethylene
- (43) vinyl chloride
- (44) xylenes
  - (a) o-xylene
  - (b) m-xylene
  - (c) p-xylene
- (45) 1,1-dichloroethane
- (46) ethylene dibromide (EDB)
- (47) cis-1,2-dichloroethylene
- (48) trans-1,2-dichloroethylene
- (49) naphthalene
- (50) 1-methylnaphthalene
- (51) 2-methylnaphthalene

(52) benzo-a-pyrene

VV. "vadose zone" means earth material below the land surface and above ground water, or in between bodies of ground water;

WW. "wastes" means sewage, industrial wastes, or any other liquid, gaseous or solid substance which will pollute any waters of the state;

XX. "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;

YY. "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;

ZZ. "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;

AAA. "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.

BBB. "well" means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension; and

CCC. "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.

[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]

**20.6.2.8 SEVERABILITY:** If any Section, Subsection, individual standard or application of these standards or regulations is held invalid, the remainder shall not be affected.  
[2-18-77, 12-1-95; 20.6.2.8 NMAC - Rn, 20 NMAC 6.2.I.1007, 1-15-01]

**20.6.2.9 DOCUMENTS:** Documents referenced in the Part may be viewed at the New Mexico Environment Department, Ground Water Protection and Remediation Bureau, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, New Mexico 87503.  
[12-1-95; 20.6.2.9 NMAC - Rn, 20 NMAC 6.2.I.1006, 1-15-01]

**20.6.2.10 - 20.6.2.1199: [RESERVED]**  
[12-1-95; 20.6.2.10 - 20.6.2.1199 NMAC - Rn, 20 NMAC 6.2.I.1008-1100, 1102-1199, 1-15-01]

**20.6.2.1200 PROCEDURES:**  
[12-1-95; 20.6.2.1200 NMAC - Rn, 20 NMAC 6.2.I.1200, 1-15-01]

**20.6.2.1201 NOTICE OF INTENT TO DISCHARGE:**

A. 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 Protection and Remediation 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.

B. 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.  
[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]

**20.6.2.1202 FILING OF PLANS AND SPECIFICATIONS—SEWERAGE SYSTEMS:**

A. Any person proposing to construct a sewerage system or proposing to modify any sewerage system in a manner that will change substantially the quantity or quality of the discharge from the system shall file plans and specifications of the construction or modification with the Ground Water Protection and Remediation 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. Modifications having a minor effect on the character of the discharge from sewerage systems shall be reported as of January 1 and June 30 of each year to the Ground Water Protection and Remediation Bureau of the department for discharges that may affect ground water, or the Surface Water Quality Bureau of the department for discharges that may affect surface water.

B. Plans, specifications and reports required by this Section, if related to facilities for the production, refinement and pipeline transmission of oil and gas, or products thereof, shall be filed instead with the Oil Conservation Division.

C. Plans and specifications required to be filed under this Section must be filed prior to the commencement of construction.

[1-4-68, 9-3-72, 2-20-81, 12-1-95; 20.6.2.1202 NMAC – Rn, 20 NMAC 6.2.I.1202, 1-15-01]

**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 Protection and Remediation Bureau of the department, or his 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 Protection and Remediation 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 Protection and Remediation 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 Protection and Remediation 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]

**20.6.2.1204 – 20.6.2.1209 [RESERVED]**  
[12-1-95; 20.6.2.1204 – 20.6.2.1209 NMAC – Rn, 20 NMAC 6.2.I.1204-1209, 1-15-01]

**20.6.2.1210 VARIANCE PETITIONS:**

A. Any person seeking a variance pursuant to 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;
- (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.

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 commission shall not grant a variance for a period of time in excess of five years.

D. 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]

**20.6.2.1211 – 20.6.2.1219: [RESERVED]**  
[12-1-95; 20.6.2.1211 – 20.6.2.1219 NMAC – Rn, 20 NMAC 6.2.I.1211-1219, 1-15-01]

**20.6.2.1220 PENALTIES ENFORCEMENT, COMPLIANCE ORDERS, PENALTIES, ASSURANCE OF DISCONTINUANCE.:** Failure to comply with the Water Quality Act, or any regulation or standard promulgated pursuant to the Water Quality Act is a prohibited act. If the secretary determines that a person has violated or is violating a requirement of the Water Quality Act or any regulation promulgated thereunder or is exceeding any water quality standard or ground water standard contained in Commission regulations, or is not complying with a condition or provision of an approved or modified abatement plan, discharge plan, or permit issued pursuant to the Water Quality Act, the secretary may issue a compliance order, assess a penalty, commence a civil action in district court, or accept an assurance of discontinuance in accordance with NMSA 1978, Section 74-6-10 of the Water Quality Act.  
[12-1-95; 20.6.2.1220 NMAC – Rn, 20 NMAC 6.2.I.1220, 1-15-01]

**20.6.2.1221 – 20.6.2.1999: [RESERVED]**  
[12-1-95; 20.6.2.1221 – 20.6.2.1999 NMAC – Rn, 20 NMAC 6.2.I.1221-2099, 1-15-01]

**20.6.2.2000 SURFACE WATER PROTECTION:**  
[12-1-95; 20.6.2.2000 NMAC – Rn, 20 NMAC 6.2.II, 1-15-01]

**20.6.2.2001 – 20.6.2.2099: [RESERVED]**



[12-1-95; 20.6.2.2001 – 20.6.2.2099 NMAC – Rn, 20 NMAC 6.2.I.1221-2099, 1-15-01]

**20.6.2.2100 APPLICABILITY:** The requirements of Section 20.6.2.2101 and 20.6.2.2102 NMAC shall not apply to any discharge which is subject to a permit under the National Pollutant Discharge Elimination System of P. L. 92-500; provided that any discharger who is given written notice of National Pollutant Discharge Elimination System permit violation from the Administrator of the Environmental Protection Agency and who has not corrected the violation within thirty days of receipt of said notice shall be subject to Section 20.6.2.2101 and 20.6.2.2102 NMAC until in compliance with the National Pollution Discharge Elimination System permit conditions; provided further that nothing in this Part shall be construed as a deterrent to action under Section 74-6-11 NMSA, 1978.  
[8-13-76; 20.6.2.2100 NMAC – Rn, 20 NMAC 6.2.II.2100, 1-15-01]

**20.6.2.2101 GENERAL REQUIREMENTS:**

- A. Except as otherwise provided in Sections 20.6.2.2000 through 20.6.2.2201 NMAC, no person shall cause or allow effluent to discharge to a watercourse if the effluent as indicated by:
- (1) any two consecutive daily composite samples;
  - (2) more than one daily composite sample in any thirty-day period (in which less than ten (10) daily composite samples are examined);
  - (3) more than ten percent (10%) of the daily composite samples in any thirty-day period (in which ten (10) or more daily composite samples are examined); or
  - (4) a grab sample collected during flow from an intermittent or infrequent discharge does not conform to the following:

|                                      |                                    |
|--------------------------------------|------------------------------------|
| (a) Bio-chemical Oxygen Demand (BOD) | Less than 30 mg/l                  |
| (b) Chemical Oxygen Demand (COD)     | Less than 125 mg/l                 |
| (c) Settleable Solids                | Less than 0.5 mg/l                 |
| (d) Fecal Coliform Bacteria          | Less than 500 organisms per 100 ml |
| (e) pH                               | Between 6.6 and 8.6                |
- B. Upon application, the secretary may eliminate the pH requirement for any effluent source that the secretary determines does not unreasonably degrade the water into which the effluent is discharged.
- C. Subsection A of this Section does not apply to the weight of constituents in the water diverted.
- D. Samples shall be examined in accordance with the most current edition of Standard Methods for the Examination of Water and Wastewater published by the American Public Health Association or the most current edition of Methods for Chemical Analysis of Water and Wastes published by the Environmental Protection Agency, where applicable.  
[4-20-68, 3-14-71, 10-8-71, 8-13-76, 2-20-81, 12-1-95; 20.6.2.2101 NMAC – Rn, 20 NMAC 6.2.II.2101, 1-15-01]

**20.6.2.2102 RIO GRANDE BASIN—COMMUNITY SEWERAGE SYSTEMS:**

- A. No person shall cause or allow effluent from a community sewerage system to discharge to a watercourse in the Rio Grande Basin between the headwaters of Elephant Butte Reservoir and Angostura Diversion Dam as described in Subsection E of this Section if the effluent, as indicated by:
- (1) any two consecutive daily composite samples;
  - (2) more than one daily composite sample in any thirty-day period (in which less than ten (10) daily composite samples are examined);
  - (3) more than ten percent (10%) of the daily composite samples in any thirty-day period (in which ten (10) or more daily composite samples are examined); or
  - (4) a grab sample collected during flow from an intermittent or infrequent discharge does not conform to the following:

|                                      |                                    |
|--------------------------------------|------------------------------------|
| (a) Bio-chemical Oxygen Demand (BOD) | Less than 30 mg/l                  |
| (b) Chemical Oxygen Demand (COD)     | Less than 80 mg/l                  |
| (c) Settleable Solids                | Less than 0.1 mg/l                 |
| (d) Fecal Coliform Bacteria          | Less than 500 organisms per 100 ml |
| (e) pH                               | Between 6.6 and 8.6                |
- B. Upon application, the secretary may eliminate the pH requirement for any effluent source that the secretary determines does not unreasonably degrade the water into which the effluent is discharged.

C. Subsection A of this Section does not apply to the weight of constituents in the water diverted.

D. Samples shall be examined in accordance with the most current edition of Standard Methods for the Analysis of Water and Wastewater published by the American Public Health Association or the most current edition of Methods for Chemical Analysis of Water and Wastes published by the Environmental Protection Agency, where applicable.

E. The following is a description of the Rio Grande Basin from the headwaters of Elephant Butte Reservoir to Angostura Diversion Dam as used in this Section. Begin at San Marcial USGS gauging station, which is the headwaters of Elephant Butte Reservoir Irrigation Project, thence northwest to U.S. Highway 60, nine miles + west of Magdalena; thence west along the northeast edge of the San Agustin Plains closed basin; thence north along the east side of the north plains closed basin to the Continental Divide; thence northly along the Continental Divide to the community of Regina on State Highway 96; thence southeasterly along the crest of the San Pedro Mountains to Cerro Toledo Peak; thence southwesterly along the Sierra de Los Valles ridge and the Borrego Mesa to Bodega Butte; thence southerly to Angostura Diversion Dam which is the upper reach of the Rio Grande in this basin; thence southeast to the crest and the crest of the Manzano Mountains and the Los Pinos Mountains; thence southerly along the divide that contributes to the Rio Grande to San Marcial gauging station to the point and place of beginning; excluding all waters upstream of Jemez Pueblo which flow into the Jemez River drainage and the Bluewater Lake. Counties included in the basin are:

- (1) north portion of Socorro County;
- (2) northeast corner of Catron County;
- (3) east portion of Valencia County;
- (4) west portion of Bernalillo County;
- (5) east portion of McKinley County; and
- (6) most of Sandoval County.

[3-14-71, 9-3-72, 8-13-76, 2-20-81, 12-1-95; 20.6.2.2102 NMAC – Rn, 20 NMAC 6.2.II.2102, 1-15-01]

**20.6.2.2103 – 20.6.2.2199: [RESERVED]**

[12-1-95; 20.6.2.2103 – 20.6.2.2199 NMAC – Rn, 20 NMAC 6.2.II.2103-2199, 1-15-01]

**20.6.2.2200 WATERCOURSE PROTECTION:**

[12-1-95; 20.6.2.2200 NMAC – Rn, 20 NMAC 6.2.II.2200, 1-15-01]

**20.6.2.2201 DISPOSAL OF REFUSE:** No person shall dispose of any refuse in a natural watercourse or in a location and manner where there is a reasonable probability that the refuse will be moved into a natural watercourse by leaching or otherwise. Solids diverted from the stream and returned thereto are not subject to abatement under this Section.

[4-20-68, 9-3-72; 20.6.2.2201 NMAC – Rn, 20 NMAC 6.2.II.2201, 1-15-01]

**20.6.2.2202 – 20.6.2.2999: [RESERVED]**

[12-1-95; 20.6.2.2202 – 20.6.2.2999 NMAC – Rn, 20 NMAC 6.2.II.2202-3100, 1-15-01]

**20.6.2.3000 PERMITTING AND GROUND WATER STANDARDS:**

[12-1-95; 20.6.2.3000 NMAC – Rn, 20 NMAC 6.2.III, 1-15-01]

**20.6.2.3001 – 20.6.2.3100: [RESERVED]**

[12-1-95; 20.6.2.3001 – 20.6.2.3100 NMAC – Rn, 20 NMAC 6.2.II.2202-3100, 1-15-01]

**20.6.2.3101 PURPOSE:**

A. The purpose of Sections 20.6.2.3000 through 20.6.2.3114 NMAC controlling discharges onto or below the surface of the ground is to protect all ground water of the state of New Mexico which has an existing concentration of 10,000 mg/l or less TDS, for present and potential future use as domestic and agricultural water supply, and to protect those segments of surface waters which are gaining because of ground water inflow, for uses designated in the New Mexico Water Quality Standards. Sections 20.6.2.3000 through 20.6.2.3114 NMAC are written so that in general:

(1) if the existing concentration of any water contaminant in ground water is in conformance with the standard of 20.6.2.3103 NMAC, degradation of the ground water up to the limit of the standard will be allowed; and

(2) if the existing concentration of any water contaminant in ground water exceeds the standard of Section 20.6.2.3103 NMAC, no degradation of the ground water beyond the existing concentration will be allowed.

B. Ground water standards are numbers that represent the pH range and maximum concentrations of water contaminants in the ground water which still allow for the present and future use of ground water resources.

C. The standards are not intended as maximum ranges and concentrations for use, and nothing herein contained shall be construed as limiting the use of waters containing higher ranges and concentrations.

[2-18-77; 20.6.2.3101 NMAC – Rn, 20 NMAC 6.2.III.3101, 1-15-01]

**20.6.2.3102: [RESERVED]**

[12-1-95; 20.6.2.3102 NMAC – Rn, 20 NMAC 6.2.III.3102, 1-15-01]

**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 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 concentrations of the contaminants.

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) Arsenic (As).....                                     | 0.1 mg/l   |
| (2) Barium (Ba).....                                      | 1.0 mg/l   |
| (3) Cadmium (Cd).....                                     | 0.01 mg/l  |
| (4) Chromium (Cr).....                                    | 0.05 mg/l  |
| (5) Cyanide (CN).....                                     | 0.2 mg/l   |
| (6) Fluoride (F).....                                     | 1.6 mg/l   |
| (7) Lead (Pb).....  | 0.05 mg/l  |
| (8) Total Mercury (Hg).....                               | 0.002 mg/l |
| (9) Nitrate (NO <sub>3</sub> as N).....                   | 10.0 mg/l  |
| (10) Selenium (Se).....                                   | 0.05 mg/l  |
| (11) Silver (Ag).....                                     | 0.05 mg/l  |
| (12) Uranium (U).....                                     | 5.0 mg/l   |
| (13) Radioactivity: Combined Radium-226 & Radium-228..... | 30 pCi/l   |
| (14) Benzene.....   | 0.01 mg/l  |
| (15) Polychlorinated biphenyls (PCB's).....               | 0.001 mg/l |
| (16) Toluene.....   | 0.75 mg/l  |
| (17) Carbon Tetrachloride.....                            | 0.01 mg/l  |
| (18) 1,2-dichloroethane (EDC).....                        | 0.01 mg/l  |
| (19) 1,1-dichloroethylene (1,1-DCE).....                  | 0.005 mg/l |

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 plan 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. 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. Effluent or leachate discharges resulting from activities regulated by a mining plan approved and permit issued by the New Mexico Coal Surface Mining Commission, provided that this exemption shall not be construed as limiting the application of appropriate ground water protection requirements by the New Mexico Coal Surface Mining Commission;

M. Effluent or leachate discharges which are regulated by the Oil Conservation Commission 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.

[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]

#### **20.6.2.3106 APPLICATION FOR DISCHARGE PLAN APPROVALS AND RENEWALS:**

A. Any person who, before or on June 18, 1977, is discharging any of the water contaminants listed in Section 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 plan 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 an approved discharge plan until 240 days after written notification by the secretary that a discharge plan 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 Section 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 Section 20.6.2.1201 NMAC; the secretary shall, within 60 days, notify such person if a discharge plan is required; upon submission, the secretary shall review the discharge plan pursuant to Sections 20.6.2.3108 and 20.6.2.3109 NMAC; for good cause shown, the secretary may allow such person to discharge without an approved plan for a period not to extend beyond February 18, 1978; after February 18, 1978, for good cause shown the secretary may allow such person to discharge without an approved discharge plan for a period not to exceed 120 days.

C. 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 art. 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 approval of the discharge plan will not result in concentrations in excess of the standards of Section 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 effluent disposal wells or in situ extraction wells as provided in Sections 20.6.2.5000 through 20.6.2.5300 NMAC.

D. An applicant for a discharge plan shall pay fees as specified in Section 20.6.2.3114 NMAC.

E. 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. If the holder of an approved discharge plan submits an application for discharge plan renewal at least 120 days before the discharge plan expires, and the discharger is not in violation of the approved discharge plan on the date of its expiration, then the existing approved discharge plan for the same activity shall not expire until the application for renewal has been approved or disapproved. A discharge plan continued under this provision remains fully effective and enforceable. An application for discharge plan renewal must include and adequately address all of the information necessary for evaluation of a new discharge plan. 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]

**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 plan 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 plan;
- (7) The discharger to retain for a period of at least five years any monitoring data required in the discharge plan;
- (8) A system of monitoring and reporting to verify that the plan is achieving the expected results;
- (9) Procedures for detecting failure of the discharge system;
- (10) Contingency plans to cope with failure of the discharge plan or system;
- (11) A closure plan to prevent the exceedance of standards of Section 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 and/or abate such contamination.

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 plan;
- (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 plan requirement in order to collect samples from ground water or the vadose zone.

E. Each discharge plan for an effluent disposal well or in situ extraction well shall incorporate the requirements of Sections 20.6.2.5000 through 20.6.2.5300 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]

#### **20.6.2.3108 PUBLIC NOTICE AND PARTICIPATION:**

A. Within sixty (60) days of receipt of an application for a discharge plan, modification or renewal of an approved discharge plan, the department shall review the application for administrative completeness. To be deemed administratively complete, an application must provide all of the information required for purposes of issuing a public notice pursuant to Subsection C of Section 20.6.2.3108 NMAC. If the department determines that the application is not administratively complete, the department shall notify the applicant of the deficiencies and state what additional information is necessary.

B. Within thirty (30) days of deeming the application administratively complete, the department shall notify the applicant and the following persons:

- (1) the public, who shall be notified through publication of a notice in a newspaper of general circulation in this state;
- (2) those persons who have requested notification, who shall be notified by mail;
- (3) any local, state, federal, tribal or pueblo governmental agency affected which shall be notified by certified mail;
- (4) the Governor, Chairperson, or President of each Indian Tribe, Pueblo or Nation within the state of New Mexico, as identified by the department, shall be notified by mail.

C. The public notice shall include:

- (1) name of the proposed discharger;
- (2) location of the discharge;
- (3) brief description of the activities which produce the discharge described in the application ;
- (4) quantity, quality and flow characteristics of the discharge;
- (5) depth to and TDS concentration of the ground water most likely to be affected by the discharge;
- (6) brief description of the procedures followed by the secretary in making a final determination;
- (7) statement on the comment period; and

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

D. Following the public notice and prior to ruling on any proposed discharge plan or its modification or renewal, there shall be a period of at least thirty (30) days during which written comments may be submitted to the department and/or a public hearing requested in writing. 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 significant public interest. The department shall notify the applicant of the decision and the reasons therefore in writing.

E. If a hearing is held, pursuant to Subsection D of this section, notice of the hearing shall be given by the department at least thirty (30) days prior to the hearing in accordance with Subsection B of this section. The notice shall include the information identified in Subsection C of this section in addition to the time, place and a brief description of the hearing procedures. The hearing shall be held pursuant to Section 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]

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

A. The department shall evaluate the proposed discharge plan, 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 the 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 secretary, any information submitted by the discharger or the general public, other information considered by the department, and, if a public hearing is held, all of the documents filed with the hearing clerk, all exhibits offered into evidence at the hearing, and the written transcript or tape recording of the hearing.

B. The secretary shall, within sixty (60) days after the administrative record is complete and all required information is available, approve, approve with conditions or disapprove the proposed discharge plan, modification or renewal based on the administrative record. The secretary shall give written notice of the action taken to the applicant or permittee and any other person 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 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 discharge plan, modification or renewal will not result in either concentrations in excess of the standards of Section 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 of Section 20.6.2.3109 NMAC, or

(3) the plan conforms to either Subsection a or b below and Subsection 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 Section 20.6.2.3103 NMAC except for nitrates and except for contaminants in the water diverted as provided in Subsection D of Section 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 Section 20.6.2.3103 NMAC except for nitrates and except for contaminants in the water diverted as provided in Subsection D of Section 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 Section 20.6.2.3103 NMAC except for nitrate and contaminants in the water diverted as provided in Subsection D of Section 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 Section 20.6.2.3103 NMAC except for nitrate and contaminants in the water diverted as provided in Subsection D of Section 20.6.2.3109 NMAC.

(c) All Discharges.

(i) the monitoring system proposed in the 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 approved discharge plan or other information available to the secretary indicates that this Part is being or may be violated or that the standards of Section 20.6.2.3103 NMAC are being or will be exceeded, or a toxic pollutant as defined in Section 20.6.2.1101 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 Section 20.6.2.3109 NMAC:

(1) the secretary may require a discharger to modify a discharge plan 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 of Section 20.6.2.3109 NMAC, will be abated or prevented. If the secretary requires that a discharge plan be modified to abate water pollution:

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

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

(2) the secretary may terminate an approved discharge plan when a discharger fails to modify the plan in accordance with Paragraph 1 of Subsection E of this section.



(3) the secretary may require modification, or may terminate a discharge plan for an effluent disposal well or in situ extraction well pursuant to the requirements of Sections 20.6.2.5000 through 20.6.2.5300 NMAC.

F. If a discharge plan expires or is terminated for any reason and the standards of Section 20.6.2.3103 NMAC are being or will be exceeded, or a toxic pollutant as defined in Section 20.6.2.1101 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 Sections 20.6.2.4104 and Subsection A of Section 20.6.2.4106 NMAC.

G. At the request of the discharger, an approved discharge plan may be modified in accordance with Sections 20.6.2.3000 through 20.6.2.3114 NMAC.

H. The secretary shall not approve a 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

plan 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 approval was issued. For those approvals 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 approval 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]

[Subsection 3109.A was added and subsequent subsections renumbered 11-15-96]

#### **20.6.2.3110 PUBLIC HEARING PARTICIPATION:**

A. The secretary may appoint an impartial hearing officer to preside over the hearing. The hearing officer may be a department employee other than an employee of the bureau evaluating the application.

B. The hearing shall be at a place in the area affected by the facility for which the discharge plan proposal, modification or renewal is sought.

C. Any person who wishes to present technical evidence at the hearing shall, no later than ten (10) days prior to the hearing, file with the department, and if filed by a person who is not the applicant, serve on the applicant, a statement of intent to present evidence. A person who does not file a statement of intent to present evidence may present a general non-technical statement in support of or in opposition to the discharge plan proposal, modification or renewal. The statement of intent to present technical evidence shall include:

(1) the name of the person filing the statement;

(2) indication of whether the person filing the statement supports or opposes the discharge plan proposal, modification or renewal;

(3) the name of each witness;

(4) an estimate of the length of the direct testimony of each witness;

(5) a list of exhibits, if any, to be offered into evidence at the hearing; and

(6) a summary or outline of the anticipated direct testimony of each witness.

D. At the hearing, the New Mexico Rules of Civil Procedure, SCRA 1986, 1-001 to 1-102 and the New Mexico Rules of Evidence, SCRA 1986, 11-101 to 11-1102 shall not apply. At the discretion of the hearing officer, the rules may be used as guidance. Any reference to the Rules of Civil Procedure and the Rules of Evidence shall not be construed to extend or otherwise modify the authority and jurisdiction of the department under the Act.

E. The hearing officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, and avoid delay. The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in the proceedings.

F. At the hearing, all persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.

G. Unless otherwise allowed by the hearing officer, testimony shall be presented in the following order:

(1) testimony by and examination of the applicant or permittee proving the facts relied upon to justify the proposed discharge plan, renewal or modification and meeting the requirements of the regulations;

(2) testimony by and examination of technical witnesses supporting or opposing approval, approval subject to conditions, or disapproval of the proposed discharge plan, renewal or modification, in any reasonable order;

(3) testimony by the general public; and

(4) rebuttal testimony, if appropriate.

H. The secretary may provide translation service at a public hearing conducted in a locale where the Department can reasonably expect to receive testimony from non-English speaking people.

I. If determined useful by the hearing officer, within thirty (30) days after conclusion of the hearing, or within such time as may be fixed by the hearing officer, the hearing officer may allow proposed findings of fact and conclusions of law and closing argument. All such submissions, if allowed, shall be in writing, shall be served upon the applicant or permittee, the department and all persons who request copies in advance in writing, and shall contain adequate references to the record and authorities relied on. No new evidence shall be presented unless specifically allowed by the hearing officer.

J. The department shall make an audio recording of the hearing. If the applicant or permittee, or a participant requests a written transcript or certified copy of the audio recording, the requestor shall pay the cost of the transcription or audio copying.

K. The hearing officer shall issue a report within thirty (30) days after the close of the hearing record. The report may include findings of fact, conclusions regarding all material issues of law or discretion, as well as reasons therefore. The report shall be served on the applicant or permittee, the department, and all persons who request copies in advance in writing. The report will be available for public inspection at the department's office in Santa Fe and at the field office closest to the point of the proposed discharge.

L. The secretary shall issue a decision in the matter no later than thirty (30) days of receipt of the hearing report. The decision shall be served and made available for inspection pursuant to Subsection K of this section.

M. Any person who testifies at the hearing or submits a written statement for the record will be considered a participant for purposes of Section 20.6.2.3113 NMAC and NMSA 1978, Section 74-6-5.N.

[2-18-77, 12-1-95, 11-15-96; 20.6.2.3110 NMAC – Rn, 20 NMAC 6.2.III.3110, 1-15-01]

**20.6.2.3111 TRANSFER OF DISCHARGE PLAN:** No purported transfer of any discharge plan shall be effective to create, alter or extinguish any right or responsibility of any person subject to this Part, unless the following transfer requirements are met:

A. Prior to any transfer of ownership, control, or possession (whether by lease, conveyance or otherwise) of a facility with an approved discharge plan, the transferor shall notify the transferee in writing of the existence of the discharge plan, and shall deliver or send by certified mail to the department a copy of such written notification, together with a certification or other proof that such notification has in fact been received by the transferee.

B. Upon receipt of such notification, the transferee shall have the duty to inquire into all of the provisions and requirements contained in such discharge plan, and the transferee shall be charged with notice of all such provisions and requirements as they appear of record in the department's file or files concerning such discharge plan.

C. Until both ownership and possession of the facility have been transferred to the transferee, the transferor shall continue to be responsible for any discharge from the facility.

D. Upon assuming either ownership or possession of the facility, the transferee shall have the same rights and responsibilities under the discharge plan as were applicable to the transferor.

E. Nothing in this section or in this part shall be construed to relieve any person of responsibility or liability for any act or omission which occurred while that person owned, controlled or was in possession of the facility.

[2-18-77, 12-24-87, 12-1-95, 11-15-96; 20.6.2.3111 NMAC – Rn, 20 NMAC 6.2.III.3111, 1-15-01]

**20.6.2.3112 APPEALS FROM 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 an approved plan, 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 filing a discharge plan, or that the material to be discharged contains any toxic pollutant as defined in Section 20.6.2.1101 NMAC, which is not included in the numerical standards of Section 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 Sections 74-6-5(N),(O) and (P), 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]

**20.6.2.3113 APPEALS FROM COMMISSION DECISIONS:** An applicant, permittee or a person who participated in a permitting action and who is adversely affected by such action may appeal the decision of the commission in accordance with the provisions of Section 74-6-7(A), NMSA 1978.  
[2-18-77, 12-1-95, 11-15-96; 20.6.2.3113 NMAC – Rn, 20 NMAC 6.2.III.3113, 1-15-01]

**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 <sup>3</sup> of contaminated solids   | \$ 1,725   |
| Industrial 10,000 to 99,999 gpd; or 10,000 to 99,999 yd <sup>3</sup> of contaminated solids   | \$ 3,450   |
| Industrial 100,000 to 999,999 gpd; or 100,000 to 999,999 yd <sup>3</sup> of contaminated solids or greater  | \$ 6,900   |
| Industrial 1,000,000 gpd or greater; or 1,000,000 yd <sup>3</sup> 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  | \$ 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 contamination at oil and gas Sites  | \$ 2,600   |
| General permit  | \$ 600     |

**20.6.2.3114 Table 2**

|   | <b>Fee<br/>Amount</b>     |
|---|---------------------------|
| Filing fee                                  | \$ 100                    |
| Temporary permission                        | \$ 150                    |
| 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]

**20.6.2.3115 - 20.6.2.3999: [RESERVED]**

[12-1-95; 20.6.2.3115 - 20.6.2.3999 NMAC - Rn, 20 NMAC 6.2.III.3115-4100, 1-15-01]

**20.6.2.4000 PREVENTION AND ABATEMENT OF WATER POLLUTION:**

[12-1-95; 20.6.2.4000 NMAC - Rn, 20 NMAC 6.2.IV, 1-15-01]

**20.6.2.4001 - 20.6.2.4100: [RESERVED]**

[12-1-95; 20.6.2.4001 - 20.6.2.4100 NMAC - Rn, 20 NMAC 6.2.III.3115-4100, 1-15-01]

**20.6.2.4101 PURPOSE:**

A. The purposes of Sections 20.6.2.4000 through 20.6.2.4115 NMAC are to:

(1) Abate pollution of subsurface water so that all ground water of the State of New Mexico which has a background concentration of 10,000 mg/L or less TDS, is either remediated or protected for use as domestic and agricultural water supply, and to remediate or protect those segments of surface waters which are gaining because of subsurface-water inflow, for uses designated in the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20.6.4 NMAC); and

(2) Abate surface-water pollution so that all surface waters of the State of New Mexico are remediated or protected for designated or attainable uses as defined in the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20.6.4 NMAC).

B. If the background concentration of any water contaminant exceeds the standard or requirement of Subsections A, B and C of Section 20.6.2.4103 NMAC, pollution shall be abated by the responsible person to the background concentration.

C. The standards and requirements set forth in Section 20.6.2.4103 NMAC are not intended as maximum ranges and concentrations for use, and nothing herein contained shall be construed as limiting the use of waters containing higher ranges and concentrations.

[12-1-95; 20.6.2.4101 NMAC - Rn, 20 NMAC 6.2.IV.4101, 1-15-01]

**20.6.2.4102: [RESERVED]**

[12-1-95; 20.6.2.4102 NMAC - Rn, 20 NMAC 6.2.IV.4102, 1-15-01]

**20.6.2.4103 ABATEMENT STANDARDS AND REQUIREMENTS:**

A. The vadose zone shall be abated 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.

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.

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 from all compliance sampling stations approved by the secretary 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.

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

**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. [12-1-95; 20.6.2.4104 NMAC – Rn, 20 NMAC 6.2.IV.4104, 1-15-01]

**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 an underground storage tank, under the authority of the Underground 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 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]

**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 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 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.

**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]

**20.6.2.4107 OTHER REQUIREMENTS:**

- A.** Any responsible person shall allow any authorized representative of the secretary to:
- (1) upon presentation of proper credentials, enter the facility at reasonable times;
  - (2) inspect and copy records required by an abatement plan;
  - (3) inspect any treatment works, monitoring and analytical equipment;
  - (4) sample any wastes, ground water, surface water, stream sediment, plants, animals, or vadose-zone material including vadose-zone vapor;
  - (5) use monitoring systems and wells under such responsible person's control in order to collect samples of any media listed in Paragraph (4) of Subsection A of this section; and
  - (6) gain access to off-site property not owned or controlled by such responsible person, but accessible to such responsible person through a third-party access agreement, provided that it is allowed by the agreement.
- B.** Any responsible person shall provide the secretary, or a representative of the secretary, with at least four (4) working days advance notice of any sampling to be performed pursuant to an abatement plan, or any well plugging, abandonment or destruction at any facility where an abatement plan has been required.
- C.** Any responsible person wishing to plug, abandon or destroy a monitoring or water supply well within the perimeter of the 3-dimensional body where the standards set forth in Subsection B of Section 20.6.2.4103 NMAC are exceeded, at any facility where an abatement plan has been required, shall propose such action by certified mail to the secretary for approval, unless such approval is required from the State Engineer. The proposed action shall be designed to prevent water pollution that could result from water contaminants migrating through the well or borehole. The proposed action shall not take place without written approval from the secretary, unless written approval or disapproval is not received by the responsible person within thirty (30) days of the date of receipt of the proposal.
- [12-1-95; 20.6.2.4107 NMAC – Rn, 20 NMAC 6.2.IV.4107, 1-15-01]

**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 a Stage 2 abatement plan proposal, or proposed significant modification of Stage 2 of the abatement plan, any responsible person shall provide to the secretary proof of public notice of the abatement plan 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 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;

(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.

C. The public notice shall include, as approved in advance by the secretary:

(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

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

D. 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.

[12-1-95; 20.6.2.4108 NMAC – Rn, 20 NMAC 6.2.IV.4108, 1-15-01]

#### **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, 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 of Section 20.6.2.4108 NMAC, then the secretary shall, within ninety (90) 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 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]

**20.6.2.4110 INVESTIGATION AND ABATEMENT:** Any responsible person who receives approval for Stage 1 and/or Stage 2 of an abatement plan shall conduct all investigation, abatement, monitoring and reporting activity in full compliance with Sections 20.6.2.4000 through 20.6.2.4115 NMAC and according to the terms and schedules contained in the approved abatement plans.

[12-1-95; 20.6.2.4110 NMAC – Rn, 20 NMAC 6.2.IV.4110, 1-15-01]

**20.6.2.4111 ABATEMENT PLAN MODIFICATION:**

A. Any approved abatement plan may be modified, at the written request of the responsible person, in accordance with Sections 20.6.2.4000 through 20.6.2.4115 NMAC, and with written approval of the secretary.

B. If data submitted pursuant to any monitoring requirements specified in the approved abatement plan or other information available to the secretary indicates that the abatement action is ineffective, or is creating unreasonable injury to or interference with health, welfare, environment or property, the secretary may require a responsible person to modify an abatement plan within the shortest reasonable time so as to effectively abate water pollution which exceeds the standards and requirements set forth in Section 20.6.2.4103 NMAC, and to abate and prevent unreasonable injury to or interference with health, welfare, environment or property.

[12-1-95; 20.6.2.4111 NMAC – Rn, 20 NMAC 6.2.IV.4111, 1-15-01]

**20.6.2.4112 COMPLETION AND TERMINATION:**

A. Abatement shall be considered complete when the standards and requirements set forth in Section 20.6.2.4103 NMAC are met. At that time, the responsible person shall submit an abatement completion report, documenting compliance with the standards and requirements set forth in Section 20.6.2.4103 NMAC, to the secretary for approval. The abatement completion report also shall propose any changes to long term monitoring and site maintenance activities, if needed, to be performed after termination of the abatement plan.

B. Provided that the other requirements of this Part are met and provided further that the standards and requirements set forth in Section 20.6.2.4103 NMAC have been met, the secretary shall approve the abatement completion report. When the secretary approves the abatement completion report, he shall also notify the responsible person in writing that the abatement plan is terminated.

[12-1-95; 20.6.2.4112 NMAC – Rn, 20 NMAC 6.2.IV.4112, 1-15-01]

**20.6.2.4113 DISPUTE RESOLUTION:** In the event of any technical dispute regarding the requirements of Paragraph (9) of Subsection A and Subsection E of Section 20.6.2.1203, Sections 20.6.2.4103, 20.6.2.4105, 20.6.2.4106, 20.6.2.4111 or 20.6.2.4112 NMAC, including notices of deficiency, the responsible person may notify the secretary by certified mail that a dispute has arisen, and desires to invoke the dispute resolution provisions of this Section, provided that such notification must be made within thirty (30) days after receipt by the responsible person of the decision of the secretary that causes the dispute. Upon such notification, all deadlines affected by the technical dispute shall be extended for a thirty (30) day negotiation period, or for a maximum of sixty (60) days if approved by the secretary for good cause shown. During this negotiation period, the secretary or his/her designee and the responsible person shall meet at least once. Such meeting(s) may be facilitated by a mutually agreed upon third party,

but the third party shall assume no power or authority granted or delegated to the secretary by the Water Quality Act or by the commission. If the dispute remains unresolved after the negotiation period, the decision of secretary shall be final.

[12-1-95; 20.6.2.4113 NMAC – Rn, 20 NMAC 6.2.IV.4113, 1-15-01]

**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 Section 20.6.2.1203, Paragraph (4) of Subsection E of Section 20.6.2.3109, or Subsection B of Section 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 this section may file a petition requesting a hearing 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]

**20.6.2.4115 COURT REVIEW OF COMMISSION DECISIONS:** Court review of commission decisions shall be as provided by law.

[12-1-95; 20.6.2.4115 NMAC – Rn, 20 NMAC 6.2.IV.4115, 1-15-01]

**20.6.2.4116 – 20.6.2.4999: [RESERVED]**

[12-1-95; 20.6.2.4116 – 20.6.2.4999 NMAC – Rn, 20 NMAC 6.2.IV.4116-5100, 1-15-01]

**20.6.2.5000 UNDERGROUND INJECTION CONTROL:**

[12-1-95; 20.6.2.5000 NMAC – Rn, 20 NMAC 6.2.V, 1-15-01]

**20.6.2.5001 – 20.6.2.5100: [RESERVED]**

[12-1-95; 20.6.2.5001 – 20.6.2.5100 NMAC – Rn, 20 NMAC 6.2.IV.4116-5100, 1-15-01]

**20.6.2.5101 DISCHARGE PLAN AND OTHER REQUIREMENTS:**

A. Effluent disposal wells and in situ extraction wells must meet the requirements of Sections 20.6.2.5000 through 20.6.2.5300 NMAC in addition to other applicable requirements of the commission regulations. No effluent disposal well or in situ extraction 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 Section 20.6.2.5103 NMAC, or pursuant to a temporary designation as provided in Paragraph (2) of Subsection C of Section 20.6.2.5101 NMAC.

B. Operation of an effluent disposal well or in situ extraction well must be pursuant to an approved discharge plan according to the schedules in the following paragraphs:

(1) Any person who before September 20, 1982, is injecting fluids into an effluent disposal well or in situ extraction well without an approved discharge plan, may continue to inject without an approved discharge plan until December 19, 1982. No person who intends to begin discharging into an effluent disposal well or in situ extraction well after September 20, 1982 shall discharge except in conformance with an approved discharge plan.

(2) Any person who, before December 19, 1982, has a discharge plan approved pursuant to Sections 20.6.2.3000 through 20.6.2.3114 NMAC for the injection of fluids into an effluent disposal well or an in situ extraction well, may inject according to the approved discharge plan until the expiration of the current discharge plan approval. Upon application for renewal of the discharge plan approval, such person shall comply with the requirements of Sections 20.6.2.3000 through 20.6.2.3114 NMAC and Sections 20.6.2.5000 through 20.6.2.5300 NMAC in the renewal application.

(3) After December 19, 1982, any person who does not have discharge plan approval pursuant to Paragraph (2) of Subsection B of Section 20.6.2.5101 NMAC shall not discharge into an effluent disposal well or an in situ extraction well without an approved discharge plan meeting the requirements of Sections 20.6.2.3000 through 20.6.2.3114 NMAC and Sections 20.6.2.5000 through 20.6.2.5300 NMAC.

C. Discharge plans for effluent disposal wells, or in situ extraction wells affecting ground water of 10,000 mg/l or less TDS submitted for secretary approval shall:

(1) Receive an aquifer designation as required in Section 20.6.2.5103 NMAC prior to approval of the discharge plan; or

(2) For in situ extraction 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 Section 20.6.2.3103 NMAC or any toxic pollutant. Approval of a discharge plan or project discharge plan for in situ extraction wells that provides for restoration of ground water in accordance with the requirements of this Subsection shall substitute for the aquifer designation provisions of Section 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 plan. Such temporary designation shall expire upon final termination of operations including restoration efforts.

D. The exemptions from the discharge plan requirement listed in Section 20.6.2.3105 NMAC do not apply to effluent disposal wells or in situ extraction wells except as provided below:

(1) Wells regulated by the Oil Conservation Division under the exclusive authority granted under Section 70-2-12 NMSA 1978 or under other Sections of the "Oil and Gas Act";

(2) Wells regulated by the Oil Conservation Division under the "Geothermal Resources Act";

(3) Wells regulated by the New Mexico Coal Surface Mining Bureau under the "Surface Mining Act";

(4) Wells for the disposal of effluent from systems which receive less than 2,000 gallons per day of domestic sewage effluent and are regulated under the "Liquid Waste Disposal Regulations" (20 NMAC 7.3) adopted by the Environmental Improvement Board under the "Environmental Improvement Act".

E. Project Discharge Plans for In Situ Extraction Wells.

(1) The secretary may consider a project discharge plan for in situ extraction 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) An approved project discharge plan 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 plan 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 Section 20.6.2.3106, Sections 20.6.2.3107, 20.6.2.5204 through 20.6.2.5209, and Subsection B of Section 20.6.2.5210 NMAC.

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

and (a) Site-specific information demonstrating that the requirements of this Part are met,

(b) Information required under Sections 20.6.2.5202 through 20.6.2.5210 NMAC and not previously provided pursuant to Subparagraph (b) of Paragraph (3) of Subsection F of this Section.

(5) Applications for project discharge plan approval and for operational area approval shall be processed in accordance with the same procedures provided for discharge plans under Sections 20.6.2.3000 through 20.6.2.3114 NMAC, allowing for public notice on the project discharge plan and on each application for operational area approval pursuant to Section 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 an approved discharge plan for an effluent disposal well, or in situ extraction well submits an application for discharge plan renewal at least 120 days before discharge plan expiration, and the discharger is in compliance with his approved discharge plan on the date of its expiration, then the existing approved discharge plan for the same activity shall not expire until the application for renewal has been approved or disapproved. An application for discharge plan renewal must include and adequately address all of the information necessary for evaluation of a new discharge plan. 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 Plan Signatory Requirements: No discharge plan for an effluent disposal well or in situ extraction well may be approved unless:

(1) The application for a discharge plan approval 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) The signature is 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 Effluent Disposal Well and In Situ Extraction Well Discharge Plans.

(1) The transfer provisions of Section 20.6.2.3111 NMAC do not apply to a discharge plan for an effluent disposal well or in situ extraction well.

(2) An effluent disposal well or in situ extraction well discharge plan 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 plan 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 approved discharge plan upon taking possession of the facility; and

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

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

I. Modification or Termination of a Discharge Plan for an Effluent Disposal Well or In Situ Extraction Well: If data submitted pursuant to any monitoring requirements specified in the approved plan 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 plan for an effluent disposal well, or in situ extraction well or well field, that was approved pursuant to the requirements of this under Sections 20.6.2.5000 through 20.6.2.5300 NMAC for the following causes:

- (1) Noncompliance by the discharger with any condition of the discharge plan; or
- (2) The discharger's failure in the discharge plan application or during the discharge plan 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 plan 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]

#### **20.6.2.5102 PRE-CONSTRUCTION REQUIREMENTS:**

##### **A. Discharge Plan Requirement for Effluent Disposal Wells.**

(1) Prior to construction of an effluent disposal well or conversion of an existing well to an effluent disposal well, an approved discharge plan is required that incorporates the requirements of Sections 20.6.2.5000 through 20.6.2.5300 NMAC, except Subsection C of Section 20.6.2.5210 NMAC. As a condition of discharge plan approval, the operation of the effluent disposal well under the discharge plan will not be authorized until the secretary has:

- (a) Reviewed the information submitted for his consideration pursuant to Subsection C of Section 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 approved discharge plan.

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

##### **B. Notification Requirement for In Situ Extraction 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 discharge plan or project discharge plan approval for the in situ extraction operation.

(a) Any person, proposing to drill or construct a new in situ extraction well or well field, or convert an existing well to an in situ extraction well, shall file plans, specifications and pertinent documents regarding such construction or conversion, with the Ground Water Protection and Remediation 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.

(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 Section 20.6.2.3106 NMAC;
- (ii) A map showing the in situ extraction 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 (Section 20.6.2.5202 NMAC) of the in situ extraction 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 Section 20.6.2.5210 NMAC, showing the ability of the discharger to undertake measures necessary to prevent groundwater contamination; and

(xi) A plugging and abandonment plan showing that the requirements of Subsections B, C and D of Section 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 (x) of Subparagraph (d) of Paragraph (1) of Subsection B of Section 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 Section 20.6.2.5205, Subsection E of Section 20.6.2.5209, and Subparagraph (d) of Paragraph (1) of Subsection B of Section 20.6.2.5102 NMAC.

(4) Within thirty (30) days of receipt, the secretary shall issue public notice, consistent with Subsection B of Section 20.6.2.3108 NMAC, that notification was submitted pursuant to Subsection B of Section 20.6.2.5102 NMAC. The secretary shall allow a period of at least thirty (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 sixty (60) days of their receipt by the secretary.

(6) Within thirty (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 plan is not submitted or approved, all wells which may cause groundwater 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 groundwater contamination, plugging pursuant to the notification is not required. Financial responsibility established pursuant to Sections 20.6.2.5000 through 20.6.2.5300 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]

#### **20.6.2.5103 DESIGNATED AQUIFERS:**

A. Any person may file a written petition with the secretary seeking commission consideration of certain aquifers or portions of aquifers as "designated aquifers". The purpose of aquifer designation is:

(1) For effluent disposal wells, to allow as a result of injection, the addition of water contaminants into ground water, which before initiation of effluent disposal has a concentration between 5,000 and 10,000 mg/l TDS; or

(2) For in situ extraction wells, to allow as a result of injection, the addition of water contaminants into ground water, which before initiation of in situ extraction has a concentration between 5,000 and 10,000 mg/l TDS, and not provide for restoration or complete restoration of that ground water pursuant to Paragraph (2) of Subsection C of Section 20.6.2.5101 NMAC.

B. The applicant shall identify (by narrative description, illustrations, maps or other means) and describe such aquifers, in geologic and/or geometric terms (such as vertical and lateral limits and gradient) which are clear and definite.

C. An aquifer or portion of an aquifer may be considered for aquifer designation under Subsection A. of this Section, if the applicant demonstrates that the following criteria are met:

(1) It is not currently used as a domestic or agricultural water supply; and

(2) There is no reasonable relationship between the economic and social costs of failure to designate and benefits to be obtained from its use as a domestic or agricultural water supply because:

(a) It is situated at a depth or location which makes recovery of water for drinking or agricultural purposes economically or technologically impractical at present and in the reasonably foreseeable future; or

(b) It is already so contaminated that it would be economically or technologically impractical to render that water fit for human consumption or agricultural use at present and in the reasonably foreseeable future.

D. The petition shall state the extent to which injection would add water contaminants to ground water and why the proposed aquifer designation should be approved. For in situ extraction wells, the applicant shall state whether and to what extent restoration will be carried out.

E. The secretary shall either transmit the petition to the commission within sixty (60) days recommending that a public hearing be held, or refuse to transmit the petition and notify the applicant in writing citing reasons for such refusal.

F. If the secretary transmits the petition to the commission, the commission shall review the petition and determine to either grant or deny a public hearing on the petition. If the commission grants a public hearing, it shall issue a public notice, including the following information:

(1) Name and address of the applicant;

(2) Location, depth, TDS, areal extent, general description and common name or other identification of the aquifer for which designation is sought;

(3) Nature of injection and extent to which the injection will add water contaminants to ground water; and

(4) Address and telephone number at which interested persons may obtain further information.

G. If the secretary refuses to transmit the petition to the commission, then the applicant may appeal the secretary's disapproval of the proposed aquifer designation to the commission within thirty (30) days, and address the issue of whether the proposed aquifer designation meets the criteria of Subsections A, B, C, and D of this Section.

H. If the commission grants a public hearing, the hearing shall be held in accordance with the provisions of Section 74-6-6, NMSA 1978.

I. If the commission does not grant a public hearing on the petition, the aquifer designation shall not be approved.

J. After public hearing and consideration of all facts and circumstances included in Section 74-6-4(D), NMSA 1978, the commission may authorize the secretary to approve a proposed designated aquifer if the commission determines that the criteria of Subsection A, B, C, and D of this section are met.

K. Approval of a designated aquifer petition does not alleviate the applicant from complying with other Sections of Sections 20.6.2.5000 through 20.6.2.5300 NMAC, or of the responsibility for protection, pursuant to this part, of other nondesignated aquifers containing ground water having 10,000 mg/l or less TDS.

L. Persons other than the petitioner may add water contaminants as a result of injection into an aquifer designated for effluent disposal, or for in situ extraction without restoration, provided the person receives discharge plan approval pursuant to the requirements of Sections 20.6.2.5000 through 20.6.2.5300 NMAC. Persons, other than the original petitioner or his designee, requesting addition of water

contaminants as a result of injection into aquifers previously designated only for in situ extraction with partial restoration shall file a petition with the commission pursuant to the requirements of Subsections A, B, C, and D of this Section.

[9-20-82, 12-1-95; 20.6.2.5103 NMAC – Rn, 20 NMAC 6.2.V.5103, 1-15-01]

**20.6.2.5104 WAIVER OF REQUIREMENT BY SECRETARY:**

A. Where an effluent disposal well or an in situ extraction well or well field, does not penetrate, or inject into or above ground water having 10,000 mg/l or less TDS, the secretary may:

(1) Approve a discharge plan for a well or well field with less stringent requirements for area of review, construction, mechanical integrity, operation, monitoring, and reporting than required by Sections 20.6.2.5000 through 20.6.2.5300 NMAC; or

(2) For in situ extraction wells only, approve a discharge plan pursuant to the requirements of Sections 20.6.2.3000 through 20.6.2.3114 NMAC.

B. Authorization of a reduction in requirements under Subsection A of this Section shall be granted only if injection will not result in an increased risk of movement of 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.  
[9-20-82, 12-1-95; 20.6.2.5104 NMAC – Rn & A, 20 NMAC 6.2.V.5104, 1-15-01]

**20.6.2.5105 – 20.6.2.5199: [RESERVED]**

[12-1-95; 20.6.2.5105 – 20.6.2.5199 NMAC – Rn, 20 NMAC 6.2.V.5105-5199, 1-15-01]

**20.6.2.5200 TECHNICAL CRITERIA AND PERFORMANCE STANDARDS FOR EFFLUENT DISPOSAL WELLS AND IN SITU EXTRACTION WELLS:**

[12-1-95; 20.6.2.5200 NMAC – Rn, 20 NMAC 6.2.V.5200, 1-15-01]

**20.6.2.5201 PURPOSE:** Sections 20.6.2.5200 through 20.6.2.5210 NMAC provide the technical criteria and performance standards for effluent disposal wells and in situ extraction wells.

[9-20-82; 20.6.2.5201 NMAC – Rn, 20 NMAC 6.2.V.5201, 1-15-01]

**20.6.2.5202 AREA OF REVIEW:**

A. The area of review is the area surrounding an effluent disposal well or in situ extraction 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 effluent disposal well, or each in situ extraction 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 effluent disposal well, or in situ extraction well or well field. The following modified Theis 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.

$$r = \left( \frac{2.25 K H t}{S 10^x} \right)^{1/2}$$

Where:

- $x = \frac{4BKH (H_w - H_{bo}) \times S_p G_b}{2.3 Q}$
- $r =$  Radius of the area of review for an effluent disposal well or in situ extraction 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 effluent disposal well or in situ extraction 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]

**20.6.2.5203 CORRECTIVE ACTION:**

A. Persons applying for approval of an effluent disposal well, or an in situ extraction well or well field shall identify the location of all known wells, drill holes, shafts, stopes and other conduits within the area of review which may penetrate the injection zone, in so far as is known or is reasonably available from the public records. For such wells or other conduits which are improperly sealed, completed, or abandoned, or otherwise provide a pathway for the migration of contaminants, the discharger shall address in the discharge plan such steps or modifications (corrective action) as are necessary to prevent movement of 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.

B. Prior to operation, or continued operation of a well for which corrective action is required pursuant to Subsections A or D of Section 20.6.2.5203 NMAC, the discharger must demonstrate that:

- (1) All required corrective action has been taken; or
- (2) Injection pressure is to be limited so that pressure in the injection zone does not cause fluid movement through any well or other conduit within the area of review into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC. This pressure limitation may be removed after all required corrective action has been taken.

C. In determining the adequacy of corrective action proposed in the discharge plan, the following factors will be considered by the secretary:

- (1) Chemical nature and volume of the injected fluid;
- (2) Chemical nature of native fluids and by-products of injection;
- (3) Geology and hydrology;
- (4) History of the injection and production operation;
- (5) Completion and plugging records;
- (6) Abandonment procedures in effect at the time a well, drill hole, or shaft was abandoned;

and

- (7) Hydraulic connections with waters having 10,000 mg/l or less TDS.

D. In the event that, after approval for an effluent disposal well or in situ extraction well has been granted, additional information is submitted or it is discovered that a well or other conduit within the applicable area of review might allow movement of 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, the secretary may require action in accordance with Subsection I of Section 20.6.2.5101 and Subsection B Section 20.6.2.5203 NMAC.

[9-20-82, 12-1-95; 20.6.2.5203 NMAC – Rn, 20 NMAC 6.2.V.5203, 1-15-01]

**20.6.2.5204 MECHANICAL INTEGRITY:**

A. An effluent disposal well or in situ extraction well has mechanical integrity if there is no detectable leak in the casing, tubing or packer which the secretary considers to be significant at maximum operating temperature and pressure; and no detectable conduit for fluid movement out of the injection zone through the well bore or vertical channels adjacent to the well bore which the secretary considers to be significant.

**B.** Prior to well injection and at least once every five years or more frequently as the secretary may require for good cause during the life of the well, the discharger must demonstrate that an effluent disposal well or in situ extraction well has mechanical integrity. The demonstration shall be made through use of the following tests:

- (1) For evaluation of leaks,
  - (a) Monitoring of annulus pressure (after an initial pressure test with liquid or gas before operation commences), or
  - (b) Pressure test with liquid or gas;
- (2) For determination of conduits for fluid movement,
  - (a) The results of a temperature or noise log, or
  - (b) Where the nature of the casing used for in situ extraction wells precludes use of these logs, cementing records and an appropriate monitoring program as the secretary may require which will demonstrate the presence of adequate cement to prevent such movement;
- (3) Other appropriate tests as the secretary may require.

**C.** The secretary may consider the use by the discharger of equivalent alternative test methods to determine mechanical integrity. The discharger shall submit information on the proposed test and all technical data supporting its use. The secretary may approve the request if it will reliably demonstrate the mechanical integrity of wells for which its use is proposed. For in situ extraction wells this demonstration may be made by submission of adequate monitoring data after the initial mechanical integrity tests.

**D.** In conducting and evaluating the tests enumerated in this Section or others to be allowed by the secretary, the discharger and the secretary shall apply methods and standards generally accepted in the affected industry. When the discharger reports the results of mechanical integrity tests to the secretary, he shall include a description of the test(s), the method(s) used, and the test results. In making an evaluation, the secretary's review shall include monitoring and other test data submitted since the previous evaluation.

[9-20-82, 12-1-95; 20.6.2.5204 NMAC – Rn, 20 NMAC 6.2.V.5204, 1-15-01]

#### **20.6.2.5205 CONSTRUCTION REQUIREMENTS:**

**A.** General Construction Requirements Applicable to Effluent Disposal Wells and In Situ Extraction Wells.

(1) Construction of all effluent disposal wells and all new in situ extraction wells shall include casing and cementing. Prior to well injection, the discharger shall demonstrate that the construction and operation of:

(a) Effluent disposal wells will not cause or allow movement of 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;

(b) In situ extraction wells will not cause or allow 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.

(2) The construction of each newly drilled well shall be designed for the proposed life expectancy of the well.

(3) In determining if the discharger has met the construction requirements of this Section and has demonstrated adequate construction, the secretary shall consider the following factors:

- (a) Depth to the injection zone;
- (b) Injection pressure, external pressure, annular pressure, axial loading, and other stresses that may cause well failure;
- (c) Hole size;
- (d) Size and grade of all casing strings, including wall thickness, diameter, nominal weight, length, joint specification, and construction material;
- (e) Type and grade of cement;
- (f) Rate, temperature, and volume of injected fluid;
- (g) Chemical and physical characteristics of the injected fluid, including corrosiveness, density, and temperature;
- (h) Chemical and physical characteristics of the formation fluids including pressure and temperature;

- (i) Chemical and physical characteristics of the receiving formation and confining zones including lithology and stratigraphy, and fracture pressure; and
- (j) Depth, thickness and chemical characteristics of penetrated formations which may contain ground water.

(4) To demonstrate adequate construction, appropriate logs and other tests shall be conducted during the drilling and construction of new effluent disposal wells or in situ extraction wells or during work-over of existing wells in preparation for reactivation or for change to injection use. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the secretary for review prior to well injection. The logs and tests appropriate to each type of injection well shall be based on the intended function, depth, construction and other characteristics of the well, availability of similar data in the area of the drilling site and the need for additional information that may arise from time to time as the construction of the well progresses.

(a) The discharger shall demonstrate through use of sufficiently frequent deviation checks, or another equivalent method, that an effluent disposal well or in situ extraction well drilled using a pilot hole then enlarged by reaming or another method, does not allow a vertical avenue for fluid migration in the form of diverging holes created during drilling.

(b) The secretary may require use by the discharger of the following logs to assist in characterizing the formations penetrated and to demonstrate the integrity of the confining zones and the lack of vertical avenues for fluid migration:

(i) For casing intended to protect ground water having 10,000 mg/l or less TDS: Resistivity, spontaneous potential, and caliper logs before the casing is installed; and a cement bond, or temperature log after the casing is set and cemented.

(ii) For intermediate and long strings of casing intended to facilitate injection: Resistivity, spontaneous potential, porosity, and gamma ray logs before the casing is installed; fracture finder or spectral logs; and a cement bond or temperature log after the casing is set and cemented.

(5) In addition to the requirements of Section 20.6.2.5102 NMAC, the discharger shall provide notice prior to commencement of drilling, cementing and casing, well logging, mechanical integrity tests, and any well work-over to allow opportunity for on-site inspection by the secretary or his representative.

**B. Additional Construction Requirements for Effluent Disposal Wells.**

(1) All effluent disposal wells shall be sited in such a manner that they inject into a formation which is beneath the lowermost formation containing, within one quarter mile of the well bore, ground water having 10,000 mg/l TDS or less except as approved pursuant to Section 20.6.2.5103 NMAC.

(2) All effluent disposal wells shall be cased and cemented by circulating cement to the surface.

(3) All effluent disposal wells, except those municipal wells injecting noncorrosive wastes, shall inject fluids through tubing with a packer set in the annulus immediately above the injection zone, or tubing with an approved fluid seal as an alternative. The tubing, packer, and fluid seal shall be designed for the expected length of service.

(a) The use of other alternatives to a packer may be allowed with the written approval of the secretary. To obtain approval, the operator shall submit a written request to the secretary which shall set forth the proposed alternative and all technical data supporting its use. The secretary may approve the request if the alternative method will reliably provide a comparable level of protection to ground water. The secretary may approve an alternative method solely for an individual well or for general use.

(b) In determining the adequacy of the specifications proposed by the discharger for tubing and packer, or a packer alternative, the secretary shall consider the following factors:

- (i) Depth of setting;
- (ii) Characteristics of injection fluid (chemical nature or characteristics, corrosiveness, and density);
- (iii) Injection pressure;
- (iv) Annular pressure;
- (v) Rate, temperature and volume of injected fluid; and
- (vi) Size of casing.

**C. Additional Construction Requirements for In Situ Extraction Wells.**

(1) Where injection is into a formation containing ground water having 10,000 mg/l or less TDS, monitoring wells shall be completed into the injection zone and into the first formation above the

injection zone containing ground water having 10,000 mg/l or less TDS which could be affected by the extraction operation. If ground water having 10,000 mg/l or less TDS below the injection zone could be affected by the extraction operation, monitoring of such ground water may be required. These wells shall be of sufficient number, located and constructed so as to detect any excursion of injection fluids, process byproducts, or formation fluids outside the extraction area or injection zone. The requirement for monitoring wells in aquifers designated pursuant to Section 20.6.2.5103 NMAC may be waived by the secretary, provided that the absence of monitoring wells does not result in an increased risk of movement of fluids into protected ground waters having 10,000 mg/l or less TDS.

(2) Where injection is into a formation which does not contain ground water having 10,000 mg/l or less TDS, no monitoring wells are necessary in the injection zone. However, monitoring wells may be necessary in adjoining zones with ground water having 10,000 mg/l or less TDS that could be affected by the extraction operation.

(3) In an area that the secretary determines is subject to subsidence or collapse, the required monitoring wells may be required to be located outside the physical influence of that area.

(4) In determining the adequacy of monitoring well location, number, construction and frequency of monitoring proposed by the discharger, the secretary shall consider the following factors:

(a) The local geology and hydrology;

(b) The operating pressures and whether a negative pressure gradient to the monitor well is being maintained;

(c) The nature and volume of injected fluid, formation water, and process by-products;

and

(d) The number and spacing of in situ extraction wells in the well field.

[9-20-82, 12-1-95; 20.6.2.5205 NMAC – Rn, 20 NMAC 6.2.V.5205, 1-15-01]

#### **20.6.2.5206 OPERATING REQUIREMENTS:**

**A. General Operating Requirements Applicable to Effluent Disposal Wells and In Situ Extraction 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 Effluent Disposal 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 (a) 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 In Situ Extraction Wells.**

(1) 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 plan unless it is done during well stimulation and the discharger demonstrates:

(a) 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

(b) That the provisions of Subsection C 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]

#### **20.6.2.5207 MONITORING REQUIREMENTS:**

**A. The discharger shall demonstrate mechanical integrity for each effluent disposal well or in situ extraction well at least once every five years during the life of the well pursuant to Section 20.6.2.5204 NMAC.**

**B. Additional Monitoring Requirements for Effluent Disposal Wells.**



- (1) The discharger shall provide analysis of the injected fluids at least quarterly or, if necessary, more frequently to yield data representative of their characteristics.
- (2) Continuous monitoring devices shall be used to provide a record of injection pressure, flow rate, flow volume, and pressure on the annulus between the tubing and the long string of casing.
- (3) The discharger shall provide wells within the area of review as required by the discharge plan to be used by the discharger to monitor pressure in, and possible fluid movement into, ground water having 10,000 mg/l or less TDS except for such ground waters designated pursuant to Section 20.6.2.5103 NMAC. This Section does not require monitoring wells for effluent disposal wells unless monitoring wells are necessary due to possible flow paths within the area of review.

**C. Additional Monitoring Requirements for In Situ Extraction Wells.**

(1) The discharger shall provide an analysis or description, whichever the secretary requires, of the injected fluids at least quarterly or, if necessary, more frequently to yield representative data.

(2) The discharger shall perform:

(a) Appropriate monitoring of injected and produced fluid volumes by whichever of the following methods the secretary requires:

(i) Recording injection pressure and either flow rate or volume every two weeks; or

(ii) Metering and daily recording of fluid volumes;

(b) Monitoring every two weeks, or more frequently as the secretary determines, of the monitor wells, required in Subsection C of Section 20.6.2.5205 NMAC for:

(i) Water chemistry parameters used to detect any migration from the injection zone;

(ii) Fluid levels adjacent to the injection zone; and

(c) Other necessary monitoring as the secretary for good cause may require to detect movement of fluids from 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.

(3) With the approval of the secretary, all in situ extraction wells may be monitored on a well field basis by manifold monitoring rather than on an individual well basis. Manifold monitoring to determine the quality, pressure, and flow rate of the injected fluid may be approved in cases of facilities consisting of more than one in situ extraction well, operating with a common manifold, provided that the discharger demonstrates that manifold monitoring is comparable to individual well monitoring. [9-20-82, 12-1-95; 20.6.2.5207 NMAC – Rn, 20 NMAC 6.2.V.5207, 1-15-01]

**20.6.2.5208 REPORTING REQUIREMENTS:**

**A. Reporting Requirements for Effluent Disposal Wells.**

(1) If an effluent disposal well is found to be discharging or is suspected of discharging fluids into a zone or zones other than the permitted or authorized injection zone, the discharger shall within 24 hours notify the secretary of the circumstances and action taken. The discharger shall provide subsequent written reports as required by the secretary.

(2) The discharger shall provide reports quarterly to the secretary on:

(a) The physical; chemical and other relevant characteristics of injection fluids;

(b) Monthly average, maximum and minimum values for injection pressure, flow rate and volume, and annular pressure; and

(c) The results of monitoring prescribed under Subsection B of Section 20.6.2.5207

NMAC.

(3) The discharger shall report, no later than the first quarterly report after completion, the results of:

(a) Periodic tests of mechanical integrity as required in Sections 20.6.2.5204 and 20.6.2.5207 NMAC;

(b) Any other test of the effluent disposal well conducted by the discharger if required by the secretary;

(c) Any well work-over; and

(d) Any changes within the area of review which might impact subsurface conditions.

**B. Reporting Requirements for In Situ Extraction Wells.**

(1) The discharger shall notify the secretary within 48 hours of the detection or suspected detection of a leachate excursion, and provide subsequent reports as required by the secretary.

- (2) The discharger shall provide to the secretary:
- (a) Reports on required monitoring quarterly, or more frequently as required by the secretary; and
  - (b) Results of mechanical integrity testing as required in Sections 20.6.2.5204 and 20.6.2.5207 NMAC and any other periodic tests required by the secretary. These results are to be reported no later than the first regular report after the completion of the test.
  - (3) Where manifold monitoring is permitted, monitoring results may be reported on a well field basis, rather than individual well basis.

**C. Report Signatory Requirements.**

(1) All reports submitted pursuant to this Section shall be signed and certified as provided in Subsection G of Section 20.6.2.5101 NMAC, or by a duly authorized representative.

(2) For a person to be a duly authorized representative, authorization must:

(a) Be made in writing by a signatory described in Paragraph (1) of Subsection H of Section 20.6.2.5101 NMAC.;

(b) Specify either an individual or a position having responsibility for the overall operation of that regulated facility or activity, such as the position of plant manager, operator of a well or well field, superintendent, or position of equivalent responsibility; and

(c) Have been submitted to the secretary.

[9-20-82, 12-1-95; 20.6.2.5208 NMAC – Rn, 20 NMAC 6.2.V.5208, 1-15-01]

**20.6.2.5209 PLUGGING AND ABANDONMENT:**

**A.** The discharger shall submit as part of the discharge plan, a plan for plugging and abandonment of an effluent disposal well or an in situ extraction well that meets the requirements of Subsection C of Section 20.6.2.3109 and Subsection C of Section 20.6.2.5101 NMAC for protection of ground water. If requested, a revised or updated abandonment plan shall be submitted for approval prior to closure.

**B.** Prior to abandonment of a well used in an effluent disposal or in situ extraction 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 in situ extraction 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]

**20.6.2.5210 INFORMATION TO BE CONSIDERED BY THE SECRETARY:**

**A.** This Section sets forth the information to be considered by the secretary in authorizing construction and use of an effluent disposal well or in situ extraction well or well field. Certain maps, cross-sections, tabulations of all wells within the area of review, and other data may be included in the

discharge plan submittal by reference provided they are current, readily available to the secretary and sufficiently identified to be retrieved.

B. Prior to the approval of a discharge plan or project discharge plan allowing construction of a new effluent disposal well, operation of an existing effluent disposal well, or operation of a new or existing in situ extraction well or well field, or conversion of any well to injection use, the secretary shall consider the following:

- (1) Information required in Subsection C of Section 20.6.2.3106 NMAC;
- (2) A map showing the effluent disposal well, or in situ extraction wells or well fields, for which approval is sought and the applicable area of review. Within the area of review, the map must 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;
- (3) A tabulation of data on all wells within the area of review which may penetrate into the proposed injection zone. Such data shall include, as available, a description of each well's type, the distance and direction to the injection well or well field, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information the secretary may require;
- (4) For wells within the area of review which penetrate the injection zone, but are not properly completed or plugged, the corrective action proposed to be taken under Section 20.6.2.5203 NMAC;
- (5) Maps and cross-sections indicating the general vertical and lateral limits of all ground water having 10,000 mg/l or less TDS within the area of review, the position of such ground water within the area of review 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;
- (6) Maps and cross-sections detailing the geology and geologic structure of the local area, including faults, if known or suspected;
- (7) Generalized maps and cross-sections illustrating the regional geologic setting;
- (8) Proposed operating data, including:
  - (a) Average and maximum daily flow rate and volume of the fluid to be injected;
  - (b) Average and maximum injection pressure;
  - (c) Source of injection fluids and an analysis or description, whichever the secretary requires, of their chemical, physical, radiological and biological characteristics;
- (9) Results of the 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, provided that the secretary may issue a conditional approval of a discharge plan if he finds that further formation testing is necessary for final approval;
- (10) Expected pressure changes, native fluid displacement, and direction of movement of the injected fluid;
- (11) Proposed stimulation program;
- (12) Proposed or actual injection procedure;
- (13) Schematic or other appropriate drawings of the surface and subsurface construction details of the well;
- (14) Construction procedures, including a cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program;
- (15) Contingency plans to cope with all shut-ins or well failures so as to prevent movement of 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;
- (16) Plans, including maps, for meeting the monitoring requirements of Section 20.6.2.5207 NMAC; and
- (17) The ability of the discharger to undertake measures necessary to prevent contamination of ground water having 10,000 mg/l or less TDS after the cessation of operation, including the proper closing, plugging and abandonment of a well, ground water restoration if applicable, and any post-operational monitoring as may be needed. Methods by which the discharger shall demonstrate the ability to undertake these measures shall include submission of a surety bond or other adequate assurances, such as financial statements or other materials acceptable to the secretary, such as: (1) a surety bond; (2) a trust fund with a New Mexico bank in the name of the State of New Mexico, with the State as Beneficiary;

(3) a non-renewable letter of credit made out to the State of New Mexico; (4) liability insurance specifically covering the contingencies listed in this paragraph; or (5) a performance bond, generally in conjunction with another type of financial assurance. Such bond or materials shall be approved and executed prior to discharge plan approval and shall become effective upon commencement of construction. If an adequate bond is posted by the discharger to a federal or another state agency, and this bond covers all of the measures referred to above, the secretary shall consider this bond as satisfying the bonding requirements of Sections 20.6.2.5000 through 20.6.2.5300 NMAC wholly or in part, depending upon the extent to which such bond is adequate to ensure that the discharger will fully perform the measures required hereinabove.

C. Prior to the secretary's approval that allows the operation of a new or existing effluent disposal well or in situ extraction well or well field, the secretary shall consider the following:

- (1) Update of pertinent information required under Subsection B of Section 20.6.2.5210 NMAC;
  - (2) All available logging and testing program data on the well;
  - (3) The demonstration of mechanical integrity pursuant to Section 20.6.2.5204 NMAC;
  - (4) The anticipated maximum pressure and flow rate at which the permittee will operate;
  - (5) The results of the formation testing program;
  - (6) The physical, chemical, and biological interactions between the injected fluids and fluids in the injection zone, and minerals in both the injection zone and the confining zone; and
  - (7) The status of corrective action on defective wells in the area of review.
- [9-20-82, 12-24-87, 12-1-95; 20.6.2.5210 NMAC – Rn, 20 NMAC 6.2.V.5210, 1-15-01]

**20.6.2.5211 – 20.6.2.5299: [RESERVED]**

[12-1-95; 20.6.2.5211 – 20.6.2.5299 NMAC – Rn, 20 NMAC 6.2.V.5211-5299, 1-15-01]

**20.6.2.5300 INJECTION WELL NOTIFICATION REQUIREMENT:** All operators of injection wells, except those wells regulated under the Oil and Gas Act, the Geothermal Resources Conservation Act, and the Surface Mining Act, shall:

A. Submit to the secretary the information enumerated in Subsection B of Section 20.6.2.1201 NMAC of this Part no later than September 20, 1983; provided, however, that if the information in Subsection B of Section 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 Sections 20.6.2.1 through 20.6.2.1220 NMAC and Sections 20.6.2.3000 through 20.6.2.3114 NMAC of this Part.

[9-20-82, 12-1-95; 20.6.2.5300 NMAC – Rn, 20 NMAC 6.2.V.5300, 1-15-01]

**HISTORY of 20 .6.2. NMAC:**

**Pre-NMAC History:**

Material in this Part was derived from that previously filed with the commission of public records – state records center and archives:

WQC 67-2, Regulations Governing Water Pollution Control in New Mexico, filed 12-5-67, effective 1-4-68

WQC 72-1, Water Quality Control Commission Regulations, filed 8-4-72, effective 9-3-72

WQC 77-1, Amended Water Quality Control Commission Regulations, filed 1-18-77, effective 2-18-77

WQC 81-2, Water Quality Control Commission Regulations, filed 6-2-81, effective 7-2-81

WQC 82-1, Water Quality Control Commission Regulations, filed 8-19-82, effective 9-20-82

**History of Repealed Material: [Reserved]**

**Other History:**

20 NMAC 6.2, Water Quality – Ground and Surface Water Protection, filed 10-27-95, effective 12-1-95

20 NMAC 6.2, Water Quality – Ground and Surface Water Protection, filed 10-15-96, effective 11-15-96

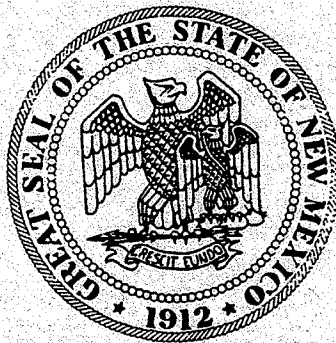
**NEW MEXICO  
STATUTES  
1978**

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**ANNOTATED**

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**Chapter 74  
Environmental Improvement  
Pamphlet 120**



**2000 REPLACEMENT PAMPHLET**

This pamphlet includes laws enacted through the Second Special Session of the Forty-Fourth Legislature (2000 (2<sup>nd</sup> S.S.)) and annotations through 2000-NMSC-011, 2000-NMCA-030, 120 S. Ct. 865, 199 F.3d 424, 76 F. Supp. 2d 1374, 190 F.R.D. 215, and 242 Bankr. 920.

**MICHIE**

B. that available scientific information indicates a substantial possibility that fluoroalkanes, a major component of certain aerosol spray products, when discharged into the atmosphere, dissipate or impair the earth's protective layer of ozone; that the dissipation or impairment of even a small portion of the ozone layer is likely to decrease the screening of ultraviolet radiation; that any significant increase in human exposure to ultraviolet radiation is likely to increase the risk of skin cancer and other serious illness; that any significant increase in exposure of the environment to ultraviolet radiation may endanger the environment; and that therefore, the release of these aerosol spray products into the atmosphere is a significant hazard to the public health, safety and welfare of the citizens, and future citizens, of this state.

**History:** 1978 Comp., § 74-5-1, enacted by Laws 1977, ch. 384, § 1.

### 74-5-2. Repealed.

**Repeals.** — Laws 1979, ch. 82, § 3, repeals 74-5-2 NMSA 1978, relating to restrictions on the sale of certain aerosol products, effective March 16, 1979.

## ARTICLE 6

### Water Quality

#### Sec.

- 74-6-1. Short title.
- 74-6-2. Definitions.
- 74-6-3. Water quality control commission created. (Repealed effective July 1, 2006.)
- 74-6-3.1. Legal advice.
- 74-6-4. Duties and powers of commission. (Repealed effective July 1, 2006.)
- 74-6-5. Permits; certification; appeals to commission.
- 74-6-5.1. Disclosure statements.
- 74-6-5.2. Water quality management fund created.
- 74-6-6. Adoption of regulations and standards; notice and hearing.
- 74-6-7. Administrative action; judicial review.
- 74-6-8. Duties of constituent agencies.

#### Sec.

- 74-6-9. Powers of constituent agencies.
- 74-6-10. Penalties enforcement; compliance orders; penalties; assurance of discontinuance.
- 74-6-10.1. Civil penalties.
- 74-6-10.2. Criminal penalties.
- 74-6-11. Emergency; powers of delegated constituent agencies; penalties.
- 74-6-12. Limitations.
- 74-6-13. Construction.
- 74-6-14. Recompiled.
- 74-6-15. Confidential information; penalties.
- 74-6-16. Effect and enforcement of Water Quality Act during transition.
- 74-6-17. Termination of agency life; delayed repeal.

### 74-6-1. Short title.

Chapter 74, Article 6 NMSA 1978 may be cited as the "Water Quality Act".

**History:** 1953 Comp., § 75-39-1, enacted by Laws 1967, ch. 190, § 1; 1993, ch. 291, § 1.

**Cross references.** — For the Pollution Control Revenue Bond Act, see 3-59-1 NMSA 1978 et seq.

The 1993 amendment, effective June 18, 1993, substituted "Chapter 74, Article 6 NMSA 1978" for "This act".

**Water laws apply on Indian land.** — Where non-Indians enter into long-term lease with an Indian tribe under which the non-Indians are to develop the land as a subdivision, state laws concerning subdivision control, construction licensing and water cannot be held inapplicable to the lessee because of federal preemption. *Norvell v. Sangre de Cristo Dev. Co.*, 372 F. Supp. 348 (D.N.M. 1974), rev'd on other grounds, 519 F.2d 370 (10th Cir. 1975).

**Provided Indian proprietary interest and self-government unimpaired.** — The application

of state antipollution laws to industries located on Indian land is valid, provided that the operation of those laws neither impairs the proprietary interest of the Indian people in their lands nor limits the right of the tribe or pueblo to govern matters of tribal relations. The regulation of industrial discharges is not a matter fundamental to tribal relations, and the state supervision of environment pollution will not limit, in any meaningful manner, the right of the several Indian peoples to govern themselves. The extension of pollution controls to industries located on Indian land will not affect the ownership or control of the land. 1970 Op. Att'y Gen. No. 70-5.

**An implied private right of action does not exist** under this section and a negligence per se claim may not be predicated on a violation of this section. *Schwartzman, Inc. v. Atchison, T. & S.F. Ry.*, 857 F. Supp. 838 (D.N.M. 1994).

**Law reviews.** — For comment, "Control of Industrial Water Pollution in New Mexico," see 9 Nat. Resources J. 653 (1969).

For note, "New Mexico Water Pollution Regulations and Standards Upheld," see 19 Nat. Resources J. 693 (1979).

For article, "The Assurance of Reasonable Toxic Risk?," see 24 Nat. Resources J. 549 (1984).

For article, "Information for State Groundwater Quality Policymaking," see 24 Nat. Resources J. 1015 (1984).

For article, "Transboundary Toxic Pollution and the Drainage Basin Concept," see 25 Nat. Resources J. 589 (1985).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Standing to sue for violation of state environmental regulatory statute, 66 A.L.R.4th 685.

Measure and elements of damages for pollution of well or spring, 76 A.L.R.4th 629.

Liability insurance coverage for violations of anti-pollution laws, 87 A.L.R.4th 444.

39A C.J.S Health and Environment § 131.

## 74-6-2. Definitions.

As used in the Water Quality Act [Chapter 74, Article 6 NMSA 1978]:

A. "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;

B. "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;

C. "wastes" means sewage, industrial wastes or any other liquid, gaseous or solid substance which may pollute any waters of the state;

D. "sewer system" means pipelines, conduits, pumping stations, force mains or any other structures, devices, appurtenances or facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;

E. "treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes;

F. "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;

G. "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;

H. "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;

I. "commission" means the water quality control commission;

J. "constituent agency" means, as the context may require, any or all of the following agencies of the state:

- (1) the department of environment;
- (2) the state engineer and the interstate stream commission;
- (3) the department of game and fish;
- (4) the oil conservation commission;
- (5) the state park and recreation division [state parks division] of the energy, minerals and natural resources department;
- (6) the New Mexico department of agriculture;
- (7) the soil and water conservation commission; and
- (8) the bureau of mines and mineral resources at the New Mexico institute of mining and technology;

K. "new source" means:



(1) any source, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance applicable to the source; or

(2) any existing source when modified to treat substantial additional volumes or when there is a substantial change in the character of water contaminants treated;

L. "source" means a building, structure, facility or installation from which there is or may be a discharge of water contaminants directly or indirectly into water;

M. "septage" means the residual wastes and water periodically pumped from a liquid waste treatment unit or from a holding tank for maintenance or disposal purposes;

N. "sludge" means solid, semi-solid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility that is associated with the treatment of these wastes. "Sludge" does not mean treated effluent from a wastewater treatment plant;

O. "substantial adverse environmental impact" means that an act or omission of the violator causes harm or damage:

(1) to human beings; or

(2) that amounts to more than ten thousand dollars (\$10,000) damage or mitigation costs to flora, including agriculture crops; fish or other aquatic life; waterfowl or other birds; livestock or wildlife or damage to their habitats; or ground water or surface water or to the lands of the state;

P. "federal act" means the federal Water Pollution Control Act, its subsequent amendments and successor provisions; and

Q. "standards of performance" means any standard, effluent limitation or effluent standard adopted pursuant to the federal act or the Water Quality Act.

**History:** 1953 Comp., § 75-39-2, enacted by Laws 1967 ch. 190, § 2; 1970, ch. 64, § 1; 1971, ch. 277, § 49; 1973, ch. 326, § 1; 1977, ch. 253, § 73; 1993, ch. 291, § 2.

**Bracketed material.** — The bracketed reference to the state parks division was inserted by the compiler. The bracketed material was not enacted by the legislature and is not a part of the law. See 9-5A-6.1 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, in Subsection A, substituted "that could alter if discharged or spilled" for "which alters", inserted "or radiological", added the second sentence, and made a minor stylistic change; made a minor stylistic change in Subsection C; substituted "plant" for "plat" in Subsection E; rewrote Subsection H; in Subsection J, in Paragraph (1), deleted "environmental improvement division of the health and environment" preceding "department" and inserted "of environment" following "department", deleted "New Mexico" preceding "department" in Paragraph (3), substi-

tuted "division of the energy, minerals and natural resources department" for "commission" in Paragraph (5), substituted "soil and water" for "state natural resource" in Paragraph (7), in Paragraph (8), deleted "New Mexico" preceding "bureau" and added the language following "mines"; in Subsection K, added the Paragraph (1) designation, added Paragraph (2), and made a minor stylistic change; and added Subsections L through Q.

**Compiler's notes.** — The water quality control commission is terminated on July 1, 2005. See 74-6-17 NMSA 1978.

**Water Pollution Control Act.** — The federal Water Pollution Control Act appears as 33 U.S.C. § 1251 et seq.

**Atomic Energy Act of 1954.** — The federal Atomic Energy Act of 1954, referred to in subsection A, appears as 42 U.S.C. § 2011 et seq.

**Law reviews.** — For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

### **74-6-3. Water quality control commission created. (Repealed effective July 1, 2006.)**

A. There is created the "water quality control commission" consisting of:

(1) the secretary of environment or a member of his staff designated by him;

(2) the director of the department of game and fish or a member of his staff designated by him;

(3) the state engineer or a member of his staff designated by him;

(4) the chairman of the oil conservation commission or a member of his staff designated by him;

(5) the director of the state park and recreation division [state parks division] of the energy, minerals and natural resources department or a member of his staff designated by him;



(6) the director of the New Mexico department of agriculture or a member of his staff designated by him;

(7) the chairman of the soil and water conservation commission or a soil and water conservation district supervisor designated by him;

(8) the director of the bureau of mines and mineral resources at the New Mexico institute of mining and technology or a member of his staff designated by him; and

(9) three representatives of the public to be appointed by the governor for terms of four years and who shall be compensated from the budgeted funds of the department of environment in accordance with the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

B. No member of the commission shall receive or shall have received, during the previous two years, a significant portion of his income directly or indirectly from permit holders or applicants for a permit and shall, upon the acceptance of his appointment and prior to the performance of any of his duties, file a statement of disclosure with the secretary of state disclosing any amount of money or other valuable consideration, and its source, the value of which is in excess of ten percent of his gross personal income in each of the preceding two years, that he received directly or indirectly from permit holders or applicants for permits required under the Water Quality Act [Chapter 74, Article 6 NMSA 1978].

C. The commission shall elect a chairman and other necessary officers and shall keep a record of its proceedings.

D. A majority of the commission constitutes a quorum for the transaction of business, but no action of the commission is valid unless concurred in by six or more members present at a meeting.

E. The commission is the state water pollution control agency for this state for all purposes of the federal act and the wellhead protection and sole source aquifer programs of the federal Safe Drinking Water Act and may take all action necessary and appropriate to secure to this state, its political subdivisions or interstate agencies the benefits of that act and those programs.

F. The commission is administratively attached, as defined in the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978], to the department of environment.

**History:** 1953 Comp., § 75-39-3, enacted by Laws 1967, ch. 190, § 3; 1970, ch. 64, § 2; 1971, ch. 277, § 50; 1973, ch. 326, § 2; 1977, ch. 253, § 74; 1987, ch. 234, § 81; 1993, ch. 291, § 3; 1997, ch. 82, § 1.

**Delayed repeals.** — Laws 1999, ch. 21, § 2 repeals 74-6-3 NMSA 1978, as enacted by Laws 1967, ch. 190, § 3, effective July 1, 2006.

**Cross references.** — As to exemption of water quality control commission from authority of secretary of environment, see 9-7A-13 NMSA 1978. As to director of the New Mexico department of game and fish, see 17-1-5 NMSA 1978. As to the chairman of the oil conservation commission, see 70-2-4 NMSA 1978. As to the state engineer, see 72-2-1 NMSA 1978. As to the director of the New Mexico department of agriculture, see 76-1-3 NMSA 1978.

**Bracketed material.** — The bracketed reference to the state parks division was inserted by the compiler; see 9-5A-6.1 NMSA 1978. The bracketed material was not enacted by the legislature, and it is not a part of the law.

**The 1993 amendment,** effective June 18, 1993, in Subsection A, substituted "secretary of environment" for "director of the environmental improvement division of the health and environment department" in Paragraph (1) and, in Paragraph (9), substituted "three representatives" for "a representative", deleted "health and environment" preceding "depart-

ment" and inserted "of environment" following "department"; in Subsection E, substituted "federal act and the wellhead protection and sole source aquifer programs of the federal Safe Drinking Water Act" for "Federal Water Pollution Control Act, the Water Quality Act of 1965 and the Clean Waters Restoration Act of 1966", and substituted "that act and those programs" for "these acts"; and in Subsection F, deleted "health and environment" preceding "department" and inserted "of environment" following "department".

**The 1997 amendment,** in Subsection A, substituted "soil and water conservation district supervisor" for "person" in Paragraph (7) and "terms" for "a term" in Paragraph (9). Laws 1997, ch. 82 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature.

**Safe Drinking Water Act.** — The federal Safe Drinking Water Act, referred to in Subsection E, appears as 21 U.S.C. § 349 and 42 U.S.C. § 300f et seq.

**Authority of division to propose regulations and act as interested party at hearings.** — In light of the fact that the legislature had seen fit to have the director of the environmental improvement division sit as a member of the commission, the division could propose regulations to the commission and then act as an interested party at the hearings.

Kerr-McGee Nuclear Corp. v. New Mexico Water Quality Control Comm'n, 98 N.M. 240, 647 P.2d 873 (Ct. App. 1982) (decided prior to 1982 amendment of 74-6-9 NMSA 1978 and the 1993 amendment of subsection A(1) of this section).

**Law reviews.** — For comment, "Control of Indus-

trial Water Pollution in New Mexico," see 9 Nat. Resources J. 653 (1969).

For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

For annual survey of New Mexico law relating to administrative law, see 13 N.M.L. Rev. 235 (1983).

### 74-6-3.1. Legal advice.

A. In the exercise of any of its powers or duties, the water quality control commission shall act with independent legal advice. The manner in which such advice is provided shall be determined by the commission, but from among one of the following:

- (1) the office of the attorney general;
- (2) independent counsel hired by the commission, whether full- or part-time; or
- (3) another state agency whose function is sufficiently distinct from the department of environment and each constituent agency to assure independent, impartial advice.

B. Notwithstanding the provisions of Subsection A of this section, attorneys from constituent agencies may act for the water quality control commission in lawsuits filed against or on behalf of the commission, and the attorney general may, at the request of the commission, file and defend lawsuits on behalf of the commission.

**History:** 1978 Comp., § 74-1-8.1, enacted by Laws 1982, ch. 73, § 28; recompiled as 1978 Comp., § 74-1-8.2; 1991, ch. 25, § 32; recompiled as 1978 Comp., § 74-6-3.1 by Laws 1993, ch. 291, § 18.

The 1991 amendment, effective March 29, 1991, inserted "the water quality control" and "water quality control" preceding "commission" in the first sentence in Subsection A and in Subsection B; and, in Subsection A, substituted "department of environ-

ment" for "health and environment department" in Paragraph (3) and made a minor stylistic change.

**Compiler's notes.** — Laws 1982, ch. 73, § 28, enacted this section as 74-1-8.1 NMSA 1978, but since Laws 1982, ch. 73, § 23, had already enacted 74-1-8.1 NMSA 1978, this section was compiled as 74-1-8.2 NMSA 1978. See 74-6-2 NMSA 1978 for the definition of "commission" and 74-6-4 NMSA 1978 for the general powers and duties of the commission.

### 74-6-4. Duties and powers of commission. (Repealed effective July 1, 2006.)

The commission:

A. may accept and supervise the administration of loans and grants from the federal government and from other sources, public or private, which loans and grants shall not be expended for other than the purposes for which provided;

B. shall adopt a comprehensive water quality management program and develop a continuing planning process;

C. shall adopt water quality standards for surface and ground waters of the state subject to the Water Quality Act [Chapter 74, Article 6 NMSA 1978]. The standards shall include narrative standards and as appropriate, the designated uses of the waters and the water quality criteria necessary to protect such uses. The standards shall at a minimum protect the public health or welfare, enhance the quality of water and serve the purposes of the Water Quality Act. In making standards, the commission shall give weight it deems appropriate to all facts and circumstances, including the use and value of the water for water supplies, propagation of fish and wildlife, recreational purposes and agricultural, industrial and other purposes;

D. shall adopt, promulgate and publish regulations to prevent or abate water pollution in the state or in any specific geographic area, aquifer or watershed of the state or in any part thereof, or for any class of waters, and to govern the disposal of septage and sludge and the use of sludge for various beneficial purposes. The regulations governing the disposal of septage and sludge may include the use of tracking and permitting systems or other reasonable means necessary to assure that septage and sludge are designated for disposal in, and arrive at, disposal facilities, other than facilities on the premises where the septage and sludge is generated, for which a permit or other authorization has been issued

pursuant to the federal act or the Water Quality Act. Regulations shall not specify the method to be used to prevent or abate water pollution but may specify a standard of performance for new sources that reflects the greatest reduction in the concentration of water contaminants that the commission determines to be achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives, including where practicable, a standard permitting no discharge of pollutants. In making regulations, the commission shall give weight it deems appropriate to all relevant facts and circumstances, including:

- (1) character and degree of injury to or interference with health, welfare, environment and property;
- (2) the public interest, including the social and economic value of the sources of water contaminants;
- (3) technical practicability and economic reasonableness of reducing or eliminating water contaminants from the sources involved and previous experience with equipment and methods available to control the water contaminants involved;
- (4) successive uses, including but not limited to, domestic, commercial, industrial, pastoral, agricultural, wildlife and recreational uses;
- (5) feasibility of a user or a subsequent user treating the water before a subsequent use;
- (6) property rights and accustomed uses; and
- (7) federal water quality requirements;

E. shall assign responsibility for administering its regulations to constituent agencies so as to assure adequate coverage and prevent duplication of effort. To this end, the commission may make such classification of waters and sources of water contaminants as will facilitate the assignment of administrative responsibilities to constituent agencies. The commission shall also hear and decide disputes between constituent agencies as to jurisdiction concerning any matters within the purpose of the Water Quality Act. In assigning responsibilities to constituent agencies, the commission shall give priority to the primary interests of the constituent agencies. The department of environment shall provide technical services, including certification of permits pursuant to the federal act;

F. may enter into or authorize constituent agencies to enter into agreements with the federal government or other state governments for purposes consistent with the Water Quality Act and receive and allocate to constituent agencies funds made available to the commission;

G. may grant an individual variance from any regulation of the commission, whenever it is found that compliance with the regulation will impose an unreasonable burden upon any lawful business, occupation or activity. The commission may only grant a variance conditioned upon a person effecting a particular abatement of water pollution within a reasonable period of time. Any variance shall be granted for the period of time specified by the commission. The commission shall adopt regulations specifying the procedure under which variances may be sought, which regulations shall provide for the holding of a public hearing before any variance may be granted;

H. may adopt regulations to require the filing with it or a constituent agency of proposed plans and specifications for the construction and operation of new sewer systems, treatment works or sewerage systems or extensions, modifications of or additions to new or existing sewer systems, treatment works or sewerage systems. Filing with and approval by the federal housing administration of plans for an extension to an existing or construction of a new sewerage system intended to serve a subdivision solely residential in nature shall be deemed compliance with all provisions of this subsection;

I. may adopt regulations requiring notice to it or a constituent agency of intent to introduce or allow the introduction of water contaminants into waters of the state;

J. may adopt regulations establishing pretreatment standards that prohibit or control the introduction into publicly owned sewerage systems of water contaminants that



are not susceptible to treatment by the treatment works or that would interfere with the operation of the treatment works;

K. shall not require a permit respecting the use of water in irrigated agriculture, except in the case of the employment of a specific practice in connection with such irrigation that documentation or actual case history has shown to be hazardous to public health or the environment; and

L. shall coordinate application procedures and funding cycles for loans and grants from the federal government and from other sources, public or private, with the local government division of the department of finance and administration pursuant to the New Mexico Community Assistance Act.

**History:** 1953 Comp., § 75-39-4, enacted by Laws 1967, ch. 190, § 4; 1970, ch. 64, § 3; 1971, ch. 277, § 51; 1973, ch. 326, § 3; 1981, ch. 347, § 1; 1984, ch. 5, § 13; 1993, ch. 291, § 4.

**Delayed repeals.** — Laws 1999, ch. 21, § 2 repeals 74-6-4 NMSA 1978, as enacted by Laws 1967, ch. 190, § 4, effective July 1, 2006.

**Cross references.** — For certification of utility operators, see 61-33-1 NMSA 1978 et seq.

**The 1993 amendment,** effective June 18, 1993, inserted "management" in Subsection B; in Subsection C, deleted "as a guide to water pollution control" following "standards" in the first sentence and added all of the remaining language following the first occurrence of "standards"; in Subsection D, rewrote the introductory paragraph, inserted "environment" in Paragraph (1), made minor stylistic changes in Paragraphs (2), (5), and (6), and added Paragraph (7); substituted the last sentence of Subsection E for the former last sentence which read "The environmental improvement division of the health and environment department shall provide testing and other technical services"; made minor stylistic changes in Subsections G, H, and J; and inserted "or the environment" in Subsection K.

**New Mexico Community Assistance Act.** — See 11-6-1 NMSA 1978 and notes thereto.

**Discretion in consideration of factors.** — In adopting standards for organic compounds in groundwater, Subsection D does not require the record to contain the commission's consideration of every part within the six factors for each organic compound. The commission possesses reasonable discretion in its consideration of the six factors and in the weight it gives to each factor. *Tenneco Oil Co. v. New Mexico Water Quality Control Comm'n*, 107 N.M. 469, 760 P.2d 161 (Ct. App. 1988) (decided prior to the 1993 amendment, which added Paragraph (7) to Subsection D).

**No requirement that commission consider complete environmental impact.** — There is no specific requirement in the commission's mandate that it consider to the fullest extent possible the

environmental consequences of its action. The commission could in all good faith adopt a regulation governing the effluent quality of sewage so restrictive that municipalities would turn to methods other than those currently used to dispose of it which would have adverse environmental consequences far more serious than some pollution of the waters of the state. *City of Roswell v. New Mexico Water Quality Control Comm'n*, 84 N.M. 561, 505 P.2d 1237 (Ct. App. 1972), cert. denied, 84 N.M. 560, 505 P.2d 1236 (1973) (decided under former law).

**Commission may delegate authority to administer regulations.** — Where the commission gives the environmental improvement division the authority to administer certain regulations, there is no unlawful delegation of authority. *Kerr-McGee Nuclear Corp. v. New Mexico Water Quality Control Comm'n*, 98 N.M. 240, 647 P.2d 873 (Ct. App. 1982).

**Numerical standards for organic compounds in rainwater.** — The adoption of numerical standards for organic compounds in rainwater was not arbitrary and capricious, as they were technically achievable within the meaning of Subsection D. *Tenneco Oil Co. v. New Mexico Water Quality Control Comm'n*, 107 N.M. 469, 760 P.2d 161 (Ct. App. 1988).

**Law reviews.** — For comment, "Control of Industrial Water Pollution in New Mexico," see 9 Nat. Resources J. 653 (1969).

For note, "Ground and Surface Water in New Mexico: Are They Protected Against Uranium Mining and Milling?" see 18 Nat. Resources J. 941 (1978).

For note, "New Mexico Water Pollution Regulations and Standards Upheld," see 19 Nat. Resources J. 693 (1979).

For article, "The Assurance of Reasonable Toxic Risk?," see 24 Nat. Resources J. 549 (1984).

For article, "Information for State Groundwater Quality Policymaking," see 24 Nat. Resources J. 1015 (1984).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 61A Am. Jur. 2d Pollution Control § 719.

39A C.J.S. Health and Environment §§ 133 to 136.

## 74-6-5. Permits; certification; appeals to commission.

A. By regulation the commission may require persons to obtain from a constituent agency designated by the commission a permit for the discharge of any water contaminant or for the disposal or re-use of septage or sludge.

B. The commission shall adopt regulations establishing procedures for certifying federal water quality permits.

C. Prior to the issuance of a permit, the constituent agency may require the submission of plans, specifications and other relevant information that it deems necessary.

D. The commission shall by regulation set the dates upon which applications for permits shall be filed and designate the time periods within which the constituent agency shall, after the filing of an administratively complete application for a permit, either grant the permit, grant the permit subject to conditions or deny the permit.

E. The constituent agency shall deny any application for a permit or deny the certification of a federal water quality permit if:

(1) the effluent would not meet applicable state or federal effluent regulations, standards of performance or limitations;

(2) any provision of the Water Quality Act [Chapter 74, Article 6 NMSA 1978] would be violated;

(3) the discharge would cause or contribute to water contaminant levels in excess of any state or federal standard. Determination of the discharges' effect on ground water shall be measured at any place of withdrawal of water for present or reasonably foreseeable future use. Determination of the discharges' effect on surface waters shall be measured at the point of discharge; or

(4) the applicant has, within the ten years immediately preceding the date of submission of the permit application:

(a) knowingly misrepresented a material fact in an application for a permit;

(b) refused or failed to disclose any information required under the Water Quality Act;

(c) been convicted of a felony or other crime involving moral turpitude;

(d) been convicted of a felony in any court for any crime defined by state or federal law as being a restraint of trade, price-fixing, bribery or fraud;

(e) exhibited a history of willful disregard for environmental laws of any state or the United States; or

(f) had an environmental permit revoked or permanently suspended for cause under any environmental laws of any state or the United States.

F. The commission shall by regulation develop procedures that ensure that the public, affected governmental agencies and any other state whose water may be affected shall receive notice of each application for issuance or modification of a permit. No ruling shall be made on any application for a permit without opportunity for a public hearing at which all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.

G. The commission may adopt regulations for the operation and maintenance of the permitted facility, including requirements, as may be necessary or desirable, that relate to continuity of operation, personnel training and financial responsibility, including financial responsibility for corrective action.

H. Permits shall be issued for fixed terms not to exceed five years, except that for new discharges, the term of the permit shall commence on the date the discharge begins, but in no event shall the term of the permit exceed seven years from the date the permit was issued.

I. By regulation, the commission may impose reasonable conditions upon permits requiring permittees to:

(1) install, use and maintain effluent monitoring devices;

(2) sample effluents and receiving waters for any known or suspected water contaminants in accordance with methods and at locations and intervals as may be prescribed by the commission;

(3) establish and maintain records of the nature and amounts of effluents and the performance of effluent control devices;

(4) provide any other information relating to the discharge or direct or indirect release of water contaminants; and

(5) notify a constituent agency of the introduction of new water contaminants from a new source and of a substantial change in volume or character of water contaminants being introduced from sources in existence at the time of the issuance of the permit.

J. The commission shall provide by regulation a schedule of fees for permits, not exceeding the estimated cost of investigation and issuance, modification and renewal of permits. Fees collected pursuant to this section shall be deposited in the water quality management fund.

K. The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Water Quality Act, any applicable regulations or water quality standards of the commission or any applicable federal laws, regulations or standards.

L. A permit may be terminated or modified by the constituent agency that issued the permit prior to its date of expiration for any of the following causes:

- (1) violation of any condition of the permit;
- (2) obtaining the permit by misrepresentation or failure to disclose fully all relevant facts;
- (3) violation of any provisions of the Water Quality Act or any applicable regulations, standard of performance or water quality standards;
- (4) violation of any applicable state or federal effluent regulations or limitations; or
- (5) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

M. If the constituent agency denies, terminates or modifies a permit or grants a permit subject to condition, the constituent agency shall notify the applicant or permittee by certified mail of the action taken and the reasons.

N. A person who participated in a permitting action before a constituent agency or a person affected by a certification of a federal permit and who is adversely affected by such permitting action or certification may file a petition for review before the commission. The petition shall be made in writing to the commission within thirty days from the date notice is given of the constituent agency's action. Unless a timely petition for review is made, the decision of the constituent agency shall be final.

O. If a timely petition for review is made, the commission shall hold a hearing within ninety days after receipt of the petition. The commission shall notify the petitioner and the applicant or permittee if other than the petitioner by certified mail of the date, time and place of the hearing. If the commission deems the action that is the subject of the petition to be affected with substantial public interest, it shall ensure that the public receives notice of the date, time and place of the hearing and is given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. A person submitting data, views or arguments orally or in writing shall be subject to examination at the hearing. In the hearing, the burden of proof shall be upon the petitioner. The commission may designate a hearing officer to take evidence in the hearing. Based upon the evidence presented at the hearing, the commission shall sustain, modify or reverse the action of the constituent agency.

P. If the petitioner requests, the hearing shall be recorded at the cost of the petitioner. Unless the petitioner requests that the hearing be recorded, the decision of the commission shall be final.

**History:** 1953 Comp., § 75-39-4.1, enacted by Laws 1973, ch. 326, § 4; 1985, ch. 157, § 1; 1989, ch. 248, § 1; 1993, ch. 100, § 3; 1993, ch. 291, § 5; 1999, ch. 21, § 1.

**1993 amendments.** — Laws 1993, ch. 100, § 3, effective March 31, 1993, deleting the former last sentence of Subsection H, which read "Effective July 1, 1992, all fees collected pursuant to this section shall be deposited in the general fund" and making minor stylistic changes throughout the section, was approved March 31, 1993. However, Laws 1993, ch. 291, § 5, effective June 18, 1993, also amending this section, rewriting it to the extent that a detailed comparison would be impracticable, but not giving

effect to the changes made by the first 1993 amendment, was approved April 7, 1993. The section is set out as amended by Laws 1993, ch. 291, § 5. See 12-1-8 NMSA 1978.

**The 1999 amendment,** effective June 18, 1999, in Subsection N substituted "review" for "hearing" in two places and substituted "petition" for "request" in the last sentence, substituted "review" for "hearing" in the first sentence of Subsection O, and made minor stylistic changes.

**Commission's requirement of information to prevent water pollution within statutory mandate.** — Where the objective of this article is to abate and prevent water pollution, it is not "clearly



incorrect" for the commission to require a discharger of toxic pollutants to provide a site and method for flow measurement and to provide any pertinent information relating to the discharge of water contaminants in order to demonstrate to the commission that the plans of the discharger will not result in a violation of the standards and regulations; these requirements are well within the statutory mandate. *Bokum Resources Corp. v. New Mexico Water Quality Control Comm'n*, 93 N.M. 546, 603 P.2d 285 (1979).

**In determining whether administrative interpretation is "clearly incorrect,"** the authority granted to an administrative agency should be construed so as to permit the fullest accomplishment of the legislative intent or policy. *Bokum Resources Corp. v. New Mexico Water Quality Control Comm'n*, 93 N.M. 546, 603 P.2d 285 (1979).

**Commission may delegate authority to administer regulations.** — Where the commission gave the environmental improvement division [now department of environment] the authority to administer certain regulations, there was no unlawful dele-

gation of authority. *Kerr-McGee Nuclear Corp. v. New Mexico Water Quality Control Comm'n*, 98 N.M. 240, 647 P.2d 873 (Ct. App. 1982).

**Discharge of a toxic pollutant in violation of a discharge plan** is a criminal act. *Kerr-McGee Nuclear Corp. v. New Mexico Water Quality Control Comm'n*, 98 N.M. 240, 647 P.2d 873 (Ct. App. 1982).

**Law reviews.** — For note, "New Mexico Water Pollution Regulations and Standards Upheld," see 19 *Nat. Resources J.* 693 (1979).

For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 *N.M.L. Rev.* 1 (1981).

For annual survey of New Mexico law relating to administrative law, see 13 *N.M.L. Rev.* 235 (1983).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 61A *Am. Jur. 2d Pollution Control* §§ 133 to 136.

Validity of state statutory provision permitting administrative agency to impose monetary penalties for violation of environmental pollution statute, 81 *A.L.R.3d* 1258.

39A *C.J.S. Health and Environment* §§ 134, 145, 154.

### 74-6-5.1. Disclosure statements.

A. The commission by regulation may require every applicant for a permit to dispose or use septage or sludge, or within a source category designated by the commission, to file with the appropriate constituent agency a disclosure statement. The disclosure statement shall be submitted on a form developed by the commission and the department of public safety. The commission in cooperation with the department of public safety shall determine the information to be contained in the disclosure statement. The disclosure statement shall be submitted to the constituent agency at the same time that the applicant files an application for a permit pursuant to Section 74-6-5 NMSA 1978. The commission shall adopt regulations designating additional categories of sources subject to the disclosure requirements of this section as it deems appropriate and necessary to carry out the purposes of this section.

B. Upon a request by the constituent agency, the department of public safety shall prepare and transmit to the constituent agency an investigative report on the applicant within ninety days after the department of public safety receives an administratively complete disclosure statement prepared by the applicant for a permit. The investigative report shall be based in part upon the disclosure statement. The ninety-day deadline for preparing the investigative report may be extended by the constituent agency for a reasonable period of time for good cause. The department of public safety in preparing the investigative report may request and receive criminal history information from any other law enforcement agency or organization. The constituent agency may also request information regarding a person who will be or could reasonably be expected to be involved in management activities of the permitted facility or a person who has a controlling interest in a permitted facility. The information received from a law enforcement agency shall be kept confidential by the department of public safety to the extent that confidentiality is imposed by the law enforcement agency as a condition for providing the information to the constituent agency or the commission.

C. All persons required to file a disclosure statement shall provide any assistance or information requested by the constituent agency or the department of public safety and shall cooperate in any inquiry or investigation conducted by the department of public safety. If a person required to file a disclosure statement refuses to comply with a formal request to answer an inquiry or produce information, evidence or testimony, the application of the applicant or the permit of the permittee shall be denied or terminated by the constituent agency.

D. If the information required to be included in the disclosure statement changes or if additional information should be added after the filing of the disclosure statement, the

person required to file the disclosure statement shall provide the information to the constituent agency in writing within thirty days after the change or addition. Failure to provide the information within thirty days shall constitute the basis for the termination of a permit or denial of an application for a permit. Prior to terminating a permit or denying an application for a permit, the constituent agency shall notify the permittee or applicant of the constituent agency's intent to terminate a permit or deny an application and the constituent agency shall give the permittee or applicant fourteen days from the date of notice to satisfactorily explain why the information was not provided within the thirty-day period. The constituent agency shall consider the explanation of the permittee or applicant when determining whether to terminate the permit or deny the application for a permit.

E. No person shall be required to submit the disclosure statement required by this section if:

(1) the application is for a facility owned and operated by the state, a political subdivision of the state or an agency of the federal government or for the permitted disposal or use of septage or sludge on the premises where the sludge or septage is generated;

(2) the person has submitted a disclosure statement pursuant to this section within the previous year and no changes have occurred that would require disclosure under Subsection D of this section; or

(3) the person is a corporation or an officer, director or shareholder of that corporation and that corporation:

(a) has on file and in effect with the federal securities and exchange commission a registration statement required by Section 5, Chapter 38, Title 1 of the Securities Act of 1933, as amended;

(b) submits to the constituent agency with the application for a permit evidence of the registration described in Subparagraph (a) of this subsection and a copy of the corporation's most recent annual form 10-K or an equivalent report; and

(c) submits to the constituent agency on the anniversary date of the issuance of the permit evidence of registration described in Subparagraph (a) of this subsection and a copy of the corporation's most recent annual form 10-K or an equivalent report.

F. Permit decisions made pursuant to this section shall be subject to the procedures established in Section 74-6-5 NMSA 1978, including notice and appeals.

**History:** Laws 1993, ch. 291, § 12.  
Securities Act of 1933. — Section 5, Chapter 38,

Title 1 of the Securities Act of 1933, referred to  
Subsection E(3)(a), appears as 15 U.S.C. § 77e.

### **74-6-5.2. Water quality management fund created.**

There is created in the state treasury the "water quality management fund" to be administered by the department of environment. All fees collected pursuant to the regulations adopted by the commission under Subsection H [J] of Section 74-6-5 NMSA 1978 shall be deposited in the fund. Money in the fund is appropriated to the department of environment for the purpose of administering the regulations adopted by the commission pursuant to Section 74-6-5 NMSA 1978. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of environment.

**History:** Laws 1993, ch. 100, § 4.  
**Bracketed material.** — The bracketed material in the second sentence was inserted by the compiler. It was not enacted by the legislature, and it is not a

part of the law. Laws 1993, ch. 291, § 5 rewrote 74-6-5 NMSA 1978, moving the provisions relating to fees to Subsection J, effective June 18, 1993.



### 74-6-6. Adoption of regulations and standards; notice and hearing.

A. No regulation or water quality standard or amendment or repeal thereof shall be adopted until after a public hearing.

B. Any person may petition in writing to have the commission adopt, amend or repeal a regulation or water quality standard. The commission shall determine whether to hold a hearing within ninety days of submission of the petition. The denial of such a petition shall not be subject to judicial review.

C. Hearings on regulations or water quality standards of statewide application shall be held in Santa Fe. Hearings on regulations or standards that are not of statewide application may be held within the area that is substantially affected by the regulation or standard. At least thirty days prior to the hearing date, notice of the hearing shall be published in the New Mexico register and a newspaper of general circulation in the area affected and mailed to all persons who have made a written request to the commission for advance notice of hearings and who have provided the commission with a mailing address. The notice shall state the subject, the time and the place of the hearing and the manner in which interested persons may present their views. The notice shall also state where interested persons may secure copies of any proposed regulation or water quality standard.

D. At the hearing, the commission shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. The commission may designate a hearing officer to take evidence in the hearing. Any person heard or represented at the hearing shall be given written notice of the action of the commission.

E. No regulation or water quality standard or amendment or repeal thereof adopted by the commission shall become effective until thirty days after its filing in accordance with the provisions of the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** 1953 Comp., § 75-39-5, enacted by Laws 1967, ch. 190, § 5; 1982, ch. 73, § 26; 1993, ch. 291, § 6.

**Cross references.** — As to filing with the supreme court law librarian, see 14-4-9 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, inserted "and standards" in the catchline; inserted the subsection designations; in Subsection A, deleted "within the area of the state concerned; provided that the commission may adopt water quality standards on the basis of the record of hearings held by the New Mexico department of public health prior to the effective date of the Water Quality Act if those hearings were held in general conformance with the provisions of this section" from the end; in Subsection B, substituted the language following "Any person may" for "recommend or propose regulations to the commission for promulgation"; in Subsection C, in the first sentence, inserted "or water quality standards" and made a minor stylistic change, added the second sentence, in the third sentence, added "At least thirty days prior to the hearing date" and substituted the language following "hearing shall be" for "given at least thirty days prior to the hearing date and"; inserted "The notice" at the beginning of the fourth sentence and deleted the last two sentences, which read "The notice shall be published in a newspaper of general circulation in the area affected. Reasonable effort shall be made to give notice to all persons who have made a written request to the commission for advance notice of its hearings"; and deleted the former second sentence of Subsection E, which read "The commission shall determine

whether or not to hold a hearing within sixty days of submission of a proposed regulation."

**Authority of division to propose regulations and act as interested party at hearings.** — In light of the fact that the legislature had seen fit to have the director of the environmental improvement division sit as a member of the commission, the division could propose regulations to the commission and then act as an interested party at the hearings. *Kerr-McGee Nuclear Corp. v. New Mexico Water Quality Control Comm'n*, 98 N.M. 240, 647 P.2d 873 (Ct. App. 1982) (decided prior to 1982 amendment of 74-6-9 NMSA 1978 and the 1993 amendment to 74-6-3A(1)).

**Adequacy of hearing.** — Given the extensive nature of the public meetings and public hearing on the matter, with an opportunity to present evidence and cross-examine witnesses and with the prehearing disclosure of six references, the allegation of the concealment of the basic data on which standards for organic compounds in ground-water were based, was without merit. *Tenneco Oil Co. v. New Mexico Water Quality Control Comm'n*, 107 N.M. 469, 760 P.2d 161 (Ct. App. 1988).

**Law reviews.** — For comment, "Control of Industrial Water Pollution in New Mexico," see 9 *Nat. Resources J.* 653 (1969).

For annual survey of New Mexico law relating to administrative law, see 13 *N.M.L. Rev.* 235 (1983).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 61A *Am. Jur. 2d Pollution Control* § 4.

39A *C.J.S. Health and Environment* §§ 138, 142.

### 74-6-7. Administrative action; judicial review.

A. Except as otherwise provided in the Water Quality Act [Chapter 74, Article 6 NMSA 1978], a person who is adversely affected by a regulation adopted by the commission or by a compliance order approved by the commission or who participated in a permitting action or appeal of a certification before the commission and who is adversely affected by such action may appeal to the court of appeals for further relief. All such appeals shall be upon the record made before the commission and shall be taken to the court of appeals within thirty days after the regulation, compliance order, permitting action or certification that is being appealed occurred. If an appeal of a regulation is made, then the date of the commission's action shall be the date of the filing of the regulation under the State Rules Act [Chapter 14, Article 4 NMSA 1978].

B. Upon appeal, the court of appeals shall set aside the commission's action only if it is found to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence in the record; or
- (3) otherwise not in accordance with law.

C. After a hearing and a showing of good cause by the appellant, a stay of the action being appealed may be granted pending the outcome of the judicial review. The stay of the action may be granted by the commission or by the court of appeals if the commission denies a stay within ninety days after receipt of the application.

**History:** 1953 Comp., § 75-39-6, enacted by Laws 1967, ch. 190, § 6; 1970, ch. 64, § 4; 1993, ch. 291, § 7.

The 1993 amendment, effective June 18, 1993, substituted "Administrative Action" for "Validity of Regulation" in the catchline; rewrote Subsection A; deleted former Subsection B, relating to the procedure for perfecting an appeal; redesignated former Subsection C as present Subsection B; in present Subsection B, substituted "commission's action" for "regulation", deleted "or reasonably related to the prevention or abatement of water pollution" following "the record" in Paragraph (2), and made a minor stylistic change; and added present Subsection C.

**Standard is rule,** if the proper procedure has been followed in promulgating it. *Bokum Resources Corp. v. New Mexico Water Quality Control Comm'n*, 93 N.M. 546, 603 P.2d 285 (1979).

**Standards adopted as rules are appealable.** — Since the standards for the evaluation of waste water to determine whether it is contaminated were adopted as rules, they are appealable to the court of appeals. *Bokum Resources Corp. v. New Mexico Water Quality Control Comm'n*, 93 N.M. 546, 603 P.2d 285 (1979).

**Lack of numerical standards not basis for invalidating regulation.** — Although there are no numerical standards in a regulation for what concentration of compounds triggers the label "toxic pollutant," this is not detrimental to a discharger where the director of the environmental improvement division will make that determination before a discharge plan is approved or disapproved, and the discharger will be notified. The lack of numerical standards is, therefore, not a basis for finding the regulation unconstitutional. *Kerr-McGee Nuclear Corp. v. New Mexico Water Quality Control Comm'n*, 98 N.M. 240, 647 P.2d 873 (Ct. App. 1982).

**Stay from operation of order or regulation.** — Implicit in this section is the power to grant a stay

from the operation of an administrative order or regulation, after due notice and opportunity for hearing. *Tenneco Oil Co. v. New Mexico Water Quality Control Comm'n*, 105 N.M. 708, 736 P.2d 986 (Ct. App. 1986) (decided prior to the 1993 amendment, which added the provisions in Subsection C authorizing a stay of the action being appealed).

**Evidence upon review.** — The "whole record" standard of judicial review to findings of fact made by administrative agencies controls where the commission acts in its rule-making capacity. Therefore, such a review must include the record of all public meetings and public hearings. *Tenneco Oil Co. v. New Mexico Water Quality Control Comm'n*, 107 N.M. 469, 760 P.2d 161 (Ct. App. 1988).

The legal residuum rule, which requires support by some evidence that would be admissible in a jury trial, is not applicable in a judicial review of a rule-making proceeding. *Tenneco Oil Co. v. New Mexico Water Quality Control Comm'n*, 107 N.M. 469, 760 P.2d 161 (Ct. App. 1988).

**Law reviews.** — For comment, "Control of Industrial Water Pollution in New Mexico," see 9 Nat. Resources J. 653 (1969).

For note, "New Mexico Water Pollution Regulations and Standards Upheld," see 19 Nat. Resources J. 693 (1979).

For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M.L. Rev. 1 (1981).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 61A Am. Jur. 2d Pollution Control §§ 117, 678 et seq., 749, 878, 881, 1249, 1578 to 1581, 1719, 1721.

Validity and construction of anti-water pollution statutes and ordinances, 32 A.L.R.3d 215.

Pollution control: validity and construction of statutes, ordinances or regulations controlling discharge of industrial wastes into sewer system, 47 A.L.R.3d 1224.

39A C.J.S. Health and Environment § 146.

### 74-6-8. Duties of constituent agencies.

Each constituent agency shall administer regulations adopted pursuant to the Water Quality Act [Chapter 74, Article 6 NMSA 1978], responsibility for the administration of which has been assigned to it by the commission.

**History:** 1953 Comp., § 75-39-7, enacted by Laws 1967, ch. 190, § 7.

**Commission may delegate authority to administer regulations.** — Where the commission gives the environmental improvement division the authority to administer certain regulations, there is

no unlawful delegation of authority. *Kerr-McGee Nuclear Corp. v. New Mexico Water Quality Control Comm'n*, 98 N.M. 240, 647 P.2d 873 (Ct. App. 1982).

**Law reviews.** — For article, "The Assurance of Reasonable Toxic Risk?," see 24 *Nat. Resources J.* 549 (1984).

### 74-6-9. Powers of constituent agencies.

Each constituent agency may:

A. receive and expend funds appropriated, donated or allocated to the constituent agency for purposes consistent with the Water Quality Act [Chapter 74, Article 6 NMSA 1978];

B. develop facts and make studies and investigations and require the production of documents necessary to carry out the responsibilities assigned to the constituent agency. The result of any investigation shall be reduced to writing and a copy furnished to the commission and to the owner or occupant of the premises investigated;

C. report to the commission and to other constituent agencies water pollution conditions that are believed to require action where the circumstances are such that the responsibility appears to be outside the responsibility assigned to the agency making the report;

D. make every reasonable effort to obtain voluntary cooperation in the prevention or abatement of water pollution;

E. upon presentation of proper credentials, enter at reasonable times upon or through any premises in which a water contaminant source is located or in which are located any records required to be maintained by regulations of the federal government or the commission; provided that entry into any private residence without the permission of the owner shall be only by order of the district court for the county in which the residence is located and that, in connection with any entry provided for in this subsection, the constituent agency may:

(1) have access to and reproduce for their use any copy of the records;

(2) inspect any treatment works, monitoring equipment or methods required to be installed by regulations of the federal government or the commission; and

(3) sample any effluents, water contaminant or receiving waters;

F. on the same basis as any other person, recommend and propose regulations and standards for promulgation by the commission; and

G. on the same basis as any other person, present data, views or arguments and examine witnesses and otherwise participate at all hearings conducted by the commission or any other administrative agency with responsibility in the areas of environmental management, public health or consumer protection, but shall not be given any special status over any other party; provided that the participation by a constituent agency in a hearing shall not require the recusal or disqualification of the commissioner representing that constituent agency.

**History:** 1953 Comp., § 75-39-8, enacted by Laws 1967, ch. 190, § 8; 1973, ch. 326, § 5; 1982, ch. 73, § 27; 1993, ch. 291, § 8.

The 1993 amendment, effective June 18, 1993, made a minor stylistic change in Subsection B; in Subsection E, in the introductory paragraph, substituted "a water contaminant" for "an effluent" and

inserted "federal government or the", inserted "and reproduce for their use" in Paragraph (1), in Paragraph (2), inserted "treatment works" and "federal government or the", inserted "water contaminant or receiving waters" in Paragraph (3); inserted "and standards" in Subsection F; and inserted "public health" in Subsection G.



**Authority of division to propose regulations and act as interested party at hearings.** — In light of the fact that the legislature had seen fit to have the director of the environmental improvement division sit as a member of the commission, the division could propose regulations to the commission and then act as an interested party at the hearings. *Kerr-McGee Nuclear Corp. v. New Mexico Water*

*Quality Control Comm'n, 98 N.M. 240, 647 P.2d 873 (Ct. App. 1982) (decided prior to 1982 amendment and the 1993 amendment to 74-6-3A(1)).*

**Law reviews.** — For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

For annual survey of New Mexico law relating to administrative law, see 13 N.M.L. Rev. 235 (1983).

### **74-6-10. Penalties enforcement; compliance orders; penalties; assurance of discontinuance.**

A. Whenever, on the basis of any information, a constituent agency determines that a person violated or is violating a requirement, regulation or water quality standard adopted pursuant to the Water Quality Act [Chapter 74, Article 6 NMSA 1978] or a condition of a permit issued pursuant to that act, the constituent agency may:

- (1) issue a compliance order requiring compliance immediately or within a specified time period or issue a compliance order assessing a civil penalty, or both; or
- (2) commence a civil action in district court for appropriate relief, including injunctive relief.

B. A compliance order issued pursuant to Paragraph (1) of Subsection A of this section may include a suspension or termination of the permit allegedly violated.

C. A compliance order shall state with reasonable specificity the nature of the violation. Any penalty assessed in the compliance order shall not exceed:

- (1) fifteen thousand dollars (\$15,000) per day of noncompliance with the provisions in Section 74-6-5 NMSA 1978, including a regulation adopted or a permit issued pursuant to that section; or

- (2) ten thousand dollars (\$10,000) per day for each violation of a provision of the Water Quality Act other than the provisions in Section 74-6-5 NMSA 1978 or of a regulation or water quality standard adopted pursuant to the Water Quality Act.

D. In assessing a penalty authorized by this section, the constituent agency shall take into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements and other relevant factors.

E. For purposes of this section, a single operational event that leads to simultaneous violations of more than one standard shall be treated as a single violation.

F. If a person fails to take corrective actions within the time specified in a compliance order, the constituent agency may:

- (1) assess a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day of continued noncompliance with the compliance order; and
- (2) suspend or terminate the permit violated by the person.

G. Any compliance order issued by a constituent agency pursuant to this section shall become final unless, no later than thirty days after the compliance order is served, any person named in the compliance order submits a written request to the commission for a public hearing. The commission shall conduct a public hearing within ninety days after receipt of a request.

H. The commission may appoint an independent hearing officer to preside over any public hearing held pursuant to Subsection F of this section. The hearing officer shall:

- (1) make and preserve a complete record of the proceedings; and
- (2) forward to the commission a report that includes recommendations, if recommendations are requested by the commission.

I. The commission shall consider the findings of the independent hearing officer and, based on the evidence presented at the hearing, the commission shall make a final decision regarding the compliance order.

J. In connection with any proceeding under this section, the commission may:

- (1) adopt rules for discovery procedures; and

(2) issue subpoenas for the attendance and testimony of witnesses and for relevant papers, books and documents.

K. Penalties collected pursuant to this section shall be deposited in the general fund.

L. As an additional means of enforcing the Water Quality Act or any regulation or standard of the commission, the commission may accept an assurance of discontinuance of any act or practice deemed in violation of the Water Quality Act or any regulation or standard adopted pursuant to that act, from any person engaging in, or who has engaged in, such act or practice, signed and acknowledged by the chairman of the commission and the party affected. Any such assurance shall specify a time limit during which the discontinuance is to be accomplished.

**History:** 1953 Comp., § 75-39-9, enacted by Laws 1967, ch. 190, § 9; 1970, ch. 64, § 5; 1993, ch. 291, § 9.

The 1993 amendment, effective June 18, 1993, rewrote this section to the extent that a detailed comparison would be impracticable.

**Voluntary compliance no bar to assessment of civil penalties and cleanup costs.** — The former voluntary compliance provision of Subsection A did not apply to the remedies provided for violations of this article. The absence of voluntary compliance actions on the part of the state in a case did not prevent the state from seeking civil penalties and costs of cleanup. State ex rel. New Mexico Water Quality Control Comm'n v. Molybdenum Corp. of Am., 89 N.M. 552, 555 P.2d 375 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976) (decided prior to the 1993 amendment, which rewrote this section, deleting reference to voluntary compliance and shifting penalty provisions to 74-6-10.1 and 74-6-10.2 NMSA 1978).

**Law reviews.** — For comment, "Control of Indus-

trial Water Pollution in New Mexico," see 9 Nat. Resources J. 653 (1969).

For article, "The Assurance of Reasonable Toxic Risk?," see 24 Nat. Resources J. 549 (1984).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 61A Am. Jur. 2d Pollution Control § 2046 et seq.

Injunction against pollution of stream by private persons or corporations, 46 A.L.R. 8.

Validity and construction of statutes, ordinances or regulations controlling discharge of industrial wastes into sewer system, 47 A.L.R.3d 1224.

Preliminary mandatory injunction to prevent, correct or reduce effects of polluting practices, 49 A.L.R.3d 1239.

Right to maintain action to enjoin public nuisance as affected by existence of pollution control agency, 60 A.L.R.3d 665.

Validity, under federal constitution, of state statute or local ordinance regulating phosphate content of detergents, 21 A.L.R. Fed. 365.

39A C.J.S. Health and Environment §§ 150 to 154.

### 74-6-10.1. Civil penalties.

A. Any person who does not comply with the provisions of Section 74-6-5 NMSA 1978, including any regulation adopted pursuant to that section, or any permit issued pursuant to that section, shall be assessed civil penalties up to the amount of fifteen thousand dollars (\$15,000) per day of noncompliance for each violation.

B. Any person who violates any provision of the Water Quality Act [Chapter 74, Article 6 NMSA 1978] other than Section 74-6-5 NMSA 1978 or any person who violates any regulation, water quality standard or compliance order adopted pursuant to that act shall be assessed civil penalties up to the amount of ten thousand dollars (\$10,000) per day for each violation.

**History:** Laws 1993, ch. 291, § 14.

### 74-6-10.2. Criminal penalties.

A. No person shall:

(1) discharge any water contaminant without a permit for the discharge, if a permit is required, or in violation of any condition of a permit for the discharge from the federal environmental protection agency, the commission or a constituent agency designated by the commission;

(2) make any false material statement, representation, certification or omission of material fact in an application, record, report, plan or other document filed, submitted or required to be maintained under the Water Quality Act [Chapter 74, Article 6 NMSA 1978];

(3) falsify, tamper with or render inaccurate any monitoring device, method or record required to be maintained under the Water Quality Act;

(4) fail to monitor, sample or report as required by a permit issued pursuant to a state or federal law or regulation; or

(5) introduce into a sewerage system or into a publicly owned treatment works any water contaminant or hazardous substance, other than in compliance with all applicable federal, state or local requirements or permits, that the person knew or reasonably should have known could cause personal injury or property damage, which causes the treatment works to violate an effluent limitation or condition in a permit issued to the treatment works pursuant to the Water Quality Act or applicable federal water quality statutes.

B. Any person who knowingly violates or knowingly causes or allows another person to violate Subsection A of this section is guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

C. Any person who is convicted of a second or subsequent violation of Subsection A of this section is guilty of a third degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

D. Any person who knowingly violates Subsection A of this section or knowingly causes another person to violate Subsection A of this section and thereby causes a substantial adverse environmental impact is guilty of a third degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

E. Any person who knowingly violates Subsection A of this section and knows at the time of the violation that he is creating a substantial danger of death or serious bodily injury to any other person is guilty of a second degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

F. A single operational event that leads to simultaneous violations of more than one water contaminant parameter shall be treated as a single violation.

History: Laws 1993, ch. 291, § 15.

#### **74-6-11. Emergency; powers of delegated constituent agencies; penalties.**

A. If a constituent agency determines upon receipt of evidence that a pollution source or combination of sources over which it has been delegated authority by the commission poses an imminent and substantial danger to public health, it may bring suit in the district court for the county in which such a source is located to:

(1) restrain immediately any person causing or contributing to the alleged condition from further causing or contributing to the condition; or

(2) take such other action as deemed necessary and appropriate.

B. If it is not practicable to assure prompt protection of public health solely by commencement of a civil action as set forth in Subsection A of this section, the constituent agency may issue such orders as it deems necessary to protect public health. Any order issued by the constituent agency shall be effective for not more than seventy-two hours unless the constituent agency brings an action in district court within the seventy-two hour period. If the constituent agency brings an action within seventy-two hours of issuance of the order, the order shall be effective for one hundred sixty-eight hours or for a longer period of time authorized by the court.

C. Any person who willfully violates or fails or refuses to comply with an order issued by a constituent agency under Subsection B of this section shall, upon conviction, be punished by a fine of not more than five thousand dollars (\$5,000) for each day during which the violation, failure or refusal occurs.

History: 1953 Comp., § 75-39-10, enacted by Laws 1967, ch. 190, § 10; 1970, ch. 64, § 6; 1971, ch. 277, § 52; 1993, ch. 291, § 10.

The 1993 amendment, effective June 18, 1993, rewrote the catchline, which read "Emergency Proce-

dures"; deleted the former language of the section relating to the procedure followed by the director of the environmental improvement agency to abate water pollution, and added new Subsections A through C.



**Law reviews.** — For comment, "Control of Industrial Water Pollution in New Mexico," see 9 Nat. Resources J. 653 (1969).

For article, "The Assurance of Reasonable Toxic Risk?," see 24 Nat. Resources J. 549 (1984).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 61A Am. Jur. 2d Pollution Control §§ 2012, 2050. 39A C.J.S. Health and Environment § 144.

## 74-6-12. Limitations.

A. The Water Quality Act [Chapter 74, Article 6 NMSA 1978] does not grant to the commission or to any other entity the power to take away or modify the property rights in water, nor is it the intention of the Water Quality Act to take away or modify such rights.

B. The Water Quality Act does not apply to any activity or condition subject to the authority of the environmental improvement board pursuant to the Hazardous Waste Act [Chapter 74, Article 4 NMSA 1978], the Ground Water Protection Act [Chapter 74, Article 6B NMSA 1978] or the Solid Waste Act except to abate water pollution or to control the disposal or use of septage and sludge.

C. The Water Quality Act does not authorize the commission to adopt any regulation with respect to any condition or quality of water if the water pollution and its effects are confined entirely within the boundaries of property within which the water pollution occurs when the water does not combine with other waters.

D. The Water Quality Act does not grant to the commission any jurisdiction or authority affecting the relation between employers and employees with respect to or arising out of any condition of water quality.

E. The Water Quality Act does not supersede or limit the applicability of any law relating to industrial health, safety or sanitation.

F. Except as required by federal law, in the adoption of regulations and water quality standards and in an action for enforcement of the Water Quality Act and regulations adopted pursuant to that act, reasonable degradation of water quality resulting from beneficial use shall be allowed. Such degradation shall not result in impairment of water quality to the extent that water quality standards are exceeded.

G. The Water Quality Act does not apply to any activity or condition subject to the authority of the oil conservation commission pursuant to provisions of the Oil and Gas Act [Chapter 70, Article 2 NMSA 1978], Section 70-2-12 NMSA 1978 and other laws conferring power on the oil conservation commission to prevent or abate water pollution.

H. When changes in dissolved oxygen, temperature, dissolved solids, sediment or turbidity in a water of the state is attributable to natural causes or to the reasonable operation of irrigation and flood control facilities that are not subject to federal or state water pollution control permitting, numerical standards for temperature, dissolved solids content, dissolved oxygen, sediment or turbidity adopted under the Water Quality Act do not apply. "Reasonable operation", as used in this subsection, shall be defined by regulation of the commission.

**History:** 1953 Comp., § 75-39-11, enacted by Laws 1967, ch. 190, § 11; 1973, ch. 326, § 6; 1993, ch. 291, § 11; 1995, ch. 133, § 1; 1999, ch. 152, § 1.

The 1993 amendment, effective June 18, 1993, deleted former Subsection B relating to the availability of data obtained by the commission to the public and inserted present Subsection B; in Subsection F, inserted "Except as required by federal law", substituted "pursuant to that act" for "thereunder", and added the last sentence; and rewrote Subsection G.

The 1995 amendment, effective June 16, 1995, substituted "pursuant to provisions of" for "under" in Subsection G, and added Subsection H.

The 1999 amendment, effective June 18, 1999, rewrote Subsection H which read: "When dissolved oxygen, sediment or turbidity in a water of the state

is attributable to natural causes or to the reasonable operation of irrigation and flood control facilities, numerical standards for dissolved oxygen, sediment or turbidity adopted under the Water Quality Act do not apply. 'Reasonable operation', as used in this subsection, shall be defined by regulation of the commission".

**Solid Waste Act.** — See 74-9-1 NMSA 1978 and notes thereto.

**Law reviews.** — For comment, "Control of Industrial Water Pollution in New Mexico," see 9 Nat. Resources J. 653 (1969).

For note, "New Mexico Water Pollution Regulations and Standards Upheld," see 19 Nat. Resources J. 693 (1979).

For article, "The Assurance of Reasonable Toxic Risk?," see 24 Nat. Resources J. 549 (1984).

### 74-6-13. Construction.

The Water Quality Act [Chapter 74, Article 6 NMSA 1978] provides additional and cumulative remedies to prevent, abate and control water pollution, and nothing abridges or alters rights of action or remedies in equity under the common law or statutory law, criminal or civil. No provision of the Water Quality Act or any act done by virtue thereof estops the state or any political subdivision or person as owner of water rights or otherwise, in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

**History:** 1953 Comp., § 75-39-12, enacted by Laws 1967, ch. 190, § 12.

**Court retains jurisdiction of case seeking tort and contract damages.** — The trial court correctly retains jurisdiction of a case seeking tort and contract damages against a utility for its failure to supply water meeting certain minimal standards of quality since the government agencies involved have no expertise in considering tort and contractual

claims and are without power to grant the relief that the plaintiffs have asked, and this section evidences the legislative intent that common-law remedies against water pollution be preserved. *O'Hare v. Valley Utils., Inc.*, 89 N.M. 105, 547 P.2d 1147 (Ct. App.), modified, 89 N.M. 262, 550 P.2d 274 (1976).

**Law reviews.** — For comment, "Control of Industrial Water Pollution in New Mexico," see 9 Nat. Resources J. 653 (1969).

### 74-6-14. Recompiled.

**Recompilations.** — Section 74-6-14 NMSA 1978, as amended by Laws 1993, ch. 291, § 17, relating to

the termination of agency life, was recompiled as 74-6-17 NMSA 1978 in 1993.

### 74-6-15. Confidential information; penalties.

A. Records, reports or information obtained by the commission or a constituent agency pursuant to the Water Quality Act [Chapter 74, Article 6 NMSA 1978] shall be generally available to the public. All ambient water quality data and all effluent data obtained by the commission or a constituent agency shall be available to the public. Records, reports or information or particular parts of the records, reports or information shall be held confidential, if a person can demonstrate to the commission or constituent agency that the records, reports or information or particular parts of the records, reports or information, if made public, would divulge confidential business records or methods or processes entitled to protection as trade secrets. Except that the record, report or information may be disclosed:

(1) to officers, employees or authorized representatives of the commission or a constituent agency concerned with carrying out the purposes and provisions of the Water Quality Act;

(2) to officers, employees or authorized representatives of the United States government; or

(3) when relevant in any proceeding pursuant to the Water Quality Act or the federal act.

B. The commission shall promulgate regulations to implement the provisions of this section, including regulations specifying business records entitled to protection as confidential.

C. An officer, employee or authorized representative of the commission or a constituent agency who knowingly or willfully publishes, divulges, discloses or makes known any information that is required to be considered confidential pursuant to this section shall be fined not more than one thousand dollars (\$1,000) or imprisonment of not more than one year, or both.

**History:** Laws 1993, ch. 291, § 13.