

1 **TITLE 20 ENVIRONMENTAL PROTECTION**
 2 **CHAPTER 6 WATER QUALITY**
 3 **PART 5 NEW MEXICO POLLUTANT DISCHARGE ELIMINATION SYSTEM**

4
 5 **20.6.5.1 ISSUING AGENCY:** Water Quality Control Commission.
 6

7 **20.6.5.2 SCOPE:** This Part applies to all persons who discharge a pollutant from a point source to a water of the
 8 United States. This Part does not apply persons who discharge a pollutant from a point source to a water of the
 9 United States under tribal jurisdiction.

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 11 **20.6.5.3 STATUTORY AUTHORITY:** These regulations are adopted by the commission under the authority of
 12 the New Mexico Pollutant Discharge Elimination System Act, NMSA 1978, Sections 74-6C-1 et seq.
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14 **20.6.5.4 DURATION:** Permanent.
 15

16 **20.6.5.5 EFFECTIVE DATE:** [DATE] unless a later date is cited at the end of a section.
 17

18 **20.6.5.6 OBJECTIVE:** This Part implements the New Mexico Pollutant Discharge Elimination System Act,
 19 NMSA 1978, Sections 74-6C-1 et seq.
 20

21 **20.6.5.7 DEFINITIONS:** Terms defined in the New Mexico Pollutant Discharge Elimination System Act shall have
 22 the meaning given therein. Unless defined in the New Mexico pollutant discharge elimination system act, terms used
 23 in federal regulations incorporated by reference in this Part shall have the meaning given therein. In the event of a
 24 conflict, the definitions in the Act or in this Part shall govern.

25 **A. “applicant”** means a person who owns or operates a site and applies for a discharge permit; when
 26 a site is owned by one person but operated by another person, either both persons shall be co-applicants or the
 27 person who operates the site shall be the applicant;

28 **B. “C.F.R.”** means the code of federal regulations in effect pursuant to the federal act and national
 29 pollutant discharge elimination system program;

30 **C. “commission”** means:
 31 (a) -the New Mexico water quality control commission, or
 32 (b) the department or attorney general when used in connection with any administrative and
 33 enforcement activity;

34 **D. “department”** means the environment department or authorized representative of the environment
 35 department;

36 **E. “discharge”** means the addition of a pollutant or combination of pollutants to waters of the United
 37 States from a point source, including surface runoff collected or channeled by human effort, discharges through
 38 pipes, sewers or other conveyances owned by the state, a municipality or another person that do not lead to a
 39 treatment works and discharges through pipes, sewers or other conveyances leading into privately owned treatment
 40 works. "Discharge" does not include an addition of pollutants by an indirect discharger;

41 **F. “federal act”** means the Federal Water Pollution Control Act and its subsequent amendments and
 42 successor provisions;

43 **G. “general permit coverage”** means the authorization to discharge pursuant to a general permit;

44 **H. “indirect discharger”** means a nondomestic discharger introducing water contaminants to a
 45 publicly owned treatment works;

46 **HI. “national pollutant discharge elimination system” or “NPDES”** means the program for
 47 issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits and imposing and
 48 enforcing pretreatment requirements pursuant to Sections 307, 318, 402 and 405 of the federal act;

49 **J. “new source”** means:
 50 (a) any source from which there may be a discharge of water contaminants, the construction
 51 of which commenced after the publication of proposed rules prescribing a standard of performance applicable to the
 52 source; or

53 (b) an existing source of water contaminants when modified to treat additional volumes or
 54 when there is a change in the character of water contaminants treated;

55 **IK. “permit”** means an authorization issued by the department in accordance with program
 56 requirements and includes an individual or general permit;

1 **JL.** “person” means an individual, an association, a partnership, a corporation, a municipality, a
 2 nation, tribe, or pueblo of New Mexico, a state or federal agency or an agent, officer or employee thereof;

3 **KM.** “point source” means:

4 (1) a discernible, confined and discrete conveyance, including a pipe, ditch, channel, tunnel,
 5 conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate
 6 collection system or vessel or other floating craft from which pollutants are or may be discharged; but

7 (2) “point source” does not include a discharge composed entirely of return flows from irrigated
 8 agriculture or agricultural storm water runoff;

9 **M.** “pollutant” means:

10 (1) dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage
 11 sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated pursuant to
 12 the federal Atomic Energy Act of 1954, as amended), heat, wrecked or discarded equipment, rock, sand, cellar dirt
 13 and industrial, municipal and agricultural waste discharged into water; but

14 (2) “pollutant” does not include:

15 (a) sewage from vessels;

16 (b) water, gas or other material that is injected into a well to facilitate production of
 17 oil or gas; and

18 (c) water derived in association with oil or gas production and disposed of in a well,
 19 if: 1) the well is used either to facilitate production or for disposal purposes and is approved by authority of the state
 20 in which the well is located; and 2) the state determines that the injection or disposal will not result in the
 21 degradation of ground or surface water resources;

22 **N.** “New Mexico pollutant discharge elimination system” or “NMPDES” or “program” means the
 23 program authorized by the New Mexico Pollutant Discharge Elimination System Act and approved by the United
 24 States environmental protection agency per 40 CFR Section 123;

25 **O.** “regional administrator” means the regional administrator of region six of the United States
 26 environmental protection agency; and

27 **P.** “secretary” means the secretary of the environment department. In a federal regulation
 28 incorporated by reference, “director” or “state director” mean secretary of the environment department; and

29 **Q.** “stormwater” means stormwater runoff, snow melt runoff, and surface runoff and drainage.

30 **R.** “treatment works treating domestic sewage” or “TWDS” means a facility that handles
 31 domestic sewage use a multi-stage process of physical, chemical, and biological treatments to clean the water before
 32 it is discharged ~~as defined in 40 C.F.R. § 122.2;~~ and

33 **RS.** “tribal water quality standards” means standards established by the governing body pursuant to
 34 the laws of a nation, tribe or pueblo and which are applied in tribal water quality programs.

35 **ST.** “waters of the United States” means those waters regulated pursuant to the national pollutant
 36 discharge elimination system program and defined in federal regulations incorporated by refence in this Part.
 37

38 **20.6.5.8 COMPLIANCE WITH OTHER REGULATIONS:** Compliance with this Part shall not relieve
 39 a person of the obligation to comply with any other applicable state or federal law or regulation.
 40

41 **20.6.5.9 CONSTRUCTION:** This Part shall be liberally construed to effectuate the purposes of the New
 42 Mexico Pollutant Discharge Elimination System Act and this Part.
 43

44 **20.6.5.10 SEVERABILITY:** If any provision or application of this Part is held invalid, the remainder or its
 45 application to another situation or person shall not be affected.
 46

47 **20.6.5.11 SAVINGS CLAUSE:** The amendment and supersession of this Part shall not affect any
 48 enforcement action pending on the effective date of such amendment or supersession or the validity of any permit
 49 issued under this Part.
 50

51 **20.6.5.12-20.6.5.100: [RESERVED]**
 52

53 **20.6.5.101: PERMITTING PROHIBITIONS AND REQUIREMENTS:**

54 **A.** Except as provided in 20.6.5.102 NMAC (~~Permit Not Required~~), no person shall discharge a
 55 pollutant to a water of the United States from a point source without a permit issued by the secretary or general
 56 permit coverage approved by the department under this Part.

1 **B.** The requirement to obtain a permit under Section 301 (~~Individual Permits~~) and Section 303
 2 (~~General Permit Coverage~~) of this Part shall become effective when the memorandum of agreement between the
 3 state and the United States environmental protection agency that outlines the terms of the federal program
 4 delegation, including responsibilities and timelines for the transition, is effective.

5 **C.** No permit shall be issued for any of the reasons listed under 40 C.F.R. § 122.4, including when the
 6 regional administrator has objected in writing pursuant to the federal act.

7 **D.** The permittee shall comply with all conditions of the permit. Any permit noncompliance
 8 constitutes a violation of the New Mexico Pollutant Discharge Elimination System Act and is grounds for
 9 enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit
 10 renewal application.

11 **E.** The permittee shall retain records of all ~~monitoring information, copies of all reports required by~~
 12 ~~the permit, and records of all data used to complete an application for a permit and any supplemental information~~
 13 ~~submitted, for five years from the date of the sample, measurement or report, or for a period of at least five years~~
 14 ~~after from the date the permit is issued; issuance of the permit;~~ this period may be extended by request of the
 15 secretary at any time.

16 **F.** The permittee shall retain records of all monitoring information, including all calibration and
 17 maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all
 18 reports required by the permit, for five years from the date of the sample, measurement or report; this period may be
 19 extended by request of the secretary at any time. Samples and measurements taken for the purpose of monitoring
 20 shall be representative of the monitored activity. Monitoring must be conducted according to test procedures
 21 approved under 40 C.F.R. Part 136 unless another method is required under 40 C.F.R. Subchapter N or Subchapter
 22 O, Part 503 or if another method is approved by the department. Records of monitoring information shall include:

- 23 (1) the date, exact place, and time of sampling or measurements;
 24 (2) the individual(s) who performed the sampling or measurements;
 25 (3) the date(s) analyses were performed;
 26 (4) the individual(s) who performed the analyses;
 27 (5) the analytical techniques or methods used; and
 28 (6) the results of such analyses.

29 **FG.** The issuance of a permit does not convey any property rights or exclusive privileges.

30 **GH.** The issuance of a permit does not authorize any injury to persons or property or invasion of other
 31 private rights or any infringement of any other laws, rules, regulations or ordinances.

32
 33 **20.6.5.102 PERMIT NOT REQUIRED:** Only the following discharges are exempt from a permit under this
 34 Part:

35 **A.** A discharge composed entirely of return flows from irrigated agriculture or agricultural
 36 stormwater runoff;

37 **B.** A discharge of storm water runoff from a mining operation or an oil and gas exploration,
 38 production, processing or treatment operation or transmission facility that is composed entirely of flows that are
 39 from conveyances or systems of conveyances, including pipes, conduits, ditches and channels, used for collecting
 40 and conveying precipitation runoff and that are not contaminated by contact with, or do not come into contact with,
 41 any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the
 42 site of the operation or facility. Oil and gas exploration, production, processing or treatment operations or
 43 transmission facilities include activities necessary to prepare a site for drilling and for the movement and placement
 44 of drilling equipment, whether or not the field activities or operations may be considered to be construction
 45 activities; or

46 **C.** A discharge of runoff resulting from the following non-point source silviculture activities
 47 conducted in accordance with standard industry practice:

- 48 (1) nursery operations;
 49 (2) site preparation;
 50 (3) reforestation and subsequent cultural treatment;
 51 (4) thinning;
 52 (5) prescribed burning;
 53 (6) pest and fire control;
 54 (7) harvesting operations;
 55 (8) surface drainage; and
 56 (9) road construction and maintenance.

Some of these activities may involve point source discharges of dredged or fill material which may require a Clean Water Act Section 404 permit.

20.6.5.103 CONFLICTS OF INTEREST:

A. No member of the commission or the secretary who receives or received during the previous two years a significant portion of income directly or indirectly from permit holders or applicants for a permit shall approve or deny a permit, or portion thereof, either initially or on review.

B. For the purpose of this section:

(1) "Significant portion of income" means 10 percent or more of gross personal income for a calendar year, except that it means 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement, pension, or similar arrangement;

(2) "Income" means earnings of any type, including retirement benefits, consultant fees, and stock dividends, but does not include earnings from mutual funds or other diversified investments.

(3) "Permit holders or applicants" do not include a department or agency of state government.

20.6.5.105-20.6.5.200: [RESERVED]

20.6.5.201 FEDERAL REGULATIONS INCORPORATED BY REFERENCE: Except as otherwise provided, the following federal regulations, as they may be modified or amended, are hereby incorporated by reference:

A. 40 C.F.R. Part 122:

~~(1) Federal regulations cited in 20.6.5 NMAC;~~

~~(2)~~ 40 C.F.R. §§ ~~122.2, 122.4, 122.21(a), (b), (c)(2), (e) through (k), (m) through (r), 122.22, 122.23, 122.24, 122.25, 122.26, 122.27, 122.28, 122.29(a), 122.29(b), 122.29(d), 122.30, and 122.32 through 122.37, 122.41(a)(1), (b)-(j)(4), (k)(1), and (l)-(n), 122.42, 122.43, 122.44, 122.45, 122.46, 122.47(a), 122.48, 122.50, 122.61, 122.62, 122.63, 122.64;~~ and

~~(3)~~ Appendices A, C, D, E, F, G, H, I, and J;

B. 40 C.F.R. §§ 124.3(a), 124.5(a), (c), and (d), 124.6(a), (c), (d), and (e), 124.8, 124.10(a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e), 124.17(a) and (c), 124.56, 124.57(a), 124.59, 124.62;

C. 40 C.F.R. Part 125, Subparts A, B, D, H, I, and J, ~~and N;~~

~~CD.~~ 40 C.F.R. Part 129;

~~DE.~~ 40 C.F.R. Part 133;

~~EF.~~ 40 C.F.R. Part 136;

~~FG.~~ 40 C.F.R. Subchapter N, ~~Part 403;~~

~~GH.~~ 40 C.F.R. Part 3 and Part 127; ~~and~~

~~HI.~~ 40 C.F.R. Subchapter O, Part 503; ~~and~~

J. ~~Federal regulations cited in 20.6.5 NMAC and excluding any federal statutes cited in 20.6.5 NMAC.~~

20.6.5.202 EFFECT OF STAY OR INVALIDATION OF FEDERAL REGULATION: The department shall administer and enforce a federal regulation incorporated by reference only to the extent that it is implementable and enforceable by the United States environmental protection agency (EPA).

20.6.5.203 AVAILABILITY OF FEDERAL REGULATIONS: The public may request to view federal regulations incorporated by reference by contacting the New Mexico Environment Department, Surface Water Quality Bureau, 1190 St. Francis Dr., Santa Fe, New Mexico 87505.

20.6.5.204- 20.6.5.300 [RESERVED]:

20.6.5.301 INDIVIDUAL PERMITS:

A. APPLICATIONS.

(1) Any person who requires a new individual permit or the renewal, modification, or transfer of an existing individual permit, shall submit a complete application in the format specified by the department on the department's website.

(2) Any person who submits an application shall retain records of all data used to prepare the application for five years after issuance of the permit from the date the application is signed.

1 **B. NEW PERMITS.** Any person who requires a new individual permit shall submit an application at
2 least 180 days before the date on which the person intends to commence the discharge.

3 **C. PERMIT RENEWALS.**

4 (1) Any person proposing to renew a permit shall submit an application no later than 180
5 days prior to the expiration date of the permit.

6 (2) If prior to the expiration date of the permit the department determines that the application
7 is administratively complete, the permit shall continue in full force and effect until the department renews the
8 permit.

9 (3) If prior to the expiration date of the permit the department determines that the application
10 is not administratively complete, and the applicant fails to correct the deficiencies in accordance with Paragraph (2)
11 of Subsection C of 20.6.5.401 NMAC (~~Administrative Completeness~~), the permit shall be deemed to expire and the
12 person shall be deemed to be discharging without a permit after the expiration date.

13 (4) If a permittee is out of compliance with ~~the effluent limitations in~~ an existing permit,
14 including exceedances of effluent limitations, failure to meet deadlines, violations of other permit conditions or such
15 that there is an immediate threat to water quality or human health and the environment, the permittee shall be
16 required to submit a compliance plan or pollutant minimization plan with their application or as a condition of a
17 renewed permit in order to control and reduce or eliminate pollutants in the discharge and protect surface water
18 quality.

19 **D. PERMIT MODIFICATIONS.**

20 (1) ~~If cause exists,~~ the secretary may modify or revoke and reissue a permit for any reason
21 specified in 40 C.F.R. §§ 122.62(a) or (b) or 122.63:

22 (a) upon receipt of any information;

23 ~~(b)~~ upon receipt of an application from the permittee;

24 ~~(bc)~~ upon receipt of a written request from any person; ~~or~~

25 ~~(ed)~~ upon review of the permit file; or

26 ~~(de)~~ upon receipt of a written request from any nation, tribe or pueblo ~~in~~ of New
27 Mexico.

28 (2) All requests for modifications shall be in writing and shall contain facts and reasons
29 supporting the request.

30 (3) The secretary shall notify the permittee of permit modifications under Subparagraphs (b)
31 or (c) of Paragraph (1) of Subsection D of 20.6.5.301 NMAC (~~Individual Permits~~) in accordance with the
32 requirements of 20.6.5.403 NMAC.

33 (4) For an application under Subparagraph (a) of Paragraph (1) of Subsection D of
34 20.6.5.301 NMAC (~~Individual Permits~~), the secretary shall modify only those conditions requested in the application
35 or which the secretary determines are necessary and appropriate to grant the request. If a permit is revoked and
36 reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term.

37 (5) For a written request under Subparagraph (b) of Paragraph (1) of Subsection D of
38 20.6.5.301 NMAC (~~Individual Permits~~), if the secretary decides that the request is not justified, they shall send the
39 requester a brief written response giving a reason for the decision, which shall not be subject to public notice,
40 comment, or hearing.

41 (6) During the processing of the application, the permittee shall comply with the existing
42 permit, including any term or condition proposed for modification.

43 (7) The secretary may ~~grant a modification~~ modify a permit for a reason listed in 40 C.F.R. §
44 122.63 ~~by providing written notice to the permittee~~ upon the consent of the permittee, and such modification shall
45 not be subject to the requirements of 20.6.5.403 through 20.6.5.406 NMAC, as provided in 40 C.F.R. § 122.62.

46 **E. PERMIT TERMINATIONS:**

47 (1) The secretary may terminate or deny renewal of a permit:

48 (a) upon receipt of a written request from the permittee; or

49 (b) upon receipt of a written request from any person; or

50 (c) upon the secretary's own initiative:

51 (i) for a reason specified in 40 C.F.R. § 122.64(a);

52 (ii) for violation of any provisions of the New Mexico Pollutant Discharge
53 Elimination System Act or any applicable rules, standards of performance, or water quality standards; or

54 (iii) for violation of any applicable state, federal, or tribal water quality
55 standards or regulations; or

56 (iv) for violation of any permit effluent limitations.

1 (2) All requests for termination shall be in writing and shall contain facts and reasons
2 supporting the request.

3 (23) The secretary shall notify the permittee of the permit termination in accordance with the
4 requirements of 20.6.5.403 NMAC.

5 (43) If the permittee does not object within 30 days of receipt of the notification, the secretary
6 shall terminate the permit.

7 (54) If the permittee objects within 30 days of receipt of the notification, the secretary shall
8 issue a notice of intent to terminate the permit pursuant to 20.6.5.403 NMAC.

9 (65) For a written request from any person under Subparagraph (b) of Paragraph (1) of
10 Subsection E of 20.6.5.301 NMAC (~~Individual Permits~~), if the secretary decides that the request is not justified, they
11 shall send the requester and the permittee a brief written response giving a reason for the decision, which shall not
12 be subject to public notice, comment, or hearing.

13 **F. PERMIT TRANSFERS:**

14 (1) The secretary may transfer a permit by modification;
15 ~~(a)~~ under Subparagraph (a) of Paragraph (1) of Subsection D of 20.6.5.301 NMAC
16 (~~Individual Permits~~) to identify the new permittee and incorporate such other conditions as may be necessary; ~~or~~

17 (2) ~~(b)~~ under Paragraph (7) of Subsection D of 20.6.5.301 NMAC if: As an alternative
18 to transfers under Paragraph (1) of Subsection F of 20.6.5.301 NMAC, any individual permit may be automatically
19 transferred to a new permittee if:

20 (i) the existing permittee submits the transfer application no later than 30
21 days before the proposed transfer date;

22 (ii) the transfer application includes a written agreement between the
23 existing permittee and proposed ~~transferee~~ new permittee specifying the date for transfer of permit responsibility,
24 coverage, and liability between them;

25 ~~(iii)~~ the secretary does not notify the existing permittee and the proposed
26 new permittee of the secretary's intent to modify or revoke and reissue the permit, or modify the permit for a reason
27 listed in 40 C.F.R. § 122.63; and

28 ~~(iiiv)~~ the secretary determines that the permittee is not required to submit a
29 transfer application under Subparagraph (a) of Paragraph (1) of Subsection D of 20.6.5.301 NMAC (~~Individual~~
30 ~~Permits~~).

31 (23) The permittee shall be responsible and liable for any discharge covered by the permit
32 until the secretary approves the transfer.

33 (34) The permittee shall be responsible and liable for any act or omission that occurred before
34 the secretary approves the transfer.

35 (45) The transferee is not authorized to discharge under the permit until the secretary approves
36 the transfer.

37 **G. SPECIAL PROVISIONS FOR TWTDS:**

38 (1) A TWTDS shall submit to the department the information identified in 40 C.F.R. §§
39 122.21(c)(2)(ii)(A) through (E) within one year after publication of a standard applicable to its sewage sludge use or
40 disposal practice(s), and based thereon, the secretary shall determine whether the TWTDS shall submit an
41 application.

42 (2) The secretary may require a TWTDS to submit a permit application at any time they
43 determine that a permit is necessary to protect public health and the environment from any potential adverse effects
44 that may occur from toxic pollutants in sewage sludge.

45 (3) A TWTDS that commences operation after promulgation of a standard applicable to its
46 sewage sludge use or disposal practice(s) shall submit an application at least 180 days prior to the date proposed for
47 commencing operations.

48 **H. VARIANCES:**

49 (1) The secretary may grant or deny an application for a variance (subject to EPA objection
50 under 40 C.F.R. § 123.44) in whole or part for:

51 (a) an extension under 33 U.S.C. § 1311(i)(1) based on delay in completion of a
52 publicly or privately owned treatment works;

53 (b) after consultation with the regional administrator, an extension under 33 U.S.C.
54 § 1311(k) based on the use of innovative technology; or

55 (c) thermal pollution, as provided under 33 U.S.C. § 1326(a).

1 (2) The secretary may deny an application for, or forward an application to the regional
2 administrator with a written concurrence, or submit to the U.S. environmental protection agency without
3 recommendation, a completed variance application based on:

- 4 (a) the economic capability of the applicant under 33 U.S.C. § 1311(c); or
5 (b) water quality related effluent limitations under 33 U.S.C. § 1312(b)(2).

6 (3) For a completed variance application that is forwarded by the secretary, the regional
7 administrator may deny, forward, or submit to the EPA Office Director for Water Enforcement and Permits with a
8 recommendation for approval. The EPA Office Director for Water Enforcement and Permits may approve or deny
9 any variance request submitted by the regional administrator. If the Office Director approves the variance, the
10 department may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a
11 variance or modification has been approved or denied shall identify the applicable procedures for appealing that
12 decision under 20.1.3 NMAC.

13 (4) The secretary may deny or forward to the EPA administrator (or their delegate) with a
14 written concurrence a completed variance application based on:

- 15 (a) the presence of “fundamentally different factors” from those on which an
16 effluent limitations guideline was based, in accordance with 40 C.F.R. § 122.21(m); or
17 (b) certain water quality factors under 33 U.S.C. § 1311(g).

18 (5) The EPA administrator (or their delegate) may grant or deny a request for a variance
19 listed in Paragraph (4) of Subsection H of 20.6.5.301 NMAC (~~Individual Permits~~) that is forwarded by the secretary.
20 If the EPA administrator (or their delegate) approves the variance, the department may prepare a draft permit
21 incorporating the variance. Any public notice of a draft permit for which a variance or modification has been
22 approved or denied shall identify the applicable procedures for appealing that decision under 20.1.3 NMAC.

23 (6) A variance shall not exceed five years and shall not be extended or renewed unless the
24 secretary grants a new application for a variance.

25 **I. PERMIT DENIALS.** The secretary shall deny a permit if:

- 26 (1) the discharge would not comply with applicable effluent limitations or standards;
27 (2) the discharge would cause or contribute to an exceedance of a water quality standard in or
28 violate any requirement of 20.6.4 NMAC – Standards for Interstate and Intrastate Surface Waters;
29 (3) the discharge would cause or contribute to an exceedance of a water quality standard of a
30 downstream state or tribal water quality standard;
31 (4) the discharge would violate any requirement of state or federal law; or
32 (5) the applicant has, within the ten years immediately preceding the date of submission of
33 the application:

- 34 (a) knowingly misrepresented a material fact in an application for a permit;
35 (b) refused or failed to disclose any information required under the Clean Water Act
36 or Water Quality Act;
37 (c) been convicted of a felony or other crime involving moral turpitude;
38 (d) been convicted of a felony in any court for any crime defined by state or federal
39 law as being a restraint of trade, price-fixing, bribery or fraud;
40 (e) exhibited a history of willful disregard for environmental laws of any state, tribe,
41 nation or pueblo, or the United States; or
42 (f) had an environmental permit revoked or permanently suspended for cause under
43 any environmental laws of any state, tribe, nation, or pueblo or the United States.

44 **J. PRETREATMENT PROGRAM FOR POTWs.**

- 45 (1) A POTW permit must include pretreatment program conditions requiring the permittee
46 to:
47 (a) identify, in terms of character and volume of pollutants, any significant indirect
48 dischargers into the POTW subject to pretreatment standards under 33 U.S.C. 1317(b) and 40 C.F.R. Part 403;
49 (b) submit a local program when required by and in accordance with 40 C.F.R. Part
50 403 to assure compliance with pretreatment standards to the extent applicable under 33 U.S.C. 1317(b); the local
51 program must be incorporated into the permit as described in 40 C.F.R. Part 403, and must require all indirect
52 dischargers to the POTW to comply with the reporting requirements of 40 C.F.R. Part 403; and
53 (c) provide a written technical evaluation of the need to revise local limits under 40
54 C.F.R. 403.5(c)(1) following permit issuance or reissuance.

(2) A permit issued to a POTW that is not required to develop a local program under Subparagraph (b) of Paragraph (1) of this Section must require the POTW to develop effluent limits when required by and in compliance with 40 C.F.R. 403.5(c)(2).

(3) Notwithstanding the provision of 40 C.F.R. § 403.8(a), the department may assume responsibility for implementing the POTW pretreatment program requirements set forth in § 403.8(f) in lieu of requiring the POTW to develop a pretreatment program. This does not preclude POTW's from independently developing pretreatment programs.

(4) The secretary will enforce compliance with pretreatment standards, including local limits, established under 40 C.F.R. Part 403 or developed by a POTW as part of its local program or in accordance with Paragraph (2) of the Section.

(5) The secretary shall have authority to:

(a) approve and deny requests for approval of POTW pretreatment programs submitted by the POTW to the secretary;

(b) deny and recommend approval (but not approve) requests for fundamentally different factors variances submitted by industrial users in accordance with the criteria and procedures set forth in 40 C.F.R. § 403.13; and

(c) approve and deny requests for authority to modify categorical pretreatment standards to reflect removals achieved by the POTW in accordance with the criteria and procedures set forth in 40 C.F.R. §§ 403.7, 403.9, and 403.11.

(6) A POTW that is a sludge-only facility shall develop a pretreatment program under 40 C.F.R. Part 403 when the regional administrator determines that a pretreatment program is necessary to assure compliance with 33 U.S.C. § 1345(d).

(7) For purposes of this Section only, the purpose and applicability and objectives under 40 C.F.R. §§ 403.1 and 403.2 apply.

20.6.5.302 GENERAL PERMITS:

A. The secretary may issue or renew a general permit for one or more categories or subcategories of discharges, sludge use or disposal practices, or facilities, except those covered by individual permits, within a geographic area as described in 40 C.F.R. § 122.28(a)(1) for either:

(1) storm water point sources; or

(2) other point sources or TWTDS if all of the sources in the category or subcategory satisfy 40 C.F.R. § 122.28(a)(2).

B. Where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed pursuant to 40 C.F.R. § 122.44, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

C. The secretary may modify, ~~revoke and reissue,~~ terminate, or deny renewal of a general permit for a reason specified in 40 C.F.R. §§ 122.62 or 122.64.

D. Any person may request that the secretary modify, ~~revoke and reissue,~~ terminate, or deny renewal of a general permit for a reason specified in 40 C.F.R. §§ 122.62(a) or (b) or 122.64(a). The request shall be in writing and shall contain facts and reasons supporting the request. If the secretary decides that the request is not justified, they shall send the requester a brief written response giving a reason for the decision, which shall not be subject to public notice, comment, or hearing.

20.6.5.303 GENERAL PERMIT COVERAGE:

A. NOTICE OF INTENT.

(1) No later than the time specified in the applicable general permit, a person who seeks general permit coverage shall submit to the department a notice of intent (NOI) containing the information required by the general permit on the applicable form provided on the department's website.

(2) ~~The~~ Within 15 days, the department ~~will~~ shall review all notices for completeness based on the requirements for each general permit, make a determination, and respond to the applicant ~~in one of the following ways~~ specifying that:

(a) the NOI is complete, and general permit coverage is authorized;

(b) the NOI is deficient, and additional information is required before general permit coverage is authorized;

(c) general permit coverage is not appropriate for proposed discharge, and the applicant must apply for an individual permit.

1 (3) A person who fails to submit a timely notice of intent that complies with Paragraph (1) of
 2 Subsection A of 20.6.5.303 NMAC (General Permit Coverage) is not authorized to discharge or to engage in a
 3 sludge use or disposal practice under a general permit.

4 B. LIST. The department shall maintain a list on its website containing the notices of intent
 5 submitted and approved for general permit coverage.

6 C. TRANSFERS.

7 (1) No later than 30 days before the proposed transfer of NOI coverage:

8 (a) the permittee shall submit a notice of termination as described in Paragraph (3)
 9 of Subsection D of 20.6.5.303 NMAC ~~(General Permit Coverage)~~; and

10 (b) the transferee shall comply with the notice of intent requirement in Paragraph
 11 (1) of Subsection A of 20.6.5.303 NMAC ~~(General Permit Coverage)~~.

12 (2) The general permit coverage shall not transfer until the secretary notifies the permittee
 13 and transferee that the termination and transfer of general permit coverage are approved.

14 (3) The permittee shall be responsible and liable for any discharge covered by the general
 15 permit until the secretary provides the notice in Paragraph (2) of Subsection C of 20.6.5.303 NMAC ~~(General Permit
 16 Coverage)~~.

17 (4) The permittee shall be responsible and liable for any act or omission that occurred before
 18 the secretary provides the notice in Paragraph (2) of Subsection C of 20.6.5.303 NMAC ~~(General Permit Coverage)~~.

19 (5) The transferee is not authorized to discharge under the general permit until the secretary
 20 provides the notice in Paragraph (2) of Subsection C of 20.6.5.303 NMAC ~~(General Permit Coverage)~~.

21 D. TERMINATIONS.

22 (1) The secretary may terminate general permit coverage for:

23 (a) any reason listed in 40 C.F.R. §122.64(a);

24 (b) violation of any provisions of the New Mexico Pollutant Discharge Elimination
 25 System Act or any applicable rules, standards of performance, or water quality standards; or

26 (c) violation of any applicable state, federal or tribal effluent regulation or
 27 limitation.

28 (2) General permit coverage shall terminate automatically upon the department's issuance of
 29 an individual permit for the discharge, or sewage sludge use or disposal practice(s).

30 (3) The permittee may terminate general permit coverage by submitting a notice of
 31 termination when:

32 (a) the construction or operation has ceased and the termination conditions in the
 33 general permit have been satisfied;

34 (b) the general permit coverage is being transferred; or

35 (c) the discharge has terminated.

36 (4) The notice of termination shall contain the information required by the general permit in
 37 the format specified by the department

38 (5) No later than 30 days after receipt, the secretary shall approve or deny the notice of
 39 termination.

40 (6) The secretary shall deny the notice of termination if the permittee is or may be in
 41 violation of the general permit, the construction or operation has not ceased, the termination conditions in the
 42 general permit have not been satisfied, the transfer of general permit coverage is denied, or the discharge has not
 43 been terminated.

44 E. If the secretary does not renew a general permit before its expiration date, the current general
 45 permit shall be continued, and a permittee who has general permit coverage shall continue to comply with the
 46 general permit until the earlier of:

47 (1) the permittee submits a notice of intent for general permit coverage under the renewed
 48 general permit; ~~or~~

49 (2) the permittee obtains an individual permit; ~~or-~~

50 (3) coverage under the general permit is terminated in accordance with 20.6.5.303-(D)
 51 NMAC.

52 F. INDIVIDUAL PERMIT REQUIRED.

53 (1) The secretary may require a person to obtain an individual permit for the following
 54 reasons:

55 (a) the discharge does not qualify for general permit coverage;

56 (b) the secretary terminates general permit coverage; or

(c) for any reason listed in 40 C.F.R. §122.28(b)(3).

(2) Any person may request the secretary to require a person to obtain an individual permit for a reason listed in Paragraph (1) of Subsection F of 20.6.5.303 NMAC ~~(General Permit Coverage)~~. The request shall be in writing and shall contain facts and reasons supporting the request. If the secretary decides that the request is not justified, they shall send the requester a brief written response giving a reason for the decision, which shall not be subject to public notice, comment, or hearing.

(3) The secretary shall provide notification to a person required to obtain an individual permit, including:

(a) the reason(s) for requiring an individual permit;

(b) how to obtain an application;

(c) the deadline for submitting an administratively complete application;

(d) a statement that general permit coverage shall terminate on the effective date of the individual permit, if applicable; and

(e) a statement that the person notified under this paragraph may request review by the commission pursuant to 20.6.5.409 NMAC ~~(Review of Commission Decisions)~~.

(4) The secretary may extend the deadline to submit an administratively complete application for good cause.

(5) If a person with general permit coverage fails to submit an administratively complete application by the initial or extended deadline, the general permit coverage shall be automatically terminated.

20.6.5.304- 20.6.5.400: [RESERVED]

20.6.5.401 ADMINISTRATIVE COMPLETENESS:

A. ~~The secretary shall review an application for administrative completeness. The department shall not issue a permit before receiving a complete application for a permit except for NPDES general permits.~~

B. The department will not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit.

C. To be deemed administratively complete, an application for a permit and any required reports shall:

(1) be complete and in the format specified by the department on the department's website;

(2) for a new or renewed permit, provide the information required by 40 C.F.R. § 122.21 (c)(2)(ii)(A) through (E), (f) through (k), (q) and (r);

(3) for a modification, provide the supporting facts and reasons in writing, as required by 40 C.F.R. § 124.5(a);

(4) include all required quantitative data collected in accordance with sufficiently sensitive analytical methods approved under 40 CFR Part 136 or required under 40 CFR Chapter I, Subchapter N or O, in accordance with 40 C.F.R. § 122.21(e)(3).

(a) When there is no applicable analytical method that has been approved under 40 CFR Part 136, required under 40 CFR Chapter I, Subchapter N or O, and is not otherwise required by the department or EPA, the applicant may use any suitable method approved by the department but shall provide a description of the method.

(b) When selecting a suitable method, other factors such as a method's precision, accuracy, or resolution, may be considered when assessing the performance of the method;

(5) meet the signatory and certification requirements of 40 C.F.R. § 122.22; and

(5) include payment in full of the applicable fee.

C. Within ~~60-30~~ days of receipt of an application, the department shall notify the applicant in writing whether the application is deemed administratively complete.

(1) If the application is deemed administratively complete, the notification shall include a schedule identifying the estimated dates for the public notice, public comment, draft permit decision, public hearing, and final action, and the date of the notice shall be deemed the application's effective date.

(2) If the application is not deemed to be administratively complete, the notification shall identify the deficiencies and the deadline to correct the deficiencies and submit additional information. Failure to correct the deficiencies and submit additional information by the deadline shall be deemed a withdrawal of the application.

D. A permit application shall not be considered complete if the department has waived application requirements and EPA has disapproved that waiver application. If a waiver request has been submitted to EPA more than 210 days prior to permit expiration and the EPA has not disapproved the waiver application 181 days prior to permit expiration, the permit application lacking the information subject to the waiver application shall be considered complete.

20.6.5.402 PROCESSING:

A. The ~~secretary~~department shall process an administratively complete application for a new or renewed permit or a permit modification, a notice of intent to deny the application, or a notice of intent to terminate a permit in accordance with Sections 20.6.5.403 through 20.6.5.406 NMAC.

B. The ~~secretary~~department may request additional information, including a new or revised application, from an applicant, transferee, or requester to implement this Part, and such additional information shall be considered part of the application. Upon the department's request for additional information, the processing timeframe shall temporarily pause. The department will provide an updated processing timeline to the applicant, transferee, or requestor.

C. The department may conduct an inspection of the site, including the collection and analysis of samples, data, and information, at any time as it deems necessary to implement this Part, and such additional information shall be considered part of the application.

D. In appropriate cases, the ~~department~~secretary may consult with any state or federal agency with jurisdiction over water, fish, wildlife, or public health, and shall consult with any nation, tribe or pueblo government, before issuing a draft permit and may reflect their views in the statement of basis, the fact sheet, or the draft permit, in accordance with 40 C.F.R. § 124.59(c).

20.6.5.403 DRAFT PERMITS, NOTICES OF INTENT TO DENY THE APPLICATION, AND NOTICES OF INTENT TO TERMINATE THE PERMIT:

A. After an application to issue, renew, or modify a permit is deemed administratively complete or the secretary notifies the permittee that ~~they~~the secretary intends to deny the application or the request to modify or terminate the permit under Paragraph (23) of Subsection D of 20.6.5.301 NMAC (~~Individual Permits~~) or Paragraph (43) of Subsection E of 20.6.5.301 NMAC (~~Individual Permits~~), the department shall prepare ~~either~~ a draft permit, a notice of intent to deny the application, or a notice of intent to terminate the permit.

B. If the secretary decides to issue, renew, modify, or terminate a general permit, the department shall prepare a draft permit or notice of intent to terminate the permit.

C. If the secretary determines that a source or discharger is new under 40 C.F.R. § 122.29(b), the department shall prepare a written determination.

D. A draft permit shall contain the information identified in 40 C.F.R. § 124.6(d) and include conditions that comply with Subparagraphs (a) and (b) of Paragraph (1) of Subsection A-B of 20.6.5.406407 NMAC (~~Public Hearings~~).

E. For draft permits for the following facilities or activities, the department shall prepare a fact sheet that briefly sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered, and contains the information identified in 40 C.F.R. §§ 124.8(b); and 124.56, ~~and 124.57~~, as applicable:

- (1) major facilities;
- (2) Class I sludge management facilities;
- (3) permits that incorporate variances;
- (4) facilities for which an explanation is required by 40 C.F.R. § 124.56(b);
- (5) permits that include sewage sludge land application plans under 40 C.F.R. §

501.15(a)(2)(ix);

(6) permits that, in the secretary's discretion, are the subject of widespread public or tribal interest or raise major issues; and

- (7) general permits.

F. For any facility or activity that does not require a fact sheet under Subsection E of 20.6.5.403 NMAC (~~Draft Permits, Notices of Intent to Deny the Application, and Notices of Intent to Terminate the Permit~~), the department shall prepare a statement of basis that briefly describes the derivation of the conditions in the draft permit and the reasons for them.

G. For a notice of intent to deny an application or terminate a permit, the department shall prepare a statement of basis explaining the reasons.

1 **20.6.5.404 PUBLIC NOTICE AND PARTICIPATION:**

2 **A.** Within 90 days after the department makes its administrative completeness determination and all
3 required technical information is available, the department shall make available a draft permit or a notice of intent to
4 deny an application for a discharge permit, modification, or renewal.

5 **B.** The department shall provide a copy of the draft permit and fact sheet or statement of basis or
6 shall provide a copy of the notice of intent to deny to the applicant, and require written acknowledgement of receipt.
7 The department shall provide ~~to the~~ public notice of the draft permit or notice of intent to deny the application, ~~-~~ fact
8 sheet, statement of basis, or new source or new discharger determination, as follows:

- 9 (1) post notice on the department's website for the duration of the comment period;
10 (2) mail or email notice to:
11 (a) units of local government having jurisdiction over the area where the site will be
12 located;
13 (b) affected land grant organizations and ditch associations;
14 (c) governments of affected ~~Indian~~ nations, tribes, and pueblos of New Mexico;
15 (d) affected states;
16 (e) state agencies that have authority with respect to the construction or operation of
17 the site;
18 (f) U.S. environmental protection agency, U.S. army corps of engineers, New
19 Mexico game and fish department, New Mexico office of the state engineer, U.S. fish and wildlife service, U.S.
20 bureau of indian affairs, New Mexico state historic preservation officer, and advisory council on historic
21 preservation;
22 (g) other agencies that the department knows have issued or are required to issue an
23 air, water, or hazardous waste permit for the same facility or activity under state or federal law;
24 (h) users identified in the application of a privately owned treatment works; and
25 (i) persons who requested notice of draft permits in general or for the site.
26 (3) In providing notice ~~of a discharge permit~~ provided for in Subsection B of 20.6.5.404
27 NMAC, the department shall consider the languages spoken by and the communication methods accessible to the
28 intended recipients of the public notice.

29 (4) The secretary shall ensure that the methods of public notice effectively inform all
30 interested communities and allows access to the permitting process for those seeking to participate.

31 **C.** Concurrent with the department's notice in Subsection ~~C-B~~ of 20.6.5.404 NMAC ~~(Public Notice~~
32 ~~and Participation)~~, the applicant for an individual surface water discharge permit shall provide notice to the public of
33 the draft permit as follows:

- 34 (1) Mail or email notice to adjacent and nearby landowners within a 1/3 mile distance from
35 the discharge location or facility.
36 (2) For new surface water discharge permits or permit modifications, post notice at a place
37 conspicuous to the public and near the discharge location or facility.
38 (3) In providing notice of a discharge permit, the applicant shall consider the languages
39 spoken by and the communication methods accessible to the intended recipients of the public notice.

40 **D.** The notice provided under Subsections ~~B~~ and ~~Subsection C~~ of this ~~section~~ Section shall include:

- 41 (1) the name and address of the department;
42 (2) the mail and e-mail addresses and telephone number of the department's representative
43 who can provide further information, including copies of the draft permit, notice of intent to deny the application, or
44 notice of intent to terminate the permit, fact sheet, and application;
45 (3) the name and address of the permittee or applicant and the site, except for general
46 permits;
47 (4) a brief description of the business conducted at the site, except for general permits;
48 (5) a brief description of the procedures that the department will follow to make a ~~-~~final
49 decision on the draft permit, notice of intent to deny an application, or notice of intent to terminate a permit;
50 (6) a brief description of the procedures to submit a public comment, request a ~~-~~hearing, or
51 participate in the final decision on the draft permit, notice of intent to deny an application, or notice of intent to
52 terminate a permit;
53 (7) the time and place of a hearing if already scheduled;
54 (8) the location of each existing or proposed discharge point;
55 (9) the name of the receiving water;

1 (10) the sludge use and disposal practices(s) and location of each TWTDS and use and
2 disposal sites known at the time of the application;

3 (11) the requirements for cooling water intake structures under 33 U.S.C. § 1326(b), in
4 accordance with 40 C.F.R. Part 125, Appendices I, and J, and N;

5 (12) for a draft permit for which a thermal variance request under 33 U.S.C. § 1326(a) has
6 been filed, the statements required by 40 C.F.R. § 124.57(a); and

7 (13) a statement that the department will send future notices regarding the draft permit, notice
8 of intent to deny an application, or notice of intent to terminate a permit to persons who request them.

9 E. Within 15 days of completion of the public notice requirements in Subsection C of 20.6.5.404
10 NMAC (~~Public Notice and Participation~~), the applicant shall submit to the department proof of notice, including an
11 affidavit of mailing(s) and the list of property owner(s), proof of publication, and an affidavit of posting, as
12 appropriate.
13

14 20.6.5.405 PUBLIC COMMENTS AND REQUESTS FOR PUBLIC HEARING:

15 A. Following the public notice of the draft permit or notice of intent to deny, and prior to a final
16 action by the secretary, there shall be a period of at least 30 days during which any interested person may submit
17 written comments on the draft permit and may request a public hearing.

18 B. The 30-day public comment period shall begin on the date designated in the notice published on
19 the department's website. All comments will be considered by the department and shall be ~~answered~~ responded to
20 as provided in 40 C.F.R. § 124.17.

21 C. The department may extend the public comment period upon written request.

22 D. If a public hearing is held, the department shall extend the public comment period to the close of
23 the public hearing.
24

25 20.6.5.406 PUBLIC HEARINGS:

26 A. Requests for a hearing shall be in writing and shall state the nature of the issues to be raised in the
27 hearing.

28 B. A public hearing shall be held if the secretary determines there is a significant degree of public
29 interest, if ~~a~~ the government of a nation, tribe, or pueblo ~~government of New Mexico~~ requests a public hearing, or
30 the ~~department's~~ secretary, in ~~its~~ their discretion, determines that a hearing may clarify a relevant issue.

31 C. The department shall notify the applicant and any person requesting a hearing of the decision
32 whether to hold a hearing and the reasons therefore in writing.

33 D. The hearing shall be held in the area of the site, except that for general permits the hearing shall be
34 held in the affected region, basin, or watershed, or in Santa Fe if the general permit applies statewide.

35 E. At least 30 days prior to the hearing, the department shall give notice in the manner specified in
36 Subsection B of 20.6.5.404 NMAC (~~Public Notice and Participation~~), as applicable. The department may combine
37 this notice with the notice of the draft permit, notice of intent to deny the application, or notice of intent to terminate
38 the permit.

39 F. The notice shall include the information required by Subsection ~~C-D~~ of 20.6.5.404 (~~Public Notice~~
40 ~~and Participation~~) NMAC, as applicable, and:

41 (1) the date of previous notices relating to the draft permit, notice of intent to deny the
42 application, or notice of intent to terminate the permit;

43 (2) the date, time, and place of the hearing; and

44 (3) a brief description of the nature and purpose of the hearing, including the applicable rules
45 and procedures.

46 G. The hearing shall be conducted in accordance with the following provisions of 20.1.4 NMAC
47 (Permit Procedures - Environment Department):

48 (1) 20.1.4.100 NMAC (General Provisions);

49 (2) 20.1.4.200(A)(2), (B), (C)(1) and (3), and (D) NMAC (Prehearing Procedures);

50 (3) 20.1.4.300 NMAC (Participation);

51 (4) 20.1.4.400 NMAC (Hearing Procedures); and

52 (5) 20.1.4.500 NMAC (Post Hearing Procedures), provided the hearing officer's report and
53 the secretary's final decision shall:

54 (a) describe and respond to all significant comments raised during the public
55 comment period and hearing; and

1 (b) identify the provisions of the draft permit, notice of intent to deny the
2 application, or notice of intent to terminate the permit, if any, for which the hearing officer recommends a change,
3 and the reasons for the change.
4

5 **20.6.5.407 FINAL ACTIONS:**

6 A. The department shall evaluate the application for a new discharge permit, modification, or renewal
7 based on information contained in the application, additional information required by the department, any additional
8 information submitted by the applicant or the general public, other relevant information considered by the
9 department including antidegradation or reasonable potential analyses, applicable total maximum daily loads, water
10 quality and designated use attainment in the receiving stream, public comments, and, if a public hearing is held, any
11 testimony and information provided, associated hearing officer report and post hearing submissions. The department
12 shall prepare a revised draft discharge permit based on this evaluation for the secretary's review and approval.

13 B. Within ~~45~~30 days after the draft permit is provided for the secretary's review with all required
14 information, the secretary shall take final action based on the administrative record by:

15 (1) issuing a new, renewed or modified permit that:

16 (a) includes the conditions required by 40 C.F.R. §§ 122.21(p), 122.41(a)(1), ~~and~~
17 (b)-(j)(4), (k)(1), and (l)-(n), 122.42, 122.43, 122.44, 122.45, 122.48, and 122.50, and 124.59(a);

18 (b) in the secretary's discretion, includes the conditions requested by a state or
19 federal agency with jurisdiction over water, fish, wildlife, or public health pursuant to 40 C.F.R. § 124.59(b);

20 (c) in the secretary's discretion, includes a compliance schedule consistent with 40
21 C.F.R. § 122.47(a); and

22 (d) shall be effective for a fixed term not to exceed five years, ~~which shall not be~~
23 ~~extended except by renewal~~; or

24 (2) denying a new, renewed or modified permit for a reason listed in and as required by 40
25 C.F.R. § 122.4; or

26 (3) terminating or refusing to terminate a permit.

27 C. The department shall give notice of the secretary's final action and the reasons for such action,
28 including a response to comments containing the information required by 40 C.F.R. § 124.17(a)(1) and (2), to the
29 applicant and to any person who submitted a public comment, participated in the hearing, or requested such notice,
30 and to the public pursuant to Subsection B of 20.6.5.404 NMAC (~~Public Notice and Participation~~).

31 D. A new, renewed or modified permit shall become effective 30 days after the department gives
32 notice to the applicant under 20.6.5.406(B) NMAC unless a later date is specified in the permit or a timely petition
33 for review is filed.
34

35 **20.6.5.408 COMMISSION REVIEW OF SECRETARY DECISIONS:**

36 A. If the secretary approves, approves subject to conditions, or denies a proposed discharge permit,
37 renewal, or modification, or modifies or terminates a discharge permit, appeal therefrom shall be in accordance with
38 the New Mexico Pollutant Discharge Elimination System Act, Section 74-6C-8 NMSA 1978. The filing of an
39 appeal does not act as a stay of any provision of the Act, the regulations, or any permit issued pursuant to the Act,
40 unless otherwise ordered by the secretary or the commission.

41 B. If the secretary determines that a discharger is not exempt from obtaining a discharge permit, or
42 that the material to be discharged contains any toxic pollutant listed in 20.6.2.7 NMAC (~~Definitions~~), which is not
43 included in the table of numeric criteria in Paragraph (1) of Subsection J of 20.6.4.900 NMAC (~~Criteria Applicable~~
44 ~~to Existing, Designated or Attainable Uses Unless Otherwise Specified in 20.6.4.97 through 20.6.4.899 NMAC~~),
45 then the discharger may appeal such determination by filing with the commission a notice of appeal to the
46 commission within 30 days after receiving the secretary's written determination, and the appeal therefrom and any
47 action of the commission thereon shall be in accordance with the New Mexico Pollutant Discharge Elimination
48 System Act, Section 74-6C-8 NMSA 1978.

49 C. Proceedings before the commission shall be conducted in accordance with the commission's
50 adjudicatory procedures in 20.1.3 NMAC (~~Adjudicatory Procedures—Water Quality Control Commission~~).
51

52 **20.6.5.409 JUDICIAL REVIEW OF COMMISSION DECISIONS:** An applicant, permittee, or a person
53 who participated in a permitting action and who is adversely affected by such action may appeal the decision of the
54 commission in accordance with the New Mexico Pollutant Discharge Elimination System Act, Section 74-6C-9
55 NMSA 1978.
56

1 **20.6.5.410-20.6.5.500: [RESERVED]**
 2

3 **20.6.5.501 ENFORCEMENT:**

4 **A. COMPLIANCE ORDERS.** The department shall conduct the public hearing on a compliance
 5 order in accordance with 20.1.5 NMAC ~~(Adjudicatory Procedures—Environment Department).~~

6 **B. CITIZEN PARTICIPATION.** The department shall:

7 (1) investigate and provide written responses to citizen complaints;

8 (2) not oppose intervention by any citizen when permissive intervention may be authorized
 9 by statute or regulation; and

10 (3) publish notice and allow at least 30 days for public comment on any proposed settlement
 11 of an enforcement action.

12 **C. DEFENSES.**

13 (1) Except for the toxic effluent standards and prohibitions of Section 307 and 405(d) of the
 14 Clean Water Act, compliance with a permit during its term constitutes compliance, for purposes of enforcement,
 15 with Sections 301, 302, 306, 307, 318, ~~403,~~ and 405(a)-(b) of the Clean Water Act, ~~as incorporated by reference~~
 16 ~~herein.~~

17 (2) Compliance with a permit condition which implements a standard for sewage sludge use
 18 or disposal shall be an affirmative defense in an enforcement action brought for a violation of that standard, ~~as~~
 19 ~~incorporated by reference herein pursuant to Sections 405(e) and 309 of the Clean Water Act.~~

20 **D. CREDIBLE INFORMATION.**

21 (1) If credible information obtained by the department or provided to the department by a
 22 third party indicates that a source is not in compliance with the provisions of this Part, that information may be used
 23 by the department for purposes of establishing whether a person has violated or is in violation of this Part.

24 (2) If credible information obtained by the department or provided to the department by a
 25 nation, tribe, or pueblo government or agency indicates that a facility is not in compliance with the provisions of
 26 tribal water quality standards, that information may be used by the department for purposes of establishing whether
 27 a person has violated or is in violation of this Part.
 28

29 **20.6.5.502-20.6.5.600: [RESERVED]**
 30

31 **20.6.5.601 FEES:**

32 **A.** Every person submitting a NMPDES discharge permit application for new permits or permit
 33 renewals, modifications, or transfers shall pay the application and annual fees specified in Table 1 of 20.6.5.605
 34 NMAC. Every person submitting a request for general permit coverage shall pay the application and annual fees
 35 specified in Table 2 of 20.6.5.605 NMAC.

36 **B.** If the secretary requires a discharge permit modification as a component of an enforcement action,
 37 the facility shall pay the applicable discharge permit modification fee. If the secretary requires a discharge permit
 38 modification outside the context of an enforcement action, the facility shall pay the application fee specified in
 39 Table 1 of this section.

40 **C.** On or before April 30 of each year, the Department shall calculate the required permit annual fee
 41 rate based on the legislative appropriation for the upcoming fiscal year. The annual fee rate shall be determined by
 42 dividing the total appropriated amount for the program by the projected total annual program cost for the upcoming
 43 fiscal year. The adjusted fee rate, expressed as the annual fee percent discount, shall be published on the
 44 Department's website.

45 **D.** The secretary may waive or reduce fees for discharge permit modifications, renewals, or transfers,
 46 as appropriate and justified.

47 **~~E.~~** The owner or operator shall pay the application fee at the time of discharge permit application.
 48 The owner or operator shall pay annual fees in equal installments over the term of the discharge permit. ~~The~~
 49 Department shall invoice annual fees in July. Annual fee payments shall be remitted yearly ~~with the first~~
 50 installment due on the date of discharge permit issuance. Subsequent installment payments shall be remitted yearly
 51 thereafter]. The discharge permit or discharge permit application review may be suspended or terminated if the
 52 owner or operator fails to submit the annual fee by the due date.

53 **~~F.~~** Every three years, beginning in 2028, the fees specified in Table 1 and 2 of this section shall be
 54 adjusted on January 1 to reflect changes in the consumer-price index for all urban consumers ("CPI-U"), which is
 55 published monthly by the United States Department of Labor. The change will be calculated by averaging the CPI-U
 56 for the 12-month period ending on August 31 of the previous year, then multiplying the fees by the percentage of

1 increase (or decrease) between that figure and the figure from the prior adjustment. These revisions shall be in
 2 accordance with Section 74-6-5(L), NMSA 1978. If the United States Department of Labor fails to update the CPI-
 3 U, the secretary shall propose an alternative inflation adjustment for the commission's approval.

4 **FC.** The Permittee-Initiated Hearing fee is a retainer credited against the total cost of a hearing
 5 initiated by the applicant for an issuance, renewal or modification of a permit. Upon completion of the hearing, the
 6 department shall invoice the applicant and credit any remaining portion of the fee to future actions.

7 **20.6.5.602 FEE CALCULATIONS:**

8 **A. Application Fee Calculations.**

9 **(1)** For domestic wastewater treatment discharge permits, the department shall calculate
 10 application fees based on design flow, using a progressive bracket system, similar to federal tax brackets. Major
 11 facilities (>1 million gallons per day) have higher base fees for applications because they are often more complex
 12 permits and, because of their size and discharge volume, they have greater potential to harm the environment and
 13 thus demand greater consideration and oversight by the department. The application fee shall be calculated as
 14 follows:

15 **(a)** base fee plus design flow multiplied by a size factor [base fee + (design flow x
 16 size factor)], where;

17 **(i)** the base fee for a minor facility (<1 million gallons per day) is \$2,000
 18 and the base fee for a major facility (>1 million gallons per day) is \$5,000.

19 **(ii)** design flow is the permitted design flow of the facility.

20 **(iii)** size factors are:

Discharge (in Gallons)	Size Factor	Category Cap (\$)
10,000	0.0125	125
10,001-25,000	0.0115	297.5
25,001-50,000	0.0105	560
50,001-100,000	0.01	1,060
100,001-250,000	0.009	2,410
250,001-500,000	0.008	4,410
500,001-1,000,000	0.0065	7,660
1,000,001-2,500,000	0.004	13,660
2,500,001-5,000,000	0.003	21,160
5,000,001-7,500,000	0.0025	27,410
7,500,001-10,000,000	0.001	29,910
10,000,001-15,000,000	0.0005	32,410
15,000,001-20,000,000	0.00025	33,660
20,000,001-30,000,000	0.0002	35,660
30,000,001-40,000,000	0.00015	37,160
40,000,001-50,000,000	0.000125	38,410
>50,000,000	0.0001	N/A

21 **(2)** For industrial wastewater treatment discharge permits, the department shall calculate
 22 application fees based on the complexity of the facility and discharge, the number of outfalls to be permitted, and
 23 whether the facility is considered a major or minor facility. The application fee shall be calculated as follows:

24 **(a)** complexity factor multiplied by base fee, plus the number of outfalls multiplied
 25 by the base fee, complexity factor, and a constant [(complexity factor x base fee) + (number of outfalls x base fee x
 26 complexity factor x 1.3)], where;

27 **(i)** the base fee for a minor facility is \$3,500 and the base fee for a major
 28 facility is \$6,500.

29 **(ii)** the number of outfalls is the total number of outfalls minus one, with a
 30 maximum number of 24.

1 (iii) complexity factor is a value between one and five with one being the
2 least complex and five being the most complex facilities and permits.

3 (3) Application fees for general permit coverage are set as flat fees (Table 2).

4 **B. Annual Fee Calculations.**

5 (1) For domestic wastewater treatment discharge permits, the department shall calculate
6 annual fees based on design flow, using a progressive bracket system. The annual fee shall be calculated as follows:

7 (a) base fee plus design flow multiplied by a size factor, multiplied by a constant
8 [base fee + (design flow x size factor) x 4.2], where;

9 (i) the base fee for a minor facility (<1 million gallons per day) is \$2,000
10 and the base fee for a major facility (>1 million gallons per day) is \$5,000.

11 (ii) design flow is the permitted design flow of the facility.

12 (iii) size factors - see table in Paragraph (1) of Subsection A of this section.

13 (2) For industrial wastewater treatment discharge permits, the department shall calculate
14 annual fees based on the number of outfalls to be permitted. The annual fee shall be calculated as follows:

15 (a) the number of outfalls plus one multiplied by the base fee, [(number of outfalls
16 + 1) x base fee], where the base fee for a minor facility is \$3,500 and the base fee for a major facility is \$7,000.

17 (3) Annual fees for general permit coverage are set as flat fees (Table 2).

18
19 **20.6.5.603 PAYMENTS AND DUE DATES:**

20 **A. Application Fees.**

21 (1) For individual permits, the department shall invoice the owner or operator for the
22 application fee when the application is deemed administratively complete.

23 (2) For general permit coverage, the owner or operator shall pay the application fee when
24 they submit a notice of intent or preconstruction notification for general permit coverage.

25 (3) The owner or operator may submit a written request to the secretary seeking a payment
26 extension, fee reduction, or fee waiver. The secretary must approve the request to extend the time for payment, or to
27 reduce or waive the fee. Failure to submit payment with the application, notice of intent, or preconstruction
28 notification may result in the application being denied, general permit coverage being denied, or late charges being
29 assessed.

30 **B. Annual Fees.**

31 (1) For individual permits, the department shall invoice the owner or operator for the annual
32 fee on date of permit issuance and every year thereafter of the permit term.

33 (2) For general permit coverage, the department shall invoice the owner or operator for the
34 annual fee one year after the date of general permit coverage authorization and every year thereafter of general
35 permit coverage, as applicable.

36 (3) Payment of an annual fee shall be due within 60 days of receipt of the invoice. The owner
37 or operator may submit a written request to the secretary at least fourteen days prior to the end of the 60-day period
38 seeking a payment extension or fee reduction. The secretary must approve the request to extend the time for
39 payment or reduce the fee before the payment is due. Failure to submit payment within 60 days, or approved
40 extension or fee reduction, may result in the permit being revoked, assessment of late fees, or further enforcement
41 action.

42 **C. Late Charges and Failure to Pay.**

43 (1) If any fee required by this Part is not paid in full on the date due, the person owing the fee
44 shall pay a billing charge of \$100, plus late charges in the amount of an additional one percent of all fees owed for
45 every month or part of a month in which the fees remain unpaid beyond the due date. Billing and late charges shall
46 be credited to the water quality management fund and are independent of any penalties assessed under the act.

47 (2) Failure to pay any fee required by this Part may result in enforcement proceedings under
48 the act including the revocation or suspension of any surface water discharge permit or general permit authorization.

49 **D.** Fees are not refundable and do not guarantee that a permit will be issued or a submittal or action
50 will be approved by the department. In addition, payments will not be refunded because of a transfer of ownership or
51 operations to a new owner or operator.

52 **E.** All fees shall be paid to the department by certified check or money order payable to the New
53 Mexico environment department or the surface water quality bureau, by electronic funds transfer (with prior notice
54 to department), or by other methods deemed acceptable by the department. Cash payments are not an acceptable
55 method of payment. All payments must include the invoice number and be addressed to the New Mexico
56 environment department – surface water quality bureau.

1
2 **20.6.5.604 DEPOSIT IN THE WATER QUALITY MANAGEMENT FUND:** All fees collected pursuant
3 to this Part shall be transmitted to the state treasurer for credit to the water quality management fund and used for
4 meeting necessary expenses in the administration and operation of the surface water permitting program.
5

20.6.5.605 TABLE 1 – INDIVIDUAL PERMITS	Application Fee	Annual Fee
Domestic Wastewater Permit* – 10 th Percentile	\$2,371	\$3,558
Domestic Wastewater Permit* – 25 th Percentile	\$3,060	\$6,542
Domestic Wastewater Permit* – 50 th Percentile	\$7,060	\$23,252
Domestic Wastewater Permit* – 75 th Percentile	\$16,660	\$53,972
Domestic Wastewater Permit* – 90 th Percentile	\$29,500	\$107,900
Domestic Wastewater Permit* – 100 th Percentile	\$46,010	\$117,242
Industrial Wastewater Permit* – 10 th Percentile	\$3,500	\$7,000
Industrial Wastewater Permit* – 25 th Percentile	\$3,500	\$7,000
Industrial Wastewater Permit* – 50 th Percentile	\$6,500	\$7,000
Industrial Wastewater Permit* – 75 th Percentile	\$50,750	\$38,500
Industrial Wastewater Permit* – 90 th Percentile	\$146,562	\$91,000
Industrial Wastewater Permit* – 100 th Percentile	\$293,125	\$91,000
Pretreatment Program	\$10,000	\$15,000
Surface Water Discharge Permit Modification ¹	\$25,000	NA
Antidegradation Review – Service Fee	\$6,000	NA
Mitigation Plan Review & Coordination – Service Fee	\$6,000	NA
Aquatic Resource Delineation – Service Fee	\$800	NA
Agency Consultation – Service Fee	\$300	NA
Permittee-Initiated Hearing Fee	\$10,000	NA

NOTES:

6
7 An asterisk (*) means the fee is calculated according to procedures in 20.6.5.602 NMAC. Fees shown are
8 selected values of calculated application and annual fees.

9 1 - See Paragraph B of 20.6.5.601 NMAC.
10
11

TABLE 2 – GENERAL PERMITS	Application Fee	Annual Fee
Construction General Permit – Stormwater	\$550	\$800
Multi-Sector General Permit – Stormwater	\$550	\$800
Oil & Gas General Permit – Stormwater	\$550	\$800
Municipal Separate Storm Sewer System (MS4)	\$2,500	\$3,000
Concentrated Animal Feeding Operation (CAFO)	\$1,500	\$1,500
Hydrostatic Test General Permit	\$550	\$800
Pesticide General Permit	\$550	\$800
Wildfire General Permit	\$550	\$800
Fish Hatchery General Permit – NMDGF	\$550	\$800
Other General Permits	\$550	\$800

12
13 **20.6.5.606- 20.6.5.699: [RESERVED]**
14