



the state's surface waters. This bill does not change who would be regulated for discharges into WOTUS, but instead would change who the administrative and enforcement agency would be.

- **Scope:** Delegation of the NPDES program from the U.S. Environmental Protection Agency (EPA) covering point source discharges to surface waters: municipal and industrial wastewater, general permits, federal facilities, pretreatment, and biosolids. Tribal waters and Clean Water Act Section 404 discharges (regulated by the U.S. Army Corps of Engineers) are excluded.
- **Framework:** A standalone act to simplify EPA review and avoid conflicts within existing WQA provisions. The bill establishes processes for permit issuance, renewal, compliance monitoring, enforcement, and appeals, and leaves details to the Water Quality Control Commission (WQCC) rulemaking.
- **Enforcement:** Civil penalties start at \$5,000/day for noncompliance, while criminal penalties range from \$10,000/day for felonies. The act includes mechanisms for hearings, appeals, and civil or criminal enforcement actions.
- **Transparency:** Public access to permit records and compliance data, with provisions to protect trade secrets.
- **Exceptions:** Permits may not be required for certain activities, including return flows from agriculture, stormwater runoff that does not come into contact with water contaminants, and certain forestry activities.

## **FISCAL IMPLICATIONS**

At full program implementation of a comprehensive surface water permitting program for waters of the U.S. (this bill) and other waters of the state addressed in Senate Bill 22 (SB22), the Department estimates annual program costs to be approximately \$8 million with 60 full time employees (FTE). The Department currently has 10 FTE to perform this and other clean water work, which equates to approximately \$900 thousand per year to assist the EPA and U.S. Army Corps of Engineers with regulating discharges to surface waters pursuant to the federal Clean Water Act and related administrative expenses. Therefore, the Department would need an additional \$7.1 million per year and an additional 50 FTE to implement the permitting, compliance, enforcement, data management and stewardship, outreach and training, and administrative responsibilities of a comprehensive, state-administered program. This cost estimate includes the federal NPDES program and the complimentary state program authorized by the Water Quality Act amendments proposed in SB22 (*see* Conflict, Duplication, Companionship, Relationship section below).

Funding can be achieved through a 100% fee-based program, a 100% legislative appropriation (General Fund), or a combination of fees and appropriations sufficient to implement the program.

## **SIGNIFICANT ISSUES**

The EPA requires and must accept the legislation for New Mexico to assume authority over the federal permitting program. This legislation complies with Clean Water Act requirements for the assumption of the National Pollutant Discharge Elimination System (NPDES) program and, coupled with subsequent regulations, is crucial for EPA authorization of New Mexico to assume authority over the federal NPDES program. After legislation is enacted and regulations adopted, the Environment Department will prepare and submit a program application to EPA to request

authorization of the NPDES program and prove the state has the capacity, funding, and framework necessary to implement the NPDES program successfully. To date, 47 states have completed this process and received U.S EPA approval to implement the NPDES program within their jurisdictions.

#### **PERFORMANCE IMPLICATIONS**

None.

#### **ADMINISTRATIVE IMPLICATIONS**

Creating, hiring, and training 50 full time employees (FTE) will be a significant undertaking for the Department and will be slow and inefficient if human resources are at current staffing levels. Creating a regulatory program will increase the number of support staff needed to help implement the program, including administrative, IT, human resources, financial, and legal staff. Funding from program fees would be able to support these related expenses.

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Proposed amendments to the Water Quality Act in SB22 are related to this Act and support needed authorities for the Environment Department to administer and enforce a comprehensive water quality permitting program for all types of surface waters within the State, including waters of the U.S., surface waters of the State, and wetlands, but excluding tribal waters.

#### **TECHNICAL ISSUES**

None.

#### **OTHER SUBSTANTIVE ISSUES**

None.

#### **ALTERNATIVES**

None.

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo. The EPA, not New Mexico, will administer, and enforce the NPDES program to protect surface water quality in the State. New Mexico will have to continue to rely on the EPA to continue to be the permitting authority for discharges of contaminants into federal jurisdictional waters within New Mexico as they see fit. Permit application and annual fees will not be collected by the State. Penalties and fines related to dischargers who violate surface water quality protections in New Mexico will go to the federal government. Permitting jurisdiction will be complicated with two permitting authorities in the State – one for waters of the U.S. and one for state waters.

#### **AMENDMENTS**

None.