



# New Mexico Environment Department



## Surface Water Discharge Permitting Program

Shelly Lemon – Surface Water Quality Bureau Chief  
Water and Natural Resources Committee Meeting



# Scope of Proposed Program

"The commission ... may adopt regulations to be administered by the department of environment for surface water discharges."

NM Water Quality Act, Section 74-6-4(Q)

*"Commission" refers to the Water Quality Control Commission (WQCC)*

- Waters of the U.S. (Clean Water Act)
  - Seek delegation from EPA for the NPDES program for point source discharges
  - Will not seek delegation for the Section 404 discharge program: U.S. Army Corps of Engineers will continue to regulate discharges of dredged and fill materials to waters of the U.S.
  
- Surface waters of the state (Water Quality Act)
  - Create a State program to fill the gaps left by *Sackett* that covers both point source discharges and discharges of dredged and fill materials in surface waters of the state
  - The program will not apply to tribal waters, but NMED will be responsive to tribal concerns



# Surface Water Advisory Panel



**The discharge of pollutants into a surface water is not a right.**

- Provided technical information, practical considerations, and policy perspectives from a wide range of stakeholders
- Informed NMED's development of legislation and rules for consideration by the Water Quality Control Commission
- NMED posted updates on its [website](#)





# Legislation Needed: NMPDES Act

- **New Mexico Pollutant Discharge Elimination System (NMPDES) Act**
- **Guiding principles**
  - ▣ Stand alone instead of interpolated into the WQA
    - Easier for EPA to review
    - Avoids creating conflicts within the WQA
  - ▣ Assumes the state will request delegation for all 5 components: municipal and industrial, general permits, federal facilities, pretreatment, and biosolids
  - ▣ General - concise – familiar structure
    - Establishes purpose, delegates and limits authorities, addresses other matters that need to be in statute instead of rule, e.g., appellate procedures.
    - Leaves details to the rule
    - Follows familiar outline



# NMPDES Act

What is included  
in the draft  
statute?

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Title

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Purpose

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Definitions

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Permit required

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Duties and powers of commission

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Duties and powers of department

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Civil enforcement

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Criminal enforcement

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Appeals to commission

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Petitions for review by court of appeals

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Limitations

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Availability of records

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# NMPDES Draft Statute

## Section 3. Definitions

G. "New Mexico Pollutant Discharge Elimination System" means that program authorized by the Act;

H. "National Pollutant Discharge Elimination System" means that program authorized by sections 318, 402, and 405 of the federal act for the discharge of a pollutant to a water of the United States;

- |  |  |
|--|--|
| A. Act   | H. New Mexico Pollutant Discharge Elimination System |
| B. commission                                      | I. permit  |
| C. department                                      | J. person  |
| D. discharge                                       | K. point source                                      |
| E. federal act                                     | L. pollutant   |
| F. federal regulations                             | M. Regional Administrator                            |
| G. National Pollutant Discharge Elimination System | N. Waters of the United States                       |

## Section 4. Permit Required

### 4. Permit Required.

A. No person shall discharge a pollutant from a point source to a water of the United States from a point source without a permit approved the department under the New Mexico Pollutant Discharge Elimination System.

B. The issuance of a permit does not convey any property rights or exclusive privileges, or authorize any injury to persons or property or invasion of other private rights, or any infringement of other laws, regulations, or ordinances.

*Language in this presentation is paraphrased from the draft statute.*



# NMPDES Draft Statute

## Section 5. Duties and powers of commission

- A. Adopt rules which are necessary to obtain authorization
- B. Provide by regulation a schedule of fees sufficient to pay the cost of implementation

## Section 6. Duties and powers of department

- A. For the discharge of a pollutant to waters of the United States, notwithstanding Subsection G of Section 74-6-12 NMSA 1978, the department shall be authorized to implement this Act, pursuant to rules adopted by the commission.
- B. All necessary and appropriate to implement NMPDES
  - 1) Propose rules
  - 2) Conduct investigations
  - 3) Require monitoring, sampling, reporting
  - 4) Require keeping and production of records and information
  - 5) Review applications
  - 6) Require, issue, renew, modify, deny, terminate permits
  - 7) Conduct inspections
  - 8) Issue compliance orders and file actions for enforcement

*Language in this presentation is paraphrased from the draft statute.*



# NMPDES Draft Statute

- **Section 7. Civil enforcement**
  - A. Issue a compliance order or commence a civil action
  - B. Minimum civil penalty \$5,000 per day on noncompliance
  - C. Considerations in setting penalty amount
  - D. Final unless person requests hearing
  - E. Conduct hearing within 90 days of request
  - F. Issue written decision constituting final action
  - G. Next steps if the person fails to comply
  - H. Civil penalties into general fund
  
- **Section 8. Criminal enforcement**
  - List of violations
  - Description of felony types – 4<sup>th</sup>, 3<sup>rd</sup>, 2<sup>nd</sup> degree
  - Minimum penalty \$10,000 per day on noncompliance
  - Considerations in setting penalty amount





# NMPDES Draft Statute

- **Section 9. Appeals to commission**
  - A. Who may file and when (permitting actions, compliance orders); contents of petition
  - B. Petitioner may request a stay – commission may grant
  - C. Petition must be timely filed or final action is not subject to review
  
- **Section 10. Petitions for review by court of appeals**
  - A. Who may file and when (department final actions, commission regulations)
  - B. Decided solely on basis of record before the commission
  - C. Injunctions per NM Rules of Civil Procedure
  - D. Reasons for setting aside commission's decision



# NMPDES Draft Statute

## □ **Section 11. Limitations.**

Permits may not be required if they would:

- A. Take/modify property right in water
- B. Affect labor relations
- C. Supersede or limit applicability of industrial health, sanitation or safety law
- D. Apply to a discharge of return flows from irrigated agriculture
- E. Apply to a discharge of stormwater runoff from mining or oil and gas facility if not in contact with contaminants
- F. Apply to a discharge of runoff from certain silviculture activities

## □ **Section 12. Availability of records.**

- A. All information obtained by commission or department available to the public except information entitled to protections as trade secrets
- B. Information maybe disclosed to officers, employees, and authorized representatives of the WQCC, NMED, or U.S. or in a proceeding under the NMPDES statute or federal Clean Water Act
- C. Requires persons submitting information to designate records as "trade secrets" and "confidential"

*Language in this presentation is paraphrased from the draft statute.*



# Legislation Needed: Water Quality Act Amendments

## **NM Water Quality Act amendments:**

- Authorize the use of general permits
  - stormwater, dredge and fill, pesticide, wildfire, etc.
- Update/modernize public notification requirements
- Allow the requirement to mitigate for unavoidable adverse impacts to water quality/water resources
- Incorporate antidegradation provision to protect high-quality waters
- Amend oversight responsibility for discharges to surface water currently under Oil Conservation Commission jurisdiction



# NM Water Quality Act Amendments

## **Authorize the Use of General Permits**

- 74-6-2. Definitions : "General permit" and "General permit coverage"
- 74-6-5. Permits; certification; appeals to commission.
  - Adds language to include general permits
  - Clarifies public notice requirements for general permits
  - Authorizes fee collection for approvals of general permits
  - Outlines causes for termination or modification of general permit coverage



# NM Water Quality Act Amendments

## **Update Public Notification Requirements:**

- Section 74-6-5(F):
  - Updates notification requirements for draft permits to include postal mail, electronic mail, text messages, social media posts, radio announcements, and advertisements
  - Clarifies public notice requirements and provides exclusions for general permits:
    - Notice to adjacent and nearby landowners,
    - Posting at a place conspicuous to the public and near the discharge or proposed discharge site



# NM Water Quality Act Amendments

## **Mitigation for Dredged or Fill Materials**

- 74-6-4. Duties and Powers of Commission
  - Requires Commission to adopt, promulgate, and publish regulations to mitigate water pollution.
  - Authorizes the Commission to impose reasonable permit conditions that require mitigation to compensate for unavoidable adverse effects to a surface water.

## **Antidegradation**

- 74-6-12. Limitations
  - Excludes allowance of antidegradation of water quality resulting from beneficial use for a surface water discharge permit issued pursuant to the Water Quality Act.



# NM Water Quality Act Amendments

## **Oil and Gas Activity**

- 74-6-12. Limitations
  - Excludes the discharge of a water contaminant to a surface water from the oversight responsibility of the Oil Conservation Commission and places it under the Water Quality Act.



# Feedback Requested

We have requested and received legislative feedback from EPA

We have requested and received legislative feedback and redline edits from SWAP Members

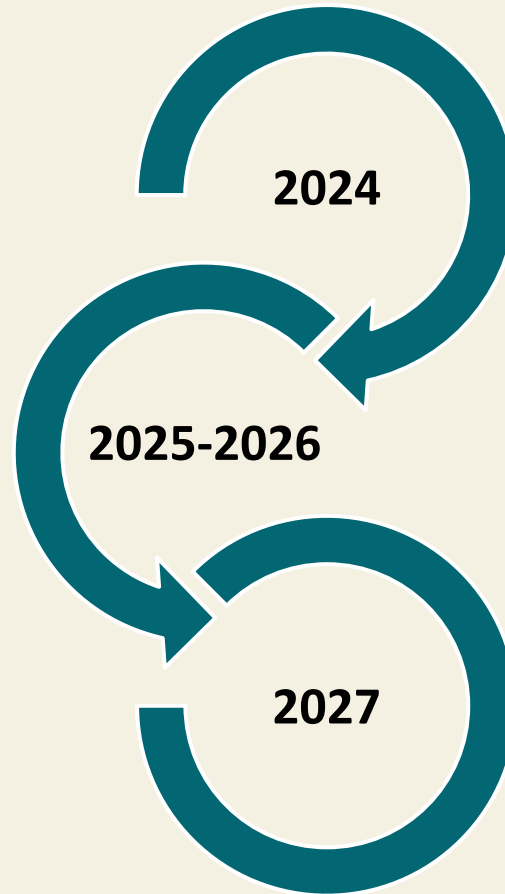
*NMED is evaluating feedback received from EPA and SWAP Members. We will be revising the NMPDES Statute and WQA Amendments based on feedback.*





# Permitting Database - Timeline

- Add features and refine, including mapping and external database links
- Test, populate
- Finalize internal/external user guidance



- Demonstrate future surface water database functionality
- Roll out ground water database for domestic waste facilities
- Plan next phases

- Training
- Ready for roll out of surface water quality state permitting program



# The Water Data Benefit



Data will be uploaded to and available on EPA's Integrated Compliance Information System (ICIS) for public access

- Information on regulated facilities
- Discharge quality data
- Groundwater monitoring data



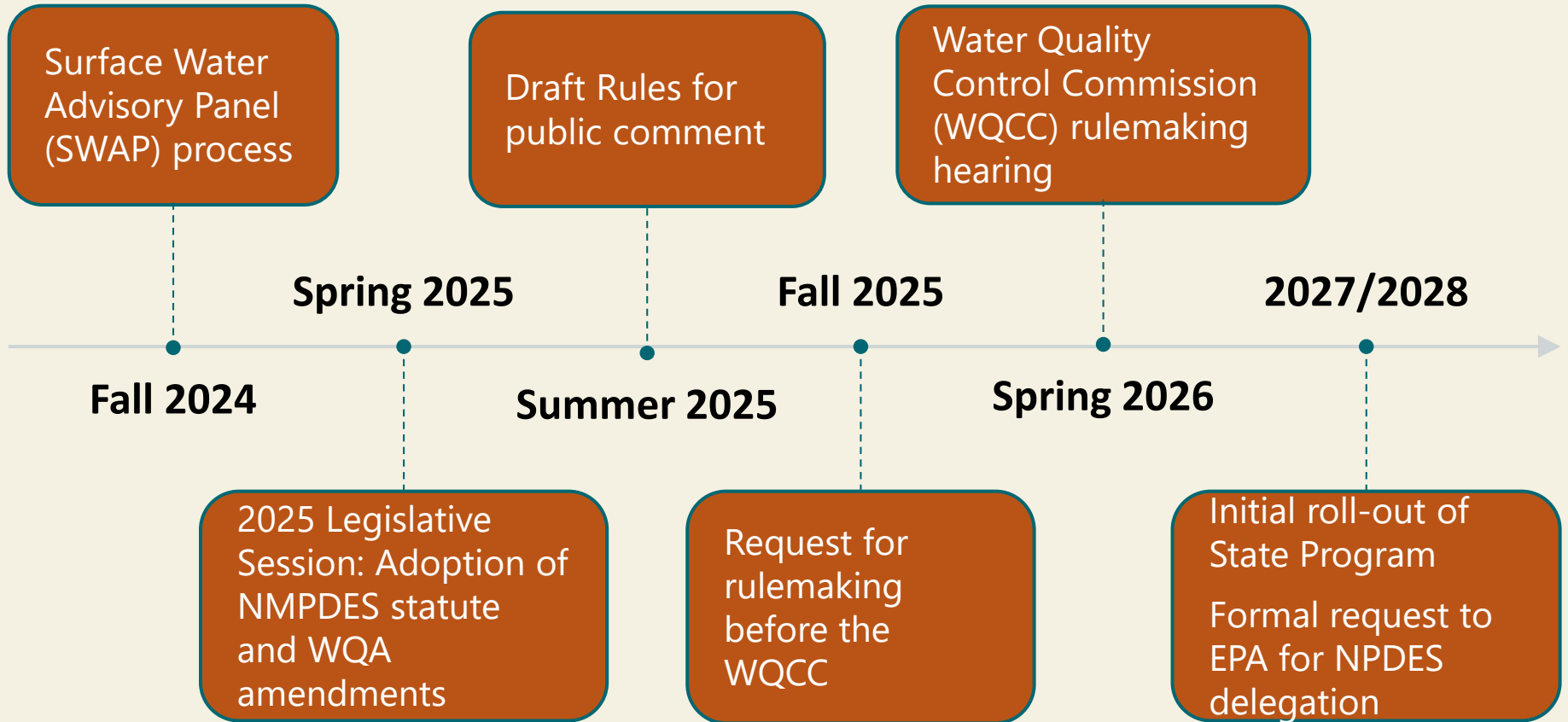
# Estimated Program Costs (NPDES + State)

Program	Estimated FTE	Estimated Cost (\$ Million)	Existing FTE & Cost
Permitting	16.7	2.2	3.5 FTE
Compliance	14.1	1.7	2.5 FTE
Enforcement	17.1	2.0	2.5 FTE
Dredge/Fill	9.1	1.0	1.5 FTE
Other Related Costs	NA	~0.9	NA
<b>Total:</b>	<b>57 FTE</b>	<b>\$7.8</b>	<b>10 FTE/\$900K</b>

Approximate Values



# Revised Timeline





# Here's to the next 50 years!

“The future depends on what we do in the present.” - Mahatma Ghandi





# Contact Us / Learn More

Email: [swq.pp@env.nm.gov](mailto:swq.pp@env.nm.gov)

SWQB website: [www.env.nm.gov/surface-water-quality/spp](http://www.env.nm.gov/surface-water-quality/spp)

SWAP website: <https://www.env.nm.gov/surface-water-quality/swap/>

Phone: 505-827-2855 | 1-800-219-6157 | Environmental Emergencies: 505-827-9329 (24 hours)

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## Surface Water Quality State Permitting Program



### Contact us

Ph: 505-827-0187 Find a list of Surface Water Quality staff contacts [here](#).