



New Mexico Environment Department

Surface Water Quality State Permitting Program

Water and Natural Resources Committee Presentation
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July 14, 2026



Senate Bill 21



- Senate Bill 21 was passed during the 2025 Legislative Session.
- Signed into law by Governor Lujan Grisham on April 8, 2025.
- Protects the state's surface and ground water resources.
- Gives New Mexico control over its surface water resources in two ways:
 1. Amended the Water Quality Act (WQA).
 2. Created the New Mexico Pollutant Discharge Elimination System (NMPDES) Act to allow the Environment Department to implement the federal NPDES permitting program in New Mexico.



Senate Bill 21 – NMPDES Act

Senate Bill 21:

Passed in the 2025 session

Signed by Governor Lujan-Grisham on April 8

Amends the New Mexico Water Quality Act

Creates the New Mexico Pollutant Discharge Elimination System Act (NMPDES Act)

- 1) Requires a permit system for point source discharges of pollutants, including opportunities for public comment and protections for downstream waters.
- 2) Identifies exemptions and limitations related to permitting.
- 3) Specifies duties and powers of the Water Quality Control Commission and the Department of Environment.
- 4) Provides for administrative, civil and criminal enforcement and penalties and for administrative appeals of department actions and judicial appeals of commission actions.
- 5) Makes most records generated or obtained by the department and the commission available to the public.



Senate Bill 21 – WQA Amendments

Senate Bill 21:

Passed in the 2025
session

Signed by Governor
Lujan-Grisham on
April 8

Amends the New
Mexico Water
Quality Act

Creates the New
Mexico Pollutant
Discharge
Elimination System
Act (NMPDES Act)

Amendments fill gaps where the federal Clean Water Act no longer protects New Mexico's surface waters.

Aligns with half a century of practice under the Clean Water Act.

1. Surface water discharges: point source and dredge & fill
2. Downstream water quality protections
3. Compensatory mitigation: dredge or fill discharges
4. Antidegradation provisions to protect high quality waters
5. Public noticing
6. General permits
7. Exemptions
8. Penalties to General Fund
9. Fees to Water Quality Management Fund



Scope of Permitting Program



- Waters of the U.S. (Clean Water Act)
 - ▣ **Seek delegation from EPA for the NPDES program for point source discharges**
 - ▣ Will not seek authorization for the Section 404 discharge program: U.S. Army Corps of Engineers will continue to regulate discharges of dredge and fill materials to waters of the U.S.

- Surface Waters of the State (Water Quality Act)
 - ▣ **Create a State program that covers both point source discharges and discharges of dredged and fill materials to surface waters of the state**
 - ▣ The program will not apply to tribal waters, but NMED will be responsive to tribal concerns.



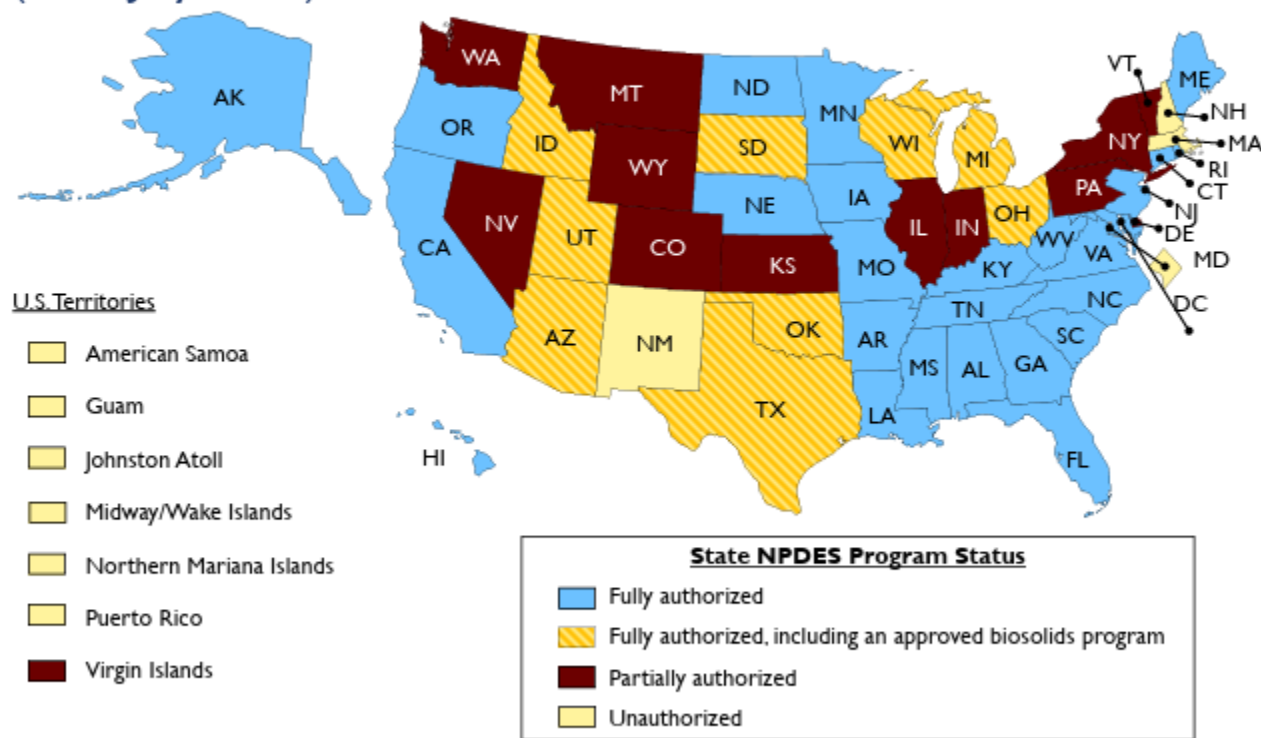
New Mexico Pollutant Discharge Elimination System (NMPDES) Act

- Stand alone instead of added into the WQA.
 - Easier for EPA to review.
 - Avoids creating conflicts within the WQA.
- Assumes the state will request delegation for all five NPDES program components: municipal and industrial, general permits, federal facilities, pretreatment, and biosolids.
- Opportunity for public hearing on draft permits.
- Notification to New Mexico's Nations, Pueblos, and Tribes that are downstream.
- Downstream water quality protections.
- Requires NMED to investigate complaints, report on findings and settlement, and not oppose intervention.



EPA State Program Authorizations

NPDES Program Authorizations (as of July 2019)



NPDES Permit Writers' Course



□ Source: <https://www.epa.gov/npdes/npdes-state-program-authority>



EPA State Program Requirements

- **40 C.F.R. § 123.61 Approval Process**
 - EPA publishes notice of the state's application in the Federal Register and newspapers in the state.
 - EPA mails notice of the application to all persons on the state and EPA interested parties lists and all permit holders within the state.
 - 45-day public comment period.
 - Public hearing within 30 days after notice is published in the Federal Register.
 - EPA takes public comment into consideration and approves/disapproves within 90 days of receipt of a complete program submission.
 - Notice of an approved state program is published in the Federal Register.
 - EPA suspends the issuance of permits by EPA as of the date of program approval.

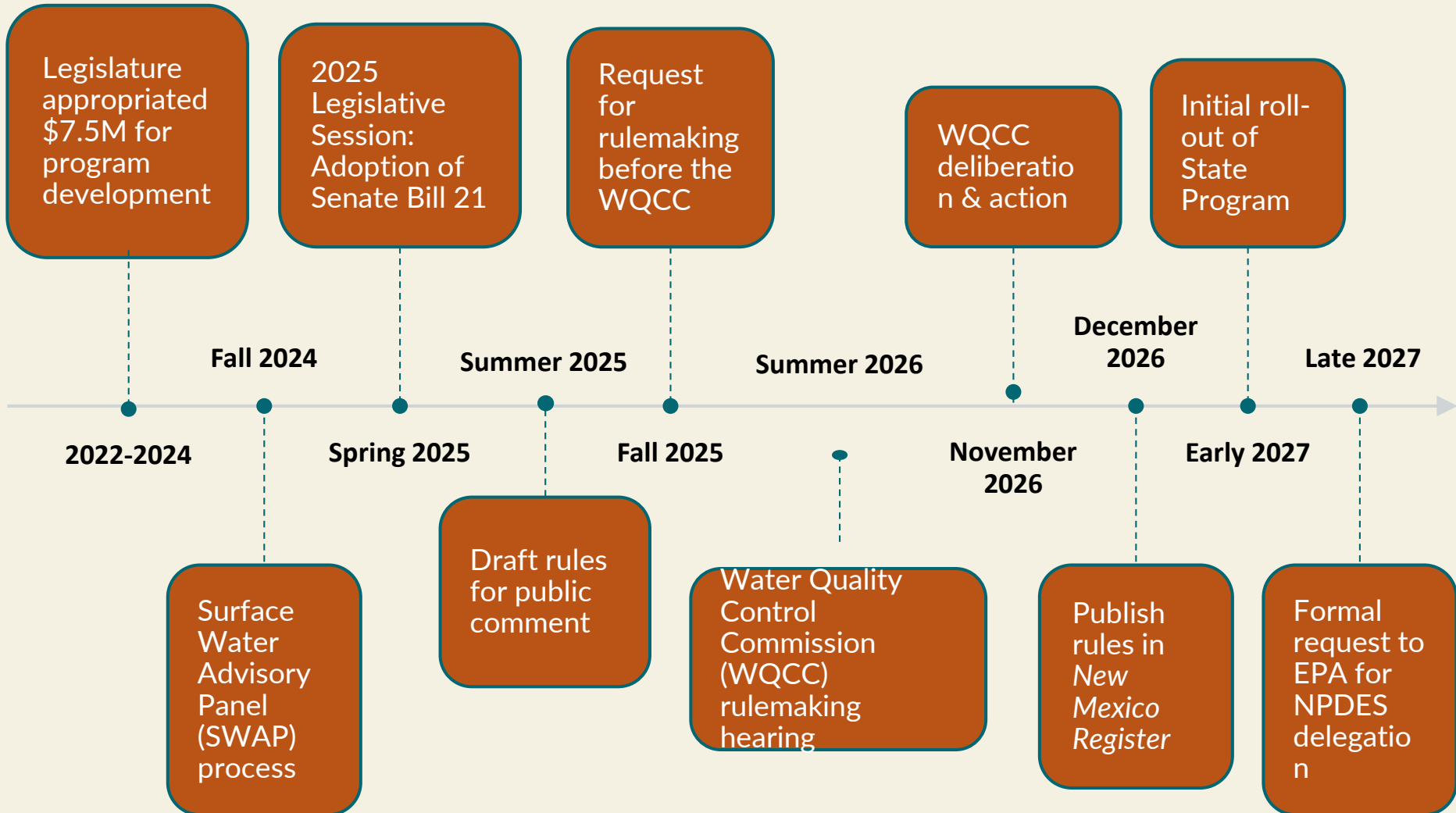


Clean Water Act 33 U.S.C. § 1342(b)

- (b) “State permit programs....the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program...”



Program Timeline





Rulemaking

- Protect surface waters of the State (SWOTS) using practical and common-sense approach to ensure clean water for all uses.
- Allow New Mexico to protect water quality regardless of what is happening at the federal level.
- ***New* -- 20.6.5 NMAC New Mexico Pollutant Discharge Elimination System**
 - Implements the New Mexico Pollutant Discharge Elimination System Act.
 - Applies to all persons who discharge a pollutant from a point source to a water of the United States.
- ***Amended* -- 20.6.2 NMAC Ground and Surface Water Protection**
 - Implements the Water Quality Act amendments in Senate Bill 21 related to a state-led surface water permitting program.
 - Applies to persons who discharge from a point source or who discharge dredged or fill material to a surface water of the State.



20.6.5 NMAC - NMPDES Rule

- Permit requirements and prohibitions consistent with the Clean Water Act

20.6.5.101 NMAC – Permitting Prohibitions and Requirements

A. No person shall discharge a pollutant to a water of the United States from a point source without a permit ...

- Permit exemptions consistent with the Clean Water Act

20.6.5.102 Permit Not Required

- A. Return flows from irrigated agriculture;
- B. Certain stormwater discharges from mining operations and oil and gas; or
- C. Certain forestry activities conducted in accordance with standard industry practice.



20.6.2 NMAC - Proposed Amendments

20.6.2.2303 NMAC – Exemptions

- A. Point source discharge exemptions – same as 20.6.5 NMAC (which are consistent with the Clean Water Act exemptions for both point source discharges), with the addition of:
 - 4) Discharges and water contaminants that are subject to effective and enforceable surface water quality requirements in a state or federally issued permit...
- B. Dredge or fill discharge exemptions – identical to the Clean Water Act exemptions, with the addition of:
 - 6) Discharges and water contaminants that are subject to effective and enforceable surface water quality requirements in a state or federally issued permit...



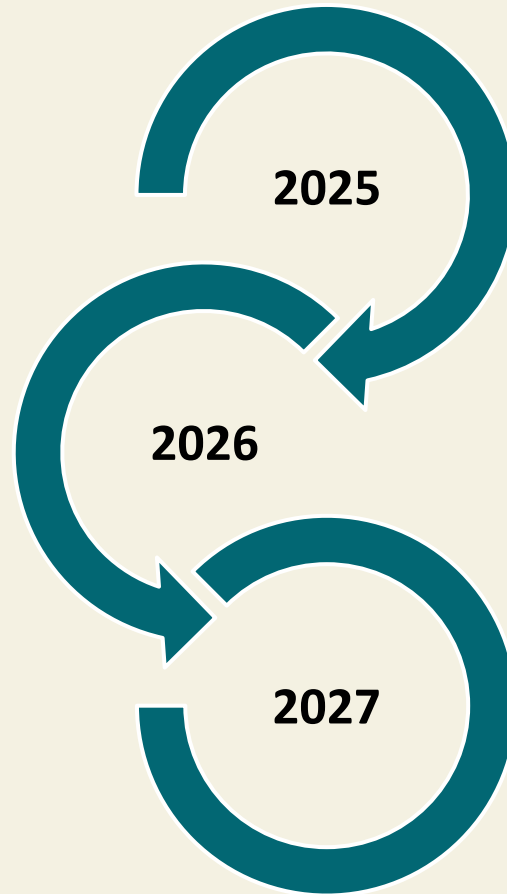
Rulemaking

- May 2025: Provided draft permitting rules to the Surface Water Advisory Panel and Tribal Environmental Directors.
- August 2025: Public review draft rules announced.
- August – October 2025: Outreach and engagement with the public and tribal consultation and coordination with New Mexico's Nations, Pueblos, & Tribes.
- October 2025: Public review draft rules and comment period closes.
- December 2025: Petition Water Quality Control Commission to request rulemaking hearing in spring 2026.
- June 2026: 9-day WQCC rulemaking hearing, including public comment.
- Early Fall 2026: NMED files final proposed rules; Other parties file final proposed rules; All parties file closing arguments and proposed statements of reasons.
- November 2026: WQCC Deliberations.



e-Permitting Database: On-going

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



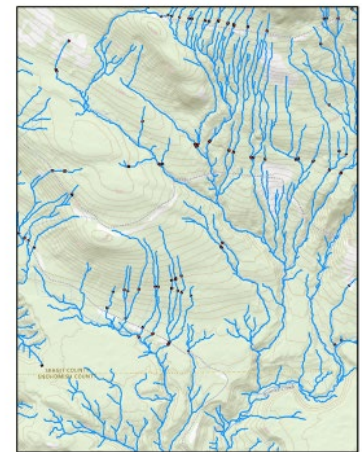
- Demonstrate surface water database functionality
- Roll out ground water database for domestic waste facilities
- Plan next phases

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



Surface Water Mapping

- Assist with jurisdiction questions.
- Help determine a discharge's impact on a surface water.
- Assist the regulated community in determining if they need a permit or not.
- Improved hydrography data will benefit management and protection of flows, water quality, water resource planning, flood risk, restoration, conservation, wildlife and habitat, infrastructure, etc.
- Better surface water mapping will improve the ability to track information related to water (like streamflow permanence).
- October 2025 – draft Mapper for internal validation and testing.
- October 2026 – Mapper expected to go live.





Estimated Program Costs

Program	Estimated FTE	Estimated Cost (\$ Million)
Permitting	16.7	2.2
Compliance	14.1	1.7
Enforcement	17.1	2.1
Dredge/Fill	9.1	1.1
Other Related Costs	NA	~0.9
Total:	57 FTE	\$8.0

Approximate Values



Permitting Fees

Considerations:

- ❑ 100% fee-based? 100% legislative appropriations? Mix?
- ❑ Application fees and Annual fees
- ❑ Type of Facility (Industrial, Municipal, Mine, etc.)
- ❑ Flow Volume/Design Flow
- ❑ Number of Outfalls
- ❑ Permit Type
 - Individual vs. General
 - Major (>1 MGD) vs. Minor (<1 MGD)
 - Complexity, toxic potential, pollutant loadings, population, etc.
- ❑ Compliance history; previous violations
- ❑ Service-Related Fees (e.g., Special Study Reviews, Antidegradation)
- ❑ Fee exemptions (state or federal agencies, public schools, minimal impact discharges, hardship waivers, etc.)

Fees roughly evenly split between general permits and individual permits.



Permitting Fees

- ❑ **Regionally, 60% of program costs are covered by fees (AZ, CO, KS, OK, UT, NV).**
- ❑ **Nationally, 45% of program costs are covered by fees.**
- ❑ **Arizona, Colorado, and Utah**, among others, charge the highest permit fees to municipal wastewater treatment plants (“POTWs”).
- ❑ All states with NPDES primacy have permit fees *except* North Dakota and Mississippi.
- ❑ Costs not covered by fees are made up of General Funds and some Clean Water Act (CWA) Section 106 grant funds (est. ~10%).
- ❑ There is considerable diversity in fee schedule design across the states, ranging from flat fees to complex formulae. About 50% of states are required to pay permit fees annually.



Questions?

Thank you!