



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

Nutrient Management Plans Statutes & Regulations

New Mexico

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Nutrient Management Plans

STATE OF NEW MEXICO

1) N.M. Stat. Ann. § 74-6-5; NMAC § 20.6.6.21

The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the New Mexico Legislative Council Service.

1) N.M. Stat. Ann. § 74-6-5; § 20.6.6.21 NMAC

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

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

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

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

D. The commission shall by regulation set the dates upon which applications for permits shall be filed and designate the time periods within which the constituent agency shall, after the filing of an administratively complete application for a permit, either grant the permit, grant the permit subject to conditions or deny the permit. The constituent agency has the burden of showing that each condition is reasonable and necessary to ensure compliance with the Water Quality Act [74-6-1 NMSA 1978] and applicable regulations, considering site-specific conditions. After regulations have been adopted for a particular industry, permits for facilities in that industry shall be subject to conditions contained in the regulations. Additional conditions on a final permit may be imposed if the applicant is provided with an opportunity to review and provide comments in writing on the draft permit conditions and to receive a written explanation of the reasons for the conditions from the constituent agency.

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

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

(2) any provision of the Water Quality Act [74-6-1 NMSA 1978] would be violated;

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

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

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

(b) refused or failed to disclose any information required under the Water Quality Act [74-6-1 NMSA 1978];

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

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

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

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

F. The commission shall by regulation develop procedures that ensure that the public, affected governmental agencies and any other state whose water may be affected shall receive notice of each application for issuance, renewal or modification of a permit. Public notice shall include:

(1) for issuance or modification of a permit:

(a) notice by mail to adjacent and nearby landowners; local, state and federal governments; land grant organizations; ditch associations; and Indian nations, tribes or pueblos;

(b) posting at a place conspicuous to the public and near the discharge or proposed discharge site; and

(c) a display advertisement in English and Spanish in a newspaper of general circulation in the location of the discharge or proposed discharge; provided, however, that the advertisement shall not be displayed in the classified or legal advertisement sections; and

(2) for issuance of renewals of permits:

(a) notice by mail to the interested public, municipalities, counties, land grant organizations, ditch associations and Indian nations, tribes or pueblos; and

(b) a display advertisement in English and Spanish in a newspaper of general circulation in the location of the discharge; provided, however, that the advertisement shall not be displayed in the classified or legal advertisement sections.

G. No ruling shall be made on any application for a permit without opportunity for a public hearing at which all interested persons shall be given a reasonable chance to submit evidence, data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. The hearing shall be recorded. Any person submitting evidence, data, views or arguments shall be subject to examination at the hearing.

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

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

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

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

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

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

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

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

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

L. The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Water Quality Act [74-6-1 NMSA 1978], any applicable regulations or water quality standards of the commission or any applicable federal laws, regulations or standards.

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

- (1) violation of any condition of the permit;
- (2) obtaining the permit by misrepresentation or failure to disclose fully all relevant facts;
- (3) violation of any provisions of the Water Quality Act [74-6-1 NMSA 1978] or any applicable regulations, standard of performance or water quality standards;
- (4) violation of any applicable state or federal effluent regulations or limitations;
or
- (5) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

N. If the constituent agency denies, terminates or modifies a permit or grants a permit subject to condition, the constituent agency shall notify the applicant or permittee by certified mail of the action taken and the reasons. Notice shall also be given by mail to persons who participated in the permitting action.

O. A person who participated in a permitting action before a constituent agency or a person affected by a certification of a federal permit and who is adversely affected by such permitting action or certification may file a petition for review before the commission. Unless a timely petition for review is made, the decision of the constituent agency shall be final and not subject to judicial review. The petition shall:

- (1) be made in writing to the commission within thirty days from the date notice is given of the constituent agency's action;
- (2) include a statement of the issues to be raised and the relief sought; and
- (3) be provided to all other persons submitting evidence, data, views or arguments in the proceeding before the constituent agency.

P. If a timely petition for review is made, the commission shall consider the petition within ninety days after receipt of the petition. The commission shall notify the petitioner and the applicant or permittee, if other than the petitioner, by certified mail of the date, time and place of the review. If the petitioner is not the applicant or permittee, the applicant or permittee shall be a party to the proceeding. The commission shall ensure that the public receives notice of the date, time and place of the review.

Q. The commission shall review the record compiled before the constituent agency, including the transcript of any public hearing held on the application or draft permit, and shall allow any party to submit arguments. The commission may designate a hearing officer to review the record and the arguments of the parties and recommend a decision to the commission. The commission shall consider and weigh only the evidence contained in the record before the constituent agency and the recommended decision of the hearing officer, if any, and shall not be bound by the factual findings or legal conclusions of the constituent agency. Based on the review of the evidence, the arguments of the parties and recommendations of the hearing officer, the commission shall sustain, modify or reverse the action of the constituent agency. The commission shall enter ultimate findings of fact and conclusions of law and keep a record of the review.

R. Prior to the date set for review, if a party shows to the satisfaction of the commission that there was no reasonable opportunity to submit comment or evidence on an issue being challenged, the commission shall order that additional comment or evidence be taken by the constituent agency. Based on the additional evidence, the constituent agency may revise the decision and shall promptly file with the commission the additional evidence received and action taken. The commission shall consider the additional evidence within ninety days after receipt of the additional evidence and shall notify the petitioner and the applicant or permittee, if other than the petitioner, of the date, time and place of the review.

S. The commission shall notify the petitioner and all other participants in the review proceeding of the action taken by the commission and the reasons for that action.

§ 20.6.6.21. ADDITIONAL OPERATIONAL REQUIREMENTS FOR DAIRY FACILITIES WITH A LAND APPLICATION AREA

A. Impoundment storage capacity management - wastewater and wastewater/stormwater combination. A permittee shall operate and maintain a wastewater or combination wastewater/stormwater impoundment(s) or a tank for the purpose of storing wastewater prior to discharging to the land application area. A permittee shall manage wastewater or combination wastewater/stormwater impoundments to maintain the capacity and two feet of freeboard required by Subsection D of 20.6.6.17 NMAC.

B. Authorized land application of wastewater and stormwater. A permittee shall apply wastewater and stormwater to fields within the land application area, up to the maximum

acreage of irrigated cropland specifically authorized by a discharge permit. Wastewater and stormwater shall be distributed uniformly over the field at the planned rate consistent with the nutrient management plan (NMP); ponding shall be minimized.

C. Land application area - fresh irrigation water required. Wastewater shall only be applied to fields within the land application area receiving fresh irrigation water. Fresh irrigation water shall be used as the primary source to meet the water consumptive needs of the crop to support crop production and nutrient removal. Wastewater and stormwater are intended as sources of crop nutrients and shall not be used as a primary source to meet the water consumptive needs of the crop. An applicant may propose and the department may accept a proposal to apply wastewater to crops or grazing land without using fresh water for irrigation if the proposal demonstrates to the department's satisfaction that crops or plants to be grazed can be successfully maintained without fresh irrigation water.

D. Wastewater/irrigation water blending. Wastewater may be blended in-line (i.e., fresh irrigation water supply lines) when fresh water irrigation lines are equipped with backflow prevention that is installed, operated, inspected and maintained in accordance with Subsections L and M of this section. Wastewater may also be blended in a mix-tank(s), applied alternately in the same irrigation line which has been physically disconnected from supply wells, or applied in a separate line, as authorized by a discharge permit. Wastewater may be blended with fresh water in a wastewater impoundment prior to land application so long as:

- (1) the permittee maintains an accurate written record of the volume of fresh water added to the wastewater and that volume is accounted for in determining the volumes of wastewater applied for purposes of the nutrient management plan;
- (2) fresh water is introduced in a safe manner to prevent scouring of the liner;
- (3) the impoundment capacity requirements of this rule are met.

E. Land application area - existing infrastructure. An applicant or permittee shall submit documentation for the existing infrastructure necessary to transfer, distribute and apply wastewater or stormwater to fields within the land application area that will receive wastewater or stormwater to the department with the application for a new, renewed or modified discharge permit. The documentation shall consist of a narrative statement and photographic documentation that confirm the existing land application distribution system including the type(s) and location(s) of the systems, and the method(s) of backflow prevention employed.

F. Land application area - new infrastructure. Before the initial application of wastewater or stormwater to any field within the land application area that has not previously received wastewater or stormwater, an applicant or permittee shall install a land application distribution system to distribute wastewater and stormwater to those fields. The land application distribution system shall be used to distribute and apply wastewater

and stormwater to fields within the land application area to meet the requirements of this section. Before the initial application of wastewater or stormwater to any field within the land application area, an applicant or permittee shall submit documentation confirming installation of the land application distribution system. The documentation shall consist of a narrative statement and photographic documentation that confirms the new land application system including the type(s) and location(s) of the system(s), and the method(s) employed for backflow prevention.

G. Flow metering - wastewater to land application area. A permittee shall install flow meters to measure the volume of wastewater discharged from the wastewater or combination wastewater/stormwater impoundments to the land application area. The flow meter(s) shall be installed on the discharge line(s) from the wastewater impoundment(s) or tank to the distribution system for the land application area. Meter installation and confirmation of meter installation shall be performed pursuant to Subsections J, K and M of 20.6.6.20 NMAC.

H. Flow metering - stormwater to land application area. For a dairy facility transferring stormwater from a stormwater impoundment directly to a distribution system for the land application area, a permittee shall install flow meters to measure the volume of stormwater applied directly to the land application area. The flow meter(s) shall be installed on the transfer line(s) from the stormwater impoundment(s) to the distribution system for the land application area. Meter installation and confirmation of meter installation shall be performed pursuant to Subsections J, K and M of 20.6.6.20 NMAC.

I. Nutrient management plan. Nutrients and other constituents required to be monitored under Subsection C of 20.6.6.25 NMAC and present in wastewater and stormwater shall be applied to irrigated cropland under cultivation in accordance with the requirements of a nutrient management plan (NMP) submitted to the department with the application for a new, renewed, or modified discharge permit. The NMP shall provide for development of a nutrient budget for nitrogen on an annual basis that accounts for the amount of nitrogen from all combined nitrogen sources, including but not limited to wastewater, stormwater, manure solids, composted material, irrigation water and other additional fertilizer(s), along with residual soil nitrogen and nitrogen credits from leguminous crops and that considers estimated and measured nitrogen removal by harvested crops and other losses, considering the monitoring data required to be collected under Section 20.6.6.25 NMAC. The NMP shall describe how planned total nitrogen application rates shall be determined each year based upon realistic yield goals for the planned crops. The information used to set the crop yield goals shall be identified in the NMP. The NMP shall address how nitrogen application rates will be adjusted based upon the results of soil tests required by Subsections K and L of 20.6.6.25 NMAC, consistent with applicable Natural Resource Conservation Service guidance for normal, high and excessive soil nitrogen levels. The NMP shall specify the maximum application rates for wastewater applied through irrigation so as not to exceed the soil intake/infiltration rate. The application of nitrogen to each field within the land application area shall be in accordance with the NMP, and any departures from the NMP due to growing conditions or other factors shall be addressed in the update to the NMP for the following year. Plant

material and soil sampling protocols in the NMP shall be, at a minimum, equivalent to the requirements of Subsections I, K and L of 20.6.6.25 NMAC. The NMP shall identify the method(s) of crop removal to be employed. The NMP shall be developed for the term of the discharge permit and updated annually. The NMP shall be developed, signed and dated annually by an individual certified by the American society of agronomy as a certified crop advisor (CCA) or certified professional agronomist (CPAg) or by an individual certified by the New Mexico office of the U.S. department of agriculture natural resources conservation service as a nutrient management planner. The permittee may elect to submit an NMP meeting the requirements of this subsection that is incorporated into a broader plan, such as a comprehensive nutrient management plan or a nutrient management plan prepared to meet the requirements of a permit issued by EPA, in which case only the portions of such plan required by this subsection and Section 20.6.6.25 NMAC shall be considered for purposes of the dairy rule. For a renewed permit where the NMP was not submitted in an application, the permittee shall submit the initial NMP by May 1 of the first year the permit is in effect, and the permittee shall submit annual updates to the NMP to the department in the monitoring reports due by May 1 of each year.

J. Crop removal - mechanical or grazing. A permittee shall remove crops from fields within the land application area by mechanical harvest or grazing. An NMP which proposes grazing for crop removal shall also include, at a minimum, estimated values for the following elements.

- (1) The length of the grazing season.
- (2) The size and number of animals to be grazed.
- (3) The estimated weight gain of animals to be grazed, or estimated intake for maintenance or milk production.
- (4) The calculations to determine stocking rates, total acreage needed and residency period.
- (5) The plant species used to establish pastures and the pasture renovation practices to be employed.
- (6) The yield of plant species grown in each pasture and the forage supplied on a monthly basis.
- (7) The grazing management system employed and a map indicating key features of the system including water tanks, fencing, and pasture layout with numbering system and acreage of each pasture.

K. Irrigation ditches - inspection and maintenance. Irrigation ditches used to land apply wastewater or stormwater at a dairy facility shall be concrete-lined and shall be maintained in good repair. The permittee shall visually inspect the ditch system on a

monthly basis to ensure proper maintenance. Any damage to a lined ditch shall be repaired within a reasonable time period. A log shall be kept on-site documenting the inspection findings and repairs made, and the log shall be made available to the department upon request.

L. Backflow prevention. A permittee shall protect all water wells used within the land application distribution system from contamination by wastewater or stormwater backflow by installing and maintaining backflow prevention methods or devices. Backflow prevention shall be achieved by a total disconnect (physical air gap separation of at least two times the pipe diameter or complete piping separation when wastewater is being pumped) or by the installation of, at a minimum an air/vacuum relief valve and a low pressure drain valve located immediately upstream of a check valve between the discharge head of the well pump and wastewater and stormwater delivery systems.

(1) A permittee for a new dairy facility shall install backflow prevention methods or devices and submit written confirmation of installation to the department before discharging at the dairy facility.

(2) A permittee for an existing dairy facility that lacks backflow protection as required by this subsection shall install backflow prevention methods or devices within 90 days of the effective date of the discharge permit. The permittee shall submit written confirmation of installation to the department within 180 days of the effective date of the discharge permit.

M. Backflow prevention by check valve backflow prevention device - inspection and maintenance. A permittee shall inspect each check valve device at least monthly when the well is operating. A malfunctioning check valve device shall be repaired or replaced within 30 days of discovery, and use of all wastewater supply lines associated with the check valve device shall cease until repair or replacement has been completed. Copies of the inspection and maintenance records for each check valve device associated with the backflow prevention program for the previous year shall be submitted to the department annually in the monitoring reports due by May 1.

N. Supply well protection. With the exception of monitoring wells, all wells located within the land application area of a dairy facility shall have a surface pad constructed in accordance with the recommendations of Subsection G of 19.27.4.29 NMAC and a permanent well cap or cover pursuant to Subsection I of 19.27.4.29 NMAC.