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States' Application Restrictions Statutes &
Regulations:
New Mexico



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NM Stat § 74-6-4
20 NM Admin Code 20.6.6.16(F)
20 NM Admin Code 20.6.6.25

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.

NM Stat § 74-6-4. Duties and powers of commission. [Repealed effective July 1, 2020]

The commission:

- A. may accept and supervise the administration of loans and grants from the federal government and from other sources, public or private, which loans and grants shall not be expended for other than the purposes for which provided;
- B. shall adopt a comprehensive water quality management program and develop a continuing planning process;
- C. shall not adopt or promulgate a standard or regulation that exceeds a grant of rulemaking authority listed in the statutory section of the Water Quality Act [74-6-1 NMSA 1978] authorizing the standard or regulation;
- D. shall adopt water quality standards for surface and ground waters of the state based on credible scientific data and other evidence appropriate under the Water Quality Act [74-6-1 NMSA 1978]. The standards shall include narrative standards and as appropriate, the designated uses of the waters and the water quality criteria necessary to protect such uses. The standards shall at a minimum protect the public health or welfare, enhance the quality of water and serve the purposes of the Water Quality Act. In making standards, the commission shall give weight it deems appropriate to all facts and circumstances, including the use and value of the water for water supplies, propagation of fish and wildlife, recreational purposes and agricultural, industrial and other purposes;



E. shall adopt, promulgate and publish regulations to prevent or abate water pollution in the state or in any specific geographic area, aquifer or watershed of the state or in any part thereof, or for any class of waters, and to govern the disposal of septage and sludge and the use of sludge for various beneficial purposes. The regulations governing the disposal of septage and sludge may include the use of tracking and permitting systems or other reasonable means necessary to assure that septage and sludge are designated for disposal in, and arrive at, disposal facilities, other than facilities on the premises where the septage and sludge is generated, for which a permit or other authorization has been issued pursuant to the federal act or the Water Quality Act [74-6-1 NMSA 1978]. Regulations may specify a standard of performance for new sources that reflects the greatest reduction in the concentration of water contaminants that the commission determines to be achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives, including where practicable a standard permitting no discharge of pollutants. In making regulations, the commission shall give weight it deems appropriate to all relevant facts and circumstances, including:

- (1) character and degree of injury to or interference with health, welfare, environment and property;
- (2) the public interest, including the social and economic value of the sources of water contaminants;
- (3) technical practicability and economic reasonableness of reducing or eliminating water contaminants from the sources involved and previous experience with equipment and methods available to control the water contaminants involved;
- (4) successive uses, including but not limited to domestic, commercial, industrial, pastoral, agricultural, wildlife and recreational uses;
- (5) feasibility of a user or a subsequent user treating the water before a subsequent use;
- (6) property rights and accustomed uses; and
- (7) federal water quality requirements;

F. shall assign responsibility for administering its regulations to constituent agencies so as to assure adequate coverage and prevent duplication of effort. To this end, the commission may make such classification of waters and sources of water contaminants as will facilitate the assignment of administrative responsibilities to constituent agencies. The commission shall also hear and decide disputes between constituent agencies as to jurisdiction



concerning any matters within the purpose of the Water Quality Act [74-6-1 NMSA 1978]. In assigning responsibilities to constituent agencies, the commission shall give priority to the primary interests of the constituent agencies. The department of environment shall provide technical services, including certification of permits pursuant to the federal act, and shall maintain a repository of the scientific data required by this act;

G. may enter into or authorize constituent agencies to enter into agreements with the federal government or other state governments for purposes consistent with the Water Quality Act [74-6-1 NMSA 1978] and receive and allocate to constituent agencies funds made available to the commission;

H. may grant an individual variance from any regulation of the commission whenever it is found that compliance with the regulation will impose an unreasonable burden upon any lawful business, occupation or activity. The commission may only grant a variance conditioned upon a person effecting a particular abatement of water pollution within a reasonable period of time. Any variance shall be granted for the period of time specified by the commission. The commission shall adopt regulations specifying the procedure under which variances may be sought, which regulations shall provide for the holding of a public hearing before any variance may be granted;

I. may adopt regulations to require the filing with it or a constituent agency of proposed plans and specifications for the construction and operation of new sewer systems, treatment works or sewerage systems or extensions, modifications of or additions to new or existing sewer systems, treatment works or sewerage systems. Filing with and approval by the federal housing administration of plans for an extension to an existing or construction of a new sewerage system intended to serve a subdivision solely residential in nature shall be deemed compliance with all provisions of this subsection;

J. may adopt regulations requiring notice to it or a constituent agency of intent to introduce or allow the introduction of water contaminants into waters of the state;

K. shall specify in regulations the measures to be taken to prevent water pollution and to monitor water quality. The commission may adopt regulations for particular industries. The commission shall adopt regulations for the dairy industry and the copper industry. The commission shall consider, in addition to the factors listed in Subsection E of this section, the best available scientific information. The regulations may include variations in requirements based on site-specific factors, such as depth and distance to ground water and geological and hydrological conditions. The constituent agency shall establish an advisory committee composed of persons with knowledge and expertise



particular to the industry category and other interested stakeholders to advise the constituent agency on appropriate regulations to be proposed for adoption by the commission. The regulations shall be developed and adopted in accordance with a schedule approved by the commission. The schedule shall incorporate an opportunity for public input and stakeholder negotiations;

L. may adopt regulations establishing pretreatment standards that prohibit or control the introduction into publicly owned sewerage systems of water contaminants that are not susceptible to treatment by the treatment works or that would interfere with the operation of the treatment works;

M. shall not require a permit respecting the use of water in irrigated agriculture, except in the case of the employment of a specific practice in connection with such irrigation that documentation or actual case history has shown to be hazardous to public health or the environment;

N. shall not require a permit for applying less than two hundred fifty gallons per day of private residential gray water originating from a residence for the resident's household gardening, composting or landscape irrigation if:

(1) a constructed gray water distribution system provides for overflow into the sewer system or on-site wastewater treatment and disposal system;

(2) a gray water storage tank is covered to restrict access and to eliminate habitat for mosquitos or other vectors;

(3) a gray water system is sited outside of a floodway;

(4) gray water is vertically separated at least five feet above the ground water table;

(5) gray water pressure piping is clearly identified as a nonpotable water conduit;

(6) gray water is used on the site where it is generated and does not run off the property lines;

(7) gray water is applied in a manner that minimizes the potential for contact with people or domestic pets;

(8) ponding is prohibited, application of gray water is managed to minimize standing water on the surface and to ensure that the hydraulic capacity of the soil is not exceeded;

(9) gray water is not sprayed;

(10) gray water is not discharged to a watercourse; and



(11) gray water use within municipalities or counties complies with all applicable municipal or county ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978; and

O. shall coordinate application procedures and funding cycles for loans and grants from the federal government and from other sources, public or private, with the local government division of the department of finance and administration pursuant to the New Mexico Community Assistance Act [11-6-1 NMSA 1978].

20 NM Admin Code 20.6.6.16. Setback requirements for dairy facilities applying for new discharge permits.

A. An application for a new discharge permit shall include the information in this section.

B. **Contact information.** An application shall include:

- (1) applicant's name, title and affiliation with the dairy facility, mailing address, and phone number;
- (2) dairy facility manager's or operator's name, title and affiliation with the dairy facility, mailing address and phone number;
- (3) application preparer's name, title and affiliation with the dairy facility, mailing address, phone number and signature; and
- (4) mailing address and phone number of any consultants authorized to assist the dairy facility with compliance with the Water Quality Act and 20.6.2 and 20.6.6 NMAC.

C. **Ownership and real property agreements.**

(1) An application shall include the dairy facility owner's name, title, mailing address and phone number.

(a) If more than one person has an ownership interest in the dairy facility or a partnership exists, then the applicant shall list all persons having an ownership interest in the dairy facility, including their names, titles, mailing addresses and phone numbers.

(b) If any corporate entity, including but not limited to a corporation or a limited liability company, holds an ownership interest in the dairy facility, then the applicant shall also list the name(s), as filed with the New Mexico public regulation commission, of the corporate entity, and



the corporate entity's registered agent's name and address.

(2) If the applicant is not the owner of record of the real property upon which the dairy facility is or will be situated, or upon which dairy operations and land application will occur, then the applicant shall submit a copy of any lease agreement or other agreement which authorizes the use of the real property for the duration of the term of the requested permit. Lease prices or other price terms may be redacted.

D. Setbacks. The applicant shall certify that the setback requirements of 20.6.6.16 NMAC are met. An application shall include a scaled map of the dairy facility layout demonstrating that the proposed layout of the dairy facility meets the setback requirements of 20.6.6.16 NMAC.

E. Dairy facility information and location. An application shall include:

- (1) the dairy facility name, physical address and county; and
- (2) the township, range and section for the entire dairy facility, which includes the production area and fields within the land application area.

F. Public notice preparation. An application shall include the name of a newspaper of general circulation in the location of the dairy facility for the future display advertisement publication, the proposed public location(s) for posting of the 2-foot by 3-foot sign, and the proposed off-site public location for posting of the 8.5-inch by 11-inch flyer, as required by 20.6.2.3108 NMAC.

G. Pre-discharge total dissolved solids concentration in ground water. Pursuant to Paragraph (3) of Subsection C of 20.6.2.3106 NMAC, an application shall include the pre-discharge total dissolved solids concentration from analytical results of ground water obtained from the on-site test boring pursuant to Subsection X of 20.6.6.20 NMAC, if applicable, or from the nearest well within a one-mile radius of the dairy facility. A copy of the laboratory analysis stating the pre-discharge total dissolved solids concentration shall be submitted with the application.

H. Determination of maximum daily discharge volume. An application shall include the following information.

- (1) The proposed maximum daily discharge volume and a description of the methods and calculations used to determine that volume.
- (2) The identification of all sources of wastewater which may



include, but are not limited to, hospital barns, maternity barns, bottle-washing operations and parlor/equipment washdown.

(3) The animal washing method(s) employed and the estimated daily wastewater volume generated by the method(s).

(4) Information regarding other wastewater discharges (i.e., domestic or industrial) at the dairy facility not generated by dairy operations. Permit identification numbers shall be submitted for those discharges that are already permitted.

I. Wastewater quality. An application shall include estimated concentrations of wastewater quality for total dissolved solids, chloride, total sulfur, nitrate as nitrogen, and total Kjeldahl nitrogen.

J. Identification and physical description of the dairy facility. An application shall include the following information.

(1) A scaled map of the entire dairy facility pursuant to Subsection U of 20.6.6.20 NMAC.

(2) The identification of each proposed impoundment, including information about its location, purpose (i.e., to store wastewater or stormwater, or dispose of it by evaporation), liner material and storage or evaporative disposal capacity.

(3) The identification of each field within the proposed land application area, including information about its location, acreage, proposed method of wastewater and stormwater application and proposed method of irrigation water application.

(4) The identification of proposed sumps and mix tanks, including information for each component regarding its location, purpose, construction material, dimensions and capacity.

(5) A description of the proposed method(s) employed to protect each area from stormwater runoff and run-on, and to minimize leachate.

K. Flow metering. An application shall describe a dairy facility's flow metering system pursuant to Subsections J, K, L, M, N and O of 20.6.6.20 NMAC and Subsections G and H of 20.6.6.21 NMAC, including:

(1) the identification of the method(s) (i.e., pumped versus gravity flow) of wastewater discharge, stormwater transfer, and wastewater and stormwater land application;



- (2) the proposed flow measurement devices for each flow method; and
- (3) the identification of flow meter locations.

L. Depth-to-most-shallow ground water and ground water flow direction. An application shall include the following information.

- (1) The depth-to-most-shallow ground water pursuant to Subsection X of 20.6.6.20 NMAC.
- (2) The ground water flow direction of the most-shallow ground water beneath the dairy facility based on the most recent regional water level data or published hydrogeologic information. Survey data from nearby monitoring wells and a ground water elevation contour map indicating the direction of ground water flow may be included. The sources of all information used to determine ground water flow direction shall be provided with the application.

M. Monitoring wells. An application shall include the proposed monitoring well locations pursuant to Subsections A and B of 20.6.6.23 NMAC.

N. Surface soil survey and vadose zone geology. An application shall include:

- (1) the most recent regional soil survey map and associated descriptions identifying surface soil type(s); and
- (2) if applicable, the lithologic log obtained from the on-site test boring pursuant to Subsection X of 20.6.6.20 NMAC to identify the geological profile of the vadose zone.

O. Location map. An application shall include a location map with topographic surface contours identifying all of the following features located within a one-mile radius of the dairy facility:

- (1) watercourses, lakebeds, sinkholes, playa lakes and springs (springs used to provide water for human consumption shall be so denoted);
- (2) wells supplying water for a public water system and private domestic water wells;
- (3) irrigation supply wells; and
- (4) ditch irrigations systems, acequias, irrigation canals and drains.

P. Flood zone map. An application shall include the most recent 100-year flood zone map developed by the federal emergency management administration, FEMA, documenting flood potential for the dairy facility, and a description of any engineered measures used for flood protection.



Q. Engineering and surveying. Pursuant to 20.6.6.17 NMAC an application shall include:

- (1) plans and specifications for impoundments and associated liners;
- (2) plans and specifications for a manure solids separator(s); and
- (3) a grading and drainage report and plan.

R. Land application area. For a dairy facility with a land application area, an application shall include the following information.

- (1) A nutrient management plan (NMP) pursuant to Subsections I and J of 20.6.6.21 NMAC.
- (2) A written description of the wastewater sampling location(s) pursuant to Subsection C of 20.6.6.25 NMAC.

20 NM Admin Code 20.6.6.25. Additional monitoring requirements for dairy facilities with a land application area.

A. Volume of wastewater and wastewater/stormwater land applied - measurement and reporting. A permittee shall measure all wastewater discharges from a wastewater or combination wastewater/stormwater impoundment to each fields within the land application area using flow meters. A permittee shall maintain a log recording the date and location of each discharge, flow meter readings immediately prior to and after each discharge, and the calculated total volume of each discharge reported in gallons and acre-foot. A permittee shall submit a copy of the log entries including units of measurement to the department in the quarterly monitoring reports.

B. Volume of stormwater land applied - measurement and reporting. A permittee shall measure all stormwater applications from a stormwater impoundment to each fields within the land application area using flow meters. A permittee shall maintain a log recording the date and location of each application, flow meter readings immediately prior to and after each application, and the calculated total volume of each application reported in gallons and acre-foot. A permittee shall submit a copy of the log entries including units of measurement to the department in the quarterly monitoring reports.

C. Wastewater to be land applied - sampling and reporting. A permittee shall collect and analyze wastewater samples on an annual basis for nitrate as nitrogen, total Kjeldahl nitrogen, chloride, total sulfur and total dissolved solids pursuant to Subsection B of 20.6.6.24 NMAC. Representative samples shall be collected from the wastewater impoundments unless an



alternative method is approved for good cause, including safety. The representative samples shall consist of eight samples taken from eight different locations evenly distributed throughout the impoundment or using an alternative method approved by the department for good cause. A permittee shall submit the analytical results to the department in the quarterly monitoring reports.

D. Manure solids -nitrogen content. The nitrogen content of the manure solids applied to each fields within the land application area shall be estimated at 25 pounds of nitrogen per ton. Should a permittee choose to use actual nitrogen content values of on-site manure solids, the permittee shall collect a composite sample on an annual basis. The composite sample shall consist of a minimum of 30 sub-samples collected on the same day and thoroughly mixed. Manure samples shall be analyzed for total Kjeldahl nitrogen and moisture content. The permittee shall submit the analytical results to the department in the quarterly monitoring reports.

E. Irrigation water - sampling, volume applied, and reporting. A permittee shall monitor irrigation wells used to supply fresh water to the fields within the land application area to account for additional potential nitrogen supplied to the land application area in the following manner.

- (1) Each irrigation well shall be identified in association with the fields(s) to which it supplies fresh water.
- (2) An annual sample of irrigation water supplied from each well or a group of physically connected wells shall be collected and analyzed for nitrate as nitrogen and total Kjeldahl nitrogen, pursuant to Subsection B of 20.6.6.24 NMAC. If the results are consistent for the first five years of annual sampling, sampling frequency may be reduced to once every other year.
- (3) The annual volume of irrigation water applied to each fields within the land application area shall be estimated for each well.
- (4) The permittee shall submit the analytical results and the estimated annual volume of irrigation water applied from each well to each fields within the land application area to the department in the monitoring reports due by May 1.

F. Fertilizer application reporting. A permittee shall maintain a log of all additional fertilizer(s) applied to each fields within the land application area. The log shall contain the date of fertilizer application, the type and form of fertilizer, fertilizer analysis, the amount of fertilizer applied in pounds per acre to each fields, and the amount of nutrients applied in pounds per



acre to each fields. The permittee shall submit a copy of the log entries to the department in the quarterly monitoring reports.

G. Land application data sheets. A permittee shall complete land application data sheets for each fields within the land application area to document the crop grown and amount of total nitrogen applied from wastewater, stormwater, manure solids, composted material, irrigation water and other additional fertilizer(s), and the residual soil nitrogen and nitrogen credits from leguminous crops. The permittee shall submit a land application data sheet or a statement that land application did not occur to the department in the quarterly monitoring reports. The land application data sheet shall include the following elements.

(1) The total monthly volume, reported in acre-feet, of wastewater and stormwater applied to each fields within the land application area. Total monthly volumes shall be obtained from flow meter readings of each application pursuant to Subsections A and B of this section.

(2) The total nitrogen concentration of wastewater and stormwater obtained from the corresponding quarterly or annual analyses collected pursuant to Subsection C of this section and Subsection D of 20.6.6.24 NMAC.

(3) The total monthly volume, reported in tons per acre, of manure solids applied to each fields within the land application area.

(4) The total nitrogen content of the manure solids estimated at 25 pounds of nitrogen per ton or determined from analysis of manure solids samples collected pursuant to Subsection D of this section.

(5) The total nitrogen concentration within the irrigation water and the amount of irrigation water applied pursuant to Subsection E of this section.

(6) The amount of nitrogen reported in pounds per acre from additional fertilizer(s) applied pursuant to Subsection F of this section.

(7) The amount of residual soil nitrogen and nitrogen from leguminous crops credited to each fields within the land application area pursuant to Subsections K and L of this section.

H. Crop yield documentation. A permittee shall submit crop yield documentation and plant and harvest dates of each crop grown to the department in the quarterly monitoring reports. Crop yield documentation shall consist of copies of scale-weight tickets or harvest summaries based on scale-weights.



I. Nitrogen concentration of harvested crop. A permittee shall determine the total nitrogen concentration of each harvested crop. A composite sample consisting of 15 sub-samples of plant material shall be taken from each fields during the final harvest of each crop grown per year. Samples shall be analyzed for percent total nitrogen and percent dry matter. A permittee shall submit the analytical reports to the department in the quarterly monitoring reports.

J. Nitrogen removal summary of harvested crop. A permittee shall develop a nitrogen removal summary to determine total nitrogen removed by each crop grown on each fields within the land application area. Nitrogen removal shall be determined using crop yield and total nitrogen concentration information collected pursuant to Subsections H and I of this section. A permittee shall submit the summary to the department in the quarterly monitoring reports.

K. Soil sampling - initial event in a discharge permit term. A permittee shall collect composite soil samples from each fields within the land application area for the first soil sampling event during the first year following the effective date of the discharge permit. Composite soil samples shall be collected for all fields regardless of whether the fields is cropped, remains fallow, or has received wastewater or stormwater. One surface composite soil sample (first-foot) and two sub-surface composite soil samples (second-foot and third-foot) shall be collected from each fields. Composite soil samples shall be collected and analyzed according to the following procedure.

(1) Each surface and sub-surface soil sample shall consist of a single composite of 15 soil cores collected randomly throughout each fields. Should a fields consist of different soil textures (i.e., sandy and silty clay), a composite soil sample shall be collected from each soil texture within each fields.

(2) Surface soil samples (first-foot) shall be collected from a depth of 0 to 12 inches.

(3) Each second-foot sub-surface soil sample shall be collected from a depth of 12 to 24 inches.

(4) Each third-foot sub-surface soil sample shall be collected from a depth of 24 to 36 inches.

(5) Each surface and sub-surface composite sample shall be analyzed for pH, electrical conductivity, total Kjeldahl nitrogen, nitrate as nitrogen, chloride, organic matter, potassium, phosphorus, sodium, calcium, magnesium, sulfate, soil texture, and sodium adsorption ratio.



(6) pH, electrical conductivity, sodium, calcium, magnesium, and sulfate shall be analyzed using a saturated paste extract in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC. Phosphorus shall be analyzed using the Olsen sodium bicarbonate method in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC. Nitrate as nitrogen shall be analyzed by a 2 molar KCl extract in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC. Total Kjeldahl nitrogen, chloride, organic matter, potassium, soil texture, and sodium adsorption ratio shall be analyzed in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC.

(7) The permittee shall submit the analytical results and a map showing the fields and the sampling locations within each fields to the department in the monitoring report due by May 1 following the effective date of the discharge permit.

L. Soil sampling - routine. Beginning in the year following the initial soil sampling required by this section, the permittee shall collect annual soil samples from each fields within the land application area that has received or is actively receiving wastewater or stormwater. For those fields that have never before received wastewater, the permittee shall collect soil samples immediately before initial wastewater application and annually thereafter. Once a fields has received wastewater it shall be sampled annually regardless of whether the fields is cropped, remains fallow, or has recently received wastewater or stormwater. One surface composite soil sample (first-foot) and two sub-surface composite soil samples (second-foot and third-foot) shall be collected from each fields. Composite soil samples shall be collected and analyzed according to the following procedure.

(1) Each surface and sub-surface soil sample shall consist of a single composite of 15 soil cores collected randomly throughout each fields. Should a fields consist of different soil textures (i.e., sandy and silty clay), a composite soil sample shall be collected from each soil texture within each fields.

(2) Surface soil samples (first-foot) shall be collected from a depth of 0 to 12 inches.

(3) Each second-foot sub-surface soil sample shall be collected from a depth of 12 to 24 inches.

(4) Each third-foot sub-surface soil sample shall be collected from a depth of 24 to 36 inches.



(5) Surface soil samples shall be analyzed for pH, electrical conductivity, nitrate as nitrogen, chloride, organic matter, potassium, phosphorus, sodium, calcium, magnesium, and sodium adsorption ratio.

(6) Subsurface soil samples shall be analyzed for electrical conductivity, nitrate as nitrogen, and chloride.

(7) pH, electrical conductivity, sodium, calcium, and magnesium shall be analyzed using a saturated paste extract in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC. Phosphorus shall be analyzed using the Olsen sodium bicarbonate method in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC. Nitrate as nitrogen shall be analyzed by a 2 molar KCl extract in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC. Chloride, organic matter, potassium, and sodium adsorption ratio shall be analyzed in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC.

(8) The permittee shall submit the analytical results and a map showing the fields and the sampling locations within each field to the department in the monitoring report due by May 1.

