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NEW MEXICO ENVIRONMENT DEPARTMENT'S PURSUIT OF A STATE NPDES PERMITTING PROGRAM

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Good morning. As Bobby Creel said, I am here today to discuss the state's efforts to seek primacy for the National Pollutant Discharge Elimination System program, better known as the NPDES program.

As Cindy Padilla mentioned yesterday, we have changed our plans and are not seeking NPDES legislation for the upcoming 2007 legislative session. However, the project is still moving forward. My talk today will be an overview of our efforts.

First, what is the NPDES program? It is the National Pollutant Discharge Elimination System permit program that was created by the federal Clean Water Act in the 1970s to control water pollution. Controlling

water pollution is achieved by regulating the discharge of pollutants into surface waters. What this means to us in New Mexico is that the Clean Water Act and the NPDES program were intended to protect our waters from industrial chemicals, nutrients from wastewater discharges, and other contaminants from other sources including our national laboratories. It was also intended to prevent contamination from storm water and to ensure that our streams and lakes provide a healthy ecosystem for fish and other aquatic organisms. Right now in New Mexico, we rely on the federal government to protect our surface water quality by issuing NPDES permits.

In New Mexico we have approximately 120 facilities that operate under individual NPDES permits issued by the U.S. Environmental Protection Agency (EPA). This includes, among others, 52 municipal permits, 36 industrial permits, and three federal facility permits.

We also have approximately 2,000 facilities that operate under three “general” NPDES permits that have been issued by the EPA. One is the CAFO permit that regulates animal feeding operations such as dairies, feedlots, and chicken farms. There is also an industrial storm water permit and a construction storm water permit.

The Environment Department believes that it is critical for the State of New Mexico to protect and manage the quality of the state’s precious surface

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water. The citizens of New Mexico depend on our department to protect our water quality and our environment. Many would probably be surprised to know that the EPA currently has the authority and the responsibility to issue

surface water quality protection permits in New Mexico. That being said, I’d like to provide a brief overview of why the department chose to go down the path toward NPDES delegation.

First let’s talk about the state’s responsibilities. The New Mexico state constitution indicates that the state’s beautiful and healthful environment is hereby declared to be a fundamental importance to the public interest, health, safety, and the general welfare. It specifically says that the legislature shall provide for control of pollution and control of despoilment of the air, water, and other natural resources of this state, consistent with the use and development of these resources for the maximum benefit of the people (New Mexico Constitution, Section XX21).

This is really the ultimate level of authority in New Mexico and based on it the responsibility for the protection of our environment lies with the state. In the context of today’s discussion, the language is visionary. It clearly lays out our responsibility as state leaders and New Mexicans to protect our water quality.

The legislature also had the vision to declare that the state’s water is a resource that belongs to the public,

the people of New Mexico. Therefore, good public policy must include protection of our water quality.

Furthermore, the federal Clean Water Act states that it is the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of states to prevent, reduce, and eliminate pollution and that it is the policy of Congress that the states implement the NPDES permit program. These important documents clearly lay out our responsibility as a state to protect our water quality.

As I mentioned yesterday, recent U.S. Supreme Court cases that were decided in June of this year are shaping national water policy. EPA is relying more on the states to fill the gaps left by the federal government. If the federal government continues to limit its role in protecting the state’s waters, New Mexico could be left with 90 percent of its waters unprotected. If the state is unable to fill the gap, the greatest impact of inadequate water quality protection will be felt by local governments.

As I’m sure you are aware, many of our local economies depend on clean water. Whether it’s our municipal supply, water-based recreation, or sustainable agriculture, the state has the responsibility to ensure that weakened federal protections do not negatively impact our local water resources and our local economies.

Here are some fun facts for you. New Mexico is one of only five states nationwide that does not have authority to implement the NPDES program. In fact, we are soon to be one of four states because Alaska has moved ahead of New Mexico. It is close to achieving delegation for its own NPDES program.

In EPA Region 6, which is the region that New Mexico is in, New Mexico is the only state without NPDES delegation and in the entire Southwest. We are the only state not given this authority by our state legislature. This is in contrast to the fact that in the state of New Mexico, we have authority to implement all other federal environmental programs and to manage all other aspects of the state’s water resources.

Beyond the clear responsibility authority for the state to protect its water quality, we believe that there are benefits to a state administered NPDES program. Draft statutes, regulations, program descriptions, enforcement management strategies, and all the other documents that would be used for the foundation of this program are available on the department’s website for anyone who wants more detailed information.

First, a state program would place strong emphasis on compliance rather than enforcement. The state can seek voluntary compliance prior to initiation of costly enforcement and penalties. EPA, on the other hand, routinely uses penalties and administrative orders as a first response to violations. This concept is actually included in the proposed statute for this program. We are also committed to providing consultation services to assist municipalities and other permittees in permitting and compliance issues. Permittees can request non-enforcement facility audits, training/education, and other compliance outreach assistance so they can identify potential problems before they become enforcement issues.

State proposals also allow cities to consolidate ground water and surface water quality protection permits to reduce the administrative burden and cost of permitting that are borne by the regulating community. A key implementation strategy for the program is that this will be a joint effort between the Environment Department, the Oil Conservation Division (OCD), and the Mining and Minerals Divisions (MMD) of the Energy, Minerals and Natural Resources Department. OCD will issue NPDES permits for their surface water discharges from oil and gas facilities just as they do for groundwater discharges. MMD will issue coal mining permits just as they do for groundwater protection, and NMED will issue all other permits consistent with groundwater discharge programs. EPA would no longer issue permits in New Mexico once the state has been delegated to administer an NPDES program. Also a state program will provide permittees with global contacts. At a minimum, NPDES staff will be located in Roswell, Santa Fe, Farmington, Las Cruces, and Albuquerque, offices much closer than having to deal with regulators in Dallas, Texas.

Finally, I will talk briefly about the process NMED has undertaken to gather input in addressing concerns of stakeholders about NPDES delegation. In 2004, we formed a workgroup to prepare a proposal for a state NPDES program. Workgroup participants include representatives from municipalities, industries, dairies, advocacy groups, and affected state and federal agencies. I believe that one of the ongoing successes of this workgroup is that participants have been able

to come together, sometimes with heated debate, but mostly in open and honest discussions about issues and concerns. Most workgroup meetings are attended by 30 to 40 workgroup participants. We have received many comments over the past two years from the workgroup and most comments we have been able to address. We will continue to work on program funding over the next year.

In closing, we all know that water is one of our most precious resources. As I mentioned earlier, recent national decisions are putting some of our waters in jeopardy. The state will have to decide how it will fill the gaps left by the federal government. I expect that NPDES delegation will remain an important topic for water quality decision makers.

If you would like more information, you can check our website at: <http://www.nmenv.state.nm.us/swqb/NPDES/index.html>, or contact me for additional information at marcy.leavitt@state.nm.us or (505) 827-2795.

Thank you.

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