

RESPONSE TO COMMENTS
General Permit for Low Threat Discharges on the Navajo Nation
NPDES Permit No. NNG990001

EPA received comments from the New Mexico Environment Department on the draft NPDES General Permit for Low Threat Discharges on the Navajo Nation (LTGP) on June 26, 2023. EPA has summarized the comments and responded to comments below.

COMMENT 1: New Mexico adopted surface water quality standards (WQS) in accordance with CWA Section 303 and the New Mexico Water Quality Act, New Mexico Statutes Annotated (NMSA) 1978 §§ 74-6-1 to -17. State WQS are published in Title 20, Chapter 6, Part 4 of the New Mexico Administrative Code (20.6.4 NMAC), Standards for Interstate and intrastate Surface Waters, as amended by the New Mexico Water Quality Control Commission (WQCC) on September 24, 2022, and approved by the U.S. Environmental Protection Agency (EPA) on February 8, 2023. Any discharges with a potential to reach state of New Mexico waters must meet State water Quality Standards listed in 20.6.4 NMAC.

RESPONSE 1: The NPDES General Permit for Low Threat Discharges on the Navajo Nation (LTGP) authorizes discharges that present no or minimal threat to receiving water quality. Discharges that are eligible for coverage under the LTGP are intermittent, low volume, and/or short-term in nature. Discharges covered under the LTGP do not contain pollutants in concentrations that cause, have the reasonable potential to cause, or contribute to excursions above any applicable water quality criterion. However, to make this explicit, the permit factsheet Part III. B. shall be clarified and include the following language: “Such water quality standards in the case of this permit includes current Navajo Nation Water Quality Standards which have been approved by EPA, as well as federal, and appropriate downstream State Water Quality Standards that EPA may consider on a best professional judgment basis”.

COMMENT 2: The Permittee/Operator shall report all spills to Waters of New Mexico immediately to the New Mexico Environment Department (NMED) as required by the New Mexico Water Quality Control Commission Regulations (20.t.2.1203 NMAC). For non-emergencies during normal business hours, call 505-428-2500. For non-emergencies after hours, call 866-428-6535.

RESPONSE 2: This is a federally issued NPDES permit and as such State regulations do not apply. However, to keep NMED informed, LTGP Part II. 1. A. 2. e. requires the applicant/permittee to provide notice to any state into which discharge is likely to reach waters of a state. The specific address to send the notice in case of New Mexico was provided in an added footnote. Additionally, the contact phone numbers provided to report spills to Waters of New Mexico are included in LTGP Part III F. which covers twenty-four-hour reporting of non-compliance.

COMMENT 3: In [LTGP] Part I. B. 5- Discharge to waters near tribal boundaries, NMED requests that there be consideration for proposed discharges greater than 0.5 MGD (II.b.). These discharges should be evaluated on a case-by-case basis to determine any possibility of crossing Navajo Nations/New Mexico boundaries.

RESPONSE 3: Category II.b. as defined in the permit is for discharges of 0.05 MGD or less from a single or multiple outfalls, AND 30 days or more. There is no provision for discharge of greater than 0.5 MGD in the permit. Additionally, the permit requires that the Notice of Intent (NOI) include a statement as to whether the discharge location is on State Lands or other areas for which EPA does not have permitting authority and whether the discharge will reach waters of a state. If the discharge is likely to do so, the permit requires a statement that the appropriate state agency has been informed. Contact information for NMED has specifically been provided in a footnote.

COMMENT 4: NMED requests to be notified of proposed discharges that may reach Surface Waters of New Mexico. The notification should be sent to psrs.program.manager@env.nm.gov.

RESPONSE: The draft permit required that the Notice of Intent (NOI) include a statement as to whether the discharge location is on State Lands or other areas for which EPA does not have permitting authority and whether the discharge will reach waters of a state. If the discharge is likely to do so, the permit requires a statement that the appropriate state agency has been informed. Previously a mailing address was provided in a footnote. This has been updated to include the email NMED address provided above.

COMMENT 5: Part II.1.A.2.e. footnote 1: NMED requests the addition of the email psrs.program.manager@env.nm.gov for electronic communications. Email notification is preferred.

RESPONSE 5: The footnote 1 has been amended to include the NMED email address provided above with a note that email notification is preferred.

COMMENT 6: In Attachment A. Section A Standard Conditions, Item 12- Reporting Requirements; at 40 CFR 122.41(l): discharges with the reasonable probability to injure or be detrimental to human health, animals, plants, property or unreasonably interfere with public welfare that will affect downstream users in New Mexico should be reported to the State of New Mexico per 20.6.4.1203 NMAC. The contact information in Part II.1. A. 2.e. footnote 1 should be used for reporting.

RESPONSE 6: This is Standard Conditions language that EPA uses for directly issued permits in Region 9. Therefore, no modification is being made to this section. However, clarification will be made in the appropriate section in the permit factsheet as to where any such reports should be sent in addition to reporting to EPA Region 9.