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May 4, 2026

Environmental Protection Agency, Region 6
NPDES Permitting and Wetlands Section
Water Division
Ms. Monica Burrell, P.E., Environmental Engineer
1445 Ross Avenue
Dallas, TX 75202-2733

Via email to: burrell.monica@epa.gov

RE: Proposed NPDES MS4 Permit NMR04B000

Dear Ms. Monica Burrell,

Santa Fe County (the County) appreciates the opportunity to review and comment on the proposed state-wide NPDES Municipal Separate Storm Sewer System (MS4) Permit No. NMR04B000 provided on March 3, 2026. The ability to provide feedback on the proposed permit from the perspective of a Phase II small MS4 outside of the Middle Rio Grande, and through the collaborative lens of the Santa Fe area small MS4 permittees, ensures the final permit meets the capacity for permittees across the state.

The County has performed a high-level review of the proposed permit and compared it to the current 2007 *General Permit for Discharges from Small MS4s NMR04000 Permit*, as well as the 2015 draft *General Permit for Discharges from Small MS4s NMR04000 in the State of New Mexico* and the 2024 *New Mexico Strawman MS4 Permit*. The County has reviewed the document with both the Middle Rio Grande Technical Advisory Committee and the Santa Fe MS4 Advisory Group. Below are high-level comments and concerns regarding the proposed permit. Additionally, we have compiled a list of specific edits and comments to the proposed permit and included these as an attachment.

- **Requesting a full review of permit for formatting and reference corrections.** We request the EPA perform a thorough review of the existing permit for formatting and context errors. Section numbering errors are present throughout the document, creating ambiguity in how to reference the document. Additionally, several appendices and section in-text references do not correspond correctly (e.g. Appendix B is indicated to represent National Historic Preservation Act (NHPA) procedures and references but instead includes the table for

Minimum Quantification Levels [MQL's]). These inconsistencies will cause unnecessary confusion in the interpretation of permit requirements.

- **Clarity on permit requirements applied to Phase I and Phase II designated MS4s.** We request the EPA reformat permit language to more clearly differentiate between the requirements for Phase I, II, and II (designated) permittees prior to final permit implementation. The proposed permit does not adequately define each type of MS4, or how requirements apply to each designee within the state. This is represented through ambiguous context used when describing permit requirements for Phase I, Middle Rio Grande MS4s without excluding Phase II MS4s elsewhere in the state. Current interpretations of permit sections could lead to permit requirements being applied inconsistently based on permittee preference. The current 2007 permit, draft 2015 permit, and 2024 strawman permit included more specific language for the different requirements for Phase I and II MS4s.

Clarification on permit requirements between MS4 designees is of particular concern for Santa Fe County as it relates to the TMDL plan and wet weather monitoring plan requirements. Both were not previously a requirement for Phase II MS4s and would cause unnecessary burden, if required in the new permit.

- **Update permit language to accurately reflect the Code of Federal Regulation and 2020 Census definition of Urban Areas.** We request language referencing “urbanized areas” throughout the permit be updated to reflect definitions consistent with 40 CFR 122.32 and the 2020 census reclassification of “*urbanized areas*” and “*urbanized clusters*” to “*urban areas*”. This inconsistency in terminology reflects a lack of administrative oversight in understanding broader federal regulation that would lead to confusion in how permit requirements are applied to MS4 jurisdictions.

Additionally, the use of outdated language and compiled census boundaries (i.e., current permit language identifies MS4 jurisdictions as inclusive of boundaries identified in the 2000, 2010, and 2020 Census) is arbitrarily applied without consideration for the CFR. If the EPA promulgates the proposed permit without modification, then defined MS4 boundaries should be provided to allow for effective implementation of permit requirements.

- **Request permit deadlines and reporting period to reflect the New Mexico Fiscal Year.** We request proposed reporting periods and deadlines be updated to reflect current permit requirements consistent with the New Mexico fiscal year. The proposed deadlines (e.g., October 1st – September 30th for permittees besides Phase I entities previously covered in NMR04A000) would cause unnecessary burden for small MS4s, as financial tracking and management is compiled on the New Mexico fiscal cycle (July 1st – June 30th).
- **Define how Rio Grande tributaries are treated as discharging into the greater Rio Grande watershed.** We request the EPA better define what “waters discharging in the Rio Grande Watershed” are treated for the purpose of the permit. The Santa Fe River is defined as a direct tributary to the Rio Grande River and could be considered falling under this language. However, the Santa Fe River flows as an ephemeral and intermittent river. The

recent interpretations of the Clean Water Act (CWA) following *Sackett v. EPA (2023)* alters the historic application of the CWA to the Santa Fe River.

Respectfully,



Michael J. W. Carr
Environmental Compliance Officer
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Office: (505) 995-9515

Attachments: List of Comments on the proposed NPDES MS4 Permit NMR04B000

cc:

Brian Synder, Santa Fe County (w/attachment)
Leandro Cordova, Santa Fe County (w/attachment)

List of Specific Comments on the Proposed NPDES MS4 Permit No. NMR04B000

- Part I.A.1 – Permit Area: The term “urbanized areas” was reclassified as “urban area” per the final Phase II rule clarification related to census bureau urban area designation criteria published in the federal register on June 12, 2023 (Vol. 88, No. 112). We request that this terminology be updated throughout the permit to reflect the new interpretation.
- Part I.A.1.b – Permit Area: The permit lists the MS4 jurisdiction as being fully or partially within the urbanized areas as determined by the Albuquerque urbanized area, the 2000, 2010, and 2020 decennial census. This language is inconsistent with 40 CFR 122.32.a.1, which indicates the MS4 area is determined by the latest decennial census. We request the language in NMR04B000 reflects the language indicated in 40 CFR 122.32 and be updated to reflect the MS4 jurisdiction as determined from the latest decennial census.
- Part I.A.2 – Eligible MS4s: Phase I, II, and II (designated) are not defined or classified in the list of eligible MS4s. These classifications are used in tables identifying compliance deadlines throughout the permit (tables 1-8). We request clarity regarding how the which jurisdictions are classified within these three categories.
- Part I.A.2 – Eligible MS4s: The term “urbanized cluster” is utilized to define the Los Alamos jurisdiction in conjunction with “the latest decennial Census”. Per the 2020 Census, the term Urban Clusters is no longer representative of newly defined urban areas. This is incorrect and inconsistent with the language used to identify the permit area in Part I.A.1. We request this is corrected and language be made consistent with previous comments.
- Part I.A.3.b – Eligibility: The paragraph following Criterion B indicates Appendix B relates to the National Historic Preservation Act (NHPA) procedures and references. This instead directs you to Appendix B – Minimum Quantification Levels (MQL’s). We request the reference be updated to Appendix A (Historic Properties Eligibility Procedures).
- Part I.A.4 – Authorized Non-Stormwater Discharges: The first sentence of the section includes “prohibited” incorrectly within the context of the section. Language should be changed from “The following non-stormwater discharges are prohibited” to “permitted”.
- Part I.A.6.a.ii – NOI Second Step: This section includes the dates proposed in the draft permit shared in September 2025. The dates “May 1, 2026, or October 1,2026” are not representative of the effective date of the permit. Comment solicitation for the proposed permit is not closed until May 3, 2026. We request this section be updated to represent a deadline related to the effective date of the permit.
- Part I.B.1.a – Designations: This section identifies MS4s required to submit NOIs as being identified in the 2010 or 2020 census designations. The language is unclear whether this is intended to reflect the urbanized or urban areas and is also inconsistent with the previous language for MS4 designations that include urbanized areas as designated from the 2000 census. We request this language be updated to reflect the final Phase II rule clarification for

urban areas and CFR 40 122.32 indicating MS4s are represented by the latest decennial census.

- Part I.B.2.b – Information Required in the Supplemental NOI: The proposed permit indicates materials not previously required for Phase II MS4s be submitted in a supplemental NOI. This includes a proposed TMDL plan and a proposed Wet Weather Monitoring Plan. We request clarity as to whether this applies to Phase I, II, or II (designated) MS4s.
- Part I.B.2.4(?) – Contents of Notice(s) of Intent: Permit indicates that operators must submit their signed NOI to the EPA and NMED via email. It is also required that NOIs be applied for via the EPA’s NPDES eReporting Tool once available. We request clarity as to whether email submission will be required for the EPA once the eReporting tool is available.
- Part I.B.2.4(?) – Contents of Notice(s) of Intent: Section 4 “Where to Submit” and Section 5. Permittees with Cooperative Elements in their SWMP are inconsistently ordered within the section formatting. These sections should be updated to section “c” and “d”, respectively.
- Part I.B.2.4(?) – Contents of Notice(s) of Intent: permit language indicates that a complete copy of the signed NOI be maintained “on-site”. We request clarity on what “on site” means for an MS4. We request clarity on whether this means a physical, printed copy of the NOI be kept at an office building associated with the MS4, or if electronic versions available on MS4 websites are permitted to meet this requirement.
- Part I.C.2 – Discharges to Impaired Waters with and without approved TMDLs: This section of the permit does not have consistent formatting for subsections. This makes it difficult to reference for review and potential implementation.
- Part I.C.2.vi – Monitoring or Assessment of Progress: Can a permittee use Method A or Method B individually? Paragraphs are joined with and, not or.
- Part I.D – Stormwater Management Program (SWMP): This section was not given a section code and should be updated with “D” to be consistent with the proposed permit formatting.
- Part I.D.4.h – Develop program to address PFAS: This section is inappropriately formatted into the section with the following section being unrelated to PFAS.
- Part I.D.4.h – Develop program to address PFAS: The PFAS requirements of the permit are partially met through the passing of the New Mexico PFAS Protection Act and the amendment of the New Mexico Hazardous Waste Act (74.4 NMSA 1978) in 2025. Prohibition on the use of Aqueous Film Forming Foam (AFFF) has specifically been enacted to prevent additional PFAS exposures from this product. Additionally, Santa Fe County is currently in the process of accessing PFAS contamination from the Santa Fe Airport National Guard Facility. We request additional information regarding the requirements where clean-up is required where AFFFs have been utilized.

- Part III.A – Wet Weather Monitoring Plan: Permit language identifying permittees required to submit a wet weather monitoring plan is unclear. “MS4s discharging into the Rio Grande” is not defined, nor does it identify whether EPA intends this provision to apply to all upstream Phase II MS4s. We request this section be revised to accurately identify how the requirement is to be applied to Phase I, II, and II (designated) permittees.
- Part III. A.1.a – Pollutant Parameters: section incorrectly directs readers to Appendix C to view a list of 303(d) pollutants. We request this be updated to accurately reflect the permit references.
- Part III.A.1.b – Cooperative Monitoring Program: pollutant parameters do not include Cadmium, Arsenic, or Thallium, which are listed in the fact sheet. We request clarity on whether these pollutant parameters are included in the permit requirements.
- Part III.A.2– General Wet Weather Monitoring Requirements: This requirement was not applied to Phase II MS4s in previous iterations of the permit. Developing and implementing wet weather monitoring plans within the provided timelines would be difficult for Santa Fe County to meet. Additionally, supporting laboratory services for analyzing stormwater samples are in Albuquerque (~60 miles; 1-hour away). Office hours, driving times, and staff availability could restrict the ability of the County from meeting permit requirements without additional flexibility included in the permit language.

Flexibility in meeting this requirement should include sampling along any portion of the hydrograph.

- Part III.B – Annual Report: The annual report period and submittal dates represent the federal fiscal year and not the New Mexico fiscal year, as utilized in previous iterations of the permit. We request this section should be updated to reflect the existing reporting periods: July 1st – June 30th for all permittees. Additionally, we request annual report submittals correspond to the October 1st due date for small MS4s already in use.
- Part III.B.6 – Annual Report: permit language indicates that a complete copy of Annual Report must be maintained “on site”. We request clarity on what “on site” means for an MS4. We request clarity on whether this means a physical, printed copy of the Annual Report be kept at an office building associated with the MS4, or if electronic versions available on MS4 websites are permitted to meet this requirement.
- Appendix B. Minimum Quantification Levels (MQL’s): PFAS is not listed in the appendix. We request stormwater sampling methodology and reporting limits be included.