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MEMORANDUM

To: Kim Hill, HRMB  
Fr: Glenn E. Saums, HPM, SWQB-PSRS  
Subj.: Definition of Surface Water  
Date: 25 October 1996

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You requested the Surface Water Quality Bureau provide HRMB a definition of "surface water" for use in HSWA module RCRA permits.

Presently there is no statutory or regulatory definition for "surface water." The term surface water has been arrived at through the definitions for "navigable waters<sup>1</sup>", "waters of the United States<sup>2</sup>", and "water(s) of the State<sup>3</sup>."

If the term "surface water" needs to be used in lieu of one of the above defined terms, I recommend that it be defined as follows:

"surface water" means "waters of the United States" as defined at 40 CFR 122.2 or "water(s) of the State" as defined at 20 NMAC 6.1.3100.WW.

Alternatively, if you believe the reference to federal regulations may not be appropriate for your purpose, the above could be further simplified to:

"surface water" means "water(s) of the State" as defined at 20 NMAC 6.1.3100.WW.

If you have any questions, please contact me at extension 2827.

1. Federal Clean Water Act §502(7) - "... navigable waters means waters of the United States...."

2. 40 CFR 122.2. *Waters of the United States or waters of the U.S. means:*

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands."

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs prairie potholes, wet meadows, playa lakes, or natural ponds the use degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters: (1) Which are or could be used by interstate or foreign travelers for recreational or other purposes; (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or (3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;

(f) The territorial sea; and

(g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

3. New Mexico Standards for Interstate and Intrastate Streams (20 NMAC 6.1.3100.WW). "Water(s) of the State" means all interstate and intrastate waters including, natural ponds and lakes, playa lakes, reservoirs, perennial streams and their tributaries, intermittent streams, sloughs, prairie potholes and wetlands.



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