

**PROFESSIONAL ON-SITE WASTEWATER RE-USE ASSOCIATION OF NEW  
MEXICO, INC.  
P.O. Box 8542  
Santa Fe, NM 87504  
(505)988-7676**

**AND**

**LINK SUMMERS Pro Se  
P.O. Box 1600  
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July 30, 2009

Joyce Medina, Administrator  
New Mexico Environmental Improvement Board  
Harold Runnels Building, Rm N2150  
1190 St. Francis Drive  
Santa Fe, New Mexico 87505

**Re: Petition for Public Hearing to Consider a Proposed Amendment to the Liquid Waste Disposal and Treatment Regulations in Title 20, Chapter 7, Part 3, Section 904 of the New Mexico Administrative Code.**

Dear Ms. Medina:

The Professional On- Site Wastewater Re-Use Association of New Mexico (“POWRA”) and Link Summers, Pro Se, respectfully request a hearing before the Environmental Improvement Board (“EIB”) on proposed amendments to the Liquid Waste Disposal and Treatment Regulations, 20.7.3 NMAC. The purpose of the proposed amendments is to make adjustments to the current regulations, to clarify various provisions and to assure that the Liquid Waste Program performs its functions according to law.

POWRA and Mr. Summers seek to preserve Section 904 of 20.7.3 NMAC that is now in the process of being adjudicated in District Court in Santa Fe. POWRA and Mr. Summers believe that the judicial process has begun and should be allowed to run its course. For the reasons set forth in POWRA’s attorney’s letter, the Constitution of the State of New Mexico may require that the proceedings of the court be concluded before the Environment Improvement Board can act on a request for a rule change pertaining to Section 904.

POWRA and Mr. Summers respectfully request that the Board consider this Petition at the appropriate time. POWRA and Mr. Summers expect that the hearing will take approximately 1 day. At the appropriate time, scheduling the hearing should allow

for 60 days notice to the public pursuant to NMSA 1978, §74-1-9D (1985). POWRA and Mr. Summers understand that the New Mexico Environment Department has asked for a rule change for Section 904 as well. POWRA and Mr. Summers would suggest that the two requests be consolidated into one hearing as has been done in the past.

The proposed amendments include:

**Section 20.7.3.904 REQUIREMENTS FOR CERTIFICATION:**

A. Amend to insert the words "The department shall assign to the Utility Operator Certification Program of the department the duty of adopting, developing, administering, and implementing the certification program on the effective date of this regulation and" after the words " After July 1, 2009:"

(1) Amend to delete the words " installer, wastewater reuse irrigator" after the words " system designer," and before the words " system designer, "; insert the word "consultant" after the words " maintenance service provider," and before the words " or septage pumper"; replace the word " approved " with the word "adopted"; replace the word " department" with the words "Utility Operator Certification Program;

(2) Amend to replace the word "approved " with the word "adopted"; replace the word "department" with the words "Utility Operator Certification Program;

(3) Amend to replace the word "approved " with the word "adopted"; replace the word "department" with the words "Utility Operator Certification Program;

B.

Amend to delete the existing (3)

(3) Delete the language "Installers shall possess a valid, applicable New Mexico contractor's license and demonstrate competence in the installation of on-site liquid waste systems.

(a) An installer 1 shall demonstrate competence in the installation of conventional treatment and disposal systems and holding tanks.

(b) An installer 2 shall demonstrate competence in all forms of on-site liquid waste systems. An installer 2 must have at least 3 years of installation experience, 30 hours of approved coursework and certified by the manufacturer of approved systems they install. ";

Amend to insert a new (3)

(3) Consultants shall complete a program and pass an exam adopted by the Utility Operator Certification Program prior to offering any consulting services regarding on-site liquid waste disposal and treatment systems

Amend to delete the existing (4)

(4) Wastewater reuse irrigation service providers shall possess a valid, applicable New Mexico contractor's license and demonstrate competence in the configuration, installation, operation and maintenance of wastewater irrigation systems and the protection of public health.

Amend to renumber existing B. (5), (6), (7), and (8) to be the new B. (4), (5), (6), and (7) respectively.

C.

(2) Amend to replace existing language " Installer 1 may only install conventional treatment systems and conventional disposal systems that do not involve

dosing or other mechanical distribution systems." with the following language "Consultants shall not offer any consultation concerning services or activities for which a contractor's license is required unless the consultant possesses the appropriate contractor's license issued by the construction industries division of New Mexico."

D.

(2) Amend to replace the word "department" with the words "Utility Operator Certification Program;

E.

(1) Amend to replace the word "department" with the words "Utility Operator Certification Program;

(2) Amend to replace the word "department" with the words "Utility Operator Certification Program;

Amend to delete 20.7.3.904. F, G, H, and I in their entirety

POWRA and Mr. Summers have provided an underlined, strike through version of 20.7.3 reflecting the proposed changes.

The Professional On-Site Wastewater Re-Use Association of New Mexico and Link Summers have worked diligently with various installers, site evaluators, system designers, installers, pumpers, maintenance service providers, pumpers, state and local officials, regulatory authorities, manufacturers, trade associations, and educators in preparation of these proposed amendments, and will continue to do so.

Thank you for your consideration of this request.

Sincerely,

Ralph Baker Dotson  
President  
Professional On-Site Wastewater Re-Use  
Association of New Mexico, Inc.

Link Summers, Pro Se

Link Summers, Pro Se

E. Prior to the transfer of a property with an existing on-site liquid waste system, the current system owner shall have the system inspected and evaluated by an inspector utilizing a department approved form.

(1) the system shall be sampled in accordance with permit conditions for compliance with 20.7.3.602-604 NMAC if a regularly scheduled sampling event has not occurred within 180 days of the inspection; the sampling results shall be included with the system report; if a regularly scheduled sampling event has occurred within 180 days of the inspection, the results of the sampling shall be included in the inspection report; and

(2) an amendment of permit reflecting ownership change is required pursuant to Subsection E of 20.7.3.403 NMAC.

F. Inspections shall be recorded on forms approved by the department. Inspection reports shall be kept on file by the inspector of the on-site liquid waste system. Inspectors shall submit to the department copies of all inspection reports, whether completed or not, within 15 days of the inspection. A permit or variance application shall be submitted within 15 days of the inspection to correct any deficiencies or permit violations identified by the inspection. In addition, all inspection reports shall include the global positioning system (GPS) coordinates of the tank. Once an inspection is requested, all results, whether complete or not, shall be submitted to the department.

G. In the event of a failed system, that includes, but is not limited to disposal fields, the owner shall remedy the failed system with department approval.

[20.7.3.902 NMAC - N, 9/1/05; A, 4/1/07]

#### **20.7.3.903 MAINTENANCE SERVICE PROVIDERS (MSP) FOR CONVENTIONAL AND ADVANCED ON-SITE LIQUID WASTE SYSTEMS:**

A. Maintenance service providers (MSP) shall at a minimum:

- (1) obtain certification by the national association of waste transporters (NAWT) or equivalent;
- (2) inspect, operate and maintain the system in accordance with the manufacturer's specification; and
- (3) submit pumping and inspection records upon request to the department.

B. The MSP personnel shall be certified by the manufacturer for the proprietary unit being maintained.

C. The MSP personnel shall be trained in the proper operation and maintenance of the system.

D. The MSP personnel shall have the ability to sample the unit in accordance with approved sampling methods under this part.

E. The MSP shall have in place a standardized quality assurance/quality control (QA/QC) plan.

F. The MSP shall be able to respond to emergency situations within forty-eight (48) hours of being notified.

G. A public MSP shall adopt an ordinance, bylaw or rule, as appropriate, approved by the department, detailing the terms and conditions of service.

H. A private MSP shall use a contract for service that contains, at least, minimum standards approved by the department.

I. The MSP shall meet minimum requirements, as promulgated by the department, for effective operation, such as:

- (1) reasonable response time;
- (2) appropriate equipment;
- (3) parts inventory;
- (4) quality assurance/quality control plan; and
- (5) insurance.

J. The MSP shall notify the department of any failed system.

[20.7.3.903 NMAC - N, 9/1/05]

#### **20.7.3.904 REQUIREMENTS FOR CERTIFICATION:**

A. The department ~~will develop~~ shall assign to the Utility Operator Certification Program the duty of adopting a certification program by July 1, 2010 that addresses the competency, minimum skill set, and specifications below and as provided by law. After January 1, 2011:

(1) any person offering services pertaining to an on-site liquid waste system, including site evaluator, system designer, ~~installer, wastewater reuse irrigator,~~ inspector, maintenance service provider, consultant or septage pumper, shall be certified after completing a program and passing an exam ~~approved~~ adopted by the ~~department~~ Utility Operator Certification Program;

(2) employees of the department reviewing, approving or inspecting on-site liquid waste systems shall be certified as department liquid waste specialist after completing a program and passing an exam ~~approved~~ adopted by the department Utility Operator Certification Program; and

(3) a homeowner shall complete a program and pass an exam ~~approved~~ adopted by the department Utility Operator Certification Program prior to the issuance of a permit for a homeowner installed system.

B. General requirements for certifications of persons involved in the liquid waste program are specified below.

(1) Site evaluators shall demonstrate competence in soil evaluation to determine acceptable liquid waste disposal application rates and identify potential areas of concern, such as fractured bedrock, shallow ground water and karst terrain.

(2) Liquid waste system designers that configure conventional treatment systems and approved proprietary advanced systems shall demonstrate competence in configuration of on-site liquid waste systems, certification by the manufacturer of approved systems proposed and a basic understanding of the treatment and disposal process.

~~(3) Installers shall possess a valid, applicable New Mexico contractor's license and demonstrate competence in the installation of on-site liquid waste systems.~~

~~(a) An installer 1 shall demonstrate competence in the installation of conventional treatment and disposal systems and holding tanks.~~

~~(b) An installer 2 shall demonstrate competence in all forms of on-site liquid waste systems. An installer 2 must have at least 3 years of installation experience, 30 hours of approved coursework and certified by the manufacturer of approved systems they install.~~

(3) Consultants shall complete a program and pass an exam adopted by the Utility Operator Certification Program prior to offering any consulting services regarding on-site liquid waste disposal and treatment systems

~~(4) Wastewater reuse irrigation service providers shall possess a valid, applicable New Mexico contractor's license and demonstrate competence in the configuration, installation, operation and maintenance of wastewater irrigation systems and the protection of public health.~~

(5) (6) Inspectors shall demonstrate competence in the inspection of on-site liquid waste systems. Certification by the national association of waste transporters (NAWT), NSF international or a department-approved program is demonstration of competence in the inspection of conventional treatment and disposal systems.

(6) (7) Maintenance service providers (MSP) shall demonstrate competence in the operation and maintenance of on-site liquid waste systems. Persons providing service shall follow department procedures for MSP and shall be certified by the manufacturer of the systems they operate and maintain.

(7) (8) Septage pumpers shall demonstrate familiarity with applicable regulations and demonstrate competence in locating and exposing septic tanks, measuring septic tank sludge and scum levels, the complete pumping of septic tank sludge, maintenance of pumping equipment in a sanitary condition, prevention of pathogen transmission and preparation of an appropriate safety plan for normal operations.

(8) (9) Manufacturers of approved advanced treatment systems shall provide training and certification for their systems at least once per year. Manufacturers may charge reasonable fees for their training and certification.

C. Limitations on scope of services.

(1) Liquid waste system designers may only configure conventional treatment systems, approved proprietary advanced treatment systems and conventional, proprietary and alternative disposal systems described in 20.7.3 NMAC.

~~(2) Installer 1 may only install conventional treatment systems and conventional disposal systems that do not involve dosing or other mechanical distribution systems.~~

~~(3) Installer 2 may install all forms of on-site liquid waste systems.~~

(2) Consultants shall not offer any consultation concerning services for which a contractor's license is required unless the consultant possesses the appropriate contractor's license issued by the construction industries division of New Mexico.

D. Expiration and renewal of certifications and establishment of fees.

(1) Certifications are valid for a period up to three (3) years and shall expire on December 31 of the third year of issuance.

(2) Renewal of certifications require completion of at least 8 hours of continuing education units per year ~~approved~~ adopted by the department Utility Operator Certification Program.

(3) The department shall establish fees for the initial application and renewal of certifications.

E. Suspension, revocation and denials.

(1) The department Utility Operator Certification Program may suspend or revoke a certification for cause. Failure to provide service in accordance with the certification shall be grounds for revocation of the certification.

(2) The department Utility Operator Certification Program may deny certification if it determines that an applicant does not meet all requirements of this part or has violated any provision of these regulations.

~~F. Education steering committee. The secretary shall appoint an education steering committee. The committee shall consist of at least one representative of each classification for which certification is required and one department appointed member. The committee shall meet monthly until sufficient classes for all categories of certification are approved. Thereafter the committee shall meet semi-annually or as required for the purpose of certification reviews of sponsors, courses and instructors and shall make recommendations to the secretary as to findings.~~

~~G. Approval of sponsors.~~

~~(1) All sponsors wishing to offer department approved courses for credit must be approved by the secretary prior to accepting students.~~

~~(2) Educational institutions, proprietary schools, professional organizations, internet-based training providers or businesses wishing to become department approved sponsors must submit an application for department approval.~~

~~(3) The department shall maintain a list of approved sponsors.~~

~~(4) An approved sponsor shall comply with the following requirements.~~

~~(a) Conduct all courses in accordance with department rules and regulations and education policies.~~

~~(b) Permit the department or its representative access to classes being conducted and make available to the department, upon request, all information pertaining to the activities of the sponsor.~~

~~(c) Advertise at all times in a manner free from misrepresentation, deception or fraud.~~

~~(d) Prominently display the current certificate of sponsorship in the main office of the sponsor as registered with the department.~~

~~(e) In the event a sponsor ceases operations while students are enrolled who have not completed their program of study, submit within thirty (30) days a list of students enrolled at the time of closure, the amount of tuition paid, the status of course work in progress and all other student records.~~

~~(f) Maintain current, complete and accurate student records and instructor critiques or summaries, which shall be accessible at all times to the department or its authorized representatives. These records shall include, but not be limited to, a record of payments made, a record of attendance and a record of course work completed.~~

~~(g) Conduct all courses in accordance with course content requirements approved by the department.~~

~~(h) Certify no student as successfully completing a pre-certification course unless the student has attended at least 75% of the classroom instruction and has passed the course.~~

~~(i) Certify no certificate holder as successfully completing approved certification or continuing education course unless they have attended at least 90% of the classroom instruction.~~

~~(j) Advise the department of change of address and telephone number.~~

~~(k) Reapply for sponsorship in event of change of majority ownership.~~

~~(l) Notify the department in writing of change of directorship.~~

~~(m) Renew sponsorship approval every three (3) years.~~

~~(5) Failure to comply with this rule may result in the loss of sponsor approval.~~

~~H. Approval of courses.~~

~~(1) All pre-certification and continuing education courses shall be approved by the secretary.~~

~~(2) All courses shall be offered in accordance with established department course content requirements.~~

~~(3) All approved courses are subject to periodic review by the department.~~

~~I. Approval of instructors.~~

~~(1) All instructors shall be approved by the secretary.~~

~~(2) All instructor candidates shall complete an application for department review.~~

~~(3) All instructor candidates must be prepared to make a minimum fifteen (15) minute presentation to the education steering committee.~~

~~(4) An approved instructor shall comply with the following requirements:~~

- ~~\_\_\_\_\_ (a) conduct all classes in accordance with department rules and regulations and education policies;~~
- ~~\_\_\_\_\_ (b) insure that all instruction is free from misrepresentation;~~
- ~~\_\_\_\_\_ (c) instruct in accordance with department approved course content requirements;~~
- ~~\_\_\_\_\_ (d) allow access to any class to any duly appointed representative of the department;~~
- ~~\_\_\_\_\_ (e) renew approval biannually as prescribed by the department; instructor approval expires on December 31 of each even numbered year;~~
- ~~\_\_\_\_\_ (f) certify to the sponsor a true and correct record of student attendance; and~~
- ~~\_\_\_\_\_ (g) failure to comply with this section may result in the loss of instructor approval.~~

[20.7.3.904 NMAC - N, 9/1/05; A, 4/1/07]

**20.7.3.905 TECHNICAL ADVISORY COMMITTEE:** Technical product review and approval shall be in accordance with 9-7A-15 NMSA 1978.

[20.7.3.905 NMAC - Rp, 20.7.3.8 NMAC, 9/1/05]

**20.7.3.906 ADMINISTRATIVE ENFORCEMENT:**

A. Any violation of these regulations is a petty misdemeanor subject to criminal penalties as authorized by NMSA 74-1-10.

B. The department may appear and prosecute any misdemeanor proceeding if the appearance is by an employee authorized by the secretary to institute or cause to be instituted an action on behalf of the department.

C. The secretary, at his discretion, may elect to pursue criminal or civil penalties, or both, for any violations of these regulations.

D. Upon any violation of these regulations, the department may:

(1) issue a compliance order stating the nature of the violation requiring compliance immediately or within a specific time period and assess a civil penalty for any past or current violation or both; or

(2) commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

E. Any penalty assessed in the compliance order for residential on-site liquid waste systems shall not exceed one hundred dollars (\$100) for each violation.

F. Any penalty assessed in the compliance order for non-residential on-site liquid waste systems shall not exceed one thousand dollars (\$1000) for each violation.

G. If a violator fails to achieve compliance within the time specified in the compliance order, the secretary shall assess civil penalties of not more than one thousand dollars (\$1000) for each noncompliance with the order.

H. A compliance order issued pursuant to this section shall become final unless, no later than thirty (30) days after the compliance order is served, the party named in the order submits a written request to the secretary for a hearing.

I. All requests for hearings shall be in accordance with 20.7.3.406 NMAC.

J. Penalties collected pursuant to violations of 20.7.3 NMAC shall be deposited in the state treasury to be credited to the general fund.

K. Any noncompliance with any provision of 20.7.3 NMAC or any permit provision may be subject to penalties.

[20.7.3.906 NMAC - N, 9/1/05]

**20.7.3.907 AUTHORITY TO DISCONNECT SOURCE OF WATER SUPPLY:** After due process is provided, the department may disconnect the source of water supply to a commercial or residential unit that is served by any on-site liquid waste system that has become a failed system and that presents an imminent hazard to public health. This authority includes authority to disconnect power utilities if necessary to disconnect the source of water supply. The department shall give notice of its actions to the unit owner and the tenants affected or as otherwise provided by the law.

[20.7.3.907 NMAC - Rp, 20.7.3.8 NMAC, 9/1/05; A, 4/1/07]

**20.7.3.908 through 20.7.3.1000 [RESERVED]**

**20.7.3.1001 CONSTRUCTION:** 20.7.3 NMAC shall be liberally construed to carry out its purpose.