

**STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION**

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In the Matter of:)	
)	
PROPOSED AMENDMENT)	No.: WQCC 09-13 (R)
TO 20.6.2 NMAC (Diary Rules))	
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)	

PROCEDURAL ORDER

GENERAL

In conducting the hearing for the Dairy Rules, the Hearing Officer will follow, in addition to the specific procedures set out below, Part I (General Provisions), Part V (Appeals and Stays), and Part VI (Miscellaneous Provisions) of the Guidelines for New Mexico Water Quality Commission Regulation Hearings, unless later modified. This Order should be read with the Scheduling Order issued concurrently.

DOCUMENT FILING

201. FILING AND SERVICE OF DOCUMENTS.¹

201A. The filing of any document as required by this Order shall be accomplished by delivering the document to the Commission's Administrator, Joyce Medina, 1190 St. Francis Drive, Suite N-2150, Santa Fe, New Mexico 87502. Telephone: 505.827.2425.

201B. Any person filing any document shall:

¹ The numbering begins with 201 to generally follow the numbering convention in the Guidelines for Water Quality Control Commission Regulation Hearings.

1. provide the Administrator with an original and five copies of the document, along with an electronic version; and
2. serve a copy thereof on the Ground Water Quality Bureau of the New Mexico Environment Department and on all persons filing an entry of appearance, proposed changes to the standards, or notice of intent to present technical testimony (collectively "Parties"). The Service List will be available in the office of the Administrator.

201C. Whenever these guidelines require service of a document, service shall be made by delivering a copy of the document to the person to be served or by mailing it to that person. If a person is represented by an attorney, service of the document shall be made on the attorney. Service by mail is complete upon mailing the document. "Mail" may include electronic transmission if a party has provided an e-mail address for that purpose. Service on the Administrator shall be deemed to be accomplished upon receipt of the document by the Administrator. The Administrator's receipt by e-mail will be shown by an e-mail reply.

201D. The Administrator shall maintain a service list.

DOCUMENT EXAMINATION

202. EXAMINATION OF DOCUMENTS FILED.

202A. EXAMINATION ALLOWED. Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during normal business hours, inspect and copy any document filed with the Administrator. Such documents shall be made available by the Administrator, as appropriate. The Administrator shall maintain the original submittals for the record proper and a separate file of submittals for public examination.

201B. COST OF DUPLICATION. The cost of duplicating documents shall be borne by the person seeking copies of such documents in accordance with provisions of law.

PREHEARING PROCEDURES

302. NOTICE OF HEARING.

302A. The Commission shall give public notice of the hearing at least thirty (30) days before the hearing. Public notice shall be given in accordance with the Water Quality Act and Commission Guidelines.

302B. The Administrator shall mail the notice to the Parties and to persons who have made a written request to the Commission for advance notice of regulatory change hearings and who have provided the Commission with a mailing or electronic address. Requests for such notice shall be addressed to the Administrator.

302C. Public notice of the hearing shall state:

1. the subject, including a general description of the proposed regulatory change(s), time, and place of the hearing;
2. the statutes, regulations, and procedural guidelines governing the conduct of the hearing;
3. the manner in which persons may present their views or evidence to the Commission, including times outside business hours when non-technical public comment may be offered;
4. the location where persons may secure copies of the proposed regulatory change(s); and
5. when the Commission may be expected to make a decision on the proposed regulatory change(s).

303. TECHNICAL TESTIMONY.

303A. In order to present direct technical testimony, a person must file a notice of intent to present technical testimony no later than the applicable deadline specified in the Scheduling Order. The notice shall:

1. identify the person for whom the witness(es) will testify;
2. identify each technical witness the person intends to present and state the qualifications of that witness including a description of their educational and work background;
3. attach the full direct testimony in writing of each technical witness;
4. include the text of any recommended modifications to the proposed regulatory change, provided, however, that any person proposing substantive modifications must file proposed regulatory changes and statement of basis by the applicable deadline specified in the Scheduling Order; and
5. identify and attach all exhibits to be offered by the person.

303B. In order to present technical testimony on rebuttal, a person must file a notice of intent to present technical testimony on rebuttal no later than the applicable deadline specified in the Scheduling Order. The notice shall:

1. identify the person for whom the witness(es) will testify;
2. identify each technical witness the person intends to present and state the qualifications of that witness including a description of their educational and work background;
3. identify the direct evidence each technical witness will rebut;
4. attach the full rebuttal testimony in writing of each technical witness;

5. include the text of any recommended modifications to the proposed regulatory change, provided, however, that any person proposing substantive modifications must file proposed regulatory changes and statement of basis by the applicable deadline specified in the Scheduling Order; and
6. identify and attach all exhibits to be offered by the person.

303C. The Hearing Officer shall enforce Section 303 through the exclusion of technical testimony or exhibits, as applicable.

304. PARTICIPATION BY GENERAL PUBLIC.

304A. Any member of the general public may present non-technical testimony and exhibits at the hearing. No prior notification shall be required.

304B. A member of the general public may submit a written non-technical statement for the record, in lieu of oral testimony at the hearing at any time prior to the close of the hearing.

305. LOCATION OF THE HEARING. The hearing shall be held in Santa Fe.

HEARING PROCEDURES

401. CONDUCT OF HEARINGS.

401A. The rules of civil procedure and the rules of evidence shall not apply.

401B. The Hearing officer shall conduct the hearing so as to provide a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome or burdening the record with unnecessary repetition. The hearing shall proceed as follows:

1. The hearing shall begin with an opening statement from the Hearing Officer. The statement shall identify the nature and subject matter of hearing and explain the procedures to be followed;

2. A Party who files a notice of intent to present technical testimony may make an opening statement at the beginning of its case-in-chief;
3. the Department shall present its case first;
4. The other Parties who have filed a notice of intent to present technical testimony will present their cases next; the Hearing Officer shall establish an order for the presentation of their cases-in-chief in the pre-hearing conference;
5. The Parties shall not orally present their pre-filed direct and rebuttal testimony at the hearing, except for a summary limited to fifteen minutes per witness, at the option of each party. Oral summaries shall not include new facts or arguments not included in the prefiled written testimony.
6. The Parties shall be entitled to cross-examination in the same order as their presentation of cases-in-chief, followed by persons who filed Entries of Appearance;
7. Technical testimony at the hearing should be limited to introducing and qualifying witnesses, allowing witnesses to endorse their previously filed testimony and present a summary of no more than fifteen minutes, presenting new information responsive to rebuttal testimony filed on March 29, 2010; responding to cross-examination by other Parties, and presenting redirect testimony from any witness on a matter within the scope of his or her cross-examination;
8. With respect to the presentation of new information responsive to rebuttal testimony, witnesses may refer to previously filed testimony as appropriate and necessary; and

9. With respect to cross-examination, the Parties or other interested persons present at the hearing may inquire regarding any matter addressed in the witness's pre-filed or oral testimony. To facilitate the cross-examination of witnesses on matters addressed in their pre-filed testimony, each Party shall make each of its witnesses available for cross-examination at the hearing. A Party may elect to present their witnesses for cross-examination as a panel, but any Party conducting cross-examination may direct a question to a specific witness.

10. If the hearing continues for more than one day, the Hearing Officer shall provide an opportunity each day for testimony from members of the general public, some of which will be outside normal working hours. Members of the general public who wish to present testimony shall indicate their intent on a sign-in sheet; and

11. At the close of the hearing, the Hearing Officer shall announce that the record is closed except for the submittal of proposed statements of reasons and written closing argument by the Parties, and shall identify the deadline for filing the submittals.

402. TESTIMONY AND CROSS EXAMINATION.

402A. All testimony will be taken under oath or affirmation.

402B. The Hearing Officer shall admit any relevant evidence, unless the Hearing Officer determines that the evidence is incompetent or unduly repetitious.

402C. Any person who testifies at the hearing shall be subject to cross-examination on the subject matter of the direct testimony and any matter affecting the witness' credibility. Any person at the hearing may conduct cross-examination as may be required for a full and true

disclosure of matters at the hearing. The Hearing Officer may limit cross-examination to avoid harassment, intimidation, needless expenditure of time or undue repetition.

403. EXHIBITS.

403A. Any person offering an exhibit pursuant to Section 303 shall provide at least one copy for review by persons attending the hearing.

403B. All exhibits shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially.

403C. Exhibits consisting of large charts, diagrams, models or other bulky objects are discouraged, but persons may use such demonstrative aids and may submit smaller versions as exhibits for the record. If visual aids (e.g., overhead projections and power point presentations) are used, legible copies shall be submitted for the record.

404. TRANSCRIPT OF PROCEEDING.

404A. The NMED will pay for the preparation of the transcript that is the official record of the proceeding.

404B. Any person desiring a copy of the transcript of proceeding may obtain a copy directly from the court reporter at his or her own cost, or may review the copy of the transcript maintained by the Administrator.

405. POST HEARING SUBMISSIONS.

405A. The Hearing Officer shall hold the record open for a reasonable period of time following the hearing to allow the Parties to submit proposed statements of reasons and written closing argument.

406. HEARING OFFICER'S REPORT.

406A. If the Commission directs, the Hearing Officer or Commission Counsel shall file a draft proposed statement of reasons.

406B. The Parties may file exceptions or comments on the draft proposed statement of reasons within the time specified by Commission.

407. DELIBERATION AND DECISION.

407A. Commissioners may attend any part or all of the hearing. The Administrator will provide a copy of the transcript to all Commission members who did not attend the hearing and wish to participate in the deliberations and decision.

407B. If directed by the Commission, Commission Counsel or the Hearing Officer shall provide Commissioners with a proposed statement of reasons within the time specified by the Commission. The Administrator shall provide Commissions with timely filed exceptions or comments on the proposed statement of reasons.

407C. The Commission shall issue its decision on the proposed regulatory change(s) in a suitable format, which shall include its statement of reasons for the action taken.

407D. The Commission's written decision and statement of reasons shall be the official version of the Commission's action. Other written or oral statements by Commissioners shall not be recognized as part of the official version of the Commission's action.



Hearing Officer