

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

**IN THE MATTER OF:
THE PETITION TO AMEND THE STANDARDS
FOR INTERSTATE AND INTRASTATE SURFACE WATERS
20.6.4 NMAC**

No. WQCC 24-31 (R)

**Triad National Security, LLC,
Newport News Nuclear BWXT-Los Alamos, LLC,
and U.S. Department of Energy, Office of
Environmental Management**

Petitioners.

SECOND PRE-HEARING ORDER

On September 10, 2024, following discussion, the Water Quality Control Commission (Commission), rescheduled the hearing in this matter to January 14, 2025.

Having heard the Commission's discussion, reviewed the calendar, and considered the opportunity to adjust the prehearing headlines set earlier, the Hearing Officer orders as follows:

1. The public hearing in this matter will be conducted in-person at the State Capital Building, with a virtual participation option, directly after the Water Quality Control Commission's regularly scheduled meeting beginning at 9 a.m. on Tuesday, January 14, 2025, and continuing through January 15, 2025, as necessary to hear all testimony, evidence, and public comment. The Commission may choose to deliberate on the Petition following the close of the record, or may choose to deliberate in a subsequent meeting.
2. The Commission Administrator is directed to pursue the possibility that a physical location can be identified in Los Alamos County where someone wishing to participate could appear in order to use a computer system in that location.

3. The Commission Administrator is further directed to work with the Petitioner and the Surface Water Bureau to assure that public notice of the new hearing date and new prehearing deadlines is timely published in all appropriate locations, including but not limited to the New Mexico Register, the Albuquerque Journal, the Los Alamos Daily Post, the New Mexico Sunshine Portal, and the Commission webpage. The Administrator may identify those notices requiring arrangements for payment as the financial responsibility of the Petitioner. The hearing notice shall also be sent to both the Commission's interested parties email list and the Bureau's interested parties email list.
4. The Petitioner, Bureau, and Administrator shall work together to assure that all other administrative requirements are met to allow the Commission to hear the matter and to make a decision following the hearing. This includes, but may not be limited to, the drafting of a public involvement plan (PIP), letters to the Small Business Regulatory Advisory Commission and the New Mexico Legislative Council Service, and communication with the Environmental Protection Agency.
5. In the event of a dispute or confusion relating to responsibility for a particular element of administrative support to the Commission in connection with the hearing, any party may request a conference with the Hearing Officer.
6. At the hearing, Petitioners will present their evidence first, followed by NMED, and then other parties as decided following the submission of Notices of Intent to Present Technical Testimony (NOIs). The Hearing Officer retains discretion to deviate from that schedule, taking witnesses or issues out of order as necessary based on circumstances or time constraints that arise during the hearing.

7. Entries of appearance and NOIs for the direct technical presentations of parties planning to make them shall be filed pursuant to this Order and 20.1.6.202 NMAC on or before December 20, 2024. NOIs shall include a full narrative of anticipated direct testimony and all exhibits other than demonstrative exhibits, which may include PowerPoint presentations. The NOI 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) include a copy of the direct testimony of each technical witness in narrative form;
 - (4) include the text of any recommended modifications to the proposed regulatory change; and
 - (5) list and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.
8. NOIs and other documents submitted to the Commission Administrator shall be filed electronically and served electronically on all parties reflected on the service list maintained by the Administrator. The requirements in 20.1.6.104 NMAC to file paper copies of documents are waived.
9. In the event a party seeks to present rebuttal technical testimony, a rebuttal NOI must be filed with the Commission Administrator no later than close of business, January 3, 2025, with full narrative of rebuttal testimony and the other required elements in the direct NOI shown above in paragraph 4, filed and served electronically as shown above in paragraph 5.

10. The technical witnesses for each party shall not read their narrative testimony from the NOI during the public hearing but offer a summary of their direct testimony not to exceed 30 minutes, and a summary of any rebuttal testimony not to exceed 30 minutes, unless otherwise authorized by the Hearing Officer.
11. Motions *in limine* and motions purporting to be dispositive shall be filed no later than close of business, January 3, 2025. The Hearing Officer will inform the parties as to when any motion filed will be argued.
12. Demonstrative exhibits, including PowerPoint or other slide presentations, shall be uploaded no later than close of business January 10, 2025, to a folder for which a link will be provided to all parties. This will allow for review by all parties and the members of the Commission prior to the hearing.
13. Public Comment: The Hearing Officer will provide an opportunity for non-technical public comment each day of the hearing in a manner that accommodates the public pursuant to 20.1.6.204 NMAC. This may require interrupting the technical testimony. Public comment sessions will be expressly reserved at 1 p.m. and 5 p.m. on January 14, 2025.
14. Members of the public wishing to offer non-technical public comment may do so once either in person or on the virtual platform with access provided and managed by the Administrator.
15. Although 20.1.6.301.C NMAC provides that any person who testifies at the hearing is subject to cross-examination on the subject matter of their direct testimony and matters affecting their credibility, the parties are encouraged to limit such cross-examination of non-technical witnesses, including the public, to avoid harassment, intimidation, needless expenditure of time or undue repetition. The Hearing Officer may take appropriate action to limit any such cross-examination.

16. Those wishing to comment may be invited but will not be required to sign up for the time slot they wish to speak in. Oral public comment is limited to 3 minutes; written public comment submitted to the Administrator is unlimited and must be received prior to adjournment of the hearing. Written public comment may be submitted electronically or as a single original document.
17. Panels: Any party may present its witnesses for some or all of its presentation as a panel of no larger than five persons. If witnesses testify as members of a panel, clarifying questions and cross-examination will occur only after all panel members have testified.
18. The Commission members may ask clarifying questions and cross-examine individual witnesses or witness panels at the conclusion of all direct testimony by individual witnesses or witness panels. Thereafter, cross-examination by the parties will be in reverse order of their direct testimony.
19. The Commission Administrator is directed to arrange for Spanish-language interpreters and a Court Reporter to make a transcript of the proceeding and deliberations; the expense of providing simultaneous interpretation between English and Spanish and a full transcript to the Commission will be borne by Petitioners.
20. To the extent not in conflict with the above, the Rulemaking Procedures found in 20.1.6 NMAC apply.

Felicia Orth
Felicia Orth, Hearing Officer

Certificate of Service

I hereby certify that on September 11, 2024 a copy of the foregoing was emailed to the persons listed below. A copy will be mailed first class upon request.

Lisa Chai
Assistant General Counsel
New Mexico Environment Department
lisa.chai1@env.nm.gov
Counsel for the New Mexico Environment Department

Kari Olson
Louis Rose
Montgomery & Andrews
kolson@spencerfane.com
lrose@spencerfane.com
Counsel for Newport News Nuclear BWXT-Los Alamos, LLC

Maureen Dolan
Maxine McReynolds
dolan@lanl.gov
mcreynolds@lanl.gov
Counsel for Triad National Security, LLC

John Evans
Robert Reine
John.H.Evans@em.doe.gov
Robert.Reine@em.doe.gov
Counsel for US DOE, Office of Environmental Mgmt, Los Alamos Field Office

Nicholas Maxwell
Inspector@sunshineaudit.com

Sandra Gardner
New Mexico Office of the attorney General
sgardner@nmdoj.gov
Counsel for the Water Quality Control Commission

Felicia Orth
Felicia.L.Orth@gmail.com
Hearing Officer

Pamela Jones

Pamela Jones, Commission Administrator
Phone: (505) 660-4305
Email: Pamela.Jones@env.nm.gov