

STATE OF NEW MEXICO  
BEFORE THE WATER QUALITY CONTROL COMMISSION

NEW MEXICO ENVIRONMENT  
DEPARTMENT WATER PROTECTION  
DIVISION,  
SURFACE WATER QUALITY BUREAU,

Complainant,

No. WQCC 20-16 (CO)

v.

MATADOR PRODUCTION COMPANY  
and SAN MATEO MIDSTREAM, LLC,

Respondents.

**ORDER ON MOTION OF RESPONDENTS TO AMEND REMEDIATION DEADLINES  
AND STAY ACCRUAL OF PENALTIES AND PROCEDURAL MATTERS**

The Hearing Officer, having considered the above-referenced Motion, the Response to the Motion of the Surface Water Quality Bureau (“Bureau”) of the New Mexico Environment Department (“NMED”) and the Reply of the Respondents, having considered certain procedural matters and being otherwise fully advised, FINDS AND CONCLUDES:

I. MOTION

1. The Motion requests an Order extending the deadline for completion of remediation established by the Administrative Compliance Order (“ACO”) issued by the Bureau on March 30, 2020 as amended by the First Amendment (“First Amendment”) to the Administrative Compliance Order dated June 18, 2020. Specifically, the Motion requests extending the deadline from August 20, 2020 until after the scheduled September 8, 2020 hearing in this matter and staying the accumulation of penalties until such time.

2. As grounds for the Motion, Respondents state that they should be allowed to present testimony and argument at the hearing so that liability can be determined and the scope of required remediation can be determined, prior to being required to complete remediation and being subject to accumulation of penalties. The Amendment extends the deadline for completion from June 22, 2020 to August 20, 2020 and provides that documentation that remediation has begun be submitted on or before July 9, 2020. Respondents assert in their Reply to the Bureau that testing done since the Motion was filed indicates an absence of bentonite in soil, creating questions concerning their liability for remediation. Respondents also assert that basic tenets of due process of law require that they have an opportunity to be heard at a meaningful time on the issue of liability before they are subjected to a remediation plan and the accumulation of penalties.

3. The Bureau asserts that the remediation requirements and accrual of penalties specified in the ACO must remain in effect, that Respondents remain liable for all accrued penalties if the ACO is upheld by the Commission and that the Hearing Officer has no authority to amend the ACO.

4. Paragraph 5 of the Commission's Order Scheduling Compliance Order Hearing and Appointing Hearing Officer dated June 9, 2020 ("Scheduling and Appointment Order") authorizes the Hearing Officer "to perform the functions described in 20.1.3.10(B)(2) NMAC, and to exercise all powers and duties prescribed or delegated by the Commission under the Water Quality Act or 20.1.3 NMAC."

20.1.3.10(B)(2) NMAC states that

The hearing officer shall have authority to take all measures necessary for... fair and impartial adjudication of issues..., including but not limited to:

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(b) rule upon motions... that do not seek final resolution of the proceeding and issue all necessary orders;”

5. NMSA 1978, Section 74-6-10(G) provides:

“G. Any compliance order issued by a constituent agency pursuant to this section shall become final unless, no later than thirty days after the compliance order is served, any person named in the compliance order submits a written request to the commission for a public hearing. (emphasis added).

6. NMSA 1978, Section 74-6-10(I) states that the Commission may appoint a hearing officer to preside over any public hearing held and “based on the evidence presented at the hearing, the commission shall make a final decision regarding the compliance order.” (emphasis added).

7. NMSA 1978, Sections 74-6-10(G) and (I) provide that a compliance order issued by a constituent bureau of NMED is not final, if a public hearing before the Commission is requested, until after the public hearing, and that the decision of the Commission shall be based on the record of the public hearing.

8. 20.1.3.10(B)(2) provides that the Hearing Officer has authority to issue orders that have the effect of amending the ACO necessary for the “fair and impartial adjudication of the issues”, so long as the order does not “seek final resolution of the issues”.

9. The deadlines in the ACO and Amendment and remediation requirements in the ACO are subject to revision by the Commission, based upon the record of the hearing. The ACO is not final and is the subject of appeal. The Commission is required to make its final decision on the ACO based upon the record of the yet-to-be-held public hearing. The applicable provisions of the Water Quality Act and the Adjudicatory Rules of the Commission do not support mandating that requirements of the ACO be adhered to while an appeal to the Commission is pending under the facts presented here.

THEREFORE, IT IS ORDERED that the Motion is granted and the Hearing Officer recommends that the issues raised related to timing of any remediation and imposition of penalties for violation of the ACO and the Amendment be decided by the Commission based on the evidence presented at or in connection with the public hearing in this proceeding as provided in the Water Quality Act.

## II. PROCEDURAL MATTERS

1. The public hearing will be held beginning at 9:00 a.m. September 8, 2020 and continuing thereafter as necessary via the web application Web Ex, as set forth in the Scheduling and Appointment Order and the Notice of Public Hearing. The public hearing will be conducted in accordance with the Adjudicatory Procedures of the Commission contained in 20.1.3 NMAC.

2. Witnesses proposing to submit technical evidence [as defined in 20.1.3.7.A(21) NMAC] shall include in their notices of testimony required to be filed under 20.1.3.19(E), a summary of the testimony, the conclusions reached or opinions offered, the technical material relied on by the witness, an explanation of the bases for the conclusions and opinions reached and copies of all Exhibits.

3. At the hearing the parties, will be allowed, but are not required, to make brief opening and closing statements.

4. The Bureau has the burden of persuasion and shall present its case first, followed by the Respondents and then the public.

5. A pre-hearing conference may be held after the filing of notices of testimony for the purpose of further addressing procedural issues and simplification of issues.

6. Post-hearing procedures will be conducted as determined by the Commission.

7. The Parties are encouraged to engage in settlement discussions and present a stipulated final order to the Commission.

THEREFORE, IT IS ORDERED that this proceeding shall be conducted in accordance with the procedures set out above, unless otherwise ordered by the Commission.

DATED: August 7, 2020.



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Richard L. C. Virtue, Hearing Officer

## CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2020 a copy of the foregoing **Order on Motion of Respondents to Amend Remediation Deadlines and Stay Accrual of Penalties and Procedural Matters** was emailed to the persons listed below. A copy will be mailed first class upon request.

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