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By Water Quality Control Commission at 12:39 pm, Nov 09, 2020

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

_____)
)
In the Matter of:)
)
PROPOSED AMENDMENTS TO)
STANDARDS FOR INTERSTATE AND)
INTRASTATE SURFACE WATERS,)
20.6.4 NMAC)
_____)

No. WQCC 20-51 (R)

PROCEDURAL ORDER

This Procedural Order is issued by the Hearing Officer pursuant to the Water Quality Control Commission's Rulemaking Procedures, 20.1.6 NMAC, and the Order for Hearing and Appointment of Hearing Officer issued on October 19, 2020, for the purpose of establishing procedures for the conduct of the hearing in this matter "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." 20.1.6.300(B) NMAC. The Hearing Officer, Petitioner New Mexico Environment Department ("NMED"), and parties Triad National Security, LLC, and the United States Department of Energy conducted a teleconference on October 27, 2020, regarding scheduling and procedures for the hearing in this matter scheduled to begin on July 13, 2021. Based upon the discussion during the teleconference, and further discussions amongst the parties thereafter, it is hereby ordered as follows:

- 1. The hearing will be conducted beginning directly after the Water Quality Control Commission's regular meeting on July 13, 2021, and continuing thereafter until completion of the hearing, or as may be further ordered by the Commission. At the time of issuing this

Order, it is anticipated the hearing will be conducted in a virtual fashion via Webex or some other suitable online meeting platform due to restrictions necessitated by the COVID-19 pandemic.

2. Testimony at the hearing shall be presented by issue. A detailed hearing schedule will be issued following the parties' filing of their Notices of Intent to present technical testimony, once the more complex and/or controversial issues may be accurately delineated. Notices of Intent to present technical testimony and rebuttal technical testimony shall include the full written testimony of each witness. For issues raised in the Petition, NMED, as Petitioner, will present first on each issue, followed by the other parties that have filed testimony on that issue, in an order to be determined following submission of the pre-filed rebuttal testimony. *See* 20.1.6.300(B)(3) NMAC (petitioner shall present its case first unless otherwise ordered). For issues raised in Petitions filed by other parties, to the extent that they do not address issues raised by NMED, the non-NMED Petitioner will present first on those issues. This Schedule of Testimony is intended as a guide, and 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.
3. Witnesses that have filed Notices of Intent to provide technical testimony may summarize their direct and rebuttal testimony before standing for cross-examination; summaries of pre-filed technical testimony, encompassing both direct and rebuttal testimony, should not exceed thirty minutes. Witnesses that will testify on multiple issues will be qualified and adopt their pre-filed direct and rebuttal testimony when they first testify and need not do so again for each issue on which they provide testimony in order to prevent unnecessary

repetition. All technical testimony pre-filed, whether direct or rebuttal, shall be the full written testimony of the witness.

4. Technical testimony not timely disclosed will not be admitted. PowerPoint presentations or other illustrative exhibits may be used at the hearing without having been attached to the Notice of Intent, so long as the presentations are limited to the summary of pre-filed technical testimony and copies of the presentations or exhibits are provided to the Commission and all other parties before the witness testifies.
5. The parties may introduce sur-rebuttal exhibits or provide sur-rebuttal testimony at the hearing which tends to explain, counteract, repel, or disprove rebuttal evidence submitted by another party. The time limitations of paragraph 3 shall not apply to sur-rebuttal testimony.
6. The parties are encouraged to make evidentiary motions regarding the exhibits or testimony filed with the Notices of Intent in writing as soon as possible before the hearing. This does not preclude any party from making appropriate objections or evidentiary motions at the hearing.
7. Testimony of a non-technical nature by the general public pursuant to 20.1.6.204 NMAC will be allowed each day the hearing is conducted, at times set by the Hearing Officer and announced at and prior to the hearing. 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 retains authority to take appropriate action to limit any such cross-examination.

8. Written comments submitted by members of the general public to the Commission Administrator prior to or during the hearing pursuant to 20.1.6.204(B) NMAC will be considered part of the record. The Hearing Officer retains the discretion to leave the record open for some further time after the conclusion of the hearing for additional public comments to be submitted. If the Hearing Officer leaves the record open for additional public comment, the Hearing Officer shall specify a reasonable time for the parties to submit responses to those comments.
9. As provided for in 20.1.6.300(B)(1) NMAC, the hearing shall begin with an opening statement from the Hearing Officer. In that statement, the Hearing Officer will explain to the Commission that NMED is the Petitioner in this proceeding and has proposed changes to the Commission's Standards for Interstate and Intrastate Surface Waters, 20.6.4 NMAC. The Hearing Officer will also explain that other parties are proposing changes to the Commission's Standards for Interstate and Intrastate Surface Waters that are logical outgrowths of NMED's proposed changes.
10. Each party shall have the opportunity to make an opening statement, either in the beginning of the hearing, or immediately prior to presentation of that party's technical evidence on a given issue, at that party's discretion. Opening statements shall be limited to 15 minutes per issue due to the large number of parties anticipated in this rulemaking proceeding. Parties are encouraged to forego opening statements if the likelihood is high that the opening statement will be unnecessarily repetitive.
11. Filing deadlines which are earlier or otherwise different than those specified in 20.1.6 NMAC are specified in a table at the end of this Order.

12. In all other respects, the Commission's Rulemaking Procedures at 20.1.6 NMAC shall apply to this proceeding.

Table of relevant deadlines:

Date	Event
2/1/2021	Deadline to publish Hearing Notice pursuant to 20.1.6.201 NMAC
4/12/2021	Deadline to file Notices of Intent to Present Technical Testimony (including filing full written direct testimony)
6/1/2021	Deadline to file full written Technical Rebuttal Testimony
7/13/2021	The first day of the Triennial Review hearing, continuing from day to day as necessary to hear from all parties and the public
45 days after notice of the Commission's receipt of hearing transcript	Deadline to file proposed statement of reasons and closing argument
45 days after filing of proposed statement of reasons and closing argument	Hearing Officer to file Report and Draft Proposed Statement of Reasons, to be served on all parties
30 days after receipt of Hearing Officer's Report	Deadline to file Exceptions to Hearing Officer's Report and Draft Proposed Statement of Reasons
Approximately 30 days after receipt of exceptions, at next regular WQCC meeting	Hearing Officer to present final Report and Proposed Statement of Reasons to Commission for their review and consideration

Gregory
Chakalian

Digitally signed by Gregory
Chakalian
Date: 2020.11.09 12:33:32 -07'00'

Gregory Chakalian, Hearing Officer

Certificate of Service

I hereby certify that on November 9, 2020 a copy of the foregoing **Procedural Order** was emailed to the persons listed below. A copy will be mailed first class upon request.

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