

U.S. Department of Energy and Triad National Security

FILED
Water Quality
Control Commission

WQCC No. 20-51(R)

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Summary of Technical
Testimony of
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Managed by Triad National Security, LLC for the U.S. Department of Energy's NNSA

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Testimony to address

- 20.6.4.7(C) “Definitions” – Contaminants of Emerging Concern (CECs)
- 20.6.4.13(F) “General Criteria” – Toxic Pollutants and CECs
- 20.6.4.15 Use Attainability Analysis

NMED's Proposed Language at 20.6.4.7(C)

- “Contaminants of emerging concern” or “CECs” refer to water contaminants including, but not limited to, pharmaceuticals and personal care products that may cause significant ecological or human health effects at low concentrations. CECs are generally chemical compounds that, although suspected to potentially have impacts, may not have regulatory standards, and the concentrations to which negative impacts are observed have not been fully studied.

Contaminants of Emerging Concern

- NMED's proposed definition is in broad agreement with EPA's, however, this definition has the potential to add thousands of chemicals to the water quality standards for which there is inadequate information about toxicity and to which there is no known regulatory limit.
- NMED further addresses CECs under the toxic pollutants section of the General Criteria (20.6.4.13), however, the general criteria lack numeric limits unless the department has developed translators that clarify the limits to which dischargers must monitor (see Temperature, turbidity and nutrients).

Contaminants of Emerging Concern: LANL's recommendations

- NMEDs testimony claims that addition of CECs, by both definition and addition to the general criteria, will add more clarity and allow for implementation of regulatory standards.
- Addition of CECs, absent the process of translating the general criteria to numeric limits, is premature.
- **LANL recommends not adding the definition to 20.6.4.7(C) and to the general criteria at 20.6.4.13 until such a time that it is clear which CECs and what numerical limits would apply to dischargers and that the State would measure to as part of their state wide water quality surveys.**

NMED's Proposed Language at 20.6.4.13(F)

- Toxic pollutants: (1) Except as provided in 20.6.4.16 NMAC, surface waters of the state shall be free of toxic pollutants, **including but not limited to contaminants of emerging concern and those toxic pollutants listed in 20.6.2 NMAC,...**

Toxic pollutants:

- NMED proposes adoption of the toxics list from the Groundwater quality rules, a list of about 99 pollutants (20.6.2).
- Some of these are already adopted into surface water quality standards.
- Others lack EPA-promulgated guidance documents which determine numeric limits for the protection of human health and aquatic life.
- It is unclear what numeric limits would apply to the state surveillance program and to NPDES dischargers for those pollutants lacking federal limits and/or appropriate methods.

Toxic pollutants: LANL's recommendation

- WQCC should disapprove adopting broad lists from the groundwater rules until such a time that NMED is able to review the scientific merits of adoption of each of the individual pollutants for which EPA has guidance, either for protections of aquatic life or human health.

NMED's Proposed Language at 20.6.4.15 "UAA"

- NMED adds clarifying language throughout section 15 regarding when, why, and how a Use Attainability Analysis may/must be done.
- UAAs are scientific investigations that may be performed when a water body's Designated Uses are suspected to be incorrect.
- UAAs may be performed by NMED or outside parties.
- Outside parties must conduct UAAs with an NMED-approved work plan.
- Much of NMED's proposed language is clarifying the process for outside party UAAs.

UAAs: LANL Recommendations

- LANL supports almost all proposed language to 20.6.4.15
- LANL requests that language at 20.6.4.15 (B); “**The mechanism to remove a designated use**” be changed to “Performing a Use Attainability Analysis”
- Regarding the UAA work plan; NMED’s detailed edits are welcome, however, **we propose that in addition to the requirement of a time line in the work plan, that NMED add a 30 day review of draft work plans be added.**
- NMED holds outside UAA petitioners to a timeline, therefore, for purposes of regulatory certainty, the NMED review of work plans should also have a time-limited review period.