

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION



**IN THE MATTER OF PROPOSED
RULEMAKING RULES FOR THE
COMMISSION, 20.1.6 NMAC**

No. WQCC 16-03 (R)

**New Mexico Environment Department,
Petitioner.**

**LOS ALAMOS NATIONAL SECURITY, LLC'S
COMMENTS FOR THE PUBLIC RECORD**

In accordance with the Public Notice, Los Alamos National Security, LLC (“LANS”) provides the following comments on the proposed Rulemaking Rules for the Water Quality Control Commission.

LANS operates the Los Alamos National Laboratory (“LANL”) for the United States Department of Energy (“DOE”). LANL is a federal facility located in Northern New Mexico on approximately 36 square miles of DOE-owned property. LANL is part of the nation’s weapons complex and additionally performs significant research and development in a number of areas including chemical science, energy, information science, and Earth and space science. In connection with this work, LANL engages in industrial activities that result in discharges of effluent to waters of the United States and to surface and ground waters of the State of New Mexico. LANS and its predecessor have participated in numerous rulemaking proceedings before the WQCC, including the 2003, 2009, and 2014 Triennial Reviews.

LANS supports the proposed rules, with the amendments proposed by the New Mexico Mining Association, NMMA Exhibit A. LANS believes that codifying the current hearing procedure guidelines is necessary and appropriate, and will provide participants in the WQCC’s rulemaking hearing appropriate guidance on how the hearing will be conducted, including how

and when technical testimony will be handled. In addition, as explained below, LANS proposes that the WQCC consider changes to proposed Section 207, Motions, to require the Hearing Officer to decide all written motions expeditiously. For motions submitted prior to the hearing, except those relating to evidentiary issues, they must be decided before beginning the hearing.

LANS notes that in the 2003, 2009, and 2014 Triennial Review proceedings, the hearing officer specified procedures for conducting those public hearings. The procedures adopted were similar to those proposed by NMED here, but included more detailed requirements for submittal of technical testimony. The more detailed requirement included pre-filed direct and rebuttal testimony and proposed rule changes. LANS believes that the proposed rules do not adequately address the necessary procedures for conducting complex rulemaking hearings, like those in the Triennial Review, and that, if the proposed rules are adopted, it will be necessary to adopt procedures specifically for those hearings. Rather than debate the proper procedures on a case-by-case basis, LANS suggests that the WQCC adopt procedures for the Triennial Review similar to those specified for the 2003, 2009, and 2014 proceedings. Further, LANS believes that those procedures will be appropriate for other complex, contested rulemaking proceedings. The NMMA proposal accomplishes that objective. As a result, LANS supports the NMMA proposal for complex hearings.

Additionally, in LANS' experience, pre-hearing motion practice is inconsistent, and sometimes, motions are not decided prior to the hearing. The lack of timely resolution of such motions may force participants to prepare for disparate outcomes. This increases participants' costs and may serve as an impediment to public participation. To avoid this problem, LANS suggests shortening the times authorized for filing responses to motions and replies to responses, and specifying that decisions on motions be made in a timely manner and that the Hearing Officer's

failure to act on certain motions prior to the beginning of testimony will be deemed a denial of the motion. Specifically, LANS recommends that proposed Section 207 be revised as follows:

D. Response to motions: Any party upon whom an opposed motion is served shall have ~~15~~ 10 days after service of the motion to file a response. A non-moving party failing to file a timely response shall be deemed to have waived any objection to the granting of the motion.

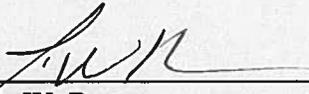
E. Reply to response: The moving party may, but is not required to, submit a reply to any response within ~~10~~ 5 days after service of the response.

F. Decision: All motions shall be decided expeditiously. Non-dispositive motions may be decided by the hearing officer without a hearing. The hearing officer shall refer any motion that would effectively dispose of the matter to the commission for decision, and may refer any other motion to the commission. A procedural motion may be ruled upon prior to the expiration of the time for response; any response received thereafter shall be treated as a request for reconsideration of the ruling. Any motions submitted prior to the hearing, except those relating to evidentiary issues, not decided prior to the beginning of oral testimony shall be deemed denied. The hearing officer shall file all original documents with the commission administrator.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2016, a true and correct copy of the foregoing *Los Alamos National Security, LLC's Comments for the Public Record* was served via electronic mail or hand-delivered to the following:

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