

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



**IN THE MATTER OF THE PETITION FOR
PROPOSED ADOPTION OF NEW MEXICO
CERTIFIED UTILITY OPERATOR CODE OF
PROFESSIONAL CONDUCT 20.7.4.16 NMAC**

No. WQCC 16-01 (R)

STATEMENT OF REASONS

This matter comes before the Water Quality Control Commission (“Commission”) pursuant to WQCC 16-01 (R), the Petition for Regulatory Change filed by the New Mexico Environment Department (“Department”) on March 23, 2016.

The Commission scheduled a public hearing for this matter on Tuesday, August 9, 2016, at the State Capitol Building, Room 307, 490 Old Santa Fe Trail, Santa Fe, New Mexico, to be held in accordance with the Guidelines for Water Quality Control Commission Regulation Hearings (“Commission Rulemaking Guidelines”); the Water Quality Act, NMSA 1978, Section 74-6-6 (1993); and other applicable procedures.

The Commission held the aforementioned hearing on Tuesday, August 9, 2016, and at this hearing the Commission heard testimony from the Department and Utility Operators Certification Advisory Board and admitted exhibits into the record. On August 9, 2016, the Commission deliberated and voted to adopt the proposed amendments with one revision for the reasons that follow:

STATEMENT OF REASONS

1. The New Mexico Utility Operators Certification Act is governed by NMSA 1978, Sections 61-33-1 to 10 (2005).

2. NMSA 1978, Section 66-33-4(A) states that the Commission may “adopt rules relating to the administration and enforcement of the Utility Operators Certification Act.”
3. NMSA 1978, Section 66-33-4(B) states that the Commission shall “adopt rules providing standards and criteria for the certification of operators based on their qualifications and their ability to operate public water supply systems or public wastewater facilities of the various classifications.”
4. NMSA 1978, Section 66-33-4(D) states that the Commission shall “adopt . . . rules necessary to carry out the provisions of the Utility Operators Certification Act.”
5. NMSA 1978, Section 74-6-6 outlines the notice and hearing requirements for the Commission before adoption of regulations.
6. The Certified Utility Operators Advisory Board (“Board”) determined that a Code of Professional Conduct is necessary to professionalize the certified utility operator discipline. The Board approved the Code of Professional Conduct at their regularly scheduled meeting on September 25, 2015, and proposed that its citation in the New Mexico Administrative Code be 20.7.4.16 NMAC. This section is currently reserved.
7. Proposed 20.7.4.16.A NMAC expresses in general terms the level of professional conduct expected of certified utility operators in the state of New Mexico. This ethical code shall have the purpose of raising awareness of the importance of the actions of water and wastewater utility operators to public safety and protection of the environment.
8. Proposed 20.7.4.16.B NMAC requires that all certified utility operators understand the Code of Professional Conduct and demonstrate familiarity with all utility operator certification regulations. This subsection goes on to explain that failure to follow any provision of the Code of Professional Conduct shall be considered gross incompetence by

NMED. According to NMSA 1978, § 61-33-7(B), gross incompetence may result in NMED suspending or revoking a certified operator's license.

9. Proposed 20.7.4.16.C NMAC provides a core set of values and standards and establishes seven duties for utility operators when performing activities that could affect public health and the environment.
10. Any person may petition the Commission for amendment of regulations within the jurisdiction of the Commission. NMSA 1978, § 74-6-6(B).
11. On March 23, 2016, NMED filed a petition with the Commission for a public hearing in this matter. *See* petition in Record Proper.
12. On May 10, 2016, at a meeting conducted in compliance with the Open Meetings Act, NMSA 1978, Sections 10-15-1 to 4 (2013), and other applicable requirements, the Commission granted the Department's request for a hearing.
13. On June 30, 2016, Notice of Hearing was published in the New Mexico Register. *See* NMED Exhibit 4 and Record Proper.
14. The Notice of Hearing was published in the *Las Cruces Sun-News* on July 9, 2016, and in the *Albuquerque Journal* on July 12, 2016 (in English and Spanish). *See* NMED Exhibit 4 and Record Proper.
15. NMED filed a Notice of Intent to Present Technical Testimony ("NOI") on July 26, 2016, in accordance with Commission Rulemaking Guidelines.
16. A public hearing was held in this matter on August 9, 2016, in Santa Fe, New Mexico.
17. In considering the proposed amendments, the Commission is required by the Water Quality Act, NMSA 1978, Section 74-6-4(E) (2009), to give the weight it deems appropriate to all relevant facts and circumstances, including but not limited to: (1)

character and degree of injury to or interference with health, welfare, environment and property; (2) the public interest, including the social and economic value of the sources of water contaminants; (3) technical practicability and economic reasonableness of reducing or eliminating water contaminants from the sources involved and previous experience with equipment and methods available to control the water contaminants involved; (4) successive uses, including but not limited to domestic, commercial, industrial, pastoral, agricultural, wildlife and recreational uses; (5) feasibility of a user or subsequent user treating the water before subsequent use; (6) property rights and accustomed uses; and (7) federal water quality requirements.

18. In giving the appropriate weight to all relevant facts and circumstances, the Commission concluded that proposed 20.7.4.16.B NMAC should require timely notice to the certified operator of an alleged violation of the Code of Professional Conduct. The Commission therefore approved a revision to the final sentence of proposed 20.7.4.16.B NMAC so that it states, "The department shall following notification of the certified operator first seek the advisement of the utility operators certification advisory board prior to any application of enforcement made pursuant to this code of professional conduct."
19. One purpose of the Utility Operators Certification Act is to set standards for certified operators, who are the individuals "certified by the department as being qualified to operate one of the classifications of public water supply systems or public wastewater facilities." NMSA 1978, § 61-33-4 (2005).
20. The proposed amendments with the approved revision will satisfy the purpose of the Utility Operators Certification Act, as well as the Commission's rulemaking considerations found in the Water Quality Act, because they will professionalize the

utility operator discipline and specify penalties for failure to act in an ethical manner, thereby enhancing protection of public health and safety.

21. The Commission has the authority to approve these proposed amendments with the approved revision pursuant to NMSA 1978, Sections 74-6-4(E) and 61-33-4.
22. The notice and hearing requirements of NMSA 1978, Section 74-6-6 and the Commission Rulemaking Guidelines were satisfied in this rulemaking process.
23. The proposed amendments with the approved revision are adopted for any or all of the reasons stated above.

ORDER

By a unanimous vote of a quorum of the Commission members, the proposed regulatory revisions were approved by the Commission on August 9, 2016. Amendments to 20.7.4 NMAC, with any appropriate corrections of typographical errors or formatting, shall be filed with the New Mexico State Records Center.


Larry J. Dominguez, Commission Chair
Water Quality Control Commission

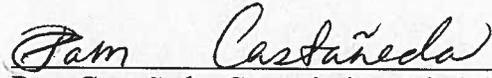
Dated: 8-17-16

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **Statement of Reasons** was sent via the stated methods below to the following party on August 18, 2016:

Via hand delivery and email:

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