

STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT



NO. NMED 18-15(R)

IN THE MATTER OF PROPOSED
REVISIONS TO THE RULEMAKING
PROCEDURES FOR THE DEPARTMENT,
20.1.9 NMAC

New Mexico Environment Department,

Petitioner.

NEW MEXICO ENVIRONMENT DEPARTMENT'S
NOTICE OF INTENT TO PRESENT TECHNICAL TESTIMONY

The New Mexico Environment Department (“Department”), pursuant to the Scheduling Order in this matter, hereby files this Notice of Intent to Present Technical Testimony at the public hearing scheduled to commence on October 12, 2018.

1. Entity Represented by Technical Witness

The technical witness will testify on behalf of the Department.

2. Name and Qualifications of the Technical Witness

The Department will call Ms. Jennifer Hower at the hearing to present direct technical testimony:

Ms. Hower is the General Counsel for the New Mexico Environment Department. Ms. Hower received her Bachelor of Science in Kinesiology from Kansas State University, her M.P.A. from Northern Arizona University, and her J.D. from the University of New Mexico School of Law. She has worked for the Department in the Office of General Counsel since August 2007, and in her current position as General Counsel, she is responsible for the supervision and management of the Department’s Office of General Counsel and is the Department’s chief legal counsel. She has

represented the Department in numerous rulemakings. Additionally, Ms. Hower is an Adjunct Professor at the University of New Mexico School of Law teaching a course on the practice of administrative environmental law in New Mexico.

3. List and Description of Exhibits

The Department submits the following exhibits:

NMED Exhibit 1	Proposed Amendments to 20.1.9 NMAC
NMED Exhibit 2	Resume of Jennifer Hower
NMED Exhibit 3	Written Testimony of Jennifer Hower
NMED Exhibit 4	House Bill 58
NMED Exhibit 5	SBRAC Letter
NMED Exhibit 6	Proposed Statement of Reasons
NMED Exhibit 7	October 31, 2017 New Mexico Register Publication
NMED Exhibit 8	Affidavits of Publication, Albuquerque Journal (unavailable at time of filing Notice of Intent to Present Technical Testimony, will be provided at the public hearing)
NMED Exhibit 9	Electronic Notice to Interested Parties List
NMED Exhibit 10	Electronic Notice to Legislative Counsel Service
NMED Exhibit 11	Evidence of Posting of Notice at Agency Offices
NMED Exhibit 12	Evidence of Posting on Agency Website
NMED Exhibit 13	Evidence of Posting on New Mexico Sunshine Portal

4. Reservation of Rights

The Department reserves the right to call any other person to present original and/or rebuttal testimony in response to another notice of intent or public comment filed in this matter or to any testimony or exhibit offered at the public hearing.

5. Notice

The Department provides Exhibits 7 through 13 addressing the manner in which the public notice requirements were met for this proceeding.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT

/s/ Christopher Atencio

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TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 1 ENVIRONMENTAL PROTECTION GENERAL
PART 9 RULEMAKING PROCEDURES - ENVIRONMENT DEPARTMENT

20.1.9.1 ISSUING AGENCY: New Mexico Environment Department.

[20.1.9.1 NMAC - N, 12/01/07]

20.1.9.2 STATUTORY AUTHORITY: This part is adopted pursuant to [~~Section 9-7A-6(D) NMSA 1978 and Section 3-29-9 NMSA 1978.~~] Sections 3-29-9, 9-7A-6(D), and 14-4-1 to -11 NMSA 1978.

[20.1.9.2 NMAC - N, 12/01/07]

20.1.9.3 SCOPE: This part governs the procedures in all regulatory change hearings before the department pursuant to the Department of Environment Act, Section 9-7A-6(D) NMSA 1978[~~and~~]; the Sanitary Projects Act, Sections 3-29-1 through 3-29-20 NMSA 1978; and the State Rules Act, NMSA 1978, Sections 14-4-1 to -11.

[20.1.9.3 NMAC - N, 12/01/07]

20.1.9.4 DURATION: Permanent.

[20.1.9.4 NMAC - N, 12/01/07]

20.1.9.5 EFFECTIVE DATE: [~~December 1, 2007~~] _____ unless a later date is cited at the end of a section.

[20.1.9.5 NMAC - N, 12/01/07]

20.1.9.6 OBJECTIVE: The purposes of this part are:

A. to standardize the procedures used in [~~regulatory change hearings~~] rulemaking proceedings before the department pursuant to the Department of Environment Act, [~~and Sanitary Projects Act~~]; the Sanitary Projects Act, and the State Rules Act;

B. to encourage public participation in the regulatory change hearings conducted by the department pursuant to the Department of Environment Act and Sanitary Projects Act; [~~and~~]

C. to make possible the effective presentation of the evidence and points of view of parties and members of the general public;

D. to allow all interested persons a reasonable opportunity to submit data, views, or arguments orally or in writing; and

[C]E. [to assure that the regulatory change hearings pursuant to the Department of Environment Act and Sanitary Projects Act are conducted by the department in a fair and equitable manner.] to assure that rulemaking proceedings pursuant to the Department of Environment Act, the Sanitary Projects Act, and the State Rules Act are conducted by the Department in a fair and equitable manner.

[20.1.9.6 NMAC - N, 12/01/07]

20.1.9.7 DEFINITIONS: As used in this part:

A. [~~“department”~~] “Department” means the New Mexico environment department;

B. “Document” means any paper, exhibit, pleading, motion, response, memorandum, decision, order or other written or tangible item that is filed in a proceeding under this part, or is brought to or before the secretary for consideration, but does not include a cover letter accompanying a document transmitted for filing;

C. “Exhibit” means any document or tangible item submitted for inclusion in the hearing record;

D. “General public” includes any person attending a hearing who has not submitted a notice of intent to present technical testimony;

E. “Governing law” means the statute, including any applicable case law, which authorizes and governs the decision on the proposed regulatory change;

[B]F. [~~“hearing clerk”~~] “Hearing Clerk” means the department employee designated by the secretary as the hearing clerk for the department;

~~[C]G.~~ [~~“hearing officer”~~] “Hearing Officer” means the person designated by the secretary of the department to conduct a hearing under this part; the hearing officer may be an employee of the department;

~~[D]H.~~ [~~“hearing record”~~] means the transcript of proceedings or tape record and the record proper; “Hearing Record” means:

~~(1)~~ (1) the transcript of proceedings; and

~~(2)~~ (2) the record proper;

~~I.~~ “Participant” means any person who participates in a rulemaking proceeding before the secretary;

~~J.~~ “Party” means the petitioner, any person filing a notice of intent to present technical testimony, and any person filing an entry of appearance;

~~[E]K.~~ [~~“person”~~] “Person” means an individual or entity, including federal, state, local, and tribal governmental entities, however organized;

~~[F]L.~~ [~~“petitioner”~~] “Petitioner” means the person who petitioned the secretary for the regulatory change that is the subject of the [regulatory change] rulemaking hearing;

~~M.~~ “Provide to the Public” means for the secretary to distribute rulemaking information by:

~~(1)~~ (1) posting it on the department’s website;

~~(2)~~ (2) posting it on the New Mexico sunshine portal;

~~(3)~~ (3) making it available at the department’s district, field, and regional offices;

~~(4)~~ (4) sending it by email to persons who have made a written request for notice of announcements addressing the subject of the rulemaking proceeding and who have provided an email address to the secretary’s hearing office administrator;

~~(5)~~ (5) sending it by email to persons who have participated in the rulemaking and who have provided an email address to the secretary’s hearing office administrator;

~~(6)~~ (6) sending written notice that includes, at a minimum, an internet and street address where the information may be found to persons who provided a postal address; and

~~(7)~~ (7) providing it to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees.

~~[G]N.~~ [~~“record proper”~~] “Record Proper” means all documents related to the hearing and received or generated by the secretary prior to the beginning, or after the conclusion, of the hearing, including, but not limited to:

~~(1)~~ (1) the petition for hearing, including the proposed regulatory change;

~~(2)~~ (2) affidavits of publication;

~~(3)~~ (3) written comments and documents from the public;

~~(4)~~ (4) the hearing officer’s report, if any;

~~(5)~~ (5) post-hearing submissions, if allowed; and

~~(6)~~ (6) the secretary’s final decision and statement of reasons;]

~~(1)~~ (1) the petition for hearing, including the proposed regulatory change, and any response thereto;

~~(2)~~ (2) the notice of hearing;

~~(3)~~ (3) affidavits of publication;

~~(4)~~ (4) a copy of all publications in the New Mexico register relating to the proposed rule;

~~(5)~~ (5) notices of intent to present technical testimony;

~~(6)~~ (6) all written pleadings, including motions and responsive pleadings and orders;

~~(7)~~ (7) a copy of any technical information that was relied upon in formulating the final rule;

~~(8)~~ (8) statements for the public record or other relevant materials received by the department during the public comment period;

~~(9)~~ (9) the hearing officer report, if any;

~~(10)~~ (10) a copy of the full text of the initial proposed rule, the full text of the final adopted rule, and the concise explanatory statement filed with the state records administrator;

~~(11)~~ (11) post-hearing submissions, if allowed;

~~(12)~~ (12) the secretary’s decision and the reasons therefore; and

(13) any corrections made by the state records administrator pursuant to Section 14-4-3 NMSA 1978.

[H]O. ["regulation"] "Regulation" means any regulation, rule, or standard promulgated by the secretary [pursuant to this part;] and affecting one or more persons, besides the secretary and the department, except for any order or decision issued in connection with the disposition of any case involving a particular matter as applied to a specific set of facts;

[I]P. ["regulatory change"] "Regulatory Change" means the adoption, amendment or repeal of a regulation;

[J]Q. ["secretary"] "Secretary" means the secretary of the New Mexico environment department, the secretary's designee, or any person who properly assumes the role of the secretary in the event of the secretary's recusal or disqualification.

R. "Service" means personally delivering a copy of the document, exhibit, or pleading to the person required by this part to be served; mailing it to that person; or, if that person has agreed, sending it by facsimile or electronic transmission; if a person is represented by an attorney, service of the document shall be made on the attorney; service by mail is complete upon mailing the document; service by facsimile or electronic transmission is complete upon the transmission of the document.

S. "Technical Testimony" means scientific, engineering, economic, or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing; and

T. "Transcript of Proceedings" means the verbatim record (audio recording or stenographic) of the proceedings, testimony, and argument in the matter, together with all exhibits proffered at the hearing, whether or not admitted into evidence, including the recording of any motion hearings or prehearing conferences.

[20.1.9.7 NMAC - N, 12/01/07]

20.1.9.8 POWERS AND DUTIES OF THE DEPARTMENT AND HEARING OFFICER:

A. Department: The secretary of the department shall exercise all powers and duties prescribed by Section 9-7A-6(D) and/or Section 3-29-9 NMSA 1978, and by this part, and not otherwise delegated to the hearing officer. The secretary shall have the authority to take all measures necessary and appropriate to maintain an orderly, efficient and fair proceeding.

B. Hearing officer: The secretary shall designate a hearing officer for each hearing who shall exercise all powers and duties prescribed or delegated under this part. The hearing officer shall conduct a fair and [impartial]equitable proceeding and assure that the facts are fully elicited, and avoid delay. [The hearing officer shall have the authority to take all measures necessary and appropriate to maintain an orderly, efficient and fair proceeding. The authority of the hearing officer includes, but is not limited to:] The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair, and impartial consideration of issues arising in proceedings governed by this part, including, but not limited to:

(1) conducting hearings under this part;
(2) accepting comments as provided for under this part
(3) making such orders as may be necessary to ensure a orderly, efficient and fair proceeding, and;

(4) if requested by the secretary, preparing and filing a report of the proceeding, with recommendations for action by the secretary.]

(1) conducting hearings under this part;
(2) ruling on motions and procedural requests that do not seek final resolution of the proceeding, and issuing all necessary orders;

(3) administering oaths and affirmations, admitting or excluding evidence, examining witnesses, and allowing post-hearing submissions;

(4) making such orders as may be necessary to preserve decorum and to protect the orderly hearing process;

(5) if requested by the secretary, preparing and filing a report of the hearing, with recommendations for the secretary's action;

(6) requesting parties to file original documents with the secretary's hearing office administrator; and

(7) requesting a party to submit a proposed statement of reasons in support of the secretary's decision.

C. Qualifications. The hearing officer may be an independent contractor, shall be knowledgeable of the laws of the state and of administrative hearing procedures, and shall not be:

(1) an employee of the department, except for the secretary, or unless employed by the department as a hearing officer;

(2) a person who has a personal bias or prejudice concerning a party, a party's lawyer or consultant, or has personal knowledge of disputed facts concerning the proceeding, or is related to a party within the third degree of relationship, or has a financial interest in the proceeding.

D. Notice of hearing officer assignment: If a hearing officer other than the secretary is assigned, the secretary's hearing office administrator shall notify the parties of the name and address of the hearing officer. The secretary's hearing office administrator shall also, at that time, forward to the hearing officer copies of all documents filed to date.

[20.1.9.9 NMAC – N, 12/01/07]

20.1.9.9 GENERAL PROVISIONS:

A. Liberal construction: This part shall be liberally construed to carry out its purpose.

B. Severability: If any part or application of this part is held invalid, the remainder of this part or its application to other persons or situations shall not be affected.

C. Computation of time: In computing any period of time prescribed or allowed by this part, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday, or legal state holiday, in which event the time is extended until the end of the next day, which is not a Saturday, Sunday, or legal state holiday. Whenever a party must act within a prescribed period after service upon them, and service is by mail, three days is added to the prescribed period.

D. Extension of time: The secretary or hearing officer may grant an extension of time for the filing of any document upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties.

[20.1.9.9 NMAC - N, 12/01/07]

20.1.9.10 DOCUMENT REQUIREMENTS[?] - FILING SERVICE, AND EXAMINATION:

[A. Filing and service of documents.

(1) The filing of any document required by this part shall be accomplished by delivering the document to the hearing clerk or by transmitting the document by mail, facsimile or electronic mail to the hearing clerk. If a document is filed by facsimile or electronic mail, the original document shall be delivered or mailed to the hearing clerk.

(2) Filing by mail shall be complete upon receipt of the document by the hearing clerk. Filing by facsimile or electronic mail shall be complete when transmission of the document is completed.

(3) Any person filing a document shall serve a copy on the petitioner.

(4) Service of a document shall be made by delivering a copy of the document to the person, by mailing it to the person or, if the person agrees, by transmitting the document by facsimile or electronic mail to the person. If the person is represented by an attorney, service of the document shall be made on the attorney.

(5) Service by mail shall be complete upon mailing of the document. Service by facsimile or electronic mail shall be complete when transmission of the document is completed.

B. Examination of documents.

(1) Examination allowed: Subject to the provisions of law restricting public disclosure, any person may during normal business hours inspect and copy any document filed in a rulemaking proceeding before the secretary.

(2) Cost of duplication: The cost of duplicating documents shall be borne by the person requesting copies of such documents.]

A. The filing of any document as required by this part shall be accomplished by delivering the document to the secretary's hearing office administrator.

B. Any person filing any document shall:

(1) provide the secretary's administrator with the original document;

(2) if the document is a notice of intent to present technical testimony filed by any person other than the petitioner, serve a copy thereof on the petitioner;

C. The petitioner and any person who has filed a timely notice of intent to present technical testimony under this part may inspect all documents that have been filed in a proceeding in which they are involved as participants. Such inspection shall be permitted in accordance with the Inspection of Public Records Act, Sections 14-2-1 to -12 NMSA 1978. The secretary's hearing office administrator shall notify the petitioner and all persons who have filed a timely notice of intent to present technical testimony by email whenever any document is filed in a proceeding under this part. Any such person who does not provide an email address shall instead be notified by mail.

D. All documents filed under this part shall be made available to any person for inspection upon request and shall, to the extent required by law, be made available on the department's website and the New Mexico sunshine portal.

E. Examination allowed: Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during normal business hours, inspect and copy any document filed in any rulemaking proceeding before the secretary. Such documents shall be made available by the secretary's hearing office administrator, as appropriate, and shall also be made available on the New Mexico sunshine portal. If the secretary's hearing office administrator determines that any part of the rulemaking record cannot be practicably displayed or is inappropriate for public display on the New Mexico sunshine portal, the secretary's hearing office administrator shall describe that part of the record, shall note on the New Mexico sunshine portal that the part of the record is not displayed, and shall provide instructions for accessing or inspecting that part of the record.

F. Cost of duplication: The cost of duplicating documents shall be borne by the person seeking copies of such documents, but the secretary's hearing office administrator shall not charge a fee for providing the notice of proposed rulemaking in electronic form.

[20.1.9.10 NMAC - N, 12/01/07]

20.1.9.11 EX PARTE DISCUSSIONS: At no time after the filing of a petition under this part shall any petitioner or member of the public discuss ex parte the merits of the proceeding with the secretary or hearing officer. This prohibition does not preclude department staff who are not and have not been involved in the petition from conferring with the secretary or hearing officer.

[20.1.9.11 NMAC - N, 12/01/07]

20.1.9.12 PREHEARING PROCEDURES:

A. Petition for regulatory changes.

(1) Any person, including the department, may file a petition with the secretary to adopt, amend or repeal any regulation within the jurisdiction of the secretary.

(2) If the department is the petitioner and intends to file a petition under the Sanitary Projects Act, the department shall prepare the proposed regulatory change in consultation with representatives of the associations as defined in Section 3-29-2 NMSA 1978.

(3) The petition shall be in writing and shall include a statement of reasons for the regulatory change. The proposed regulatory change, indicating any language to be added or deleted, shall be attached to the petition.

(4) The secretary shall determine no later than 60 days after receipt of the petition whether or not to hold a public hearing on the petition.

(5) If the secretary determines to hold a public hearing on the petition, the secretary may issue such orders specifying procedures for the conduct of the hearing, in addition to those provided by this part, as may be necessary and appropriate.

B. Notice of hearings.

(1) The secretary shall ~~[give public]~~ provide to the public notice of the ~~[hearing]~~ proposed rulemaking at least 30 days prior to the hearing. ~~[Public notice]~~ Notice of the proposed rulemaking shall include publication in at least one newspaper of general circulation in the state, publication in the New Mexico register, the department's website, and such other means as the secretary may direct or are required by law.

~~[(2)]~~ The secretary shall make reasonable efforts to give notice to persons who have made a written request for advance notice of regulatory change hearings. Requests for such notice shall be addressed to the hearing clerk.

~~[(3)]~~ Notice of the hearing shall state:

~~[(a)]~~ the subject of the hearing, including a general description of the proposed regulatory change; and the time and place of the hearing;

~~[(2)]~~ The notice of proposed rulemaking shall state:

~~[(a)]~~ the subject of the proposed rule, including a summary of the full text of the proposed rule and a short explanation of the purpose of the proposed rule;

~~[(b)]~~ a citation to the specific legal authority authorizing the proposed rule and a short explanation of the purpose of the proposed rule;

~~[(c)]~~ a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained;

~~[(b)]~~~~[(d)]~~ the statutes, regulations and procedural rules governing the conduct of the hearing;

~~[(e)]~~~~[(e)]~~ the manner in which persons may present their ~~[comments]~~ views or evidence to the secretary, including the time, place, and information on participating in the public hearing; ~~[and]~~

~~[(d)]~~~~[(f)]~~ the location where persons may secure ~~[a copy]~~ copies of the full text of the proposed regulatory change[-];

~~[(g)]~~ an internet link providing free access to the full text of the proposed rule; and

~~[(h)]~~ if applicable, that the secretary may make a decision on the proposed regulatory change at the conclusion of the hearing.

C. Participation by public.

(1) ~~[Any member of the public may give oral comments at the hearing. Any such member may also submit documents in connection with his or her comments.]~~ Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer non-technical exhibits in connection with his or her testimony, so long as the exhibit is not unduly repetitious of the testimony.

(2) Any member of the general public who wishes to submit a written statement for the record, in lieu of giving oral ~~[comments]~~ testimony at the hearing, shall file the written statement prior to the hearing or submit it at the hearing. Written comment must be mailed or delivered to the secretary's administrator; email comments will not be accepted. However, comments may be submitted electronically on the department's webpage.

D. Location of hearing: ~~[The]~~ Unless otherwise permitted by governing law, the secretary shall hold hearings on proposed regulatory changes in Santa Fe and at other places the secretary may prescribe.

E. If the secretary changes the date of the hearing or the deadline for submitting comments as stated in the notice of proposed rulemaking, the secretary shall provide notice to the public of the change.

[20.1.9.12 NMAC - N, 12/01/07]

20.1.9.13 TECHNICAL TESTIMONY:

A. Any person, including the petitioner, who intends to present technical testimony at the hearing shall, no later than 15 days prior to the hearing, file a notice of intent to present technical testimony with the secretary's hearing office administrator. The notice shall:

(1) identify the person for whom the witness(es) will testify;

(2) identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their education and work background;

(3) if the hearing will be conducted at multiple locations, indicate the location or locations at which the witnesses will be present;

(4) include a copy of the direct testimony of each technical witness in narrative form;

(5) include the text of any recommended modifications to the proposed regulatory change;
and

(6) list and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

B. The hearing officer may enforce the provisions of this section through such action as the hearing officer deems appropriate, including, but not limited to, exclusion of the technical testimony of any witness for whom a notice of intent was not timely filed. If such testimony is admitted, the hearing officer may keep the record open after the hearing to allow responses to such testimony. The hearing officer may also require that written rebuttal testimony be submitted prior to the hearing.

20.1.9.14 ENTRY OF APPEARANCE: Any person may file an entry of appearance as a party. The entry of appearance shall be filed with the secretary's hearing office administrator no later than 20 days before the date of the hearing on the petition. In the event of multiple entries of appearance by those affiliated with one interest group, the hearing officer may consolidate the entries, or divide the service list to avoid waste of resources.

20.1.9.15 PARTICIPATION BY CONFERENCE TELEPHONE OR OTHER SIMILAR DEVICE: A witness may participate in a rulemaking hearing before the secretary by means of a telephone conference or other similar communications equipment when an emergency or circumstances make it impossible for the witness to attend the hearing in person. A witness who wishes to participate in a rulemaking hearing in this manner must receive permission from the hearing officer or the secretary sufficiently in advance of the rulemaking hearing. No witness may participate in a rulemaking hearing by telephone conference unless the witness makes a request sufficiently in advance of the rules hearing so as to permit the secretary's hearing office administrator to arrange for an adequate telephone hookup. Each witness participating by telephone must be identified when speaking, all participants must be able to hear each other at the same time, and members of the public attending the hearing must be able to hear any witness who speaks during the hearing.

20.1.9.16 MOTIONS:

A. General: All motions, except those made orally during a hearing, shall be in writing, specify the grounds for the motion and state the relief sought. Each motion shall be accompanied by an affidavit, certificate, or other evidence relied upon and shall be served as provided by 20.1.9.10 NMAC.

B. Unopposed motions: An unopposed motion shall state that the concurrence of all other parties was obtained. The moving party shall submit a proposed order approved by all parties for the hearing officer's review.

C. Opposed motions: Any opposed motion shall state either that concurrence was sought and denied, or why concurrence was not sought. A memorandum brief in support of such motion may be filed with the motion.

D. Response to motions: Any party upon whom an opposed motion is served shall have 15 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 days after service of the response.

F. Decision: All motions shall be decided by the hearing officer without a hearing, unless otherwise ordered by the hearing officer *sua sponte* or upon written request of any party. The hearing officer shall refer any motion that would effectively dispose of the matter, and may refer any other motion to the secretary for a decision. 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. The hearing officer shall file all original documents with the secretary's hearing office administrator.

20.1.9.[13]17

HEARING PROCEDURES – CONDUCT OF HEARINGS

~~[A. Conduct of hearings.~~

~~(1) The hearing officer shall conduct the hearing 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 or irrelevant comments or documents.~~

~~(2) The hearing shall proceed as follows:~~

~~(a) the hearing shall begin with an opening statement from the hearing officer identifying the nature and subject matter of the hearing and explaining the procedures that will be followed;~~

~~(b) the hearing officer may allow a brief opening statement from the petitioner;~~

~~(c) the hearing officer shall establish the order for receiving comments from the public and the department, if the department is not the petitioner; the order may be based on a sign-in sheet or the availability of members of the public.~~

~~B. Transcript of proceedings.~~

~~(1) A verbatim transcript, tape or electronic recording shall be made of the hearing unless otherwise specified by the hearing officer.~~

~~(2) The cost of the transcript of proceedings for the secretary shall be borne by the petitioner.~~

~~C. Post hearing submissions: The hearing officer may allow the record to remain open for a reasonable period of time following conclusion of the hearing for written submission of additional comments, documents, arguments and proposed statements of reasons. The hearing officer's determination shall be announced at the conclusion of the hearing. In considering whether to keep the record open, the hearing officer may consider the reasons why the material was not presented during the hearing, the significance of material to be submitted and the necessity for a prompt decision. If the record is kept open, the hearing officer shall determine and announce the subject(s) on which submittals will be allowed and the deadline for filing the submittals.~~

~~D. Hearing officer's report: If the secretary directs, the hearing officer shall file a report of the hearing within 30 days following close of the record. The report shall identify the issues addressed at the hearing, explain the comments, and make a recommendation for action by the secretary. The hearing officer report shall be filed with the hearing clerk, with a copy served on the petitioner. The hearing clerk shall promptly notify each person who submitted comments that the hearing officer's report has been filed and shall provide a copy upon request.~~

~~E. Decision.~~

~~(1) The secretary shall render his final decision on the proposed regulatory changes within 60 days following close of the record.~~

~~(2) The secretary shall issue the final decision on the proposed regulatory changes in a suitable format. The final decision shall include a statement of reasons for the action taken.~~

~~(3) The hearing clerk shall provide notice of the secretary's final decision to all persons who submitted oral or written comments, and to all other persons who have made written request to the hearing clerk for notification of the action taken.]~~

A. The rules of civil procedure and the rules of evidence shall not apply.

B. The hearing officer shall conduct the hearing 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. The hearing shall proceed as follows:

(1) The hearing shall begin with an opening statement from the hearing officer. The statement shall identify the nature and subject matter of the hearing and explain the procedures to be followed.

(2) The hearing officer may allow a brief opening statement by any party who wishes to make one.

(3) Unless otherwise ordered, the petitioner shall present its case first.

(4) The hearing officer shall establish an order for the testimony of other participants. The order may be based upon notices of intent to present technical testimony, sign-in sheets, and the availability of witnesses who cannot be present for the entire hearing.

(5) If the hearing continues for more than one day, the hearing officer shall provide an opportunity each day for testimony from members of the general public. Members of the general public who wish to present testimony should indicate their intent on a sign-in sheet.

(6) The hearing officer may allow a brief closing argument by any person who wishes to make one.

(7) At the close of the hearing, the hearing officer shall determine whether to keep the record open for written submittals in accordance with 20.1.9.21 NMAC. If the record is kept open, the hearing officer shall determine and announce the subject(s) on which submittals will be allowed and the deadline for filing the submittals.

C. If the hearing is conducted at multiple locations, the hearing officer may require the petitioner's witnesses to summarize their testimony or be available for cross-examination at each location. Other participants are not required to testify at more than one location, and the hearing officer may prohibit a witness from testifying at more than one location.

[20.1.9.13 NMAC - N, 12/01/07]

20.1.9.18 TESTIMONY AND CROSS-EXAMINATION:

A. All testimony will be taken under oath or affirmation which may be accomplished en masse or individually.

B. The hearing officer shall admit any relevant evidence, unless the hearing officer determines that the evidence is incompetent or unduly repetitious. The hearing officer shall require all oral testimony be limited to the position of the witness in favor of or against the proposed rule.

C. Any person who testifies at the hearing is subject to cross-examination on the subject matter of his or her direct testimony and matters affecting his or her credibility. Any person attending the hearing is entitled to conduct such cross-examination as may be required for a full and true disclosure of matters at issue in the hearing. The hearing officer may limit cross-examination to avoid harassment, intimidation, needless expenditure of time, or undue repetition.

20.1.9.19 EXHIBITS:

A. Any person offering an exhibit at hearing, other than a document filed and served before the hearing, shall provide an original for the secretary and a sufficient number of copies for every other party.

B. All exhibits offered at the hearing shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially. If a person offers multiple exhibits, he or she shall identify each exhibit with an index tab or by other appropriate means.

C. Large charts and diagrams, models and other bulky exhibits are discouraged. If visual aids are used, legible copies shall be submitted for inclusion in the record.

20.1.9.20 TRANSCRIPT OF PROCEEDINGS:

A. Unless specified by the secretary or hearing officer, a verbatim transcript shall be made of the hearing. The cost of the original transcript of the proceeding and of providing a copy for each member shall be borne by the petitioner.

B. Any person may obtain a copy of the transcript of a proceeding. It shall be obtained directly from the court reporter, and the cost of the transcript shall be paid directly to the source.

20.1.9.21 POST-HEARING SUBMISSIONS: The hearing officer may allow the record to remain open for a reasonable period of time following the conclusion of the hearing for written submission of additional evidence, comments and arguments, and proposed statements of reasons. The hearing officer's determination regarding post-hearing submissions shall be announced at the conclusion of the hearing. In considering whether the record will remain open, the hearing officer shall consider the reasons why the material was not presented during the hearing, the significance of the material to be submitted, and the necessity for a prompt decision. If the record is kept open, the hearing officer shall determine and announce the subject(s) on which submittals will be allowed and the deadline for filing submittals.

20.1.9.22 HEARING OFFICER'S REPORT: If the secretary directs, the hearing officer shall file a report of the hearing. The report shall identify the issues addressed at the hearing, identify the parties' final proposals, and the evidence supporting those proposals, including discussion or recommendations as requested by

the secretary, and shall be filed with the secretary's administrator within the time specified by the secretary. The secretary's hearing office administrator shall promptly notify each party that the hearing officer's report has been filed and shall provide a copy of the report along with a notice of any deadline set for comments on that report.

20.1.9.23 DELIBERATION AND DECISION:

A. If the hearing notice indicated that a decision might be made at the conclusion of the hearing, the secretary may immediately make a decision on the proposed regulatory change.

B. The secretary shall reach a decision on the proposed regulatory change within 60 days following the close of the record or the date the hearing officer's report is filed, whichever is later.

C. If the secretary determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed regulatory change, the secretary may, consistent with the requirements of due process, reopen the hearing for such additional evidence only.

D. The secretary shall issue a decision on the proposed regulatory change in a suitable format, which shall include the secretary's reasons for the action taken.

E. The secretary's written decision is the official version of the secretary's action, and the reasons for that action. Other written or oral statements by the secretary are not recognized as part of the secretary's official decision.

F. If the secretary fails to act on a proposed regulatory change within two years after the notice of proposed rulemaking is published in the New Mexico register, the rulemaking is automatically terminated unless the secretary acts to extend the period for an additional two years by filing a statement of good cause for the extension in the rulemaking record. If the secretary extends the rulemaking period, the secretary shall provide for additional public participation, comments, and hearing(s) prior to adopting the rule.

G. The secretary may terminate a rulemaking at any time by publishing a notice of termination in the New Mexico register. If the secretary terminates a rulemaking in this manner, the secretary shall provide to the public notice the action.

20.1.9.24 NOTICE OF SECRETARY ACTION:

A. The secretary's administrator shall provide to the public notice of the secretary's action and a concise explanatory statement.

B. The adopted rule shall not take effect unless within 15 days of adoption of the rule, the secretary delivers the final rule to the state records administrator, accompanied by a concise explanatory statement that contains:

(1) the date that the secretary adopted the rule;

(2) the effective date of the rule;

(3) a reference to the specific statutory or other authority authorizing the rule;

(4) any findings required by law for adoption of the rule;

(5) reasons for any change between the published proposed rule and the final rule; and

(6) reasons for not accepting substantive argument made through public comment.

C. Adoption of the final rule occurs upon signature of the written decision.

D. If the state records administrator notifies the secretary of having made any minor, non-substantive corrections in spelling, grammar, or format in the filed rule, the secretary hearing office administrator shall provide to the public notice of the correction within 30 days of receiving the state records administrator's record of correction.

20.1.9.25 STAYS AND APPEALS OF SECRETARY REGULATIONS:

A. Any person who is or may be affected by a rule adopted by the secretary may file a motion with the secretary's hearing administrator seeking a stay of that rule or regulatory change. The motion shall include the reason for, and the legal authority supporting, the granting of a stay. The movant shall serve the motion for a stay as provided by this part, and shall further serve all parties in the rulemaking proceeding. The secretary will decide when the motion will be heard. Unless otherwise ordered by the secretary or otherwise provided by law, the filing of an appeal shall not act as a stay on the regulatory change being appealed.

B. Unless otherwise provided by governing law, the secretary may grant a stay pending appeal of any regulatory change promulgated by the secretary. The secretary may only grant a stay if good cause is shown after a motion is filed and a hearing is held.

C. In determining whether good cause is present for the granting of a stay, the secretary shall consider:

- ~~(1) the likelihood that the movant will prevail on the merits of the appeal;~~
- ~~(2) whether the moving party will suffer irreparable harm if a stay is not granted;~~
- ~~(3) whether substantial harm will result to other interested persons; and~~
- ~~(4) whether harm will ensue to the public interest.~~

~~D. If no action is taken within 60 days after filing of the motion, the secretary shall be deemed to have denied the motion for stay.~~

~~E. Appeal of any final decision of the secretary shall be taken in accordance with the governing law.~~

~~F. The appellant shall service a copy of the appeal on the secretary and the petitioner.~~

~~G. The appellant shall be responsible for preparation of a sufficient number of copies of the hearing record at the appellant's expense.~~

~~[20.1.9.14 APPEALS AND STAYS~~

~~A. Appeal of regulations.~~

~~(1) Appeal of any final decision of the secretary shall be taken in accordance with governing law.~~

~~(2) The appellant shall service a copy of the appeal on the secretary and the petitioner.~~

~~(3) The appellant shall be responsible for preparation of a sufficient number of copies of the hearing record at the appellant's expense.~~

~~B. Stay of secretary regulations.~~

~~(1) Unless otherwise ordered by the secretary in accordance with this paragraph or otherwise provided by law, the filing of an appeal shall not act as a stay on the regulatory change being appealed.~~

~~(2) The secretary may grant a stay of the regulatory change pending appeal only if good cause is shown after a motion is filed and hearing is held.~~

~~(3) In determining whether good cause is present for the granting of a stay, the secretary shall consider:~~

~~(a) the likelihood that the moving party will prevail on the merits of the appeal;~~

~~(b) whether the moving party will suffer irreparable harm if a stay is not granted;~~

~~(c) whether substantial harm will result to other interested persons; and~~

~~(d) the public interest.~~

~~(4) If no action is taken within 60 days after filing the motion for stay, the secretary shall be deemed to have denied the motion.~~

~~[20.1.9.14 NMAC - N, 12/01/07]]~~

HISTORY OF 20.1.9 NMAC: [RESERVED]

Jennifer L. Hower

NM Bar #: 23721

New Mexico Environment Department
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Albuquerque, NM 87102
Phone: (505) 222-9550
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EDUCATION:

Juris Doctor (Natural Resources Certificate)
University of New Mexico School of Law
May 2007

Master of Public Administration (Emphases: Public Policy and American Political Institutions)
Northern Arizona University
May 2001

Bachelor of Science, Kinesiology
Kansas State University
December 1998

EMPLOYMENT:

May 2016 – Present
General Counsel, New Mexico Environment Department, Santa Fe/Albuquerque, NM

- Supervisory and administrative oversight of the Office of General Counsel, including personnel and budgetary matters.
- Supervises and monitors work of eight attorneys, including two senior attorneys (Attorney IV), three paralegals and a management analyst.
- Provides guidance to staff attorneys related to cases handled by the Office of General Counsel.
- Lead counsel for agency, including direct legal counsel to Secretary, Deputy Secretary and Division Directors.
- Reviews and edits all contracts and agreements for the New Mexico Environment Department.
- Provides supervisory authority over and legal counsel and guidance related to NMED's the Inspection of Public Records Act program.
- Supervises summer interns and semester externs who are placed with the Office of General Counsel through the clinical law program at the University of New Mexico School of Law.

- Represents clients from New Mexico Environment Department's Divisions and Bureaus in major matters before Department Hearing Officers, the Environmental Improvement Board, the Water Quality Control Commission, state District Courts, federal District Courts and federal Bankruptcy Court.
- Counsels departmental clients on wide array of legal issues.
- Assists Bureaus and Divisions with all aspects of judicial and administrative proceedings.
- Composes motions, briefs, findings of fact and conclusions of law.
- Composes and prepares legal research related to client inquiries.
- Facilitates the negotiation of and drafts settlement agreements, especially in major or high-impact matters.
- Drafts regulations, legislation and internal policies for the New Mexico Environment Department.

January 2017 – Present

Adjunct Professor, University of New Mexico School of Law, Albuquerque, NM

- Adjunct Professor for an annual spring drafting course titled "The Practice of Administrative Environmental Law in New Mexico".
- Design and update course content including lectures and reading materials.
- Review and grade drafting assignments.
- Provide guidance and mentorship to law students enrolled in course.

April 2012 – May 2016

Deputy General Counsel, New Mexico Environment Department, Santa Fe/Albuquerque, NM

- Supervised and monitored work performance of legal support staff.
- Supervised and monitored work of attorneys, including senior attorneys (Attorney IV).
- Assumed all lead counsel, supervisory and administrative duties within the Office of General Counsel when the General Counsel was on leave or no General Counsel was in place.
- Assisted General Counsel with establishing office priorities and case assignments.
- Assisted with the administration of the Office of General Counsel.
- Reviewed and edited all contracts and agreements for the New Mexico Environment Department.
- Provided legal counsel and guidance related to the Inspection of Public Records Act.
- Supervised summer interns and semester externs who are placed with the Office of General Counsel through the clinical law program at the University of New Mexico School of Law.
- Represented clients from New Mexico Environment Department's Divisions and Bureaus before Department Hearing Officers, the Environmental Improvement Board, the Water Quality Control Commission, state District Courts, federal District Courts and federal Bankruptcy Court.
- Counseled departmental clients on wide array of legal issues.
- Assisted Bureaus and Divisions with all aspects of judicial and administrative proceedings.
- Prepared witnesses for testimony in various types of proceedings, including permit hearings, rulemakings, appeal hearings, District Court hearings, and depositions.
- Composed motions, briefs, findings of fact and conclusions of law.
- Composed and prepared legal research related to client inquiries.
- Acquired administrative search warrants.
- Facilitated the negotiation of and drafted settlement agreements.
- Assisted clients with creditor proceedings in federal Bankruptcy Court.

- Drafted regulations, legislation and internal policies for the New Mexico Environment Department.
- Created training programs and trained enforcement and inspection staff on the New Mexico Inspection of Public Records Act, Proper Administrative Inspections and the Fourth Amendment, and the Retention of E-Records under the Public Records Act.

August 2007 – April 2012

Assistant General Counsel, New Mexico Environment Department, Santa Fe/Albuquerque, NM

- Represented clients from New Mexico Environment Department's Divisions and Bureaus before Department Hearing Officers, the Environmental Improvement Board, the Water Quality Control Commission, state District Courts, federal District Courts and federal Bankruptcy Court.
- Counseled departmental clients on wide array of legal issues.
- Assisted Bureaus and Divisions with all aspects of judicial and administrative proceedings.
- Prepared witnesses for testimony in various types of proceedings, including permit hearings, rulemakings, appeal hearings, District Court hearings, and depositions
- Composed motions, briefs, findings of fact and conclusions of law.
- Composed and prepared legal research related to client inquiries.
- Acquired administrative search warrants.
- Facilitated the negotiation of and drafts settlement agreements.
- Assisted clients with creditor proceedings in federal Bankruptcy Court.
- Drafted regulations, legislation and internal policies for the New Mexico Environment Department.
- Created training program and trained enforcement and inspection staff on the New Mexico Inspection of Public Records Act, Proper Administrative Inspections and the Fourth Amendment, and the Retention of E-Records Under the Public Records Act.
- Supervised summer interns and semester externs who are placed with the Office of General Counsel through the clinical law program at the University of New Mexico School of Law.

June 2005 – August 2005, May 2006 – August 2006, January 2007 – June 2007

(Externship, January 2006 – April 2006)

Law Clerk, New Mexico Environment Department, Santa Fe, NM

- Researched complex legal issues relating to state and federal environmental statutes (including clean air, clean water and hazardous waste), agency authority in regulating and enforcing environmental statutes, and the interaction between state and federal regulatory agencies.
- Drafted statutory language for the amendment of current state environmental statutes.
- Composed legal memos regarding researched environmental topics for staff attorneys.
- Assisted in the research and composition of appellate briefs.
- Met with staff attorneys on a daily basis to verbally discuss research and legal findings pertaining to environmental statutes and case law.
- Attended Environmental Improvement Board and Water Quality Control Commission hearings.

September 2005 – May 2006

Contributor, New Mexico State Bar Section on Natural Resources, Energy and Environmental Law Newsletter, Albuquerque, NM

- Researched current legal issues that are applicable to New Mexico relating to natural resources, energy and the environment.
- Composed and edited articles for newsletter publication based on research undertaken.
- Worked with editor of newsletter to refine articles before publication.
- Produced work product under deadlines.

July 2001 – August 2004

Economic/Policy Analyst, Energy Economic & Environmental Consultants, Inc., Albuquerque, NM

- Economic/policy analyst in consulting firm that provided economic, strategic, policy and financial analysis of natural gas, petroleum, power, and environmental issues for business planning; natural gas, petroleum commodity and natural resource valuation issues; energy company marketing and financial practices; energy conditions and economic forecasts; energy industry regulation and deregulation; environmental and natural resource damage analysis.
- On the behalf of the University of New Mexico, participated in the analysis of regulatory policy issues relating to the environment, energy and energy economics and the analysis of business and administrative issues dealing with the implementation of energy systems (specifically, distributive generation), provided representation within regulatory arenas in relation to rate and deregulation issues, created rate design models, and created and designed presentations and reports dealing with diverse energy, environmental and economic issues.
- Assisted tribal entities with utility formation, including resource assessments, economic modeling, acquisition of funding, interactions with public utilities and participation in regulatory arenas.
- Created reports, memos and presentations for diverse audiences regarding energy and environmental regulatory issues and analyses.
- Researched diverse topics regarding local, state and federal energy and environmental regulatory issues.
- United States Department of Justice security clearance.

PUBLICATIONS:

- *“At the Well” in New Mexico- Current Court Interpretations of the Definition of “At the Well” in Natural Gas Royalty Clauses.* Vista, State Bar of New Mexico Section on Natural Resources, Energy and the Environment Newsletter, Fall 2005.
- *The Clean Air Mercury Rule, Coal-burning Power Plants and New Mexico’s Water: What’s the Connection?* Vista, State Bar of New Mexico Section on Natural Resources, Energy and the Environment Newsletter, Spring 2006.

MEMBERSHIPS AND ACTIVITIES:

- State Bar of New Mexico.
 - o Public Law Section member.
 - Board Member, 2006-2017 (Secretary- 2010; Chair-Elect, 2011; Chair-2012; Past Chair- 2013; Budget Officer- 2016).
- Federal Bar, United States District Court, District of New Mexico.
- New Mexico Environment Department Employee Recognition Committee- 2011.

- Albuquerque Soccer League, Team Representative (First Division- Godzilla).
- Volunteer with the City of Albuquerque Animal Welfare Department (volunteer work consists of leading a "dog team" of volunteers every Saturday morning, walking dogs at the Eastside shelter and fostering puppies and kittens until they are ready for adoption).

AWARDS:

- Class of 2007 Hugh Muir Oath Project Award Winner, University of New Mexico School of Law.
- University of New Mexico School of Law Honor Roll: Fall 2005, Spring 2006, Fall 2006.

STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT

IN THE MATTER OF PROPOSED

REVISIONS TO THE RULEMAKING

NO. NMED 18-15(R)

PROCEDURES FOR THE DEPARTMENT,

20.1.9 NMAC

New Mexico Environment Department,

Petitioner.

DIRECT TESTIMONY OF JENNIFER L. HOWER

I. INTRODUCTION

This technical testimony is submitted by Jennifer L. Hower, General Counsel of the New Mexico Environment Department (“Department”), for the public hearing before the Secretary of Environment on the proposed amendments to 20.1.9 NMAC. The hearing is to be held in Santa Fe, New Mexico on October 12, 2018.

The purpose of this testimony is to provide a summary and explanation of the proposed amendments and discuss why the proposed amendments are necessary.

II. BACKGROUND

I, Jennifer L. Hower, have been employed by the Department for 11 years. I currently hold the position of General Counsel and have held this position since May 2016. In this position, I am responsible for the supervision and management of the Department's Office of General Counsel, which includes nine staff attorneys. In this position, I am also the chief legal counsel for the Department. Prior to this position, I was the Deputy General Counsel of the Department from April 2012 to May 2016. In this position, I was responsible for directly supervising all paralegals and two attorneys within the Office of General Counsel, representing the Department in administrative and judicial proceedings, and providing managerial assistance to the General Counsel. Prior to that, I was an Assistant General Counsel with the Department from August 2007 to April 2012. Throughout my legal career, I have represented the Department in numerous rulemakings. Additionally, I am an Adjunct Professor at the University of New Mexico School of Law where I teach a course on the practice of administrative environmental law in New Mexico. I hold a B.S. in Kinesiology from Kansas State University, a M.P.A. from Northern Arizona University, and a J.D. from the University of New Mexico School of Law. A copy of my resumé is marked as NMED Exhibit 2.

II. THE NEW MEXICO ENVIRONMENT DEPARTMENT'S RULEMAKING RULES

The Department is proposing amendments to the Secretary of Environment's ("Secretary") process for reviewing, considering, promulgating, and adopting regulations pursuant to its grant of authority from the Department of Environment Act, NMSA 1978, Sections 9-7A-1 to -15. *See* 20.1.9. NMAC ("Rulemaking Procedures"). Specifically, the Department is proposing amendments to the Rulemaking Procedures found in 20.1.9 NMAC to bring them into compliance with amendments to the State Rules Act ("SRA"), NMSA 1978, Sections 14-4-1 to -11, adopted

by the New Mexico Legislature in 2017. *See* 2017 N.M. Laws, ch. 137 §3 (attached as NMED Exhibit 4). Adoption of the Department’s proposed amendments to the Rulemaking Procedures, attached as NMED Exhibit 1, will provide at least as much opportunity for public participation as the SRA and the New Mexico Attorney General’s default rulemaking procedures. In addition to the amendments to comply with the SRA, the Department proposes general amendments to the Rulemaking Procedures in order to bring them into parity with the New Mexico Water Quality Control Commission and Environmental Improvement Board rulemaking rules. *See* 20.1.6 NMAC and 20.1.1 NMAC. As a procedural note, the Department discusses “amendments” to the Rulemaking Procedures for convenience of language. The proposed revisions are technically a “repeal and replace” of 20.1.9 NMAC in accordance with 1.24.10 NMAC, and the Department therefore respectfully requests that the Secretary repeal 20.1.9 NMAC and replace it with the version provided in NMED Exhibit 1.

A. Rulemaking Procedures Background

The Secretary may adopt rulemaking procedures pursuant to NMSA 1978, Sections 9-7A-6(D), and 3-29-9. However, the proposed amendments to the Rulemaking Procedures are not relevant to the Sanitary Projects Act. *See generally* NMSA 1978, 3-29-1 to -21 and NMED Exhibit 1. Specifically, section 9-7A-6(D) allows the Secretary to promulgate rules applying to persons and entities outside the Department that are necessary to carry out the duties of the Department and its divisions. Section 9-7A-6(D) further establishes the basic procedural requirements for adopting those regulations. To date, the Secretary has promulgated rules 13 times for a variety of purposes. *See e.g.* 20.1.4 NMAC, Permit Procedures – Environment Department; 20.2.89 NMAC, Qualified Generating Facility Certification; and 20.6.3 NMAC, Voluntary Remediation.

During the 2017 Regular Session, the New Mexico Legislature passed House Bill 58 (“HB58”) amending the SRA. NMED Exhibit 4. HB58 primarily added requirements to facilitate public participation in executive agency rulemakings. *Id.* The SRA now includes additional procedural steps applicable to state agencies, including the Department. NMSA 1978, § 14-4-2(A) (2017); *see e.g.* NMSA 1978, § 14-4-5.2 (2017) (requiring a notice of proposed rulemaking be published prior to a rulemaking hearing).

To meet these obligations, the SRA permits state agencies to adopt agency procedural rules that provide at least as much opportunity for parties and the public to participate as the default rulemaking provisions adopted by the New Mexico Attorney General (“Attorney General”). NMSA 1978, § 14-4-5.8 (2017). The Attorney General adopted a default procedural rule for rulemakings effective April 10, 2018, which can be found at 1.24.25 NMAC (“Default Rules”). Pursuant to NMSA 1978, Section 14-4-5.8, the Default Rules apply to agencies who do not adopt their own procedural rules or incorporate the Default Rules by reference. 1.24.25.2 NMAC. To properly adopt its own rulemaking procedures pursuant to the SRA, the Secretary must ensure that his procedures will provide at least as much opportunity for participation by the parties and the public as the Default Rules proposed by the Attorney General. NMSA 1978, § 14-4-5.8.

B. Reason for Enacting Rulemaking Rules

The purposes of the Rulemaking Procedures are to:

- i.** Standardize the procedures used in rulemaking proceedings before the Department;
- ii.** Encourage public participation in the regulatory change hearings conducted by the Department;
- iii.** Assure that the regulatory change hearings are conducted by the Department in a fair and equitable manner.

20.1.9.6 NMAC.

These existing stated purposes fit well within the purposes of the SRA amendments because the SRA amendments primarily address public notice and participation in the rulemaking process. *See e.g.* NMSA 1978, §§ 14-4-5(B) (prohibiting adoption of a rule until the end of the public comment period), 14-4-5.2 (requiring that an agency provide to the public and publish in the New Mexico Register a notice of proposed rulemaking that includes instructions for participation or providing comment in the rulemaking proceeding), 14-4-5.3 (requiring that public rule hearings be open to the public), 14-4-5.4 (requiring maintenance of a rulemaking record that is readily available for public inspection), and 14-4-5.8 (requiring procedural rules that provide opportunity for public participation). Even though the stated purposes of the current Rulemaking Procedures provide a standardized, public, and efficient process, the proposed changes will bring the Rulemaking Procedures in line with the SRA's new requirements through the addition of additional language.

Importantly, the Department proposes to add two additional reasons to the objectives for the Rulemaking Procedures. First, "to make possible the effective presentation of the evidence and points of view of parties and members of the general public." NMED Exhibit 1, Section 20.1.9.6.C. Second, "to allow all interested persons a reasonable opportunity to submit data, views, or arguments orally or in writing". Currently, the Rulemaking Procedures do not have requirements for the submittal of technical testimony. The only requirements relate to offering public comment, but not the presentation of technical evidence, the timeline for filing technical testimony, or the content of such filings. 20.1.9.12.C NMAC. In the Department's experience and expertise in having conducted numerous contested and uncontested rulemakings, clear procedures for the filing of technical testimony prior to the start of the hearing allows for a clearer and more thorough examination of the record by the decision maker as well as a more robustly supported decision.

Without these clear procedural requirements, there is nothing to prevent parties from surprising the hearing officer and other parties with voluminous filings and little to no time for review. *See* 20.1.9.12.C NMAC, allowing submittal of written comments at or before the hearing.

III. PROPOSED CHANGES

This section provides a section-by-section review and explanation of the Department's proposed revisions.

A. 20.1.9.2 NMAC- The Department proposes to add citations to the SRA because some of the proposed revisions are based on SRA language; addition of these citations directly supports these revisions.

B. 20.1.9.5 NMAC- Given the extensive nature of the revisions, the Department proposes a repeal and replace of 20.1.9 NMAC. This will require a new effective date dependent on the Secretary's adoption of the proposed revisions as well as filing of the adopted rule.

C. 20.1.9.6 NMAC- See explanation above in Section II.

D. 20.1.9.7 NMAC- This section provides definitions applicable to the Rulemaking Procedures. The Default Rules adopt the SRA definitions found in Section 14-4-2 in 1.24.25.7 NMAC. The Department's proposed definitions do not incorporate all SRA definitions as incorporated by Section 1.24.25.7 of the Default Rules because some of those definitions are unnecessary at the agency level, though they may be necessary when applied to multiple agencies. However, the Department is proposing to adopt Sections 14-4-2(B) (defining person), 14-4-2(E) (defining the method of distributing rulemaking information to the public), and 14-4-2(F) (defining rules). These are the key definitions because compliance with the SRA hinges on public participation. *See* NMSA 1978, § 14-4-5.8. Additional definitions in the Department's proposed amendments meet or surpass the Default Rules definitions:

i. Document: This term is currently undefined in the Rulemaking Procedures. See 20.1.9.7 NMAC. However, this definition will help clarify the procedures, specifically the applicability of service requirements in Section 20.1.9.7.R and defining the record proper in Section 20.1.9.7.N of the Department’s proposed revisions, as found in NMED Exhibit 1.

ii. Exhibit: See explanation for addition of “Document”.

iii. General Public: The Department is proposing this definition to clarify the applicability of certain requirements, particularly in relation to the participation requirements found in Section 20.1.9.12.C.

iv. Governing Law: The Department proposes this definition for clarity.

v. Participant and Party: The Department proposes these definitions to clearly distinguish between the responsibilities and statuses of participants and parties. Compare e.g. NMED Exhibit 1, Section 20.1.9.17.A (establishing order of testimony for participants) and NMED Exhibit 1, Section 20.1.9.16 (establishing requirements for service and filing of motions for parties). Neither of these terms is defined in the SRA or the Default Rules which incorporate the SRA definitions by reference.

vi. Person: NMSA 1978, Section 14-4-2(B) defines a person as, “individuals, associations, partnerships, companies, business trusts, political subdivisions, and corporations.” The current Rulemaking Procedures are more inclusive in that they include individuals in the definition of a person as well as, “an entity”. 20.1.9.7.E NMAC. Including entities necessarily includes the organizations listed in the statute as well as organizations that are not listed in the statute.

vii. Providing to the Public: The Department proposes new subsection M under 20.1.9.7 NMAC to incorporate the SRA public notice requirements. This is separate from the

newspaper and New Mexico Register notice currently required pursuant to 20.1.9.12.B NMAC. The Department's proposed amendments require notice for additional actions, but those actions do not require publication of notice in the New Mexico Register or a newspaper. *See e.g.* NMED Exhibit 1, Section 20.1.9.24 (requiring notice to the public upon agency action). For clarity, the Department proposes this definition since this notice process is used multiple times, particularly in the proposed 20.1.9.12.B(1), 20.1.9.23.G, and 20.1.9.24 NMAC. NMED Exhibit 1. The proposed definition establishes the necessary steps to provide to the public notice when required, and includes posting or sending the necessary rulemaking information:

- a. on the Department's website;
- b. on the New Mexico sunshine portal;
- c. in the applicable field offices;
- d. by email to persons who have participated in the rulemaking or have provided an email address to the hearing office administrator;
- e. by written notice to persons who have provided a postal address to the hearing office administrator; and
- f. to the New Mexico Legislative Council Service.

NMED Exhibit 1, Section 20.1.9.7.M.

viii. Record Proper: The Department proposes adding seven items to the definition of Record Proper currently located at 20.1.9.7.G NMAC. NMED Exhibit 1, Section 20.1.9.7.N. The Rulemaking Procedures already include many of the record requirements listed in the SRA, *compare* 20.1.9.7.G NMAC to NMSA 1978, Section 14-4-5.4(B), but the Department proposes additional items to meet the SRA's requirements:

- a. the notice of hearing;
- b. a copy of all publications in the New Mexico Register relating to the proposed rule;

- c. notices of intent to present technical testimony;
- d. all written pleadings, including motions, responsive pleadings, and orders;
- e. a copy of any technical information relied upon in formulating the final rule;
- f. a copy of the full text of initial proposed rule and final adopted rule as well as the concise explanatory statement required to be filed with the State Records Administrator; and
- g. any corrections made by the State Records Administrator pursuant to Section 14-4-3, NMSA 1978.

NMED Exhibit 1, Section 20.1.9.7.N.

Additionally, the Department proposes to clarify the proposed 20.1.9.7.N(8) NMAC by stating that all relevant materials the Secretary receives during the public comment period will be part of the record proper, not just public statements as currently required by 20.1.9.7.G(3) NMAC. Further, the Department proposes that all pleadings be part of the record through the addition of the proposed 20.1.9.7.N(6). NMED Exhibit 1, Section 20.1.9.7.N(6). The transcript of proceedings is required by NMSA 1978, Section 14-4-5.4(B)(3), but the transcript of proceedings is already included in the definition of the hearing record found at 20.1.9.7.D NMAC. These, and the remaining proposed, changes will match the requirements of Section 14-4-5.4, NMSA 1978 as well as the requirements of the Default Rules. *See* Section 1.24.25.14 NMAC.

ix. Regulation: The SRA defines rules in NMSA 1978, Section 14-4-2(F). This definition includes rules, regulations, or standards, including those that explicitly or implicitly implement or interpret a federal or state legal mandate or other applicable law, and amendments, repeals, and renewals. *Id.* Rules must impact agencies or persons outside the issuing agency and do not include orders or decisions related to certain New Mexico government entities. *Id.*

The current definition of a regulation is not quite as expansive in terms of items listed as the SRA definition, though they are similar. *Compare* NMSA 1978, § 14-4-2(F) and 20.1.9.7.H NMAC. The Rulemaking Procedures do not list the specific inclusions of implementation or interpretation of federal or state legal mandates or amendments, repeals, or renewals. *Compare* NMSA 1978, § 14-4-2(F) with 20.1.9.7.H NMAC. However, the Rulemaking Procedures should be adequate since the SRA defines types of rules, and all types of rules are necessarily included in the Rulemaking Procedures' definition of any rules. Additionally, the Rulemaking Procedures do not include the specific exclusion of education or hospitals listed in the SRA. *See* NMSA 1978, § 14-4-2(F). Since those facility related matters are outside of the scope of the Department of Environment Act, the Rulemaking Procedures do not need to list those exclusions. *See* NMSA 1978, § 74-1-8 (2000).

x. Service: The Department proposes to move the service requirements from 20.1.9.10.A NMAC to the definitions sections for clarity. *See* NMED Exhibit 1, Section 20.1.9.7.R.

xi. Technical Testimony: The Department proposes this definition to differentiate between public comment and technical testimony. This is necessary to establish to whom the requirements to file a notice of intent to present technical testimony apply, proposed in NMED Exhibit 1, Section 20.1.9.13.

xii. Transcript of Proceedings: The Department proposes this definition to clearly identify another part of the record. The transcript of proceedings is listed in the SRA as part of the agency record required to maintained for each proposed rule. NMSA 1978, § 14-4-5.4 (2017).

E. 20.1.9.8.B NMAC- The Department proposes to change “impartial” to “equitable” to bring language into conformity with NMSA 1978, Section 14-4-5.3(B). Further, this brings the section into parity with the objective of the Rulemaking Procedures which currently states that that a purpose is, “to assure that the regulatory change hearings pursuant to the Department of Environment Act and Sanitary Projects Act are conducted by the department in a fair and equitable manner.” 20.1.9.6.C NMAC. The remaining proposed language in this subsection brings the Rulemaking Procedures into parity with the EIB’s rulemaking procedures, 20.1.1.107 NMAC, and the WQCC’s rulemaking procedures, 20.1.6.100.B NMAC, reducing confusion for potential participants in any rulemakings involving the Department and providing sufficient authority for the hearing officer to achieve the objectives of this part. *See* NMED Exhibit 1, Section 20.1.1.8.

F. 20.1.9.9 NMAC- Currently, there is no direction for calculating time in relation to deadlines within the Rulemaking Procedures. This proposed language removes uncertainty for all participants as it pertains to calculating or extending deadlines for their requirements in rulemakings.

G. 20.1.9.10 NMAC- The Department proposes this language to be consistent with the SRA, the EIB and WQCC rulemaking procedures, and for clarity for rulemaking participants. The proposed language differs somewhat from the EIB and WQCC rulemaking procedures because of the practicalities of the different governing bodies involved. *Compare e.g.* 20.1.1.200.B(3) NMAC (requiring filing of document 20 days before a board meeting to discuss the document) with Section 20.1.9.10 B (containing no such requirement). Both the EIB and WQCC conduct regular meetings and may decide on matters at regular meetings. *See Id.* The Secretary does not conduct regular meetings, and decisions regarding motions and other matters will be decided by the hearing officer who can set scheduling requirements as needed pursuant to

the proposed 20.1.9.9. *See* NMED Exhibit 1, Section 20.1.9.9. Additionally, the service language was moved to the proposed 20.1.9.7.R. NMED Exhibit 1, Section 20.1.9.7.R.

H. 20.1.9.10.E NMAC- The SRA requires posting rulemaking information on the New Mexico Sunshine Portal, www.sunshineportalnm.com as well as the agency web page. NMSA 1978, §§ 14-4-2(E)(2) and 14-4-5.4(A). Currently, Department proceedings and documents are posted on a variety of different agency web pages, depending on the Bureau involved. The Department will work with the hearing office administrator and its Information Technologies staff to facilitate development of a dedicated Department hearing page similar to those available for the EIB or WQCC, <https://www.env.nm.gov/eib> and <https://www.env.nm.gov/wqcc>. There is a current procedure in place to post notice to the New Mexico Sunshine Portal; the Department followed that procedure in this matter. *See* NMED Exhibit 13.

I. 20.1.9.10.F NMAC- The SRA does not allow the hearing office administrator to charge for electronic copies of the notice of proposed rulemaking; though the hearing office administrator may charge a reasonable fee for providing any records in nonelectronic format. NMSA 1978, § 14-4-5.2(B) (2017). The proposed language conforms to the SRA prohibition, placing the same limits on the hearing office administrator. The Default Rules incorporate NMSA 1978, Section 14-4-5.4 by reference. 1.24.25.9.D and 1.24.25.10.E NMAC. Thus, the proposed changes satisfy both the SRA and the Default Rules.

J. 20.1.9.12- This section focuses on pre-hearing procedures and requirements for rulemakings. The Department does not propose any changes to the process for petitioning for a rule change. However, the Department proposes several changes to the notice of hearings requirements.

i. 20.1.9.12.B- The Department proposes to make two changes to this paragraph. First, the Department proposes to change “give public notice” to “provided to the public notice”. NMED Exhibit 1, Section 20.1.9.12.B(1). The SRA requires notice at different points via the “provide to the public” requirement. NMSA 1978, §§ 14-4-5(C), 14-4-5.2(A), and 14-4-5.5. However, publication in the New Mexico Register is only required for the notice of proposed rulemaking, even though the notice of proposed rulemaking must also meet the requirements of “provide to the public”. NMSA 1978, § 14-4-5.2(A). Additionally, the Department of Environment Act only requires that notice of the hearing be published in the New Mexico Register and a newspaper of general circulation. NMSA 1978, § 9-7A-6(D). The proposed language ensures that both the Department of Environment Act notice requirements and SRA notice requirements are included without being too confusing. Additionally, the Department proposes to change “public notice” to “notice of proposed rulemaking”. NMED Exhibit 1, 20.1.9.12.B(1). This will help specify exactly which notice must meet these requirements.

ii. The Department proposes to remove the current 20.1.9.12.B(2) NMAC since that requirement is listed in the “provide the public” requirements found in Section 20.1.9.7.M of the Department’s proposed changes. *Compare* NMED Exhibit 1, Section 20.1.9.7.M and 20.1.9.12.B(2) NMAC. Listing the “provide to the public” requirement is duplicative.

iii. The Department proposes changes to paragraph (3) of this subsection which, because of the removal of 20.1.9.12.B(2) NMAC, would become paragraph (2). NMED Exhibit 1, Section 20.1.9.12.B(2). The proposed changes incorporate the SRA requirements for content of the notice of proposed rulemaking. *Compare* NMED Exhibit 1, Section 20.1.9.12.B(2) with NMSA 1978, § 14-4-5.2 (2017).

K. 20.1.9.12.C NMAC- This subsection establishes requirements for the submittal of non-technical testimony by the general public. The Department proposes minor revisions to this subsection to make it consistent with the corresponding EIB and WQCC provision. *Compare* 20.1.1.304 NMAC, 20.1.6.204 NMCA, and NMED Exhibit 1, Section 20.1.9.12.C.

L. 20.1.9.12.D NMAC- The Department proposes adding language allowing the Secretary to hold a rulemaking hearing in multiple locations if necessary or outside Santa Fe where permitted. *See* NMED Exhibit 1, Section 20.1.9.12.D; NMSA 1978, § 9-7A-6(D). While the Department is not aware of a situation where this has happened in a Departmental rulemaking, it may be helpful in the future to conduct hearings at multiple locations to solicit as much public comment as possible.

M. 20.1.9.12.E NMAC- The Department proposes to add subsection E to 20.1.9.12 NMAC to incorporate the requirement to notify the public of a change in the hearing date or the submission deadlines as required by NMSA 1978, Section 14-4-5.2(D) and the Default Rules, 1.24.25.12 NMAC. As discussed, this notice is not the notice of proposed rulemaking and does not need to be published in the New Mexico Register or a newspaper of general circulation.

N. 20.1.9.13 NMAC- The Department proposes to replace 20.1.9.13 NMAC with a new section that establishes requirements for submitting technical testimony. *See* NMED Exhibit 1, Section 20.1.9.13. The Rulemaking Procedures do not currently contain requirements for filing technical testimony or submittals of notices of intent. Adoption of these requirements will ensure that parties to the rulemaking hearing will be adequately prepared for the public hearing through the advanced preparation and review of the evidence and testimony, rather than attempting to develop a robust record at the hearing. The proposed revisions will facilitate public comment and a clear rulemaking record. *See* 1.24.25.13.E NMAC. This will bring the Rulemaking Procedures

into parity with the EIB and WQCC rulemaking procedures. *See* 20.1.1.302 NMAC and 20.1.6.202 NMAC.

Additionally, the Default Rules correspond to the SRA requirements found in NMSA 1978, Section 14-4-5.3. The Department's proposed amendments incorporate the same requirements, *see* NMED Exhibit 1, 20.1.1.304, with one exception. The current Rulemaking Procedures delineate between public comment and technical testimony while the Default Rules make no such distinction. *Compare* 20.1.1.302 and 20.1.1.304 NMAC with 1.24.25.13.D NMAC. This should not create conflict since the Department's proposed distinction still allows full participation by the public while providing methods of participation.

O. 20.1.9.14 NMAC- The Department proposes to add section 14 to clarify that any person may file an entry of appearance in a rulemaking proceeding rather than only those affected by the proposed rule. NMED Exhibit 1, Section 20.1.9.14. This will allow parties to the hearing clarity as to participation and service as defined in the proposed 20.1.9.7.R NMAC.

P. 20.1.9.15 NMAC- This new section allows witnesses to participate in public rulemaking hearings via telephone or other similar devices in emergency situations or when it is otherwise impossible to attend in person. NMED Exhibit 1, Section 20.1.9.15. Though not ideal because of the limitations on these forms of technology, this allowance furthers the objective of this part to encourage public participation and establish reasonable means for participation. *See* 20.1.9.6 NMAC. In order to ensure that this privilege is not abused, the hearing officer's advanced permission is required; that authority is consistent with the Department of Environment Act, NMSA 1978, § 9-7A-6(D) (directing the secretary or hearing officer to provide notice explaining the manner in which to present views in a public hearing); the SRA, NMSA 1978, § 14-4-5.3(B) (2017) (requiring the agency or hearing officer to determine the manner in which the public can

participate as long as it is consistent with statute and case law); and the Default Rules, 1.24.25.13 NMAC (requiring the agency or hearing officer to conduct the hearing in a simple and organized manner that facilitates public comment and a clear rulemaking record).

Q. 20.1.9.16 NMAC- The Department proposes addition of Section 16 to 20.1.9 NMAC to control the process and requirements for the submittal and resolution of motions in a rulemaking proceeding. NMED Exhibit 1, Section 20.1.9.16. Currently, there are no provisions addressing motions in a rulemaking hearing other than the general grant of authority to the hearing officer to take necessary and appropriate measures to maintain an orderly, efficient, and fair proceeding. 20.1.9.8.B. NMAC. Addition of this section provides clear structure and timelines for resolving motions. *See* NMED Exhibit 1, Section 20.1.9.16.

R. 20.1.9.17 - .23 NMAC- This section outlines the conduct of hearings. The Default Rules similarly include hearing requirements that include: the requirement to hold a public hearing; allowance to appoint a hearing officer; provisions for submitting or making public comment; the requirement that the hearing be fair and equitable and designed to facilitate public comment and a clean rulemaking record; and accommodations for logistical considerations. 1.24.25.13 NMAC. The Rulemaking Procedures currently direct that a hearing be held 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 or irrelevant comments of documents." 20.1.9.13.A(1) NMAC. While the current Rulemaking Procedures provide more expansive direction in terms of the conduct of the hearing itself, they lack the specificity and clarity of the corresponding EIB and WQCC provisions. *Compare* 20.1.9.13 and .14 NMAC to 20.1.1.400 - .406 NMAC and 20.1.6.300 - .306 NMAC. By comparison, the EIB and WQCC rulemaking procedures provides more expansive direction than the Default Rules in terms of appointing a

hearing officer, clearly defining the hearing officer's and parties' roles and authority, and conduct of the hearing itself. *Compare* 1.24.25.13 NMAC to 20.1.1.400 - .406 and 20.1.6.300 .306 NMAC. To provide clarity and structure to the Rulemaking Procedures, the Department proposes to add similar provisions to 20.1.9 NMAC as those found in 20.1.1 and 20.1.6 NMAC. Addition of these requirements will also remove the need for the hearing officer to address similar requirements via scheduling orders for future hearings unless necessary for some other reason.

S. 20.1.9.20 NMAC- The Department's proposed amendment requires that transcripts shall be obtained from the court reporter who has a financial interest in transcript preparation. Though retained as part of the record, the transcript is prepared by a non-party and non-agency employee. Often, the Department receives requests from the court reporters that it retains to direct those requesting a copy of the transcript to request them directly from the court reporter because of the professional and financial interest they have in its preparation.

T. 20.1.9.23. NMAC- The Department proposes to define the date of adoption of a rule as the date of signature of the written decision to avoid confusion regarding deadlines. NMED Exhibit 1, Section 20.1.9.23.E. In addition to providing more expansive direction and certainty to the deliberation and decision process as described in the reasoning for 20.1.9.17- .23 above, the Department proposes the addition of subsection F to conform with NMSA 1978, Section 14-4-5(B), requiring state agencies to decide on proposed rules within two years of publication of the notice of proposed rulemaking in the New Mexico Register. The proposed language states how the Secretary may extend the rulemaking period in accordance with the SRA. NMED Exhibit 1, Section 20.1.9.23.F. The Department's proposed subsection G conforms to the SRA requirements for notice upon termination of a rulemaking found in NMSA 1978, Section 14-4-5(C).

U. **20.1.9.24 NMAC-** The SRA requires that the Secretary provide to the public a notice of his decision as well as a concise explanatory statement supporting adoption of a rule. NMSA 1978, §§ 14-4-5(D) and 14-4-5.5. This goes beyond the current requirement of providing notice to just the participants to the rulemaking or those who have requested notice. *See* 20.1.9.13.E(3) NMAC. Additionally, the SRA requires that the Secretary file the adopted rule with the State Records Administrator within 15 days of adoption. NMSA 1978, § 14-4-5(D). The SRA also requires the filing of a concise explanatory statement with the State Records Administrator supporting adoption of the rule. NMSA 1978, § 14-4-3(A). Finally, the SRA gives the State Records Administrator the authority to make minor, non-substantive changes to the rule after it is filed. NMSA 1978, § 14-4-3(D). While “minor, nonsubstantive changes” is not defined, there are requirements for the hearing office administrator to meet should this happen. *Id.* The Default Rules mirror many of these requirements. *See e.g.* 1.24.25.15.A. (requiring that an agency file an adopted rule with the State Records Administrator within 15 days of adoption); NMSA 1978, § 14-4-5(D). The Department proposes to adopt language conforming to the notice and filing requirements of the SRA and the Default Rules.

V. **20.1.9.25 NMAC-** The Department proposes a few revisions to the current 20.1.9.14 NMAC to provide for clarity in process. First, the current section would be renumbered because of the addition of the new sections discussed above and to preserve the chronological order of the sections in a rulemaking proceeding. *See* NMED Exhibit 1, Sections 20.1.9.13 - .25. Second the Department proposes additional procedural steps to ensure that all parties are aware and included in the stay/appeal process. *See e.g.* NMED Exhibit 1, Section 20.1.9.25.A.

IV. CONCLUSION

Currently, the Department's Rulemaking Procedures do not adequately govern rulemaking proceedings. For example, in this proceeding, an additional scheduling order was necessary to provide certainty on testimony and filing. *See* Scheduling Order. Adoption of the Department's proposed amendments as provided in NMED Exhibit 1 will bring the Rulemaking Procedures into compliance with the SRA and parity with the Default Rules, and it will ensure that the Secretary will be able to continue to confidently conduct rulemakings in compliance with state law. Adoption of the Department's proposed amendments will provide for fair and equitable public participation through adequate notice, opportunity for public comment and testimony in the hearing, access to the rulemaking record throughout the proceedings, and notice upon the completion of the rulemaking process. Therefore, the Department respectfully requests that the Secretary adopted the proposed amendments. The Department has attached a proposed statement of reasons for adoption of the amendments as NMED Exhibit 6 for the Secretary's review and consideration.

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AN ACT

RELATING TO RULES; CREATING REQUIREMENTS FOR PROPOSING,
ADOPTING, AMENDING OR REPEALING RULES; AMENDING AND ENACTING
SECTIONS OF THE STATE RULES ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 14-4-2 NMSA 1978 (being Laws 1967,
Chapter 275, Section 2, as amended) is amended to read:

"14-4-2. DEFINITIONS.--As used in the State Rules Act:

A. "agency" means any agency, board, commission,
department, institution or officer of the state government
except the judicial and legislative branches of the state
government;

B. "person" includes individuals, associations,
partnerships, companies, business trusts, political
subdivisions and corporations;

C. "proceeding" means a formal agency process or
procedure that is commenced or conducted pursuant to the
State Rules Act;

D. "proposed rule" means a rule that is provided
to the public by an agency for review and public comment
prior to its adoption, amendment or repeal, and for which
there is specific legal authority authorizing the proposed
rule;

E. "provide to the public" means for an agency to

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1 distribute rulemaking information by:

2 (1) posting it on the agency website, if
3 any;

4 (2) posting it on the sunshine portal;

5 (3) making it available in the agency's
6 district, field and regional offices, if any;

7 (4) sending it by electronic mail to persons
8 who have made a written request for notice from the agency of
9 announcements addressing the subject of the rulemaking
10 proceeding and who have provided an electronic mail address
11 to the agency;

12 (5) sending it by electronic mail to persons
13 who have participated in the rulemaking and who have provided
14 an electronic mail address to the agency;

15 (6) sending written notice that includes, at
16 a minimum, an internet and street address where the
17 information may be found to persons who provide a postal
18 address; and

19 (7) providing it to the New Mexico
20 legislative council for distribution to appropriate interim
21 and standing legislative committees;

22 F. "rule" means any rule, regulation, or standard,
23 including those that explicitly or implicitly implement or
24 interpret a federal or state legal mandate or other
25 applicable law and amendments thereto or repeals and renewals

1 thereof, issued or promulgated by any agency and purporting
2 to affect one or more agencies besides the agency issuing the
3 rule or to affect persons not members or employees of the
4 issuing agency, including affecting persons served by the
5 agency. An order or decision or other document issued or
6 promulgated in connection with the disposition of any case or
7 agency decision upon a particular matter as applied to a
8 specific set of facts shall not be deemed such a rule, nor
9 shall it constitute specific adoption thereof by the agency.
10 "Rule" does not include rules relating to the management,
11 confinement, discipline or release of inmates of any penal or
12 charitable institution, the New Mexico boys' school, the
13 girls' welfare home or any hospital; rules made relating to
14 the management of any particular educational institution,
15 whether elementary or otherwise; or rules made relating to
16 admissions, discipline, supervision, expulsion or graduation
17 of students from any educational institution; and

18 G. "rulemaking" means the process for adoption of
19 a new rule or the amendment, readoption or repeal of an
20 existing rule."

21 SECTION 2. Section 14-4-3 NMSA 1978 (being Laws 1967,
22 Chapter 275, Section 3, as amended) is amended to read:

23 "14-4-3. FORMAT OF RULES--FILING--DISTRIBUTION.--

24 A. Each agency promulgating any rule shall place
25 the rule in the format and style required by rule of the

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1 state records administrator and shall deliver the rule to the
2 state records administrator or the administrator's designee,
3 accompanied by the concise explanatory statement required by
4 the State Rules Act. The state records administrator or the
5 administrator's designee shall note thereon the date and hour
6 of filing.

7 B. The state records administrator or the
8 administrator's designee shall maintain a copy of the rule as
9 a permanent record open to public inspection during office
10 hours, on the website of the records center, published in a
11 timely manner in the New Mexico register and compiled into
12 the New Mexico Administrative Code.

13 C. At the time of filing, an agency may submit to
14 the state records administrator or the administrator's
15 designee a copy, for annotation with the date and hour of
16 filing, to be returned to the agency.

17 D. The state records administrator, after written
18 notification to the filing agency, may make minor,
19 nonsubstantive corrections in spelling, grammar and format in
20 filed rules. The state records administrator shall make a
21 record of the correction and shall deliver the record to the
22 filing agency and issuing authority within ten days of the
23 change. Within thirty days of receiving that state records
24 administrator's record of a correction, the agency shall
25 provide to the public notice of the correction in the same

1 manner as the agency used to give notice of the rulemaking
2 proceeding pursuant to Section 4 of this 2017 act."

3 SECTION 3. Section 14-4-5 NMSA 1978 (being Laws 1967,
4 Chapter 275, Section 6, as amended) is amended to read:

5 "14-4-5. TIME LIMIT ON ADOPTION OF A PROPOSED RULE--
6 FILING AND COMPLIANCE REQUIRED FOR VALIDITY.--

7 A. Except in the case of an emergency rule, no
8 rule shall be valid or enforceable until it is published in
9 the New Mexico register as provided by the State Rules Act.

10 B. An agency shall not adopt a rule until the
11 public comment period has ended. If the agency fails to take
12 action on a proposed rule within two years after the notice
13 of proposed rulemaking is published in the New Mexico
14 register, the rulemaking is automatically terminated unless
15 the agency takes action to extend the period. The agency may
16 extend the period of time for adopting the proposed rule for
17 an additional period of two years by filing a statement of
18 good cause for the extension in the rulemaking record, but it
19 shall provide for additional public participation, comments
20 and rule hearings prior to adopting the rule.

21 C. An agency may terminate a rulemaking at any
22 time by publishing a notice of termination in the New Mexico
23 register. If a rulemaking is terminated pursuant to this
24 section, the agency shall provide notice to the public.

25 D. Within fifteen days after adoption of a rule,

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1 an agency shall file the adopted rule with the state records
2 administrator or the administrator's designee and shall
3 provide to the public the adopted rule. The state records
4 administrator or the administrator's designee shall publish
5 rules as soon as practicable after filing, but in no case
6 later than ninety days after the date of adoption of the
7 proposed rule. Unless a later date is otherwise provided by
8 law or in the rule, the effective date of a rule shall be the
9 date of publication in the New Mexico register.

10 E. A proposed rule shall not take effect unless it
11 is adopted and filed within the time limits set by this
12 section."

13 SECTION 4. A new section of the State Rules Act is
14 enacted to read:

15 "NOTICE OF PROPOSED RULEMAKING.--

16 A. Not later than thirty days before a public rule
17 hearing, the agency proposing the rule shall provide to the
18 public and publish in the New Mexico register a notice of
19 proposed rulemaking. The notice shall include:

20 (1) a summary of the full text of the
21 proposed rule;

22 (2) a short explanation of the purpose of
23 the proposed rule;

24 (3) a citation to the specific legal
25 authority authorizing the proposed rule and the adoption of

1 the rule;

2 (4) information on how a copy of the full
3 text of the proposed rule may be obtained;

4 (5) information on how a person may comment
5 on the proposed rule, where comments will be received and
6 when comments are due;

7 (6) information on where and when a public
8 rule hearing will be held and how a person may participate in
9 the hearing; and

10 (7) a citation to technical information, if
11 any, that served as a basis for the proposed rule, and
12 information on how the full text of the technical information
13 may be obtained.

14 B. An agency may charge a reasonable fee for
15 providing any records in nonelectronic form when provided to
16 a person pursuant to this section. An agency shall not
17 charge a fee for providing any records in electronic form
18 when provided to a person pursuant to this section.

19 C. An internet link providing free access to the
20 full text of the proposed rule shall be included on the
21 notice of proposed rulemaking.

22 D. If the agency changes the date of the public
23 rule hearing or the deadline for submitting comments as
24 stated in the notice, the agency shall provide notice to the
25 public of the change.

1 E. The state records administrator or the
2 administrator's designee shall timely publish the notice of
3 proposed rulemaking in the next publication of the New Mexico
4 register."

5 SECTION 5. A new section of the State Rules Act is
6 enacted to read:

7 "PUBLIC PARTICIPATION, COMMENTS AND RULE HEARINGS.--

8 A. The notice of proposed rulemaking shall specify
9 a public comment period of at least thirty days after
10 publication in the New Mexico register during which a person
11 may submit information and comment on the proposed rule.
12 The information or comment may be submitted in an electronic
13 or written format or at a public rule hearing pursuant to
14 Subsection B of this section. The agency shall consider all
15 information and comment on a proposed rule that is submitted
16 within the comment period.

17 B. At the public rule hearing, members of the
18 public shall be given a reasonable opportunity to submit
19 data, views or arguments orally or in writing. Each agency
20 shall determine, in accordance with governing statutory and
21 case law, the manner in which parties to the proceeding and
22 members of the public will be able to participate in public
23 hearings. All public hearings shall be conducted in a fair
24 and equitable manner. Except as otherwise provided by law,
25 an agency representative or hearing officer shall preside

1 over a public rule hearing.

2 C. The public rule hearing shall be open to the
3 public and be recorded."

4 SECTION 6. A new section of the State Rules Act is
5 enacted to read:

6 "AGENCY RECORD IN RULEMAKING PROCEEDING.--

7 A. An agency shall maintain a rulemaking record
8 for each rule it proposes to adopt. The record and materials
9 incorporated by reference in the proposed rule shall be
10 readily available for public inspection in the central office
11 of the agency and available for public display on the state
12 sunshine portal. If an agency determines that any part of
13 the rulemaking record cannot be practicably displayed or is
14 inappropriate for public display on the sunshine portal, the
15 agency shall describe that part of the record, shall note on
16 the sunshine portal that the part of the record is not
17 displayed and shall provide instructions for accessing or
18 inspecting that part of the record.

19 B. A rulemaking record shall contain:

20 (1) a copy of all publications in the New
21 Mexico register relating to the proposed rule;

22 (2) a copy of any technical information that
23 was relied upon in formulating the final rule;

24 (3) any official transcript of a public rule
25 hearing or, if not transcribed, any audio recording or

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1 verbatim transcript of the hearing, and any memoranda
2 summarizing the contents of the hearing prepared by the
3 hearing officer or agency official who presided over the
4 hearing;

5 (4) a copy of all comments and other
6 material received by the agency during the public comment
7 period and at the public hearing;

8 (5) a copy of the full text of the initial
9 proposed rule and the full text of the final adopted rule and
10 the concise explanatory statement filed with the state
11 records administrator or the administrator's designee; and

12 (6) any corrections made by the state
13 records administrator pursuant to Section 14-4-3 NMSA 1978."

14 SECTION 7. A new section of the State Rules Act is
15 enacted to read:

16 "CONCISE EXPLANATORY STATEMENT.--At the time it adopts a
17 rule, an agency shall provide to the public a concise
18 explanatory statement containing:

19 A. the date the agency adopted the rule;

20 B. a reference to the specific statutory or other
21 authority authorizing the rule; and

22 C. any findings required by a provision of law for
23 adoption of the rule."

24 SECTION 8. A new section of the State Rules Act is
25 enacted to read:

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1 "EMERGENCY RULE.--

2 A. An agency shall comply with the rulemaking
3 procedures of the State Rules Act unless the agency finds
4 that the time required to complete the procedures would:

5 (1) cause an imminent peril to the public
6 health, safety or welfare;

7 (2) cause the unanticipated loss of funding
8 for an agency program; or

9 (3) place the agency in violation of federal
10 law.

11 B. The agency shall provide to the public a record
12 of any finding pursuant to Subsection A of this section and a
13 detailed justification for that finding before issuing an
14 emergency rule. The record shall include a statement that
15 the emergency rule is temporary. After such record has been
16 provided to the public, the agency may issue the emergency
17 rule immediately without a public rule hearing or with any
18 abbreviated notice and hearing that it finds practicable.

19 C. When an agency makes a finding pursuant to
20 Subsection A of this section, the agency shall follow the
21 provisions of this section in addition to any more specific
22 requirements in statute that pertain to the agency regarding
23 promulgating emergency or interim rules.

24 D. Emergency rules may take effect immediately
25 upon filing with the state records administrator or the

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1 administrator's designee or at a later date specified in the
2 emergency rule. Emergency rules shall be published in the
3 New Mexico register.

4 E. No emergency rule shall permanently amend or
5 repeal an existing rule. An emergency rule shall remain in
6 effect until a permanent rule takes effect under the normal
7 rulemaking process. If no permanent rule is adopted within
8 one hundred eighty days from the effective date of the
9 emergency rule, the emergency rule shall expire and may not
10 be readopted as an emergency rule. If an expired emergency
11 rule temporarily amended or repealed an existing rule, the
12 rule shall revert to what it would have been had the
13 emergency rule not been issued."

14 SECTION 9. A new section of the State Rules Act is
15 enacted to read:

16 "CONFLICTS BETWEEN RULE AND STATUTE--VARIANCE BETWEEN
17 PROPOSED AND FINAL ACTION.--

18 A. No rule is valid or enforceable if it conflicts
19 with statute. A conflict between a rule and a statute is
20 resolved in favor of the statute.

21 B. A word or phrase that is defined in an
22 applicable statute should not be defined in rule. A conflict
23 between a definition that appears in a rule and in an
24 applicable statute is resolved in favor of the statute."

25 SECTION 10. A new section of the State Rules Act is

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enacted to read:

"PROCEDURAL RULES.--No later than January 1, 2018, the attorney general shall adopt default procedural rules for public rule hearings for use by agencies that have not adopted their own procedural rules consistent with the State Rules Act. Each agency may adopt its own procedural rules, or continue in effect existing rules, which shall provide at least as much opportunity for participation by parties and members of the public as is provided in the procedural rules adopted by the attorney general. An agency that adopts its own procedural rules shall send a copy of those procedural rules to the attorney general and shall maintain those procedural rules on the agency's website."

SECTION 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017. _____

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SUSANA MARTINEZ
Governor
JOHN A. SANCHEZ
Lt. Governor

NEW MEXICO
ENVIRONMENT DEPARTMENT

Harold Runnels Building
1190 Saint Francis Drive, PO Box 5469
Santa Fe, NM 87502-5469
Phone (505) 827-2990 Fax (505) 827-1628
www.env.nm.gov



BUTCH TONGATE
Cabinet Secretary
J. C. BORREGO
Deputy Secretary

September 10, 2018

Small Business Regulatory Advisory Commission
c/o Johanna Nelson
SBRAC Program Manager
New Mexico Economic Development Department
1100 St. Francis Drive, Suite 1242
Santa Fe, New Mexico 87501

Re: Proposed Amendments to 20.1.9 NMAC – *Rulemaking Procedures – Environment Department*

Dear Ms. Nelson,

The New Mexico Environment Department (“Department”) hereby provides notice to the Small Business Regulatory Advisory Commission, pursuant to the Small Business Regulatory Relief Act ("Act"), NMSA 1978, Sections 14-4A-1 *et seq.* that the Department submitted a petition to the Secretary of the New Mexico Environment Department (“Secretary”) to amend the Department’s rulemaking procedures found at 20.1.9 NMAC.

In 2017, the New Mexico Legislature amended the State Rules Act, NMSA 1978, Sections 14-4-1 to -11, to address public participation in the rulemaking process. Those amendments establish requirements for agency rulemaking notices, post-hearing steps, and maintenance of and access to the rulemaking record. In particular, agencies must now publish a Notice of Proposed Rulemaking in the New Mexico Register and provide that notice to the public through specific, additional notice requirements. Agencies also face a new timeline for action after publication of the Notice of Proposed Rulemaking and adoption of a final rule.

The Legislature’s 2017 amendments further require the New Mexico Attorney General to adopt default rulemaking procedures incorporating the public participation requirements of the State Rules Act no later than January 1, 2018. However, state agencies may adopt their own or continue existing procedures that provide at least as much opportunity for public participation as the Attorney General’s rules. NMSA, 1978, § 14-4-5.8 NMAC. The Department proposes to amend 20.1.9 NMAC to bring it into compliance with the State Rules Act because the Department of Environment Act, NMSA 1978, Section 9-7A-6(D), establishes specific rulemaking requirements for the Department that are not contemplated by the State Rules Act. *Compare e.g.* NMSA 1978, § 9-7A-6(D) with NMSA 1978, § 14-4-2(E). Further, the Attorney General’s default rules, while remaining generally applicable for a diverse group of executive agencies, do not provide enough specificity for the Department to fully comply with the Department of Environment Act. *See generally* 1.24.25 NMAC. Finally, the Department proposes revisions to provide specificity and remove uncertainty from the rulemaking process governed by 20.1.9 NMAC. This includes provisions for pre-filing of testimony.

Pursuant to Section 14-4A-4, NMSA 1978, the Department does not anticipate that the proposed regulatory amendments will have any adverse effect on small business. Indeed, the Department anticipates that adoption of the proposed amendments will reduce confusion for rulemakings before the Secretary by compiling all applicable provisions in one location. The Department's current rulemaking procedures are designed to encourage participation in rulemakings, 20.1.9.6 NMAC, but adoption of the State Rules Act amendments will further facilitate public participation.

A hearing officer designated by the Secretary will hold a hearing on the proposed regulatory amendments (Docket No. NMED 18-15(R)) currently scheduled for Friday, October 12, 2018. For details regarding the time and location of the hearing please check the Department website at: <https://www.env.nm.gov/public-notices/>. If you require further information about these proposed regulatory amendments, please call me at (505) 222-9554.

Sincerely,

/s/ Christopher Atencio
Christopher N. Atencio, Esq.
Assistant General Counsel
New Mexico Environment Department

cc: Jennifer Hower, General Counsel
New Mexico Environment Department

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT**

**IN THE MATTER OF PROPOSED
REVISIONS TO THE RULEMAKING
PROCEDURES FOR THE DEPARTMENT,
20.1.9 NMAC**

NO. NMED 18-15(R)

New Mexico Environment Department,

Petitioner.

**ORDER AND STATEMENT OF REASONS FOR REPEAL AND REPLACEMENT OF
REGULATIONS**

This matter comes before the Secretary of the New Mexico Environment Department (“Secretary”) upon a petition filed by the New Mexico Environment Department (“Department”) proposing amendments to the Department’s Rulemaking Procedures codified at Title 20, Chapter 1, Part 9 of the New Mexico Administrative Code (20.1.9 NMAC or “Rulemaking Procedures”).

The Secretary appointed an administrative law judge (“ALJ”) for this proceeding, and the ALJ held a public hearing in this matter on Friday, October 12, 2018, at Room 311 in the State Capital Building, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The public notice for the hearing was published in the New Mexico Register on September 11, 2018. NMED Exhibit 7. The public notice was also published in the Albuquerque Journal on September 11, 2018. NMED Exhibit 8. The remaining public notice requirements were met pursuant to 20.1.9.12.B NMAC and NMSA 1978, Sections 14-4-2(E) and -5.2. NMED Exhibits 9 through 13. The Department provided notice to the Small Business Regulatory Advisory Commission pursuant to the Small Business Regulatory Relief Act, NMSA 1978, Sections 14-4A-1 to -6. (Laws 2005, ch. 244, § 5). NMED Exhibit 5.

At the public hearing, the ALJ heard technical testimony from the Department. No other party entered an entry of appearance in this matter, and there was no public comment. On _____, 2018, the

Secretary, having familiarized himself with the record, the Department's technical testimony, and the ALJ's report adopted the Department's proposed amendments to 20.1.9 NMAC for the following reasons:

1. Pursuant to NMSA 1978, Sections 9-7A-6 (1991) and 14-4-5.8 (2017), the Secretary has the authority to adopt procedural rules to govern rulemakings necessary to carry out the duties of the Department and its divisions.
2. The purpose of 20.1.9 NMAC is to standardize the procedures used in regulatory change hearings before the Department; to encourage participation in the regulatory change hearings conducted by the Department; and to assure that the regulatory change hearings are conducted by the Department in a fair and equitable manner. 20.1.9.6 NMAC.
3. In 2017, the New Mexico Legislature passed House Bill 58 ("HB58") addressing public participation in the rulemaking process. 2017 N.M. Laws, ch. 137 § 3. NMED Exhibit 4.
4. HB58's amendments to the State Rules Act, NMSA 1978, Sections 14-4-1 to -11 ("SRA"), establish requirements for executive agency rulemaking notices, post-hearing steps, and maintenance of and access to the rulemaking record. NMED Exhibit 4. The SRA requires agencies to publish a Notice of Proposed Rulemaking in the New Mexico Register and provide that notice to the public through specific, additional notice requirements. NMSA 1978, § 14-4-5.2 (2017). Additionally, the SRA establishes timelines for agency action after publication of the Notice of Proposed Rulemaking and adoption of a final rule. NMSA 1978, § 14-4-5 (2017).
5. The SRA requires the New Mexico Attorney General ("Attorney General") to adopt default rulemaking procedures. NMSA 1978, § 14-4-5.8. Accordingly, the Attorney General adopted default procedural rules at 1.24.25 NMAC.
6. However, the SRA allows agencies to adopt their own or continue existing procedures that provide at least as much opportunity for public participation as the Attorney General's rules. NMSA 1978, § 14-4-5.8.
7. The Department of Environment Act establishes specific rulemaking requirements for the Secretary that are not contemplated by the SRA. *Compare e.g.* NMSA 1978, § 9-7A-6(D) with NMSA 1978, § 14-4-

2(E) (2017). It is further unlikely that any default rules promulgated by the Attorney General will be able to fully comply with the Department of Environment Act while remaining generally applicable for a diverse group of executive agencies. Petition, NMED Exhibit 1.

8. The ALJ heard technical testimony from Jennifer Hower, Esq. regarding the Department's proposed changes at the October 12, 2018, public hearing. The Board found Ms. Hower to be qualified to provide expert technical testimony on this matter.

9. Ms. Hower provided a step-by-step review of the Department's proposed changes to the Rulemaking Procedures in NMED Exhibit 3, and the Secretary finds:

- a. Adding citation to the SRA is appropriate. NMED Exhibit 3, pg. 4; NMSA 1978, § 14-4-5.8.
- b. The Department proposed several changes to 20.1.9 NMAC, and repeal and replacement of 20.1.9 NMAC is therefore appropriate, requiring a new effective date for the Rulemaking Procedures. NMED Exhibit 1, Section 20.1.9.5; NMED Exhibit 3, p. 4.
- c. Ms. Hower compared the definitions in the Rulemaking Procedures with the SRA and the Default Rules. *See e.g.* NMED Exhibit 3, pp. 4-7 (comparing the definitions of "person", "providing to the public", and "regulation" with the SRA and the Default Rules). The revisions to 20.1.9.7 NMAC are comparable to the SRA and the Default Rules, and adoption of the proposed definitions will provide at least as much opportunity for public participation as the SRA or Default Rules.
- d. Adoption of the proposed 20.1.9.7.B and .C is appropriate to help clearly define parts of the record proper as well as service requirements for the parties involved in the rulemaking. NMED Exhibit 1, Section 20.1.9.7.B and .C; NMED Exhibit 3, pp. 4-5.
- e. Adoption of the definition of "general public", "participant", and "party" are necessary and appropriate to determine the methods of participation and corresponding requirements throughout the rulemaking. NMED Exhibit 1, Sections 20.1.9.7.D and 20.1.9.12.C; NMED Exhibit 3, p. 5.
- f. Adoption of the proposed 20.1.9.7.M NMAC is appropriate and necessary to facilitate providing notice to the public for the proposed 20.1.9.12.B(1), 20.1.9.23.G, and 20.1.9.24 NMAC. NMED

- Exhibit 3, pp. 5-6. Further, this method of notice will provide for at least as much public participation as the SRA or the Default Rules. *Id.*; NMSA 1978, § 14-4-2(E); 1.24.25.11 NMAC.
- g. The Department's proposed 20.1.9.7.N NMAC includes the necessary items in the record proper for compliance with the SRA. NMED Exhibit 3, pp. 6-7; NMSA 1978, § 14-4-5.4; 1.24.25.14.A NMAC.
 - h. The Department's proposed revisions to the definition of "regulation" provide clarity to which actions this part will apply while being at least as inclusive as the SRA and the Default Rules. NMED Exhibit 1, Section 20.1.9.7.O; NMED Exhibit 3, p. 7.
 - i. The service requirement revisions in the proposed 20.1.9.7.R NMAC are appropriate and will facilitate an orderly procedure for rulemakings. NMED Exhibit 3, pg. 7.
 - j. It is necessary and appropriate to differentiate between public comment and technical testimony, as described by the Department. NMED Exhibit 1, Section 20.1.9.7.S. Addition of this definition helps to clearly explain the responsibilities associated with public comment and technical testimony further described in Ms. Hower's testimony on proposed 20.1.9.13 NMAC. NMED Exhibit 3, p. 11.
 - k. Addition of "transcript of proceedings" will help define the hearing record and comply with the SRA. NMED Exhibit 1, Section 20.1.9.7.T; NMED Exhibit 3, p. 8.
 - l. Changing "impartial" to "equitable" in 20.1.1.107.B NMAC ensures compliance with the SRA by using the same language as the SRA and the objectives of the Rulemaking Procedures. NMED Exhibit 3, pg. 8; NMSA 1978, § 14-4-5.3(B); 20.1.9.6.C NMAC.
 - m. Addition of guidelines for calculation of time is appropriate to reduce confusion regarding the varying responsibilities of the parties and participants to rulemakings. NMED Exhibit 1, Section 20.1.9.9; NMED Exhibit 3, p. 8.
 - n. The filing and service requirements as proposed by the Department are appropriate to ensure an efficient rulemaking and distribution of information amongst the participants and parties. NMED Exhibit 1, Section 20.1.9.10; NMED Exhibit 3, pp. 8-9. Further, the Department's proposed

language will comply with the SRA requirements for examination of documents and provisions for duplication of documents. *Id.* Posting rulemaking information on the New Mexico Sunshine Portal is required by the SRA and the Default Rules. NMED, §§ 14-4-2(E)(2) and 14-4-5.4(A); 1.24.25.14.A NMAC. The proposed amendments will properly incorporate this requirement into the Rulemaking Procedures. NMED Exhibit 3, pp. 8-9. The proposed amendments to 20.1.9.10.F NMAC will properly incorporate the limitations and requirements for providing records to the public on the Board Administrator. NMED Exhibit 3, pg. 9; NMSA 1978, § 14-4-5.2(B).

- o. The Board's current requirements for public notice of a rulemaking hearing in 20.1.9.12 NMAC provide for public participation in the rulemaking process, but addition of the Department's proposed changes will include the necessary items to ensure that the Board's notice of proposed rulemaking requirements provides for at least as much public participation as the SRA and Default Rules. NMED Exhibit 3, pp. 9-10; NMSA 1978, § 14-4-5.2; 1.24.25.11 NMAC. Further, the proposed addition of 20.1.9.12.E NMAC provides for more public participation by requiring notice when there is a change in the hearing date or submission deadlines. NMED Exhibit 3, pp. 10-11; NMSA 1978, § 14-4-5.2(D).
- p. The Department proposed, and the Secretary agrees, that it should be a stated objective of the Rulemaking Procedures to make possible the effective presentation of evidence and points of view of the parties and members of the public. NMED Exhibit 1, Section 20.1.9.6.C. In order to comply with that objective, the Rulemaking Procedures require more structure than they currently have, and adding requirements and procedures for the pre-filing of technical testimony will help achieve that objective by ensuring adequate presentation of information, better prepared response from all parties, and a more robust hearing record. NMED Exhibit 1, Section 20.1.9.13; NMED Exhibit 3, p. 11.
- q. It is necessary to amend 20.1.9.14 NMAC to state that any person may file an entry of appearance rather than just those affected by the proposed rule to more closely align with statutory law. NMED Exhibit 3, pg. 11; NMSA 1978, § 9-7A-6(D).

- r. Allowing witness participation in a rulemaking at the hearing officer's discretion will allow for more public participation in the rulemaking. NMED Exhibit 1, Section 20.1.9.15; NMED Exhibit 3, pp.11-12.
- s. The Department's proposed addition of 20.1.9.16 NMAC to control the process and resolution of motions in a rulemaking hearing is necessary and appropriate to ensure an orderly and effective hearing process. NMED Exhibit 1 Section, 20.1.9.16; NMED Exhibit 3, p. 12. This will help reduce confusion through clear structure and timelines. *Id.*
- t. The current Rulemaking Procedures in 20.1.9.13 NMAC are not clear enough to provide for at least as much public participation as the SRA or Default Rules. As Ms. Hower testified, the Department's proposed amendments to the Rulemaking Procedures provide similar accommodations for public participation through appointment of a hearing officer, submitting public comment, and requiring a fair and equitable hearing. NMED Exhibit 3, pp. 12-13. These amendments will bring the conduct of the hearing procedures in line with the more expansive procedures outlined for the Environmental Improvement Board and Water Quality Control Commission. *Id.*
- u. Since the transcripts are prepared by the court reporter and copies are purchased from the court reporter, it is appropriate that additional copies be obtained from the court reporter and is reflected as such in 20.1.9.20 NMAC. NMED Exhibit 1, Section 20.1.9.20; NMED Exhibit 3, pg. 13.
- v. The Department's proposed 20.1.9.23 NMAC more clearly outlines the process for the Secretary's post-hearing decision. NMED Exhibit 1, Section 20.1.9.23. The proposed amendments incorporate the SRA requirements and add clarity to the post-hearing process. NMED Exhibit 1, Section 20.1.9.23; NMED Exhibit 3, p. 13. The proposed language for 20.1.9.23.F NMAC appropriately incorporates the SRA requirement to decide on a proposed rule within two years of publication in the New Mexico Register of the notice of proposed rulemaking as well as termination of a rulemaking proceeding. NMED Exhibit 3, pg. 13; NMSA 1978, §§ 14-4-5(B) and (C).

- w. The proposed language for post-hearing notice requirements in 20.1.9.24 NMAC appropriately incorporates the SRA requirements for providing public notice of the Secretary's decision, filing with the State Records Administrator within 15 days, and submittal of a concise explanatory statement for adoption of the proposed rule. NMED Exhibit 3, pp. 13-14; NMSA 1978, §§ 14-4-3(A), 14-4-5(D), and 14-4-5.5. The Secretary further finds that the proposed language retains the necessary procedural steps for compliance with both the SRA and the Department of Environment Act, and that it is appropriate to set the date of adoption for signature of the order adopting the proposed rule. The proposed language provides at least as much opportunity for public participation as the SRA and the Default Rules. NMED Exhibit 3, pp. 13-14; 1.24.25.14(F) and 1.24.25.15
10. Adoption of the proposed amendments reduces confusion for petitioners before the Secretary by compiling all applicable provisions in one location.
11. The Department's Rulemaking Procedures are designed to encourage participation in rulemakings, 20.1.9.6 NMAC; adoption of the proposed amendments will further facilitate public participation.
12. Due to procedural considerations, 20.1.9 NMAC is to be repealed, and the amendments discussed above are to be incorporated into a replacement 20.1.9 NMAC.

ORDER

The Secretary of the New Mexico Environment Department hereby repeals Title 20, Chapter 1, Part 1 of the New Mexico Administrative Code and replaces it with the rule indicated in Attachment A with any appropriate corrections of formatting or other non-substantive changes necessary to file these rules with the New Mexico State Records Center. The regulatory change as described in this Order is hereby adopted, to be effective on the date of publishing in the New Mexico Register.

Butch Tongate, Secretary
New Mexico Environment Department

Dated _____

NOTICE OF PUBLIC HEARING TO AMEND RULEMAKING PROCEDURES

The New Mexico Environment Department (“NMED”) will hold a public hearing beginning at 1:30 p.m. on Friday, October 12, 2018, and continuing thereafter as necessary in Room 311 of the State Capital Building, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The hearing location may change prior to the hearing date, and those interested in attending should visit NMED’s notice website: <https://www.env.nm.gov/public-notices/> prior to the hearing. The purpose of the hearing is to consider amendments to the Rulemaking Procedures for NMED, 20.1.9 NMAC (“Rules”).

The amendments would bring the Rules into compliance with recent changes to the State Rules Act (NMSA 1978, Sections 14-4-1 to -11). Primarily, these amendments would add requirements to the methods and content for public notice throughout the rulemaking process, clarify retention of the rulemaking record, and add post-adoption filing and notice requirements for the Rules. Additionally, the proposed amendments better define the powers and duties of the hearing officer, add procedural requirements for filing and participation in a rulemaking hearing, and outline the conduct of hearings comparable to 20.1.1, Rulemaking Procedures – New Mexico Environmental Improvement Board and 20.1.6 NMAC, Rulemaking Procedures – New Mexico Water Quality Control Commission.

NMED proposes that the NMED Secretary adopt the amendments pursuant to his authority under NMSA 1978, Sections 9-7A-6(D) and 14-4-1 to -11. Please note that formatting and minor technical changes in the Rules, other than those proposed by NMED, may be proposed at the hearing. Additionally, the Secretary may make other changes as necessary in response to public comments and evidence presented at the hearing.

The proposed amendments may be reviewed during regular business hours at the NMED Hearing Office located in the Harold Runnels Building, 1190 South St. Francis Drive, Room S-2102, Santa Fe, NM 87505. The full text of the proposed amendments is also available online at <https://www.env.nm.gov/public-notices/>.

The hearing will be conducted in accordance with the NMED Rulemaking Procedures (20.1.9 NMAC); the Department of Environment Act, NMSA 1978, Section 9-7A-6; the State Rules Act, NMSA 1978, Section 14-4-5.3; and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing; to introduce exhibits; and to examine witnesses. Any person wishing to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of the hearing.

Pursuant to the Procedural Order in this matter, those wishing to present technical testimony must file a written notice of intent to do so with the Hearing Office on or before 5:00 p.m. on Thursday, September 21, 2018. The notice of intent shall:

- Identify the person or entity for whom the witness(es) will testify;
- Identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of his or her education and work background;
- Include a copy of the direct testimony of each technical witness in narrative form, and state the estimated duration of the direct oral testimony of that witness;
- Include the text of any recommended modifications to the proposed regulatory change; and
- List and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

Notice of intent for the hearing must be received in the Hearing Office no later than 5:00 p.m. on Thursday, September 21, 2018, and should reference the name of the regulation, the date of the hearing, and docket number NMED 18-15 (R). Notices of intent to present technical testimony shall be submitted to:

John Baca, Hearing Office Administrator

New Mexico Environment Department
Harold Runnels Building
P.O. Box 5469
Santa Fe, NM 87502

Those wishing to do so may offer non-technical public comment at the hearing or submit a non-technical written statement in lieu of oral testimony at or before the hearing. Written comments regarding the proposed revisions may be addressed to Mr. John Baca, Hearing Office Administrator, at the above address, and should reference docket number NMED 18-15 (R).

If any person requires assistance, an interpreter, or an auxiliary aid to participate in this process, please contact John Baca, Hearing Office Administrator, by Tuesday, September 25, 2018, at 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM, 87502, telephone (505) 827-2430 or john.baca2@state.nm.us. (TDD or TTY users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

Notice of Non-Discrimination

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972.

If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact:

Kristine Pintado, Non-Discrimination Coordinator,
New Mexico Environment Department,
1190 St. Francis Dr., Suite N4050,
P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855,
nd.coordinator@state.nm.us.

If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above.

**AVISO DE AUDIENCIA PÚBLICA PARA ENMENDAR LOS PROCEDIMIENTOS DE
REGLAMENTACIÓN**

El Departamento de Medio Ambiente de Nuevo México ("NMED", por sus siglas en inglés) llevará a cabo una audiencia pública que comenzará el viernes, 12 de octubre de 2018, a la 1:30 de la tarde y continuará según sea necesario en el Salón 311 del edificio del Capitolio del Estado, ubicado en 490 Old Santa Fe Trail, Santa Fe, Nuevo México. La ubicación de la audiencia puede cambiar antes de la fecha de la audiencia, por lo que los interesados en asistir deberían visitar el sitio web de notificación de NMED: <https://www.env.nm.gov/public-notice/> antes de la audiencia. El objetivo de la audiencia es considerar enmiendas a los Procedimientos de Reglamentación para NMED, 20.1.9 NMAC ("Reglas").

Las enmiendas pondrían las Reglas en conformidad con los cambios recientes a la Ley de Reglas del Estado (NMSA 1978, Secciones 14-4-1 a -11). Principalmente, estas enmiendas añadirían requisitos a los métodos y al contenido para avisos públicos a través del proceso de reglamentación, clarificarían la retención del registro de reglamentación y añadirían requisitos de notificación y presentación posteriores a la adopción para las Reglas. Además, las enmiendas propuestas definen mejor los poderes y deberes del funcionario de audiencias, añaden requisitos de procedimiento para la presentación y participación en una audiencia de reglamentación y describen la conducción de audiencias comparables a 20.1.1, Procedimientos de Reglamentación - Junta de Mejora Ambiental de Nuevo México y 20.1 .6 NMAC, Procedimientos de Reglamentación - Comisión de Control de Calidad del Agua de Nuevo México.

NMED propone que el Secretario de NMED adopte las enmiendas conforme a su autoridad bajo NMSA 9-7A-6 (D) y 14-4-1 a -11 NMSA 1978. Por favor tenga en cuenta que formatos y cambios técnicos menores en las Reglas, que no sean los propuestos por NMED, pueden ser propuestos en la audiencia. Además, el Secretario puede hacer otros cambios según sea necesario en respuesta a los comentarios del público y la evidencia presentada en la audiencia.

Las enmiendas propuestas pueden ser revisadas durante horas hábiles en la Oficina de Audiencias de NMED ubicada en Harold Runnels Building, 1190 South St. Francis Drive, Sala S-2102, Santa Fe, NM 87505. El texto completo de las enmiendas propuestas también está disponible en línea en <https://www.env.nm.gov/public-notice/>.

La audiencia se llevará a cabo de acuerdo con los Procedimientos de Reglamentación de NMED (20.1.9 NMAC); Ley del Departamento de Medio Ambiente, NMSA 1978, Sección 9-7A-6; Ley de Reglas del Estado, NMSA 1978, Sección 14-4-5.3; y otros procedimientos aplicables.

A todas las personas interesadas se les dará oportunidades razonables en la audiencia para presentar evidencias, datos, puntos de vista y argumentos relevantes, oralmente o por escrito; para presentar documentos y objetos de pruebas; y para examinar a los testigos. Cualquier persona que desee presentar una declaración escrita de carácter no técnico para el registro en lugar de un testimonio oral debe presentar dicha declaración antes del cierre de la audiencia.

De conformidad con la Orden Procesal en este asunto, aquellos que deseen presentar testimonio de carácter técnico deben presentar un aviso por escrito de la intención de hacerlo en la Oficina de Audiencias no más tarde de las 5:00 p.m. del jueves, 21 de septiembre de 2018. El aviso de intención deberá:

- Identificar a la persona o entidad para la cual testificará el testigo;
- Identificar a cada testigo técnico que la persona tiene la intención de presentar y establecer las cualificaciones del testigo, incluida una descripción de su historial académico y laboral;
- Incluir una copia del testimonio directo de cada testigo técnico en forma narrativa, y establecer la duración estimada del testimonio oral directo de ese testigo;
- Incluir el texto de cualquier modificación recomendada al cambio regulatorio propuesto; y
- Hacer una lista y adjuntar todos los documentos y objetos de pruebas que se anticipa que esa persona va a presentar en la audiencia, incluyendo cualquier declaración propuesta de motivos para la adopción de las reglas.

Los avisos de intención para la audiencia deben recibirse en la Oficina de Audiencias antes de las 5:00 p.m., del jueves, 21 de septiembre de 2018, y debe hacer referencia al nombre del reglamento, la fecha de la audiencia y el número de expediente NMED 18-15 (R). Los avisos de intención de presentar testimonio de carácter técnico deberán enviarse a:

John Baca, Hearing Office Administrator
New Mexico Environment Department
Harold Runnels Building
P.O. Box 5469
Santa Fe, NM 87502

Aquellos que deseen hacerlo pueden ofrecer comentarios públicos de carácter no técnico en la audiencia o presentar una declaración escrita de carácter no técnico en lugar de un testimonio oral en o antes de la audiencia. Los comentarios escritos con respecto a las revisiones propuestas pueden dirigirse al Sr. John Baca, Administrador de la Oficina de Audiencias, a la dirección anterior, y deben hacer referencia al número de expediente NMED 18-15 (R).

Si alguna persona necesita ayuda, un intérprete o un auxiliar para participar en este proceso, comuníquese con John Baca, Administrador de la Oficina de Audiencias, a más tardar el martes, 25 de septiembre de 2018, en 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM, 87502, teléfono (505) 827-2430 o john.baca2@state.nm.us. (Los usuarios de TDD o TTY pueden acceder al número a través de la Red de Retransmisión de Nuevo México, 1-800-659-1779 (voz); los usuarios de TTY: 1-800-659-8331).

Aviso de No Discriminación

El Departamento de Medio Ambiente de Nuevo México (NMED, por sus siglas en inglés) no discrimina por motivos de raza, color, origen nacional, discapacidad, edad o sexo en la administración de sus programas o actividades, según lo exigido por las leyes y los reglamentos correspondientes. NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de consultas relativas a los requisitos de no discriminación implementados por 40 C.F.R. Partes 5 y 7, incluido el Título VI de la Ley de Derechos Civiles de 1964, según enmendada; Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, Título IX de las Enmiendas de Educación de 1972 y la Sección 13 de las Enmiendas a la Ley Federal de Control de Contaminación del Agua de 1972.

Si usted tiene preguntas sobre este aviso o sobre cualquier programa, política o procedimiento de no discriminación de NMED, usted puede comunicarse con la Coordinadora de No Discriminación:

Kristine Pintado, Non-Discrimination Coordinator
New Mexico Environment Department
1190 St. Francis Dr., Suite N4050
P.O. Box 5469
Santa Fe, NM 87502
(505) 827-2855
nd.coordinator@state.nm.us

Si usted piensa que ha sido discriminado/a con respecto a un programa o actividad de NMED, usted puede comunicarse con la Coordinadora de No Discriminación antes mencionada.

From: [Castaneda, Pam, NMENV](#)
To: [Adam Reeves](#); [Alan Huerta](#); [Alan Macgregor](#); [Alex Puglisi](#); [Allison Block](#); [Anita Reiser](#); [Bart Farris](#); [Beth Bardwell](#); [Brancard, Bill, EMNRD](#); [Bill Olson](#); [Billy Gallegos](#); [BJ Brock](#); [Bruce Gallaher](#); [CCNS](#); [Charles Nylander](#); [Chet Wyant](#); [Christina Sheehan](#); [Contessa Archuleta](#); [Danielle Berardelli](#); [Dave Gratson](#); [David Boyer](#); [Jordan, David](#); [David Lerwell](#); [David Oakeley](#); [Edmund Kendrick](#); [Elizabeth Newling Taylor](#); [Embudo Valley Environmental](#); [Eric Jantz](#); [Eric M. Cole](#); [Erick Schlenker-Goodrich](#); [Fidel Trujillo](#); [G Emlen Hall](#); [Engel, Gretchen](#); [Holder, Mike](#); [Jamie Park](#); [Janet Greenwald](#); [Jeffery M. Kane](#); [JK Chair](#); [Kupfer, Joe](#); [John Jones](#); [Jolene McCaleb](#); [Jonathon Block](#); [Joni Arends](#); [Joshua Rosenblatt](#); [Katherine Yuhas](#); [Kathy Townsend](#); [Kelly Collins](#); [Kendra Palmer](#); [Nerison, Kyler, GOV](#); [Kyrala, Michaelene, NMENV](#); [Larry P. Ausherman](#); [Lee Killinger](#); [Louis Rose](#); [Lucie Mayeux](#); [Marie Gutierrez](#); [Mary Mascarenas](#); [Melissa Patra Martin](#); [Daly, Michael](#); [Michael Jensen](#); [Michael Neumann](#); [Mikki Anaya](#); [NMENV-ooqc](#); [Oscar Simpson](#); [Paul A. Romero](#); [McGinnis, Paul](#); [Paula Garcia](#); [Philip Don Cantu](#); [Randy](#); [Robert Gallegos](#); [Stuart Butzier](#); [Sunny Nixon](#); [Theresa Ballaine](#); [Timothy Davis](#); [Tyler Irwin](#); [Walter E. Stern](#); [William Gonzales](#); [World Wildlife Fund](#)
Subject: Publication Hearing to Amend Rulemaking Procedures for the New Mexico Environment Department-20.1.9 NMAC
Date: Friday, September 7, 2018 4:59:55 PM
Attachments: [Hearing Notice 20_1_9 NMAC.pdf](#)
[Hearing Notice Spanish 20_1_9 NMAC.pdf](#)

Good afternoon,

Attached are the New Mexico Environment Department's Notice of Public Hearing to Amend Rulemaking Procedures for the New Mexico Environment Department-20.1.9 NMAC. Both in English and Spanish.

Thank you,

Pam Castaneda
Administrator to Boards and Commissions
Environmental Improvement Board
Water Quality Control Commission
Medical Imaging Radiation Therapy Advisory Council
P.O. Box 5469
Santa Fe, NM 87502
Phone: (505) 827-2425
Fax: (505) 827-1628
E:mail: pam.castaneda@state.nm.us

From: [Castaneda, Pam, NMENV](#)
To: [Adam Reeves](#); [Alan Huerta](#); [Alan Macgregor](#); [Alex Puglisi](#); [Allison Block](#); [Anita Reiser](#); [Bart Farris](#); [Beth Bardwell](#); [Brancard, Bill, EMNRD](#); [Bill Olson](#); [Billy Gallegos](#); [BJ Brock](#); [Bruce Gallaher](#); [CCNS](#); [Charles Nylander](#); [Chet Wyant](#); [Christina Sheehan](#); [Contessa Archuleta](#); [Danielle Berardelli](#); [Dave Gratson](#); [David Boyer](#); [Jordan, David](#); [David Lerwell](#); [David Oakeley](#); [Edmund Kendrick](#); [Elizabeth Newling Taylor](#); [Embudo Valley Environmental](#); [Eric Jantz](#); [Eric M. Cole](#); [Erick Schlenker-Goodrich](#); [Fidel Trujillo](#); [G Emlen Hall](#); [Engel, Gretchen](#); [Holder, Mike](#); [Jamie Park](#); [Janet Greenwald](#); [Jeffery M. Kane](#); [JK Chair](#); [Kupfer, Joe](#); [John Jones](#); [Jolene McCaleb](#); [Jonathon Block](#); [Joni Arends](#); [Joshua Rosenblatt](#); [Katherine Yugas](#); [Kathy Townsend](#); [Kelly Collins](#); [Kendra Palmer](#); [Nerison, Kyler, GOV](#); [Kyrala, Michaelene, NMENV](#); [Larry P. Ausherman](#); [Lee Killinger](#); [Louis Rose](#); [Lucie Mayeux](#); [Marie Gutierrez](#); [Mary Mascarenas](#); [Melissa Patra Martin](#); [Daly, Michael](#); [Michael Jensen](#); [Michael Neumann](#); [Mikki Anaya](#); [NMENV-oogc](#); [Oscar Simpson](#); [Paul A. Romero](#); [McGinnis, Paul](#); [Paula Garcia](#); [Phillip Don Cantu](#); [Randy](#); [Robert Gallegos](#); [Stuart Butzier](#); [Sunny Nixon](#); [Theresa Ballaine](#); [Timothy Davis](#); [Tyler Irwin](#); [Walter E. Stern](#); [William Gonzales](#); [World Wildlife Fund](#)
Subject: Publication in English and Spanish Notice of Public Hearing for the New Mexico Environment Department -20.1.9 NMAC
Date: Friday, September 7, 2018 4:57:58 PM
Attachments: [Hearing Notice 20 1 9 NMAC.pdf](#)
[Hearing Notice Spanish 20 1 9 NMAC.pdf](#)

Good afternoon,

Attached are the New Mexico Environment Department's Notice of Public Hearing to Amend Rulemaking Procedures for the New Mexico Environment Department-20.1.9 NMAC. Both in English and Spanish.

Thank you,

Pam Castaneda
Administrator to Boards and Commissions
Environmental Improvement Board
Water Quality Control Commission
Medical Imaging Radiation Therapy Advisory Council
P.O. Box 5469
Santa Fe, NM 87502
Phone: (505) 827-2425
Fax: (505) 827-1628
E:mail: pam.castaneda@state.nm.us

From: [Canepa, Laurie](#)
To: [Atencio, Christopher, NMENV](#)
Subject: RE: Public Notice for Proposed Amendments to 20.1.9 NMAC - NMED Rulemaking Procedures
Date: Friday, September 7, 2018 1:26:30 PM

Thanks

From: Atencio, Christopher, NMENV <Christopher.Atencio@state.nm.us>
Sent: Friday, September 07, 2018 9:27 AM
To: lcsmail <lcsmail@nmlegis.gov>
Subject: Public Notice for Proposed Amendments to 20.1.9 NMAC - NMED Rulemaking Procedures

Good morning,

Attached, please find the public notice and proposed regulatory revisions to 20.1.9 NMAC – Rulemaking Procedures for the New Mexico Environment Department. The hearing is scheduled for 1:30pm on Friday, October 12, 2018, at the State Capital Building.

Sincerely,
Chris Atencio

Christopher Atencio
Assistant General Counsel
Legislative & Policy Legal Analyst
121 Tijeras Ave. NE
Albuquerque, NM 87102
Phone: (505) 222-9554
Fax: (505) 383-2064

From: Chavez, William, NMENV
To: Atencio, Christopher, NMENV
Subject: 20.1.9 NMAC Notice Posting District Offices
Date: Thursday, September 20, 2018 11:20:31 AM
Attachments: image001.png
Importance: High

Chris,

This is to confirm that we received your email of September 7, 2018, and that the District Managers directed field office staff of the notice to be posted for the 20.1.9 NMAC rulemaking hearing in the district offices as requested.

Sincerely,
Bill

William Chavez
Bureau Chief, Environmental Health Bureau
New Mexico Environment Department
121 Tijeras Ave. NE, Ste. 1000
Albuquerque, New Mexico 87102
www.env.nm.gov



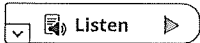


New Mexico Environment Department

Contact Information:
(505) 827-2855 MAIN // 1-800-219-6157 (toll free)

Environmental Emergencies:
505-827-9329 (24 hrs)

[Air](#) [Water](#) [Waste](#) [Health & Safety](#) [Cleanups](#) [Permits & Licenses](#) [Services & Assistance](#) [News](#) [...More](#)



Schedule - at - a - Glance

[Environment Department Calendar](#)

**NEW MEXICO ENVIRONMENT DEPARTMENT'S MOTION FOR RECORDING OF RULEMAKING HEARING
ORDER ON RECORDING OF RULEMAKING HEARING**

NEW MEXICO ENVIRONMENT DEPARTMENT NOTICE OF PUBLIC HEARING TO AMEND RULEMAKING PROCEDURES FOR THE NEW MEXICO ENVIRONMENT DEPARTMENT - 20.1.9 NMAC

DEPARTAMENTO DE MEDIO AMBIENTE DE NUEVO MÉXICO AVISO DE AUDIENCIA PÚBLICA PARA ENMENDAR LOS

NMED
Exhibit 12

PROCEDIMIENTOS DE REGLAMENTACIÓN PARA EL DEPARTAMENTO DE MEDIO AMBIENTE DE NUEVO MÉXICO – 20.1.9 NMAC

New Mexico Environment Department Public Hearing – Proposed Changes to Part 123 of the Petroleum Storage Tank Regulations

This rule making was initiated with a petition for rule making filed with the Secretary of the New Mexico Environment Department on August 1, 2018. The petition was granted and a scheduling order issued on August 27, 2018. Notice of the hearing will be published no later than September 12, 2018. Notices of Intent to Present Technical Testimony for those wishing to submit technical testimony must be filed no later than September 21, 2018. The Hearing is scheduled for Friday, October 12, 2018, at 9:00 am.

[Public Involvement Plan with Attachment A](#)

[LEP](#)

[Petition](#)

[Scheduling Order](#)

[Notice of Hearing](#)

The next Water Quality Control Commission (WQCC) Public Meeting is scheduled for **October 9, 2018 at 9:00 a.m. State Capitol Building, Room 309 490 Old Santa Fe Trail, Santa Fe, New Mexico 87501**. The WQCC Draft-Agenda will be here approximately **10 days** before the meeting.

The next **EIB** public meeting will be scheduled for **September 28, 2018, at 9:30 a.m. Farm and Ranch Heritage Museum, Room V2, 4100 Dripping Springs Rd., Las Cruces, New Mexico**. The Revised Draft-Agenda is here. [EIB-Revised Draft-Agenda-09-28-18.pdf](#)

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, contact Pam Castañeda at least ten days prior to the meeting or as soon as possible at 505.827.2425 or pam.castaneda@state.nm.us. Public documents can be provided in various accessible formats. Contact Pam Castañeda if accessible format is needed.

NMED
Exhibit 12

9/20/2018, 10:57 AM

New Mexico Environment Department Public Hearing – Proposed Amendments to 20.1.9 NMAC

This rule making was initiated with a petition for rule making filed with the Secretary of the New Mexico Environment Department on July 24, 2018. The petition was granted and a scheduling order issued on August 17, 2018. Notice of the hearing will be published no later than September 12, 2018. Notices of Intent to Present Technical Testimony for those wishing to submit technical testimony must be filed no later than September 21, 2018. The Hearing is scheduled for Friday, October 12, 2018, at 1:00 pm.

[Public Involvement Plan](#)

[PIP with Attachment A](#)

[LEP](#)

[Petition](#)

[Scheduling Order](#)

The next Water Quality Control Commission (WQCC) Public Meeting is scheduled for September 11, 2018 at 9:00 a.m. State Capitol Building Room 307 Santa Fe, New Mexico 87501. The WQCC Draft-Agenda will be here approximately 10 days before the meeting.

*If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, contact Pam Castañeda at least ten days prior to the meeting or as soon as possible at **505.827.2425** or pam.castaneda@state.nm.us. Public documents can be provided in various accessible formats. Contact Pam Castañeda if accessible format is needed.*

For [Drinking Water Bureau public notices](#) please visit the DWB site


For [Ground Water Quality Bureau Public Notices](#) please visit the GWQB site.

For all [Petroleum Storage Tank Bureau Meetings and Hearings](#) please visit the PSTB Announcements page.

For [Surface Water Quality Bureau Public Notices](#) please visit the SWQB Public Notice page.

IMPORTANT NOTICE

When you provide a check as payment, you authorize the State of New Mexico to either use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

NMED NOTICE OF NONDISCRIMINATION 

The New Mexico Environment Department ("NMED") does not discriminate on the basis of race, color, national origin, disability, age, sexual preference or sex in the administration of its programs or activities, in accordance with applicable laws and regulations.

The NMED has designated responsibility for coordination of compliance efforts and receipt or inquiries concerning nondiscrimination requirements, as implemented by 40 CFR Parts 5 and 7 to:

<p>Office of General Counsel New Mexico Environment Department 1190 S. St. Francis Drive Santa Fe, New Mexico 87505</p>
--



Harold L. Runnels Building // 1190 St. Francis Drive, Suite N4050 // Santa Fe, New Mexico 87505 // tel (800) 219-6157, (505) 827-2855

[About Us](#) [Contact Us](#) [A-Z index](#) [Site Map](#) [Website Information](#) [NM Sunshine Portal](#)

From: [Portal, Sunshine, DoIT](#)
To: [Atencio, Christopher, NMENV](#)
Subject: Re: NMED Rulemaking: 20.1.9 NMAC - Rulemaking Procedures
Date: Friday, September 7, 2018 3:58:11 PM

Hi Chris,

I posted the notice for the October 12th, 2018 rule hearing regarding the amendment of NMAC 20.1.9. Thanks and have a great weekend!

Lisa Oldis
(505) 476-3110

From: Atencio, Christopher, NMENV
Sent: Friday, September 7, 2018 10:33 AM
To: Portal, Sunshine, DoIT
Subject: NMED Rulemaking: 20.1.9 NMAC - Rulemaking Procedures

Good morning,

Attached, please find the public notice and proposed regulatory revisions to 20.1.9 NMAC – Rulemaking Procedures for the New Mexico Environment Department. Pursuant to NMSA 1978, Section 14-4-2(E), would you please post the notices and proposed revisions to the New Mexico Sunshine Portal? Thank you for your help in this matter, and please feel free to contact me with any questions or if you require any additional information.

Sincerely,
Chris Atencio

Christopher Atencio
Assistant General Counsel
Legislative & Policy Legal Analyst
121 Tijeras Ave. NE
Albuquerque, NM 87102
Phone: (505) 222-9554
Fax: (505) 383-2064

