



**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION
1190 St. Francis Drive
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Santa Fe, New Mexico 87502
(505) 827-2425**

CONSTITUENT AGENCIES:

Environment Department
State Engineer & Interstate Stream Commission
Game and Fish Department
Oil Conservation Division
Department of Agriculture
State Parks Division
Soil and Water Conservation Commission
Bureau of Mines and Mineral Resources
Members-at-Large

**Minutes of the
New Mexico Water Quality Control Commission Meeting
September 12, 2000**

The New Mexico Water Quality Control Commission held its meeting on September 12, 2000, at 9:00 a.m. at the State Capitol Building, Room 321, Corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico. Chairman Maggiore called the meeting to order at approximately 9:05 a.m.

Members Present:

Peter Maggiore	New Mexico Environment Department
Bill Olson	Oil Conservation Division
David Johnson	State Parks Division
Julie Maitland	Department of Agriculture
Jack Kelly	Department of Game & Fish
Howard Hutchinson	Soil & Water Conservation Bureau
Lynn Brandvold	Bureau of Mines & Mineral Resources
Paul Gutierrez	Member-at-Large
Irene Juliana Lee	Member-at-Large
Conrad Keyes	Member-at-Large

Members Absent:

Thomas C. Turney	State Engineer
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Others Present:

Daniel Ruben	WQCC Counsel
Tamella L. Lakes	WQCC Administrator
Pat Hanson	NMED/SWQB
Steven Pierce	NMED/SWQB
Dr. Jim Davis	Chief NMED/SWQB
Bruce Thomson	UNM

Jolene McCaleb	Ryley, Carlock & Applewhite
Jason Short	EBID
Michael Wirtz	Pecos Baldy Enterprises
Stephen Ross	OCD
Roger Anderson	NMOCD
Wayne Price	NMOCD
Jack Ford	NMOCD
Matt Holmes	NMRWA
Martin Lopez	Rural Community Assistance Program
Lawrence Troncosa	Middle Rio Grande Cons. District
David Hogge	NMED/SWQB
Greg Lewis	Director W&WMD
Mundo Gutierrez	City of Albuquerque
Ken Miller	Dairy Producers of NM
Susan Kery	Sheehan, Sheehan and Assoc.
Jay Lazarus	Glorieta Geoscience
Maxine Goad	CVA & Sierra Club
Henry Townsend	PNM
John Jones	NM Rural Water
Steve Hattenbach	NMED/OGC
Kelly Bitner	Neptune and Co.
Bill Brancard	State Land Office
Steven Glass	NM Municipal League
Peter Luthiger	Quivera Mining
Maura Hanning	NMED/GWQB
Karen McCormack	NMED/GWQB
Fred Kalish	NMED/GWQB

Item 1 - Roll Call.

Tamella L. Lakes, WQCC Administrator took roll call. Chairman Maggiore introduced Mr. Conrad Keyes who was recently appointed to the Commission. Mr. Keyes replaced Mr. Steven Glass as a member-at-Large. Chairman Maggiore also introduced Ms. Julie Maitland, she will be replacing Mr. Ricardo Rel as designee for Frank Duboise with the Department of Agriculture.

Item 2 - Approval of the Agenda

Mr. Gutierrez stated that agenda item number 7 was improperly stated. Mr. Gutierrez wished to discuss Forest Guardian's Notice of Intent to Sue, filed on July 28, 2000, regarding the WQCC's recent adoption of the NM Water Quality Standards.

Mr. Gutierrez moved to approve the agenda. Ms. Brandvold seconded the motion. The motion passed unanimously.

Item 3 – Approval of the minutes of the August 8, 2000, meeting.

Mr. Hutchinson moved to approve the August 8, 2000, minutes as amended. Mr. Olson seconded the motion. The motion passed unanimously.

Item 4 – Start the 30-day public comment period for the Middle Rio Grande fecal coliform TMDL.

Mr. David Hogge, TMDL coordinator for NMED, stated that the only TMDL due this year under the consent decree timeline is the Middle Rio Grande, other TMDLs for the Cimarron watershed will be brought before the Commission in October. On the 1998-2000 303 (d) list, the Middle Rio Grande had fecal coliform, total ammonia and chlorine listed as specific pollutants. The 1999 intensive survey results indicate only fecal coliform is exceeding standards. Only 8 TMDLs were written for the main stem of the river and loads were calculated for 8 arroyos and 1 drain. Historical as well as the 1999 data shows a direct correlation between elevated fecal coliform levels and stormwater events.

Mr. Hogge stated that the Middle Rio Grande Council of Governments (MRGCOG) is under contract to perform the public participation process. They mailed notices of all of the public meetings to their water mailing list, which contains over 2,000 entities. The MRGCOG published notices of all of the public meetings in local papers. The draft TMDL will be posted on the NMED website.

Item 5 – Discussion on reformatting 20 NMAC 6.1 – Standards for Interstate and Intrastate Surface Waters.

Mr. Steve Pierce, Program Manager SWQB, gave the Water Quality Control Commission an update on the reformatting of the Standards for Interstate and Intrastate Surface Waters. Mr. Pierce stated that the existing reference for the standards is 20 NMAC 6.1, which was assigned by the State Records Center in 1994-95. This has been changed to 20.6.4 NMAC. This reflected the requirements of what is now referred to as NMAC 1, which was the first attempt by the Commission of Public Records to produce an electronic version of New Mexico's administrative code. NMAC 1 required that certain items are located in standard parts of the document and all document references were standardized.

In January of 2000, when the Commission adopted changes as a result of the triennial review process, the standards were reformatted again. This time they were reformatted to comply with revisions of NMAC 1 adopted over the last five years and also to anticipate some of the changes of NMAC 2, such as the section history notes.

NMAC 2 went into effect at the end of February of this year. Under NMAC 2, Lexis Law Publishing, the State's contractor for publishing statutes and regulations, will reformat all New Mexico regulations.

The requirements of NMAC 2 were meant to achieve a standard look across all State regulations and to permit ease of posting of these rules by Lexis. NMAC 2 specifies the typeface, indentation, punctuation, proper footers, internal references, capitalization, justification, line spacing, numbering scheme and many other aspects of rules. The Commission requested and was granted exceptions from the "no use of symbols" requirement in order to allow the use of the degree symbol, the \pm symbol and the μ (mu) symbol, used in " $\mu\text{g/L}$."

The draft standards distributed to the Commission have been reformatted to comply with all requirements of NMAC 2 (as they exist today) and will be filed after this meeting. They will be published in the New Mexico Register and they will go into effect on October 12. The only substantive changes in this version of the standards are those adopted by the Commission on August 8. All other changes are merely formatting changes. The standards will be printed in a bound version in the next couple of weeks and copies will be sent to the commissioners in the packets for the October meeting.

Item 6 – Discussion on the Utility Operators Certification Program.

Two representatives of the Utility Operators Certification Advisory Board, Mr. Martin Lopez and the recently elected Chairman, Mr. Reymundo Gutierrez, sat with the Water Quality Control Commission for this agenda item.

Mr. Pat Hanson, Program Manager SWQB, gave the WQCC a brief overview of the Utility Operator Certification Program. Mr. Hanson stated that the purpose of the program is to protect public health and water quality in the state. The Utility Operators Certification Act was adopted in 1973, and amended in 1992. The 1992 Act amendment required all public systems to have certified operators. The Utility Operator Certification regulations were first adopted in 1974.

The Utility Operators Certification Advisory Board, (the Board), consists of 7 certified operators, with 2 alternates, appointed by the Commission and provides guidance to NMED and the WQCC, as directed by the regulations. The NMED Facility Operation Section of the SWQB administers the program on behalf of the WQCC. The WQCC oversees the program and conducts hearings. The program currently has 1334 public water systems and 325 public wastewater facilities. There are 2814 active certificates and 2064 certified operators.

The Board administers approximately 1000 certified operator exams per year in 10 sessions around the state. The passing rates for these exams are near or below 50%. The Utility Operator Certification Act directs the WQCC to prepare the examination; the WQCC has directed the facility operations section to assume that task, with review by the Board. The tests must meet the Equal Employment Opportunity Commission's Guidelines on Employee Selection Procedures.

The program has taken steps recently to improve the exams. They consist of revision to the job task analyses, revising examination specifications, revising essay questions for upper level exams, adopting a standard reference text list and replacing essay questions with machine-gradeable formats. The program has also purchased new exam development and scoring software and hardware to allow the acquisition of critical performance statistics.

Another item the program is working on is to meet Environmental Protection Agency (EPA) Guidelines that were adopted a year and a half ago. A draft program package was submitted to EPA for their review and comment in December of 1999. The program is currently working on responses to those comments and developing a package to submit to EPA before the February 5, 2001 deadline. There are a few items that need to be changed in the regulations and the program hopes to submit a request for those changes to the WQCC at its October meeting.

Ms. Brandvold asked Mr. Hanson if the Board kept minutes of their meetings. Mr. Hanson stated that the Board had produced minutes of the last two meetings, and that program staff was working to produce minutes from tape recordings taken in previous meetings. The Board will be adopting a new Open Meetings Act Resolution at its next meeting.

Mr. Olson asked Mr. Hanson if he had any comments on standardized testing and the ABC testing format brought up at the last meeting by the small rural associations. Mr. Hanson stated that the Board on numerous occasions has discussed the issue of contracting the test development and scoring procedures. A major impediment is the fact that the ABC classification system for utilities and operators is not compatible with New Mexico's. The New Mexico program has 6 levels, ABC has 5 different levels on the water side and 4 different levels on the wastewater side. If New Mexico used the ABC testing format, it is possible that many operators would have to take two different tests to be certified. The program hopes to use ABC services in two different areas, one is for obtaining additional exam questions, the other is for conducting an independent evaluation of the state's program.

Item 7 – Forest Guardian’s Notice of Intent to Sue, filed on July 28, 2000, regarding the WQCC’s recent adoption of the NM Water Quality Standards.
Mr. Rubin stated that he would recommend the Commission discuss this agenda item in executive session.

Chairman Maggiore stated that it was the Commissions decision to either have the discussion on Forest Guardian’s NOI in an open meeting or in executive session.

Ms. Brandvold moved to go into executive session for the purpose of discussing Forest Guardian’s NOI to sue. Mr. Gutierrez seconded the motion.

Roll Call Vote

Tom Turney	Absent
Bill Olson	Yes
David Johnson	Yes
Julie Maitland	Yes
Jack Kelly	Yes
Howard Hutchinson	Yes
Lynn Brandvold	Yes
Irene Lee	Yes
Conrad Keyes	Yes
Paul Gutierrez	Yes
Peter Maggiore	Yes

The motion passed.

Mr. Johnson moved to go back into open session. Mr. Kelly seconded the motion. The motion passed unanimously.

Chairman Maggiore stated for the record that the only thing discussed in executive session were matters pertaining to litigation relative to Forest Guardians NOI to sue.

Item 8 – Other Business.

There was no other business to discuss.

Item 9 – Next Meeting.

The next meeting of the WQCC will be on October 10, 2000, at 9:00 a.m. in Santa Fe, New Mexico.

Item 10 - WQCC 00-06 (R) – Hearing to consider proposed amendment to 20 NMAC 6.2 – Ground Water Discharge Permit Fees.

Mr. Olson moved to adopt the proposed changes as set forth by NMED and OCD, including some editorial and typographical changes noted during the hearing, to 20 NMAC 6.2 – Ground Water Discharge Permit Fees. Mr. Johnson seconded the motion.

Mr. Hutchinson stated that he was not convinced that an increase in fees at this time would necessarily create an increase in efficiency. If the Commission votes to increase the fees, the Legislature could decrease the Department's general fund money.

Ms. Lee stated that she is having a hard time deciding whether to vote in favor or against the regulation changes. The fee increase seems to be a tax that will be passed on to the consumer. The Legislature should spend the states tax dollars to fund the program instead of passing the fee increase on to a producer who may not be able to afford it.

Mr. Keyes stated that looking at the fees every 3 years and allowing the permittee the flexibility of not paying the full fee up front is a good idea. One area of concern is the amount of the fee increase; it does not reflect the rate of inflation in certain areas of industry over the last 9 years. The inflation rate for industry has been approximately 25 to 50 %, yet the fees are being increased 100%.

Mr. Johnson stated that if the increase passes, the WQCC must convey to the Legislature what the vote meant. The WQCC could pass on its intent to the Legislature, along with the passing of the fee increase, to allow the increase for the purpose of augmenting the program and not be used as a budget reduction.

Mr. Olson stated that in 1991 when the first fees were approved the same situation existed, everyone thought that the fees would put an undue burden on industry.

Chairman Maggiore stated that an analysis of the fee structure in comparison to other states would be beneficial in helping the Legislators understand the need for the increase.

Mr. Rubin stated that 74-6-5.J states, "The commission shall provide by regulation a schedule of fees for permits not exceeding the estimated cost of investigation and issuance, modification and renewal of permits. The collections pursuant to this section shall be deposited into the Water Quality Management Fund." Based upon that law, the fees should reflect those factors.

Roll Call Vote

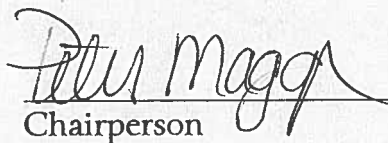
Tom Turney	Absent
Bill Olson	Yes
David Johnson	Yes
Julie Maitland	No
Jack Kelly	Yes
Howard Hutchinson	No
Lynn Brandvold	Yes
Irene Lee	Abstain
Conrad Keyes	Yes
Paul Gutierrez	Absent
Peter Maggiore	Yes

The motion carried.

Mr. Olson moved to have counsel prepare the Statement of Reasons for the Commission to review at their October meeting. Mr. Kelly seconded the motion. The motion passed unanimously.

Ms. Lee moved to adjourn the meeting. Mr. Hutchinson seconded the motion. The motion passed unanimously.

The meeting adjourned at approximately 3:00 p.m.


Chairperson