



STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION
1190 St. Francis Drive
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(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 14, 1999

The New Mexico Water Quality Control Commission (WQCC) meeting was held on September 14, 1999, at 9:00 a.m. in the State Capitol Building, Room 317, Old Santa Fe Trail and Paseo de Peralta, Santa Fe, New Mexico.

Members present:

Paul Ritzma	WQCC Acting Chair, Environment Department (NMED)
Tom Turney	State Engineer & Interstate Stream Commission
Ricardo Rel	Department of Agriculture
Howard Hutchinson	Soil and Water Conservation Commission
Steve Cary	State Parks Division
Jack Kelly	Department of Game and Fish
Bill Olson	Oil Conservation Division
Lynn Brandvold	Bureau of Mines and Mineral Resources
Paul Gutierrez	Member-at-Large
Irene Lee	Member-at-Large

Members absent:

Alberto Gutierrez	Member-at-Large
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Others present:

Tamella Gonzales	WQCC Administrator
Daniel Rubin	WQCC Counsel
David Hogge	NMED
James Davis	NMED
Marcy Leavitt	NMED
Greg Lewis	NMED
Alex Puglisi	New Mexico Municipal League
Bill Brancard	Sutin, Thayer & Browne
Steven Pierce	NMED
Hoyt Pattison	Neptune and Co.
Eric Ames	Office of General Counsel/NMED
Katherine Yuhas	NMED

Melissa Monk	LAC Minerals (USA) Inc.
Lennie Boteilho	LAC Minerals (USA) Inc.
Scott McKittrick	NMED
Bruce Thomson	University of New Mexico
Dale Doremus	NMED
Richard Virtue	Virtue, Najjar, Bartell, Matthews and Brown
Mike Saladen	LANL
Kelly Bitner	Neptune & Company
Brett Olsen	Montgomery & Andrews, P.A.
Fred Hansen	New Mexico Oil & Gas Association
Edward J. Hansen	NMED
Dan Fuqua	NMED
Tom Mills	Potter & Mills, P.C.
Charles Nylander	LANL
Richard Meyerhoff	EcoPlan Associates
Lena Eddings	RT Hicks Consultants
John McKay	NMED

Acting Chair Paul Ritzma called the meeting to order at 9:03 a.m.

Item 1: Roll call.

Tamella Gonzales, WQCC Administrator, took roll call.

Item 2: Approval of the agenda.

Mr. Ritzma moved to approve the agenda with one change. Item eight was moved up to item four. Mr. Rel seconded the motion. The motion passed unanimously.

Item 3: Review of the August 10, 1999, minutes.

Mr. Rel moved to approve the August 10, 1999, minutes as amended. Mr. Olson seconded the motion. The motion passed unanimously.

Item 4: LAC Minerals (USA) Inc. Petition for alternative Abatement Standards – action needed to set hearing and appoint Hearing Officer.

Mr. Lennie Boteilho, LAC Minerals (USA) Inc. (LAC) asked the Commission for a hearing regarding their petition for Alternative Abatement Standards.

Mr. John McKay, Assistant General Counsel for the New Mexico Environment Department (NMED) stated that the Department filed a recommendation supporting LAC's petition on September 13, 1999. Mr. McKay explained that 20 NMAC 1.3 §301 triggers the hearing that Mr. Boteilho is requesting and the Department, as well as LAC, would like to hold the hearing at the Commission's regular November meeting.

Ms. Brandvold asked Mr. Boteilho what length of time was being requested for the variance. Mr. Boteilho stated that a time period was not being requested. The petition is being filed without any limitations based on meeting water quality standards. Under 20 NMAC 1.3, a request for Alternative Abatement Standards does not require a time limitation whereas a variance does.

Mr. Rubin stated that LAC's petition seems to follow the language under 20 NMAC 6.2 §1210.A.9, which requires the petitioner to state the period of time for which the variance is desired.

Mr. Mckay stated that there is some interplay between the two sections but LAC is asking for a variance from the standard, not from the time period.

Mr. Rubin recommended that the Commission set a date and deal with the issue at the hearing.

Mr. Hutchinson moved to set the hearing for November 8, 1999. Mr. Olson seconded the motion. The motion passed unanimously.

Mr. Kelly moved to reset the hearing for November 9, 1999. Mr. Ritzma seconded the motion. The motion passed unanimously.

Ms. Brandvold moved to have the Commission as a whole sit for the hearing and appoint Paul Ritzma as Hearing Officer. Mr. P. Gutierrez seconded the motion. The motion passed. Mr. Ritzma abstained.

Item 5: Update on the Nonpoint Source Management Program.

Mr. Jim Davis, Chief Surface Water Quality Bureau, addressed the Commission regarding the Nonpoint Source Management Program (NPSMP). Mr. Davis stated that a draft NPSMP Document was presented at the August meeting and had been through a significant amount of public input and participation. The presentation of the document at the August meeting initiated a 30-day comment period. The comment period officially ended September 10, 1999.

A number of comments were received from both individuals and agencies. The Bureau is still reviewing and incorporating the comments into the document.

Mr. Davis stated that the Bureau must keep the comment period open until September 17, 1999 to allow for problems experienced by the Department with receiving electronic mail. After all electronic comments have been received and reviewed, the Bureau will be ready to present the final version of the NPSMP document to the Commission for adoption at its October meeting.

Mr. Hutchinson asked Mr. Davis if the Commission would be able to review the comments received by the Department and to see how they were incorporated into the Document. Mr. Hutchinson also asked if the Department has reviewed the proposed regulatory changes just released by the Environmental Protection Agency (EPA) regarding TMDLs and if these comments would affect the proposed NPSMP.

Mr. Davis stated that the comments would be appended to the document with a reference to the page number where an individual comment is addressed. If a comment was not incorporated, a reason will be given as to why it was not used.

Mr. Davis stated that the draft TMDL regulations were placed in the Federal Register on August 23rd and comments are due October 22nd. The Bureau is in the process of reviewing the proposed regulations and will be attending a meeting of the Western Governors Association, which will focus on the draft regulations.

After the meeting and after reviewing the comments, the Bureau will be in a position to bring its comments on the proposed regulations to the Commission. Until that time it would be hard to say whether or not the draft regulations, as currently written, will significantly impact the NPSMP document.

Mr. Rel asked the Bureau to brief the Commission at its next meeting on the comments received by other States regarding EPA's proposed TMDL regulations and on the possible conflicts the draft regulations could have on the NPSMP draft document.

Mr. Hoytt Patterson, Dairy Producers of New Mexico, stated that at the last Commission meeting a vote was taken to officially start the 30-day comment period on the NPSMP, and if it were to be extended, it would require additional action by the Commission. If the Commission chooses to extend the comment period, it should be at least an additional 15 days.

Mr. Hutchinson moved to extend the comment period on the draft NPSMP to Friday, September 24, 1999. Mr. Rel seconded the motion. The motion passed unanimously.

Item 6: Request for hearing to consider possible change to 20 NMAC 6.1, § 1102.F of the Water Quality Standards.

Mr. Eric Ames, Assistant General Counsel for the New Mexico Environment Department (NMED) and Steve Pierce, NMED, Surface Water Quality Bureau, requested a hearing on a proposed change to Section 1102.F of the Water Quality Standards. The Department would like to schedule the hearing for November 9, 1999. The NMED and the Department of Game and Fish (NMGFD) appeared before the Commission at its last meeting to discuss a specific problem with Section 1102.F, which is the general standard prohibiting toxic pollutants in surface waters of the State. The prohibition prevents wildlife management agencies from using fish toxicants in efforts to restore native fish populations in surface waters of the State.

The Commission asked the Department at its August meeting to return on September 14th with proposed language that would accommodate the NMGFD, NMED and include authorization for other entities to use pesticides other than fish toxicants. The Department has attached its proposed language to the petition.

Ms. Brandvold moved to set a hearing date for the Department's petition to amend 20 NMAC 6.1, § 1102.F, for November 9, 1999, and to follow the hearing on LAC's petition. Ms. Brandvold also moved to appoint Mr. Paul Ritzma as Hearing Officer. Mr. Olson seconded the motion. The motion passed unanimously.

Item 7: Receive and review of exceptions submitted regarding the Hearing Officers Report on 20 NMAC 6.1 – Standards for Interstate and Intrastate Streams.

Exceptions that were submitted to the Commission are as follows:

City of Las Cruces

New Mexico Environment Department

San Juan Water Commission

Amigos Bravos

O.H. Pattison and Dairy Producers

Middle Rio Grande Conservancy District, The Elephant Butte Irrigation District, and the Carlsbad Irrigation District

NM Municipal League

NM Mining Association
Los Alamos National Laboratory (LANL)
Errata Notice to LANL's Exceptions

Mr. P. Gutierrez moved to receive the exceptions to the Hearing Officers Report. Mr. Kelly seconded the motion. The motion passed unanimously.

Mr. Hutchinson moved to reschedule the Commissions regular monthly meeting from December 14, 1999 to December 7, 1999, and to have deliberation of the changes to the Standards beginning after the meeting and continue through December 9, 1999. Mr. Olson seconded the motion. The motion passed unanimously.

Item 8: Receive draft TMDL documents for North Ponil Creek, Rio Chamita, Cordova Creek, Cieneguilla Creek, Moreno Creek and Six-Mile Creek, and begin 30-day comment period.

Mr. David Hogge, TMDL Coordinator with the New Mexico Environment Department's Surface Water Quality Bureau asked the Commission to receive the Draft TMDLs and start the 30-day comment period. A notice of the comment period was mailed to the Water Quality Control Commission (WQCC) mailing list, the Nonpoint Source Task Force and the Acequia Association. Announcement of the comment period was faxed to the town of Angel Fire, Cimarron, the Village of Costilla, the USFS Questa Ranger District and the Taos Ranger District. Meetings are scheduled in the watershed to begin next week. Press releases and notice of the 30-day comment period were sent out to the media in all the affected areas. The Rio Chamita has one TMDL for temperature, North Ponil Creek has one for temperature, Cordova Creek has three for turbidity, stream bottom deposits and total phosphorus, Cieneguilla Creek has one for fecal coliform bacteria, Six-Mile Creek has one for fecal coliform and Moreno Creek has one TMDL for fecal coliform, for a total of eight. The TMDLs were submitted to EPA Region 6 for technical review in August. Public comment starts on September 14, 1999, and ends on October 13, 1999. In November the Bureau will request adoption of the TMDLs by the WQCC, and submit them to EPA for final approval. There are no point source impacts covered by the TMDLs. Nonpoint source projects will address sediment, turbidity, temperature, total fecal coliform bacteria, and total phosphorus reductions. Two Santa Fe River TMDLs remain for 1999. The Department may introduce the draft TMDLs to the Commission at its October meeting.

Mr. Hogge stated that the 30-day comment period for the TMDLs for the Rio de las Vacas, Redondo Creek, Jemez River and Rio Guadalupe ended October 10, 1999. Two comments were received, one from Los Alamos National Laboratory (LANL) and one from Santa Fe National Forest. Those comments will be presented to the Commission at its next meeting.

Mr. Olson moved to receive the draft TMDLs and open the 30-day comment period. Ms. Brandvold seconded the motion. The motion passed unanimously.

Item 9: Other Business.

Mr. Davis stated the deadline for approving the Santa Fe River TMDL is close. The Bureau has sent a letter to EPA urging them to complete their review so the TMDL can be sent out for public comment and submitted to the Commission for approval. The Bureau will keep the Commission informed on the progress of the Santa Fe River TMDL.

Mr. P. Gutierrez asked Mr. Davis if a special meeting would have to be called to approve the remaining Santa Fe River TMDL, and what would the penalty be if the deadline for approval were not met.

Mr. Davis stated that the Bureau hopes to bring the TMDL to the Commission at its December meeting. If the Santa Fe River TMDL has not been acted on at the end of the calendar year, the Federal Consent Decree will allow a one-year extension.

Mr. Ritzma asked if a letter written by the Commission, asking that EPA's contractor expedite the review of the Santa Fe River TMDL, would be helpful.

Mr. Davis advised the Commission to wait until EPA responds to his letter.

Mr. Ritzma stated that if the Commission does not receive the report from EPA on the Santa Fe River TMDL by its October meeting, that a letter be sent from the Commission to EPA. The letter would explain that, through no fault of the NMED or the WQCC, an extension must be sought.

Mr. Kelly stated that the TMDL video helped him as a new Commission member, and advised other Commissioners to view it.

Mr. Ritma moved to have the video be played during the next meeting. Ms. Brandvold seconded the motion. The motion passed unanimously.

Item 10: Next Meeting.

Mr. Kelly moved to hold the next WQCC meeting on October 12, 1999, at 9:00 a.m. Ms. Brandvold seconded the motion. The motion passed unanimously.

Pete Maggiore

Chairperson