

STATE OF NEW MEXICO  
BEFORE THE WATER QUALITY CONTROL COMMISSION



In the Matter of:

**PROPOSED AMENDMENTS TO  
GROUND AND SURFACE WATER  
PROTECTION REGULATIONS,  
20.6.2 NMAC**

No. WQCC 17-3 ~~(R)~~

**CITY OF ROSWELL'S POSITION WITH STATEMENT OF REASONS AND  
ADDITIONAL PROPOSED AMENDMENTS WITH STATEMENT OF  
REASONS REGARDING THE NMED'S PROPOSED AMENDMENTS TO  
REGULATIONS (20.6.2 NMAC)**

City of Roswell ("Roswell"), by and through undersigned counsel, hereby submits its position and additional proposed amendments regarding NMED's Petition to amend certain portions of the Commission's regulations in Title 20, Chapter 6, Part 2, of the New Mexico Administrative Code (NMAC) titled "*Ground and Surface Water Protection*" ("Rules").

INTRODUCTION

On May 1, 2017 the NMED filed its petition to amend certain portions of NMAC 20.6.2 together with its statement of reasons. Thereafter, Hearing Officer Erin Anderson was appointed and on June 2, 2017 issued her revised procedural order requiring Roswell to submit its position and statement of reasons on NMED's proposed amendments on or before July 27, 2017. Undersigned counsel filed its entry of appearance on behalf of Roswell on May 4, 2017. The revised procedural order also requires Roswell to submit any proposed amendments and statement of reasons not contained in NMED's petition that are "logical outgrowths of NMED's proposed amendments" on or before July 27, 2017. Accordingly, Roswell jointly submits its position and statement of reasons on NMED's proposed amendments followed by its proposed further amendments and statement of reasons in support thereof not contained in NMED's petition. Roswell takes no position on NMED's proposed amendments not specifically addressed herein.

**Roswell's position on NMED's Proposed Amendments  
& Statement of Reasons**

**I. 20.6.2.3103(C) NMAC [Note]:**

Roswell agrees with the NMED's proposed prospective application of the new standards taking effect on July 1, 2010 and the note should be formally codified as **20.6.2.3103 (D) NMAC.**

**II. Reason**

The prospective application allows for safe harbor, constitutes a matter of fairness, and recognizes extensive time and expense that Responsible Persons may have already undertaken in nearing completion of abatement under the current standards.

**I. Proposed amendment to 20.6.2.4103 (E):**

Roswell does not agree that eight (8) consecutive quarterly samples from all compliance sampling stations should be a precondition to completing abatement and the regulation should be revised and amended (deletions in ellipses and additions in bold) as follows:

*Subsurface-water and surface-water abatement shall not be considered complete until ... **sufficient** samples from ... compliance sampling stations as **determined by the Groundwater Quality Bureau** approved by the secretary meet the abatement standards of Subsections A, B, [and] C, and D of this section. []. Abatement of water contaminants measured in solid-matrix samples of the vadose zone shall be considered complete after one-time sampling from compliance stations approved by the secretary. Surface water pollution shall be abated to conform to the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20.6.4 NMAC)*

**II. Reason**

Sites exist throughout New Mexico that can be satisfactorily monitored with semi-annual or annual sampling to complete abatement under approval of the Secretary. Further, hydrological circumstances such as a perched aquifer or other unique ground water system characteristics that pose no risk of place of withdrawal for present or reasonably foreseeable future use justify the proposed amendment to allow Responsible Persons in these situations an avenue for remedy.

Quarterly sampling is not appropriate for many abatement sites and appears to be a hold-over from discharge permit requirements.

**I. 20.6.2.4103(F) (d) NMAC (alternative abatement):**

Roswell agrees that there should not be a 200 % limit of concentration at the time technical infeasibility is imposed. Roswell also proposes other intervals or other statistically valid sampling within a minimum of the last two years as approved by the Secretary to complete alternative abatement for the reasons stated below and as also stated on Roswell's proposed further amendment to 20.6.2.4103 (E) NMAC above. Accordingly, 20.6.2.4103(F) (d) NMAC should be revised (additional provision indicated in bold and deletions by ellipses) as follows:

*compliance with the standard set forth in Subsections A and B of this section is technically infeasible, as demonstrated by a statistically valid extrapolation of the decrease in concentration of any water contaminant over the remainder of a twenty (20) year period, such that projected future reductions during that time would be substantially less than ... the concentration at the time technical infeasibility is proposed. A statistically valid decrease can... be demonstrated by fewer than eight (8) consecutive sampling events or sufficient sampling as set forth in 20.6.2.4103 (E) subject to the approval of the Secretary in accordance with the provisions of 20.6.2.4103 (E). Sampling events demonstrating a statistically valid decrease shall be collected with a minimum of ninety (90) days between sampling events, and shall not span a time period greater than four (4) years.*

**II. Reason**

The deletion of a 200 % limit of concentration at the time technical infeasibility is proposed is reasonable subject of the approval of the Secretary in circumstances where background occurs at substantially high rates. The additional proposed language allowing for the Responsible Person to show statistically valid decrease other than on the basis of eight (8) consecutive quarters streamlines and harmonizes the regulations for Roswell's reasons discussed above regarding proposed amendment to 20.6.2.4103 (E) NMAC.

**Roswell's proposed amendments to 20.6.2 NMAC not contained in  
NMED's Petition & Statement of Reasons**

**I. Proposed additional amendment to 20.6.2.3103(C) NMAC [Note] :**

The "note" should be moved to text and thus become a codified separate provision, to wit **20.6.2.3103 (D)**.

**II. Reason**

The prospective application allows for safe harbor, constitutes a matter of fairness, and recognizes extensive time and expense that Responsible Persons may have already undertaken in nearing completion of abatement under the current standards, and should be formally codified as a provision.

**I. Proposed additional amendment to 20.6.2.4108 (B) (4) (in bold):**

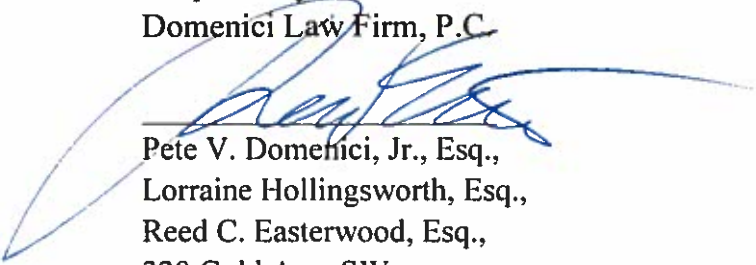
*owners and residents of surface property located inside, and within 1/3 of a mile from, the perimeter of the geographic area where the standards and requirements set forth in Section 20.6.2.4103 NMAC are exceeded who shall be notified by a means approved by the secretary;...*

**II. Reason**

The proposed amendment is consistent with the public notice and participation requirements regarding discharge permits under 20.6.2.3108 NMAC. Consistency of public notice requirements of the regulated community under NMED regulations promotes efficiency. Additional public notice is ineffective, unnecessary, and overly expensive.

**WHEREFORE**, Roswell requests that the Commission adopt its position on NMED's proposed amendments and incorporate Roswell's further proposed amendments in this matter.

Respectfully submitted,  
Domenici Law Firm, P.C.



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## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on the following via e-mail unless otherwise noted on July 27, 2017:

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