

**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 17-03(R)

**NEW MEXICO MINING ASSOCIATION'S STATEMENT OF POSITION
AND PROPOSED AMENDMENTS**

In accordance with the Revised Procedural Order issued in this case on June 2, 2017, the New Mexico Mining Association ("NMMA") files this Statement of Positions regarding the proposed amendments to 20.6.2 NMAC as attached to the Department's Petition. In addition, NMMA files its proposed amendments to 20.6.2 not contained in NMED's Petition, but which are logical outgrowths of NMED's proposed amendments.

STATEMENT OF POSITIONS

1. NMMA generally supports the proposed definition of "discharge permit amendment" in renumbered section 20.6.2.7.D(4) NMAC. However, the proposed language in subparagraph (b) is confusing and a volume limit of 50,000 gallons per day is too restrictive for mining operations, where discharge volumes can be measured in thousands of gallons per minute. Also, the limitation in subparagraph (d) regarding the introduction of a new water contaminant should include previously proposed language indicating that this limitation applies only to new water contaminants if they are that concentrations that would exceed water quality standards. NMMA recommends a definition consistent with the definition adopted as part of the Copper Rule at section 20.6.7.7.B(19) NMAC.

2. NMMA supports the proposed revision to the definition of “discharge permit modification” in renumbered section 20.6.2.7.D(5), provided that appropriate amendments are made to the definition of “discharge permit amendment” consistent with NMMA’s position stated in paragraph 1.

3. NMMA supports the revision to the definition of “hazard to public health” in renumbered section 20.6.2.7.H, provided that the language is made grammatically correct by starting a new sentence after the stricken language.

4. NMMA takes no position on the changes to the definition of “toxic pollutant” in renumbered section 20.6.2.7.T(2) and the corresponding language in section 20.6.2.3103.A, new paragraph (2). NMMA reserves the right to modify this position and to present technical testimony in response to any technical testimony and changes proposed by other parties regarding this language.

5. NMMA takes no position on the proposed changes to section 20.6.2.1201 NMAC at this time, but reserves the right to take a position in response to technical testimony and changes proposed by other parties regarding this provision.

6. NMMA supports the proposed changes to section 20.6.2.1210, particularly removing the five-year limit on the term of a variance. With regarding to proposed Subsection E, NMMA believes that the phrase “any changed circumstances or newly-discovered facts” is too vague, as this language is not limited to circumstances or facts material to maintaining the variance in place. This language also is too vague and overly broad as a basis for grounds for any person to request a hearing.

7. NMMA takes no position on the proposed change to the introductory language of section 20.6.2.3103 but reserves the right to take a position in response to technical testimony and changes proposed by other parties regarding this language.

8. NMMA takes no position on the proposed changes to the numerical standards in section 20.6.2.3103.A(1) to the extent the proposed changes are consistent with Primary Drinking Water Maximum Contaminant Levels set under the Safe Drinking Water Act (“MCLs”). That is the stated basis for the proposed changes in the Department’s draft Statement of Reasons. However, NMMA’s position is contingent on the Commission taking a consistent position that the standards in section 20.6.2.3103.A should be consistent with the Safe Drinking Water Act MCLs. NMMA takes the position that the following changes should be considered if the Commission chooses to have the standards in section 3103.A be consistent with MCLs.

a. Chromium: The Petition would leave the standards for chromium at 0.5 mg/l. The current MCL is 0.1 mg/l, and NMMA’s position is to change the standard for chromium to make it consistent with the MCL.

b. Fluoride: The Petition would leave the standard for fluoride at 1.6 mg/l. The current MCL is 4.0 mg/l, and NMMA’s position is to change the standard for fluoride to make it consistent with the MCL.

c. Lead: The Petition proposes to change the standard for lead from 0.5 to 0.015 mg/l. However the Petition fails to explain that the 0.015 mg/l level is not based upon a change in the MCL, but on an action level reflecting that the presence of lead in drinking water systems is normally due to lead present in plumbing materials. This rule replaced a former standard limiting lead to 0.5 mg/l measured where water enters the distribution

system. Consequently, setting a standard for lead at the action level measured at water taps may not be appropriate as a ground water quality standard.

d. Silver: There is no primary MCL for silver. Instead there is a secondary standard for silver of 0.1 mg/l. Consequently, NMMA opposes this proposed change.

e. NMMA takes no position on the proposed changes to the standards for organic constituents or the language regarding “toxic pollutants,” which NMMA understands to be a non-substantive change, or the proposed standard for non-aqueous phase liquids.

9. NMMA takes no position on the proposed changes to section 20.6.2.3103.B.

10. NMMA generally supports the changes to the note to section 20.6.2.3103. However, NMMA proposes that the second sentence be modified so that the amended standards would not apply unless the Secretary determines that the site is a source of these contaminants in ground water and, as a result, the site is a hazard to public health.

11. NMMA opposes the proposed change to section 20.6.2.3105.A.

12. NMMA supports the proposed changes to section 20.6.2.3105.L and .M and new subsections .N and .O.

13. NMMA supports the proposed changes to sections 20.6.2.3106, .3108, .3109, .3112 and .3114.

14. NMMA opposes the proposed change to section 20.6.2.4101.B as unnecessary if there is no renumbering of section 20.6.2.4103.

15. NMMA opposes the new subsection B added to section 20.6.2.4103.

16. NMMA supports the proposed changes to section 20.6.2.4103.C as it appears to conform to the proposed changes to section 20.6.2.3103.

17. NMMA opposes the changes to section 20.6.2.4103.E as renumbered.

18. NMMA opposes the deletion of section 20.6.2.4103.E of the existing rules regarding technical infeasibility.

19. NMMA supports the proposed changes to section 20.6.2.4103.F and new proposed subsection .G.

20. NMMA opposes the proposed change to section 20.6.2.4104.C and new subsection D.

21. NMMA opposes the proposed change to section 20.6.2.4105.B.

22. NMMA supports the proposed change to section 20.6.2.4105.C.

23. NMMA supports the proposed change to section 20.6.2.4106.D.

24. NMMA supports the proposed changes to section 20.6.2.4108.

25. NMMA opposes the change to sections 20.6.2.4109.A and .4114.A.

26. NMMA supports the proposed changes to section 20.6.2.4109.B.

27. NMMA takes no position at this time on the proposed changes to the Underground Injection Control rules.

28. NMMA takes no position on any proposed amendment to the rules not addressed in the paragraphs above.

29. NMMA reserves the right to submit technical testimony and other evidence regarding any and all of the proposed amendments.

30. NMMA reserves the right to change its position on any of the proposed amendments, including but not limited to the positions taken by other parties, amendments proposed by other parties, and technical evidence or other evidence presented by other parties, or due to any changes in relevant federal or state standards or criteria, regulations, or legislation adopted, enacted or made prior to the Commission's decision on this matter.

PROPOSED AMENDMENTS

NMMA proposes the following additional or revised amendments to the amended rule language proposed by NMED. These are in addition to proposed amendments that NMMA opposes, where NMMA's position is that the existing rule language not be modified.

1. 20.6.2.7.D(4): In place of the language proposed by NMED, NMMA proposes that this definition read as follows:

“Discharge permit amendment” means a minor modification of a discharge permit that does not result in a significant change in the location of a discharge, an increase in daily discharge volume of greater than 10% of the original daily discharge volume approved in an existing discharge permit for an individual discharge location, a significant increase in the concentration of water contaminants discharged, or introduction of a new water contaminant discharged.

Statement of Reasons: In addition to the reasons for the definition stated in NMED's Proposed Statement of Reasons filed with its Petition, this language is the same as the current definition in 20.6.7.7.B(19) as adopted by the Commission following a public hearing, and it would be best for consistency to use the same definitions in both part of the rules. In addition, NMMA's proposed language is more flexible and adaptable to the various types of discharges and facilities that require discharge permits.

2. 20.6.2.1210.E: NMMA proposes that this subsection should read as follows:

For variances granted for a period in excess of five years, the petition shall provide to the department for review a variance compliance report accompanying an application to renew the associated discharge permit, or if there is no associated permit, at five year intervals, to demonstrate that the conditions of the variance are being met. The report shall identify any changes of circumstances or newly discovered facts which are material to the variance and which are substantially different than the circumstances or facts presented in the original application for the variance. If the conditions of the variance have not been met, or if there are changed circumstances or newly discovered facts that were unknown at the time the variance was initially granted and which are material to the variance or the conditions under which the variance was approved, then any person who would have standing to appeal a permit decision may request a hearing before the commission to revoke, modify or otherwise reconsider the variance.

Statement of Reasons: A hearing regarding a variance should be warranted not based on any change in circumstances or facts, but only regarding differences that are material to the granting of the variance or its conditions. A reasonable test for materiality would be whether the commission's decision on the variance likely would have been substantially influenced by the change in facts or circumstances. Under this language, the commission can consider materiality when it considers whether to grant the request for a hearing.

3. 20.6.2.3103.A: NMMA proposes that this subsection is amended as follows:

- a. Chromium: A standard of 0.1 mg/l
- b. Fluoride: A standard of 4.0 mg/l
- c. Lead: Retain the existing standard for lead
- d. Silver: no standard

Statement of Reasons: NMMA proposes these changes for the same reasons as stated in NMED's Petition, that is, for consistency with current MCLs adopted under the Safe Drinking Water Act. With regard to lead, NMMA proposes to retain the current standard, which is based on a former MCL, and not to adopt the standard as proposed by NMED, which is not based on an MCL but, instead, is based on an action level designed to address concerns with lead in plumbing and which is measured at potable water taps and not as a treatment plant.

4. 20.6.2.3103.B: NMMA proposed that the second sentence of the Note at the end of this subsection is amended to read:

With regard to sites for which the secretary has, as of the effective date of these rule amendments, approved an abatement completion report pursuant to 20.6.2.4112 NMAC or has otherwise approved the completion of abatement of water pollution, the amended numeric standards for arsenic, cadmium, lead, combined radium-226 & radium-228, benzene, PCBs, carbon tetrachloride, EDC, PCE, TECE, methylene chloride, EDB, 1,1,2-trichloroethane, and benzo-a-pyrene shall not apply unless the secretary notifies the responsible person that site is a source of these contaminants in ground water and is a hazard to public health.

Statement of Reasons: NMMA proposes these changes because of the considerable debate with the use of “at a place of withdrawal.” There is clear understanding in the field of the definition of “hazard to public health” and the change would give clarity to this subsection and Note thereon.

5. NMMA reserves the right to submit further reasons and explanation, technical testimony and other evidence regarding any and all of NMMA’s proposed amendments.

6. NMMA reserves the right to change its position on any of NMMA’s proposed amendments including but not limited to the positions taken by other parties, amendments proposed by other parties, and technical evidence or other evidence presented by other parties, or due to any changes in relevant federal or state standards or criteria, regulations, or legislation adopted, enacted or made prior to the Commission’s decision on this matter.

Respectfully submitted,

NEW MEXICO MINING ASSOCIATION

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on July 27, 2017, via electronic mail to the following:

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