

**STATE OF NEW MEXICO
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)

REVISED ORDER ON AB/GRIP' MOTION AND RESPONSE DEADLINES

A procedural order was issued on June 26, 2018 that lacked sufficient clarity.

1. AB/GRIP's Memorandum on Logical Outgrowth and proposed amendments to 20.6.2.4103 A, B NMAC has been treated as a Motion.
2. NMED asked for leave to respond, and responded. NMED's request to treat the Memorandum was well taken and they were granted leave to Respond. NMED's request to amend was Granted. NMED's Motion to treat the Memorandum was Granted.
3. AB/GRIP's request not to include the position of NMED and NMMA in the revised hearing officer report is Denied. The revised hearing officer report, includes the contested language.
4. The procedural order was intended to notify the parties that due to the status change of the Memorandum, that they would be permitted to respond to the AB/GRIP's motion, pursuant to the rules.
5. AB/GRIP is permitted a reply. The date for the response for AB/GRIP is July 6, 2018. Due to the Independence Day holiday and the short window of time, prior to possible deliberations by the WQCC, currently scheduled for July 10th, 2018, parties who wished to respond to the June 22, 2018 AB/GRIP motion would be on a condensed time line.

6. All parties to the rule making proceeding may file a response, if they choose, on the discrete issue proposed in the AB/GRIP motion, and AB/GRIP may file a reply. The hearing officer will forward the pleadings in package form (motion, response, and reply) to the Commission Administrator on this issue and she will forward them to the Commissioners, who will determine the outcome.

20.1.6.207 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 20.1.6.104 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: Non-dispositive motions may be decided by the hearing officer without a hearing. The hearing officer shall refer any motion that would effectively dispose of the matter to the commission for a decision, and may refer any other motion to the commission. 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 commission administrator.

[20.1.6.207 NMAC - Rp, 20.1.6.207 NMAC, 03/16/2018]

7. There is a distinction between dispositive and non-dispositive motions. The order from the hearing officer issued on June 25, 2018 was a procedural order alerting the parties to the changed status of the "Memorandum" and alerting them to deadlines for filing a response to a "Motion". All parties to the hearing who wish to file responses to the AB/GRIP motion, may file pursuant to the rule.
8. The broader question posed by AB/GRIP on the logical outgrowth of the rule making hearing and its proposal to re-notice the hearing is dispositive, and properly belongs with the Commission.

9. The deadline for the parties to file a response is 15 days from the date of this order, which would fall on Monday, July 16th. This would likely impact the WQCC's ability to deliberate as their meeting is scheduled for July 10th. If parties do not wish to respond to the AB/GRIP Motion, please file a notice of completion of briefing no later than July 6, 2018, ideally at their earliest opportunity.

/s/ Erin Anderson
Erin Anderson, ALJ
Hearing Officer for WQCC 17-03 (R)
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