

**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)

SECOND PROCEDURAL ORDER

This Second Procedural Order is issued by the Hearing Officer pursuant to the Water Quality Control Commission's Rulemaking Procedures, 20.1.6 NMAC, for the purpose of establishing procedures for the conduct of the hearing in this matter "so as to provide a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome, or burdening the record with unnecessary repetition." 20.1.6.300.B NMAC. Pursuant to the Hearing Officer's June 2, 2017 Revised Procedural Order, the Parties conducted a teleconference on October 13, 2017, regarding scheduling and procedures for the hearing in this matter beginning on November 14, 2017. Based upon the discussion during the teleconference, and further discussions amongst the parties thereafter, it is hereby ordered as follows:

1. The hearing will be conducted beginning directly after the Water Quality Control Commission's regular meeting on November 14, 2017, and continuing as necessary on November 15th, 16th, and 17th, in Santa Fe, New Mexico.
2. Pursuant to Exhibit A of the Revised Procedural Order, and the subsequent Order on the Extension of the Deadline for Submittal of Rebuttal Testimony issued on October 2, 2017, the parties have pre-filed their direct testimony on September 11, 2017, and their rebuttal testimony on October 27, 2017.

3. Testimony at the hearing shall be presented by issue, as indicated in the Schedule of Testimony attached hereto as Exhibit A. Because the New Mexico Environment Department (“NMED”) is the Petitioner in this matter, NMED will present first on each issue, followed by the other parties that have filed testimony on that issue, in an order to be determined following submission of the pre-filed rebuttal testimony. *See* 20.1.6.300.B(3) NMAC (petitioner shall present its case first unless otherwise ordered). The Schedule of Testimony is intended as a guide, and the Hearing Officer retains discretion to deviate from that schedule, taking witnesses or issues out of order as necessary based on circumstances or time constraints that arise during the hearing.
4. Witnesses that have filed Notices of Intent to provide technical testimony may summarize their direct and rebuttal testimony before standing for cross-examination; summaries of pre-filed technical testimony, encompassing both direct and rebuttal testimony, should not exceed a total of ten (10) minutes except for Discharge permit amendments and variances which may be allocated up to (30) minutes to adequately summarize the voluminous testimony. Witnesses that will testify on multiple issues will be qualified and adopt their pre-filed direct and rebuttal testimony when they first testify, and need not do so again for each issue on which they provide testimony.
5. Technical testimony not timely disclosed will not be admitted. PowerPoint presentations or other illustrative exhibits may be used at the hearing without having been attached to the Notice of Intent, so long as copies of the presentation or exhibit are brought for the Commission and all other parties, and the illustrative exhibit is based on technical testimony timely submitted.

6. The parties may introduce sur-rebuttal exhibits or provide sur-rebuttal testimony at the hearing which tends to explain, counteract, repel, or disprove rebuttal evidence submitted by another party. The time limitations of paragraph 4 shall not apply to sur-rebuttal testimony.
7. The parties are encouraged to make evidentiary motions regarding the exhibits or testimony filed with the Notices of Intent in writing as soon as possible before the hearing. This does not preclude any party from making appropriate objections or evidentiary motions at the hearing.
8. Testimony of a non-technical nature by the general public will be allowed each day the hearing is conducted, at times set by the Hearing Officer and announced at the hearing.
9. As provided for in 20.1.6.300.B(1) NMAC, the hearing shall begin with an opening statement from the Hearing Officer. In that statement, the Hearing Officer will explain to the Commission that NMED is the Petitioner in this proceeding and other parties are proposing changes to NMED's Petition that are logical outgrowths of NMED's proposed changes.
10. Each party shall have the opportunity to make an opening statement, either in the beginning of the hearing, or immediately prior to presentation of that party's technical evidence, at that party's discretion. Opening statements shall be limited to fifteen (15) minutes due to the large number of parties in this rulemaking proceeding. Parties are actively encouraged to dispense with opening statements if the likelihood is high that the opening statement will be unnecessarily repetitive.
11. In all other respects, the Commission's Rulemaking Procedures at 20.1.6 NMAC shall apply to this proceeding.



Erin O. Anderson, Hearing Officer

Exhibit A - Schedule of Testimony, WQCC 17-03 (R)

November 14	<p>Regular WQCC Meeting</p> <p>Motion to Dismiss in WQCC 17-03 (R)</p> <p>WQCC 17-03 (R):</p> <p>Opening statement by Hearing Officer</p> <ul style="list-style-type: none">• Discharge permit amendments (20.6.2.7.D NMAC and throughout)
November 15	<ul style="list-style-type: none">• Discharge permit amendments [continued from 11/14]• Removal of 5-year limitation on variances (20.6.2.1210 NMAC)
November 16	<ul style="list-style-type: none">• Changes to 20.6.2.3103 NMAC:<ul style="list-style-type: none">– Reorganizing Narrative Standard from 20.6.2.7 (Definitions) to 20.6.2.3103.A(2) NMAC– Content of Narrative standard– Revise numeric standards for consistency with MCL's.– Retain WQCC-set standards for several constituents below MCL's.– Content of note.– Codify note as 20.6.2.3103.D NMAC.– CAS Numbers <p>Other Issues [time permitting]:</p> <ul style="list-style-type: none">• Time frame for determination whether discharge permit required (20.6.2.3106 NMAC)• Fact sheets, draft permits (20.6.2.3108.H NMAC)• Notification and response to comments on draft permits or proposed disapprovals (20.6.2.3109 NMAC)• Adding provision for appeal of dispute resolution decision (20.6.2.4113, 4114 NMAC)• Exemptions (20.6.2.10 and 20.6.2.3105 NMAC)

November 17	<p data-bbox="456 205 998 237">[Issues continued from 11/16 if necessary]</p> <ul data-bbox="456 279 1398 1031" style="list-style-type: none"> <li data-bbox="456 279 1317 352">• Add language re exemptions/permitting requirements for ASR projects (20.6.2.5006 NMAC) <li data-bbox="456 394 1224 426">• Alternative Abatement Standards (20.6.2.4103 NMAC) <li data-bbox="456 468 1224 499">• Subsurface water contaminants (20.6.2.4103.B NMAC) <li data-bbox="456 541 1289 573">• Abatement plans – financial assurance (20.6.2.4104 NMAC) <li data-bbox="456 615 1349 688">• Public process associated with petitions for alternative abatement standards (20.6.2.4108 NMAC) <li data-bbox="456 730 1398 804">• Language changes to provide correct statutory and agency references (20.6.2.3105.L, M, N NMAC; 20.6.2.5101.D(1)-(3) NMAC) <li data-bbox="456 846 1398 877">• Geothermal resources (20.6.2.1201, 3105, 5002, 5003, 5101 NMAC) <li data-bbox="456 919 1105 951">• Discharge plan required (20.6.2.3106 NMAC) <li data-bbox="456 993 1360 1024">• Reorganizing Definitions section alphabetically (20.6.2.7 NMAC)
--------------------	--

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **Second Procedural Order** was served to the following parties on October 31, 2017, Via email, and on November 1, 2017, Via mail:

Via hand delivery and email:

John Verheul
Lara Katz
Office of General Counsel
New Mexico Environment Department
Post Office Box 5469
Santa Fe, New Mexico 87502
John.Verheul@state.nm.us
Lara.Katz@state.nm.us
Counsel for the New Mexico Environment Department

Via First Class U.S. Mail and email:

Pete Domenici, Esq.
Lorraine Hollingsworth, Esq.
Reed Easterwood
Domenici Law Firm, P.C.
320 Gold Ave. SW Suite 1000
Albuquerque, New Mexico 87102
pdomenici@domenicilaw.com
lhollingsworth@domenicilaw.com
reasterwood@domenicilaw.com
*Counsel for the City of Roswell and
Laun-Dry*

Louis W. Rose
Kari Olson
Montgomery & Andrews, P.A.
Post Office Box 2307
Santa Fe, New Mexico 87504-2307
lrose@montand.com
Kolson@montand.com
Counsel for Los Alamos National Security, LLC

Timothy A. Dolan
Office of Laboratory Counsel
Los Alamos National Laboratory
Post Office Box 1663, MS A187
Los Alamos, New Mexico 87545
tdolan@lanl.gov
Counsel for Los Alamos National Security, LLC

Dalva L. Mollenberg
Gallagher & Kennedy, P.A.
1239 Paseo de Peralta
Santa Fe, New Mexico 87501
DLM@gknet.com
*Counsel for Dairy Producers of New Mexico and
the Dairy Industry Group for a Clean Environment*

Michael Bowen
Executive Director
1470 Saint Francis Drive
Santa Fe, New Mexico 87505
nmma@comcast.net
On behalf of New Mexico Mining Association

Jaimie Park
Douglas Meiklejohn
Eric Jantz
Johnathan Block
New Mexico Environmental Law Center
1405 Luisa Street, Suite 5
Santa Fe, New Mexico 87505
jpark@nmelc.org
Counsel for Amigos Bravos & Gila Resources Information Project

William C. Olson
14 Cosmic Way
Lamy, New Mexico 87540
billjeanie.olson@gmail.com
Self-Represented

Michael L. Casillo
AFLOA/JACE
1500 W. Perimeter Rd, Suite 1500
Joint Base Andrews, Maryland 20762
michael.l.casillo2civ@mail.mil
Counsel for United States Air Force

William Brancard
Cheryl Bada
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
Bill.Brancard@state.nm.us
Cheryl.Bada@state.nm.us
*Counsel for Energy, Minerals and Natural
Resources Department*

Russel Church, President
NMML EQA Subsection
New Mexico Municipal League
P.O. Box 846
Santa Fe, New Mexico 87504
rchurch@redviver.org
*For New Mexico, Municipal League,
Environmental Subsection*

Stuart R. Butzier
Christina C. Sheehan
American Magnesium, LLC
Rio Grande Resources Corporation
New Mexico Copper Corporation
P.O. Box 2168
Albuquerque, New Mexico 87103-2168
Stuart.butzier@modrall.com
Christina.sheehan@modrall.com
*For Rio Grande Resources Corporation,
American Magnesium, LLC and New Mexico
Copper Corporation*

Regina Ryanczak
Office of the Attorney General
Post Office Drawer 1508
Santa Fe, New Mexico 87504-1508
raryanczak@nmag.gov
Counsel for the Water Quality Control Commission


Pam Castañeda, Commission Administrator