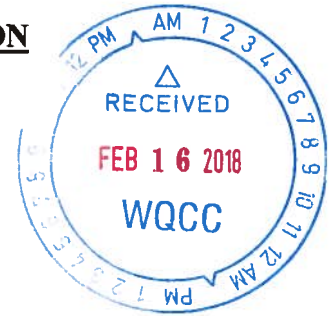


NEW MEXICO WATER QUALITY CONTROL COMMISSION
HEARING NO. WQCC 17-03(R)



WILLIAM C. OLSON
FINAL PROPOSED AMENDMENTS
TO
NMED PROPOSED REVISIONS TO 20.6.2 NMAC
(FEBRUARY 16, 2018)

This document contains William C. Olson's February 16, 2018 final proposed amendments to the text of specific sections of the New Mexico Environment Department ("Department") proposed revisions to the Ground and Surface Water Protection Regulations of 20.6.2 NMAC as contained in the Department's November 9, 2018 "*Amended Notice of Withdrawal of the New Mexico Environment Department's Proposed Definition of Discharge Permit Amendment and Related Changes to 20.6.2 NMAC*" and the accompanying proposed 20.6.2 NMAC rule amendments of "*Amended NMED Exhibit 36*". The below amendments are based upon the facts and evidence in New Mexico Water Quality Control Commission Hearing No. WQCC-17-03(R) as discussed and presented in the February 16, 2018 "*William C. Olson Closing Argument*" and "*William C. Olson Proposed Statement of Reasons*" that accompany this document. William C. Olson's proposed amendments are represented by red colored strike (deletions) and bold (new language) format changes highlighted in yellow.

Final Proposed Amendments 20.6.2.10 NMAC

20.6.2.10 LIMITATIONS: These regulations do not apply to the following:

- A. Any activity or condition subject to the authority of the environmental improvement board pursuant to the Hazardous Waste Act, NMSA 1978, Sections 74-4-1 to -14, the Ground Water Protection Act, NMSA 1978, Sections 74-6B-1 to -14, or the Solid Waste Act NMSA 1978, Sections 74-9-1 to -25 except to abate water pollution or to control the disposal or use of septage and sludge, or
- B. any activity or condition subject to the authority of the oil conservation commission pursuant to provisions of the Oil and Gas Act, NMSA 1978, Section 70-2-12 and other laws conferring power on the oil conservation commission and the oil conservation division of the energy, minerals and natural resources department to prevent or abate water pollution.

Final Proposed Amendments to 20.6.2.1210.E NMAC

20.6.2.1210 VARIANCE PETITIONS:

- E. For variances granted for a period in excess of five years, the petitioner shall provide to the department for review a variance compliance report at five year intervals to demonstrate that the conditions of the variance are being met, including notification of any changed circumstances or newly-discovered facts that are material to the variance. At such time as the department determines the report is administratively complete, the department shall post the report on its website, and mail or e-mail notice of its availability to those persons on a general and facility-specific list maintained by the department who have requested notice of discharge permit applications, and any person who participated in the variance process. If such conditions are not being met, or there

1 is evidence indicating changed circumstances or newly-discovered facts or conditions that were unknown at the time
2 the variance was initially granted **and which are material to the variance or the conditions under which the variance**
3 **was approved, the department or** any person, ~~including the department who is adversely affected~~ may request a
4 hearing before the commission to revoke, modify or otherwise reconsider the variance within 90 days of the
5 issuance of notice of availability of the report.
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8 **Final Proposed Amendments to 20.6.2.3103.A(2) NMAC**

9

10 **20.6.2.3103. STANDARDS FOR GROUND WATER OF 10,000 mg/l TDS CONCENTRATION OR** 11 **LESS:**

12 **A. Human Health Standards.**

13 (2) Standards for Toxic Pollutants. A toxic pollutant shall not be present at a concentration shown by
14 scientific information currently available to the public to have potential for causing one or more of the following
15 effects upon exposure, ingestion, or assimilation either directly from the environment or indirectly by ingestion
16 through food chains: (1) unreasonably threatens to injure human health, or the health of animals or plants which are
17 commonly hatched, bred, cultivated or protected for use by man for food or economic benefit; as used in this
18 definition injuries to health include death, histopathologic change, clinical symptoms of disease, behavioral
19 abnormalities, genetic mutation, physiological malfunctions or physical deformations in such organisms or their
20 offspring; or (2) creates a lifetime risk of more than one cancer per 100,000 exposed persons. **Sources of scientific**
21 **information for human health risk assessments should be based on credible science and supporting studies conducted**
22 **in accordance with sound scientific practices as well as data collected by accepted methods. Examples of acceptable**
23 **sources for scientific information for human health risk assessments include, but are not limited to, the Integrated**
24 **Risk Information System, EPA's Provisional Peer Reviewed Toxic Values, Agency for Toxic Substances and**
25 **Disease Registry Minimal Risk Levels and Human Effects Assessment Summary Tables.**
26
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28 **Final Proposed Amendments to 20.6.2.4108 NMAC**

29

30 **20.6.2.4108 PUBLIC NOTICE AND PARTICIPATION:**

31 **B.** ~~[Within thirty (30) days of filing of]~~**Any person proposing a Stage 2 abatement plan [proposal, or**
32 **proposed] or, a significant modification [of] to a Stage 2 [of the] abatement plan, or an alternative abatement**
33 **standard[any responsible person] shall provide [to the secretary proof of public] notice of the [abatement**
34 **plan]proposal to the following persons:**

35 **(1)** the public, who shall be notified through publication of a notice in newspapers of general
36 circulation in this state and in the county where the abatement will occur **or where the water body that would be**
37 **affected by a proposed alternative abatement standard is located,** and, in areas with large percentages of non-English
38 speaking people, through the mailing of the public notice in English to a bilingual radio station serving the area
39 where the abatement will occur with a request that it be aired as a public service announcement in the predominant
40 non-English language of the area;

41 **(2)** those persons, as identified by the secretary, who have requested notification, who shall
42 be notified by mail **or email;**

43 **(3)** the New Mexico Trustee for Natural Resources, and any other local, state or federal
44 governmental agency affected, as identified by the secretary, which shall be notified by certified mail;

45 **(4)** owners and residents of surface property located inside, and within one (1) mile from, the
46 perimeter of the geographic area where the standards and requirements set forth in Section 20.6.2.4103 NMAC are
47 exceeded who shall be notified by a means approved by the secretary; and

48 **(5)** the Governor or President of each Indian Tribe, Pueblo or Nation within the state of New
49 Mexico, as identified by the secretary, who shall be notified by mail **or email.**

50 **C.** The public notice **proposal for a Stage 2 abatement plan proposal or significant modification of a**
51 **Stage 2 abatement plan** shall ~~[include, as approved in advance by]~~ **be submitted to the secretary for approval with a**
52 **proposed Stage 2 abatement plan proposal, or significant modification of a Stage 2 abatement plan, and shall**
53 **include:**

- 54 (1) name and address of the responsible person;
55 (2) location of the proposed abatement;

1 (3) brief description of the nature of the water pollution and of the proposed abatement
2 action;
3 (4) brief description of the procedures followed by the secretary in making a final
4 determination;
5 (5) statement on the comment period;
6 (6) statement that a copy of the abatement plan can be viewed by the public at the
7 department's main office or at the department field office for the area in which the discharge occurred;
8 (7) statement that written comments on the abatement plan, and requests for a public meeting
9 or hearing that include the reasons why a meeting or hearing should be held, will be accepted for consideration if
10 sent to the secretary within sixty (60) days after the ~~[determination of administrative completeness; and]~~ date of
11 public notice; and

12 (8) address and phone number at which interested persons may obtain further information.

13 **D.** The public notice proposal for a proposed alternative abatement standard shall be submitted to the
14 secretary for approval thirty (30) days prior to the filing of a petition for alternative abatement standards, and shall
15 include:

16 (1) name and address of the responsible person;

17 (2) location of the proposed alternative abatement standards;

18 (3) brief description of the nature of the water pollution and of the proposed alternative
19 abatement standards;

20 (4) brief description of the procedures followed by the commission in making a final
21 determination on a petition for alternate abatement standards;

22 (5) statement that a copy of the petition for alternate abatement standards petition can be
23 viewed by the public at the department's main office or at the department field office for the area in which the
24 affected water body is occurring;

25 (6) statement on how the public can request to be placed on a facility-specific mailing list for
26 notification of any hearing conducted on the petition for alternate abatement standards pursuant to 20.1.3 NMAC;
27 and

28 (7) address and phone number at which interested persons may obtain further information.

29 **DE.** Within thirty (30) days of the secretary's approval of a ~~Stage 2 abatement plan~~ public notice
30 proposal for a proposed Stage 2 abatement plan, significant modification of a Stage 2 abatement plan or alternative
31 abatement standard, any responsible person shall provide to the secretary proof of public notice to the persons listed
32 in Subsection B of 20.6.2.4108 NMAC.

33 **EF.** For a proposed Stage 2 abatement plan or significant modification of a Stage 2 abatement plan, Aa
34 public meeting or hearing may be held if the secretary determines there is significant public interest. Notice of the
35 time and place of the meeting or hearing shall be given at least thirty (30) days prior to the meeting or hearing
36 pursuant to Subsections A and B above. The secretary may appoint a meeting facilitator or hearing officer. The
37 secretary may require the responsible person to prepare for approval by the secretary a fact sheet, to be distributed at
38 the public meeting or hearing and afterwards upon request, written in English and Spanish, describing site history,
39 the nature and extent of water pollution, and the proposed abatement. The record of the meeting or hearing,
40 requested under this Section, consists of a tape recorded or transcribed session, provided that the cost of a court
41 recorder shall be paid by the person requesting the transcript. If requested by the secretary, the responsible person
42 will provide a translator approved by the secretary at a public meeting or hearing conducted in a locale where
43 testimony from non-English speaking people can reasonably be expected. At the meeting or hearing, all interested
44 persons shall be given a reasonable chance to submit data, views or arguments orally or in writing, and to ask
45 questions of the secretary or the secretary's designee and of the responsible person, or their authorized
46 representatives.

47 **G.** An alternative abatement standard shall only be granted after a public hearing before the
48 commission, as required by NMSA 1978, Section 74-6-4(H) of the Water Quality Act. The commission shall
49 review petitions for alternative abatement standards in accordance with the procedures for review of variance
50 petitions provided in the commission's adjudicatory procedures, 20.1.3 NMAC.