

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 Environment Department,
Petitioner

WRITTEN DIRECT TESTIMONY OF WILLIAM C. OLSON

My name is William C. Olson. I present this technical testimony in New Mexico Water Quality Control Commission (“Commission”) rulemaking hearing case No. WQCC 17-03(R) pursuant to the Hearing Officer’s June 2, 2017 Revised Procedural Order. I am testifying as a citizen of New Mexico interested in protection of its public water resources. I present this written technical testimony in response to the New Mexico Environment Department (“Department” or “NMED”) “*Petition to Amend the Ground and Surface Water Protection Regulations (20.6.2 NMAC) and Request for Hearing*” (“Petition”) filed with the Commission on May 1, 2017 and as amended on July 27, 2017 and August 7, 2017.

I. BACKGROUND AND EXPERIENCE

I have a Bachelor of Science degree in Geology, and Master of Science degree in Hydrology from the New Mexico Institute of Mining and Technology, and 31 years of work experience related to ground water quality, discharge permitting and remediation of polluted ground water under both Commission and New Mexico Oil Conservation Division (NMOCD) rules. I previously served on the Commission as the designee of the NMOCD for 13 years, and

subsequently served on the New Mexico Oil Conservation Commission as the designee of the Secretary of the Energy Minerals and Natural Resources Department for over 5 years. During service on these commissions, I participated in adoption of a number of water quality protection rules pursuant to both the New Mexico Water Quality Act (WQA) and New Mexico Oil and Gas Act ("Oil and Gas Act"), including Commission rules for pollution abatement, public notice, adjudications, uranium ground water standards and stream standards, and NMOCD pit rules.

Since January of 2012, I have been a private consultant on water quality issues in New Mexico for various clients including assisting NMED in initial development of the Copper Mine Rule, and served as a consultant and expert witness for the New Mexico Attorney General's Office and private parties on water quality issues. During this time, I was a party and expert witness in the Commission's Copper Mine Rule hearings. In addition, I was an expert witness for the Coalition (collectively, Rio Grande Chapter of the Sierra Club, Amigos Bravos, Caballo Concerned Citizens, Lea County Concerned Citizens, and Rio Valle Concerned Citizens) in the 2015 Dairy Rule amendment hearings, including participating in and testifying on the subsequent 3-way Coalition, dairy industry and NMED settlement of the Dairy Industry Group for a Clean Environment's (DIGCE) rule amendment hearing petition and the joint proposed Dairy Rule amendments adopted by the Commission.

Prior to 2012, I worked for 25 years in state government on water quality issues with both NMED and NMOCD. I held the position of Bureau Chief of NMED's Ground Water Quality Bureau from October of 2004 to November of 2011. As Bureau Chief, I was responsible for supervising and managing personnel of the Ground Water Quality Bureau's Mining Environmental Compliance Section, Pollution Prevention Section, Remediation Oversight Section, Superfund Oversight Section, and Grants and Planning Section. My duties included

directing and managing the permitting and enforcement of discharge permits and abatement of ground water pollution pursuant to the WQA and Commission rules; remediation of contaminated properties pursuant to the Voluntary Remediation Act and Voluntary Remediation Regulations; remediation of abandoned sites in support of the U.S. Environmental Protection Agency (EPA) Superfund Program; and implementation of NMED's responsibilities under the New Mexico Mining Act. As Bureau Chief, I led the technical team and was NMED's lead technical witness in adjudication of the Tyrone Mine Closure Permit where the Commission first defined the meaning of "*place of withdrawal of water*" under the WQA. As Bureau Chief, I also led the NMED team that developed the original Dairy Rule, was a principal technical witness in the Commission's 2009 Dairy Rule rulemaking hearings and was an NMED negotiator in the settlement of DIGCE's appeal of the Commission's original 2010 Dairy Rule. Subsequently, as a private citizen after my retirement from state government, at the November 2011 Commission rulemaking hearing I testified on behalf of NMED, DIGCE and the Coalition on the settlement of DIGCE's appeal and the resulting jointly agreed Dairy Rule amendments that were adopted by the Commission (The Dairy Rule was later amended again in 2015 as discussed previously above).

Prior to my term as Bureau Chief of the NMED Ground Water Quality Bureau, I was a hydrologist for the NMOCD Environmental Bureau from 1990 to 2004. In this capacity, I implemented and enforced the WQA and Commission Rules related to discharge permitting and abatement of ground water pollution at refineries, natural gas processing plants, natural gas compressor stations, brine extraction wells and oilfield service companies. I also implemented and enforced NMOCD water quality protection permit and pollution abatement rules adopted pursuant to the Oil and Gas Act for oilfield exploration, development, production and disposal

sites. In addition, my duties involved conducting ground water studies, rule development and serving as an expert witness for oilfield industry water quality protection rules, including NMOCD abatement, pollution prevention and pit rules.

From 1988 to 1990, I worked as a hydrologist for the New Mexico Environmental Improvement Division's Ground Water Quality Bureau, and from 1986 to 1988, I worked as a hydrologist for NMOCD. Both of these jobs involved discharge permitting and abatement of water pollution under Commission rules and conducting ground water quality studies.

A copy of my current resume is marked as **WCO Exhibit 2**.

II. INTRODUCTION

On May 1, 2017, NMED submitted its Petition for regulatory change to the Commission. NMED's Petition proposed to amend certain portions of the Commission's Ground and Surface Water Protection Regulations, 20.6.2 NMAC, to "*bring the rules up to date with current science, policy and practice*". On May 31, 2017, the Commission Hearing Officer issued a Procedural Order ("Order") governing prehearing submissions, scheduling and conduct of the hearing. The Order was subsequently revised on June 2, 2017, and later amended on August 11, 2017. Pursuant to the Order, on July 27, 2017, parties to the hearing, including myself, submitted statements of position on NMED's Petition and proposed their own amendments not contained in NMED's Petition, but which are logical outgrowths of NMED's proposed revisions. On July 27, 2017, NMED also filed with the Hearing Officer a "*New Mexico Environment Department Notice of Amended Petition*" containing revisions to their original petition. On August 7, 2017, NMED, filed a "*Notice of Errata*" with the Hearing Officer containing "*corrected Proposed Amendments to the New Mexico Ground and Surface Water Protection Regulations 20.6.2 NMAC*" (hereafter referred to as "Amended Petition") which included an omitted subsection

referenced in the July 27, 2017 “*New Mexico Environment Department Notice of Amended Petition*”.

The purpose of this hearing is to address NMED’s proposed revisions in the Amended Petition in a manner consistent with provisions and requirements of the WQA. As I discussed in the previous section on my background, I have participated in many Commission rulemaking hearings. I support the need for Commission rules that prevent water and abate water pollution and protect water quality in an effective, efficient and reliable manner consistent with statutory requirements of the WQA. In this document, I present testimony on my positions on NMED’s Amended Petition and propose amendments consistent with the purpose and requirements of the WQA and Commission rules. My testimony is contained in exhibits marked **WCO Exhibits 1-3** and constitutes my written direct testimony on NMED’s Amended Petition and its proposed revisions to 20.6.2 NMAC.

III. WATER QUALITY PROTECTION

The Ground and Surface Water Protection Rules of 20.6.2 NMAC are fundamentally about protection of ground water resources in New Mexico for present and foreseeable future use. New Mexico is an arid state, with limited water resources and consequently ground and surface waters in New Mexico are public resources managed for public benefit. The state is growing and developing, placing an increasing demand on its limited ground water resources. New Mexican’s obtain approximately 90 percent of their drinking water from ground water sources and it’s therefore extremely important to protect those resources. Towards that end, the Legislature enacted the WQA and, pursuant to its statutory authority since 1977, the Commission has adopted water quality standards and rules to protect all surface and subsurface waters in New Mexico, including rules for abatement of water pollution that may occur above established

standards. The WQA was amended by the legislature in 2009 requiring that the Commission also specify in rules measures to be taken to prevent water pollution and monitor water quality.

Pollution prevention at facilities that discharge pollutants is important because extensive contamination of ground water resources can and has occurred in the past from various types of discharging facilities in the State of New Mexico, including mining, dairy, oil and gas, fueling industrial, wastewater and federal facilities. Since the adoption of pollution prevention rules in 1977, NMED and NMOCD have discovered that some discharging facilities operational and disposal practices failed to prevent ground water pollution and resulted in impacts on ground water quality. Over time, as the agencies have required new pollution prevention and ground water monitoring measures in permits, the number of cases of ground water contamination increased as more monitoring data was obtained.

Due to the importance of preserving New Mexico's public water resources and the potential for contamination of these resources, water quality protection rules should be reviewed on a periodic basis to assess whether they are consistent with current knowledge and issues. However, a number of the Commission rules have not been revised in many years and are due for review and update, especially the ground water standards.

IV. STATEMENT OF POSITION

As a hydrologist and citizen of New Mexico with a long-term involvement in Commission rulemaking and implementation and enforcement of Commission rules, I support NMED's effort to update the Commission's Ground and Surface Water Protection Rules at 20.6.2 NMAC. In general, I support the majority of NMED's proposed revisions as modified and amended in attached **WCO Exhibit 3** titled "*William C. Olson September 11, 2017 Proposed Amendments to NMED Amended Petition Proposed Revisions to 20.6.2 NMAC*" for the

reasons discussed below. I defer taking a position in certain areas of NMED's proposed revisions to 20.6.2 NMAC until such time that NMED provides their technical and legal rationale for the revisions in their written direct testimony. Consequently, at this time, I take no position on the following NMED proposed revisions:

- 1) Elimination of the 5 year term for approved variances in 20.6.2.1210 NMAC;
- 2) Numerical health-based standards that were revised to be less stringent than existing standards in 20.6.2.3103.A(1) NMAC; and
- 3) The "note" containing a grandfathering clause for water quality standards in 20.6.2.3103 NMAC.

V. PROPOSED AMENDMENTS AND STATEMENT OF REASONS

The accompanying **WCO Exhibit 3**, attached to this document, contains all of my proposed amendments to NMED's Amended Petition. The amendments I propose contain edits for clarity and additional language that are logical outgrowths of NMED's Petition and its Amended Petition. Each of my proposed amendments and the reasons for their adoption are discussed individually below.

1. 20.6.2.7.D(4)(b) NMAC should be amended as follows:

20.6.2.7 DEFINITIONS:

~~[M.]~~[D.] Definitions that begin with the letter "D."

~~[P.]~~ (4) "discharge permit amendment" means a minor change to the requirements of a discharge permit that does not result in:

(a) a change in the location of a discharge that would affect groundwater beyond that impacted by the existing discharge location,

(b) an increase in daily discharge volume of greater than ten percent of the daily discharge volume approved in the most recent discharge permit approval, renewal or modification for an individual discharge location, and where the sum of any volume increases via amendments during a permit term is not greater than ten percent of the approved, renewed or modified discharge permit volume, or greater than 50,000 gallons/day, whichever is less,

(c) any increase in discharge volume for a facility that is conducting abatement of water pollution;

(c) an increase in an effluent limit set forth in the most recent discharge permit approval, renewal or modification for an individual discharge location, or

(d) introduction of a new water contaminant

Reasons: In 20.6.2.7.D(4)(b) NMAC, in the definition of discharge permit amendment an edit is needed to clarify the intent of the definition regarding volume limitations. The definitions intent is that the sum of all increases during a permit term should “not” be greater than the specified volume limitations and the word “not” appears to have inadvertently been omitted.

2. 20.6.2.1210.A(5) NMAC should be amended as follows:

20.6.2.1210 VARIANCE PETITIONS:

A. Any person seeking a variance pursuant to NMSA 1978, Section 74-6-4(H)(G) shall do so by filing a written petition with the commission. The petitioner may submit with his petition any relevant documents or material which the petitioner believes would support his petition. Petitions shall:

- (1) state the petitioner's name and address;
- (2) state the date of the petition;
- (3) describe the facility or activity for which the variance is sought;
- (4) state the address or description of the property upon which the facility is located;
- (5) describe the water body or watercourse affected by the discharge for which the variance is sought **and provide an analysis of present and foreseeable future uses of water that may be affected by the variance;**
- (6) identify the regulation of the commission from which the variance is sought;
- (7) state in detail the extent to which the petitioner wishes to vary from the regulation;
- (8) state why the petitioner believes that compliance with the regulation will impose an unreasonable burden upon his activity; and
- (9) ~~state the period of time for which the variance is desired~~ state in detail how any water pollution above standards will be abated; and
- (10) state the period of time for which the variance is desired including all reasons, data, reports and any other information demonstrating that such time period is justified and reasonable.

Reasons: In 20.6.2.1210.A(5) NMAC, the information submitted for evaluation of a variance needs to be expanded to include an analysis of present and future uses of any water that may be affected by the variance. Ground water is a public resource that is extensively used in New Mexico for drinking, agricultural and industrial uses. Ground water is the source of approximately 90% of drinking water in New Mexico. Submission of this information is necessary for the Commission to be able to assess the effects of issuance of a requested variance on water resources, to minimize potential impacts on uses of water and meet the statutory requirements of the WQA.

3. 20.6.2.3103.A(2) NMAC should be amended as follows:

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

A. Human Health Standards

(2) Standards for Toxic Pollutants. A toxic pollutant shall not be present at a concentration shown by scientific information currently available to the public to have potential for causing one or more of the following effects upon exposure, ingestion, or assimilation either directly from the environment or indirectly by ingestion through food chains: (1) unreasonably threatens to injure human health, or the health of animals or plants which are commonly hatched, bred, cultivated or protected for use by man for food or economic benefit; as used in this definition injuries to health include death, histopathologic change, clinical symptoms of disease, behavioral abnormalities, genetic mutation, physiological malfunctions or physical deformations in such organisms or their offspring; or (2) creates a lifetime risk of more than one cancer per 100,000 exposed persons.

Reasons: In 20.6.2.3103.A(2) NMAC, additional language is needed to clarify that the narrative standards for toxic pollutants require that a toxic pollutant, as defined in 20.6.2.7.T(2) NMAC, shall not be present at the specified narrative standard consistent with the intent of the proposed changes and the prior application of the rules.

4. 20.6.2.3105.A NMAC should be amended as follows:

20.6.2.3105 EXEMPTIONS FROM DISCHARGE PERMIT REQUIREMENT: Sections 20.6.2.3104 and 20.6.2.3106 NMAC do not apply to the following:

A. Effluent or leachate which conforms to all the listed [numerical] standards of Section 20.6.2.3103 NMAC and has a total nitrogen concentration of 10 mg/l or less [~~and does not contain any toxic pollutant~~] and does not contain any toxic pollutant. If treatment or blending is required to achieve these standards this exemption does not apply. To determine conformance, samples may be taken by the agency before the effluent or leachate is discharged so that it may move directly or indirectly into ground water; provided that if the discharge is by seepage through non-natural or altered natural materials, the agency may take samples of the solution before or after seepage. If for any reason the agency does not have access to obtain the appropriate samples, this exemption shall not apply;

Reasons: In 20.6.2.3105.A NMAC, an edit is needed to clarify that effluent or leachate must conform to the listed standards of 20.6.2.3103 NMAC, and that it also does not contain a toxic pollutant. This exemption is not limited to conformance with the "listed" standards of 20.6.2.3103 NMAC but also includes conformance with the narrative standard for a toxic pollutant in 20.6.2.3103.A(2)NMAC. It appears that this is an inadvertent editing error as NMED has corrected similar editing errors of this nature in its Amended Petition in Sections 20.6.2.3106.A, B and C NMAC. This edit is necessary for clarity and consistency with the current rule, other NMED proposed revisions and the intent of the proposed rule.

5. 20.6.2.3109.F(4) NMAC needs additional language added as follows:

20.6.2.3109 SECRETARY APPROVAL, DISAPPROVAL, MODIFICATION, AMENDMENT OR TERMINATION OF DISCHARGE PERMITS, AND REQUIREMENT FOR ABATEMENT PLANS:

F. If data submitted pursuant to any monitoring requirements specified in the discharge permit or other information available to the secretary indicates that this part is being or may be violated or that the standards of 20.6.2.3103 NMAC are being or will be exceeded [~~or a toxic pollutant as defined in 20.6.2.7 NMAC is present,~~] in ground water at any place of withdrawal for present or reasonably foreseeable future use, or that the water quality standards for interstate and intrastate streams in New Mexico are being or may be violated in surface water, due to the discharge, except as provided in Subsection [D] E of 20.6.2.3109 NMAC.

(1) The secretary may require a discharge permit modification within the shortest reasonable time so as to achieve compliance with this part and to provide that any exceeding of standards in ground water at any place of withdrawal for present or reasonably foreseeable future use, or in surface water, due to the discharge except as provided in Subsection [D] E of 20.6.2.3109 NMAC will be abated or prevented. If the secretary requires a discharge permit modification to abate water pollution:

(a) the abatement shall be consistent with the requirements and provisions of 20.6.2.4101, 20.6.2.4103, Subsections C and E of 20.6.2.4106, 20.6.2.4107, 20.6.2.4108 and 20.6.2.4112 NMAC; and

(b) the discharger may request of the secretary approval to carry out the abatement under 20.6.2.4000 through 20.6.2.4115 NMAC, in lieu of modifying the discharge permit; the discharger shall make the request in writing and shall include the reasons for the request.

(2) The secretary may terminate a discharge permit when a discharger fails to modify the permit in accordance with Paragraph (1) of Subsection [E] F of 20.6.2.3109 NMAC.

(3) The secretary may require modification, or may terminate a discharge permit for a Class I well, a Class III well or other type of well specified in Subsection A of 20.6.2.5101 NMAC, pursuant to the requirements of Subsection I of 20.6.2.5101 NMAC.

(4) If a discharge permit is terminated, the secretary shall notify the permittee by certified mail of the action taken and the reasons for that action. Notice of the termination shall also be given by mail or electronic mail to persons who participated in the permitting action and those persons on the facility-specific mailing list.

Reasons: In 20.6.2.3109.F(4) NMAC, additional language is necessary to provide notice of secretary termination of a discharge permit to those persons on the facility-specific list that have requested to be informed of actions related to the facility. NMED added this language to 20.6.2.3109.C NMAC in its Amended Petition but omitted adding it in this paragraph. This additional notice provision is necessary for consistency in noticing Department discharge permit applications pursuant to public participation requirements of 20.6.2.3108 NMAC.

6. 20.6.2.4103.F(1) NMAC needs to be amended as follows:

20.6.2.4103 ABATEMENT STANDARDS AND REQUIREMENTS:

F. Alternative Abatement Standards: If the person abating water pollution pursuant to an approved abatement plan, or pursuant to the exemptions of 20.6.2.4105 NMAC, is unable to fully meet an abatement standard set forth in Subsections A, B, ~~C~~ and ~~DC~~ of this section, the person may file a petition with the commission seeking approval of an alternative abatement standard.

(1) A petition for an alternative abatement standard shall demonstrate at least one of the following criteria:

(a) — compliance with the standard set forth in Subsections A, B, C and D of this section would not be feasible by the maximum use of commercially accepted abatement technology;

(ba) compliance with the standard set forth in Subsections A, B, C and DC of this section would not be feasible by the maximum use of technology within the economic capability of the responsible person;

(eb) there is no reasonable relationship between the economic and social costs and benefits of attainment of the standard set forth in Subsections A, B, C and DC of this section; or

(ec) compliance with the standard set forth in Subsections A, B, C and DC of this section is technically infeasible following the maximum use of commercially accepted abatement technology, as demonstrated by a statistically valid extrapolation of the decrease in concentration of any water contaminant over a twenty (20) year period, such that projected future reductions during that time would be less than 20 percent of the concentration at the time technical infeasibility is proposed. Technical infeasibility proposals that involved the use of experimental abatement technology shall be considered at the discretion of the commission. A statistically valid decrease cannot be demonstrated by fewer than eight (8) consecutive sampling events. 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.

(2) A petition for alternative abatement standards shall specify, in addition to the information required by Subsection A of 20.6.2.1210 NMAC the following:

(a) the water contaminant for which the alternative abatement standard is proposed;

(b) the alternative abatement standard proposed;

(c) the three-dimensional body of water pollution for which approval is sought and any present and foreseeable future uses of water that may be affected;

(d) a summary of all actions taken to abate water pollution to standards; and

(f) other information as deemed necessary, which may include a transport, fate and risk assessment in accordance with accepted methods

Reasons: In 20.6.2.4103.F and F(1) NMAC, the references to Subsection D should be deleted. Subsection D of 20.6.2.4103 NMAC requires abatement of surface water pollution to the Commission's Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20.6.4 NMAC). These proposed NMED revisions would allow responsible persons that have polluted surface waters to seek alternate abatement standards. This revision first appeared in NMED's Amended Petition after issuance of public notice of the hearing on NMED's Petition. Neither the existing rule nor NMED's original publically noticed Petition allowed alternate abatement standards for surface water pollution, nor did NMED seek public input on this issue last year during in its scoping and public comment periods on their draft proposed rules. NMED's proposed revision for this subsection in its Amended Petition significantly changes the prior intent of the alternate standards regulations, has significant effect on the Commission's stream standards of 20.6.4 NMAC, has implications for EPA National Pollutant Discharge

Elimination System (NPDES) permits for surface waters in New Mexico, and was not properly noticed to the public. Surface waters in New Mexico support many uses including public drinking water supplies, agricultural irrigation water supplies, livestock watering, recreational uses, industrial water supplies, fisheries, wildlife habitat, aquatic life and cultural and ceremonial uses. These surface waters are limited and their uses are of such importance to citizens of New Mexico that pollution of surface waters should be abated to water quality standards that protect these uses. Permanent pollution of New Mexico surface waters should not be allowed through approval of alternate standards petitions for pollution of these waters. Since adoption of Commission rules in 1977, the Commission has not allowed such pollution. Therefore, for the above reasons, it is necessary to adopt the amendments I have proposed for this subsection.

In 20.6.2.4103.F(1) NMAC, Subparagraph (a) should be deleted as it is redundant, already covered by existing rule criteria in 20.6.2.4103.F(1)(b) and creates a less stringent criteria for seeking alternate standards than existing rules.

In 20.6.2.4103.F(2)(c) NMAC, the information submitted for evaluation of alternate standards petitions needs to be expanded to include information on present and future uses of any water that may be affected by approval of alternate standards. Ground water is a public resource that is extensively used in New Mexico for drinking, agricultural and industrial uses. Ground water is the source of approximately 90% of drinking water in New Mexico. Submission of this information is necessary for the Commission to be able to assess the effects of issuance of proposed alternate standards on New Mexico water resources in order to minimize potential impacts on uses of water and meet the statutory requirements of the WQA.

7. 20.6.2.4108 NMAC needs to be amended as follows:

20.6.2.4108 PUBLIC NOTICE AND PARTICIPATION:

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

(1) the public, who shall be notified through publication of a notice in newspapers of general circulation in this state and in the county where the abatement will occur and, in areas with large percentages of non-English speaking people, through the mailing of the public notice in English to a bilingual radio station serving the area where the abatement will occur with a request that it be aired as a public service announcement in the predominant non-English language of the area;

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

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

(4) owners and residents of surface property located inside, and within one (1) 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; and

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

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

(1) name and address of the responsible person;

(2) location of the proposed abatement;

(3) brief description of the nature of the water pollution and of the proposed abatement action;

(4) brief description of the procedures followed by the secretary in making a final determination;

(5) statement on the comment period;

(6) statement that a copy of the abatement plan can be viewed by the public at the department's main office or at the department field office for the area in which the discharge occurred;

(7) statement that written comments on the abatement plan, and requests for a public meeting or hearing that include the reasons why a meeting or hearing should be held, will be accepted for consideration if sent to the secretary within sixty (60) days after the [determination of administrative completeness; and] date of public notice; and

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

~~D. The public notice proposal for proposed alternate abatement standards shall be submitted to the secretary for approval with a petition for alternate abatement standards, and shall include:~~

(1) name and address of the responsible person;

(2) location of the proposed alternate abatement standards;

(3) brief description of the nature of the water pollution and of the proposed alternate abatement standards;

(4) brief description of the procedures followed by the commission in making a final determination;

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

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

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

~~DE. within thirty (30) days of the secretary's approval of a Stage 2 abatement plan public notice proposal for a Stage 2 abatement plan proposal, significant modification of a Stage 2 abatement plan or proposed~~

alternate abatement standards, any responsible person shall provide to the secretary proof of public notice to the persons listed in Subsection B of 20.6.2.4108 NMAC.

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

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

Reasons: In 20.6.2.4108 NMAC, the rule language does not address initial public notice of submission of alternate abatement standards petitions. Alternate standards may be petitioned at any time, and could be submitted outside submission of a Stage 2 abatement plan. The requirements of NMED's proposed 20.6.2.4103.F(5) NMAC specifies that review of alternate abatement standards petitions follow Commission adjudicatory procedures in 20.1.3 NMAC (Variance Hearings). However, Commission's variance hearing procedures of 20.1.3 NMAC only require a one-time newspaper publication and notification of the facility specific list 30 days prior to the hearing. There is no initial public notice of submission of alternate standards petitions. The public, adjacent landowners, tribes, pueblos and Natural Resource Trustee and other local, state or federal agencies would not receive initial notice of submission of petitions, as occurs for a Stage 2 abatement plan. These public and governmental parties would subsequently not have the opportunity to provide input on whether it may affect them during NMED's review of the petition or prior to a hearing on the matter. Receiving information from the public upfront in the review process is critical and useful to NMED in

evaluating alternate standards petitions, especially knowledge of area water wells and present and future water and land uses that may be affected, as well as other site specific information. In addition, the information contained in an alternate abatement petition is highly technical and extensive. The public should be provided with adequate time to review and assess the petition's effects prior to the 30-day hearing notice issued pursuant to the adjudicatory procedures. Therefore, I have edited and added new language to provide initial public notice of submission of a petition for alternate standards, similar to that required for submission of a Stage 2 abatement plan. My proposed amendments to this section also make it clear to the public that hearings on alternate standards are before the Commission and not the Secretary of NMED.

IV. CONCLUSION

For the foregoing reasons, I respectfully request that the Commission modify certain portions of NMED's 20.6.2 Proposed Revisions contained in its Amended Petition and make further amendments as explained and illustrated in the above Proposed Amendments and Statement of Reasons and as summarized in **WCO Exhibit 3**

I appreciate the opportunity to provide my opinions, positions and proposed amendments regarding NMED's proposed revisions to Commission rules. I reserve the right to modify my testimony, take new positions and submit additional exhibits based upon testimony and legal arguments presented in hearing testimony and filings.

I recommend the Commission adopt the rule amendments that I have proposed for the reasons I have set out in my testimony. That concludes my direct testimony. Thank you.

I, William C. Olson, swear that the foregoing is true and correct.



William C. Olson

Resume

William C. Olson

14 Cosmic Way
Lamy, NM 87540
(505) 466-2969

Education

M.S. Hydrology, 1989, NM Institute of Mining and Technology, Socorro, NM
B.S. Geology, 1983, NM Institute of Mining and Technology, Socorro, NM

Boards and Commissions

1991 – 2004, New Mexico Water Quality Control Commission
2005 – 2010, New Mexico Oil Conservation Commission

Employment

William Olson Consulting Services

14 Cosmic Way
Lamy, NM 87540

Title: Owner

Dates Employed: 03/12 – present

Perform environmental consulting work on water quality protection issues in New Mexico for various clients. Included assisting the New Mexico Environment Department (NMED) in development of Water Quality Control Commission Copper Mine Rules including leading monthly Copper Rule Technical Committee meetings and Copper Rule Advisory Committee meetings; conducting outreach with mining industry and other government agencies and stakeholders for input on content of proposed rules; reviewing regulations of other states; and preparing NMED draft rules incorporating stakeholder comments. Also served as an expert witness for the New Mexico Attorney General Office and other private parties in administrative permit hearings and litigation. In addition, served as an expert witness for the Coalition (collectively, the Rio Grande Chapter of the Sierra Club, Amigos Bravos, Caballo Concerned Citizens, Lea County Concerned Citizens, and Rio Valle Concerned Citizens) in Dairy Rule amendment hearings, including participating in and testifying on 3-way Coalition, dairy industry and NNMED settlement of the dairy industry rule amendment hearing petition and joint proposed Dairy Rule amendments.

NM Environment Department Ground Water Quality Bureau

1190 St. Francis Drive
Santa Fe, NM 87505

Title: Bureau Chief

Dates Employed: 10/04 – 11/11

Supervise and manage environmental regulatory personnel for the NMED Ground Water Quality Bureau including the Mining Environmental Compliance Section, Pollution Prevention Section, Remediation Oversight Section, Superfund Oversight Section, and Grants and Planning Section. Serve as a

commissioner on the Oil Conservation Commission as a designee of the Secretary of the Energy, Minerals, and Natural Resources Department. Supervise fiscal management of budgets. Direct and approve permitting and enforcement of discharge plans, and investigation and abatement of contaminated soil and ground water pursuant to the New Mexico Water Quality Act and New Mexico Water Quality Control Commission regulations; investigation and remediation of contaminated properties pursuant to the Voluntary Remediation Act and Voluntary Remediation Regulations; investigation and remediation of abandoned sites in support of the U.S. Environmental Protection Agency (EPA) Superfund Program, and implementation of the NMED responsibilities under the New Mexico Mining Act. Develop and write rules and regulatory language and guidelines. Conduct, lead and participate in public and industry regulatory work groups and meetings. Coordinate activities and actions with state, federal and local governmental organizations. Testify as an expert witness at regulation and rule making hearings. Testify as an expert witness at permitting and enforcement hearings. Represent NMED at public meetings and conferences. Interpret federal and state rules and regulations. Communicate with and advise industry and the public on laws, rules, regulations and procedures, and their interpretation.

**NM Energy, Minerals & Natural Resources Dept.
Oil Conservation Division
Environmental Bureau
1220 St. Francis Dr.
Santa Fe, NM 87505**

**Title: Senior Hydrologist
Dates Employed: 11/97 – 10/04**

Implement environmental regulatory permitting and enforcement programs under the New Mexico Oil & Gas Act, Water Quality Act and Geothermal Act for permitting of discharge plans, and reclamation and abatement of contaminated soil and ground water at oil, natural gas and geothermal facilities. Serve on the New Mexico Water Quality Control Commission as designee for the Director of the New Mexico Oil Conservation Division (NMOCD). Supervise and review hydrological, geological and engineering work products of 3 Bureau staff. Train district staff in permitting and enforcement of rules, regulations and guidelines, sample collection and inspections. Develop and write rules and regulatory language and guidelines for environmental permitting. Conduct, lead and participate in public and industry regulatory work groups and meetings. Coordinate activities and actions with state, federal and local governmental organizations. Testify as an expert witness at regulation and rule making hearings. Develop, write and evaluate pricing agreements and contracts for soil and ground water remediation, and laboratory analytical services. Direct and supervise contractors on state funded investigations of ground water contamination under the Oil & Gas Reclamation Fund. Oversee, manage, develop, evaluate, write, issue and enforce environmental permits for protection of ground water and surface water, and soil and ground water remediation and abatement plans. Negotiate technical engineering controls and hydrogeological issues on soil and ground water remediation permits with industry, environmental groups, governmental agencies, consultants and private landowners. Testify as an expert witness at NMOCD and New Mexico Oil Conservation Commission permitting and enforcement hearings. Evaluate, conduct and supervise analyses of hydrological, geological, engineering and chemical data, and engineering controls for technical adequacy and feasibility on environmental permits, and for abatement of soil and ground water pollution. Perform and supervise field inspections, water and waste quality sampling and other field tests to ensure compliance with applicable permits, rules, orders and regulations. Respond to public complaints and concerns of ground water and soil contamination. Conduct and supervise soil, water, effluent and waste quality sampling for field and laboratory analysis. Represent NMOCD at public meetings and conferences. Write and present papers on technical and environmental regulatory issues at conferences. Interpret federal and state rules and regulations.

Communicate with and advise industry and the public on laws, rules, regulations and procedures, and their interpretation.

**NM Energy, Minerals & Natural Resources Dept.
Oil Conservation Division
Environmental Bureau
1220 St. Francis Dr.
Santa Fe, NM 87505**

**Title: Geologist 4
Dates Employed: 6/92 – 11/97**

Implement and enforce environmental regulatory programs under the New Mexico Oil & Gas Act, Water Quality Act and Geothermal Act for permitting of discharge plans, and reclamation and abatement of contaminated soil and ground water at oil, natural gas and geothermal facilities. Serve on the New Mexico Water Quality Control Commission as designee for the Director of the NMOCD. Develop and write rules and regulatory language and guidelines for environmental permitting. Conduct, lead and participate in public and industry regulatory work groups and meetings. Coordinate activities and actions with state, federal and local governmental organizations. Testify as an expert witness at regulation and rule making hearings. Train district staff in permitting and enforcement of rules, regulations and guidelines, sample collection and inspections. Oversee, manage, develop, evaluate, write, issue and enforce environmental permits for protection of ground water and surface water, and soil and ground water remediation and abatement plans. Negotiate technical engineering controls and hydrogeological issues on soil and ground water remediation permits with industry, environmental groups, governmental agencies, consultants and private landowners. Testify as an expert witness at NMOCD and New Mexico Oil Conservation Commission permitting and enforcement hearings. Evaluate, conduct and supervise analyses of hydrological, geological, engineering and chemical data, and engineering controls for technical adequacy and feasibility on environmental permits, and for abatement of soil and ground water pollution. Conduct and supervise field inspections, and soil, water and waste quality sampling and other field tests to ensure compliance with applicable permits, rules, orders and regulations. Respond to public complaints and concerns of ground water and soil contamination. Represent NMOCD at public meetings and conferences. Write and present papers on technical and environmental regulatory issues at conferences. Interpret federal and state rules and regulations. Communicate with and advise industry and the public on laws, rules, regulations and procedures, and their interpretation.

**NM Energy, Minerals & Natural Resources Dept.
Oil Conservation Division
Environmental Bureau
310 Old Santa Fe Trail
Santa Fe, NM 87505**

**Title: Geologist 3
Dates Employed: 2/90 – 6/92**

Implement and enforce environmental regulatory programs under the New Mexico Oil & Gas Act, Water Quality Act and Geothermal Act for permitting of discharge plans, and reclamation and abatement of contaminated soil and ground water at oil and natural gas facilities. Serve on the New Mexico Water Quality Control Commission as designee for the Director of the NMOCD. Develop and write rules and regulatory language and guidelines for environmental permitting. Conduct, lead and participate in public and industry regulatory work groups and meetings. Coordinate activities and actions with state, federal and local governmental organizations. Testify as an expert witness at regulation and rule making hearings. Train district staff in permitting and enforcement of rules, regulations and guidelines, sample collection and inspections. Oversee, manage, develop, evaluate,

write, issue and enforce environmental permits for the protection of ground water and surface water, and soil and ground water remediation and abatement plans. Negotiate technical engineering controls and hydrogeological issues on soil and ground water remediation permits and plans with industry, environmental groups, governmental agencies, consultants and private landowners. Testify as an expert witness at NMOCD and New Mexico Oil Conservation Commission permitting and enforcement hearings. Evaluate and conduct analyses of hydrological, geological, engineering and chemical data, and engineering controls for technical adequacy and feasibility on environmental permits, and for abatement of soil and ground water pollution. Conduct field inspections, and soil, water and waste quality sampling and other field tests to ensure compliance with applicable permits, rules, orders and regulations. Respond to public complaints and concerns of ground water and soil contamination. Represent NMOCD at public meetings and conferences. Write and present papers on technical and environmental regulatory issues at conferences. Interpret federal and state rules and regulations. Communicate with and advise industry and the public on laws, rules, regulations and procedures, and their interpretation.

**NM Environmental Improvement Division
Ground Water Bureau
1190 St. Francis Dr.
Santa Fe, NM 87505**

**Title: Water Resource Spec 2
Dates Employed: 3/88 – 2/90**

Oversee, manage, develop, evaluate, write, issue and enforce environmental permits for soil and ground water remediation, reclamation and abatement under the New Mexico Water Quality Act and Water Quality Control Commission Regulations. Negotiate technical engineering controls and hydrogeological issues on soil and ground water remediation permits and plans with industry, environmental groups, governmental agencies, consultants and private landowners. Train staff in monitor well drilling, monitor well construction and water quality sampling activities. Participate in public and industry regulatory work groups and meetings. Coordinate activities and actions with state, federal and local governmental organizations. Evaluate and conduct analyses of hydrological, geological, engineering and chemical data, and engineering controls for technical adequacy and feasibility for remediation and abatement of soil and ground water pollution. Conduct field inspections, and soil, water and waste quality sampling and other field tests to ensure compliance with applicable permits, rules, orders and regulations. Respond to and investigate public complaints and concerns of ground water and soil contamination. Represent the New Mexico Environmental Improvement Division at public meetings. Write and present papers on technical and environmental regulatory issues at conferences. Interpret federal and state rules and regulations. Communicate with and advise industry and the public on laws, rules, regulations and procedures, and their interpretation. Serve as Quality Assurance Officer and develop and write EPA Quality Assurance/Quality Control plans. Supervise and operate drilling rig for installation of soil borings and ground water monitoring wells.

**NM Energy, Minerals & Natural Resources Dept.
Oil Conservation Division
Environmental Bureau
310 Old Santa Fe Trail
Santa Fe, NM 87505**

**Title: Water Resource Spec. 2
Dates Employed: 9/86 – 3/88**

Conducted hydrogeologic studies on impacts of oil and gas waste disposal practices on ground water in the San Juan Basin. Evaluate geologic and hydrologic information submitted with permit applications. Conduct field inspections, and soil, water and waste quality sampling and other field tests to ensure

compliance with applicable permits, rules, orders and regulations. Respond to and investigate public complaints and concerns of ground water and soil contamination. Participate in public and industry regulatory work groups and meetings. Assist and advise industry and the public on laws, rules, regulations and procedures, and their interpretation.

Professional Memberships and Awards

New Mexico Geological Society

2012 New Mexico Earth Science Achievement Award for Public Service and Public Policy

2013 Karl Souder Water Protection Award

WCO EXHIBIT 3

WILLIAM C. OLSON
SEPTEMBER 11, 2017
PROPOSED AMENDMENTS
TO

NMED AMENDED PETITION PROPOSED REVISIONS TO 20.6.2 NMAC

This document contains a summary of William C. Olson's September 11, 2017 proposed amendments to the text of specific sections of the New Mexico Environment Department's (NMED) Proposed Revisions to 20.6.2 NMAC. NMED's most recent proposed revisions are contained in NMED's July 27, 2017 Notice of Amended Petition and August 7, 2017 Notice of Errata (Amended Petition") that were filed with the New Mexico Water Quality Control Commission Hearing Officer prior to the filing of written direct testimony for this hearing. NMED's initial revised language is indicated by strikethrough for deletions and NMED's new language in the text is indicated by underline, as NMED presented in the Amended Petition. William C. Olson's proposed amendments to NMED's Amended Petition revised rule language are represented by red colored strike (deletions) and bold (new language) format changes highlighted in yellow.

1 CHAPTER 6 WATER QUALITY
2 PART 2 GROUND AND SURFACE WATER PROTECTION
3

4 20.6.2.7 DEFINITIONS:
5

6 ~~[M.]D.~~ Definitions that begin with the letter "D."

7 ~~[P.]~~ (4) "discharge permit amendment" means a minor change to the requirements of a
8 discharge permit that meets the requirements of 20.6.2.3109I, and does not result in:

9 (a) a change in the location of a discharge that would affect groundwater beyond
10 that impacted by the existing discharge location,

11 (b) an increase in daily discharge volume of greater than ten percent of the daily
12 discharge volume approved in the most recent discharge permit approval, renewal or modification for an individual
13 discharge location, and where the sum of any volume increases via amendments during a permit term is not greater
14 than ten percent of the approved, renewed or modified discharge permit volume, or greater than 50,000 gallons/day,
15 whichever is less,

16 (c) any increase in discharge volume for a facility that is conducting abatement of
17 water pollution;

18 (d) an increase in an effluent limit set forth in the most recent discharge permit
19 approval, renewal or modification for an individual discharge location, or

20 (e) introduction of a new water contaminant
21

22
23 20.6.2.1210 VARIANCE PETITIONS:

24 A. Any person seeking a variance pursuant to NMSA 1978, Section 74-6-4(H)(G) shall do so by
25 filing a written petition with the commission. The petitioner may submit with his petition any relevant documents or
26 material which the petitioner believes would support his petition. Petitions shall:

- 27 (1) state the petitioner's name and address;
28 (2) state the date of the petition;
29 (3) describe the facility or activity for which the variance is sought;

- 1 (4) state the address or description of the property upon which the facility is located;
2 (5) describe the water body or watercourse affected by the discharge for which the variance
3 is sought and provide an analysis of present and foreseeable future uses of water that may affected by the variance ;
4 (6) identify the regulation of the commission from which the variance is sought;
5 (7) state in detail the extent to which the petitioner wishes to vary from the regulation;
6 (8) state why the petitioner believes that compliance with the regulation will impose an
7 unreasonable burden upon his activity; and
8 (9) ~~[state the period of time for which the variance is desired]~~state in detail how any water
9 pollution above standards will be abated; and
10 (10) state the period of time for which the variance is desired including all reasons, data,
11 reports and any other information demonstrating that such time period is justified and reasonable.
12
13

14 **20.6.2.3103 STANDARDS FOR GROUND WATER OF 10,000 mg/l TDS CONCENTRATION OR**
15 **LESS:**

16 **A. Human Health Standards**

17 (2) **Standards for Toxic Pollutants.** A toxic pollutant shall not be present at a concentration
18 shown by scientific information currently available to the public to have potential for causing one or more of the
19 following effects upon exposure, ingestion, or assimilation either directly from the environment or indirectly by
20 ingestion through food chains: (1) unreasonably threatens to injure human health, or the health of animals or plants
21 which are commonly hatched, bred, cultivated or protected for use by man for food or economic benefit; as used in
22 this definition injuries to health include death, histopathologic change, clinical symptoms of disease, behavioral
23 abnormalities, genetic mutation, physiological malfunctions or physical deformations in such organisms or their
24 offspring; or (2) creates a lifetime risk of more than one cancer per 100,000 exposed persons.
25
26

27 **20.6.2.3105 EXEMPTIONS FROM DISCHARGE PERMIT REQUIREMENT:** Sections 20.6.2.3104 and
28 20.6.2.3106 NMAC do not apply to the following:

29 **A.** Effluent or leachate which conforms to all the listed ~~[numerical]~~ standards of Section 20.6.2.3103
30 NMAC and has a total nitrogen concentration of 10 mg/l or less ~~[-and does not contain any toxic pollutant]~~ and does
31 not contain any toxic pollutant. If treatment or blending is required to achieve these standards this exemption does
32 not apply. To determine conformance, samples may be taken by the agency before the effluent or leachate is
33 discharged so that it may move directly or indirectly into ground water; provided that if the discharge is by seepage
34 through non-natural or altered natural materials, the agency may take samples of the solution before or after seepage.
35 If for any reason the agency does not have access to obtain the appropriate samples, this exemption shall not apply;
36
37

38 **20.6.2.3109 SECRETARY APPROVAL, DISAPPROVAL, MODIFICATION, AMENDMENT OR**
39 **TERMINATION OF DISCHARGE PERMITS, AND REQUIREMENT FOR ABATEMENT PLANS:**

40 **F.** If data submitted pursuant to any monitoring requirements specified in the discharge permit or
41 other information available to the secretary indicates that this part is being or may be violated or that the standards
42 of 20.6.2.3103 NMAC are being or will be exceeded ~~[-or a toxic pollutant as defined in 20.6.2.7 NMAC is present,]~~
43 in ground water at any place of withdrawal for present or reasonably foreseeable future use, or that the water quality
44 standards for interstate and intrastate streams in New Mexico are being or may be violated in surface water, due to
45 the discharge, except as provided in Subsection ~~[D]~~ E of 20.6.2.3109 NMAC.

46 (1) The secretary may require a discharge permit modification within the shortest
47 reasonable time so as to achieve compliance with this part and to provide that any exceeding of standards in ground
48 water at any place of withdrawal for present or reasonably foreseeable future use, or in surface water, due to the
49 discharge except as provided in Subsection ~~[D]~~ E of 20.6.2.3109 NMAC will be abated or prevented. If the
50 secretary requires a discharge permit modification to abate water pollution:

51 (a) the abatement shall be consistent with the requirements and provisions of
52 20.6.2.4101, 20.6.2.4103, Subsections C and E of 20.6.2.4106, 20.6.2.4107, 20.6.2.4108 and 20.6.2.4112 NMAC;
53 and

54 (b) the discharger may request of the secretary approval to carry out the
55 abatement under 20.6.2.4000 through 20.6.2.4115 NMAC, in lieu of modifying the discharge permit; the discharger
56 shall make the request in writing and shall include the reasons for the request.

1 (2) The secretary may terminate a discharge permit when a discharger fails to modify the
2 permit in accordance with Paragraph (1) of Subsection [E] F of 20.6.2.3109 NMAC.

3 (3) The secretary may require modification, or may terminate a discharge permit for a
4 Class I well, a Class III well or other type of well specified in Subsection A of 20.6.2.5101 NMAC, pursuant to the
5 requirements of Subsection I of 20.6.2.5101 NMAC.

6 (4) If a discharge permit is terminated, the secretary shall notify the permittee by certified
7 mail of the action taken and the reasons for that action. Notice of the termination shall also be given by mail or
8 electronic mail to persons who participated in the permitting action and those persons on the facility-specific mailing
9 list.

10
11
12 **20.6.2.4103 ABATEMENT STANDARDS AND REQUIREMENTS:**

13 F. Alternative Abatement Standards: If the person abating water pollution pursuant to an approved
14 abatement plan, or pursuant to the exemptions of 20.6.2.4105 NMAC, is unable to fully meet an abatement standard
15 set forth in Subsections A, B, C and D of this section, the person may file a petition with the commission seeking
16 approval of an alternative abatement standard.

17 (1) A petition for an alternative abatement standard shall demonstrate at least one of the
18 following criteria:

19 (a) ~~compliance with the standard set forth in Subsections A, B, C and D of this~~
20 ~~section would not be feasible by the maximum use of commercially accepted abatement technology;~~

21 (ba) ~~compliance with the standard set forth in Subsections A, B, C and D of this~~
22 ~~section would not be feasible by the maximum use of technology within the economic capability of the responsible~~
23 ~~person;~~

24 (eb) ~~there is no reasonable relationship between the economic and social costs and~~
25 ~~benefits of attainment of the standard set forth in Subsections A, B, C and D of this section; or~~

26 (dc) ~~compliance with the standard set forth in Subsections A, B, C and D of this~~
27 ~~section is technically infeasible following the maximum use of commercially accepted abatement technology, as~~
28 ~~demonstrated by a statistically valid extrapolation of the decrease in concentration of any water contaminant over a~~
29 ~~twenty (20) year period, such that projected future reductions during that time would be less than 20 percent of the~~
30 ~~concentration at the time technical infeasibility is proposed. Technical infeasibility proposals that involved the use~~
31 ~~of experimental abatement technology shall be considered at the discretion of the commission. A statistically valid~~
32 ~~decrease cannot be demonstrated by fewer than eight (8) consecutive sampling events. Sampling events~~
33 ~~demonstrating a statistically valid decrease shall be collected with a minimum of ninety (90) days between sampling~~
34 ~~events, and shall not span a time period greater than four (4) years.~~

35 (2) A petition for alternative abatement standards shall specify, in addition to the information
36 required by Subsection A of 20.6.2.1210 NMAC the following:

37 (a) the water contaminant for which the alternative abatement standard is proposed;

38 (b) the alternative abatement standard proposed;

39 (c) the three-dimensional body of water pollution for which approval is sought and
40 any present and foreseeable future uses of water that may be affected;

41 (d) a summary of all actions taken to abate water pollution to standards; and

42 (f) other information as deemed necessary, which may include a transport, fate and
43 risk assessment in accordance with accepted methods.

44
45
46 **20.6.2.4108 PUBLIC NOTICE AND PARTICIPATION:**

47 B. ~~[Within thirty (30) days of filing of]~~ Any person proposing a Stage 2 abatement plan ~~[proposal, or~~
48 ~~proposed]~~ or a significant modification ~~[of] to a Stage 2 [of the] abatement plan, or alternate abatement~~
49 ~~standard;~~ any responsible person shall provide ~~[to the secretary proof of public]~~ notice of the ~~[abatement~~
50 ~~plan] proposal~~ to the following persons:

51 (1) the public, who shall be notified through publication of a notice in newspapers of general
52 circulation in this state and in the county where the abatement will occur and, in areas with large percentages of non-
53 English speaking people, through the mailing of the public notice in English to a bilingual radio station serving the
54 area where the abatement will occur with a request that it be aired as a public service announcement in the
55 predominant non-English language of the area;

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

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

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

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

10 C. The public notice proposal for a Stage 2 abatement plan proposal or significant modification of a
11 Stage 2 abatement plan shall ~~include, as approved in advance by~~ be submitted to the secretary for approval with a
12 proposed stage 2 abatement plan proposal, or significant modification of a Stage 2 abatement plan, and shall include:

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

14 (2) location of the proposed abatement;

15 (3) brief description of the nature of the water pollution and of the proposed abatement
16 action;

17 (4) brief description of the procedures followed by the secretary in making a final
18 determination;

19 (5) statement on the comment period;

20 (6) statement that a copy of the abatement plan can be viewed by the public at the
21 department's main office or at the department field office for the area in which the discharge occurred;

22 (7) statement that written comments on the abatement plan, and requests for a public meeting
23 or hearing that include the reasons why a meeting or hearing should be held, will be accepted for consideration if
24 sent to the secretary within sixty (60) days after the ~~determination of administrative completeness; and~~ date of
25 public notice; and

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

27 D. The public notice proposal for proposed alternate abatement standards shall be submitted to the
28 secretary for approval with a petition for alternate abatement standards, and shall include:

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

30 (2) location of the proposed alternate abatement standards;

31 (3) brief description of the nature of the water pollution and of the proposed alternate
32 abatement standards;

33 (4) brief description of the procedures followed by the commission in making a final
34 determination;

35 (5) statement that a copy of the alternate abatement standards petition can be viewed by the
36 public at the department's main office or at the department field office for the area in which the abatement is
37 occurring;

38 (6) statement on how the public can request to be placed on a facility-specific mailing list for
39 notification of any hearing conducted pursuant to 20.1.3 NMAC; and

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

41 DE. within thirty (30) days of the secretary's approval of a Stage 2 abatement plan public notice
42 proposal for a Stage 2 abatement plan proposal, significant modification of a Stage 2 abatement plan or proposed
43 alternate abatement standards, any responsible person shall provide to the secretary proof of public notice to the
44 persons listed in Subsection B of 20.6.2.4108 NMAC.

45 EF. A public meeting or hearing may be held on a proposed Stage 2 abatement plan or significant
46 modification of a Stage 2 abatement plan if the secretary determines there is significant public interest. Notice of
47 the time and place of the meeting or hearing shall be given at least thirty (30) days prior to the meeting or hearing
48 pursuant to Subsections A and B above. The secretary may appoint a meeting facilitator or hearing officer. The
49 secretary may require the responsible person to prepare for approval by the secretary a fact sheet, to be distributed at
50 the public meeting or hearing and afterwards upon request, written in English and Spanish, describing site history,
51 the nature and extent of water pollution, and the proposed abatement. The record of the meeting or hearing,
52 requested under this Section, consists of a tape recorded or transcribed session, provided that the cost of a court
53 recorder shall be paid by the person requesting the transcript. If requested by the secretary, the responsible person
54 will provide a translator approved by the secretary at a public meeting or hearing conducted in a locale where
55 testimony from non-English speaking people can reasonably be expected. At the meeting or hearing, all interested
56 persons shall be given a reasonable chance to submit data, views or arguments orally or in writing, and to ask

1 questions of the secretary or the secretary's designee and of the responsible person, or their authorized
2 representatives.

3 **G. An alternative abatement standard shall only be granted after a public hearing before the**
4 **commission, as required by NMSA 1978, Section 74-6-4(H) of the Water Quality Act. The commission shall**
5 **review petitions for alternative abatement standards in accordance with the procedures for review of variance**
6 **petitions provided in the commission's adjudicatory procedures, 20.1.3 NMAC.**
7
8