

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION



IN THE MATTER OF PROPOSED
REVISIONS TO THE RULEMAKING
RULES FOR THE WATER QUALITY
CONTROL COMMISSION, 20.1.6 NMAC

No. WQCC 17-06(R)

**NEW MEXICO ENVIRONMENT DEPARTMENT'S
NOTICE OF INTENT TO PRESENT TECHNICAL TESTIMONY**

The New Mexico Environment Department ("Department"), pursuant to 20.1.6.202 NMAC, hereby files this Notice of Intent to Present Technical Testimony at the public hearing scheduled to commence on January 9, 2018.

1. Entity Represented by Technical Witness

The technical witness will testify on behalf of the Department.

2. Name and Qualifications of the Technical Witness

The Department will call Mr. Jason Wallace at the hearing to present direct technical testimony:

Jason Wallace: Mr. Wallace is an attorney in the Department's Office of General Counsel. Mr. Wallace received his Bachelor of Arts in Political Science from the University of Arizona in 2011. Mr. Wallace received his juris doctor from the University of New Mexico School of Law in 2014. Prior to working for the Department, Mr. Wallace worked as a felony prosecutor with the 2nd Judicial District Attorney's Office in Bernalillo County. Mr. Wallace also previously clerked for the Department while attending the University of New Mexico School of Law and helped extensively with the rulemaking proceeding for 20.6.7 NMAC.

3. List and Description of Exhibits

The Department submits the following exhibits:

NMED Exhibit 1	Proposed Amendments to 20.1.6 NMAC
NMED Exhibit 2	Resume of Jason Wallace
NMED Exhibit 3	Written Testimony of Jason Wallace
NMED Exhibit 4	House Bill 58
NMED Exhibit 5	New Mexico Attorney General's Proposed Default Procedural Rule for Rulemaking
NMED Exhibit 6	SBRAC Letter
NMED Exhibit 7	Proposed Statement of Reasons
NMED Exhibit 8	October 31, 2017 New Mexico Register Publication
NMED Exhibit 9	Affidavits of Publication, Albuquerque Journal

4. Reservation of Rights

The Department reserves the right to call any other person to present original and/or rebuttal testimony in response to another notice of intent or public comment filed in this matter or to any testimony or exhibit offered at the public hearing.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT

/s/ Christopher Atencio

Christopher Atencio
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Notice of Intent to Present Technical Testimony was sent via electronic mail on December 20, 2017, to:

Via electronic mail

Stephen Vigil
New Mexico Attorney General's Office
P.O. Drawer 1508
Santa Fe, NM 87504
svigil@nmag.gov
Counsel for Water Quality Control Commission

/s/ Christopher Atencio
Christopher Atencio

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 1 ENVIRONMENTAL PROTECTION GENERAL
PART 6 RULEMAKING PROCEDURES - WATER QUALITY CONTROL COMMISSION

20.1.6.1 ISSUING AGENCY: New Mexico Water Quality Control Commission.
[20.1.6.1 NMAC - N, 05/01/17]

20.1.6.2 SCOPE: This part governs the procedures to be followed by the commission, and by participants before the commission, in connection with all rulemaking hearings before the commission, except to the extent this part may be inconsistent with specific procedures in governing law. In cases where this part is inconsistent with any rulemaking procedures specified in governing law, the procedures in governing law apply, rather than the procedures in this part.
[20.1.6.2 NMAC - N, 05/01/17]

20.1.6.3 STATUTORY AUTHORITY: Subsection E of Section 74-6-4 NMSA 1978 directs the commission to adopt, promulgate and publish regulations. Section 74-6-6 NMSA 1978 requires a public hearing prior to the adoption, amendment or repeal of a regulation, and specifies requirements for such a hearing. Sections 14-4-1 through 14-4-11 NMSA 1978 require specific public notice process and specifies filing requirements with the State Records Administrator.
[20.1.6.3 NMAC - N, 05/01/17]

20.1.6.4 DURATION: Permanent.
[20.1.6.4 NMAC - N, 05/01/17]

20.1.6.5 EFFECTIVE DATE: May 1, 2017, unless a later date is cited at the end of a section.
[20.1.6.5 NMAC - N, 05/01/17]

20.1.6.6 OBJECTIVE: The objectives of this rule are:

- A. to standardize the procedures used in rulemaking proceedings before the commission;
- B. to encourage public participation in the hearings conducted by the commission for the promulgation of regulations;
- C. to make possible the effective presentation of the evidence and points of view of parties and members of the general public;
- D. to allow all interested persons a reasonable opportunity to submit data, views or arguments orally or in writing; and
- E. to assure that commission hearings are conducted in a fair and equitable manner.

[20.1.6.6 NMAC - N, 05/01/17]

20.1.6.7 DEFINITIONS: As used in this part:

- A. "Act" means the Water Quality Act, Sections 74-6-1 through 74-6-17 NMSA 1978.
- B. "Commission administrator" means the department employee designated by the secretary of environment to provide staff support to the commission.
- C. "Commission" means the water quality control commission.
- D. "Constituent agency" means any or all agencies of the state defined as such under the act.
- E. "Department" means the New Mexico environment department.
- F. "Document" means any paper, exhibit, pleading, motion, response, memorandum, decision, order or other written or tangible item that is filed in a proceeding under this part, or brought to or before the commission for its consideration, but does not include a cover letter accompanying a document transmitted for filing.
- G. "Exhibit" means any document or tangible item submitted for inclusion in the hearing record.
- H. "General public" means any person attending a hearing who has not submitted a notice of intent to present technical testimony.
- I. "Governing law" means the statute, including any applicable case law, which authorizes and governs the decision on the proposed regulatory change.
- J. "Hearing officer" means the person designated by the commission to conduct a hearing under this part.

- K.** “Hearing record” means:
- (1) the transcript of proceedings; and
 - (2) the record proper.
- L.** “Participant” means any person who participates in a rulemaking proceeding before the commission.
- M.** “Party” means the petitioner, any person filing a notice of intent to present technical testimony, and any person filing an entry of appearance.
- N.** “Person” means an individual or any entity, including federal, state and local governmental entities, however organized.
- O.** “Petitioner” means the person who petitioned the commission for the regulatory change that is the subject of the hearing.
- P.** “Provide to the public” means for the commission to distribute rulemaking information by:
- (1) posting it on the commission’s website;
 - (2) posting it on the New Mexico sunshine portal;
 - (3) making it available at the applicable constituent agency’s district, field, and regional offices, if any;
 - (4) sending it by email to persons who have made a written request for notice of announcements addressing the subject of the rulemaking proceeding and who have provided an email address to the commission administrator;
 - (5) sending it by email to persons who have participated in the rulemaking and who have provided an email address to the commission administrator;
 - (6) sending written notice that includes, at a minimum, an internet and street address where the information may be found to persons who provide a postal address; and
 - (7) providing it to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees.
- [P.]-Q.** “Record proper” means all documents related to the hearing and received or generated by the commission prior to the beginning, or after the conclusion, of the hearing, including, but not limited to:
- (1) the petition for hearing and any response thereto;
 - (2) the minutes (or an appropriate extract of the minutes) of the meeting at which the petition for hearing was considered, and of any subsequent meeting at which the proposed regulatory change was discussed;
 - (3) the notice of hearing;
 - (4) affidavits of publication;
 - (5) a copy of all publications in the New Mexico register relating to the proposed rule;
 - [{5}]{6) notices of intent to present technical testimony;
 - (7) a copy of any technical information that was relied upon in formulating the final rule;
 - [{6}]{8) all written pleadings, including motions and responsive pleadings, and orders;
 - [{7}]{9) statements for the public record or other relevant materials received by the agency during the public comment period;
 - [{8}]{10) the hearing officer’s report, if any;
 - (11) a copy of the full text of the initial proposed rule, the full text of the final adopted rule, and the concise explanatory statement filed with the state records administrator;
 - [{9}]{12) post-hearing submissions, if allowed;
 - [{10}]{13) the audio recordings (or an appropriate extract of the recordings) of the meeting(s) at which the commission deliberated on the adoption of the proposed regulatory change; [and]
 - [{11}]{14) the commission’s decision and the reasons therefore[-]; and
 - (15) any corrections made by the state records administrator pursuant to Section 14-4-3 NMSA 1978.
- [Q.]-R.** “Regulation” means any rule, regulation or standard promulgated by the commission and affecting one or more persons, besides the commission and the department, except for any order or decision issued in connection with the disposition of any case involving a particular matter as applied to a specific set of facts.
- [R.]-S.** “Regulatory change” means the adoption, amendment or repeal of a regulation.
- [S.]-T.** “Service” means personally delivering a copy of the document, exhibit or pleading to the person required by this part to be served; mailing it to that person; or, if that person has agreed, sending it by electronic transmission; if a person is represented by an attorney, service of the document shall be made on the attorney; service by mail is complete upon mailing the document; service by electronic transmission is complete upon transmission of the document.

~~[T.]~~U. “Technical testimony” means scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing.

~~[U.]~~V. “Transcript of proceedings” means the verbatim record (audio recording or stenographic) of the proceedings, testimony and argument in the matter, together with all exhibits proffered at the hearing, whether or not admitted into evidence, including the record of any motion hearings or prehearing conferences.

[20.1.6.7 NMAC - N, 05/01/17]

20.1.6.8 LIBERAL CONSTRUCTION: This part shall be liberally construed to carry out its purpose.

[20.1.6.8 NMAC - N, 05/01/17]

20.1.6.9 SEVERABILITY: If any provision or application of this part is held invalid, the remainder of this part, or its application to other situations or persons, shall not be affected.

[20.1.6.9 NMAC - N, 05/01/17]

20.1.6.10 - 20.1.6.99 [RESERVED]

20.1.6.100 POWERS AND DUTIES OF THE COMMISSION AND HEARING OFFICER:

A. Commission: The commission shall exercise all powers and duties prescribed under the act and this part not otherwise delegated to the hearing officer or the commission administrator.

(1) The commission may issue procedural orders that either impose additional procedural requirements or simplify the procedures provided in this part. In no event, may the commission eliminate any procedural requirements of the act.

(2) The appointment of a hearing officer does not preclude the commissioners from attending or participating in the proceeding.

B. Hearing officer: The commission shall designate a hearing officer for each hearing who shall exercise all powers and duties prescribed or delegated under this part. The hearing officer shall conduct a fair and ~~[impartial]~~ equitable proceeding, assure that the facts are fully elicited, and avoid delay. The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial consideration of issues arising in proceedings governed by this part, including, but not limited to:

(1) conducting hearings under this part;

(2) ruling on motions and procedural requests that do not seek final resolution of the proceeding, and issuing all necessary orders;

(3) administering oaths and affirmations, admitting or excluding evidence, examining witnesses and allowing post-hearing submissions;

(4) making such orders as may be necessary to preserve decorum and to protect the orderly hearing process;

(5) if requested by the commission, preparing and filing a report of the hearing, with recommendations for commission action;

(6) requesting parties to file original documents with the commission administrator; and

(7) requesting a party to submit a proposed statement of reasons in support of the commission's decision.

C. Qualifications: The hearing officer may be an independent contractor or a commissioner, shall be knowledgeable of the laws of the state and of administrative hearing procedures, and shall not be:

(1) an employee of the department, except for the commissioners themselves or their designees, or unless employed by the department as a hearing officer;

(2) a person who has a personal bias or prejudice concerning a party or a party's lawyer or consultant, or has personal knowledge of disputed facts concerning the proceeding, or is related to a party within the third degree of relationship, or has a financial interest in the proceeding.

D. Notice of hearing officer assignment: If a hearing officer other than a commissioner is assigned, the commission administrator shall notify the parties of the name and address of the hearing officer. The commission administrator shall also, at that time, forward to the hearing officer copies of all documents filed to date.

[20.1.6.100 NMAC - N, 05/01/17]

20.1.6.101 GENERAL PROVISIONS - COMPUTATION OF TIME:

A. Computation of time: In computing any period of time prescribed or allowed by this part, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday, or legal state holiday, in which event the time is extended until the end of the next day, which is not a Saturday, Sunday, or legal state holiday. Whenever a party must act within a prescribed period after service upon them, and service is by mail, three days is added to the prescribed period.

B. Extension of time: The commission or hearing officer may grant an extension of time for the filing of any document upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties.

[20.1.6.101 NMAC - N, 05/01/17]

20.1.6.102 GENERAL PROVISIONS - RECUSAL: No commission member shall participate in any action in which his or her impartiality or fairness may reasonably be questioned, and the member shall recuse himself or herself in any such action by giving notice to the commission and the general public by announcing this recusal on the record. In making a decision to recuse himself or herself, the commission member may rely upon the Governmental Conduct Act, Sections 10-16-1 through 10-16-18 NMSA 1978, the Financial Disclosures Act, Sections 10-16A-1 through 10-16A-8 NMSA 1978, or any other relevant authority.

[20.1.6.102 NMAC - N, 05/01/17]

20.1.6.103 GENERAL PROVISIONS - EX PARTE DISCUSSIONS: At no time after the commission's determination to hold a public hearing on a petition and before the issuance of the commission's written decision under this part, shall the department, or any other party, interested participant or their representatives discuss *ex parte* the merits of the proceeding with any commission member or the hearing officer.

[20.1.6.103 NMAC - N, 05/01/2017]

20.1.6.104 DOCUMENT REQUIREMENTS - FILING AND SERVICE OF DOCUMENTS:

A. The filing of any document as required by this part shall be accomplished by delivering the document to the commission administrator.

B. Any person filing any document shall:

(1) provide the commission administrator with the original along with up to 15 copies of the document, provided that the commission administrator may waive the requirement to provide up to 15 copies if an electronic copy of the original is provided in a format acceptable for distribution to the commission members;

(2) serve a copy of the document on each other party. If a party is represented by an attorney, service of the document shall be made on the attorney; and

(3) include a certificate of service, as shown in Section 500 of this rule.

C. Whenever this part requires service of a document, service shall be made by delivering a copy to the person to be served by mailing it, or, if that person has agreed, by sending it by electronic transmission to that person. Agreement to be served by electronic transmission may be evidenced by placing the person's email address on a document filed pursuant to this part. Service by mail is complete upon mailing the document. Service by electronic transmission is complete upon transmission of the document.

D. Form of documents: Unless otherwise ordered by the hearing officer, all documents, except exhibits, shall be prepared on 8 ½ x 11-inch white paper, printed single-sided, and where appropriate, the first page of every document shall contain a heading and caption as shown in Section 500 of this rule.

E. Documents issued by commission or hearing officer: All documents issued by the commission or hearing officer shall be filed with the commission administrator, who shall promptly serve copies of the documents upon all parties.

[20.1.6.104 NMAC - N, 05/01/2017]

20.1.6.105 EXAMINATION OF DOCUMENTS FILED:

A. Examination allowed: Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during normal business hours, inspect and copy any document filed in any rulemaking proceeding before the commission. Such documents shall be made available by the commission administrator, as appropriate[-] and shall also be made available on the New Mexico sunshine portal. If the commission administrator determines that any part of the rulemaking record cannot be practicably displayed or is inappropriate for public display on the New Mexico sunshine portal, the commission administrator shall describe

that part of the record, shall note on the New Mexico sunshine portal that the part of the record is not displayed, and shall provide instructions for accessing or inspecting that part of the record.

B. Cost of duplication: The cost of duplicating documents shall be borne by the person seeking copies of such documents, but the commission administrator shall not charge a fee for providing records in electronic form.

[20.1.6.105 NMAC - N, 05/01/17]

20.1.6.106 - 20.1.1.199 [RESERVED]

20.1.6.200 PREHEARING PROCEDURES - PETITION FOR REGULATORY CHANGE:

A. Any person may file a petition with the commission to adopt, amend, or repeal any regulation within the jurisdiction of the commission.

B. The petition shall be in writing and shall include a statement of the reasons for the regulatory change. The petition shall cite the relevant statutes that authorize the commission to adopt the proposed rules and shall estimate the time that will be needed to conduct the hearing. A copy of the entire rule, including the proposed regulatory change, indicating any language proposed to be added or deleted, shall be attached to the petition. The entire rule and its proposed changes shall be submitted to the commission in redline fashion, and shall include line numbers. Any document that does not include all the items required to be in a petition shall be returned to the petitioner along with a copy of these rules and a check-off list of required items, and the petitioner will be asked to resubmit their petition in the form required by these rules.

C. The commission shall determine, at a public meeting occurring no later than 90 days after receipt of the petition, whether or not to hold a public hearing on the proposal. Any person may respond to the petition either in writing prior to the public meeting or in person at the public meeting.

D. If the commission determines to hold a public hearing on the petition, it may issue such orders specifying procedures for conduct of the hearing, in addition to those provided by this part, as may be necessary and appropriate to fully inform the commission of the matters at issue in the hearing or control the conduct of the hearing. Such orders may include requirements for giving additional public notice, holding pre-hearing conferences, filing direct testimony in writing prior to the hearing, or limiting testimony or cross-examination.

[20.1.6.200 NMAC - N, 05/01/17]

20.1.6.201 NOTICE OF HEARINGS:

A. Unless otherwise allowed by governing law and specified by the commission, the commission shall ~~give public~~ provide to the public notice of the ~~hearing~~ proposed rulemaking at least 60 days prior to the hearing.

B. Public notice for proposed regulatory changes of general application to the state shall include publication in at least one newspaper of general circulation in the state, publication in the New Mexico register, and such other means of providing notice as the commission may direct or are required by law. Notice for proposed regulatory changes that are confined in effect to a specific geographic area shall also be published in a newspaper of general circulation in the area affected.

~~**C.** The commission shall make reasonable efforts to give notice to persons who have made a written request to the commission for advance notice of regulatory change hearings. Requests for such notice shall be addressed to the commission administrator, and shall designate those areas of commission activity which are of interest.~~

~~**D.]C.** [Public notice of the hearing shall state:] The notice of proposed rulemaking shall state:~~

~~(1) [the subject, including a description of the proposed regulatory change, and the time and place of the hearing;] the subject of the proposed rule, including a summary of the full text of the proposed rule and a short explanation of the purpose of the proposed rule;~~

~~(2) a citation to the specific legal authority authorizing the proposed rule and the adoption of the rule;~~

~~(3) a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained;~~

~~(2)](4) the statutes, regulations, and procedural rules governing the conduct of the hearing;~~

~~(3)](5) the manner in which persons may present their views or evidence to the commission including information on participating in the public hearing;~~

~~(4)](6) the location where persons may secure copies of the proposed regulatory change; ~~and~~~~

~~(7) an internet link providing free access to the full text of the proposed rule; and~~

~~(5)~~(8) if applicable, that the commission may make a decision on the proposed regulatory change at the conclusion of the hearing.
[20.1.6.201 NMAC - N, 05/01/17]

20.1.6.202 TECHNICAL TESTIMONY:

A. Any person, including the petitioner, who intends to present technical testimony at the hearing shall, no later than 20 days prior to the hearing, file a notice of intent to present technical testimony. The notice shall:

- (1) identify the person for whom the witness(es) will testify;
 - (2) identify each technical witness the person intends to present, and state the qualifications of that witness, including a description of their educational and work background;
 - (3) if the hearing will be conducted at multiple locations, indicate the location or locations at which the witnesses will be present;
 - (4) include a copy of the direct testimony of each technical witness in narrative form, and state the estimated duration of the direct oral testimony of that witness;
 - (5) include the text of any recommended modifications to the proposed regulatory change;
- and
- (6) list and attach all exhibits anticipated to be offered by that person at the hearing.

B. The hearing officer may enforce the provisions of this section through such action as the hearing officer deems appropriate, including, but not limited to, exclusion of the technical testimony of any witness for whom a notice of intent was not timely filed. If such testimony is admitted, the hearing officer may keep the record open after the hearing to allow responses to such testimony. The hearing officer may also require that written rebuttal testimony be submitted prior to hearing.

[20.1.6.202 NMAC - N, 05/01/17]

20.1.6.203 ENTRY OF APPEARANCE: Any person may file an entry of appearance as a party. The entry of appearance shall be filed no later than 20 days before the date of the hearing on the petition. In the event of multiple entries of appearance by those affiliated with one interest group, the hearing officer may consolidate the entries, or divide the service list to avoid waste of resources.

[20.1.6.203 NMAC - N, 05/01/17]

20.1.6.204 PARTICIPATION BY GENERAL PUBLIC:

A. Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer non-technical exhibits in connection with their testimony, so long as the exhibit is not unduly repetitious of the testimony.

B. A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing or submit it at the hearing. Written comment must be mailed or delivered to the commission administrator.

C. If the commission changes the date of the hearing or the deadline for submitting comments as stated in the notice of proposed rulemaking, the commission shall provide to the public notice of the change.

[20.1.6.204 NMAC - N, 05/01/17]

20.1.6.205 LOCATION OF HEARING: Unless otherwise provided by governing law, the commission shall hold hearings on proposed regulatory changes of statewide application in Santa Fe, and at other places the commission may prescribe. The commission may hold hearings on proposed regulatory changes that are not of statewide application within the area substantially affected by the proposal.

[20.1.6.205 NMAC - N, 05/01/17]

20.1.6.206 PARTICIPATION BY CONFERENCE TELEPHONE OR OTHER SIMILAR DEVICE:

A. A member of the commission may participate in a meeting or hearing of the commission by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting or hearing in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting or hearing are able to hear any member of the commission who speaks at the meeting or hearing. A commission member's participation by such means shall constitute presence in person at the meeting or hearing. A commission member who needs to participate in this manner must notify the commission

administrator sufficiently in advance so as to permit the commission administrator to arrange for the appropriate communications equipment.

B. A witness may participate in a hearing of the commission by means of a conference telephone or other similar communications equipment when an emergency or circumstances make it impossible for the witness to attend the hearing in person. A witness who needs to participate in this manner must receive permission from the hearing officer sufficiently in advance of the hearing so as to permit the commission administrator to arrange for the appropriate communications equipment. Each witness participating in this manner must be identified when speaking, all participants must be able to hear each other at the same time, and members of the public attending the hearing must be able to hear any witness who speaks during the hearing.

[20.1.6.206 NMAC - N, 05/01/17]

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 - N, 05/01/17]

20.1.6.208 - 20.1.6.299 [RESERVED]

20.1.6.300 HEARING PROCEDURES - CONDUCT OF HEARINGS:

A. The rules of civil procedure and the rules of evidence shall not apply.

B. The hearing officer shall conduct the hearing 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. The hearing shall proceed as follows.

(1) The hearing shall begin with an opening statement from the hearing officer. The statement shall identify the nature and subject matter of the hearing and explain the procedures to be followed.

(2) The hearing officer may allow a brief opening statement by any party who wishes to make one.

(3) Unless otherwise ordered, the petitioner shall present its case first.

(4) The hearing officer shall establish an order for the testimony of other participants. The order may be based upon notices of intent to present technical testimony, sign-in sheets and the availability of witnesses who cannot be present for the entire hearing.

(5) If the hearing continues for more than one day, the hearing officer shall provide an opportunity each day for testimony from members of the general public. Members of the general public who wish to present testimony should indicate their intent on a sign-in sheet.

(6) The hearing officer may allow a brief closing argument by any person who wishes to make one.

(7) At the close of the hearing, the hearing officer shall determine whether to keep the record open for written submittals in accordance with 20.1.6.304 NMAC. If the record is kept open, the hearing officer shall determine and announce the subject(s) on which submittals will be allowed and the deadline for filing the submittals.

C. If the hearing is conducted at multiple locations, the hearing officer may require the petitioner's witnesses to summarize their testimony or be available for cross-examination at each location. Other participants are not required to testify at more than one location, and the hearing officer may prohibit a witness from testifying at more than one location.

[20.1.6.300 NMAC - N, 05/01/17]

20.1.6.301 TESTIMONY AND CROSS-EXAMINATION:

A. All testimony will be taken under oath or affirmation which may be accomplished in mass or individually.

B. The hearing officer shall admit any relevant evidence, unless the hearing officer determines that the evidence is incompetent or unduly repetitious. The hearing officer shall require all oral testimony be limited to the position of the witness in favor of or against the proposed rule.

C. Any person who testifies at the hearing is subject to cross-examination on the subject matter of his or her direct testimony and matters affecting his or her credibility. Any person attending the hearing is entitled to conduct such cross-examination as may be required for a full and true disclosure of matters at issue in the hearing. The hearing officer may limit cross-examination to avoid harassment, intimidation, needless expenditure of time or undue repetition.

[20.1.6.301 NMAC - N, 05/01/17]

20.1.6.302 EXHIBITS:

A. Any person offering an exhibit at hearing other than a document filed and served before the hearing shall provide at least an original and 15 copies for the commission, and a sufficient number of copies for every other party.

B. All exhibits offered at the hearing shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially. If a person offers multiple exhibits, he shall identify each exhibit with an index tab or by other appropriate means.

C. Large charts and diagrams, models, and other bulky exhibits are discouraged. If visual aids are used, legible copies shall be submitted for inclusion in the record.

[20.1.6.302 NMAC - N, 05/01/17]

20.1.6.303 TRANSCRIPT OF PROCEEDINGS:

A. [A] Unless specified by the commission or the hearing officer, a verbatim transcript shall be made of the hearing, including any deliberations. The cost of the original transcript of the proceeding and of providing a copy for each commission member shall be borne by the petitioner.

B. Any person may obtain a copy of the transcript of a proceeding. It shall be obtained directly from the court reporter, and the cost of the transcript shall be paid directly to the source.

[20.1.6.303 NMAC - N, 05/01/17]

20.1.6.304 POST-HEARING SUBMISSIONS: The hearing officer may allow the record to remain open for a reasonable period of time following the conclusion of the hearing for written submission of additional evidence, comments and arguments, revised proposed rule language, and proposed statements of reasons. The hearing officer's determination regarding post-hearing submissions shall be announced at the conclusion of the hearing. In considering whether the record will remain open, the hearing officer shall consider the reasons why the material was not presented during the hearing, the significance of the material to be submitted and the necessity for a prompt decision.

[20.1.6.304 NMAC - N, 05/01/17]

20.1.6.305 HEARING OFFICER'S REPORT: If the commission directs, the hearing officer shall file a report of the hearing. The report shall identify the issues addressed at the hearing, identify the parties' final proposals, and the evidence supporting or opposing those proposals, including discussion or recommendations as requested by the commission, and shall be filed with the commission administrator within the time specified by the commission. The commission administrator shall promptly notify each party that the hearing officer's report has been filed and shall provide a copy of the report along with a notice of any deadline set for comments on that report.

[20.1.6.305 NMAC - N, 05/01/17]

20.1.6.306 DELIBERATION AND DECISION:

A. If a quorum of the commission attended the hearing, and if the hearing notice indicated that a decision might be made at the conclusion of the hearing, the commission may immediately deliberate and make a decision on the proposed regulatory change.

B. If the commission does not reach a decision at the conclusion of the hearing, the commission administrator, following receipt of the transcript, will promptly furnish a copy of the transcript to each commission member that did not attend the hearing and, if necessary, to other commission members, commission counsel and the hearing officer. Exhibits provided to those persons at the time of the hearing need not be supplied again.

C. The commission shall reach its decision on the proposed regulatory change within 60 days following the close of the record or the date the hearing officer's report is filed, whichever is later.

D. If, during the course of its deliberations, the commission determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed regulatory change, the commission may, consistent with the requirements of due process, reopen the hearing for such additional evidence only.

E. The commission shall issue its decision on the proposed regulatory change in a suitable format, which shall include its reasons for the action taken.

F. The commission's written decision is the official version of the commission's action, and the reasons for that action. Other written or oral statements by commission members are not recognized as part of the commission's official decision or reasons.

G. If the commission fails to act on a proposed rule within two years after the notice of proposed rulemaking is published in the New Mexico register, the rulemaking is automatically terminated unless the commission acts to extend the period for an additional two years by filing a statement of good cause for the extension in the rulemaking record. If the commission extends the rulemaking period, it shall provide for additional public participation, comments, and hearing prior to adopting the rule.

H. The commission may terminate a rulemaking at any time by publishing a notice of termination in the New Mexico register. If the commission terminates a rulemaking in this manner, it shall provide to the public notice of its action.

[20.1.6.306 NMAC - N, 05/01/17]

20.1.6.307 NOTICE OF COMMISSION ACTION:

A. ~~The commission administrator shall provide to the public notice of the commission's action [to each of the parties, to any person heard or represented at the hearing, and to all other persons who have made a written request to the commission for notification of the action taken].~~

B. The adopted rule shall not take effect unless within 15 days of adoption of the rule, the commission delivers the final rule to the state records administrator, accompanied by a concise explanatory statement that contains:

- (1) the date that the commission adopted the rule;
- (2) a reference to the specific statutory authority authorizing the rule; and
- (3) any findings required by law for adoption of the rule.

C. Adoption of the final rule occurs upon signature of the written decision.

D. If the state records administrator notifies the commission of having made any minor, nonsubstantive corrections in spelling, grammar, and format in the filed rule, the commission administrator shall provide to the public notice of the correction within 30 days of receiving the state records administrator's record of correction.

[20.1.6.307 NMAC - N, 05/01/17]

20.1.6.308 - 20.1.6.399 [RESERVED]

20.1.6.400 APPEAL OF REGULATIONS:

A. Appeal of any regulatory change by the commission shall be taken in accordance with governing law.

B. The appellant shall serve a copy of the notice of appeal on the commission and on each party.

C. The appellant shall be responsible for preparation of a sufficient number of copies of the hearing record at the expense of appellant.

D. Unless otherwise provided by governing law, the filing of an appeal shall not act as a stay of the regulatory change being appealed.

[20.1.6.400 NMAC - N, 05/01/17]

20.1.6.401 STAY OF COMMISSION REGULATIONS:

A. Any person who is or may be affected by a rule adopted by the commission may file a motion with the commission seeking a stay of that rule or regulatory change. The motion shall include the reason for, and the legal authority supporting, the granting of a stay. The movant shall file and serve the motion in accordance with the requirements of Section 104 of this part at least 30 days before the meeting at which the commission will consider the motion. The commission chair will decide at which meeting the motion will be heard.

B. Unless otherwise provided by governing law, the commission may grant a stay pending appeal of any regulatory change promulgated by the commission. The commission may only grant a stay if good cause is shown after a motion is filed and a hearing is held.

C. In determining whether good cause is present for the granting of a stay, the commission, upon at least a two-thirds vote of the members voting shall consider:

- (1) the likelihood that the movant will prevail on the merits of the appeal;
- (2) whether the moving party will suffer irreparable harm if a stay is not granted;
- (3) whether substantial harm will result to other interested persons; and
- (4) whether harm will ensue to the public interest.

D. If no action is taken within 60 days after filing of the motion, the commission shall be deemed to have denied the motion for stay.

[20.1.6.401 NMAC - N, 05/01/17]

20.1.6.402 - 20.1.6.499 [RESERVED]

20.1.6.500 PREFERRED FORMAT:

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

**IN THE MATTER OF PROPOSED
AMENDMENTS TO _____ NMAC**

**[Name of Petitioner],
Petitioner.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing [name of document] was served by [hand-delivery] [first class mail] [email] to all parties on [date].

[20.1.6.500 NMAC - N, 05/01/17]

HISTORY OF 20.1.6 NMAC:

Pre-NMAC History: The material in this part was derived from Guidelines for Water Quality Control Commission Regulation Hearings (Approved November 10, 1992; Amended June 8, 1993).

History of Repealed Material: [RESERVED]

Other History: [RESERVED]

Jason T. Wallace

EDUCATION

University of New Mexico School of Law, Albuquerque, NM

Juris Doctor Natural Resource Certificate, May 2014

Honors: Natural Resource Journal: Manuscript Editor (2013-14); Staff (2012-13)

Activities: National Environmental Moot Court Comp.: Coach (2014); Competitor (2012-13)

Environmental Law Society: Member (2011-14); Summer Fellow (2013)

Intellectual Property Matters: Member (2011-14); Treasurer (2012-13)

Business Law Society: Member (2011-14)

University of Arizona, Tucson, AZ

Bachelor of Arts, Political Science, May 2011

Honors: Dean's List (2008-11)

United States Air Force R.O.T.C.: Information Officer (2008-9)

Emerging Democracy in Ukraine: Facilitator of Democratic Discussions in Yalta and Crimea (2009)

LEGAL EXPERIENCE

Office of General Counsel, New Mexico Environment Department, (Present)

Assistant General Counsel

- Conduct administrative hearings and judicial proceedings.
- Advise the Director, Bureau Chiefs, and Program Managers across the state.
- Draft, file, and discuss with district court judges administrative search warrants.
- Draft and enforce administrative compliance orders.
- Negotiate disputes, facilitate and draft settlements, and produce research memoranda for in-house use.

2nd Judicial District Attorney's Office, Albuquerque, NM (2016)

Trial Attorney

- High Intensity Drug Trafficking Area federal grant recipient.
- Screened, charged, managed, and tried 1st, 2nd, 3rd, & 4th degree felonies and all lesser crimes.
- Negotiated with defense counsel for the disposition of cases.
- Provided strategic consideration in advanced prosecution techniques.

University of New Mexico School of Law Business & Tax Clinic, Albuquerque, NM (2014)

Clinical Law Student

- Represented clients in matters involving state and federal income tax, contracts, foreclosure litigation, employment litigation, and entity selection, creation, and taxation.
- Arbitrated employment dispute.
- Prepared various forms of discovery and requests for production of documents, drafted interrogatories, and took two unique depositions.
- Conducted intake interviews, client meetings, witness interviews, and pre-trial settlement conferences.
- Researched, drafted, and filed various pre-trial motions, forms, affidavits, and memoranda.

Office of General Counsel, New Mexico Environment Department, Santa Fe, NM (2013)

Extern (Spring 2013), *Summer Associate* (Summer 2013)

- Supported General Counsel in matters including federal, state, and tribal environmental policy, quality compliance, permitting, administration, and enforcement as well as non-environmental, departmental issues (OSHA, etc.)
- Conducted discovery, hearing and trial preparation, and supported attorneys in the NM Copper Rule litigation.
- Worked with department Secretary, hydrologists, geologists, and attorneys to draft and edit proposed laws affording ground water protection from the copper mining process.
- Researched, drafted, and filed motions, legal memoranda, and policy considerations for internal and external use.
- Attended weekly in-house meetings, administrative hearings, pre-trial hearings, trials, and settlement negotiations.

Dhillon & Smith, LLP, San Francisco, CA (2012)

Summer Associate

- Supported commercial litigation attorneys in matters including business litigation, corporate transactions and governance, election and campaign law, contracts, bankruptcy, and real estate development.
- Drafted trial briefs, motions in limine, oppositions to motions in limine, motions to appoint receivers, motions for good faith settlement, a legal malpractice complaint, research and legal memoranda, jury instructions, short non-argumentative statements for juries, stipulated judgments, and retainer agreements.
- Assisted in depositions, arguments on motions in limine, settlement conferences, an argument on a motion regarding forum non conveniens, and various client meetings.

TESTIMONY OF JASON WALLACE:

I. BACKGROUND AND EDUCATION

A. Education-

Jason Wallace received his Bachelor of Arts in Political Science from the University of Arizona in 2011, where he focused on national security and public administration. Mr. Wallace attended the University of New Mexico School of Law from 2011 to 2014, where he received the school's Natural Resource Certificate, edited manuscripts for the Natural Resource Journal, competed in the National Environmental Law Moot Court Competition in White Plains, New York, and studied state and federal administrative law.

B. Work Experience-

Mr. Wallace worked with the Office of General Counsel of the New Mexico Environment Department for eight months while attending law school, where he worked extensively on the "Copper Rule" rulemaking before the Water Quality Control Commission. During law school, he also worked as a summer associate for Dhillon & Smith, LLP, a commercial litigation firm in downtown San Francisco, California. He worked in criminal defense in Scottsdale, Arizona in 2015 before moving back to Albuquerque, New Mexico in January of 2016, when he became a felony prosecutor with the 2nd Judicial District Attorney's Office in Bernalillo County. As a federal High Intensity Drug Trafficking Area grant recipient, Mr. Wallace's work was focused primarily on narcotics trafficking, including 4th, 3rd, 2nd, and 1st degree felony jury trials. Since December of 2016, Mr. Wallace has been Assistant General Counsel of the Office of General Counsel of the New Mexico Environment Department, where his work ranges from permit hearings to administrative enforcement. Mr. Wallace is a member of the New Mexico and Arizona Bar Associations. Mr. Wallace's resume is attached as NMED Exhibit 2.

II. INTRODUCTION

The New Mexico Environment Department ("Department" or "NMED") proposes amendments to the New Mexico Water Quality Control Commission's ("Commission") process for reviewing, considering, promulgating, and adopting regulations pursuant to its grant of authority from the Water Quality Act, NMSA 1978, Sections 74-6-1 to -17 (1991). *See* 20.1.6. NMAC ("Rulemaking Procedures"). The

Department proposes amending the Rulemaking Procedures to bring them into compliance with amendments to the State Rules Act (“SRA”), NMSA 1978, Sections 14-4-1 to -11, adopted by the New Mexico Legislature in 2017. *See* 2017 N.M. Laws, ch. 137 §3 (attached as NMED Exhibit 4). Adoption of the Department’s proposed amendments to the Rulemaking Procedures, attached as NMED Exhibit 1, should provide at least as much opportunity for public participation as the SRA and the New Mexico Attorney General’s default rulemaking procedures, attached as NMED Exhibit 5.

A. Rulemaking Procedures Background:

The Commission may adopt rulemaking procedures pursuant to NMSA 1978, Sections 74-6-4(E) and 74-6-6. Section 74-6-4(E) NMSA 1978 directs the Commission to adopt, promulgate, and publish regulations to prevent or abate water pollution in New Mexico. Section 74-6-6 NMSA 1978 establishes the basic procedural requirements for adopting those regulations.

During the 2017 Regular Session, the New Mexico Legislature passed House Bill 58 (“HB58”) which amended the SRA. NMED Exhibit 4. HB58 primarily added provisions to facilitate public participation in executive agency rulemakings. *Id.* The SRA now includes additional procedural steps applicable to state agencies, including the Commission. NMSA 1978, § 14-4-2(A) (2017); *see e.g.* NMSA 1978, § 14-4-5.2 (2017) (requiring a notice of proposed rulemaking be published prior to a rulemaking hearing).

To meet these obligations, the SRA permits state agencies to adopt agency procedural rules that provide at least as much opportunity for parties and the public to participate as the default rulemaking provisions adopted by the New Mexico Attorney General (“Attorney General”). NMSA 1978, § 14-4-5.8 (2017). The Attorney General issued notice of a rulemaking hearing to take place on January 19, 2018, to consider and adopt a Default Procedural Rule for Rulemaking (“Default Rules”). NMED Exhibit 5. Pursuant to NMSA 1978, Section 14-4-5.8, the Default Rules apply to agencies who do not adopt their own procedural rules or incorporate the Default Rules by reference. NMED Exhibit 5, Section 1.24.25.1. To properly adopt its own rulemaking procedures pursuant to the SRA, the Commission must ensure that its

procedures will provide at least as much opportunity for participation by the parties and the public as the Default Rules proposed by the Attorney General. NMSA 1978, § 14-4-5.8.

B. Reason for enacting rulemaking rules

The purposes of the Rulemaking Procedures are to:

- i. Standardize the procedures used in rulemaking proceedings before the Commission;
- ii. Encourage public participation in the hearings conducted by the Commission for the promulgation of regulations;
- iii. Make possible the effective presentation of the evidence and points of view of parties and members of the general public;
- iv. Allow all interested persons a reasonable opportunity to submit data, views, or arguments orally or in writing; and
- v. Ensure that Commission meetings are conducted in a fair and equitable manner.

20.1.6.6 NMAC.

These stated purposes fit well within the purposes of the SRA amendments because the SRA amendments primarily address public notice and participation in the rulemaking process. NMED Exhibit 4, Section 3 (prohibiting adoption of a rule until the end of the public comment period); NMED Exhibit 4, Section 4 (requiring that an agency provide to the public and publish in the New Mexico Register a notice of proposed rulemaking that includes instructions for participation or providing comment in the rulemaking proceeding); NMED Exhibit 4, Section 5 (requiring that public rule hearings be open to the public); NMED Exhibit 4, Section 6 (requiring maintenance of a rulemaking record that is readily available for public inspection); and NMED Exhibit 4, Section 10 (requiring procedural rules that provide opportunity for public participation). Even though the stated purposes of the current Rulemaking Procedures provide a standardized, public, and efficient process, the changes discussed below will bring the Rulemaking Procedures in line with the SRA's requirements through the addition of a few requirements.

III. PROPOSED CHANGES

This section provides a section-by-section review and explanation of the Department's proposed revisions.

A. 20.1.6.3 NMAC- The Department proposes to add citations to the SRA because some of the Department's proposed revisions are based on SRA language; addition of these citation will supply direct support for these changes.

B. 20.1.6.7 NMAC- This section provides definitions applicable to the Rulemaking Procedures. The Default Rules adopt the SRA definitions, NMSA 1978, Section 14-4-2. NMED Exhibit 5, Section 1.24.25.7. The Department's proposed definitions do not incorporate all SRA definitions as incorporated by Section 1.24.25.7 of the Default Rules. However, arguably, the key definitions define the scope of applicability of the Rulemaking Procedures, notice methods, and participants in the rulemaking process, i.e. NMSA 1978, Sections 14-4-2(B) (defining person), 14-4-2(E) (defining the method of distributing rulemaking information to the public), and 14-4-2(F) (defining what constitutes a rule). These are the key definitions because compliance with the SRA hinges on public participation. *See* NMSA 1978, § 14-4-5.8. In these instances, the Department's proposed definition meets or surpasses the Default Rules requirements:

- i. Person: NMSA 1978, Section 14-4-2(B) defines a person as, "individuals, associations, partnerships, companies, business trusts, political subdivisions, and corporations." The current Rulemaking Procedures are more inclusive in that they include individuals in the definition of a person as well as, "an entity". 20.1.6.7.N NMAC. Including any entity necessarily includes the organizations listed in the statute as well as organizations that are not listed in the statute.
- ii. Providing to the Public: Functionally, the provision of notice requirements in NMSA 1978, Section 14-4-2(E) and NMED Exhibit 1, Section 20.1.6.7.P are the same. *Compare* NMSA 1978, § 14-4-2(E) and NMED Exhibit 1, Section 20.1.6.7.P. The Department's proposal differs in language only to make the requirements Commission specific.
- iii. Rule: The SRA defines rules in NMSA 1978, Section 14-4-2(F). This definition includes rules, regulations, or standards, including those that explicitly or implicitly implement or interpret a

federal or state legal mandate or other applicable law, and amendments, repeals, and renewals. *Id.* Rules must impact agencies or persons outside the issuing agency and do not include orders or decisions related to certain New Mexico government entities. *Id.* The Rulemaking Procedures use the term regulation and define it as, "...any rule, regulation, or standard promulgated by the commission and affecting one or more persons, besides the commission and the department, except for any order or decision issued in connection with the disposition of any case involving a particular matter as applied to a specific set of facts." 20.1.6.7.Q NMAC (listed as proposed 20.1.6.7.R in NMED Exhibit 1).

The definitions of rule are similar in both the statute and the Rulemaking Procedures, though there are a couple of differences. The Rulemaking Procedures do not list the specific inclusions of implementation or interpretation of federal or state legal mandates or amendments, repeals, or renewals. *Compare* NMSA 1978, § 14-4-2(F) with 20.1.6.7.Q NMAC. Still, the Rulemaking Procedures should be adequate since the inclusion in the SRA further defines types of rules, and all types of rules should be included in the Rulemaking Procedures' definition of any rules. Additionally, the Rulemaking Procedures do not include the specific exclusion of education or hospitals listed in the SRA. *See* NMSA 1978, § 14-4-2(F). Since those facility rated matters are outside of the scope of the Water Quality Act, the Rulemaking Procedures do not need to list those exclusions. *See* NMSA 1978, § 74-6-4 (2009).

C. 20.1.6.7.P NMAC- The Department proposes to add a new subsection P to 20.1.6.7 NMAC to incorporate the requirements in the SRA that certain actions in the rulemaking proceedings require a public notice that the Commission has not previously contemplated. This is separate from the newspaper and New Mexico Register Notice currently required pursuant to 20.1.6.201 NMAC. The Department's proposed amendments require notice for some additional actions, but those actions do not require publication of notice in the New Mexico Register or a newspaper. *See e.g.* NMED Exhibit 1, 20.1.6.307 (requiring notice to the public upon agency action). For clarity, the Department proposes this definition since this process is used multiple times, particularly in the proposed 20.1.6.201.A, 20.1.6.204.C, 20.1.6.306.H, and 20.1.6.307.

NMED Exhibit 1. The proposed definition sets the steps required to provide to the public notice when required, and includes posting or sending the necessary rulemaking information:

- i. on the Commission's website;
- ii. on the New Mexico sunshine portal;
- iii. in the applicable field offices;
- iv. by email to persons who have participated in the rulemaking or have provided an email address to the Commission administrator;
- v. by written notice to persons who have provided a postal address to the Commission administrator;
and
- vi. to the New Mexico Legislative Council Service.

NMED Exhibit 1, 20.6.6.7.P.

D. 20.1.6.7.Q NMAC- The Department proposes adding three items to the definition of the record proper currently located at 20.1.6.7.P NMAC. NMED Exhibit 1, Section 20.1.6.7.Q. The Commission's Rulemaking Procedures already include many of the record requirements listed in the SRA, *compare* 20.1.6.7.P NMAC to NMSA 1978, Section 14-4-5.4(B), but the Department proposes adding five items to meet the SRA's requirements:

- i. A copy of all publications in the New Mexico Register relating to the proposed rule;
- ii. A copy of any technical information relied upon in formulating the final rule;
- iii. A copy of the full text of initial proposed rule and final adopted rule as well as the concise explanatory statement required to be filed with the State Records Administrator;
- iv. Any corrections made by the State Records Administrator pursuant to Section 14-4-3, NMSA 1978.

NMED Exhibit 1, Section 20.1.6.7.Q.

Additionally, the Department proposes to clarify the proposed 20.1.6.7.Q(9) NMAC by stating that all relevant materials the Commission receives during the public comment period will be part of the record proper, not just public statements. The transcript of proceedings is required by NMSA 1978, Section 14-4-

5.4(B)(3), but the transcript of proceedings is already included in the definition of the hearing record found at 20.1.6.7.K NMAC. These changes will match the requirements of Section 14-4-5.4, NMSA 1978 as well as the requirements of the Default Rules. *See* NMED Exhibit 5, Section 1.24.25.13.

E. 20.1.6.100.B NMAC- The Department proposes to change “impartial” to “equitable” to bring language into conformity with Section 14-4-5.3(B), NMSA 1978.

F. 20.1.6.105.A NMAC- The SRA requires posting of rulemaking information on the New Mexico Sunshine Portal, www.sunshineportalnm.com. NMSA 1978, §§ 14-4-2(E)(2) and 14-4-5.4(A). Currently, Commission proceedings and documents are posted on the Commission’s webpage at <https://www.env.nm.gov/wqcc/>. If the Commission adopts this proposed requirement, the Department will work with the Commission administrator to facilitate this process as the agency administratively attached to the commission. *See* NMSA 1978, § 74-6-3(F) (2007).

G. 20.1.6.105.B NMAC- The SRA, does not allow the administrator to charge for electronic copies; though the Commission administrator may charge a reasonable fee for providing any records in nonelectronic format. NMSA 1978, § 14-4-5.2(B) (2017). The proposed language conforms to the SRA prohibition, placing the same limits on the Commission administrator. The Default Rules incorporate NMSA 1978, Section 14-4-5.4 by reference. Thus, the proposed changes satisfy both the statute and the Default Rules.

H. 20.1.6.201 NMAC- This section focuses on the notice of proposed rulemaking. There are two categories of changes to this section, the content of the notice and the method of the notice. 20.1.6.201 focuses on the notice content; the Department addresses the changes to the notice method in NMED Exhibit 1, Section 20.1.6.7.P. The Default Rules adopt the SRA language regarding notice of proposed rulemaking. NMED Exhibit 5, Section 1.24.25.10. To comply with the SRA, the Department proposes the following:

- i. For clarification, the Department proposes to change the terminology to match the SRA, i.e. “give public notice of the hearing” to “provide to the public notice of the proposed rulemaking.” *Compare* NMED Exhibit 1, Section 20.1.6.201.A to NMSA 1978, § 14-4-5.2(A). While not significant, this change will avoid confusion as to the notice being addressed in this section.

- ii. The Department proposes removal of 20.1.6.201.C NMAC because the current requirement would be covered in the proposed 20.1.6.7.P which defines “provide to the public” to include written and email notice to the Commission administrator’s interested parties lists. The SRA requires notice at several points through the “provide to the public” requirement. NMSA 1978, §§ 14-4-5(C), 14-4-5.2(A), and 14-4-5.5. However, publication in the New Mexico Register is only required for the notice of proposed rulemaking, though the notice of proposed rulemaking must also meet the requirements of “provide to the public”. NMSA 1978, § 14-4-5.2(A). Additionally, the Water Quality Act only requires that notice of the hearing be published in the New Mexico Register and a newspaper of general circulation. NMSA 1978, § 74-6-6(C). Thus, the Department proposes that Section 201, notice of proposed rulemaking, explicitly require Register and newspaper publishing; listing the “provide to the public” requirement is duplicative.
- iii. The Department proposes to include the requirements for the notice of proposed rulemaking content in a new 20.1.6.201.C NMAC. Subsection 201.C adds the SRA required elements to the notice of proposed rulemaking while maintaining the Water Quality Act requirements. *Compare* NMED Exhibit 1, Section 20.1.6.201.C with NMSA 1978, §§ 14-4-5.2, 74-6-6(C).

I. 20.1.6.204 NMAC- The Department proposes to add subsection C to 20.1.6.204 NMAC to incorporate the requirement to notify the public of a change in the hearing date or the submission deadlines as required by NMSA 1978, Section 14-4-5.2(D) and the Default Rules, Section 1.24.25.10.C. As discussed, this notice is not the notice of proposed rulemaking and does not need to be published in the New Mexico Register or a newspaper of general circulation.

Additionally, the Default Rules correspond to the SRA requirements found in NMSA 1978, Section 14-4-5.3. NMED Exhibit 5, Section 1.24.25.11. The Department’s proposed amendments incorporate the same requirements, *see* NMED Exhibit 1, 20.1.6.204, with one exception. The current Rulemaking Procedures delineate between public comment and technical testimony while the Default Rules make no such distinction. 20.1.6.202 NMAC. This should not create conflict since the Commission’s distinction still allows for full participation, only providing methods on how to participate.

J. 20.1.6.300 NMAC- This section outlines the conduct of hearings. The Default Rules likewise include hearing requirements that include: that the agency must hold a public hearing; the agency may appoint a hearing officer; provisions for submitting or making public comment; requirement that the hearing be fair and equitable and designed to facilitate public comment and a clean rulemaking record; and accommodations for logistical considerations. NMED Exhibit 5, Section 1.24.25.12. The Commission's Rulemaking Procedures include similar accommodations. The Commission currently directs that a hearing be held to "...provide a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome." 20.1.6.300.B NMAC. The Commission provides more expansive direction than the Default Rules in terms of appointing a hearing officer and clearly defining the hearing officer's roles and authority. *Compare* 20.1.6.100 NMAC with NMED Exhibit 5, Section 1.24.25.12.B. The Commission likewise provides more expansive direction in terms of outlining the conduct of the hearing itself. *Compare* 20.1.6.203 to .207 and 20.1.6.300 with NMED Exhibit 5, Section 1.24.25.12.

K. 20.1.6.303 NMAC- The Department's proposal to allow the hearing officer to not require a verbatim transcript of the proceedings would provide discretion for instances where the rulemaking may not be particularly contentious or complex enough to require a court reporter. The SRA allows audio recordings if there is no verbatim transcript. NMSA 1978, § 14-4-5.4(B)(3).

L. 20.1.6.306 NMAC- The Department proposes the addition of subsection G to conform with NMSA 1978, Section 14-4-5(B), requiring state agencies to decide on proposed rules within two years of publication of the notice of proposed rulemaking in the New Mexico Register. The proposed language also states how the Commission may extend the rulemaking period in accordance with the SRA. NMED Exhibit 1, Section 20.1.306.G. The Department's proposed subsection H would conform to the SRA requirements for notice upon termination of a rulemaking found in NMSA 1978, Section 14-4-5(C).

M. 20.1.6.307 NMAC- The SRA requires that the Commission provide to the public notice of its decision as well as a concise explanatory statement supporting adoption of the rule. NMSA 1978, §§ 14-4-5(D) and 14-4-5.5. This goes beyond the current requirement of providing notice to just the parties to the rulemaking. 20.1.6.307 NMAC. Additionally, the SRA requires that the Commission file the adopted rule

with the State Records Administrator within 15 days of adoption. NMSA 1978, § 14-4-5(D). The SRA also requires the filing of a concise explanatory statement with the State Records Administrator supporting adoption of the rule. NMSA 1978, § 14-4-3(A). Finally, the SRA gives the State Records Administrator the authority to make minor, non-substantive changes to the rule after it is filed. NMSA 1978, § 14-4-3(D). While “minor, nonsubstantive changes” is not defined, there are requirements for the Commission administrator to meet should this happen. *Id.* The Default Rules mirror many of these requirements. *See* e.g. NMED Exhibit 5, Section 1.24.25.14.A. (requiring that an agency file an adopted rule with the State Records Administrator within 15 days of adoption); NMSA 1978, § 14-4-5(D). The Department proposes to adopt language conforming to these requirements, and the Department further proposes to define the date of adoption as the date of signature of the written decision to avoid confusion regarding deadlines. NMED Exhibit 1, Section 20.1.6.307. The Commission’s deliberative process is unique to its own requirements, and the Department proposes minimal amendments to bring this process into compliance with the SRA. NMED Exhibit 1, Section 20.1.6.306 to .307.

IV. CONCLUSION

Since the Commission’s Rulemaking Procedures are relatively new, the changes required by the SRA amendments are not too extensive for 20.1.6 NMAC. Adoption of the Department’s proposed amendments as provided in NMED Exhibit 1 will bring the Rulemaking Procedures into compliance with the SRA and parity with the Default Rules, and ensure that the Commission will be able to continue to conduct rulemaking with confidence that it is in compliance with state statutory law. Adoption of the Department’s proposed amendments will provide for fair and equitable public participation through adequate notice, opportunity for public comment and testimony in the hearing, access to the rulemaking record throughout the proceedings, and notice upon the completion of the rulemaking process. Therefore, the Department respectfully requests that the Commission adopted the proposed amendments, and the Department has attached a proposed statement of reasons for adoption of the amendments as NMED Exhibit 7 for the Commission’s review and consideration.

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AN ACT

RELATING TO RULES; CREATING REQUIREMENTS FOR PROPOSING,
ADOPTING, AMENDING OR REPEALING RULES; AMENDING AND ENACTING
SECTIONS OF THE STATE RULES ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 14-4-2 NMSA 1978 (being Laws 1967,
Chapter 275, Section 2, as amended) is amended to read:

"14-4-2. DEFINITIONS.--As used in the State Rules Act:

A. "agency" means any agency, board, commission,
department, institution or officer of the state government
except the judicial and legislative branches of the state
government;

B. "person" includes individuals, associations,
partnerships, companies, business trusts, political
subdivisions and corporations;

C. "proceeding" means a formal agency process or
procedure that is commenced or conducted pursuant to the
State Rules Act;

D. "proposed rule" means a rule that is provided
to the public by an agency for review and public comment
prior to its adoption, amendment or repeal, and for which
there is specific legal authority authorizing the proposed
rule;

E. "provide to the public" means for an agency to

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1 distribute rulemaking information by:

2 (1) posting it on the agency website, if
3 any;

4 (2) posting it on the sunshine portal;

5 (3) making it available in the agency's
6 district, field and regional offices, if any;

7 (4) sending it by electronic mail to persons
8 who have made a written request for notice from the agency of
9 announcements addressing the subject of the rulemaking
10 proceeding and who have provided an electronic mail address
11 to the agency;

12 (5) sending it by electronic mail to persons
13 who have participated in the rulemaking and who have provided
14 an electronic mail address to the agency;

15 (6) sending written notice that includes, at
16 a minimum, an internet and street address where the
17 information may be found to persons who provide a postal
18 address; and

19 (7) providing it to the New Mexico
20 legislative council for distribution to appropriate interim
21 and standing legislative committees;

22 F. "rule" means any rule, regulation, or standard,
23 including those that explicitly or implicitly implement or
24 interpret a federal or state legal mandate or other
25 applicable law and amendments thereto or repeals and renewals

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1 thereof, issued or promulgated by any agency and purporting
2 to affect one or more agencies besides the agency issuing the
3 rule or to affect persons not members or employees of the
4 issuing agency, including affecting persons served by the
5 agency. An order or decision or other document issued or
6 promulgated in connection with the disposition of any case or
7 agency decision upon a particular matter as applied to a
8 specific set of facts shall not be deemed such a rule, nor
9 shall it constitute specific adoption thereof by the agency.
10 "Rule" does not include rules relating to the management,
11 confinement, discipline or release of inmates of any penal or
12 charitable institution, the New Mexico boys' school, the
13 girls' welfare home or any hospital; rules made relating to
14 the management of any particular educational institution,
15 whether elementary or otherwise; or rules made relating to
16 admissions, discipline, supervision, expulsion or graduation
17 of students from any educational institution; and

18 G. "rulemaking" means the process for adoption of
19 a new rule or the amendment, readoption or repeal of an
20 existing rule."

21 SECTION 2. Section 14-4-3 NMSA 1978 (being Laws 1967,
22 Chapter 275, Section 3, as amended) is amended to read:

23 "14-4-3. FORMAT OF RULES--FILING--DISTRIBUTION.--

24 A. Each agency promulgating any rule shall place
25 the rule in the format and style required by rule of the

1 state records administrator and shall deliver the rule to the
2 state records administrator or the administrator's designee,
3 accompanied by the concise explanatory statement required by
4 the State Rules Act. The state records administrator or the
5 administrator's designee shall note thereon the date and hour
6 of filing.

7 B. The state records administrator or the
8 administrator's designee shall maintain a copy of the rule as
9 a permanent record open to public inspection during office
10 hours, on the website of the records center, published in a
11 timely manner in the New Mexico register and compiled into
12 the New Mexico Administrative Code.

13 C. At the time of filing, an agency may submit to
14 the state records administrator or the administrator's
15 designee a copy, for annotation with the date and hour of
16 filing, to be returned to the agency.

17 D. The state records administrator, after written
18 notification to the filing agency, may make minor,
19 nonsubstantive corrections in spelling, grammar and format in
20 filed rules. The state records administrator shall make a
21 record of the correction and shall deliver the record to the
22 filing agency and issuing authority within ten days of the
23 change. Within thirty days of receiving that state records
24 administrator's record of a correction, the agency shall
25 provide to the public notice of the correction in the same

1 manner as the agency used to give notice of the rulemaking
2 proceeding pursuant to Section 4 of this 2017 act."

3 SECTION 3. Section 14-4-5 NMSA 1978 (being Laws 1967,
4 Chapter 275, Section 6, as amended) is amended to read:

5 "14-4-5. TIME LIMIT ON ADOPTION OF A PROPOSED RULE--
6 FILING AND COMPLIANCE REQUIRED FOR VALIDITY.--

7 A. Except in the case of an emergency rule, no
8 rule shall be valid or enforceable until it is published in
9 the New Mexico register as provided by the State Rules Act.

10 B. An agency shall not adopt a rule until the
11 public comment period has ended. If the agency fails to take
12 action on a proposed rule within two years after the notice
13 of proposed rulemaking is published in the New Mexico
14 register, the rulemaking is automatically terminated unless
15 the agency takes action to extend the period. The agency may
16 extend the period of time for adopting the proposed rule for
17 an additional period of two years by filing a statement of
18 good cause for the extension in the rulemaking record, but it
19 shall provide for additional public participation, comments
20 and rule hearings prior to adopting the rule.

21 C. An agency may terminate a rulemaking at any
22 time by publishing a notice of termination in the New Mexico
23 register. If a rulemaking is terminated pursuant to this
24 section, the agency shall provide notice to the public.

25 D. Within fifteen days after adoption of a rule,

1 an agency shall file the adopted rule with the state records
2 administrator or the administrator's designee and shall
3 provide to the public the adopted rule. The state records
4 administrator or the administrator's designee shall publish
5 rules as soon as practicable after filing, but in no case
6 later than ninety days after the date of adoption of the
7 proposed rule. Unless a later date is otherwise provided by
8 law or in the rule, the effective date of a rule shall be the
9 date of publication in the New Mexico register.

10 E. A proposed rule shall not take effect unless it
11 is adopted and filed within the time limits set by this
12 section."

13 SECTION 4. A new section of the State Rules Act is
14 enacted to read:

15 "NOTICE OF PROPOSED RULEMAKING.--

16 A. Not later than thirty days before a public rule
17 hearing, the agency proposing the rule shall provide to the
18 public and publish in the New Mexico register a notice of
19 proposed rulemaking. The notice shall include:

20 (1) a summary of the full text of the
21 proposed rule;

22 (2) a short explanation of the purpose of
23 the proposed rule;

24 (3) a citation to the specific legal
25 authority authorizing the proposed rule and the adoption of

1 the rule;

2 (4) information on how a copy of the full
3 text of the proposed rule may be obtained;

4 (5) information on how a person may comment
5 on the proposed rule, where comments will be received and
6 when comments are due;

7 (6) information on where and when a public
8 rule hearing will be held and how a person may participate in
9 the hearing; and

10 (7) a citation to technical information, if
11 any, that served as a basis for the proposed rule, and
12 information on how the full text of the technical information
13 may be obtained.

14 B. An agency may charge a reasonable fee for
15 providing any records in nonelectronic form when provided to
16 a person pursuant to this section. An agency shall not
17 charge a fee for providing any records in electronic form
18 when provided to a person pursuant to this section.

19 C. An internet link providing free access to the
20 full text of the proposed rule shall be included on the
21 notice of proposed rulemaking.

22 D. If the agency changes the date of the public
23 rule hearing or the deadline for submitting comments as
24 stated in the notice, the agency shall provide notice to the
25 public of the change.

1 E. The state records administrator or the
2 administrator's designee shall timely publish the notice of
3 proposed rulemaking in the next publication of the New Mexico
4 register."

5 SECTION 5. A new section of the State Rules Act is
6 enacted to read:

7 "PUBLIC PARTICIPATION, COMMENTS AND RULE HEARINGS.--

8 A. The notice of proposed rulemaking shall specify
9 a public comment period of at least thirty days after
10 publication in the New Mexico register during which a person
11 may submit information and comment on the proposed rule.

12 The information or comment may be submitted in an electronic
13 or written format or at a public rule hearing pursuant to
14 Subsection B of this section. The agency shall consider all
15 information and comment on a proposed rule that is submitted
16 within the comment period.

17 B. At the public rule hearing, members of the
18 public shall be given a reasonable opportunity to submit
19 data, views or arguments orally or in writing. Each agency
20 shall determine, in accordance with governing statutory and
21 case law, the manner in which parties to the proceeding and
22 members of the public will be able to participate in public
23 hearings. All public hearings shall be conducted in a fair
24 and equitable manner. Except as otherwise provided by law,
25 an agency representative or hearing officer shall preside

1 over a public rule hearing.

2 C. The public rule hearing shall be open to the
3 public and be recorded."

4 SECTION 6. A new section of the State Rules Act is
5 enacted to read:

6 "AGENCY RECORD IN RULEMAKING PROCEEDING.--

7 A. An agency shall maintain a rulemaking record
8 for each rule it proposes to adopt. The record and materials
9 incorporated by reference in the proposed rule shall be
10 readily available for public inspection in the central office
11 of the agency and available for public display on the state
12 sunshine portal. If an agency determines that any part of
13 the rulemaking record cannot be practicably displayed or is
14 inappropriate for public display on the sunshine portal, the
15 agency shall describe that part of the record, shall note on
16 the sunshine portal that the part of the record is not
17 displayed and shall provide instructions for accessing or
18 inspecting that part of the record.

19 B. A rulemaking record shall contain:

20 (1) a copy of all publications in the New
21 Mexico register relating to the proposed rule;

22 (2) a copy of any technical information that
23 was relied upon in formulating the final rule;

24 (3) any official transcript of a public rule
25 hearing or, if not transcribed, any audio recording or

1 verbatim transcript of the hearing, and any memoranda
2 summarizing the contents of the hearing prepared by the
3 hearing officer or agency official who presided over the
4 hearing;

5 (4) a copy of all comments and other
6 material received by the agency during the public comment
7 period and at the public hearing;

8 (5) a copy of the full text of the initial
9 proposed rule and the full text of the final adopted rule and
10 the concise explanatory statement filed with the state
11 records administrator or the administrator's designee; and

12 (6) any corrections made by the state
13 records administrator pursuant to Section 14-4-3 NMSA 1978."

14 SECTION 7. A new section of the State Rules Act is
15 enacted to read:

16 "CONCISE EXPLANATORY STATEMENT.--At the time it adopts a
17 rule, an agency shall provide to the public a concise
18 explanatory statement containing:

- 19 A. the date the agency adopted the rule;
20 B. a reference to the specific statutory or other
21 authority authorizing the rule; and
22 C. any findings required by a provision of law for
23 adoption of the rule."

24 SECTION 8. A new section of the State Rules Act is
25 enacted to read:

1 "EMERGENCY RULE.--

2 A. An agency shall comply with the rulemaking
3 procedures of the State Rules Act unless the agency finds
4 that the time required to complete the procedures would:

5 (1) cause an imminent peril to the public
6 health, safety or welfare;

7 (2) cause the unanticipated loss of funding
8 for an agency program; or

9 (3) place the agency in violation of federal
10 law.

11 B. The agency shall provide to the public a record
12 of any finding pursuant to Subsection A of this section and a
13 detailed justification for that finding before issuing an
14 emergency rule. The record shall include a statement that
15 the emergency rule is temporary. After such record has been
16 provided to the public, the agency may issue the emergency
17 rule immediately without a public rule hearing or with any
18 abbreviated notice and hearing that it finds practicable.

19 C. When an agency makes a finding pursuant to
20 Subsection A of this section, the agency shall follow the
21 provisions of this section in addition to any more specific
22 requirements in statute that pertain to the agency regarding
23 promulgating emergency or interim rules.

24 D. Emergency rules may take effect immediately
25 upon filing with the state records administrator or the

1 administrator's designee or at a later date specified in the
2 emergency rule. Emergency rules shall be published in the
3 New Mexico register.

4 E. No emergency rule shall permanently amend or
5 repeal an existing rule. An emergency rule shall remain in
6 effect until a permanent rule takes effect under the normal
7 rulemaking process. If no permanent rule is adopted within
8 one hundred eighty days from the effective date of the
9 emergency rule, the emergency rule shall expire and may not
10 be readopted as an emergency rule. If an expired emergency
11 rule temporarily amended or repealed an existing rule, the
12 rule shall revert to what it would have been had the
13 emergency rule not been issued."

14 SECTION 9. A new section of the State Rules Act is
15 enacted to read:

16 "CONFLICTS BETWEEN RULE AND STATUTE--VARIANCE BETWEEN
17 PROPOSED AND FINAL ACTION.--

18 A. No rule is valid or enforceable if it conflicts
19 with statute. A conflict between a rule and a statute is
20 resolved in favor of the statute.

21 B. A word or phrase that is defined in an
22 applicable statute should not be defined in rule. A conflict
23 between a definition that appears in a rule and in an
24 applicable statute is resolved in favor of the statute."

25 SECTION 10. A new section of the State Rules Act is

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enacted to read:

"PROCEDURAL RULES.--No later than January 1, 2018, the attorney general shall adopt default procedural rules for public rule hearings for use by agencies that have not adopted their own procedural rules consistent with the State Rules Act. Each agency may adopt its own procedural rules, or continue in effect existing rules, which shall provide at least as much opportunity for participation by parties and members of the public as is provided in the procedural rules adopted by the attorney general. An agency that adopts its own procedural rules shall send a copy of those procedural rules to the attorney general and shall maintain those procedural rules on the agency's website."

SECTION 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017. _____

NOTICE OF TERMINATION OF RULEMAKING

The New Mexico Office of the Attorney General (OAG) is providing notice to terminate the public rule hearing scheduled on Monday, December 4, 2017 at 9:30 a.m., in accordance with Subsection C of Section 14-4-5 NMSA 1978. The proposed new rule, 1.24.25 NMAC is being terminated.

NOTICE OF RULEMAKING

The New Mexico Office of the Attorney General is proposing to adopt a new rule, 1.24.25 NMAC, Default Procedural Rule for Rulemaking, in accordance with Section 14-4-5.8 NMSA 1978 of the State Rules Act, that directs the Attorney General to adopt default procedural rules for public rules hearings for use by agencies that have not adopted their own procedural rules. The proposed rule is intended to comport with House Bill 58 (Laws 2017, Chapter 137), and addresses the initiation of and public participation in the rulemaking process, as well as the conduct and record of the public hearing. Copies of the new rule (printed below) are available at the New Mexico Office of the Attorney General, 408 Galisteo Street, Santa Fe, NM 87501 and on the website at, <http://www.nmag.gov/>.

The Open Government Division of the Office of the Attorney General currently is accepting public comment on the proposed new rule. Please submit written comments on the proposed changes to P. O. Drawer 1508, Santa Fe, NM 87504-1508 or Renee K. Romero via email at romero@nmag.gov by January 18, 2018.

The Office of the Attorney General will hear public comment and consider adoption of the proposed new rule at a rule hearing on Friday, January 19, 2018, at 9:00 a. m., Toney Anaya Building, Rio Grande Conference Room, 2nd Floor, 2550 Cerrillos Road, Santa Fe, New Mexico.

If you are an individual with a disability who is in need of reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact: Renee K. Romero at romero@nmag.gov or 505-490-4861.

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 24 RULES
PART 25 DEFAULT PROCEDURAL RULE FOR RULEMAKING

1.24.25.1 ISSUING AGENCY: New Mexico Office of the Attorney General, 408 Galisteo Street, Santa Fe, NM 87501.
[1.24.25.1 NMAC - N, 01/01/2018]

1.24.25.2 SCOPE: State agencies that have not adopted their own procedural rules consistent with the State Rules Act and agencies that have expressly incorporated this rule by reference.
[1.24.25.2 NMAC - N, 01/01/2018]

1.24.25.3 STATUTORY AUTHORITY: Section 14-4-5.8 NMSA 1978.
[1.24.25.3 NMAC - N, 01/01/2018]

1.24.25.4 DURATION: Permanent.
[1.24.25.4 NMAC - N, 01/01/2018]

1.24.25.5 EFFECTIVE DATE: January 1, 2018 unless a later date is cited at the end of a section.
[1.24.25.5 NMAC - N, 01/01/2018]

1.24.25.6 OBJECTIVE: To provide default procedural rules for rulemaking and public rule hearings for use by agencies that have not adopted their own procedural rules consistent with the State Rules Act, and to facilitate public engagement with the administrative rulemaking process in a transparent, organized, and fair manner.
[1.24.25.6 NMAC - N, 01/01/2018]

1.24.25.7 DEFINITIONS: This rule adopts the definitions found in Section 14-4-2 NMSA 1978.
[1.24.25.7 NMAC - N, 01/01/2018]

1.24.25.8 AGENCY ADOPTION OF PROCEDURAL RULES:

- A. Agencies that have not adopted their own procedural rules consistent with the State Rules Act shall apply these default rules, until such time as they have adopted their own rules.
- B. Agencies may adopt these default rules, in whole or in part as their own, or continue to use their existing rules, so long as those rules satisfy the requirements of the State Rules Act.
- C. Agencies that adopt their own rules must submit a copy to the office of the attorney general within 30 calendar days of adoption, and post a copy of those rules on the agency's website, if one is maintained by the agency.

[1.24.25.15 NMAC - N, 01/01/2018]

1.24.25.9 INITIATION OF THE RULEMAKING PROCESS; PETITIONS:

- A. The rulemaking process for purposes of this rule may be initiated by either of the following:
- (1) when a notice for a rule hearing is publicly posted pursuant to this rule; or
 - (2) if authorized by law or practice of the agency, a petition for rulemaking is filed with the agency.
- B. A petition for rulemaking may be filed by the agency or, if authorized by law of the agency, by a third party outside of the agency. This rule does not require an agency to accept third party petitions for rule making.
- C. A petition for rulemaking shall be made in writing and include an explanation of the purpose or statement of reasons for the proposed rule and a citation to the legal authority authorizing the agency to adopt the rule. A petition shall include the proposed rule in underline and strikethrough format, with new language underlined and any deletions to be included with a strikethrough line across the text. A petition shall also include a copy of or citation to technical information, if any, that serves as the basis for the proposed rule.
- D. If a petition is initiated internally, the agency shall consider whether to grant the petition and proceed with the rulemaking process by posting public notice, publishing the proposed rule for comment, and setting a public rule hearing.
- E. If a petition is filed by a third party, and such practice is authorized by the agency, the agency shall, within 120 calendar days of receipt, consider the petition and make a determination whether to grant or deny the petition. The agency's decision to deny the petition is not subject to judicial review unless otherwise provided by law.
- F. If the agency is a public body subject to the Open Meetings Act, the decision to grant a petition, or the decision to initiate the rulemaking process by posting a notice for rule hearing, must be an action taken by vote of the public body in open session.
- G. Once the agency initiates the rulemaking process, the agency must maintain a record as prescribed in Section 14-4-5.4 NMSA 1978.

[1.24.25.8 NMAC - N, 01/01/2018]

1.24.25.10 RULEMAKING NOTICE:

- A. The agency shall provide to the public notice of the proposed rulemaking at least 30 calendar days before a public hearing by:
- (1) posting it on the agency website, if one is maintained by the agency;
 - (2) posting it on the sunshine portal;
 - (3) making it available by posting it in a publicly visible location in the agency's district, field and regional offices, if any;
 - (4) sending it by electronic mail to persons who have made a request for notice from the agency of rulemaking proceedings and who have provided an electronic mail address to the agency;
 - (5) sending it by electronic mail to persons who have participated in the rulemaking, by petition or other act, and who have provided an electronic mail address to the agency;
 - (6) sending it by mail to persons who have made a written request for mailed notice from the agency of rulemaking proceedings and who have provided a postal address to the agency;
 - (7) providing it to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees; and
 - (8) publish the notice in the New Mexico Register and in a newspaper of general circulation in the state.

B. The notice shall include:

- (1) a concise summary of the full text of the proposed rule;
- (2) a short explanation of the purpose of the proposed rule;
- (3) a citation to the specific legal authority authorizing the adoption of the proposed rule;
- (4) information on how and where a copy of the full text of the proposed rule may be

obtained;

- (5) an internet link or web address providing free access to the full text of the proposed rule;
- (6) information on how a person may comment on the proposed rule, where written comments will be received, and when comments are due;
- (7) information on where and when a public rule hearing will be held and how a person may participate in the hearing and provide public comment; and
- (8) a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained.

C. If the agency changes the date of the public rule hearing or shortens the deadline for submitting comments as stated in the notice, the agency shall provide notice to the public of the change as provided above.
[1.24.25.9 NMAC - N, 01/01/2018]

1.24.25.11 WRITTEN COMMENT PERIOD:

A. The public comment period must be at least 30 calendar days and shall commence upon publication of the rulemaking notice in the New Mexico register, unless a later date is specified in the notice. The agency shall not adopt a proposed rule or hold a rulemaking hearing before the end of the public comment period.

B. A person may submit, by mail or electronic form, written comments on a proposed rule, and those comments shall be made part of the record. Written comments may be submitted through the end of the public comment period.

C. The agency may decide before, during, or after the public rule hearing to extend the comment period by providing public notice, to include:

- (1) posting it on the agency website, if one is maintained by the agency;
- (2) making it available by posting notice in a publicly visible location in the agency's district, field and region offices, if any;
- (3) sending notice by electronic mail to persons who have participated in the rulemaking proceeding or made a written request for notice of rulemaking proceedings and provided an electronic mail address to the agency; and
- (4) sending notice by regular mail to persons who have participated in the rulemaking proceeding or made a written request for notice of rulemaking proceeding and provided a postal address and specifically requested notice by regular mail;

D. The agency shall post all written comments on its website, if one is maintained by the agency, as soon as practicable upon receipt, but no less than 7 calendar days prior to the rule hearing to allow for public review. All written comments received by the agency shall be available for public inspection.
[1.24.25.10 NMAC - N, 01/01/2018]

1.24.25.12 PUBLIC HEARING:

A. Prior to adopting a proposed rule, the agency must hold a public rule hearing. The purpose of the hearing is to provide all interested persons a reasonable opportunity to submit data, views or arguments orally or in writing on the proposed rule. The agency, at its sole discretion, may determine whether more than one hearing is necessary.

B. The agency may act as the hearing officer or designate a representative or hearing officer to preside over the public rule hearing. The agency representative or hearing officer may ask questions and provide comments for clarification purposes only, and should refrain from providing opinions or engaging in discussion regarding the merits of the proposed rule or any public comment presented.

C. At the start of the hearing, any pre-filed exhibits should be introduced and admitted into the rulemaking record. Pre-filed exhibits should include the petition, if filed; copies of the public notices of the rulemaking, including any lists of individuals to whom notice was mailed or sent electronically; copies of the proposed rule in underline and strikethrough format; and copies of any written comment submitted during the comment period prior to the rule hearing. The agency representative or hearing officer will allow the petitioner or agency representative an opportunity to present the petition, if applicable. Any written comments or other documents introduced during the hearing should be admitted into the record after being marked as an exhibit.

D. Individuals wishing to provide public comment or submit information at the rule hearing must state their name and any relevant affiliation for the record and be recognized before presenting by the agency representative or hearing officer. Public comment shall not be taken under oath unless required by separate rule of the agency. Any individual who provides information or public comment at the hearing may be questioned by the agency representative or hearing officer, or by other interested persons at the hearing.

E. The rule hearing shall be conducted in a fair and equitable manner. The agency representative or hearing officer may determine the format in which the hearing is conducted (e.g. introduction of each part or section one at a time for comment), but the hearing should be conducted in a simple and organized manner that facilitates public comment and a clear rulemaking record. The rules of evidence do not apply to public rule hearings and the agency representative or hearing officer may, in the interest of efficiency, exclude or limit comment that is deemed irrelevant, redundant, or unduly repetitious.

F. The agency must hold the hearing in a venue that reasonably accommodates all interested persons who wish to participate or observe, and appropriate audio equipment should be secured to ensure all in attendance can hear the proceeding and be heard when presenting comment. Reasonable efforts shall be made to accommodate the use of audio and video recording devices. Public rule hearings shall be open to the public, but are not subject to the New Mexico Open Meetings Act, Section 10-15-1 NMSA 1978, unless the hearing is conducted by a quorum of a public body.

[1.24.25.11 NMAC - N, 01/01/2018]

1.24.25.13 RULEMAKING RECORD AND ADOPTION OF RULE

A. The agency shall maintain a record of the rulemaking proceeding as required in Section 14-4-5.4 NMSA 1978, and any written comment, document, or other exhibit entered into the record during the rule hearing shall be labeled clearly.

B. If the rule hearing is conducted by an agency representative or hearing officer, the complete rulemaking record, including any memoranda summarizing the contents of the hearing, if written, shall be compiled and forwarded to the agency head or members of the board or commission with sufficient time to review. The agency head or members of the board or commission shall thoroughly familiarize themselves with the rulemaking record before rendering a decision on the proposed rule.

C. The agency may adopt, amend or reject the proposed rule. Any amendments to the proposed rule must fall within the scope of the current rulemaking. Amendments that exceed the scope of the noticed rulemaking may require a new rulemaking process with a rulemaking notice, comment period, and public rule hearing so that the public has an adequate opportunity to review and comment on the changes.

D. In instances where the agency is a board or commission, the consideration and adoption of the proposed rule shall occur during a public meeting. The adoption date of the proposed rule shall be the date of the public meeting at which the vote occurred, unless the board or commission directs that a written order be issued, in which case the adoption date shall be the date the written order is signed. The board or commission may provide reasoning for the adopted rule through comments or discussion during its meeting, or by providing a statement of reasons in a written order.

E. In instances where the agency is a department or any of its divisions, the adoption of the proposed rule shall occur through the issuance of a written order by the department head, which shall include a statement of reasons. The adoption date of the proposed rule shall be the date the written order is signed.

F. The agency shall provide a concise explanatory statement that contains the date of adoption; the specific legal authority authorizing the rule; and any findings required by law for adoption of the rule. The explanatory statement may be included in an order adopting the rule or provided separately. The explanatory statement shall be posted on the agency website, if one is maintained by the agency, and sent to any persons entitled to notice of the rulemaking within 15 calendar days after the date of adoption.

[1.24.25.12 NMAC - N, 01/01/2018]

1.24.25.14 FILING AND PUBLICATION; EFFECTIVE DATE:

A. Within 15 calendar days after the date of adoption of a rule, the agency shall file the adopted rule with the state records center and shall provide to the public the adopted rule. The agency shall post the adopted rule on its website, if one is maintained by the agency, and send the adopted rule to any persons entitled to notice of the rulemaking.

B. Unless provided for by law, no rule shall be valid or enforceable until it is filed with the state records center and published in the New Mexico register. Unless another date is provided in the written order, the effective date of the rule shall be the date of publication in the New Mexico register.

[1.24.25.13 NMAC - N, 01/01/2018]

1.24.25.15 EMERGENCY RULES:

A. The agency shall comply with the rulemaking procedures herein and the State Rules Act, unless the agency finds that the time required to complete the procedures would:

- (1) cause an imminent peril to the public health, safety or welfare;
- (2) cause the unanticipated loss of funding for the agency program; or
- (3) place the agency in violation of federal law.

B. The agency shall provide to the public a record of any finding pursuant to Subsection A of this Section and a detailed justification for that finding before issuing an emergency rule. The record shall include a statement that the emergency rule is temporary. After such record has been provided to the public, the agency may issue the emergency rule immediately without a public rule hearing or with any abbreviated notice and hearing that it finds practicable. If the agency is a board or commission, the adoption must occur during a public meeting pursuant to the requirements of the Open Meetings Act.

C. The emergency rule shall be published with the New Mexico register within 30 calendar days of the rule becoming effective.

D. When the agency makes a finding pursuant to Subsection A of this Section, the agency shall follow the provisions of this section in addition to any more specific requirements in statute that pertain to the agency regarding promulgating emergency or interim rules.

E. Emergency rules may take effect immediately upon filing with the state records administrator or the administrator's designee or at a later date specified in the emergency rule. Emergency rules shall be published in the New Mexico register.

F. No emergency rule shall permanently amend or repeal an existing rule. An emergency rule shall remain in effect until a permanent rule takes effect under the normal rulemaking process. If no permanent rule is adopted within 180 calendar days from the effective date of the emergency rule, the emergency rule shall expire and may not be readopted as an emergency rule. If an expired emergency rule temporarily amended or repealed an existing rule, the rule shall revert to what it would have been had the emergency rule not been issued. [1.24.25.14 NMAC - N, 01/01/2018]

HISTORY OF 1.24.25 NMAC: [RESERVED]



SUSANA MARTINEZ
Governor

JOHN A. SANCHEZ
Lt. Governor

NEW MEXICO ENVIRONMENT DEPARTMENT

Harold Runnels Building
1190 Saint Francis Drive, PO Box 5469
Santa Fe, NM 87502-5469
Phone (505) 827-2990 Fax (505) 827-1628
www.env.nm.gov



BUTCH TONGATE
Cabinet Secretary

J. C. BORREGO
Deputy Secretary

October 31, 2017

Small Business Regulatory Advisory Commission
c/o Deputy Secretary Barbara Brazil
New Mexico Economic Development Department
1100 St. Francis Drive
Santa Fe, New Mexico 87501

Re: Proposed Amendments to 20.1.6 NMAC – *Rulemaking Procedures*

Dear Deputy Secretary Brazil,

The New Mexico Environment Department (“Department”) hereby provides notice to the Small Business Regulatory Advisory Commission, pursuant to the Small Business Regulatory Relief Act (“Act”), NMSA 1978, Sections 14-4A-1 *et seq.* that the Department submitted a petition to the New Mexico Water Quality Control Commission (“WQCC”) to amend the WQCC’s rulemaking procedures found at 20.1.6 NMAC.

In 2017, the New Mexico Legislature amended the State Rules Act, NMSA 1978, Sections 14-4-1 to -11, to address public participation in the rulemaking process. Those amendments establish requirements for agency rulemaking notices, post-hearing steps, and maintenance of and access to the rulemaking record. In particular, agencies must now publish a Notice of Proposed Rulemaking in the New Mexico Register and provide that notice to the public through specific, additional notice requirements. Agencies also face a new timeline for action after publication of the Notice of Proposed Rulemaking and adoption of a final rule.

The Legislature’s 2017 amendments further require the New Mexico Attorney General to adopt default rulemaking procedures incorporating the public participation requirements of the State Rules Act no later than January 1, 2018. However, state agencies may adopt their own or continue existing procedures that provide at least as much opportunity for public participation as the Attorney General’s rules. NMSA, 1978, § 14-4-5.8 NMAC. The Department proposes to amend 20.1.6 NMAC to bring it into compliance with the State Rules Act because the Water Quality Act, NMSA 1978, Sections 74-6-1 to -17, establishes specific rulemaking requirements for the WQCC that are not contemplated by the State Rules Act. *Compare e.g.* NMSA 1978, § 74-6-6(C) with NMSA 1978, § 14-4-2(E). It is further unlikely that the Attorney General’s default rules will be able to fully comply with the Water Quality Act while remaining generally applicable for a diverse group of executive agencies.

Pursuant to Section 14-4A-4, NMSA 1978, the Department does not anticipate that the proposed regulatory amendments will have any adverse effect on small business. Indeed, the Department anticipates that adoption of the proposed amendments will reduce confusion for petitioners before the WQCC by compiling all applicable provisions in one location. The WQCC’s current rulemaking procedures are designed to

encourage participation in rulemakings, 20.1.6.6 NMAC, but adoption of the State Rules Act amendments will further facilitate public participation.

The WQCC will hold a hearing on the proposed regulatory amendments (Docket No. WQCC 17-06(R)) currently scheduled for Tuesday, January 9, 2018. For details regarding the time and location of the hearing please check the WQCC website at: <https://www.env.nm.gov/wqcc/>. If you require further information about these proposed regulatory amendments, please call me at (505) 222-9554.

Sincerely,

/s/ Christopher Atencio
Christopher N. Atencio, Esq.
Assistant General Counsel
New Mexico Environment Department

cc: Jennifer Hower, General Counsel
New Mexico Environment Department

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

**IN THE MATTER OF PROPOSED
REVISIONS TO THE RULEMAKING
RULES FOR THE WATER QUALITY
CONTROL COMMISSION, 20.1.6 NMAC**

No. WQCC 17- 06(R)

New Mexico Environment Department

Petitioner.

ORDER AND STATEMENT OF REASONS FOR AMENDMENT OF REGULATIONS

This matter comes before the New Mexico Water Quality Control Commission (“Commission”) upon a petition filed by the New Mexico Environment Department (“Department”) proposing amendments to the Commission’s Rulemaking Procedures codified at Title 20, Chapter 1, Part 6 of the New Mexico Administrative Code (20.1.6 NMAC).

The Commission held a public hearing in this matter on Tuesday, January 9, 2018, at Mabry Hall in the Jerry Apodaca Building, 300 Don Gaspar, Santa Fe, New Mexico. The public notice for the hearing was published in the New Mexico Register on October 31, 2017. NMED Exhibit 8. The public notice was also published in the Albuquerque Journal on November 9, 2017. NMED Exhibit 9. The remaining public notice requirements were met pursuant to 20.1.6.201 NMAC. The Department also provided notice to the Small Business Regulatory Advisory Commission pursuant to the Small Business Regulatory Relief Act, NMSA 1978, Sections 14-4A-1 to -6. (Laws 2005, ch. 244, § 5) NMED Exhibit 6.

At the public hearing, the Commission heard technical testimony from the Department. No other party entered an entry of appearance in this matter. On January 9, 2018, the Commission, having familiarized itself with the record and the Department’s technical testimony, deliberated and voted to adopt the Department’s proposed amendments to 20.1.6 NMAC by an affirmative vote of ___ to ___ for the following reasons:

1. Pursuant to NMSA 1978, Sections 14-4-5.8, 74-6-4(E) (2009), and 74-6-6 (1993), the Commission has the authority to adopt procedural rules to govern rulemakings.
2. The purpose of 20.1.6 NMAC (“Rulemaking Procedures”) is to standardize the procedures used in rulemaking proceedings before the Commission, to encourage participation in the hearings conducted by the Commission for the promulgation of regulations; to make possible the effective presentation of the evidence and points of view of the parties and members of the general public; to allow all interested persons a reasonable opportunity to submit data; views, or arguments orally or in writing; and to assure that Commission hearings are conducted in a fair and equitable manner. 20.1.6.6 NMAC.
3. In 2017, the New Mexico Legislature passed House Bill 58 (“HB58”) addressing public participation in the rulemaking process. 2017 N.M. Laws, ch. 137 § 3. NMED Exhibit 4.
4. HB58’s amendments to the State Rules Act, NMSA 1978, Sections 14-4-1 to -11 (“SRA”), establish requirements for executive agency rulemaking notices, post-hearing steps, and maintenance of and access to the rulemaking record. NMED Exhibit 4. The SRA requires agencies to publish a Notice of Proposed Rulemaking in the New Mexico Register and provide that notice to the public through specific, additional notice requirements. NMSA 1978, § 14-4-5.2 (2017). 4. Additionally, the SRA establishes timelines for agency action after publication of the Notice of Proposed Rulemaking and adoption of a final rule. NMSA 1978, § 14-4-5 (2017).
5. The SRA also requires the New Mexico Attorney General to adopt default rulemaking procedures. NMSA 1978, § 14-4-5.8 (2017). Accordingly, the New Mexico Attorney General (“Attorney General”) has proposed default procedural rules. NMED Exhibit 5 (“Default Rules”).
6. However, the SRA allows agencies to adopt their own or continue existing procedures that provide at least as much opportunity for public participation as the Attorney General’s rules. *Id.*
7. The Water Quality Act establishes specific rulemaking requirements for the Commission that are not contemplated by the State Rules Act. NMED Exhibit 3, pg. 3; *compare e.g.* NMSA 1978, § 74-6-6(C) (1993) with NMSA 1978, § 14-4-2(E) (2017). It is further unlikely that any default rules promulgated by

the Attorney General will be able to fully comply with the Water Quality Act while remaining generally applicable for a diverse group of executive agencies. Petition, NMED Exhibit 1.

8. The Commission heard technical testimony from Jason Wallace, Esq. regarding the Department's proposed changes at the January 9, 2018, public hearing. The Commission found Mr. Wallace to be qualified to provide expert technical testimony on this matter.

9. Mr. Wallace provided a step-by-step review of the Department's proposed changes to the Rulemaking Procedures in NMED Exhibit 3, and the Commission finds:

- a. Adding citation to the SRA for authority for the Rulemaking Procedures, in part, is appropriate. NMED Exhibit 3, pg. 4; NMSA 1978, § 14-4-5.8.
- b. Mr. Wallace compared the definitions in the current Rulemaking Procedures with the SRA and the Default Rules. *See e.g.* NMED Exhibit 3, pg. 4 (comparing the definitions of "person", "providing to the public", and "rule" with the SRA and the Default Rules). The proposed changes to 20.1.6.7 NMAC are comparable to the SRA and the Default Rules, and adoption of the proposed definitions will provide at least as much opportunity for public participation as the SRA or Default Rules.
- c. Adoption of the proposed 20.1.6.7.P NMAC is appropriate and necessary to facilitate providing notice to the public the proposed 20.1.6.201.A, 20.1.6.204.C, 20.1.6.306.H, and 20.1.6.307 NMAC. NMED Exhibit 3, pp. 5-6. Further, adoption of this method of notice will provide for at least as much public participation as the SRA or the Default Rules. *Id.*; NMSA 1978, § 14-4-2(E); NMED Exhibit 5, Section 1.24.25.10.
- d. The Department's proposed 20.1.6.7.Q NMAC will include the necessary items in the record proper for compliance with the SRA. NMED Exhibit 3, pp. 6-7; NMSA 1978, § 14-4-5.4; NMED Exhibit 5, Section 1.24.25.13.
- e. Changing "impartial" to "equitable" in 20.1.6.100.B NMAC will ensure compliance with the SRA by using the same language as the SRA. NMED Exhibit 3, pg. 7; NMSA 1978, § 14-4-5.3(B).
- f. Posting of rulemaking information on the New Mexico Sunshine Portal is required by the SRA and the Default Rules. NMED, §§ 14-4-2(E)(2) and 14-4-5.4(A); NMED Exhibit 5, Section

- 1.24.25.10.A(2). The proposed amendments will properly incorporate this requirement into the Rulemaking Procedures. NMED Exhibit 3, pg. 7.
- g. The proposed amendments to 20.1.6.105.B NMAC will properly incorporate the limitations and requirements for providing records to the public on the Commission Administrator. NMED Exhibit 3, pg. 7; NMSA 1978, § 14-4-5.2(B).
 - h. The Commission's current requirements for public notice of a rulemaking hearing in 20.1.6.201 NMAC provide for public participation in the rulemaking process, but addition of the Department's proposed changes will include the necessary items to ensure that the Commission's notice of proposed rulemaking requirements provides for at least as much public participation as the SRA and Default Rules. NMED Exhibit 3, pp. 7-8; NMSA 1978, § 14-4-5.2.
 - i. The proposed amendments to 20.1.6.204 NMAC will provide for more public participation by requiring notice when there is a change in the hearing date or submission deadlines. NMED Exhibit 3, p. 8; NMSA 1978, § 14-4-5.2(D). Additionally, the Commission's current requirements for providing public comment and submittal of a notice to present technical testimony provide for at least as much public participation as the SRA or Default Rules by allowing for full and orderly participation. NMED Exhibit 3, pp. 8-9; NMSA 1978, § 14-4-5.3; NMED Exhibit 5, Section 1.24.25.11.
 - j. The current Rulemaking Procedures in 20.1.6.300 NMAC provide for at least as much public participation as the SRA or the Default Rules. As Mr. Wallace testified, the Rulemaking Procedures provide similar accommodations for public participation through appointment of a hearing officer, submitting public comment, and requiring a fair and equitable hearing. NMED Exhibit 3, pg. 9. The Commission further finds that it is necessary to maintain the current hearing procedures in order to facilitate the submittal of technical testimony in its rulemaking hearings.
 - k. Given the direction in the SRA, NMSA 1978, Section 14-4-5.4(B)(3), and consistent with the Water Quality Act, it is appropriate to give the hearing officer the discretion to allow an audio recording

rather than a verbatim transcript in appropriate rulemaking settings. NMED Exhibit 3, pg. 9; NMSA 1978, § 74-6-6; 20.1.6.303 NMAC.

- l. The proposed language for 20.1.6.306.G NMAC appropriately incorporates the SRA requirement to decide on a proposed rule within two years of publication of the notice of proposed rulemaking as well as termination of a rulemaking proceeding. NMED Exhibit 3, pg. 9; NMSA 1978, §§ 14-4-5(B) and (C).
 - m. The proposed language for post-hearing requirements for 20.1.6.307 NMAC appropriately incorporates the SRA requirements for providing public notice of the Commission's decision, filing with the State Records Administrator within 15 days, and submittal of a concise explanatory statement for adoption of the proposed rule. NMED Exhibit 3, pg. 10; NMSA 1978, §§ 14-4-3(A), 14-4-5(D), and 14-4-5.5. The Commission further finds that the proposed language retains the necessary procedural steps for compliance with both the SRA and the Water Quality Act, and that it is appropriate to set the date of adoption for signature of the order adopting the proposed rule. The proposed language provides at least as much opportunity for public participation as the SRA and the Default Rules. NMED Exhibit 3, pp. 9-10; NMED Exhibit 5, Sections 1.24.25.13(F) and 1.24.25.14
10. While 20.1.6 NMAC states that governing law controls over the Commission's Rulemaking Procedures, 20.1.6.2 NMAC, adoption of the proposed amendments will reduce confusion for petitioners before the Commission by compiling all applicable provisions in one location.
 11. The Commission's Rulemaking Procedures are designed to encourage participation in rulemakings, 20.1.6.6 NMAC, but adoption of the HB58-based amendments will further facilitate public participation.
 12. Due to procedural considerations, 20.1.6 NMAC is to be repealed, and the amendments discussed above are to be incorporated into a replacement 20.1.6 NMAC.

ORDER

By an affirmative vote of ___ to __, the proposed changes to 20.1.6 NMAC were approved by the Commission. Title 20, Chapter 1, Part 6 of the New Mexico Administrative Code is hereby repealed, and replaced with the rule indicated in Attachment A with any appropriate corrections of formatting or other changes necessary to file these rules with the New Mexico State Records Center. The regulatory change as described in this Order is hereby adopted, to be effective 30 days after publishing in the New Mexico Register.

Larry Dominguez, Chair
New Mexico Water Quality Control Commission

Dated

NOTICE OF PUBLIC HEARING TO AMEND 20.1.6 NMAC, RULEMAKING PROCEDURES FOR THE WATER QUALITY CONTROL COMMISSION

The New Mexico Water Quality Control Commission (“Commission” or “WQCC”) will hold a public hearing beginning at 9:00 a.m. on Tuesday, January 9, 2018, and continuing thereafter as necessary at Mabry Hall in the Jerry Apodaca Building, 300 Don Gaspar, Santa Fe, New Mexico. The hearing location may change prior to the hearing date, and those interested in attending should visit the WQCC website: <http://www.env.nm.gov/wqcc> prior to the hearing. The purpose of the hearing is to consider amendments to the Rulemaking Procedures for the Commission, 20.1.6 NMAC (“Rules”) proposed by the New Mexico Environment Department (“NMED”).

The amendments would bring the Rules into compliance with recent changes to the State Rules Act (Sections 14-4-1 thru 14-4-11 NMSA 1978). Primarily, these amendments would add requirements to the methods and content for public notice throughout the rulemaking process, clarify retention of the rulemaking record, and add post-adoption filing and notice requirements for WQCC rules. NMED proposes the Commission adopt the amendments pursuant to its authority under Sections 14-4-5.8, 74-6-4(E), and 74-6-6 NMSA 1978. Please note that formatting and minor technical changes in the Rules other than those proposed by NMED may be proposed at the hearing. Additionally, the Commission may make other changes as necessary in response to public comments and evidence presented at the hearing.

The proposed amendments may be reviewed during regular business hours at the NMED Hearing Office located in the Harold Runnels Building, 1190 South St. Francis Drive, Room S-2102 Santa Fe, NM, 87505. The full text of the proposed amendments is also available online at <http://www.env.nm.gov/general/wqcc-17-06-r>.

The hearing will be conducted in accordance with the WQCC Rulemaking Procedures (20.1.6 NMAC); the Water Quality Act, Section 74-6-6 NMSA 1978; the State Rules Act, Section 14-4-5.3 NMSA 1978 and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing; to introduce exhibits; and to examine witnesses. Any person wishing to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of the hearing.

Pursuant to the WQCC Rulemaking Procedures, those wishing to present technical testimony must file a written notice of intent to do so with the Commission on or before 5:00 p.m. on December 20, 2017. The notice of intent shall:

- identify the person or entity for whom the witness(es) will testify;
- identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of his or her education and work background;
- include a copy of the direct testimony of each technical witness in narrative form, and state the estimated duration of the direct oral testimony of that witness;
- include the text of any recommended modifications to the proposed regulatory change; and
- list and attach all exhibits anticipated to be offered by that person at the hearing.

Notices of intent for the hearing must be received in the Hearing Office no later than 5:00 p.m. on December 20, 2017, and should reference the name of the regulation, the date of the hearing, and docket number WQCC 17-06(R). Notices of intent to present technical testimony should be submitted to:

Pam Castaneda, Administrator of Boards and Commissions

Office of the Water Quality Control Commission
Harold Runnels Building
P.O. Box 5469
Santa Fe, NM 87502

Those wishing to do so may offer non-technical public comment at the hearing or submit a non-technical written statement in lieu of oral testimony at or before the hearing. Written comments regarding the proposed revisions may be addressed to Ms. Pam Castaneda, Administrator of Boards and Commissions, at the above address, and should reference docket number WQCC 17-06(R).

If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Pam Castaneda, WQCC Administrator by December 1, 2017, at P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone (505) 827-2425 or email pam.castaneda@state.nm.us. (TDD or TTY users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

The Commission may make a decision on the proposed regulatory change at the conclusion of the hearing or may convene a meeting after the hearing to consider action on the proposal.

Notice of Non-Discrimination

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Kristine Pintado, Non-Discrimination Coordinator New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us. If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/NMED/EJ/index.html> to learn how and where to file a complaint of discrimination.

AVISO DE AUDIENCIA PÚBLICA PARA ENMENDAR 20.1.6 NMAC, LOS PROCEDIMIENTOS NORMATIVOS DE LA COMISIÓN PARA EL CONTROL DE LA CALIDAD DEL AGUA

La Comisión para el Control de la Calidad del Agua de Nuevo México ("Comisión" o "WQCC" por su sigla en inglés) celebrará una audiencia pública a las 9:00 de la mañana del martes 9 de enero de 2018, la que continuará después de esa fecha según sea necesario, en la Sala Mabry Hall del edificio Jerry Apodaca, ubicado en 300 Don Gaspar, Santa Fe, Nuevo México. El lugar indicado para la audiencia podrá cambiar antes de la fecha de la audiencia, por lo que los interesados en asistir deberán verificar esta información en el sitio web de la WQCC: <http://www.env.nm.gov/wqcc> antes de la audiencia. El propósito de la audiencia es considerar las enmiendas a los Procedimientos Normativos de la Comisión, 20.1.6 NMAC ("Reglamento") propuestas por el Departamento del Medio Ambiente de Nuevo México ("NMED" por su sigla en inglés).

Las enmiendas modificarían el Reglamento para cumplir con los recientes cambios de la Ley Estatal para Reglamentos (NMSA 1978, Secciones 14-4-1 a -11). Principalmente, estas enmiendas agregarían requisitos para los métodos y el contenido de los avisos públicos en todo el proceso normativo, aclararían la retención del registro normativo y agregarían requisitos posteriores a su adopción correspondientes a presentaciones y notificaciones en el reglamento de la WQCC. El NMED propone que la Comisión adopte las enmiendas conforme a la autoridad conferida por NMSA 1978, Secciones 14-4-5.8, 74-6-4(E), y 74-6-6. Téngase en cuenta que, durante la audiencia, se podrán proponer cambios de formato y cambios técnicos de menor envergadura en el Reglamento distintos a aquellos propuestos por el NMED. Asimismo, la Comisión podrá hacer otros cambios, según sea necesario, en respuesta a los comentarios del público y a las pruebas presentadas durante la audiencia.

Los interesados podrán examinar las enmiendas propuestas durante el horario normal de atención al público, en la Oficina de Audiencias del NMED ubicada en Harold Runnels Building, 1190 South St. Francis Drive, Sala S-2102

Santa Fe, NM, 87505. El texto completo de las enmiendas propuestas también se puede ver en línea en <http://www.env.nm.gov/general/wqcc-17-06-r>.

La audiencia se llevará a cabo conforme a los Procedimientos Normativos de la WQCC (20.1.6 NMAC); la Ley para la Calidad del Agua, NMSA 1978, Sección 74-6-6; la Ley Estatal para Reglamentos, NMSA 1978 Sección 14-4-5.3; y otros procedimientos correspondientes.

Todos los interesados tendrán una oportunidad razonable durante la audiencia para presentar pruebas, datos, puntos de vista y argumentos pertinentes, oralmente o por escrito; para presentar documentos y objetos de prueba; y para interrogar a los testigos. Toda persona interesada en presentar una declaración escrita que no sea de carácter técnico para que conste en actas, en lugar de testimonio oral, deberá presentar dicha declaración antes de la finalización de la audiencia.

De conformidad con los Procedimientos Normativos de la WQCC, aquellos interesados en presentar testimonio de carácter técnico deberán presentar ante la Comisión un aviso por escrito de su intención de presentar dicho testimonio antes de las 5:00 de la tarde del 20 de diciembre de 2017. El Aviso de Intención debe:

- identificar a la persona o entidad para la cual testificará/n el/los testigo/s;
- identificar a cada testigo técnico que la persona tenga la intención de presentar y establecer las cualificaciones de cada testigo, incluso una descripción de sus antecedentes educativos y laborales;
- incluir una copia del testimonio directo de cada testigo técnico en forma narrativa, e indicar la duración prevista del testimonio oral directo de ese testigo;
- incluir el texto de toda modificación recomendada para el cambio normativo propuesto; y
- hacer una lista y adjuntar todos los documentos y objetos de prueba que se anticipa que esa persona presentará en la audiencia.

Las notificaciones de intención para la audiencia deben llegar a la Oficina de Audiencias antes de las 5:00 de la tarde del 20 de diciembre de 2017, y se debe incluir como referencia el nombre del reglamento, la fecha de la audiencia y el número de expediente WQCC 17-06(R). Los avisos de intención de presentar testimonio de carácter técnico deben enviarse a la Administradora de Juntas y Comisiones:

Pam Castaneda, Administrator of Boards and Commissions
Office of the Water Quality Control Commission
Harold Runnels Building
P.O. Box 5469
Santa Fe, NM 87502

Los interesados podrán ofrecer comentarios públicos que no sean de carácter técnico durante la audiencia o presentar declaraciones escritas que no sean de carácter técnico en lugar de testimonio oral antes o durante la audiencia. Los comentarios escritos relativos a las revisiones propuestas podrán enviarse a la Srta. Pam Castaneda, Administradora de Juntas y Comisiones, a la dirección antes indicada, y deben incluir como referencia el número de expediente WQCC 17-06(R).

Toda persona que necesite asistencia, intérprete o un dispositivo auxiliar para participar en este proceso deberá comunicarse con Pam Castaneda, Administradora de la WQCC, antes del 1 de diciembre de 2017, en P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, o también por teléfono al (505) 827-2425 o por correo electrónico a pam.castaneda@state.nm.us. (Los usuarios de TDD y TTY podrán acceder a ese número a través de New Mexico Relay Network: 1-800-659-1779 (voz); usuarios de TTY: 1-800-659-8331).

La Comisión podrá tomar una decisión acerca del cambio normativo propuesto al finalizar la audiencia o podrá convocar una reunión después de la audiencia para considerar qué acción tomar con respecto a la propuesta.

Aviso de no Discriminación

El Departamento del Medio Ambiente de Nuevo México (NMED, por su sigla en inglés) no discrimina por motivos de raza, color, origen nacional, discapacidad, edad o sexo en la administración de sus programas o actividades, según lo exigido por las leyes y los reglamentos correspondientes. El NMED es responsable de la coordinación de esfuerzos para el cumplimiento de las reglas y la recepción de indagaciones relativas a los requisitos de no discriminación implementados por 40 C.F.R. Parte 7, que incluye el Título VI de la Ley de Derechos Civiles de 1964, como fuera enmendado; la Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975; el Título IX de las Enmiendas de Educación de 1972; y la Sección 13 de las Enmiendas a la Ley Federal de Control de la Contaminación del Agua de 1972. Si tiene preguntas sobre este aviso o sobre cualquier programa de no discriminación, norma o procedimiento de NMED, puede comunicarse con la Coordinadora de No Discriminación: Kristine Pintado, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM, 87502, (505) 827-2855. nd.coordinator@state.nm.us. Si piensa que ha sido discriminado con respecto a un programa o actividad de NMED, puede comunicarse con la Coordinadora de No Discriminación antes indicada o visitar nuestro sitio web en <https://www.env.nm.gov/NMED/EJ/index.html> para saber cómo y dónde presentar una queja por discriminación.

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO

County of Bernalillo SS

NOTICE OF PUBLIC HEARING TO AMEND 2016 NMAC RULEMAKING PROCEDURES FOR THE WATER QUALITY CONTROL COMMISSION THE NEW MEXICO WATER QUALITY CONTROL COMMISSION

Bernadette Gonzales, the undersigned, on oath states that she is an authorized Representative of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made or assessed as court cost; that the notice, copy of which hereto attached, was published in said paper in the regular daily edition, for 1 time(s) on the following date(s):

11/09/2017

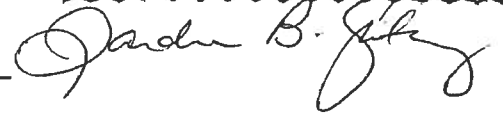
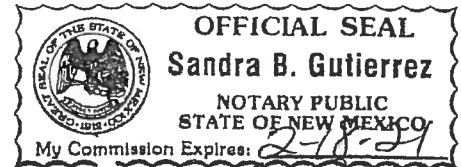


Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this 9 day of November of 2017

PRICE \$322.07

Statement to come at the end of month.

ACCOUNT NUMBER 1009602



NOTICE OF PUBLIC HEARING TO AMEND 2016 NMAC, RULEMAKING PROCEDURES FOR THE WATER QUALITY CONTROL COMMISSION

The New Mexico Water Quality Control Commission ("Commission" or "WQCC") will hold a public hearing beginning at 9:00 a.m. on Tuesday, January 9, 2018, and continuing thereafter as necessary at City Hall in the Jerry Apodaca Building, 300 Don Gaspar, Santa Fe, New Mexico. The hearing location may change prior to the hearing date, and those interested in attending should visit the WQCC website: <http://www.env.nm.gov/wqcc> prior to the hearing. The purpose of the hearing is to consider amendments to the Rulemaking Procedures for the Commission, 20.1.6 NMAC ("Rules") proposed by the New Mexico Environment Department ("NMED").

The amendments would bring the Rules into compliance with recent changes to the State Rules Act (Sections 14-4-1 thru 14-4-11 NMSA 1978). Primarily, these amendments would add requirements to the methods and content for public notice throughout the rulemaking process, clarity retention of the rulemaking record, and add post-option filing and notice requirements for WQCC rules. NMED proposes that the Commission adopt the amendments pursuant to its authority under Sections 14-4-5.8, 74-6-4(E), and 74-6-6 NMSA 1978. (See note) that formatting and minor technical changes in the Rules other than those proposed by NMED may be proposed at the hearing. Additionally, the Commission may make other changes as necessary in response to public comments and evidence presented at the hearing.

The proposed amendments may be reviewed during regular business hours at the NMED Hearing Office located in the Harold Runnels Building, 1190 South St. Francis Drive, Room S-2102 Santa Fe, NM, 87505. The full text of the proposed amendments is also available online at <http://www.env.nm.gov/general/wqcc-17-06-r>.

The hearing will be conducted in accordance with the WQCC Rulemaking Procedures (20.1.6 NMAC); the Water Quality Act, Sections 17-4-6-6 NMSA 1978; the State Rules Act, Section 14-4-5.3 NMSA 1978 and other applicable procedures.

Interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, oral or in writing; to introduce exhibits; and to examine witnesses. Any person wishing to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the start of the hearing.

Pursuant to the WQCC Rulemaking Procedures, those wishing to present technical testimony must file a written notice of intent to do so with the Commission on or before 5:00 p.m. on December 20, 2017. The notice of intent shall:

- identify the person or entity for whom the witness(es) will testify;
- identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of his or her education and work background;
- include a copy of the direct testimony of each technical witness in narrative form, and state the estimated duration of the direct oral testimony of that witness;
- include the text of any recommended modifications to the proposed regulatory change; and
- list and attach all exhibits anticipated to be offered by that person at the hearing.

Notices of intent for the hearing must be received in the Hearing Office no later than 5:00 p.m. on December 20, 2017, and should reference the name of the regulation, the date of the hearing, and docket number WQCC 17-06(R). Notices of intent to present technical testimony should be submitted to:

Pam Castaneda, Administrator of Boards and Commissions
Office of the Water Quality Control Commission
Harold Runnels Building
P.O. Box 5469
Santa Fe, NM 87502

Those wishing to do so may offer non-technical public comment at the hearing or submit a non-technical written statement in lieu of oral testimony at or before the hearing. Written comments regarding the proposed revisions may be addressed to Ms. Pam Castaneda, Administrator of Boards and Commissions, at the above address, and should reference docket number WQCC 17-06(R).

If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Pam Castaneda, WQCC Administrator by December 1, 2017, at P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone (505) 827-2425 or email pam.castaneda@state.nm.us. (TDD or TTY users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

The Commission may make a decision on the proposed regulatory change at the conclusion of the hearing or may convene a meeting after the hearing to consider action on the proposal.

Notice of Non-Discrimination

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Kristine Pintado, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us. If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/NMED/EN/index.html> to learn how and where to file a complaint of discrimination.

Journal: November 9, 2017

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County of Bernalillo SS

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Bernadette Gonzales, the undersigned, on oath states that she is an authorized Representative of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost; that the notice, copy of which hereto attached, was published in said paper in the regular daily edition, for 1 time(s) on the following date(s):

11/09/2017



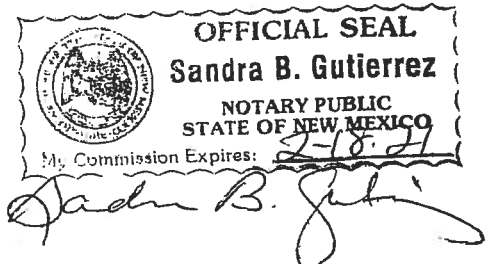
Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this

9 day of November of 2017

PRICE \$418.35

Statement to come at the end of month.

ACCOUNT NUMBER 1009602



COMISIÓN DE NUEVO MÉXICO PARA EL CONTROL DE LA CALIDAD DEL AGUA AVISO DE AUDIENCIA PÚBLICA PARA ENMENDAR LOS PROCEDIMIENTOS NORMATIVOS DE LA COMISIÓN PARA EL CONTROL DE LA CALIDAD DEL AGUA - 20.1.6 NMAC

La Comisión para el Control de la Calidad del Agua de Nuevo México ("Comisión" o "WQCC" por su sigla en inglés) celebrará una audiencia pública las 9:00 de la mañana del martes 9 de enero de 2018, la que continuará después de esa fecha según sea necesario, en la Sala Mabry Hall del edificio Jerry Apodaca, ubicado en 300 Don Gaspar, Santa Fe, Nuevo México. El lugar indicado para la audiencia podrá cambiar antes de la fecha de la audiencia, por lo que los interesados en asistir deberán verificar esta información en el sitio web de la WQCC: <http://www.env.nm.gov/wqcc> antes de la audiencia. El propósito de la audiencia es considerar las enmiendas a los Procedimientos Normativos de la Comisión, 20.1.6 NMAC ("Reglamento") propuestas por el Departamento del Medio Ambiente de Nuevo México ("NMED" por su sigla en inglés).

Las enmiendas modificarían el Reglamento para cumplir con los recientes cambios de la Ley Estatal para Reglamentos (NMSA 1978, Secciones 14-4-1 a -11). Principalmente, estas enmiendas agregarían requisitos para los métodos y el contenido de los avisos públicos en todo el proceso normativo, aclararían la retención del registro normativo y agregarían requisitos posteriores a su adopción correspondientes a presentaciones y notificaciones en el reglamento de la WQCC. El NMED propone que la Comisión adopte las enmiendas conforme a la autoridad conferida por NMSA 1978, Secciones 14-4-5.8, 74-6-4(E), y 74-6-6. Téngase en cuenta que, durante la audiencia, se podrán proponer cambios de formato y cambios técnicos de menor envergadura en el Reglamento distintos a aquellos propuestos por el NMED. Asimismo, la Comisión podrá hacer otros cambios, según sea necesario, en respuesta a los comentarios del público y a las pruebas presentadas durante la audiencia.

Los interesados podrán examinar las enmiendas propuestas durante el horario normal de atención al público, en la Oficina de Audiencias del NMED ubicada en Harold Runnels Building, 1190 South St. Francis Drive, Sala S-2102 Santa Fe, NM, 87505. El texto completo de las enmiendas propuestas también se puede ver en línea en <http://www.env.nm.gov/general/wqcc-17-06-r>.

La audiencia se llevará a cabo conforme a los Procedimientos Normativos de la WQCC (20.1.6 NMAC); la Ley para la Calidad del Agua, NMSA 1978, Sección 74-6-6; la Ley Estatal para Reglamentos, NMSA 1978 Sección 14-4-5.3; y otros procedimientos correspondientes.

Todos los interesados tendrán una oportunidad razonable durante la audiencia para presentar pruebas, datos, puntos de vista y argumentos pertinentes, oralmente o por escrito; para presentar documentos y objetos de prueba; y para interrogar a los testigos. Toda persona interesada en presentar una declaración escrita que no sea de carácter técnico para que conste en actas, en lugar de testimonio oral, deberá presentar dicha declaración antes de la finalización de la audiencia.

De conformidad con los Procedimientos Normativos de la WQCC, aquellos interesados en presentar testimonio de carácter técnico deberán presentar ante la Comisión un aviso por escrito de su intención de presentar dicho testimonio antes de las 5:00 de la tarde del 20 de diciembre de 2017. El Aviso de Intención debe:

- identificar a la persona o entidad para la cual testificará/n el/los testigo/s;
- identificar a cada testigo técnico que la persona tenga la intención de presentar y establecer las cualificaciones de cada testigo, incluso una descripción de sus antecedentes educativos y laborales;
- incluir una copia del testimonio directo de cada testigo técnico en forma narrativa, e indicar la duración prevista del testimonio oral directo de ese testigo;
- incluir el texto de toda modificación recomendada para el cambio normativo propuesto; y
- hacer una lista y adjuntar todos los documentos y objetos de prueba que se anticipa que esa persona presentará en la audiencia.

Las notificaciones de intención para la audiencia deben llegar a la Oficina de Audiencias antes de las 5:00 de la tarde del 20 de diciembre de 2017, y se debe incluir como referencia el nombre del reglamento, la fecha de la audiencia y el número de expediente WQCC 17-06(R). Los avisos de intención de presentar testimonio de carácter técnico deben enviarse a la Administradora de Juntas y Comisiones:

Pam Castaneda, Administrator of Boards and Commissions
Office of the Water Quality Control Commission
Harold Runnels Building
P.O. Box 5489
Santa Fe, NM 87502

Los interesados podrán ofrecer comentarios públicos que no sean de carácter técnico durante la audiencia o presentar declaraciones escritas que no sean de carácter técnico en lugar de testimonio oral antes o durante la audiencia. Los comentarios escritos relativos a las revisiones propuestas podrán enviarse a la Sra. Pam Castaneda, Administradora de Juntas y Comisiones, a la dirección antes indicada, y deben incluir como referencia el número de expediente WQCC 17-06(R).

Toda persona que necesite asistencia, intérprete o un dispositivo auxiliar para participar en este proceso deberá comunicarse con Pam Castaneda, Administradora de la WQCC, antes del 1 de diciembre de 2017, en P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, o también por teléfono al (505) 827-2425 o por correo electrónico a pam.castaneda@state.nm.us. (Los usuarios de TDD y TTY podrán acceder a ese número a través de New Mexico Relay Network: 1-800-659-1779 (voz); usuarios de TTY: 1-800-659-8331).

La Comisión podrá tomar una decisión acerca del cambio normativo propuesto al finalizar la audiencia o podrá convocar una reunión después de la audiencia para considerar qué acción tomar con respecto a la propuesta.

Aviso de no Discriminación

El Departamento del Medio Ambiente de Nuevo México (NMED, por su sigla en inglés) no discrimina por motivos de raza, color, origen nacional, discapacidad, edad o sexo en la administración de sus programas o actividades, según lo exigido por las leyes y los reglamentos correspondientes. El NMED es responsable de la coordinación de esfuerzos para el cumplimiento de las reglas y la recaptación de indagaciones relativas a los requisitos de no discriminación implementados por 40 C.F.R. Parte 7, que incluye el Título VI de la Ley de Derechos Civiles de 1964, como fuera enmendado; la Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975; el Título IX de las Enmiendas de Educación por Edad de 1972; y la Sección 13 de las Enmiendas a la Ley Federal de Control de la Contaminación del Agua de 1972. Si tiene preguntas sobre este aviso o sobre cualquier programa de no discriminación, norma o procedimiento de NMED, puede comunicarse con la Coordinadora de No Discriminación: Kristine Pintado, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite M4050, P.O. Box 5469, Santa Fe, NM, 87502, (505) 827-2855, nd.coordinator@state.nm.us. Si piensa que ha sido discriminado con respecto a un programa o actividad de NMED, puede comunicarse con la Coordinadora de No Discriminación antes indicada o visitar nuestro sitio web en <https://www.env.nm.gov/NMED/EN/index.html> para saber cómo y dónde presentar una queja por discriminación.

Journal: November 9, 2017