



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

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Santa Fe, New Mexico 87502

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Constituent Agencies

7 Environment Department
8 State Engineer & Interstate Stream Commission
9 Game and Fish Department
10 Oil Conservation Division
11 Department of Agriculture
12 State Parks Division
13 Soil and Water Conservation Commission
14 Bureau of Geology and Mineral Resources
15 Municipal/County Representative
16 Members-at-Large

APPROVED

17
18 **Minutes of the**
19 **New Mexico Water Quality Control Commission Meeting**
20 **April 4, 2002**
21

22 The New Mexico Water Quality Control Commission (WQCC) meeting was held on
23 April 4, 2002 at the New Mexico State Capitol Building in Santa Fe, New Mexico.
24

25 **MEMBERS PRESENT:**

26
27 Pete Maggiore Chairman, New Mexico Environment Department
28 John Whipple State Engineer & Interstate Stream Commission
29 Julie Maitland Department of Agriculture
30 Howard Hutchinson Soil and Water Conservation Commission
31 Bill Olson Oil Conservation Division
32 Steve Glass City of Albuquerque - Municipal/County Representative
33 Dr. Conrad Keyes Member-at-Large
34 Jack Westman Member-at-Large
35 Lynn Brandvold Bureau of Geology and Mineral Resources
36 David Johnson State Parks Division
37 *Larry Bell Department of Game and Fish

38
39 * Mike Sloane of the Department of Game and Fish substituted for Larry Bell
40

41 **MEMBERS ABSENT:**

42
43 Irene Lee Member-at-Large
44

45
46 **OTHERS PRESENT:**

47
48 Felicia Orth Acting WQCC Administrator, NMED Hearing Officer
49 Carolyn Vigil NMED Hearing Clerk

1 OTHERS PRESENT, Cont'd:

2
3 Tracy Hughes Interim Commission Counsel, Attorney General's Office
4 Zachary Shandler Commission Counsel, Attorney General's Office
5 Tannis Fox NMED Deputy General Counsel
6 Marcy Leavitt NMED/GWQB
7 Maura Hanning NMED/GWQB
8 Hoyt Pattison Dairy Lobbyist
9 Kelly Bitner TetraTech
10 Maxine Goad Sierra Club
11 Heather Green Attorney, Environmental Law Center
12 Ken Miller
13 Del Brooks
14 Cathy Ratliff Glorieta GeoScience
15 Joni Arends Concerned Citizens for Nuclear Safety
16 Ben Neary Reporter, Santa Fe New Mexican
17 David Gatterman State Parks Division
18 Jim Hannan Sierra Club
19
20

21
22
23
24 **Item #1: Roll Call**

25
26 Felicia Orth, Acting WQCC Administrator, took roll.
27

28 **Item #2: Approval of the Agenda**

29
30 Commissioner Johnson moved the approval of the agenda. Commissioner Brandvold
31 seconded the motion. The motion carried unanimously.
32

33 Before going to Agenda Item No. 3, Chairman Maggiore recognized Commissioner
34 Westman. Commissioner Westman announced his resignation. He had spoken at length
35 with the Governor earlier in the week. No one had told him about the considerable time
36 it would take to do the job properly, at the meetings and before and after the meetings.
37 He has a great deal of respect for all the Commission members, and is grateful they are
38 able to serve. He spends too much time in his business to do the job. Chairman
39 Maggiore said he was sorry to see Commissioner Westman go, that he had been a real
40 asset, and that he appreciated his dedication and input.
41

42 Chairman Maggiore then recognized Commissioner Johnson. Commissioner Johnson
43 introduced Dave Gatterman, who will sit for him when he cannot attend.
44

1 **Item #3: Deliberation and decision on proposed amendments to the Ground**
2 **Water Regulations, Sections 20.6.2.7, -3106, -3108, -3109, -5003, and –**
3 **5101 NMAC (WQCC 01-17R)**
4

5 Chairman Maggiore stated that Ms. Hughes, the Hearing Officer in this matter, had sent a
6 redline-strikeout version of the groundwater regulations, which should have captured the
7 changes articulated by the Ground Water Bureau.
8

9 Ms. Hughes stated that it was her interpretation of what the Bureau had accepted. She
10 suggested that they use the draft as the basis for discussion and that they go section by
11 section.
12

13 Section 20.6.2.7 Subsection D.

14
15 No discussion of changes.
16

17 Section 20.6.2.7 Subsection P.
18

19 Commissioner Olson expressed concern with the new language in this section when read
20 in conjunction with the changes in Section 3108. He is a lot more comfortable with the
21 original language. They have sites on federal and state property, and may be working
22 with the State Land Office on a cleanup. “Appurtenant property” could include a huge
23 amount of state land, and they could end up notifying people who are far away and not
24 affected. He is a lot more comfortable with a display ad at that point.
25

26 Ms. Hughes stated that it was the Bureau’s position that if the new language were
27 incorporated, then Section 20.6.2.3108.A.3 would be struck. If the Commission goes
28 back to the old language, then Subsection A.3 would not be struck.
29

30 Commissioner Olson stated that the focus should be on potentially affected people, and
31 that the entire City of Hobbs should not be notified of the discharge plan. He would stay
32 with the original language and keep section A.3; if there are no adjacent property owners
33 to notify.
34

35 Chairman Maggiore noted that the change had been made as a concession to those who
36 thought the sign was burdensome, and maybe they should keep it as an option.
37

38 Commissioner Glass stated that he had been reading Section 3108.A in reverse, as an
39 option to send notice within ½ mile, but understands that is not what was meant.
40

41 Commissioner Olson stated that reading it that way could potentially be more
42 burdensome, if it is read as being ½ mile from the furthest boundaries.
43

44 Commissioner Hutchinson stated that the idea that you could use a display ad is probably
45 going to result in better notice, and that it was going to be one of his suggestions that they
46 retain the language in Subsection 3.

1 Commissioner Glass stated that he had drafted alternative language to address these
2 issues, and distributed a handout titled "Proposed Revisions." His suggestion is that they
3 leave the appurtenant property language in, strike subsection "c" in his draft, and make it
4 an option, such that there will be prominent posting and a display ad, and mail
5 notification if the discharger is not the property owner.

6
7 Commissioner Westman stated that if the mailing goes to a lot of unaffected people,
8 Environment Department staff would get lots of calls. He doesn't want overkill, and
9 believes notice should be limited to the extent possible. In the zoning context, if a piece
10 of land is rezoned, it is just the people on the perimeter who are notified. Notice should
11 be limited to the area potentially affected. Most effective would be a standard sized sign,
12 24 x 30 inches. Mass mailings are a disaster for everyone who tries to do them.

13
14 Commissioner Glass stated that having been through the solid waste process, and done
15 notice in that context, it can get difficult and expensive to send certified mail and Public
16 Notice. He suggests that the default should be posting a synopsis in a location approved
17 by the Environment Department, and publishing a display ad. He has seen a number of
18 display ads now that he has been discussing them.

19
20 Ms. Hughes noted that Commissioner Glass's language did that, but added certified mail
21 as well.

22
23 Commissioner Glass suggested striking Subsection A.1.c, unless it is done in lieu of
24 Subsections A.1.a and b. Subsection c would be subsumed in subsection 2, and is
25 unnecessary.

26
27 Commissioner Westman stated that, going back to the zoning analogy, most
28 municipalities have printed signs with blanks, which are filled in with a marker. He
29 believes the sign and the display ad should be standardized.

30
31 Commissioner Maitland remembered the bureau's original testimony and wondered how,
32 without additional resources, they could approve the location of a sign in every case?
33 Would they do this by teleconference?

34
35 Commissioner Glass stated that the sign could be put in the post office, or wherever it
36 would be seen; he agrees that they do not need an on-site inspection. He suggests the
37 following changes to his own handout: delete Subsection A.1.c; re-letter Subsection "d"
38 to "c;" and delete the words "and (b)" in the first line of Subsection A.2.

39
40 Commissioner Olson stated that the people right next door are the ones who need notice,
41 and that he still has a problem with a display ad for every site. He still prefers the
42 Bureau's original language. Display ad costs are higher than certified mail to a few
43 neighbors. Essentially, he suggests that Subsections "a", "b" and "c" are required, and
44 that in lieu of "a" and "b" a discharger can send certified mail to landowners within 1/2
45 mile of the site.

1 Commissioner Westman stated that he proposes very strongly that if mailing is to be
2 done, it be done by the Department, and not by the applicant. The Department
3 acknowledged that the information is available by telephone, and that they do not need to
4 go to the location. What he likes is that mailing is not required for all circumstances, but
5 is circumstance-specific.

6
7 Chairman Maggiore stated that he would try to provide some balance to Commissioner
8 Westman. He knows of no program where the state has the burden to do the mailing.

9
10 Commissioner Westman stated that he asked those testifying, and all but the Dairy
11 Producers agreed to reasonable fee increases to cover the resources necessary to meet the
12 burden.

13
14 Ms. Hughes suggested that the Commission go to Section 3108, vote, and come back to
15 the definitions later.

16
17 Commissioner Maitland noted that she was not keen on voting on each section, but
18 wanted to vote on the whole thing.

19
20 Ms. Hughes asked which whole thing? The original proposal, or the new proposal?

21
22 Commissioner Johnson suggested that they go section by section and try to reach
23 consensus without voting, and that they stay with the Hearing Officer's document of
24 March 26.

25
26 Commissioner Hutchinson stated that he wanted to go to Commissioner Westman's
27 point, and referred to p. 424 of the transcript, where the Department did its check with the
28 County Assessor's Office. It would produce significant efficiencies and be less costly if
29 the Department would do the mailing. The term "discharge site" should remain as in the
30 original; and Section 3108 should remain as in the original, but he agrees with
31 Commissioner Westman that the Department should send out the letters.

32
33 Commissioner Westman stated that if you look at a discharger doing this every five
34 years, it would be overwhelming and burdensome to go to the Assessor's Office, but in
35 the Department it could be standardized. They could look to the City of Santa Fe
36 Planning Department as a model.

37
38 Commissioner Maitland suggested that discharge plan renewals be exempted, and just a
39 legal ad be published.

40
41 Commissioner Johnson noted that he does not have anyone filling out his taxes for him,
42 although they are burdensome, and that a fee increase is not part of the proposal under
43 consideration here. There are a lot of requirements imposed on any business owner. He
44 does not want to re-open the fee regulations in connection with this matter; they are
45 separate issues.

1 Chairman Maggiore stated that fees in all Department programs support work not funded
2 by the general fund. It troubles him to hear Commissioners discussing an increase in the
3 responsibilities of Department staff without additional fees to support it.
4

5 Mr. Sloane stated that they have the option of doing posting and a display ad or posting
6 and certified mail, and that this seems like the middle road.
7

8 Commissioner Hutchinson stated that some of these dischargers are public entities,
9 including municipalities and trailer parks, and that there is an un-funded burden on them
10 with the regulations. Eleven counties in New Mexico are at or near insolvency.
11

12 Commissioner Glass drew a comparison between the notice proposal here and the others
13 provided by the Department: all notices are the responsibility of the applicant. The
14 suggestion put forth by the Department here is that the applicant bears the burden of the
15 initial notice, and that the Department bears the burden of subsequent notices. He
16 believes this is a reasonable compromise. The Department is no longer seeking a large
17 sign costing \$800 to produce; the notice required is much closer to the standard notice
18 given in other areas.
19

20 Commissioner Olson agreed with Commissioner Glass's comment, and commented that
21 in his agency the burden for all notices are on the applicant—no burden is on the agency.
22 This proposal is a reasonable compromise. Moreover, during the fee hearing it became
23 clear that fees cover only a small fraction of the costs of permitting.
24

25 Commissioner Westman stated that procedurally they were going to seek consensus, but
26 that it is impossible to tell. He proposed that someone move for discussion purposes the
27 approval of the Department's proposal, and then move to amend it with votes.
28

29 Commissioner Keyes moved to accept the Hearing Officer's draft with the exception of
30 the definition in Section 20.6.2.7.P, replacing it with the Department's original definition.
31 Commissioner Olson seconded the motion. The vote on the motion was delayed pending
32 further debate.
33

34 Commissioner Olson moved to retain the stricken language on p.2, Section 3108.A.3.
35 Commissioner Hutchinson seconded the motion. The motion carried 10 -1. Chairman
36 Maggiore voted in the negative.
37

38 Commissioner Hutchinson moved that in Section 3108.A. renewals be stricken from the
39 paragraph. He suggested that people could be put on a site-specific list pursuant to
40 subparagraph G such that the Department would notify them of subsequent actions.
41

42 Commissioner Olson noted that no existing facility would have such a list.
43

44 Commissioner Sloane stated that if Commissioner Hutchinson would change his motion
45 exempting renewals to exempt renewals after one renewal that would be more palatable
46 to him.

1 Commissioner Westman seconded the motion.
2
3 Mr. Shandler advised that an exemption of renewals would have to be based on testimony
4 given during the public hearing.
5
6 Chairman Maggiore noted that there is no statutory basis for exempting renewals.
7 Ms. Hughes stated that she had heard testimony and questioning during the hearing
8 relating to an exemption for renewals, but that looking at the statute she saw no
9 distinction between permit issuance and permit renewals.
10
11 Commissioner Hutchinson stated that he had heard the Commission had discretion in the
12 initial notification, and referred to statements made by Ms. Fox on pages 411, 412, and
13 442 of the transcript. He believes if the Commission has discretion to adopt this
14 regulation, it has the discretion to adopt another.
15
16 Chairman Maggiore stated that the lines cited in the transcript did not support his thesis,
17 and that just because the rule is defective does not mean that a more defective rule should
18 be adopted.
19
20 Mr. Shandler stated that statements made by a lawyer are not testimony, that he agrees
21 with the Chairman that there is no explicit distinction in the statute between permit
22 issuance and permit renewal, and that provisions adopted by the Commission must still
23 be the logical outgrowth of testimony on the record.
24
25 Ms. Hughes referred the Commission to Section 74-6-5.F in the statutes.
26
27 Commissioner Westman sought clarification regarding "lawyer testimony." His
28 recollection is that there was testimony on both sides of the renewal issue.
29
30 Mr. Shandler noted that if that was the case, that could be a winning argument.
31
32 Commissioner Hutchinson noted that the new language in Subsection 3108.G provides
33 that "Within 60 days after the department makes its administrative completeness
34 determination.... the department shall make available a proposed approval or disapproval
35 of the application...." He believes this complies with the statute.
36
37 Ms. Hughes suggested that counsel to the Commission might want to weigh in on the
38 question of whether the Commission could distinguish between the issuance of discharge
39 plans and renewals.
40
41 Mr. Shandler stated that he would have to do research, but there is probably a
42 presumption that it would withstand challenge.
43
44 Commissioner Keyes noted that it seems all the original language in Section 3108.C had
45 been transferred to Section 3108.D, such that the requirements for original discharge
46 plans and renewals had been taken care of, but that there was something new that hadn't

1 been considered, which is that the Department was recommending all three ways of
2 providing notice.

3
4 Commissioner Whipple stated that he sees existing discharge plans with expiration dates.
5 "Renewal" is a term used, but for all practical purposes a renewal is a new permit. Why
6 distinguish between a renewal and a new permit for notification purposes?

7
8 Commissioner Westman stated that the Commission is instituting a new notice procedure
9 on top of the existing procedures, so it has the right to distinguish between overlying
10 requirements for new permits and not others.

11
12 Commissioner Olson stated that they have the opportunity to give the notice described in
13 Subsection G, but that the intention is to get comments and address them early. By the
14 time folks get to the ground water hearing, it's too late to head off unnecessary
15 controversy.

16
17 Chairman Maggiore noted that his broad experience in this area supports Commissioner's
18 Olson's statements.

19
20 Commissioner Hutchinson noted that Subsection D has notice in it, too, and that with
21 notice in Subsection G and notice proposed for subsection A, there are three tiers of
22 noticing here. Even with the burden on the Department, multiple tiers get to the point of
23 ridiculous redundancy. A notice just wouldn't be sent that an application has been made;
24 there would still be two other notices.

25
26 Mr. Sloane wondered how long a list would be valid, since permits are good for five
27 years.

28
29 Commissioner Glass agreed with Commissioner Sloane, and stated that part of the
30 purpose of Subsection A is to provide the list for the notice given in Subsection D.

31
32 Commissioner Johnson called the question on Commissioner Sloane's motion change to
33 Section 3108.A. A hand vote was taken; the motion failed 3 - 8. Commissioners Keyes,
34 Brandvold, Johnson, Sloane, Whipple, Olson, Glass and Maggoire voted in the negative.

35
36 The discussion returned to Section 3108.

37
38 Commissioner Glass proposed that the language in Section A.1.a be changed to the
39 language in his handout, which removes the requirement "visible for 30 feet."

40
41 Chairman Maggiore asked whether his intent was to allow the notice to be posted at the
42 local post office or cafe?

43
44 Commissioner Glass answered, "Yes, this proposal allows for flexibility."

45 Commissioner Brandvold seconded the motion.
46

1 Commissioner Westman noted that sometimes the notice would need to be in Spanish.
2 He stated that the proposal is well worded and that he favors it.
3
4 Commissioner Hutchinson proposed a friendly amendment that after the word
5 "approved" the word "provided" be inserted.
6
7 Commissioner Glass amended his motion to include "1" and "a," thereby rendering
8 Commissioner Hutchinson's comment moot.
9
10 Commissioner Hutchinson stated that the department could provide the notice by e-mail
11 to Kinko's and Kinko's could prepare the notices and ship them to the applicant. The
12 word "provide," suggests that the Environment Department pays with cost of signed
13 production.
14
15 Chairman Maggiore sought clarification that the department would be doing the work and
16 then transmitting it to a reprographic facility such that they would then be prepared and
17 shipped and billed to the applicant?
18
19 Commissioner Glass noted that they would not bill the applicant, as the department had
20 stated that the cost would be \$20 or less.
21
22 Commissioner Westman stated that a posting could be as small as 8 ½ by 11 inches.
23
24 Chairman Maggiore noted that it could be a larger sign at the entrance.
25
26 Commissioner Westman noted that this gives the government flexibility in how the notice
27 is provided.
28
29 Chairman Maggiore stated that he appreciated the flexibility, but worried about the
30 burden of paying for it by the department.
31
32 Commissioner Glass wondered if his recollection was incorrect.
33
34 Mr. Sloane noted that the term "prepared" by the department does not mean "purchased,"
35 whereas the word "provide" does.
36
37 Commissioner Olson asked whether all notices in Section A. 1 were intended to be
38 prepared and provided by the Department?
39
40 Commissioner Glass answered "yes."
41
42 Commissioner Westman moved for the adoption of all of Commissioner Glass's
43 proposed revisions so the Commission could make more detailed revisions after deciding
44 to adopt it.
45

1 Commissioner Johnson noted that they just re-zoned, and that if a sign disappears you
2 buy it again. The sign must be posted for 30 days, and he is not comfortable having the
3 Department pay for it.

4
5 Chairman Maggiore, referring back to the Department's Exhibit 14, noted that the costs
6 for reproduction were more than \$20.

7
8 Commissioner Keyes suggested that 1.a be changed just to delete the distance
9 requirements.

10
11 Commissioner Glass went back to his original motion, and Commissioner Brandvold still
12 held her second. A hand vote was taken. The motion carried unanimously.

13
14 Commissioner Glass moved to delete the words "or to residents" in Section 3108.A.1.b.
15 Commissioner Westman seconded the motion.

16
17 Commissioner Maitland clarified that Commissioner Glass was abandoning his own
18 Subsection b in his handout, and Commissioner Glass agreed that he was. She noted that
19 the word "either" should also be deleted if the residents were going to be deleted. This
20 was accepted as a friendly amendment.

21
22 Chairman Maggiore also wanted to specify that it was certified mail, "return receipt
23 requested."

24
25 Commissioner Brandvold seconded this suggestion.

26
27 A hand vote was taken. The motion carried unanimously.

28
29 Commissioner Westman stated that he wants the notice requirements to be a posting and
30 a display ad or a posting and mailing.

31
32 The specific motion was that after Section 3108.A.1.b, add "in lieu of the provisions of
33 subparagraph b, above, publishing a synopsis of the public notice in a display
34 advertisement at least two inches by three inches in a newspaper of general circulation in
35 the locale of the proposed discharge."

36
37 Mr. Shandler noted that it would be better to make it Subparagraph 4, as an exception to
38 the rule.

39
40 Chairman Maggiore stated that he was concerned that no one would ever give notice by
41 mail.

42
43 Commissioner Westman stated that the applicant might decide that it is more cost
44 effective to do a posting and a display ad.

45 Chairman Maggiore stated that he was concerned cost effectiveness was taking
46 precedence over effectiveness of the notice.

1 Mr. Sloane suggested a clause whereby the Department would decide what was the best
2 notice in each case.

3
4 Commissioner Westman moved that a new subparagraph "c" under paragraph 1 would
5 pick up the wording in subparagraph "b" on the Glass handout, and "c" would become
6 "d." [This was effectively a restatement of his motion above.]

7
8 Ms. Hughes suggested using the numbering "2" or "3" or "4" instead of the lettering "b"
9 or "c" or "d."

10
11 Commissioner Maitland seconded the motion. A hand vote was taken. The motion
12 carried 6 – 5. Commissioner Glass, Johnson, Olson, Whipple and Maggiore voted in the
13 negative.

14
15 The discussion moved to Section 3108.A.1.c.

16
17 Commissioner Westman noted that a motion had already been made to accept the whole
18 document, that a new "2" had just been adopted, such that the existing 2 has become "3."
19 He moved that the wording "or to residents" be removed.

20
21 Ms. Hughes clarified that, to be consistent, the language would include "return receipt
22 requested," and the word "either" would also be deleted.

23
24 Commissioner Johnson seconded the motion.

25
26 Mr. Shandler noted that the general rule includes three steps: posting, notice to adjacent
27 property owners, and notice to the owner of the property if it is not the permittee. There
28 is a new exception as of this morning, such that notice does not have to be given to
29 adjacent property owners by certified mail if the discharger does an ad. What the
30 Commission is discussing now is the possibility that a discharger need not do posting or
31 certified mail to adjacent property owners, but would have to do certified mail to property
32 owners of record within ½ mile if the discharger is not the owner.

33
34 Commissioner Westman stated that Mr. Shandler had captured the essence of the
35 proposal, and now it was just wordsmithing. He wondered if drafting could be delegated
36 to counsel.

37
38 Mr. Shandler noted that he will draft findings, and that a delegation could be made to the
39 Chairman to do wording.

40
41 Commissioner Maitland sought clarification that there is an 'or' between the new
42 paragraph "2" and the new paragraph "3."

43
44 Mr. Shandler agreed that this was the intent.

45 Commissioner Olson agreed that this was the intent. Posting would not have to be done
46 where mailing was sent within ½ mile.

1 A hand vote was taken on the new subparagraph 3. The motion carried unanimously.
2
3 The discussion turned to Section 3108.B.
4
5 Commissioner Maitland noted that on certified mail with return receipt requested,
6 sometimes fifteen days is not enough.
7
8 Commissioner Westman agreed that sometimes the mail can sit there for a long time, and
9 said he likes the current wording.
10
11 Ms. Hughes noted that with no changes to Section B., the discussion would turn to
12 Section A (1)(C).
13
14 Commissioner Glass noted that the words “return receipt requested” need to be added to
15 Section A (1)(c).
16
17 Commissioner Keyes called the question for the original motion.
18
19 Commissioner Glass moved to replace “governments” with “governmental agencies,”
20 pursuant to the statute, and to insert in Section 3108.D. “acequia associations, irrigation
21 districts and land grants.” Commissioner Hutchinson seconded the motion.
22
23 Commissioner Westman noted that he was not sure they should include land grants, as
24 they almost always have acequias associated with them, and could be a difficult element
25 to administer.
26
27 Chairman Maggiore noted that he was concerned about leaving them out.
28
29 Commissioner Olson noted that ditch associations are not acequias associations.
30
31 Commissioner Whipple noted that a private ditch would not qualify, but that if it had
32 bylaws in accordance with state statute it might be a political subdivision.
33
34 Mr. Sloane suggested a clause “or other entities as identified by the department,” and
35 made a statement for discussion and not a formal motion to include the list anywhere it’s
36 represented.
37
38 Mr. Shandler noted that “tribal or pueblo” is redundant, but he did not want anyone to
39 question the Commission’s motives in taking it out, so he would leave it in.
40
41 A hand vote was taken, the motion carried unanimously. [The language will now include
42 “political subdivisions, ditch associations or land grants as identified by the
43 Department.”]
44
45 Commissioner Westman moved that all references in Section 3108.A to “the applicant”
46 be changed to “the department.” Commissioner Hutchinson seconded the motion.

1 Commissioner Glass stated that having been through the process, he could see the
2 significant value to the applicant in making the initial contact with the neighbors. It
3 avoids a lot of negative reactions.

4
5 A hand vote was taken. The motion failed 4 - 7. Commissioners Olson, Glass, Whipple,
6 Brandvold, Johnson, Sloan and Maggiore voted in the negative.

7
8 Commissioner Whipple stated that he wanted more discussion on the whole proposal to
9 increase public notice. He didn't hear that the public notice given now is deficient.
10 Somehow, through the current notice procedures, the people giving testimony at the
11 hearing got notified of permit applications and had an opportunity to participate in
12 drafting of permits. He could support adding public review after issuance of a draft
13 permit consistent with the process used by EPA in the surface water NPDES permit
14 program, but he is concerned about the initial round of review. With different choices
15 available for notification, there may be little consistency in how the public is notified.
16 The idea is to notify those who could be affected by the facility being permitted, but there
17 is no determination of physical impact, which will be larger in some cases than in others.
18 He didn't hear in the testimony that the current procedure caused a lack of public
19 participation which resulted in a faulty permit being issued. He moved to remove
20 Subsection A & B in Section 3108; this would moot the controversy over who has
21 responsibility for initial notification, and still provide for two rounds of public notice
22 after the completeness determination is made. Commissioner Westman seconded the
23 motion. The motion failed 3 - 8. Commissioners Keyes, Olson, Glass, Hutchinson,
24 Brandvold, Johnson, Sloan and Maggiore voted in the negative.

25
26 Chairman Maggiore stated that he could not disagree more strongly with Commissioner
27 Whipple. There was a list of people who appeared last month to testify about
28 deficiencies in the public notice. Moreover, when people are involved early on, the
29 permits issued are better for it. There was also testimony on possible liability associated
30 with the current notice given, insofar as it does not comport with state statute, specifically
31 Section 74-6-5.F.

32
33 A roll call vote was conducted on Commissioner Keyes' earlier ultimate motion to adopt
34 the proposal as amended.

35
36 Howard Hutchinson yes
37 John Whipple no
38 Bill Olson yes
39 Julie Maitland no
40 Jack Westman no
41 Mike Sloane yes
42 Steve Glass yes
43 David Johnson yes
44 Dr. Conrad Keyes yes
45 Lynn Brandvold yes
46 Peter Maggiore yes

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The motion carried.

Mr. Shandler stated that he would be preparing a statement of reasons for the Commission's adoption of the regulation amendments. He read off the seven grounds for adoption, and there seemed to be consensus that most or all of the grounds applied. Mr. Shandler will present the statement of reasons at a subsequent meeting.

Commissioner Hutchinson stated that he had concerns about the increasing complexity of the permit application process, and the possibility of procedural mischief as a favorite tactic to defeat a permit, along with sitting issues. There are parties out there who utilize these tactics to make an applicant so uncomfortable they go elsewhere. He does expect the Bureau to keep track of the efficiencies proposed, and to see if the problems materialize. If the Commission has created a procedural quagmire, he will vote to amend the process.

Adjournment: Commissioner Johnson moved to adjourn the meeting. Commissioner Olson seconded the motion. Motion carried unanimously.



John D'Antonio Jr., Chairman