

San Juan Water Commission

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MEMBERS:
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San Juan County
S.J. County Rural Water Users Assoc.

January 6, 2021

New Mexico Environment Department
Surface Water Quality Bureau
Attn: Jennifer Fullam-2020 Triennial Review
P.O. Box 5469
Santa Fe, NM, 87502

Via U.S. Mail and E-mail to:
jennifer.fullam@state.nm.us

Re: San Juan Water Commission Comments on August 19, 2020, Triennial Review
Rulemaking Petition, Statement of Reasons, and Proposed Amendments

Dear Ms. Fullam:

Pursuant to the November 2 and 25, 2020, notices of a public comment period for the proposed amendments to the State's Standards for Interstate and Intrastate Surface Waters (20.6.4 New Mexico Administrative Code ("NMAC")), I hereby provide the following comments on behalf of the San Juan Water Commission ("SJWC") to the New Mexico Environment Department Surface Water Quality Bureau ("NMED"). These comments are based on our review of NMED's August 19, 2020, Petition and Statement of Reasons for the proposed amendments to the surface water quality standards, as well as the information provided by NMED personnel at the virtual meetings held on November 12 and 16, 2020. SJWC appreciates the opportunity provided by NMED to comment on the Petition and Statement of Reasons.

General Comment

SJWC has been hampered in its review of, and development of comments concerning, NMED's proposed changes to the surface water quality standards because of the lack of information about the bases for the proposed changes. Although NMED has provided a Statement of Reasons, that Statement merely provides a general description of NMED's proposals—it provides almost no bases for the proposals. In past Triennial Reviews, NMED's petition has included extensive descriptions of the bases for each proposed change to a surface water quality standard. Those bases aided interested parties in their review of the scientific and/or regulatory appropriateness of each proposed standard change. For example, see NMED's 2013 Triennial Review Petition filed with the WQCC on June 25, 2014.

SJWC encourages NMED to amend its Petition and, in accordance with its historical practice, provide both the general public and future parties to the Triennial Review with adequate information concerning the bases for NMED's proposals. Without such information, it is not possible to adequately review NMED's proposals and consider whether to support them.

Substantive Comments

1. Climate Change – New 20.6.4.6.D and 20.6.4.7.C(4) NMAC. These provisions are very general and could have far-reaching implications. The Statement of Reasons (paragraphs 1 and 2.iii) does not clearly explain the intent behind these additions to the surface water quality standards. SJWC therefore requests that NMED explain, in more detail, its reasons for referencing climate change and how it intends to implement the climate change “standard.” Without such information, SJWC is unable to determine whether the proposals are workable or, indeed, whether they are within the WQCC's statutory authority. SJWC suggests that NMED simply treat “climate change” as any other “cause” of an impairment. Also, the terms within the definition of “climate change” (*i.e.*, “significant change,” “extended period of time,” and “major changes”) need to be defined.
2. Baseflow – New 20.6.4.7.B(1) NMAC. SJWC agrees this is a very useful concept to add to the surface water quality standards. However, more detail for calculating baseflow is needed. A formula approach like that used in the new definitions for “4Q3” or “harmonic mean flow” may be useful. The definition of “effluent dominated” proposed in the new 20.6.4.7.E(2) NMAC implies “baseflow” would be based on a 12-month average. Because few streams have flow gages, NMED should provide additional explanation concerning what readily available data will be used for determining baseflow.
3. Contaminants of Emerging Concern – New 20.6.4.7.C(7) NMAC and Amended 20.6.4.13.F(1) NMAC. This language will allow NMED to regulate contaminants that are not routinely monitored and for which there are no regulatory standards. It therefore will be difficult to determine whether the concentrations of these contaminants are in amounts that will cause the effects listed in 20.6.4.13.F(1) NMAC. Furthermore, it is not clear whether, by specifically referencing this category of contaminants, NMED is given any additional authority. NMED should provide additional explanation concerning the bases of, and its intent for, these provisions.
4. Existing Use Analysis – New 20.6.4.10.B NMAC. NMED proposes to add language to this section that is directly from 40 CFR § 131.10. At the same time, NMED is proposing to implement this provision and use it to support the modification of the recreational use for several stream segments from “secondary” to “primary” contact. The proposed changes to the recreational uses for those segments are premature. The process for the “existing use analysis” should be

defined and approved prior to implementing it. "Supporting evidence" (the type and amount of data required) for this type of demonstration also should be defined. In addition, NMED should provide any analysis it has done in support of its proposals to upgrade recreational uses from secondary to primary contact.

5. Toxic Pollutants – Amendment to 20.6.4.13.F(1) NMAC. NMED is proposing to add a reference to the definition of "toxic pollutants" found in the Ground and Surface Water Protection Rules (20.6.2 NMAC) to the toxic pollutants regulation in the surface water quality standards. "Toxic pollutants" already is defined in the surface water quality standards at 20.6.4.7.T(2) NMAC. The inclusion of a reference to the 20.6.2 NMAC definition within the surface water quality standards is confusing and may cause conflict. The two definitions have existed in separate rules for many years, and NMED should explain why it is now proposing this amendment. In addition, like SJWC's comment concerning contaminants of emerging concern, NMED should explain how it intends to implement this provision for toxic pollutants for which there are no regulatory standards or very limited monitoring data.
6. Section 900 Criteria.
 - a. 20.6.4.900.D NMAC - New Recreational Criteria for Microcystins and Cylindrospermopsin. NMED proposes to adopt maximum criteria for these cyanotoxins. Criteria for E. coli bacteria are based on a monthly geometric mean and single sample maximum. In *Recommended Human Health Recreational Ambient Water Quality Criteria or Swimming Advisories for Microcystins and Cylindrospermopsin* (EPA 822-R-19-001, page 76), EPA specified: "recommended criteria for these cyanotoxins that provide a magnitude (8 µg/L microcystins or 15 µg/L cylindrospermopsin) and duration (not to be exceeded in more than three 10-day assessment periods over the course of a recreational season)." See <https://www.epa.gov/sites/production/files/2019-05/documents/hh-rec-criteria-habs-document-2019.pdf>) EPA recommended the use of a "maximum" for swimming advisories only. NMED should justify the proposed duration as "maximum" for the cyanotoxins or change it to a monthly statistic similar to E. coli bacteria.
 - b. 20.6.4.900.H(6) NMAC – Amendment to the Marginal Warmwater Aquatic Life Designated Use. NMED proposes to revise the language from "maximum temperature 32.2°C" to "temperatures that may routinely exceed 32.2°C." SJWC agrees that it is helpful to include language to distinguish between the warmwater and marginal warmwater designated uses. NMED should explain how it intends to implement this language, especially including detail on what "routinely" means.
 - c. 20.6.4.900.I(1) and (2) NMAC - Proposed Revisions to Metals Tables.

- i. The values for m_A , b_A , m_C , b_C for Cadmium (Cd) and Zinc (Zn) are different than the current EPA recommended values. NMED should provide the basis for the difference. In most cases the values generate a more stringent criterion than the federal criterion.
 - ii. NMED should explain the basis for the Copper (Cu) and Manganese (Mn) values. EPA does not specify aquatic life criteria for those metals.
 - iii. EPA issued a new aluminum criterion in 2018 based on multiple linear regression (MLR) models. The criteria are a function of pH, total hardness, and dissolved organic carbon (DOC). NMED does not propose to adopt the MLR approach. NMED should explain why it is not proposing the MLR approach.
- d. 20.6.4.900.I(3) NMAC. NMED proposes to amend select acute and chronic hardness-based metals criteria values for Chromium (Cr) III, Lead (Pb), Nickel (Ni), and Silver (Ag) without explanation. The equations in 20.6.4.900.I(1) and (2) NMAC have not changed. NMED should specify the reason(s) for its proposed changes.
- e. 20.6.4.900.J NMAC. NMED proposes the following changes to be consistent with federal criteria pursuant to 40 CFR § 131.20. SJWC notes the following discrepancies.
- i. NMED should provide the basis for the aquatic life criteria for Molybdenum, total recoverable. Currently, there are no equivalent EPA ambient water quality criteria for Molybdenum.
 - ii. NMED has not adopted acute and chronic criteria for Acrolein.
 - iii. The proposed changes for Benzene do not appear to meet the EPA recommended criteria. NMED should provide specific justification for the Benzene criteria.
 - iv. The human health organism only criterion for Dichlorodiphenyl-dichloroethylene (DDE) should be 0.00018 ug/L instead of 0.000018 ug/L because the surface water quality standards specify protection at 10^{-5} risk level.

Editorial Comments

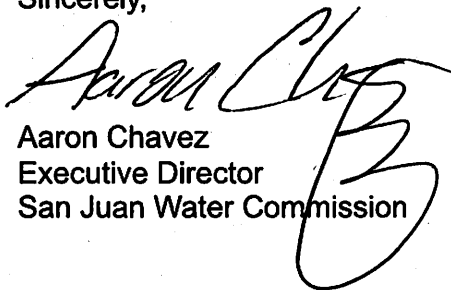
1. Deletion of spacing. NMED should explain why it is proposing to delete certain spaces in the subject lines of many sections of the standards. This comment concerns the standards for which the deletion of spacing is the only proposed

change (subsections 107, 109, 111, 113-114, 117-123, 125, 127, 129-139, 201-205, 210-214, 216-219, 221-230, 301-306, 308, 310, 313-317, 401-402, 405-410, 451-453, 501, 504-505, 601-603, 701-702, 801-802, and 805-806 of 20.6.4 NMAC). NMED has proposed to include an "amendment" notation in the brackets containing the historical notes to reflect this formatting change. SJWC believes such a notation will cause confusion in the future when anyone is researching the substantive standards changes for a particular year. If the spaces proposed for deletion must be eliminated per *New Mexico Register* formatting requirements, perhaps a waiver is available that would eliminate the need to include the date of this non-substantive amendment in the history notes.

2. Definitions in General. SJWC supports the proposals to add newly defined terms and to move language from the substantive sections to the definitions.
3. 20.6.4.900.D NMAC. "Cylindropermopsin" should be "Cylindrospermopsin."
4. 20.6.4.900.J(1) NMAC. For "pentachlorobenzene," the CAS # should be 608-93-5 instead of 608-63-5.

Thank you for the opportunity to comment on NMED's proposed revisions to the State's surface water quality standards. SJWC reserves the right to supplement these comments, and to comment on any additional proposed changes, as the Triennial Review process proceeds.

Sincerely,


Aaron Chavez
Executive Director
San Juan Water Commission