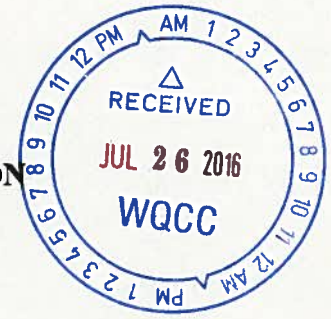

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION

In the Matter of:	
PROPOSED ADOPTION OF *NEW MEXICO CERTIFIED UTILITY OPERATOR CODE OF PROFESSIONAL CONDUCT* 20.7.4.16 NMAC	**No. WQCC 16-01 (R)**

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

The Utility Operator Certification Program of the Drinking Water Bureau of the Water Protection Division of the New Mexico Environment Department ("NMED"), pursuant to the Guidelines for Water Quality Control Commission Regulation Hearings (Approved November 10, 1992; Amended June 8, 1993), hereby files this Notice of Intent to Present Technical Testimony at the hearing scheduled to commence on August 9, 2016.

1. The entity for whom the technical witnesses will testify

The technical witnesses will testify for the Utility Operator Certification Program of the Surface Water Quality Bureau of the Water Protection Division of the NMED.

2. The name, address, affiliation, educational and work background of each technical witness

The Department will call the following witnesses at the hearing to present technical testimony:

A. Cathie Eisen. Ms. Eisen is the Chair of the Utility Operator Certification Advisory Board. She has worked as a certified operator for water and waste water systems for

over fifteen (15) years. Ms. Eisen holds the highest level of certifications for both water and waste water systems in New Mexico, and has also received certification in Oklahoma and Arizona. Ms. Eisen's educational and professional background is described in her resume, attached as NMED Exhibit 3. Ms. Eisen is expected to testify about the Utility Operator Certification Advisory Board's decision to draft the Code of Professional Conduct and the process of drafting it. A summary of Ms. Eisen's direct testimony is provided as NMED Exhibit 2. Ms. Eisen's verbal testimony at the hearing is expected to take no more than thirty (30) minutes.

B. Anne Keller. Ms. Keller is the acting Certification Officer for the Utility Operator Certification Program. She has worked for NMED in the Utility Operator Certification Program since September 2013, and has been the Acting Utility Operator Certification Program Team Supervisor since January 2016. Prior to that, Ms. Keller worked as a geologist and hydrologist in Missouri for over ten (10) years. Ms. Keller received bachelor's degrees in Geology/Geophysics and Spanish from the Missouri University of Science and Technology, as well as a master's of science degree in Geology/Geophysics from the Missouri University of Science and Technology. Ms. Keller is a registered geologist in Missouri. Ms. Keller's educational and professional background is described in her resume, attached as NMED Exhibit 1. Ms. Keller is expected to provide testimony about the drafting of the Code of Professional Conduct that is put forth for adoption today, the process of holding Stakeholder meetings and incorporating input arising from them, compliance with the notification requirements for the rulemaking hearing, and the expected enforcement process should a certified utility operator violate the Code of Professional Conduct. A summary of Ms. Keller's direct testimony is

provided as NMED Exhibit 4. Ms. Keller's verbal testimony at the hearing is expected to take no more than forty-five (45) minutes.

3. List and Description of Exhibits

The Department submits the following exhibits:

NMED Exhibit 1	Resume of Cathie Eisen
NMED Exhibit 2	Written Testimony of Cathie Eisen
NMED Exhibit 3	Resume of Anne Keller
NMED Exhibit 4	Written Testimony of Anne Keller
NMED Exhibit 5	Proposed Amendments to 20.7.4 NMAC in Legislative Format
NMED Exhibit 6	Small Business Regulatory Relief Act Notice
NMED Exhibit 7	Small Business Regulatory Relief Act Response
NMED Exhibit 8	Proposed Statement of Reasons

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/ Annie Maxfield

Annie Maxfield
Assistant General Counsel
121 Tijeras Avenue NE, Suite 1000
Albuquerque, NM 87102-3400
Telephone: (505) 222-9592
annie.maxfield@state.nm.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Notice of Intent to Present Technical Testimony* was served on the following party on this the 26th day of July, 2016, via the stated delivery method below:

Hand delivery:

Ms. Pam Castaneda, Administrator
Water Quality Control Commission
Room S-2102, Runnels Building
1190 St. Francis Dr.
Santa Fe, New Mexico 87505

/s/ Annie Maxfield
Annie Maxfield

CATHIE R. EISEN

PO Box 133
Nogal, NM 88341
(575) 937-6321
cathieeisen@gmail.com

EDUCATION

- *State University of New York at Delhi, Delhi, NY University* Animal Husbandry/ Horse Management September 1975 to May 1976 Studies focusing on livestock anatomy, physiology and management. GPA: 3.31/4.0
- *New Mexico Operator Certification Program - New Mexico Water Wastewater Association/New Mexico Rural Water Association* Studies specific to Water/Wastewater Utility Operations and Management. Short Schools Total Training Credits: 675.00 (Level IV Utility Operator Water & Wastewater Certifications) (Equivalent 61.9 College credits)
- *Oklahoma Water Resource Board* - Surface Water Sampling (8 hours)
- *United States Geological Services* – Surface Water Sampling Techniques(16 hours)
- *Master Naturalist Program* – Teacher Education (Approx. 32 hours)
- *Inter Tribal Council of Arizona* – Tribal Utility Management, Operator Training (18+ Hours)

RELEVANT EXPERIENCE

Water & Wastewater Technician February 2012- Present

Mescalero Apache Tribe Utilities and the Department of Resource Management and Protection

- Responsible for the operation and maintenance of all the tribal drinking water systems
- Drinking water sampling for monitoring and compliance with EPA regulations
- Operation of Wastewater Treatment Plant

Utility Repairer/Operator September 2011 – December 2011

Department of the Interior, Grand Canyon National Park, AZ

- Operates and repairs water and wastewater systems serving the park
- Routine water and wastewater sampling for monitoring and compliance

Hydrological Field Technician July 2009 – June 2011

NM Bureau of Geology and Mineral Resources, Socorro, NM

- Field work associated with two aquifer mapping projects in Tularosa Basin and San Agustin Plains, NM
- Well inventory/set up of monitoring networks
- Obtaining GPS coordinates and recording field data
- Ground water level measurement, stream flow measurements and water quality sampling
- Research additional well data

Ranch Manager May 2009-September 2011

Good Sawyer Development, Nogal, NM

- Maintained ranch property comprised of 1000 acres of grazing and cultivated fields
- Create and execute ranch management plans to include operation of irrigation equipment, fence maintenance, weed control, field crop cultivation and harvesting, improved grass coverage, livestock grazing management including field rotations, spring development, water well maintenance and operation including water level monitoring in order to minimize impacts to water supply, drought planning, spring flow monitoring, sampling and development, tracking of surface water flows, intake design and construction plans, water rights research, documentation of all efforts for practical and legal purposes including ranch journal and photographs, tracked and reported all related expenses, organization of all operations including long and short term planning including making recommendations for future utilization of ranchland to optimize productivity and potential income.

Water System Operator November 1999 – September 2011

Nogal Mutual Domestic Water Consumers Association, Nogal, NM

- Operation and management of community water system
- Routine water samples
- Water level and production records
- Compliance sampling and reporting
- Two year compilation of ground water levels and water quality parameters according to the NMED/GWUDI Program (Ground Water Under the Direct Influence)
- Guidance and oversight on water treatment plant and infrastructure replacement including grant applications and engineering.

Small Water System Consulting
Walking Water Consulting, Nogal, NM July 2009 – present

- Providing operational and managerial support to small water systems
- Water well design, construction and monitoring oversight
- Technical and regulatory guidance for new system development

Field Technician September 2006 - 2012
Terr Avenga, Carlsbad, NM

- Field support for water level monitoring for Sandia National Laboratories
- Ground water level measurements and water quality sampling
- Obtaining GPS coordinates and recording field data

Regional Water Technician April 2008 – February 2009
New Mexico State Parks Region II, Tucumcari, NM

- Oversight of the operation and maintenance of ten State Park Water/Wastewater Systems
- Maintain compliance with New Mexico Environmental Department/EPA regulations including routine water samples and production reports and system upgrades
- Routine inspections of water/wastewater facilities
- Provide guidance and design recommendations for systems upgrades
- Oversee and train individuals responsible for water and wastewater systems operations
- Regional safety officer

Utility Director September 2005 – April 2008
CDS Rainmakers Utilities, Alto, NM

- Operation, management and expansion of community water system
- Routine reporting and water samples for compliance with New Mexico Environmental Department
- Water level and production records on community wells for the NM Office of the State Engineer
- Established detailed water level and production monitoring program in order to identify and minimize impacts on ground water production wells
- Collaborated with Sandia National Laboratories on water level monitoring program
- Oversaw construction and development of large diameter water well in accordance to OSE Specifications.
- Developed Standard Operating Procedures for water/wastewater systems and supervised employees.
- Made recommendations for upgrades and replacement of water and wastewater infrastructure
- Provided guidance regarding design for replacement of existing wastewater treatment facility

Small Water Systems Technician August 2003 – August 2005
New Mexico Rural Water Association, Albuquerque, NM */Oklahoma Rural Water Association,* Oklahoma City, OK

- Provided technical assistance to small public water systems in order to attain compliance with the local Environmental Department and US Environmental Protection Agency regulations
- Conducted technical evaluations and assessments of water systems utilizing the Environmental Departments Sanitary Surveys
- Provided written recommendations identifying both short and long term actions needed to eliminate deficiencies to water system personnel and Environmental Department staff.
- Responded to emergency requests (Regulatory violations or loss of operating pressure)
- Train system personnel to improve operation, maintenance and ground water well monitoring
- Utilization of GPS technology for system mapping

Environmental Outreach Coordinator May 2004 – July 2004
Kaw Nation Indian Tribe, EPA Environmental Department, Kaw City, Oklahoma

- Provide research and field data relating to environmental projects
- Establishing, organizing, maintaining files for Environmental Department projects
- Worked with Environmental Department Director & Staff to develop projects
- Identified environmental concerns that could directly impact the health of tribal members.
- Created pamphlets and organized public meetings for education of tribal members regarding environmental concerns.

Utility Operator September 2005 – April 2008
Town of Carrizozo, Carrizozo, NM

- Operation and management of community water and wastewater system
- Operation of ground water wells, surface water treatment plant and wastewater treatment plant.

- Daily water quality monitoring and reporting of ph, turbidity, chlorine residuals and coagulant dosages to maintain compliance with New Mexico Environmental Department
- Routine drinking water samples for compliance with New Mexico Environmental Department
- Water level and production records on community wells for the NM Office of the State Engineer
- Development of a Preliminary Engineering Report for Water System Upgrades
- Routine sampling, water level measurements and recording of information on monitoring wells for a wastewater treatment plant for compliance purposes.
- Evaluation and recommendations for the improvement and upgrades to the operation and maintenance of wastewater collection and treatment system including composite and grab sampling of wastewater flows and interpretation of sample results for compliance as well as design purposes.

COMPUTER SKILLS

- Adobe Reader
- Microsoft Word, Microsoft Excel, Microsoft PowerPoint
- Ground water level modeling programs (Sandia National Laboratories)
- National Rural Water: Community Water Systems Database & Field Technician Reporting System
- Data base entries for NM Tech
- Familiar with Office of the State Engineers Waters, Environmental Protection Agency (EPA) and Environmental Departments databases.
- General Internet research for specific data

CERTIFICATIONS

NM Advanced Small Water Systems – Issued March 17, 2000

- NM Water Systems II – Issued November 10, 2000
- NM Water Systems III – Issued February 1, 2002
- NM Water Systems IV – Issued January 31, 2003(current)
- OK Water Laboratory C (Oklahoma) – Issued July 8, 2005(expired)
- NM Wastewater Systems I – Issued November 21, 2001
- NM Wastewater Systems II – Issued September 13, 2002
- NM Wastewater Systems III – Issued February 1, 2007
- NM Wastewater Systems IV- Issued February 6, 2008(current)
- AZ Water & Wastewater Operator IV- Issued September 2011(Reciprocity)
- AZ Distribution & Collections Operator IV- Issued September 2011(Reciprocity)
- Tribal Water Treatment Operator (ABC Level II) Passed test October 11, 2013
- Tribal Utility Management Certification (Level I) Passed test October 11, 2013
- Tribal Water Treatment (ABC Level IV) Through reciprocity October 2013
- Tribal Wastewater Treatment (ABC Level IV) Through reciprocity October 2013
- Native American Water Masters Utility Management Certification 2014

AWARDS

- Water Operator of the Year- Medium Systems New Mexico Rural Water Association Annual Conference 2002
- Operator Of The Year Tribal Systems – New Mexico Rural Water Association Annual Conference 2015

BOARDS

- Lincoln County Works 2001-2004
- New Mexico Rural Water Association 2003
- Lincoln County Public Land Use & Rural Activities Committee 2006-2007
- South Central Mountain RC&D Council Executive Committee 2007
- Lincoln County Water Research & Conservation Committee (Chairman) 2007-2008
- New Mexico Environmental Department Utility Operators Certification Advisory Board (Chairman) 2008 – present

ASSOCIATIONS

- New Mexico Water & Wastewater Association since year 2000
- Native American Water Masters Association since year 2014

REFERENCES

Please feel free to contact the following individuals as they are familiar with my experience and qualifications as a Water/Wastewater Operator.

- Robert George- Santa Fe County- 505-901-7952
- Michael Coffman- State of New Mexico Surface Water Quality Bureau – 505-222-9575
- Ron Romero - State of New Mexico Environmental Department – 505-476-8620
- David Bernadone- New Mexico Office of the State Engineer – 505-624-5151
- Stacy Timmons- New Mexico Tech Bureau of Geology and Mineral Resources- 575-835-6951
- Lewis A. Land Ph. D.- National Cave and Karst Research Institute- 575-887-5508

Additional Information:

Surface Water Treatment: I operated a Roberts Package Plant for surface water treatment for three years while employed by the Town Of Carrizozo. In addition to that experience during the time I was employed by New Mexico and Oklahoma Rural Water Associations I visited the vast majority of the surface water systems in New Mexico and Oklahoma in response to the passing of the Long Term 2 Surface Water Treatment Rule in 2003. During that time we conducted detailed inspections of these systems in order to provide guidance towards regulatory compliance as many of these systems were unable to meet the more stringent requirements related to the disinfection by products resulting from the addition of chlorine to surface water. We were also gathering information which was utilized for future monitoring and operational recommendations on a national level. Having worked with many different treatment systems ranging from small pressure filters, package plants and conventional surface water treatment I feel that I have an in depth understanding of the process and maintenance requirements of these systems. We also spent time inspecting and evaluating distribution and storage facilities as the management of these appurtenances also directly influenced the quality and quantity of the water delivered to the communities they served.

Wastewater Treatment: During the fourteen years I have been in the industry I have had the opportunity to operate several types of wastewater treatment systems as well as visiting quite a few others while working for Rural Water. I operated a lagoon system for the Town of Carrizozo which had an Imhoff tank as the pretreatment for the influent prior to being discharged to the lagoons. I was also an active participant in the removal of one engineering firm and the hiring of a new one for the replacement of the WW Treatment system and took part in an evaluation of the collections system for the same community while being directly involved in the design of the new treatment plant.

In addition to that experience I have operated a small activated sludge WW package plant for three years, was an operator for a large activated sludge WW Treatment system at the Grand Canyon which also went through final treatment for reuse throughout the park. I operated a Rotating Biological Contact System as the stand-in operator in Glorieta where we also composted the sludge for garden fertilizer. I am currently the operator for a Biolac WW Treatment system with a surface water discharge as well as an evaporative lagoon system for sludge management and septage disposal. I have also received training on Sequential Batch Reactors and Membrane Filtration as well as other processes and feel comfortable dealing with any range of wastewater treatment. I have also had some experience with Reverse Osmosis treatment processes and other pressure filter treatments for water and wastewater.

Water Wells: I have assisted in the planning and development of community water wells from the initial efforts of locating the best location for optimal production, planning of the actual well construction to meet the regulatory requirements for community water supplies. I stayed on site through the complete drilling process for a large diameter (20 inch surface case) 1000 foot well and observed the entire process including a major effort to alleviate a loss of circulation due a cavern in karst limestone. I participated in the mud logging and tracking of the drilling process, pump sizing(recommendations), installation, and

took part the pump testing of the well including the monitoring of water levels in other wells in the surrounding area. I was also tasked with adjusting the pump rates on the new well to assure continual production without adverse effects on the static and pumping levels for that well and those adjacent to it. I have also taught classroom instruction on the same subject to assist other operators in proper monitoring and management of water supply wells.

Tribal Systems: I have several years of involvement with the Tribal Water and Wastewater systems and understand the challenges of which these communities are faced with. I have worked closely with Tribal Leadership and Tribal Members in the office and the field as well as interfacing with Indian Health Services and Environmental Protection Agency personnel to upgrade and improve water and wastewater systems operation and management. I have performed in house training with my co workers and successfully assisted two of them in obtaining their Level I New Mexico Water Systems Operator Certifications. I have worked directly with leaders and councils both for Community and Tribal systems as well as the various enforcement and funding agencies and feel I have been able to establish a good report with all of them.

Overall Experience: Having worked as a Utility Operator, Manager, Board Member and Technical Provider as well as a Hydrological Field Technician I have achieved a broad range of skills and a deep understanding of water system operation, hydrology and wastewater treatment and disposal. I have also provided a lot of hands on and classroom training on water and wastewater production, distribution, collections and treatment and safety. I have a commitment to the industry as an operator and board member to provide the highest level of treatment and operation for the systems I am responsible for. I truly enjoy providing these services for our communities and residents as well as protecting our vital resources and public health.

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION

In the Matter of:	
PROPOSED ADOPTION OF *NEW MEXICO CERTIFIED UTILITY OPERATOR CODE OF PROFESSIONAL CONDUCT* 20.7.4.16 NMAC	**No. WQCC 16-01 (R)**

DIRECT TESTIMONY OF CATHIE EISEN

I. INTRODUCTION

This technical testimony is submitted by Cathie Eisen, Chair of Utility Operators Certification Advisory Board ("Board"), established pursuant to NMSA 1978, § 61-33-4, for the public hearing on the proposed adoption of New Mexico Certified Utility Operator Code of Professional Conduct, 20.7.4.16 NMAC.

The hearing is to be held before the Water Quality Control Commission ("WQCC") in Santa Fe, New Mexico on August 9, 2016. The purpose of this testimony is to give an overview of the Board's reasons and procedures for drafting and adopting this Code of Professional Conduct.

II. BACKGROUND AND EXPERIENCE

I, Cathie Eisen, have been a certified water systems operator in New Mexico for sixteen (16) years. I have been a certified wastewater systems operator in New Mexico for over fourteen (14) years. I hold the highest level of certification for both water systems (WS4) and waste water systems (WW4) in New Mexico. I have held certifications in Oklahoma and Arizona through reciprocity. I am certified as a Level 4 Tribal Water Systems Water and Wastewater Operator and hold a Tribal Utilities Managerial Certification and Native American Water Masters Utility Management Certification. I was first appointed to the Board by the WQCC in 2008, and am currently serving my third term on the Board. I was elected as chair of the Board by my fellow Board members in September 2015.

I currently serve as the lead wastewater operator for the Mescalero Apache Tribe under the Department of Resource Management and Protection and provide technical assistance to small water systems as Walking Water Consulting in Nogal, New Mexico. Prior to this, I have worked as a water systems technician and operator in different communities in New Mexico, Oklahoma, and Arizona, beginning in 1999. A copy of my resume is marked as NMED Exhibit 1.

III. GOALS FOR CODE OF PROFESSIONAL CONDUCT

The Board would like to present to you a proposed amendment to 20.7.4 NMAC. We are proposing to add a Section 16, titled "Code of Professional Conduct." The purpose of this code is to clearly define the level of professional conduct that we as Certified Water and Wastewater Operators should abide by to assure we are serving the public and protecting the environment to the highest level of professionalism. Although NMSA 1978, § 61-33-7 provides instances in which utility operators may have their certifications suspended or revoked and other language in the NMAC alludes to standards for utility operators by describing what utility operators must do in order to perform their jobs correctly, the proposed Code of Professional Conduct unifies the expectations for utility operators in one place in the NMAC. The proposed Code establishes guidelines and defines values that can be clearly understood and abided by while also providing the means to enforce these requirements.

The initiative to develop this code originated from within our own Board. In 2012, one of our previous Board members, along with three other certified operators, was investigated for violating NMSA 1978, § 61-33-7(B) and (C), which are the provisions in the Utility Operators Certification Act concerning gross incompetence and dereliction of duty. The NMED subsequently revoked one of the four operator's certification. This event opened a discussion among the Board members as to how we could prevent such behavior from recurring. The members of the Board feel obligated to perform to the highest standards in our industry and we decided to establish a set of guidelines for the Board for that purpose. To get ideas about what these guidelines should look like, we initially reviewed the "Code of Conduct" used by the Inter Tribal Council of Arizona for Tribal Water Systems Certification and then referenced similar Codes used by other states. We took inspiration from the codes we reviewed to draft an appropriate code for Board. The end result of this effort was the New Mexico Utility Operators Certification Advisory Board Code of Professional Conduct for Board Members. The Board formally adopted the Code on January 29, 2015. All Board members signed the Code, and it is preserved electronically in the Program's files. After the Board established a Code of Professional Conduct for ourselves, we then formulated another code for the purpose of formally setting standards for the New Mexico Utility Systems Operators as a whole. We looked to other state codes and the Board's code for inspiration. Once we had drafted the initial version of code, we advertised and conducted a meeting for the stakeholders and opened the floor for comments and discussion. We received some good input which we then utilized to revise the draft code into one that we hope will suit everyone concerned. It is this final rendition of the code that we are presenting today for your approval.

As industry professionals, we all have a common goal to protect the health and the safety of our customers as well as the surrounding environment. Many professions have codes of conduct that all professionals practicing the discipline are required to adhere to. We feel strongly that the proposed Code of Professional Conduct strengthens our ability to protect public health and safety while also enhancing the integrity and professionalism of all of us who are dedicated to the industry.

This concludes my direct testimony.

ANNE KELLER, R.G.

PO Box 5469
Santa Fe, New Mexico 87502

(505) 827-0149
anne.keller@state.nm.us

OBJECTIVE: To enforce the New Mexico Utility Operator Certification Act & Regulation and to provide assistance to certified and uncertified water and wastewater operators in New Mexico.

EDUCATION: **MISSOURI UNIVERSITY OF SCIENCE & TECHNOLOGY**

July 2000 • **M.S. Geology/Geophysics**
May 1996 • **B.S. Geology/Geophysics**
January 1992 • **B.A. Spanish**

GRADUATE RESEARCH & THESIS:

March 1999 to May 2000 **Hydrologic and Dye Trace Study of Welch Spring, Missouri**

- Performed historical document research for all hydrologic information related to Welch Spring.
- Performed field investigation of watershed feeding Welch Spring, including upper Meramec River and upper Current River basins using USGS 7.5-minute topographic maps.
- Designed and executed four positive dye traces to three different springs within research study area.
- Delineated new, larger groundwater recharge area for Welch Spring based on research results.
- Generated 17 maps for research study area using ArcView GIS.

REGISTERED GEOLOGIST:

- Missouri License # 2011012526, Expiration: April 2017

EXPERIENCE:

January 2016 to Present **Utility Operator Certification Program Team Supervisor - Acting**
Utility Operator Certification Program-Surface Water Quality Bureau

- Supervise, make work assignments and prioritize workloads for 2 Utility Operator Certification Program team members.
- Oversee daily workflow to ensure Utility Operator Certification Program team members complete operator certification renewals, exam application approvals and information requests in a timely manner.
- Coach and mentor UOCP team in program and bureau procedures; operator exam session preparation, procedures and proctoring; utility operator certification database management; application and enforcement of the UOC Regulations and general operator assistance.
- Provide regular, meaningful feedback to UOCP team regarding work performance.
- Arrange and implement a staff location work schedule that provides ample team coverage for UOCP offices in Santa Fe and Albuquerque.
- Coordinate and plan LXR Test 6.1 Author training and other important training for UOCP staff.
- Approve bi-weekly time sheets for UOCP staff.
- Review and act upon annual leave and sick leave request for UOCP staff.
- Evaluate quarterly performance of UOCP staff based on employee's performance as related to his/her performance plan goals.
- Encourage and foster an atmosphere of teamwork among UOCP team members by promoting a working environment of good communication, cooperation and mutual respect and by setting a personal example.
- Conduct regular staff meetings to discuss staff issues and concerns, status of renewal and exam applications, improvements and efficiencies to daily work-flow, improvements to the utility operator certification database, future program initiatives that will increase the protection public health and the environment and initiatives to better serve the utility operator community.

January 2016 to Present **Utility Operator Certification Program Team Supervisor - Acting (cont'd)**

- Provide technical and administrative support to UOCP team.
- Update Bureau Chief regularly regarding current UOCP issues, projects and initiatives.
- Work with UOCP team and SWQB financial staff to make sure daily checks are receipted and deposited within 24 hours of receiving checks.
- Analyze budgets and direct monies so that expenditures reflect purchases that are completed and justified.
- Coordinate and work with SWQB financial staff to insure appropriate management of UOCP monies.
- Prepare reports that document the status of the UOCP and its compliance with EPA guidelines directing operator certification.
- Plan, direct and coordinate the New Mexico Utility Operator Advisory Board by setting meeting dates, conducting Board nominations and setting meeting agendas.
- Coordinate with the New Mexico Utility Operator Advisory Board to evaluate and update operator experience and need-to-know criteria for all operator certification levels.
- Present new Utility Operator Advisory Board members before the Water Quality Control Commission (WQCC) for final approval.
- Coordinate with NM Utility Operator Advisory Board Chair and Office of General Counsel to plan testimony for the WQCC hearing for the "Code of Professional Conduct" amendment to the Utility Operation Certification Regulation.
- Testify at the hearing before the WQCC regarding the "Code of Professional Conduct" amendment to the Utility Operation Certification Regulation.
- Review and update UOC examinations, UOCP training materials and text books.
- Evaluate utility operator training classes and utility operator training providers.
- Plan, coordinate, conduct and proctor operator exam sessions.
- Review and update operator certification exam evaluation procedures to insure qualified exam applicants are able to take a certification exam.
- Create guidance document for UOC staff to use when reviewing and evaluating operator water and wastewater experience on operator examination applications.
- Conduct exam reviews for unsuccessful examinees to assist their exam preparation and identify needed exam improvements.
- Maintain files, folders and records in the utility operator certification database on all public water and wastewater facilities to perform Utility Operator Certification Regulation compliance tracking.
- Enforce the UOC Regulations by conducting investigations and enforcement actions in accordance with Department policy.
- Coordinate with other NMED agencies when operator certification issues are involved.
- Review, analyze and prepare clear, concise and factual comments on proposed new or amended federal and state agency policies and procedures, regulations and technical recommendations.
- Utilize the utility operator certification database to provide assistance and information to operators regarding their certifications via phone, in writing and by email.
- Update operators' records in the utility operator certification database as necessary based on changes/ updates via incoming mail, telephone and email communications and exam/renewal applications.
- Review and evaluate operator renewal and exam applications in accordance with the Utility Operator Certification Regulation.

September 2013 to December 2015 **Environmental Scientist/Specialist-Advanced**

Utility Operator Certification Program-Surface Water Quality Bureau

- Assist Team Leader in preparation of hiring packet documents for the advertisement of vacant positions within the Utility Operator Certification Program (UOCP).
- Review job applicants' education and work experience to determine applicants suitability for an interview for vacant positions in UOCP.
- Interview and recommend top selected candidates for vacant positions in UOCP.

September 2013 to December 2015 **Environmental Scientist/Specialist-Advanced (cont'd)**

- Take the lead in preparation of hiring packet documents for top selected candidates to fill vacant positions in UOCP.
- Train new UOCP staff in program and bureau procedures; operator exam session preparation, procedures and proctoring; the utility operator certification database management; application and enforcement of the UOC Regulations and general operator assistance.
- Provide guidance and oversee administrative and technical program staff in Santa Fe office when Team Leader is working in the Albuquerque office.
- Encourage and foster an atmosphere of teamwork among UOCP staff by promoting a working environment of good communication, cooperation and mutual respect and by setting a personal example.
- Review and update UOC examinations, UOCP training materials and text books.
- Evaluate utility operator training classes and utility operator training providers.
- Plan, coordinate, conduct and proctor operator exam sessions.
- Conduct exam reviews for unsuccessful examinees to assist their exam preparation and identify needed exam improvements.
- Maintain files, folders and records in the utility operator certification database on all public water and wastewater facilities to perform Utility Operator Certification Regulation compliance tracking.
- Enforce the UOC Regulations by conducting investigations and enforcement actions in accordance with Department policy.
- Coordinate with other NMED agencies when operator certification issues are involved.
- Review, analyze and prepare clear, concise and factual comments on proposed new or amended federal and state agency policies and procedures, regulations and technical recommendations.
- Assist Team Lead in planning, directing and coordinating the New Mexico Utility Operator Advisory Board by setting meeting dates, conducting Board nominations and setting meeting agendas.
- Serve as the UOC Advisory Board Executive Secretary at Advisory Board meeting when the team leader cannot attend.
- Coordinate with the New Mexico Utility Operator Advisory Board to evaluate and update need-to-know criteria for all operator certification levels.
- Present new Utility Operator Advisory Board members before the Water Quality Control Commission for final approval.
- Assist Team Lead in working with New Mexico Utility Operator Advisory Board and the Office of General Counsel to develop and amend the Utility Operator Certification Regulation to include Subpart 16, "Code of Professional Conduct" (20.7.4.16 NMAC).
- Assist Team Lead in planning and conducting stakeholder's meeting to discuss the proposed "Code of Professional Conduct" amendment to the Utility Operator Certification Regulation.
- Analyze budgets and direct monies so that expenditures reflect tasks that are completed and justified.
- Utilize the utility operator certification database to provide assistance and information to operators regarding their certifications via phone, in writing and by email.
- Update operators' records in the utility operator certification database as necessary based on changes/ updates via incoming mail, telephone and email communications and exam/renewal applications.
- Review and evaluate operator renewal and exam applications in accordance with the Utility Operator Certification Regulation.
- Prepare reports that document the status of the UOCP and its compliance with EPA guidelines directing operator certification.

August 2012 to September 2013 **Hydrologist IV - Public Drinking Water Assistance Unit Chief**

Water Resources Center-MO Dept. Natural Resources

- Supervise and make work assignments for three PDWA Unit staff.
- Mentor existing PDWA Unit staff and train new PDWA Unit staff in program and division procedures and job duties.

August 2012 to September 2013 **Hydrologist IV - Public Drinking Water Assistance Unit Chief (cont'd)**

- Encourage and foster an atmosphere of teamwork among PDWA Unit staff by promoting a working environment of cooperation and mutual respect and by setting a personal example.
- Approve weekly time sheets for three staff.
- Review and act upon annual leave and sick leave request for three staff.
- Create and modify employee performance plans for three staff using the PERforM (Productivity, Excellence and Results for Missouri) system.
- Evaluate yearly performance of three employees using PERforM, based on individual's performance as related to individual's performance plan objectives.
- Review job applicants' education and work experience to determine applicants suitability for an interview for vacant positions in the PDWA Unit..
- Interview and recommend selected applicants for vacant positions in the PDWA Unit.
- Assist Groundwater Section Chief in preparation of hiring packet documents for top selected applicants to fill vacant positions in the PDWA Unit.
- Research, prepare and submit position re-classification paperwork for 2 different employees who consistently performed work above their current position classification for more than 1 year.
- Provide testimony to Missouri Well Installation Advisory Board regarding the regulatory differences between public and private well construction in Missouri.
- Petition the Missouri Well Installation Advisory Board to direct MO Dept. of Natural Resources- Well Head Protection staff to begin rule making that would require restricted licenses for all public water well drillers in Missouri.
- Manage progress of more than 75 public water supply (PWS) well construction projects using Basecamp®. project management software.
- Draft technical procedure documents for the permitting, construction and certification of bedrock and alluvial PWS well.
- Train 50 staff in seven separate MO DNR programs and regional offices to use Basecamp® software for tracking of all new PWS wells drilled in Missouri.
- Train over 100 staff at Regional Office/Public Drinking Water Workshop in the22-step permitting, construction and certification procedure for PWS wells.
- All duties detailed below under "Hydrologist III" position.
- "Core Duties" as detailed below.

June 2006 to August 2012 **Hydrologist III**

Water Resources Center-MO Dept. Natural Resources

- Manage subsurface hydrology lab and staff.
- Supervise, make work assignments and prioritize workloads for 1-2 part-time subsurface hydrology lab staff.
- Coach and mentor subsurface hydrology lab staff in proper rock cutting management procedures, rock cutting acidizing methods and procedures and lab safety procedures.
- Collaborate with well drillers, design engineers, DNR regional office and public drinking water staff to find realistic cost-effective solutions to PWS well drilling and grouting issues.
- Utilize the Safe Drinking Water Inventory System (SDWIS) to investigate PWS water sample results and water system information.
- Manage, revise and maintain data in well log database containing more than 28,000 well logs.
- "Core Duties" as detailed below.

July 2002 to June 2006 **Geologist II**

Water Resources Center-MO Dept. Natural Resources

- "Core Duties" as detailed below.

July 2002 to September 2013 **Core Duties: Geologist II through Hydrologist IV**

Water Resources Center-MO Dept. Natural Resources

- Research and provide technical written and verbal assistance to public water supply (PWS) officials, well design engineers, drilling contractors and the public regarding, aquifer characteristics and water quality and quantity issues in Missouri.
- Research and write estimated casing depth letters for PWS wells to protect public health and groundwater quality.
- Establish permanent casing amount for PWS wells based on examination of rock cuttings, the quantity and quality of water produced and the protection of public health and groundwater quality.
- Analyze pumping test data for PWS wells to calculate transmissivity, specific capacity and plot drawdown curves.
- Utilize transmissivity and specific capacity to manage the State's water resources by calculating proper well spacing and estimating the magnitude of well interference between an existing and proposed well.
- Create geologic and groundwater quality maps using ArcMap 10.0.
- Utilize USGS 7.5-minute topographic maps to determine section, township, range and surface elevation of proposed PWS well sites.
- Utilize aerial photography base maps in ArcMap to determine latitude and longitude of proposed PWS well sites.
- Create geologic well logs for PWS wells using insoluble residue logging and whole rock cutting logging techniques.

August 2001 to July2002 **Project CATE Manager**

St. Louis Public Library

- Supervise, make work assignments and schedule school outreach programs for two project team members.
- Review and constructively comment on after school instructional programs and school outreach programs developed by project team members.
- Mentor and train two project team members in project job duties and standard library procedures, guidelines and policies.
- Review and approve weekly time sheets for two project team members.
- Review and act upon annual leave and sick leave request for two project team members.
- Create and modify employee performance plans for two project team members.
- Evaluate performance of two project team members based on each employee's performance as related to employee's performance plan and overall project objectives and goals.
- Discuss and provide on-going mentoring to employee with underperformance/ absenteeism problem.
- Review job applicants' education and work experience to determine applicants suitability for an interview for vacant position on the Project CATE team.
- Interview and recommend selected applicant for vacant position on the Project CATE team.
- Assist in preparation of hiring packet documents for top selected applicants to fill vacant position on the Project CATE team.
- Ensure the project goals and performance targets were met according to the project timeline and specifications.
- Maintain and track project grant budget, including appropriated money and actual expenditures for staff salaries, equipment and supplies.
- Coordinate and work with library financial staff to insure appropriate management of project grant monies.
- Review, evaluate and act upon purchase requests submitted by team members for equipment and supplies.
- Meet weekly with team members to evaluate success of recent after school and outreach programs, develop strategies to improve after school and outreach programs, brainstorm ideas and plan for future after school and outreach programs, discuss equipment and supplies required for programs and review project and library procedures and policies as necessary.

March 2000 to June 2000 **Hydrologist I (Temporary 90-day Position)**

Water Resources Center-MO Dept. Natural Resources

- Research and plan wetland investigation in accordance with requirements of the grant-funded project.
- Perform initial field reconnaissance of wetland project study area.
- Create site maps of wetland project study area using ArcView GIS.
- Managed correspondence and ordering of IKONOS satellite images of the wetland project area.
- Managed Digital Orthophoto Quarter Quads (DOQQ) library for Water Resources Center.

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION

In the Matter of:	
PROPOSED ADOPTION OF *NEW MEXICO CERTIFIED UTILITY OPERATOR CODE OF PROFESSIONAL CONDUCT* 20.7.4.16 NMAC	**No. WQCC 16-01 (R)**

DIRECT TESTIMONY OF ANNE KELLER

I. INTRODUCTION

This technical testimony is submitted by Anne Keller, Acting Certification Officer for the Utility Operator Certification Program ("Program"), Drinking Water Bureau, Water Protection Division, New Mexico Environment Department ("NMED"), for the public hearing on the proposed adoption of the New Mexico Certified Utility Operator Code of Professional Conduct ("Code"), 20.7.4.16 NMAC. Prior to July 1, 2016, the Utility Operator Certification Program fell under the Surface Water Quality Bureau, also of the Water Protection Division of the NMED. For the sake of clarity, all activities referred to in the preparation for the public hearing will be attributed to the Program.

The hearing is to be held before the Water Quality Control Commission ("WQCC") in Santa Fe, New Mexico on August 9, 2016. The purpose of this testimony is to describe the drafting of the Code of Professional Conduct that is put forth for adoption today; discuss the process of holding Stakeholder meetings and incorporating input arising from them; demonstrate compliance with the notification requirements for the rulemaking hearing, and provide the expected enforcement process should a certified utility operator violate the Code of Professional Conduct.

II. BACKGROUND AND EXPERIENCE

I, Anne Keller, have been employed by the NMED for nearly three (3) years. I currently hold the position of Acting Certification Officer for the Utility Operator Certification Program, and have held this position since January 2016. In this position I am responsible for all statewide utility operator certification activities. This means that I ensure that New Mexico meets the requirements of the federal Clean Water Act, the federal Safe Drinking Water Act, and the New Mexico Utility Operator Certification Act through the certification of utility operators for all public drinking water and wastewater systems in the state. Prior to this position, I worked as a geologist and hydrologist for the Water Resources Center-Missouri Department of Natural Resources for over ten (10) years. In the positions I held there, I worked with public water

systems and water well drillers to ensure public water wells were constructed according to state regulations. I hold a B.A. in Spanish from the University of Missouri and a B.S. and M.S. in Geology/Geophysics, from the Missouri University of Science and Technology. I am a licensed registered geologist in the State of Missouri. A copy of my résumé is marked as NMED Exhibit 3.

III. UTILITY OPERATORS CERTIFICATION ADVISORY BOARD

The Utility Operator Certification Advisory Board ("Board") is an independent board appointed by the Water Quality Control Commission to function with the Commission to establish qualifications of operators, classify public water and wastewater systems and facilities, adopt rules and advise the NMED on the administration of the New Mexico Utility Operator Certification Act, NMSA 1978, Sections 61-33-1 to -10. The Board consists of seven regular members and two alternate members, all of whom are certified water and/or wastewater utility operators in New Mexico.

In my capacity as the Acting Certification Officer for the Program, I serve as the Acting Executive Secretary to the Board. I coordinate and work with the Board to set their quarterly meeting dates and agendas, to evaluate and update operator experience and need-to-know criteria for all utility operator certification levels, to present newly elected Board members to the WQCC for final appointment, and to plan and testify before the WQCC regarding amendments to the Utility Operator Certification Rule.

IV. DRAFTING OF THE CODE OF PROFESSIONAL CONDUCT

The Board drafted the Code of Professional Conduct that is the proposed amendment to 20.7.4 NMAC. Many other states and tribal organizations have codes of professional conduct for certified utility operators. In addition to the reasons included in Ms. Eisen's testimony, the instance of falsifying turbidity readings at the city of Ruidoso Grindstone Water Plant provided the motivation for the Board to start drafting the code when it did. The individuals within the NMED who investigated this incident recommended that the next time the Program and Board amend the certified operator regulations, they should strongly consider including ethics requirements for certified operators.

V. PUBLIC OUTREACH

The Board held one stake holder meeting on April 3, 2015. Stakeholders, in this context, are certified water and wastewater utility operators in the New Mexico, public water and wastewater facilities in the New Mexico, NMED-Surface Water Quality Bureau, NMED-Groundwater Quality Bureau, NMED-Drinking Water Bureau, the New Mexico Municipal League, the New Mexico Water and Wastewater Association and the New Mexico Rural Water Association. On February 16, 2015, a memo announcing the meeting was emailed to NMED, New Mexico Water and Wastewater Association and the New Mexico Rural Water Association stakeholders. Legal notices were posted in the Albuquerque Journal and the Las Cruces Sun Times. The Utility Operator Certification Program coordinated the meeting that was held at the NMED District 1 office, which was located at that time at 5500 San Antonio Dr. NE, Albuquerque, NM.

The Board received several comments from stakeholders at the April 3, 2015 meeting, and revised the Code to address their concerns. Several stakeholders thought that two of the duties listed in the proposed 20.7.4.16.C NMAC sounded duplicative. These duties are 20.7.4.16.C(3), which states that operators shall submit objective and truthful information in all reports statements and testimony as required by state and federal law, and 20.7.4.16.C(5), which states that operators shall act honestly, responsibly, ethically and lawfully in a manner that enhances the reputation of the profession. Larry Webb of the City of Rio Rancho also noted the overlap in an email comment that he sent the Board. After consideration, the Board determined that these two duties were not the same, and elected to leave both in the Code.

One stakeholder (Robert George of Santa Fe County Public Utilities) proposed a new draft version of 20.7.4.16 at the stakeholder meeting. Mr. George did not like what is now 20.7.4.16.C (7), which deals with the falsification of academic or professional qualifications. Mr. George attended a subsequent meeting of the Board and stated that his preference was to have that item (7) struck from the draft entirely. He believed this condition was already covered in the Utility Operator Certification Act. The Board discussed with Mr. George that language in the Act covered representing oneself as a certified operator without the accompanying certification (NMSA 1978, Section 61-33-8). After this discussion, the Board elected to keep what is now 20.7.4.16.C(7).

Mentioned in both Mr. Webb's email and at the April 3, 2015 meeting was the idea that a revocation or suspension for a first infraction may be too severe. Several attendees were in agreement that a penalty should begin with a warning and result in a revocation only for repeat infractions. Some who attended the stakeholder meeting wanted any revocation or suspension to be issued only by the Board, and not by the NMED. However, 20.7.4.27 NMAC states the NMED is responsible for revocations and suspensions. When that current provision of the regulation was explained to attendees, some attendees then stated that any revocations or suspensions based on the Code should be presented to the Board for review and recommendation before the NMED actually revokes or suspends a certification. The Board took these comments into consideration and ultimately decided to modify 20.7.4.16.B, which now states that the NMED "shall first seek the advisement of the Utility Operators Certification Advisory Board prior to any application of enforcement made pursuant to this Code of Professional Conduct."

Kit Roush of the Albuquerque-Bernalillo County Water Utility Authority took issue with a provision of 20.7.4.16(C) that dealt with maintaining the aesthetics of the environment in and around water and wastewater systems. Several other attendees at the April 3, 2015 meeting echoed his concern. Mr. Roush and others were concerned that the NMED would use this condition as an excuse to suspend or revoke an operator's certification based on whether the grass or weeds were mowed at the treatment plant. The Board took these comments into consideration and removed this duty from the Code.

VI. PROPOSED ENFORCEMENT OF THE CODE OF PROFESSIONAL CONDUCT

The proposed changes will hold operators and Board members to a high ethical standard while they are pursuing and holding a NM Utility Operator certification. The Code will provide another enforcement mechanism when fraud and deceit in the field of water and wastewater operations occur. Because the Code explicitly states that a certified utility operator's failure to follow the duties set forth in the Code constitutes gross incompetence, the NMED will then be

able to use NMSA 1978, Section 61-33-7(B) as grounds to suspend or revoke a noncompliant operator's certification. The NMED will consult with the Board before taking such a step, as also specified in the Code.

VII. PUBLIC NOTICE REQUIREMENTS FOR WQCC RULEMAKING HEARINGS

The Commission appointed a hearing office for the August 9, 2016 rulemaking hearing. The hearing officer drafted a scheduling order for the hearing and directed the Surface Water Quality Bureau to provide public notice of the August 9, 2016 hearing in accordance with Section 302 of the Guidelines for Water Quality Control Commission Regulation Hearings ("Guidelines"). The Program fulfilled all notice requirements set forth by the Commission. The Program drafted a notice that complied with Section 302(C) of the Guidelines, and stated the following:

1. the subject, including a description of the proposed regulatory change, time, and place of the hearing;
2. the statutes, regulations, and procedural guidelines governing the conduct of the hearing;
3. the manner in which persons may present their views of evidence to the Commission;
4. the location where persons may secure copies of the proposed regulatory change; and
5. if applicable, that the Commission may make a decision on the proposed regulatory at the conclusion of the hearing.

The Program ensured that the notice was published in the New Mexico Register on June 30, 2016, in the Las Cruces Sun-News on July 9, 2016, and in the Albuquerque Journal on July 12, 2016. The newspaper advertisements were published in both English and Spanish.

In addition to the notice required by the guidelines, the Program published the proposed amendment to 20.7.4 NMAC on the Utility Operator Certification Program website in February 2016. To date, the Bureau has received a few comments and requests in addition to the ones received in conjunction with the stakeholder meeting, described above. On April 26, 2016, Pooja Kandala of Thomson Reuters requested a copy of the draft Code, which I emailed to her. Again on July 21, 2016, Ms. Kandala requested a copy of the draft Code, which I again emailed to her. She asked if it was the latest version of the draft Code. I responded that the version I emailed is the version that will be brought before the WQCC at the August 9, 2016 hearing.

On June 27, 2016, Jane DeRose-Bamman of the Albuquerque Bernalillo County Water Utility Authority and WQCC Commissioner, inquired by email if the rule revisions had been public noticed, if there was a schedule for the public notice process and when comments are due. I responded by stating the correct draft Code was emailed to all stake holders on February 24, 2016 and posted on the Program's webpage. I explained that the hearing notice would be published in the June 30 issue of the New Mexico Register and that legal notices would be run in the Albuquerque Journal and Las Cruces Sun Times on July 9. I directly quoted the WQCC Hearing Guidelines, Section 303 and Section 304, in the email that explains the process of presenting testimony at the hearing. I also attached copies of the draft Code and the WQCC Hearing Guidelines to my response email.

On July 7, 2016, Ms. DeRose-Bamman emailed inquiring as to the difference between the version of draft Code in the hearing petition submitted to the WQCC in March 2016 and the version of the draft Code posted on the Program's webpage. She noted that the version included in the hearing petition is dated September 25, 2015 and the version on the Program's webpage is dated August 5, 2015. I responded that both draft Code versions are the same. I explained that August 5, 2015, was the date the draft code was finalized and September 25, 2016 was the date that the Board voted to adopt this final version of the draft Code.

The Program also complied with the Small Business Regulatory Relief Act, NMSA 1978, Sections 14-4A-1 to -6, by ensuring that a letter was sent to the Small Business Regulatory Advisory Commission describing the proposed rule change (Exhibit 6). This Act establishes a review process, not a standard or outcome. The NMED must consider the effect of the proposed rule on small businesses. If the NMED identifies an adverse effect, it must consider the available methods to reduce the effect. Even if there are no such methods, the Commission may approve the proposed rule to accomplish the objectives of the applicable law. The NMED does not anticipate that the proposed regulatory amendments will have an adverse impact on small businesses. Although not required, the Chair of the Small Business Regulatory Advisory Commission drafted a letter to the NMED concurring that the proposed rulemaking was unlikely to affect small businesses in New Mexico (Exhibit 7).

VIII. CONCLUSION

This concludes my testimony to the Commission on Board's proposed revisions to 20.7.4 NMAC. I respectfully request that the Commission adopt these rule revisions at the conclusion of this hearing. A Proposed Statement of Reasons supporting adoption of these amendments is attached to the NMED's Notice of Intent to Present Technical Testimony as Exhibit 8 for the Commission's consideration.

I further advise the Commission that the rule revisions may be revised to correct any typographical errors and to reflect formatting changes required by the Administrative Law Division of the New Mexico Commission of Public Records for compilation into the New Mexico Administrative Code.

This concludes my direct testimony.

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 7 WASTEWATER AND WATER SUPPLY FACILITIES
PART 4 UTILITY OPERATOR CERTIFICATION

20.7.4.1 ISSUING AGENCY: Water Quality Control Commission.
[20.7.4.1 NMAC - Rp, 20 NMAC 7.4.100, 1-26-01]

20.7.4.2 SCOPE: All persons, facilities and systems subject to the act.
[20.7.4.2 NMAC - Rp, 20 NMAC 7.4.101, 1-26-01; A, 11-15-06]

20.7.4.3 STATUTORY AUTHORITY: Utility Operators Certification Act, NMSA 1978, Sections 61-33-1 to 10.
[20.7.4.3 NMAC - Rp, 20 NMAC 7.4.102, 1-26-01]

20.7.4.4 DURATION: Permanent.
[20.7.4.4 NMAC - Rp, 20 NMAC 7.4.103, 1-26-01]

20.7.4.5 EFFECTIVE DATE: January 26, 2001, unless a later date is indicated in the history note at the end of a section.
[20.7.4.5 NMAC - Rp, 20 NMAC 7.4.104, 1-26-01]

20.7.4.6 OBJECTIVE: The objective of this part is to implement the act.
[20.7.4.6 NMAC - Rp, 20 NMAC 7.4.105, 1-26-01; A, 11-15-06]

20.7.4.7 DEFINITIONS: All terms used in this part shall have the following meanings:

A. "act" means the Utility Operators Certification Act, NMSA 1978, Sections 61-33-1 to 10;

B. "board" means the utility operators certification advisory board;

C. "certified operator" means a person who is certified by the department as being qualified to operate one of the classifications of public water supply systems or public wastewater facilities;

D. "collection system" means pipelines or conduits, pumping stations, force mains, and all other devices, appurtenances and facilities used for collecting and conducting waste to a point of treatment and disposal;

E. "commission" means the water quality control commission;

F. "department" means the New Mexico environment department;

G. "distribution system" means pipelines, appurtenances, devices and facilities which carry potable water under pressure to each consumer;

H. "domestic liquid waste" means human excreta and water-carried waste from typical residential plumbing fixtures and activities, including but not limited to waste from toilets, sinks, bath fixtures, clothes or dishwashing machines and floor drains;

I. "domestic liquid waste treatment unit" means any system that is designed to discharge less than two thousand gallons per day and that is subject to the rules promulgated by the environmental improvement board pursuant to Paragraph (3) of Subsection (A) of Section 74-1-8 NMSA 1978 or a watertight unit designed, constructed and installed to stabilize only domestic liquid waste and to retain solids contained in such domestic liquid waste, including septic tanks;

J. "education" means academic credit received attending any public or private primary, secondary or high school, approved vocational training courses in the water supply and wastewater field, college or university;

K. "experience" means actual work experience, full or part-time, as an operator in the fields of public water supply or public wastewater treatment; work experience in a related field may be accepted at the discretion of the department;

L. "operate" means performing any activity or function or making any process control or system integrity decision regarding water quality or water quantity that has the potential to affect the proper functioning of a public water supply system or public wastewater facility or to affect human health, public welfare or the environment; the term "operate" does not include the operation of monitoring equipment from a distantly remote location;

M. "operator" means any person who operates a public water supply system or public wastewater facility;

N. "owner" means the person or persons who own(s) any part of a public water supply system or public wastewater facility;

O. "person" means any agency, department or instrumentality of the United States and any of its officers, agents or employees, the state or any agency, institution or political subdivision thereof, any public or private corporation, individual, partnership, association or other entity, and includes any officer or governing or managing body of any political subdivision or public or private corporation;

P. "population served" means actual or estimated maximum number of persons served by the public water supply system or public wastewater facility;

Q. "public wastewater facility" means a system of structures, equipment and processes designed to collect and treat domestic and industrial waste and dispose of the effluent, but does not include:

(1) any domestic liquid waste treatment unit;

(2) any industrial facility subject to an industrial pretreatment program regulated by the United States environmental protection agency under the requirement of the federal Clean Water Act of 1977; or

(3) any waste treatment system which is strictly limited to treating non-human, agricultural waste;

R. "public water supply system" means:

(1) a system for the provision through pipes or other constructed conveyances to the public of water for human consumption or domestic purposes if the system:

(a) has at least fifteen service connections; or

(b) regularly serves an average of at least twenty-five individuals at least sixty days of the year;

(2) any water supply source and any treatment, storage and distribution facilities under control of the operator of the system; and

(3) any collection device, including but not limited to wells, spring boxes, infiltration galleries or intake structures, and any treatment, storage, and distribution facilities under the control of the operator of such system and any collection device or pretreatment storage facilities not under such control which are used primarily in connection with such system;

S. "supervision" means the coordination, direction, oversight or inspection of the operation of a public water supply system or a public wastewater facility; the term "supervision" does not include the operation of monitoring equipment from a distantly remote location;

T. "training" means approved education or non-academic training in the fields of public water supply system or public wastewater facility operations;

U. "training credit" means the amount of credit earned by a participant in a training program; and

V. "treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes.

[20.7.4.7 NMAC - Rp, 20 NMAC 7.4.108, 1-26-01; A, 10-17-01; A, 11-15-06]

20.7.4.8 CONSTRUCTION: This part shall be liberally construed to carry out the purposes of the act. If any provision or application of this part is held invalid, the remainder or its application to other situations or persons shall not be affected.

[20.7.4.8 NMAC - Rp, 20 NMAC 7.4.106, 1-26-01; A, 11-15-06]

20.7.4.9 COMPLIANCE WITH OTHER REGULATIONS: Compliance with this part does not relieve a person from the obligation to comply with other applicable state and federal regulations.

[20.7.4.9 NMAC - Rp, 20 NMAC 7.4.107, 1-26-01]

20.7.4.10 LEVELS OF CERTIFICATION FOR OPERATORS OF PUBLIC WATER SUPPLY SYSTEMS AND PUBLIC WASTEWATER FACILITIES:

A. The levels of general certification for operators of public water supply systems from lowest to highest shall be:

(1) level 1 water supply (WS1);

(2) level 2 water supply (WS2);

(3) level 3 water supply (WS3); and

(4) level 4 water supply (WS4).

B. The levels of special certification for operators of public water supply systems from lowest to highest shall be:

(1) small water (SW); and

(2) small water advanced (SWA);

C. The levels of certification for water sample technicians at public water supply systems from lowest to highest shall be:

(1) water sample technician 1 (WST1); and
(2) water sample technician 2 (WST2).

D. The levels of certification for operators of distribution systems at public water supply systems from lowest to highest shall be:

(1) distribution systems 1 (DS1);
(2) distribution systems 2 (DS2); and
(3) distribution systems 3 (DS3).

E. The levels of general certification for operators of public wastewater facilities from lowest to highest shall be:

(1) level 1 wastewater (WW1);
(2) level 2 wastewater (WW2);
(3) level 3 wastewater (WW3); and
(4) level 4 wastewater (WW4).

F. The levels of special certification for operators of public wastewater facilities from lowest to highest shall be:

(1) small wastewater (SWW); and
(2) small wastewater advanced (SWWA).

G. The levels of certification for wastewater laboratory technicians at public wastewater facilities from lowest to highest shall be:

(1) wastewater laboratory technician 1 (WWLT1);
(2) wastewater laboratory technician 2 (WWLT2); and
(3) wastewater laboratory technician 3 (WWLT3).

H. The levels of certification for operators of collection systems at public wastewater facilities from lowest to highest shall be:

(1) collection systems 1 (CS1); and
(2) collection systems 2 (CS2).

[20.7.4.10 NMAC - Rp, 20 NMAC 7.4.109 - 110, 1-26-01; A, 11-15-06]

20.7.4.11 CLASSIFICATION OF PUBLIC WATER SUPPLY SYSTEMS AND PUBLIC WASTEWATER FACILITIES:

A. Public water supply systems and public wastewater facilities are classified based on: (1) the size and type of the system or facility; (2) the capacity of the system or facility in terms of size service area and number of users served; (3) the type and character of the water or wastewater to be treated; and (4) the physical conditions affecting the treatment plants, collection systems and distribution systems.

B. Public water supply systems and public wastewater facilities are classified in accordance with the requirements of 20.7.4.12 NMAC and 20.7.4.13 NMAC.

[20.7.4.11 NMAC - Rp, 20 NMAC 7.4.111, 1-26-01; A, 11-15-06]

20.7.4.12 PUBLIC WATER SUPPLY SYSTEMS:

A. In order to operate the various types of treatment processes at public water supply systems, the indicated level of certification shall be required:

Type of Treatment Process	Population Served				
	25 to 500	501 to 5,000	5,001 to 10,000	10,001 to 20,000	20,000+
Filtration (sand, gravity)	SWA	WS3	WS3	WS3	WS4
Coagulation, sedimentation, filtration	SWA	WS3	WS3	WS4	WS4
Chemical precipitation (Mn, Fe, softening)	SWA	WS3	WS3	WS4	WS4
Aeration	SW	WS2	WS3	WS3	WS4
Odor and taste control (activated carbon)	SW	WS2	WS3	WS3	WS4
Chemical addition (stabilization)	SW	WS2	WS2	WS3	WS4
Pressure filtration	SWA	WS2	WS2	WS3	WS4
Ion exchange (softening, defluoridation)	SWA	WS2	WS3	WS3	WS4

Chlorination	SW	WS2	WS2	WS3	WS4
Fluoridation	SW	WS2	WS2	WS3	WS4
Arsenic removal	SWA	WS3	WS3	WS3	WS4
Radionuclide removal	SWA	WS3	WS3	WS3	WS4
Special, such as desalinization	SWA	WS4	WS4	WS4	WS4
Production, ground water only	SW	WS1	WS2	WS3	WS4

B. In order to operate various types of distribution systems at public water supply systems, the indicated level of certification shall be required:

Type of Distribution Systems	Population Served				
	25 to 500	501 to 5,000	5,001 to 10,000	10,001 to 20,000	20,000+
Distribution of treated surface water	SW	DS2	DS2	DS2	DS3
Distribution of chlorinated groundwater	SW	DS2	DS2	DS2	DS3
Distribution of unchlorinated groundwater	SW	DS1	DS2	DS2	DS3

C. In order to perform the various types of water sampling at public water supply systems after January 1, 2008, the indicated level of certification shall be required:

Type of Water Sampling	Population Served				
	25 to 500	501 to 5,000	5,001 to 10,000	10,001 to 20,000	20,000+
Microbiology	SW or WST1	WST1	WST1	WST1	WST1
Chemical and Radiological	WST2	WST2	WST2	WST2	WST2

[20.7.4.12 NMAC - Rp, 20 NMAC 7.4.112, 1-26-01; A, 11-15-06]

20.7.4.13 PUBLIC WASTEWATER FACILITIES:

A. In order to operate the various types of treatment processes at public wastewater facilities, the indicated level of certification shall be required:

Type of Treatment Process	Population Served				
	25 to 500	501 to 5,000	5,001 to 10,000	10,001 to 20,000	20,000+
Raw wastewater lagoons	SWW	WW1	WW1	WW1	WW1
Aerated lagoons	SWW	WW2	WW2	WW2	WW2
Primary treatment	SWW	WW2	WW2	WW2	WW2
Primary treatment and oxidation ponds	SWW	WW2	WW2	WW2	WW2
Secondary treatment, trickling filter	SWW	WW2	WW3	WW3	WW4
Secondary treatment, aeration	SWWA	WW3	WW3	WW4	WW4
Physical-chemical treatment processes	SWWA	WW3	WW3	WW3	WW4
Advanced waste treatment process	SWWA	WW3	WW4	WW4	WW4
Phosphorous and nitrogen removal	SWWA	WW3	WW3	WW4	WW4

B. In order to operate collection systems at the various sizes of public wastewater facilities, the indicated level of certification shall be required:

Population Served	25 to 500	501 to 5,000	5,001 to 10,000	10,001 to 20,000	20,000+
Level of Certification	SWW	CS1	CS1	CS2	CS2

C. In order to perform wastewater analysis for regulatory compliance at public wastewater facilities after January 1, 2011, the indicated level of certification shall be required:

Level of Certification Needed	Type of Methodology Performed
WWLT1	Analyses involving colorimetry and commercially prepared reagents, including but not limited to Dissolved Oxygen (DO) and pH by probe, and commercially available test kits.
WWLT2	WWLT1 plus analyses involving other specific ion electrodes, titration, gravimetry, microbiology, media and standards preparation, including but not limited to Biochemical Oxygen Demand (BOD), fecal coliform, E.coli, residuals (Total Suspended Solids (TSS), Total Volatile Solids (TVS), Volatile Suspended Solids (VSS), etc.), Total Residual Chlorine (TRC) by titration, and Dissolved Oxygen by the Winkler method.
WWLT3	WWLT1 and WWLT2 plus analyses involving digestion, distillation, spectrophotometry, chromatography, reagents and standards preparation, live organisms, including but not limited to nitrogen (Nitrate (NO_3), Ammonium (NH_4), Total Kjeldahl Nitrogen (TKN)), trace metals, anions, and whole effluent toxicity.
SWW, SWWA, WW1, WW2, WW3, WW4, WWLT1, WWLT2 or WWLT3	TRC by the N-diethyl-p-phenylene-diamine (DPD) method, pH, Temperature and DO by probe.

[20.7.4.13 NMAC - Rp, 20 NMAC 7.4.113, 1-26-01; A, 11-15-06; A, 1-15-11]

20.7.4.14 LESSER INCLUDED CERTIFICATIONS:

A. An operator holding a SWA certification is certified to perform any activity or function or make any process control or system integrity decision which requires a SW certification.

B. An operator holding a SWWA certification is certified to perform any activity or function or make any process control or system integrity decision which requires a SWW certification.

C. An operator holding a WS1 certification is certified to perform any activity or function or make any process control or system integrity decision which requires a SW, WST1 and DS1 certification.

D. An operator holding a WS2 certification is certified to perform any activity or function or make any process control or system integrity decision which requires a SW, WS1, WST1, WST2, DS1 and DS2 certification.

E. An operator holding a WS3 certification is certified to perform any activity or function or make any process control or system integrity decision which requires a SW, SWA, WS1, WS2, WST1, WST2, DS1, DS2 and DS3 certification.

F. An operator holding a WS4 certification is certified to perform any activity or function or make any process control or system integrity decision which requires a SW, SWA, WS1, WS2, WS3, WST1, WST2, DS1, DS2 and DS3 certification.

G. An operator holding a WW1 certification is certified to perform any activity or function or make any process control or system integrity decision which requires a SWW and CS1 certification.

H. An operator holding a WW2 certification is certified to perform any activity or function or make any process control or system integrity decision which requires a SWW, WW1, WWLT1, CS1 and CS2 certification.

I. An operator holding a WW3 certification is certified to perform any activity or function or make any process control or system integrity decision which requires a SWW, SWWA, WW1, WW2, WWLT2, CS1 and CS2 certification.

J. An operator holding a WW4 certification is certified to perform any activity or function or make any process control or system integrity decision which requires a SWW, SWWA, WW1, WW2, WW3, WWLT2, CS1 and CS2 certification.
[20.7.4.14 NMAC - N, 11-15-06; A, 1-15-11]

20.7.4.15 MINIMUM NUMBER OF CERTIFIED OPERATORS:

A. A public wastewater facility or public water supply system shall provide the minimum number of certified operators needed to operate the system or facility to protect human health, public welfare or the environment.

B. If the department determines a public wastewater facility or public water supply system is in violation of Subsection A of this section, the department may determine the minimum number of certified operators needed for the public wastewater facility or public water supply system. The determination shall be made in writing and delivered by certified mail. Violation of the department determination shall be considered a violation of the rule.

C. In determining the minimum number of certified operators needed to operate a public wastewater facility or public water supply system in compliance with Subsection A of this section, the department shall consider the following criteria:

(1) current compliance with applicable state and federal regulations;
(2) historical compliance with applicable state and federal regulations;
(3) actual discharge/production compared to design capacity;
(4) availability of redundant facilities;
(5) geographic area served by the public wastewater facility or public water supply system;
(6) level of automation;
(7) staffing plan;
(8) capacity assessment findings;
(9) sanitary survey deficiencies;
(10) mechanical reliability; and
(11) currency of federally required vulnerability assessments and risk management plans.

[20.7.4.15 NMAC - N, 2/2/09]

20.7.4.16 CODE OF PROFESSIONAL CONDUCT

A. This code expresses in general terms the level of professional conduct expected of certified operators in the state of New Mexico. This code of professional conduct is intended to guide the actions of certified operators and depends upon the integrity of each certified operator to conduct themselves in a responsible and straightforward manner in operating public water supply systems and public wastewater facilities.

B. All certified operators are charged with understanding this code of professional conduct and are expected to be familiar with the provisions of these rules and the utility operator certification regulations. Failure to follow the code of professional conduct shall be considered gross incompetence by the department. The department shall first seek the advisement of the utility operators certification advisory board prior to any application of enforcement made pursuant to this code of professional conduct.

C. The certified operator shall:

(1) protect the safety, health, and welfare of the public in the performance of the operator's duties;

(2) report to the proper authority or the department as necessary any conduct that would endanger the safety, health, and welfare of the public in regards to the operation of a public water supply system or public wastewater facility;

(3) submit objective and truthful information in all reports, statements, and testimony as required by state and federal law;

(4) conscientiously and proficiently operate and maintain public water supply systems and public wastewater facilities;

(5) act honestly, responsibly, ethically, and lawfully in a manner that enhances the reputation of the profession;

(6) avoid any conflict of interest that could influence the operator's professional judgment and promptly report any such conflict of interest to the operator's employer as necessary; and

(7) not falsify any academic or professional qualifications and not misrepresent such qualifications to the operator's employer, the department, or any member of the public.

[20.7.4.15 NMAC - N, XX/XX/2016]

20.7.4.17 - 20.7.4.19 [RESERVED]

20.7.4.20 CERTIFICATION GENERAL PROVISIONS:

A. It is unlawful to operate or allow the operation of a public water supply system or public wastewater facility unless the system or facility is operated by or under the supervision of a certified operator who meets or exceeds the appropriate level of certification required to operate the system or facility.

B. Separate certification is required for the operation of public water supply systems and public wastewater facilities.

C. The name(s) of the certified operator(s) employed by a public water supply system or public wastewater facility must be on file at all times with the department. A certified operator may be replaced with another certified operator of the required level at any time. The owner shall notify the department in writing of the name of the new certified operator within thirty days after the replacement of the certified operator.

D. The department may issue certifications restricted to distribution systems or collection systems.

[20.7.4.20 NMAC - Rp, 20 NMAC 7.4.200, 1-26-01; A, 11-15-06]

20.7.4.21 REQUIREMENTS FOR APPLICATION FOR CERTIFICATION:

A. Each applicant for certification as a certified operator shall:

(1) complete an application on forms furnished by the department; applications shall be submitted to the department not later than thirty days prior to the date of the examination;

(2) submit evidence that the applicant has reached the age of majority;

(3) pay a nonrefundable examination application fee, in advance, to the department; the examination application fee for certification as a SW, SWA, SWW, SWWA, WST1, WST2 and WWLT1 shall be $25.00; the examination application fee for certification as a WS1, WS2, WS3, WS4, WW1, WW2, WW3, WW4, WWLT2, WWLT3, CS1, CS2, DS1, DS2 and DS3 shall be $30.00;

(4) successfully meet the educational, experience and training requirements stipulated in 20.7.4.22 NMAC; all training programs must be approved by the department, and the department shall assign the number of training credits for each approved training program; and

(5) successfully pass the written examination for the level of certification being applied for.

B. Written examinations for certification shall be scheduled at such times and locations as the department deems appropriate. Written examinations shall be used in determining skill, knowledge, ability and judgment of the applicant. All written examinations will be graded and the applicants notified of the results. Examination papers will not be returned to the applicant, but may be reviewed by the applicant at the department.

[20.7.4.21 NMAC - Rp, 20 NMAC 7.4.201, 1-26-01; A, 11-15-06]

20.7.4.22 MINIMUM REQUIREMENTS FOR CERTIFICATION:

A. The minimum requirements for each level of certification are:

(1) SW, SWA, SWW, SWWA, WS1, WW1, WWLT1, DS1 and CS1 certification require high school graduation, or general equivalency diploma, one year of experience and successful completion of ten training credits;

(2) WS2, WW2, WWLT2, DS2 and CS2 certification require high school graduation, or general equivalency diploma, two years of experience and successful completion of thirty training credits;

(3) WS3, WW3, WWLT3 and DS3 certification require high school graduation, or general equivalency diploma, four years of experience and successful completion of fifty training credits;

(4) WS4 and WW4 certification require high school graduation, or general equivalency diploma, one year's experience, as appropriate, as a WS3 and WW3 certificate holder and successful completion of eighty training credits;

(5) WST1 certification requires high school graduation, or general equivalency diploma, and successful completion of five training credits;

(6) WST2 certification requires high school graduation, or general equivalency diploma, and successful completion of ten training credits.

B. Substitutions.

(1) In no case shall the actual experience be less than one year for any level except as in Subparagraph (d) of Paragraph (2) of Subsection B of this section.

(2) Education may be substituted for the basic requirements or used for training credits as follows. In no case may the same education serve both as a substitution for experience and as training credits except as provided in this section.

(a) One year of additional experience may be substituted for the high school graduation or general equivalency diploma requirement for all levels of certification except level 4.

(b) No more than one year (30 semester hours) of successfully completed college education in a non-related field may be substituted for an additional six months of the required experience.

(c) One year of an approved vocational school in the water and/or wastewater field may be substituted for only one additional year of the required experience.

(d) An associate's degree for a two-year program in an approved school in the water and/or wastewater field and six months of actual experience in that field (which may be accrued before, during, or after the school program) may be substituted for the requirements of any level up to and including level 2. An associate's degree for a two-year program in an approved school in the water and/or wastewater field and twelve months of actual experience in that field (which may be accrued before, during, or after the school program) may be substituted for the requirements of a level 3.

(e) Completion of at least three years of actual experience in the water and/or wastewater field plus high school diploma or equivalent, plus 15 semester hours of successfully completed college education directly related to the water or wastewater field may be substituted for any level up to and including level 3.

(f) A bachelor's degree for a major directly related to the water or wastewater field plus two years of actual experience in that field may be substituted for any level up to and including level 3.

(3) Full time water and wastewater laboratory experience may be substituted for operator experience in a respective field at a rate of 25 percent of the actual experience held.

[20.7.4.22 NMAC - Rp, 20 NMAC 7.4.202, 1-26-01; A, 11-15-06]

20.7.4.23 TEMPORARY CERTIFICATION:

A. If, after reasonable time and effort by an owner, a qualified operator cannot be employed, the system or facility may apply for temporary certification for the operator of a system or facility. In support of the application, the system or facility shall submit documentation demonstrating that it cannot employ a qualified operator and a schedule of compliance that includes the actions the system or facility will take to employ a certified operator, the date by which the system or facility will employ a certified operator, and a contingency plan that outlines the actions to be taken if the system's or facility's schedule fails to result in the employment of a certified operator.

B. A temporary certificate may be issued to an individual for a period not to exceed six months.

C. A temporary certificate may be extended to a maximum of 18 months if the operator is involved in a training program that will qualify the operator for the required level in that period.

D. An extension to the six-month temporary certification will require prior approval of a training program to ensure coverage of areas that are specific to the system, facility or individual's knowledge and skills.

[20.7.4.23 NMAC - Rp, 20 NMAC 7.4.203, 1-26-01; A, 10-17-01; A, 11-15-06]

20.7.4.24 CERTIFICATION WITHOUT EXAMINATION:

A. Certificates shall be issued without an examination to persons who, on July 1, 1993, were operators of a system or facility serving under 2,500 persons. Applications for certification under this subsection must have been made on or before December 1, 1993.

(1) Persons making application under this subsection must meet the basic requirements for certification outlined in 20.7.4.22 NMAC.

(2) Certificates issued under this subsection will be restricted to the particular system or facility for which the applicant is employed as it existed on July 1, 1993. Major changes in the type of treatment employed, or the size of the population served, that would significantly affect the operation of the system or facility shall cause any certificate issued under this subsection to become invalid. The limitations of any certificate issued under this subsection will be printed thereon.

(3) The department may deny any application for certification under this subsection if, in the opinion of the department, approval of the application could adversely affect the health and safety of the public or the environment.

(4) Application for certification under this subsection must be accompanied by a $30.00 fee per certificate requested, payable to the department.

B. The department may issue certificates, at an equivalent level of certification, without examination to applicants who hold valid certificates or licenses issued by any state, territory, or foreign jurisdiction, provided that the requirements for issuance of such certificates or licenses are, in the opinion of the department, equal to or higher than those set forth in this part. Application for certification under this provision must be accompanied by a $30.00 fee per certificate requested, payable to the department.
[20.7.4.24 NMAC - Rp, 20 NMAC 7.4.204, 1-26-01; A, 11-15-06]

20.7.4.25 RENEWAL OF CERTIFICATES:

A. All initial certifications shall expire on the last day of the certificate holder's birth month following the third anniversary of certification. All renewals shall be for three years. A renewal fee will be payable to the department for each renewal. Renewal fees shall be paid for each individual certification and shall be in accordance with the following fee schedule.

(1) The renewal fee for SW, SWA, SWW and SWWA certifications shall be $20.00.

(2) The renewal fee for WS1, WS2, WW1, WW2, WST1, WST2, WWLT1, WWLT2, WWLT3, CS1, CS2, DS1 and DS2 certifications shall be $25.00.

(3) The renewal fee for WS3, WW3, WS4, WW4 and DS3 certifications shall be $30.00.

B. The department shall mail each holder of a certificate a renewal notice at least thirty days prior to the expiration date, mailed to his last address of record. Failure to receive such notice shall not relieve the holder of his responsibility to apply for renewal prior to the expiration date.

C. Each certificate issued under 20.7.4.24 NMAC must be renewed at three-year intervals.

D. Renewal will require that each certificate holder be credited with having obtained thirty training credits in the three-year period preceding the date on which renewal application is due, except for renewals of WST1 certifications which require five hours of training credits and WST2 certifications which require ten hours of training credits. The thirty training credits must include at least ten training credits for approved training in the operation and maintenance of the same type of public water supply system or public wastewater facility as each certificate being renewed.
[20.7.4.25 NMAC - Rp, 20 NMAC 7.4.205, 1-26-01; A, 10-17-01; A, 11-15-06]

20.7.4.26 LAPSED CERTIFICATES:

A. Certificates, which have not been renewed in accordance with 20.7.4.25 NMAC, will be considered lapsed and invalid.

B. Lapsed certificates may be reinstated without penalty upon application within thirty days of the date of expiration. A lapsed certificate which has not been reinstated within the thirty-day period may be reinstated within one year of expiration date upon reapplication and payment of a $10.00 per month penalty fee for each month or portion thereof beyond the expiration date. Reinstatement of lapsed certificate will also require satisfaction of all the renewal requirements of 20.7.4.25 NMAC.

C. If a lapsed certificate has not been reinstated within one year of its expiration date, re-examination will be required for reinstatement. All applicants for re-examination must meet the requirements of 20.7.4.21 and 20.7.4.22 NMAC of this part.
[20.7.4.26 NMAC - Rp, 20 NMAC 7.4.206, 1-26-01; A, 11-15-06]

20.7.4.27 SUSPENSION AND REVOCATION:

A. The department may suspend or revoke any or all certificate(s) held by a certified operator as provided for in Section 61-33-7 of the act.

B. In the event of a contemplated suspension or revocation of a certificate, the department shall notify the certificate holder by registered mail of the reason for such action. Within 20 days after receipt of the notice, the certificate holder may request in writing that a hearing be held by the department.

C. When the department contemplates the suspension or revocation of a certificate, the department shall serve upon the certificate holder a written notice containing a statement:

(1) that the department has sufficient evidence which, if not rebutted or explained, will justify the department in suspending or revoking the certificate;

(2) indicating the general nature of the evidence;

(3) that unless the certificate holder within twenty days after service of the notice deposits in the mail a certified return receipt requested letter addressed to the department and containing a request for a hearing, the department will take the contemplated action; and

(4) calling the certificate holder's attention to their rights under the Uniform Licensing Act, NMSA 1978, Section 61-1-8.

D. If the certificate holder does not mail a request for a hearing within the time and in the manner required by this section, the department may take the action contemplated in the notice and such action shall be final and not subject to judicial review.

E. If the certificate holder does mail a request for a hearing as required by this section, the department shall, within twenty days of receipt of such request, notify the certificate holder of the time and place of hearing, the name or names of the person or persons who shall conduct the hearing for the department and the statutes and regulations authorizing the department to take the contemplated action, which hearing shall be held not more than sixty nor less than fifteen days from the date of service of such notice.

F. Re-issuance of a revoked certificate shall be accomplished by reapplication as provided for in an original certificate. Any person whose certificate is revoked shall be ineligible for admission to any examination for certification for the entire period of revocation as set by the department.

G. A certificate may be suspended for a specified period of time to be determined by the department.
[20.7.4.27 NMAC - Rp, 20 NMAC 7.4.207, 1-26-01; A, 11-15-06]

20.7.4.28 ELIGIBILITY FOR OPERATOR TRAINING GRANT FUNDS: Each applicant for operator training grant funds administered by the department shall.

A. Submit evidence satisfactory to the department that the recipient of the training:

(1) is a person who is a candidate for employment as a "certified operator" as defined under 20.7.4.7 NMAC of this part; or

(2) is a person in a supervisory role responsible for the management of a public water supply system or public wastewater facility; or

(3) is a person who is or will be involved in the instruction of operators.

B. Submit evidence satisfactory to the department that not less than ten percent of the training cost is provided by the employer of the utility operator; the cost of per diem and mileage may not be paid from grant funds but may be accounted in determining the training cost provided by the employer; and

C. Supply any other pertinent information deemed necessary by the department.
[20.7.4.28 NMAC - Rp, 20 NMAC 7.4.208, 1-26-01; A, 11-15-06]

20.7.4.29 UTILITY OPERATORS CERTIFICATION ADVISORY BOARD:

A. Pursuant to Section 61-33-4(G) of the act, a board shall be appointed by the commission to function with the commission to establish qualifications of operators, classify systems and facilities, adopt rules and advise the department on the administration of the act.

B. The commission shall properly notify the board of all matters brought before the commission to which the act is applicable.

C. The board shall consist of seven certified operators. The commission shall also appoint two certified operators to serve as alternates to board members in their absence. All alternates appointed prior to the effective date of this part will be allowed to serve out the remainder of their three-year terms.

D. Appointments to the board shall be for three-year terms. The commission shall appoint new board members at its first meeting of each fiscal year. The terms shall overlap so that no more than three terms shall expire in any one year.

E. At the first meeting of each fiscal year, the board shall elect from its membership a chairman, a vice chairman, and two members to sit as commission members on all matters to which the act is applicable.

F. A quorum shall consist of a least four members.

G. The duties of the board shall include:

(1) reviewing proposed rules, regulations and guidelines regarding the administration of the act for action by the commission including:

(a) the basis for classifying public water supply systems and public wastewater facilities;

(b) qualifications for the various classifications of operators;

(c) proposing criteria for the evaluation of the minimum number of certified operators needed to operate a public water supply system or public wastewater facility; and

(d) developing criteria for the classification of wastewater laboratory technicians based on the complexity of analytical work performed;

(2) reviewing proposed examinations for each level and type of certification;

(3) proposing criteria for the evaluation of applicant qualifications;

(4) reviewing applications for issuance of certificates by reciprocity or endorsement;
(5) proposing criteria for the evaluation of proposed training programs;
(6) making recommendations to the commission for replacement when a board vacancy occurs; and
(7) performing any other function in regard to the act as directed by the commission.

H. Any board member failing to attend three consecutive regular meetings is automatically removed as a member of the board. The commission may remove any member of the board for neglect of any duty required by law, for incompetence or for unprofessional conduct and shall remove any board member who violates any provision of the act. The commission shall fill any vacancies on the board.

[20.7.4.29 NMAC - Rp, 20 NMAC 7.4.209, 1-26-01; A, 11-15-06]

HISTORY of 20.7.4 NMAC:

Pre-NMAC History:

WQC 67-2, Regulations Governing Water Pollution Control in New Mexico, filed 12-5-67
WQC 72-1, Water Quality Control Commission Regulations, filed 8-4-72
WQC 72-1, Amendment No. 5, Regulations for the Classification of Utility Systems and Certification of Utility Operators, filed 3-18-74
WQCC 77-1, Amended Water Quality Control Commission Regulations, filed 1-18-77
WQCC 77-1, Amendment No. 1, filed 9-21-79
WQCC 81-2, Water Quality Control Commission Regulations, filed 6-2-81
WQCC 82-1, Water Quality Control Commission Regulations, filed 8-19-82
WQCC 82-1, Amendment No. 2, filed 10-18-84
WQCC 82-1, Amendment No. 3, filed 7-23-85
WQCC 82-1, Amendment No. 5, filed 5-19-86
WQCC 82-1, Amendment No. 10, filed 7-20-93
WQCC 82-1, Amendment No. 12, filed 9-28-94

History of the Repealed Material:

20 NMAC 7.4, Wastewater and Water Supply Facilities - Utility Operator Certification, Repealed effective 1-26-01

Other History:

WQCC 82-1, Water Quality Control Commission Regulations, Replaced in part by 20 NMAC 7.4, filed 10-25-95

NEW MEXICO
ENVIRONMENT DEPARTMENT

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RYAN FLYNN
Cabinet Secretary
BUTCH TONGATE
Deputy Secretary

Via Electronic Mail

July 12, 2016

Small Business Regulatory Advisory Commission
c/o Barbara Brazil
Deputy Secretary
New Mexico Economic Development Department
1100 S. St. Francis Dr.
Santa Fe, NM 87505
Barbara.Brazil@state.nm.us

Dear Ms. Brazil:

The New Mexico Environment Department ("NMED") hereby provides notice to the Small Business Regulatory Advisory Commission, pursuant to the Small Business Regulatory Relief Act ("Act"), NMSA 1978, Sections 14-4-1 to -6, that the Water Protection Division, Drinking Water Bureau, Utility Operator Certification Program, has submitted a petition to the Water Quality Control Commission ("WQCC") for regulatory amendments to portions of 20.7.4 New Mexico Administrative Code ("NMAC").

The Utility Operators Certification Act, NMSA 1978, Sections 66-33-1 to -10, allows for the WQCC to adopt rules that provide standards for the certification of utility operators based on the operators' ability to operate public water supply systems and public wastewater systems. The Utility Operator Certification Program petitioned the WQCC for an amendment to 20.7.4 NMAC to add a Code of Professional Conduct that will apply to all certified utility operators.

The WQCC will hold a hearing on the proposed regulatory amendments to 20.7.4 NMAC (Docket No. WQCC 16-01(R)) on Tuesday, August 9, 2016 at 9:00 a.m. at the State Capitol Building, Room 307, 490 Old Santa Fe Trail, Santa Fe, New Mexico. Updates regarding the hearing can be found at the WQCC's website at https://www.env.nm.gov/wqcc/.

Pursuant to Section 14-4A-4 of the Act, the NMED does not anticipate that the proposed regulatory amendments will have any adverse effect on small businesses. If you require further information about these proposed regulatory amendments, please contact me at annie.maxfield@state.nm.us or 505-222-9592.

NMED EXHIBIT 6

Sincerely,

Annie Maxfield
Assistant General Counsel
New Mexico Environment Department

Atch: Proposed 20.7.4.16 NMAC

cc: via electronic mail
Jennifer Hower, General Counsel, NMED
Trais Kliphuis, Director, WPD, NMED
Stephanie Stringer, Bureau Chief, DWB, NMED
Anne Keller, NM Certification Officer, DWB, NMED

New Mexico Certified Utility Operator Certification Advisory Board

Draft 20.7.4.16 NMAC – Code of Professional Conduct
September 25, 2015

20.7.4.16 NMAC CODE OF PROFESSIONAL CONDUCT

A. This code expresses in general terms the level of professional conduct expected of certified operators in the state of New Mexico. This Code of Professional Conduct is intended to guide the actions of certified operators and depends upon the integrity of each certified operator to conduct themselves in a responsible and straightforward manner in operating public water supply systems and public wastewater facilities.

B. All certified operators are charged with understanding this Code of Professional Conduct and are expected to be familiar with the provisions of these rules and the utility operator certification regulations. Failure to follow the Code of Professional Conduct shall be considered gross incompetence by the department. The department shall first seek the advisement of the Utility Operators Certification Advisory Board prior to any application of enforcement made pursuant to this Code of Professional Conduct.

C. The certified operator shall:

(1) protect the safety, health, and welfare of the public in the performance of the operator's duties;

(2) report to the proper authority or the department as necessary any conduct that would endanger the safety, health and welfare of the public in regards to the operation of a public water supply system or public wastewater facility;

(3) submit objective and truthful information in all reports, statements and testimony as required by state and federal law;

(4) conscientiously and proficiently operate and maintain public water supply systems and public wastewater facilities;

(5) act honestly, responsibly, ethically and lawfully in a manner that enhances the reputation of the profession;

(6) avoid any conflict of interest that could influence the operator's professional judgment and promptly report any such conflict of interest to the operator's employer as necessary; and

(7) not falsify any academic or professional qualifications and shall not misrepresent such qualifications to the operator's employer, the department or any member of the public.

SUSANA MARTINEZ
GOVERNOR

JON BARELA
CABINET SECRETARY

July 13, 2016

Annie Maxfield
Assistant General Counsel
New Mexico Environment Department

Dear Ms. Maxfield,

Thank you for the notice to the Small Business Regulatory Advisory Commission (SBRAC) that the NM Environment Department will be conducting a rulemaking hearing in August, 2016 to hear proposed regulatory amendments to portions of 20.7.4 New Mexico Administrative Code.

The SBRAC has reviewed the proposed regulation and finds no adverse implications for small businesses in our state. The SBRAC Chair has indicated support for the proposed regulatory amendments.

Regards

Barbara Brazil
Deputy Secretary
NM Economic Development Department

cc: SBRAC

Joseph M. Montoya Bldg. 1100 South St. Francis Dr. Santa Fe, New Mexico 87505-4147
(800) 374-3061 (505) 827-0307 fax: (505) 827-0263 goNM.biz

NMED EXHIBIT 7

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION

IN THE MATTER OF PROPOSED REVISIONS TO: **No. WQCC 16-01 (R)**
20.7.4 NMAC – Utility Operator Certification

PROPOSED STATEMENT OF REASONS

This matter comes before the Water Quality Control Commission ("Commission") pursuant to WQCC 16-01 (R), the Petition for Regulatory Change filed by the New Mexico Environment Department ("Department") on March 23, 2016.

The Commission scheduled a public hearing for this matter on Tuesday, August 9, 2016, at the State Capitol Building, Room 307, 490 Old Santa Fe Trail, Santa Fe, New Mexico, to be held in accordance with the Guidelines for Water Quality Control Commission Regulation Hearings ("Commission Rulemaking Guidelines"); the Water Quality Act, NMSA 1978, Section 74-6-6 (1993); and other applicable procedures.

The Commission held the aforementioned hearing on Tuesday, August 9, 2016, and at this hearing the Commission heard testimony from the Department and Utility Operators Certification Advisory Board and admitted exhibits into the record. On March 8, 2016, the Commission deliberated and voted to adopt the proposed amendments for the reasons that follow:

STATEMENT OF REASONS

1. The New Mexico Utility Operators Certification Act is governed by NMSA 1978, Sections 61-33-1 to -10 (2005).

NMED EXHIBIT 8

2. NMSA 1978, Section 66-33-4(A) states that the Commission may "adopt rules relating to the administration and enforcement of the Utility Operators Certification Act."

3. NMSA 1978, Section 66-33-4(B) states that the Commission shall "adopt rules providing standards and criteria for the certification of operators based on their qualifications and their ability to operate public water supply systems or public wastewater facilities of the various classifications."

4. NMSA 1978, Section 66-33-4(D) states that the Commission shall "adopt . . . rules necessary to carry out the provisions of the Utility Operators Certification Act."

5. NMSA 1978, Section 74-6-6 outlines the notice and hearing requirements for the Commission before adoption of regulations.

6. The Certified Utility Operators Advisory Board ("Board") determined that a Code of Professional Conduct is necessary to professionalize the certified utility operator discipline. The Board approved the Code of Professional Conduct at their regularly scheduled meeting on September 25, 2015, and proposed that its citation in the New Mexico Administrative Code be 20.7.4.16 NMAC. This section is currently reserved.

7. Proposed 20.7.4.16.A NMAC expresses in general terms the level of professional conduct expected of certified utility operators in the state of New Mexico. This ethical code shall have the purpose of raising awareness of the importance of the actions of water and wastewater utility operators to public safety and protection of the environment.

8. Proposed 20.7.4.16.B NMAC requires that all certified utility operators understand the Code of Professional Conduct and demonstrate familiarity with all utility operator certification regulations. This subsection goes on to explain that failure to follow any provision of the Code of Professional Conduct shall be considered gross incompetence by

NMED. According to NMSA 1978, § 61-33-7(B), gross incompetence may result in NMED suspending or revoking a certified operator's license.

9. Proposed 20.7.4.16.C NMAC provides a core set of values and standards and establishes seven duties for utility operators when performing activities that could affect public health and the environment.

10. Any person may petition the Commission for amendment of regulations within the jurisdiction of the Commission. NMSA 1978, § 74-6-6(B).

11. On March 23, 2016, NMED filed a petition with the Commission for a public hearing in this matter. *See* petition in Record Proper.

12. On May 10, 2016, at a meeting conducted in compliance with the Open Meetings Act, NMSA 1978, Sections 10-15-1 to -4 (2013), and other applicable requirements, the Commission granted the Department's request for a hearing.

13. On June 30, 2016, Notice of Hearing was published in the New Mexico Register. *See* NMED Exhibit 4 and Record Proper.

14. The Notice of Hearing was published in the *Las Cruces Sun-News* on July 9, 2016, and in the *Albuquerque Journal* on July 12, 2016 (in English and Spanish). *See* NMED Exhibit 4 and Record Proper.

15. NMED filed a Notice of Intent to Present Technical Testimony ("NOI") on July 26, 2016, in accordance with Commission Rulemaking Guidelines.

16. A public hearing was held in this matter on August 9, 2016, in Santa Fe, New Mexico.

17. In considering the proposed amendments, the Commission is required by the Water Quality Act, NMSA 1978, Section 74-6-4(E) (2009), to give the weight it deems appropriate to all relevant facts and circumstances, including but not limited to: (1)

character and degree of injury to or interference with health, welfare, environment and property; (2) the public interest, including the social and economic value of the sources of water contaminants; (3) technical practicability and economic reasonableness of reducing or eliminating water contaminants from the sources involved and previous experience with equipment and methods available to control the water contaminants involved; (4) successive uses, including but not limited to domestic, commercial, industrial, pastoral, agricultural, wildlife and recreational uses; (5) feasibility of a user or subsequent user treating the water before subsequent use; (6) property rights and accustomed uses; and (7) federal water quality requirements.

18. One purpose of the Utility Operators Certification Act is to set standards for certified operators, who are the individuals "certified by the department as being qualified to operate one of the classifications of public water supply systems or public wastewater facilities." NMSA 1978, § 61-33-4 (2005).

19. The proposed amendments will satisfy the purpose of the Utility Operators Certification Act, as well as the Commission's rulemaking considerations found in the Water Quality Act, because they will professionalize the utility operator discipline and specify penalties for failure to act in an ethical manner, thereby enhancing protection of public health and safety.

20. The Commission has the authority to approve these proposed amendments pursuant to NMSA 1978, Sections 74-6-4(E) and 61-33-4.

21. The notice and hearing requirements of NMSA 1978, Section 74-6-6 and the Commission Rulemaking Guidelines were satisfied in this rulemaking process.

22. The proposed amendments are adopted for any or all of the reasons stated above.

ORDER

By _____ vote of a quorum of the Commission members, the proposed regulatory revisions were approved by the Commission on August 9, 2016. Amendments to 20.7.4 NMAC, with any appropriate corrections of typographical errors or formatting, shall be filed with the New Mexico State Records Center.

_____ Dated: _____

On Behalf of the Commission