

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION



IN THE MATTER OF PROPOSED
RULEMAKING RULES FOR THE
COMMISSION, 20.1.6 NMAC

No. WQCC 16-05(R)

New Mexico Environment Department,

Petitioner.

**PETITION TO ADOPT RULEMAKING PROCEDURES AND
REQUEST FOR HEARING**

Pursuant to NMSA 1978, Sections 74-6-4(E) and 74-6-6, the New Mexico Environment Department files this petition with the Water Quality Control Commission (“Commission”) to request a hearing to adopt procedures for rulemakings before the Commission which would be located at 20.1.6 NMAC (currently reserved). The Department proposes to combine much of the text from the current Guidelines for Water Quality Control Commission Regulation Hearings, (as approved November 10, 1992, and as amended June 8, 1993) (“Guidelines”) with additional language taken from the Commission’s adjudicatory rules, 20.1.3 NMAC (“Adjudicatory Rules”), and the Rulemaking Procedures for the Environmental Improvement Board, found at 20.1.1 NMAC (“EIB Rules”).

While the current Guidelines have proven useful and workable in a number of rulemakings before the Commission, they lack the force of law that a regulation adopted as part of the New Mexico Administrative Code would have. In addition, the Guidelines are more than 20 years old, and make no provision for developments such as email or teleconferencing. Finally, recent rulemakings have revealed a number of gaps and situations not covered by the

Guidelines, particularly related to motion practice, pre-hearing procedures, or the filing and service of documents.

The proposed rule seeks to keep the basic structure of the Guidelines intact, while adding useful language from the Adjudicatory Rules (last amended in 2010) and the EIB Rules (2012). A preliminary statement of reasons is attached as Exhibit 1. The text of the proposed rule is attached as Exhibit 2. The Department requests that a hearing be scheduled on this matter in during the Commission's regularly scheduled October, 2016 meeting. The Department anticipates that a hearing on this matter will take approximately four hours.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT



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STATEMENT OF REASONS

INTRODUCTION

The New Mexico Environment Department proposes the adoption of 20.1.6 – Rulemaking Procedures – Water Quality Control Commission (“Proposed Rule”). The Proposed Rule would govern the procedures to be followed in all rulemaking hearings before the commission, and would supersede the current Guidelines for Water Quality Control Commission Regulation Hearings (“Guidelines”).

REASONS SUPPORTING ADOPTION

1. The Guidelines are more than 20 years old, and make no provision for modern methods of communication or document service, such as email or teleconferencing.
2. The Guidelines do not have the force of law that the Proposed Rule would have as part of the New Mexico Administrative Code.
3. The Guidelines contain gaps and do not address certain procedural issues that have arisen in recent rulemakings, particularly in relation to motion practice and the filing and service of documents.
4. The Guidelines were not adopted by the commission through a formal rulemaking procedure, raising issues concerning public notice and comment that could become the basis of a legal challenge to the enforceability of the Guidelines.
5. The Proposed Rule improves upon the Guidelines by adding language from the commission’s adjudicatory rules, as well as the rulemaking procedures for the Environmental Improvement Board.
6. The Proposed Rule employs modern terminology and includes templates showing the preferred format for documents to be filed before the commission.

7. Adoption of the Proposed Rule will reduce confusion and uncertainty on the part of petitioners and other parties to rulemakings by providing more specific guidance regarding the format, filing, and service of documents, as well as the timeframes for responses and replies during motion practice.
8. The Proposed Rule specifies procedures governing the appeal of a rule adopted by the commission, as well as procedures for the commission's consideration of a motion to stay application of a rule during the pendency of an appeal.

1 **TITLE 20 ENVIRONMENTAL PROTECTION**
2 **CHAPTER 1 ENVIRONMENTAL PROTECTION GENERAL**
3 **PART 6 RULEMAKING PROCEDURES – WATER QUALITY CONTROL COMMISSION**
4

5 **20.1.6.1 ISSUING AGENCY:** New Mexico Water Quality Control Commission.
6 [xx/xx/16]
7

8 **20.1.6.2 SCOPE:** This part governs the procedures to be followed by the commission, and by participants
9 before the commission, in connection with all rulemaking hearings before the commission, except to the extent this
10 part may be inconsistent with specific procedures in governing law. In cases where this part is inconsistent with any
11 rulemaking procedures specified in governing law, the procedures in governing law apply, rather than the
12 procedures in this part.
13 [xx/xx/16]
14

15 **20.1.6.3 STATUTORY AUTHORITY:** NMSA 1978, Section 74-6-4(E) directs the commission to adopt,
16 promulgate and publish regulations. Section 74-6-6 NMSA 1978 requires a public hearing prior to the adoption,
17 amendment or repeal of a regulation, and specifies requirements for such a hearing.
18 [xx/xx/16]
19

20 **20.1.6.4 DURATION:** Permanent.
21 [xx/xx/16]
22

23 **20.1.6.5 EFFECTIVE DATE:** xx/xx/16, unless a later date is cited at the end of a section.
24 [xx/xx/16]
25

26 **20.1.6.6 OBJECTIVE:** The purposes of this part are:
27 A. to standardize the procedures used in rulemaking proceedings before the commission;
28 B. to encourage participation in the hearings conducted by the commission for the promulgation of
29 regulations;
30 C. to make possible the effective presentation of the evidence and points of view of parties and
31 members of the general public;
32 D. to allow all interested persons a reasonable opportunity to submit data, views or arguments orally
33 or in writing; and
34 E. to assure that commission hearings are conducted in a fair and equitable manner.
35 [xx/xx/16]
36

37 **20.1.6.7 DEFINITIONS:** As used in this part:
38 A. "act" means the Water Quality Act, NMSA 1978, Sections 74-6-1 through 74-6-17.
39 B. "commission administrator" means the department employee designated by the secretary of
40 environment to provide staff support to the commission;
41 C. "commission" means the water quality control commission;
42 D. "constituent agency" means any or all agencies of the state defined as such under the
43 act;
44 E. "department" means the New Mexico environment department;
45 F. "document" means any paper, exhibit, pleading, motion, response, memorandum, decision, order
46 or other written or tangible item that is filed in a proceeding under this part, or brought to or before the commission
47 for its consideration, but does not include a cover letter accompanying a document transmitted for filing;
48 G. "exhibit" means any document or tangible item submitted for inclusion in the hearing record;
49 H. "general public" includes any person attending a hearing who has not submitted a notice of intent
50 to present technical testimony;
51 I. "governing law" means the statute, including any applicable case law, which authorizes and
52 governs the decision on the proposed regulatory change;
53 J. "hearing officer" means the person designated by the commission to conduct a hearing under this
54 part;
55 K. "hearing record" means:
56 (1) the transcript of proceedings; and

- 1 (2) the record proper;
- 2 L. "participant" means any person who participates in a rulemaking proceeding before the
3 commission;
- 4 M. "party" means the petitioner; any person filing a notice of intent to present technical testimony,
5 and any person filing an entry of appearance;
- 6 N. "person" means an individual or any entity, including federal, state and local governmental
7 entities, however organized;
- 8 O. "petitioner" means the person who petitioned the commission for the regulatory change that is the
9 subject of the hearing;
- 10 P. "record proper" means all documents related to the hearing and received or generated by the
11 commission prior to the beginning, or after the conclusion, of the hearing, including, but not limited to:
- 12 (1) the petition for hearing and any response thereto;
- 13 (2) the minutes (or an appropriate extract of the minutes) of the meeting at which the petition
14 for hearing was considered, and of any subsequent meeting at which the proposed regulatory change was
15 discussed;
- 16 (3) the notice of hearing;
- 17 (4) affidavits of publication;
- 18 (5) notices of intent to present technical testimony;
- 19 (6) statements for the public record;
- 20 (7) the hearing officer's report, if any;
- 21 (8) post-hearing submissions, if allowed;
- 22 (9) the audio recordings (or an appropriate extract of the recordings) of the meeting(s) at
23 which the commission deliberated on the adoption of the proposed regulatory change; and
- 24 (10) the commission's decision and the reasons therefore;
- 25 Q. "regulation" means any rule, regulation or standard promulgated by the commission and affecting
26 one or more persons, besides the commission and the department, except for any order or decision issued in
27 connection with the disposition of any case involving a particular matter as applied to a specific set of facts;
- 28 R. "regulatory change" means the adoption, amendment or repeal of a regulation;
- 29 S. "service" means personally delivering a copy of the document, exhibit or pleading to the person
30 required by this part to be served; mailing it to that person; or, if that person has agreed, sending it by electronic
31 transmission; if a person is represented by an attorney, service of the document shall be made on the attorney;
32 service by mail is complete upon mailing the document; service by electronic transmission is complete upon
33 transmission of the document;
- 34 T. "technical testimony" means scientific, engineering, economic or other specialized testimony, but
35 does not include legal argument, general comments, or statements of policy or position concerning matters at issue
36 in the hearing; and
- 37 U. "transcript of proceedings" means the verbatim record (audio recording or stenographic) of the
38 proceedings, testimony and argument in the matter, together with all exhibits proffered at the hearing, whether or not
39 admitted into evidence, including the record of any motion hearings or prehearing conferences.
40 [xx/xx/16]

41
42 **20.1.6.8 LIBERAL CONSTRUCTION:** This part shall be liberally construed to carry out its purpose.
43 [xx/xx/16]

44
45 **20.1.6.9 SEVERABILITY:** If any provision or application of this part is held invalid, the remainder of
46 this part, or its application to other situations or persons, shall not be affected.
47 [xx/xx/16]

48
49 **20.1.6.10 – 20.1.6.99 [RESERVED]**

50
51 **20.1.6.100 POWERS AND DUTIES OF THE COMMISSION AND HEARING OFFICER:**

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

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

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

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

- 8 (1) conducting hearings under this part;
- 9 (2) ruling on motions and procedural requests that do not seek final resolution of the
10 proceeding and issuing all necessary orders;
- 11 (3) administering oaths and affirmations, admitting or excluding evidence, examining
12 witnesses and allowing post-hearing submissions;
- 13 (4) making such orders as may be necessary to preserve decorum and to protect the orderly
14 hearing process;
- 15 (5) if requested by the commission, preparing and filing a report of the hearing, with
16 recommendations for commission action;
- 17 (6) requesting parties to file original documents with the commission administrator; and
18 (7) requesting a party to submit a proposed statement of reasons in support of the
19 commission's decision.

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

- 22 (1) an employee of the department, except for the commissioners themselves or their
23 designees, or unless employed by the department as a hearing officer;
- 24 (2) a person who has a personal bias or prejudice concerning a party or a party's lawyer or
25 consultant, or has personal knowledge of disputed facts concerning the proceeding, or is related to a party within the
26 third degree of relationship, or has a financial interest in the proceeding.

27 D. Notice of hearing officer assignment: If a hearing officer other than a commissioner is assigned,
28 the commission administrator shall notify the parties of the name and address of the hearing officer. The
29 commission administrator shall also, at that time, forward to the hearing officer copies of all documents filed to date.
30 [xx/xx/16]

31
32 **20.1.6.101 GENERAL PROVISIONS - COMPUTATION OF TIME:**

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

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

42 [xx/xx/16]

43
44 **20.1.6.102 GENERAL PROVISIONS - RECUSAL:** No commission member shall participate in any
45 action in which his or her impartiality of fairness may reasonably be questioned, and the member shall recuse
46 himself or herself in any such action by giving notice to the commission and the general public by announcing this
47 recusal on the record. In making a decision to recuse himself or herself, the commission member may rely upon the
48 Governmental Conduct Act, NMSA 1978, Sections 10-16-1 through 10-16-18, the Financial Disclosures Act,
49 NMSA 1978, Sections 10-16A-1 through 10-16A-8, or any other relevant authority.

50 [xx/xx/16]

51
52 **20.1.6.103 GENERAL PROVISIONS - EX PARTE DISCUSSIONS:** At no time after the initiation and
53 before the conclusion of a proceeding under this part, shall the department, or any other party, interested participant
54 or their representatives discuss ex parte the merits of the proceeding with any commission member or the hearing
55 officer.

1 **20.1.6.104 DOCUMENT REQUIREMENTS - FILING AND SERVICE OF DOCUMENTS:**

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

4 B. Any person filing any document shall:

5 (1) provide the commission administrator with the original and 15 copies of the document;

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

8 (3) include a certificate of service, as shown in appendix A.

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

14 D. Form of documents: Unless otherwise ordered by the hearing officer, all documents, except
15 exhibits, shall be prepared on 8 1/2 x 11-inch white paper, printed single-sided, and where appropriate, the first page
16 of every document shall contain a heading and caption as shown in appendix A.

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

20
21 **20.1.6.105 EXAMINATION OF DOCUMENTS FILED:**

22 A. Examination allowed: Subject to the provisions of law restricting the public disclosure of
23 confidential information, any person may, during normal business hours, inspect and copy any document filed in any
24 rulemaking proceeding before the commission. Such documents shall be made available by the commission
25 administrator, as appropriate.

26 B. Cost of duplication: The cost of duplicating documents shall be borne by the person seeking
27 copies of such documents.

28 [xx/xx/16]

29
30 **20.1.6.106 - 20.1.1.199 [RESERVED]**

31
32 **20.1.6.200 PREHEARING PROCEDURES - PETITION FOR REGULATORY CHANGE:**

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

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

43 C. The commission shall determine, at a public meeting occurring at least 15 days and no later than
44 60 days after receipt of the petition, whether or not to hold a public hearing on the proposal. Any person may
45 respond to the petition either in writing prior to the public meeting or in person at the public meeting.

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

51 [xx/xx/16]

52
53 **20.1.6.201 NOTICE OF HEARINGS:**

54 A. Unless otherwise allowed by governing law and specified by the commission, the commission
55 shall give public notice of the hearing at least 60 days prior to the hearing. Public notice shall include publication in

1 at least one newspaper of general circulation in the state, publication in the New Mexico Register, and such other
2 means of providing notice as the commission may direct or are required by law.

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

7 C. Public notice of the hearing shall state:

8 (1) the subject, including a description of the proposed regulatory change, time and place of
9 the hearing;

10 (2) the statutes, regulations and procedural rules governing the conduct of the hearing;

11 (3) the manner in which persons may present their views or evidence to the commission;

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

13 (5) if applicable, that the commission may make a decision on the proposed regulatory

14 change at the conclusion of the hearing.

15 [xx/xx/16]

16
17 **20.1.6.202 TECHNICAL TESTIMONY:**

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

21 (1) identify the person for whom the witness(es) will testify;

22 (2) identify each technical witness the person intends to present and state the qualifications
23 of that witness, including a description of their educational and work background;

24 (3) if the hearing will be conducted at multiple locations, indicate the location or locations at
25 which the witnesses will be present;

26 (4) include a copy of the direct testimony of each technical witness in narrative form, and
27 state the estimated duration of the direct oral testimony of that witness;

28 (5) include the text of any recommended modifications to the proposed regulatory change;
29 and

30 (6) list and attach all exhibits anticipated to be offered by that person at the hearing.

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

36 [xx/xx/16]

37
38 **20.1.6.203 ENTRY OF APPEARANCE:** Any person may file an entry of appearance as a party. The entry
39 of appearance shall be filed no later than 20 days before the date of the hearing on the petition. In the event of
40 multiple entries of appearance by those affiliated with one interest group, the hearing officer may consolidate the
41 entries, or divide the service list to avoid waste of resources.

42 [xx/xx/16]

43
44 **20.1.6.204 PARTICIPATION BY GENERAL PUBLIC:**

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

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

51 [xx/xx/16]

52
53 **20.1.6.205 LOCATION OF HEARING:** Unless otherwise provided by governing law, the commission
54 shall hold hearings on proposed regulatory changes of statewide application in Santa Fe, and at other places the
55 commission may proscribe. Hearings on proposed regulatory changes that are not of statewide application may be
56 held within the area substantially affected by the proposal.

1 [xx/xx/16]
2

3 **20.1.6.206 PARTICIPATION BY CONFERENCE TELEPHONE OR OTHER SIMILAR DEVICE:**

4 A. A member of the commission may participate in a meeting or hearing of the commission by means
5 of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible
6 for the member to attend the meeting or hearing in person, provided that each member participating by conference
7 telephone can be identified when speaking, all participants are able to hear each other at the same time and members
8 of the public attending the meeting or hearing are able to hear any member of the commission who speaks at the
9 meeting or hearing. A commission member's participation by such means shall constitute presence in person at the
10 meeting or hearing. A commission member who needs to participate in this manner must notify the commission
11 administrator sufficiently in advance so as to permit the commission administrator to arrange for the appropriate
12 communications equipment.

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

20 [xx/xx/16]
21

22 **20.1.6.207 MOTIONS:**

23 A. General: All motions, except those made orally during a hearing, shall be in writing, specify the
24 grounds for the motion and state the relief sought. Each motion shall be accompanied by an affidavit, certificate or
25 other evidence relied upon and shall be served as provided by 20.1.6.104 NMAC.

26 B. Unopposed motions: An unopposed motion shall state that the concurrence of all other parties
27 was obtained. The moving party shall submit a proposed order approved by all parties for the hearing officer's
28 review.

29 C. Opposed motions: Any opposed motion shall state either that concurrence was sought and denied,
30 or why concurrence was not sought. A memorandum brief in support of such motion may be filed with the motion.

31 D. Response to motions: Any party upon whom an opposed motion is served shall have 15 days after
32 service of the motion to file a response. A non-moving party failing to file a timely response shall be deemed to
33 have waived any objection to the granting of the motion.

34 E. Reply to response: The moving party may, but is not required to, submit a reply to any response
35 within 10 days after service of the response.

36 F. Decision: Non-dispositive motions may be decided by the hearing officer without a hearing. The
37 hearing officer shall refer any motion that would effectively dispose of the matter to the commission for a decision,
38 and may refer any other motion to the commission. A procedural motion may be ruled upon prior to the expiration
39 of the time for response; any response received thereafter shall be treated as a request for reconsideration of the
40 ruling. The hearing officer shall file all original documents with the commission administrator.

41 [xx/xx/16]
42

43 **20.1.6.208 - 20.1.6.299 [RESERVED]**
44

45 **20.1.6.300 HEARING PROCEDURES - CONDUCT OF HEARINGS:**

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

47 B. The hearing officer shall conduct the hearing so as to provide a reasonable opportunity for all
48 persons to be heard without making the hearing unreasonably lengthy or cumbersome, or burdening the record with
49 unnecessary repetition. The hearing shall proceed as follows.

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

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

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

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

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

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

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

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

17 [xx/xx/16]

18
19 **20.1.6.301 TESTIMONY AND CROSS-EXAMINATION:**

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

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

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

30 [xx/xx/16]

31
32 **20.1.6.302 EXHIBITS:**

33 A. Any person offering an exhibit at hearing shall provide at least an original and 15 copies for the
34 commission, and a sufficient number of copies for every other party.

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

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

40 [xx/xx/16]

41
42 **20.1.6.303 TRANSCRIPT OF PROCEEDINGS:**

43 A. A verbatim transcript shall be made of the hearing, including any deliberations. The cost of the
44 original transcript of the proceeding and of providing a copy for each commission member shall be borne by the
45 petitioner.

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

48 [xx/xx/16]

49
50 **20.1.6.304 POST-HEARING SUBMISSIONS:** The hearing officer may allow the record to remain open
51 for a reasonable period of time following the conclusion of the hearing for written submission of additional
52 evidence, comments and arguments, and proposed statements of reasons. The hearing officer's determination
53 regarding post-hearing submissions shall be announced at the conclusion of the hearing. In considering whether the
54 record will remain open, the hearing officer shall consider the reasons why the material was not presented during the
55 hearing, the significance of the material to be submitted and the necessity for a prompt decision.

56 [xx/xx/16]

1
2 **20.1.6.305 HEARING OFFICER'S REPORT:** If the commission directs, the hearing officer shall file a
3 report of the hearing. The report shall identify the issues addressed at the hearing, identify the parties' final
4 proposals and the evidence supporting those proposals, including discussion or recommendations as requested by the
5 commission, and shall be filed with the commission administrator within the time specified by the commission. The
6 commission administrator shall promptly notify each party that the hearing officer's report has been filed and shall
7 provide a copy of the report along with a notice of any deadline set for comments on that report.

8 [xx/xx/16]
9

10 **20.1.6.306 DELIBERATION AND DECISION:**

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

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

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

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

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

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

28 [xx/xx/16]
29

30 **20.1.6.307 NOTICE OF COMMISSION ACTION:** The commission administrator shall provide notice of
31 the commission's action to each of the parties, to any person heard or represented at the hearing, and to all other
32 persons who have made a written request to the commission for notification of the action taken.

33 [xx/xx/16]
34

35 **20.1.6.308 - 20.1.6.399 [RESERVED]**
36

37 **20.1.6.400 APPEAL OF REGULATIONS:**

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

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

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

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

45 [xx/xx/16]
46

47 **20.1.6.401 STAY OF COMMISSION REGULATIONS:**

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

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

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

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

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

9 [xx/xx/16]

10
11 20.1.6.402- 20.1.6.499 [RESERVED]

12
13 20.1.6.500 APPENDIX A:

14 [Preferred Format]

15
16 STATE OF NEW MEXICO
17 WATER QUALITY CONTROL COMMISSION

18
19 IN THE MATTER OF PROPOSED
20 AMENDMENTS TO _____ NMAC

21
22 [Name of Petitioner],
23 Petitioner.

24 CERTIFICATE OF SERVICE

25
26 I hereby certify that a true and correct copy of the foregoing [name of document] was served by [hand-delivery]
27 [first class mail] [email] to all parties on [date].

28
29
30 HISTORY OF 20.1.6 NMAC:

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

33
34 History of Repealed Material:

35
36 Other History: