

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION



In the Matter of:)
PROPOSED AMENDMENT)
TO 20.6.6 NMAC (Dairy Rule))

No. WQCC 13-08 (R)

PROCEDURAL ORDER

GENERAL

In conducting the hearing for the above-captioned matter, the Hearing Officer will follow, in addition to the specific procedures set out below, Part I (General Provisions), Part V (Appeals and Stays), and Part VI (Miscellaneous Provisions) of the Guidelines for New Mexico Water Quality Control Commission Regulation Hearings, unless later modified.

PART I

HEARING DATE AND PRE-HEARING BRIEFING

105. HEARING DATE.

105.A. The two Petitions were consolidated at the Water Quality Control Commission's ("Commission") September 10, 2013, meeting, and the hearing in this matter was scheduled by the Commission to begin March 11, 2013. By subsequent motion and order, the hearing will begin December 9, 2014.

105.B. All deadlines set out below are designed to provide the Commission with the legal argument and pre-filed technical testimony necessary to begin the hearing on December 9th and to proceed efficiently from that date until the hearing concludes. The Hearing Officer, Commission Administrator, and Counsel of record participated in a teleconference on August 22, 2014, to agree to the deadlines below.

106. PRE-HEARING BRIEFING.

106.A. Briefs in support of motions presented as "dispositive" motions may be filed until 5:00 p.m. October 27, 2014.

106.B. Responses to briefs filed pursuant to Section 102.A may be filed until 5:00 p.m. November 5, 2014.

106.C. Replies to responses filed pursuant to Section 102.B may be filed until 5:00 p.m. November 18, 2014.

106.D. The Commission may rule on the motions presented at its regularly scheduled meeting on November 18, 2014.

The numbering above conflicts with existing Part I Guidelines of the WQCC which according to the general section language above are still in effect, so the subsequent unused sequential numbers of Part I are substituted.

PART II

DOCUMENT FILING

201. FILING AND SERVICE OF DOCUMENTS.

201.A. The filing of any document as required by this Order shall be accomplished by delivering the document to the Commission Administrator, Pam Castañeda, 1190 St. Francis Drive, Suite S2102, Santa Fe, New Mexico 87502 Telephone: 505.827.2425. E-mail: pam.castaneda@state.nm.us.

201.B. Any person filing any document shall:

1. Provide the Administrator with an original and fourteen copies of the document; and
2. Serve a copy thereof on the New Mexico Environment Department (“Department”) and on all persons filing an entry of appearance or other pleading (collectively “Parties”), not including those who submit only written public comment. The service list will be available in the office of the Commission Administrator and maintained on the Commission webpage.
3. The original document filed with the Administrator must be single-sided; copies may be double-sided. Voluminous background information may be submitted electronically on discs for ten of the fourteen copies required.

201.C. Wherever these guidelines require service of a document, service shall be made by delivering a copy of the document to the person to be served or by mailing it to that person. If a person is represented by an attorney, service of the document shall be made on the attorney. Service by mail is complete upon mailing the document. “Mail” may include electronic transmission if a party has provided an e-mail address for that purpose. Service on the Administrator shall be deemed to be accomplished upon receipt of the document by the Administrator.

201.D. The Administrator shall assure the record in this matter is posted on the Commission’s webpage, and updated as necessary.

PART III

301. NOTICE OF HEARING.

301.A. The Commission, by and through the Hearing Officer and Administrator, shall give public notice of the hearing at least 60 days prior to the hearing. Public notice shall be given in accordance with the Water Quality Act and Commission Guidelines.

301.B. The Administrator shall mail the notice to the Parties as shown on the service list, and to persons who have made a written request to the Commission for advance notice of regulatory change hearings and who have provided the Commission with a mailing or electronic address. Requests for such notice shall be addressed to the Administrator.

301.C. Public notice of the hearing shall state:

1. The subject, including a general description of the proposed regulatory change(s), 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 or evidence to the Commission;
4. The location where persons may secure copies of the proposed regulatory change(s); and
5. That the Commission may make a decision on the proposed regulatory change at the conclusion of the hearing.

302. TECHNICAL TESTIMONY.

302.A. In order to present technical testimony at the hearing, a person must file a notice of intent to present technical testimony no later than 5 p.m. October 17, 2014. The notice shall:

1. Identify the person or entity for whom the witness(es) will testify;
2. Identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background;

3. Attach the full written direct testimony of each technical witness, which shall include an express basis for all expert opinions offered;

4. Include the text of any recommended modifications to the proposed regulatory change; and

5. Identify and attach all exhibits to be offered by the person at the hearing.

302.B. In order to present technical testimony rebutting the testimony of another Party at the hearing, a person must file a notice of intent to present rebuttal testimony no later than 5 p.m. November 21, 2014. The notice shall comply with the requirements set out above in Section 302.A above. In addition, if a Party takes a position on proposed changes to the Petition by other Parties, i.e., either supports or opposes changes to the Petition, the notice shall also include the basis for that support or opposition.

302.C. The Hearing Officer shall enforce Section 302.A above through the exclusion of technical testimony or exhibits, as applicable.

302.D. At the hearing, persons presenting technical testimony shall not read their full, written pre-filed testimony but shall adopt it under oath and may present a brief summary of no longer than 30 minutes prior to standing for cross-examination.

302.E. Any motions on evidentiary matters shall be filed no later than 5 p.m. December 1, 2014. Responses to evidentiary motions shall be filed no later than 5 p.m. December 5, 2014. The Hearing Officer may decide on evidentiary motions or leave such decisions to the Commission.

303. PARTICIPATION BY GENERAL PUBLIC.

303.A. Any member of the general public may present non-technical testimony and exhibits at the hearing. No prior notification shall be required.

303.B. A member of the general public may submit to the Administrator a written non-technical statement for the record in lieu of oral testimony at any time prior to the close of the hearing.

304. LOCATION OF THE HEARING. - - The hearing shall be held primarily in Roswell, New Mexico at the Bassett Auditorium in the Roswell Museum and Art Center, 100 West 11th Street, where all technical testimony and non-technical public comment will be presented in a proceeding that will be recorded and transcribed for the record. The deliberations on the Petition may be held in Roswell or in Santa Fe as time allows. The Administrator shall provide timely notice of these sessions to the general public, the Parties, and the Commission.

PART IV

HEARING PROCEDURES

401. CONDUCT OF HEARINGS.

401.A. The rules of civil procedure and the rules of evidence shall not apply, but will be looked to for guidance.

401.B. The Hearing Officer shall conduct the hearing so as to provide a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome or burdening the record with unnecessary repetition. The hearing shall proceed as follows:

1. The hearing shall begin with an opening statement from the Hearing Officer. The statement shall identify the nature and subject matter of the hearing and explain the procedures to be followed.
2. Parties filing a notice of intent to present technical testimony may make an opening statement.
3. The Petitioner shall present its case first.
4. The Department shall present its case second.
5. Other Parties who have filed a notice of intent to present technical testimony will present their cases next, beginning with those generally supporting the Petition. The Hearing Officer shall establish a specific order for the Party presentations.
6. The Parties shall be entitled to cross-examination in the same order as their presentations, followed by persons who have filed Entries of Appearance.

7. The Parties shall present any rebuttal testimony in the same order.
8. The Parties may present sur-rebuttal testimony in the discretion of the Hearing Officer.
9. The Hearing Officer shall provide an opportunity each day of the hearing for testimony from members of the general public, some of which will be outside normal working hours. Specifically, the Hearing Officer will provide opportunities at 11:30 am and 5:00pm for public comment.
10. Members of the general public who wish to present testimony shall indicate their intent on a sign-in sheet.
11. The hearing will continue as necessary from December 9, 2014, through December 10, 11, 12, and other dates set by the Hearing Officer in consultation with the Parties and the Commissioners.
12. At the close of the hearing, the Hearing Officer shall announce that the record is closed except for the submittal of proposed statements of reasons and written closing argument by the Parties. The Administrator shall identify the deadline for filing the submittals when the final transcript is received.

402. TESTIMONY AND CROSS EXAMINATION.

- 402.A. All testimony and public comment will be taken under oath or affirmation.
- 402.B. The Hearing Officer shall admit any relevant evidence, unless the Hearing Officer determines that the evidence is incompetent or unduly repetitious.
- 402.C. Any person who testifies at the hearing shall be subject to cross-examination on the subject matter of the direct testimony and any matter affecting the witness's credibility. Any person at the hearing may conduct cross-examination as may be required for a full and true disclosure of matters at the hearing. The Hearing Officer may limit cross-examination to avoid harassment, intimidation, needless expenditure of time, or undue repetition.

403. EXHIBITS.

- 403.A. Any person offering an exhibit at hearing that was not appended to a notice of intent shall provide at least one copy for every other Party, the Hearing Officer, the Commissioners, and the Court Reporter.
- 403.B. All exhibits shall be marked with a designation identifying the person offering the exhibit and shall be numbered or lettered sequentially.
- 403.C. Exhibits consisting of large charts, diagrams, models, or other bulky objects are discouraged, but persons may use such demonstrative aids and may submit smaller versions as exhibits for the record. If visual aids (e.g., overhead projections and power point presentations) are used, legible copies shall be submitted for the record. The content of demonstrative exhibits, including PowerPoint presentations must be based on technical testimony timely filed.

404. TRANSCRIPT OF PROCEEDING.

- 404.A. The Petitioner will pay for the preparation of the transcript that is the official record of the proceeding.
- 404.B. Any person desiring a copy of the transcript of proceeding may obtain a copy directly from the Court Reporter at his or her own cost, or may review the copy of the transcript maintained by the Administrator.

405. POST HEARING SUBMISSIONS.

- 405.A. The Hearing Officer shall allow Parties to submit proposed statements of reasons and written closing argument following receipt of the final transcript.

406. DELIBERATION AND DECISION.

- 406.A. Commissioners may attend any part or all of the hearing. The Hearing Officer will instruct them on how they may participate.
- 406.B. The Commission will issue its decision on the proposed regulatory change(s) in a suitable format, which shall include its statement of reasons for the action taken.

406.C. The Commission's written decision and statement of reasons shall be the official version of the Commission's action. Other written or oral statement by Commissioners shall not be recognized as part of the official version of the Commission's action.

407. **NOTICE OF COMMISSION ACTION.**

407.A. The Administrator shall provide notice of the Commission's action to the Parties and to all other persons expressly requesting such notice. The Commission's action will be promptly posted on the Commission's webpage.



Christopher T. Saucedo
Hearing Officer

**BEFORE THE WATER QUALITY CONTROL COMMISSION
FOR THE STATE OF NEW MEXICO**

**In the Matter of:
PROPOSED AMENDMENT
TO 20.6.2 NMAC (Dairy Rule)**

WQCC 13-08 (R)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Procedural Order in the above-referenced matter, executed by the Hearing Officer on October 3, 2014, was sent via email and regular first-class mail to all other Counsel on October 3, 2014:

CERTIFICATE OF SERVICE LIST

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