

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION



**IN THE MATTER OF THE TRIENNIAL REVIEW
OF STANDARDS FOR INTERSTATE AND
INTRASTATE SURFACE WATERS, 20.6.4 NMAC**

WQCC No. 14-05 (R)

PROCEDURAL ORDER

GENERAL

In conducting the hearing for the Triennial Review, 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 Commission Regulation Hearings, unless later modified.

This Order should be read with the Scheduling Order published concurrently.

PART I

101. FILING AND SERVICE OF DOCUMENTS.

101A. The filing of any document required by this Order shall be accomplished by delivering the document to the Commission's Administrator, Pam Castaneda, 1190 St. Francis Drive, Suite S-2100, Santa Fe, New Mexico 87502. Telephone: 505.827.2425.

101B. Any person filing any document shall:

1. provide the Administrator with an original and fifteen copies of the document; of these copies, five must be hard copy and ten may be submitted electronically on a disc; and
2. serve a copy thereof on the Surface Water Quality Bureau of the New Mexico Environment Department and on all persons filing an entry of appearance, proposed changes to the standards, or notice of intent to present technical testimony (collectively "Parties"). The Service List will be available in the office of the Administrator.

101C. Whenever 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. The Administrator's receipt by e-mail will be shown by an e-mail reply.

101D. The Administrator shall maintain two lists: (1) a service list for Parties; and (2) a master list of all persons who file documents during this proceeding. Persons on the master list need not be served the filings of Parties, but they will receive notice of the hearing, notice of the availability of the transcript, notice of the availability of the hearing officer's report; notice of the Commission's meeting at which it will take action, and notice of the availability of the Commission's final action.

PART II

201. EXAMINATION OF DOCUMENTS FILED.

201A. EXAMINATION ALLOWED. Any person may, during normal business hours, inspect and copy any document filed with the Administrator. To the extent practicable, the Surface Water Bureau shall maintain copies of key documents on the Bureau's webpage.

201B. COST OF DUPLICATION. The cost of duplicating documents shall be borne by the person seeking copies of such documents in accordance with provisions of law.

PART III

301. ORIGINAL AND AMENDED PETITIONS.

301A. Any person may propose that the Commission adopt, amend or repeal any part of the *Standards for Interstate and Intrastate Surface Waters*, 20.6.4 NMAC, pursuant to the schedule specified in the Scheduling Order.

301B. The proposal shall be in writing and shall include the language proposed to be added or deleted and a statement of the reasons for the regulatory change(s).

302. NOTICE OF HEARING.

302A. The Commission, by and through the Administrator, shall give public notice of the hearing at least sixty (60) days prior to the hearing. Public notice shall be given in accordance with the Water Quality Act and Commission Guidelines.

302B. The Administrator shall mail the notice to the Parties, the persons on the service and master lists, 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.

302C. 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, including times outside business hours when non-technical public comment may be offered;
4. the location where persons may secure copies of the proposed regulatory change(s); and

5. when the Commission may be expected to make a decision on the proposed regulatory change(s).

303. TECHNICAL TESTIMONY.

303A. In order to present technical testimony at the hearing, a person must file a notice of intent to present technical testimony no later than the applicable deadline specified in the Scheduling Order. The notice shall:

1. identify the person or organization 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 direct testimony of each technical witness;
4. state the anticipated duration of the direct testimony of each technical witness;
5. include the text of any recommended modifications to the proposed regulatory change, provided, however, that any person proposing substantive modifications must file proposed regulatory changes and statement of basis by the applicable deadline specified in the Scheduling Order ; and
6. identify and attach all exhibits to be offered by the person at the hearing.

In addition, if a party takes a position on other proposed changes to the standards, i.e., either supports or opposes changes to the standards proposed by another party, the notice shall also include the basis for that support or opposition.

303B. The Hearing Officer shall enforce Section 303A through the exclusion of technical testimony or exhibits, as applicable.

304. PARTICIPATION BY GENERAL PUBLIC.

304A. Any member of the general public may present non-technical testimony and exhibits at the hearing. No prior notification shall be required.

304B. A member of the general public may submit a written non-technical statement for the record, in lieu of oral testimony at the hearing at any time prior to the close of the hearing.

305. LOCATION OF THE HEARING. - - The hearing shall be held in Santa Fe.

PART IV

401. CONDUCT OF HEARINGS.

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

401B. 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 hearing and explain the procedures to be followed;
2. A Party who files a notice of intent to present technical testimony may make an opening statement at the beginning of its case-in-chief;
3. the Environment Department Surface Water Bureau shall present its case first;
4. The other Parties who have filed a notice of intent to present technical testimony will present their cases next; the Hearing Officer shall establish an order for the presentation of their cases-in-chief in the pre-hearing conference;
5. The Parties shall be entitled to cross-examination in the same order as their presentation of cases-in-chief, followed by persons who filed Entries of Appearance;
6. The Parties shall present rebuttal testimony in reverse order from the presentation of their cases-in-chief;
7. if the hearing continues for more than one day, the Hearing Officer shall provide an opportunity each day for testimony from members of the general public, some of which will be outside normal working hours. Members of the general public who wish to present testimony shall indicate their intent on a sign-in sheet; and
8. 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, and shall identify the deadline for filing the submittals.

402. TESTIMONY AND CROSS EXAMINATION.

402A. All testimony will be taken under oath or affirmation.

402B. The Hearing Officer shall admit any relevant evidence, unless the Hearing Officer determines that the evidence is incompetent or unduly repetitious.

402C. 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' 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.

403A. Any person offering an exhibit pursuant to Section 303A shall provide at least one copy for review by persons other than parties attending the hearing.

403B. All exhibits shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially.

403C. 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.

404. TRANSCRIPT OF PROCEEDING.

404A. The Environment Department will pay for the preparation of the transcript that is the official record of the proceeding.

404B. 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.

405A. The Hearing Officer shall hold the record open for a reasonable period of time following the hearing to allow the Parties to submit proposed statements of reasons and written closing argument.

406. HEARING OFFICER'S REPORT.

406A. The Hearing Officer shall file a report of the hearing. The report shall identify the issues addressed at the hearing, set out the parties' final proposals for change, facilitate Commission deliberations on the proposed changes, and be filed with the Administrator within the time specified by the Scheduling Order.

406B. The Parties may file exceptions to the Hearing Officer's report within the time specified by the Scheduling Order.

407. DELIBERATION AND DECISION.

407A. Commissioners may attend any part or all of the hearing. The Hearing Officer will instruct them on how they may participate.

407B. The Hearing Officer shall provide Commissioners with a final report and the record proper within the time specified by the Scheduling Order.

407C. The Commission shall issue its decision on the proposed regulatory change(s) in a suitable format, which shall include its statement of reasons for the action taken.

407D. The Commission's written decision and statement of reasons shall be the official version of the Commission's action. Other written or oral statements by Commissioners shall not be recognized as part of the official version of the Commission's action.

408. NOTICE OF COMMISSION ACTION.

408A. The Administrator shall provide notice of the Commission's action to the Parties and to all other persons on the master list identified in Section 101.D (2). The Commission's action will be posted on the Department's web site.

 7/10/14
Butch Tongate, Chair and Hearing Officer
NM Water Quality Control Commission