

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

1190 St. Francis Drive, Room N2150

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Constituent Agencies

Environment Department
Office of State Engineer
Game and Fish Department
Oil Conservation Division
Department of Agriculture
Department of Health
State Parks Division
-Soil and Water Conservation Commission
Bureau of Geology and Mineral Resources
Municipal/County Representative
Members-at Large

New Mexico Water Quality Control Commission Meeting

July 14, 2009

9:00 a.m.

New Mexico State Capitol Building, Rm. 317

490 Old Santa Fe Trail

Santa Fe, New Mexico 87501

MEMBERS PRESENT:

Jon Goldstein	NMED/Deputy Secretary
Cheryl Bada	State Parks Division
Larry Dominguez	Department of Agriculture
Howard Hutchinson	Soil and Water Conservation Commission
Brad Jones	Oil Conservation Division
Steve Glass	County of Bernalillo, Municipal/County Representative
Doug Bland	Bureau of Geology and Mineral Resources
Mike Sloane	Department of Game & Fish
Rolf I. Schmitt-Petersen	Office of the State Engineer (sitting in lieu of Greg Lewis)
Heidi Krapfl	Department of Health
Joseph Chavarria	Member-at-Large
Maxine Goad	Member-at-Large
Edward Vigil	Member-at-Large

MEMBERS ABSENT:

None

OTHERS PRESENT:

Bill Olson, NMED/GWB
Glenn Saums, NMED/SWQB
Pam Homer, NMED/SWQB

Abe Franklin, NMED/SWQB
Rich Powell, NMED/SWQB
Adolfo Mendez, NMED/OGC

Rick Schaap, Rockview Dairy
Clinton D. Harden, NM State Senator
Kirsten Schaap, Rockview Dairy
Chet Wyant
Megan Anderson, WELC
Phillip Troost
Stuart Butzier, Modrall Law Firm
Loren Horton
Mark Hiles, Peabody Energy
Dean Van Damm
Beverly Fikse
Billy Rucker
Mike D. Coffman, NMED/SWQB
Jane Hughes
Andrew Galloway
Nick Gilbert
Alice Visser, Parkland Dairy
Gerry Greathouse
Mike Stark
John Dollins
Tony Taunn
Alva Carter, DIGCE
Joyce Medina, NMED

Tim Amezun, Beetstra Family Dairy
Bill Heather, Landmark Dairy
Gerard Doldersum, Landmark Dairy
Joseph Gonzales
Leila Behnampour
Jennifer Evans, Modrall Law Firm
Jay Lazarus, Galisteo Geo Science
Brian Shield, Amigos Bravos
Mark A. Smith, NMEMNRD
Gary Bonestroo
Tara Bonestroo
Kent R. Rousch
Sara McGrath, NMED/GWB
Eric Hall
Tracy Hughes, NMED/General Counsel
Bill Pearson, NMED/GWQ
Loekje Visser, Parkland Dairy
Eric Padilla
Luke Woelber
Sharon Lombarde
Walter Bradley, Dairy Farmers of America
Zachary Shandler, Asst. Atty. Gen.

The meeting was called to order by Mr. Goldstein at 9:05 a.m.

Item 1. Roll Call:

The Commission administrator took roll and noted a quorum was present.

The Chair welcomed Heidi Krapfl, new Commission member representing the NM Department of Health.

Item 2. Approval of Agenda

Mr. Goldstein noted that, as requested by the interested parties with respect to Item 7 A., approval of the schedule for the development of regulations applicable to discharges from dairy facilities as required by NMSA 1978, Section 74-6-4.K (2009) of the Water Quality Act, William Olson, NMED/GWQB; Adolfo Mendez, NMED/OGC and Item 7 B., proposed dairy schedule by Dairy Industry Group for a Clean Environment (DIGCE) in re: development of regulations applicable to discharges from dairy facilities, pursuant to Senate Bill 206, as amended, effective date June 19, 2009, DIGCE, Dalva L. Moellenberg, Esq., T. J. Trujillo, Esq.; Adolfo Mendez, NMED/OGC, Item 7, A. and B. would heard before Agenda Item 4.

Action: Mr. Dominguez moved Commission adoption of the Agenda as amended. Mr. Hutchinson seconded. The motion passed unanimously.

Item 3. Approval of the meeting minutes of June 9, 2009.

Action: Mr. Glass moved Commission approval of the June 9, 2009 meeting minutes. Mr. Bland seconded. The motion passed unanimously.

Item 7. A. Approval of schedule for the development of regulations applicable to discharges from dairy facilities as required by NMSA 1978, Section 74-6-4 K (2009) of the Water Quality Act. William Olson, NMED/GWB; Adolfo Mendez, NMED/OGC.

B. Proposed dairy schedule by Dairy Industry Group for a Clean Environment (DIGCE) in re: development of regulations applicable to discharges from dairy facilities, pursuant to Senate Bill 206, as amended, effective date June 19, 2009. DIGCE, Dalva L. Moellenberg, Esq., T.J. Trujillo, Esq.; Adolfo Mendez, NMED/OGC.

Mr. Shandler announced that Adrian Terry, Assistant Attorney General, would act as Commission counsel with respect to this agenda item.

A. Mr. Mendez introduced Bill Olson, Bureau Chief of NMED's Ground Water Bureau. Mr. Mendez and Mr. Olson presented to the Commission the Department's revised proposed schedule for development of dairy facility regulations. Mr. Mendez noted that while Senate Bill 206 directed the Department to adopt regulations with respect to the copper mining industry and the dairy industry, the proposed schedule relating to the adoption of regulations currently before the Commission related only to the dairy industry. He then presented the Commission with background processes that have already taken place, timelines and information relating to the revised future schedule for complying with the Department's understanding of the mandate of Senate Bill 206.

Mr. Goldstein stated that Messrs. Moellenberg and Trujillo would present their client's position with respect to the Department's proposed schedule and that presentation would be followed by public comment, if any.

B. Mr. Trujillo, representing DIGCE, introduced Walter Bradley, representing the Dairy Farmers of America, a constituent group to DIGCE, Alva Carter, Chair of DIGCE and Sharon Lombarde, who is with the Dairy Producers of New Mexico. Mr. Trujillo gave the Commission a very brief background on the groups that have united to address the issue of new dairy regulations. He went on to set forth the industry position with respect to the adoption of new regulations.

Mr. Bradley then discussed the industry position relating to the need for additional time to assure that the regulations are well thought out and that the industry has the opportunity to employ individuals knowledgeable in the field to assess and report their findings regarding the proposed content of new regulations as well as make recommendations relating to that content.

Senator Harden, the sponsor of Senate Bill 206, briefly discussed the bill as well as its impact on the dairy industry and on the State's water resources.

Mr. Goldstein asked for public comments from the audience. Several interested individuals expressed their respective positions relating to new regulations and the need for them to be balanced and fair, taking into consideration the public good as well as industry interests.

The Commission then conducted a lengthy discussion with the parties relating to the regulation development as well as a schedule that would be workable for all involved.

After discussion, it was agreed that the Commission would recess for lunch and the parties would meet independently to attempt to work out their differences relating to a proposed schedule for the development of the dairy regulations.

Following the lunch recess, the Chair announced that since the parties to the dairy regulation issue were still conferring, the Commission would move to Item 6. on today's agenda.

Item 6. Appointment by the Commission of two regular positions on the Utility Operators Certification Board. Mike Coffman, NMED/SWQB.

Mr. Coffman proposed that the Commission appoint Albert Mendez and Eric Hall to the Utility Operators Certification Board.

Action: Mr. Glass moved that the Commission appoint Messrs. Mendez and Hall to the Utility Operators Certification Board. Mr. Hutchinson seconded. The motion passed unanimously.

The Chair announced that the next matter to be heard by the Commission would be Item 4, Adoption of Statement of Reasons in WQCC 07-11 (A), Alta Vista Subdivision. Presented by Zachary Shandler, Asst. Atty General, Commission Counsel.

Item 4. Adoption of Statement of Reasons in WQCC 07-11 (A), Alta Vista Subdivision. Presented by Zachary Shandler, Asst. Atty General, Commission Counsel.

Commission discussion was followed by requests for minor changes in the text of the Final Order Partially Sustaining and Partially Modifying NMED Secretary's Permitting Action in WQCC 07-11 (A).

There was also a discussion among Commission members relating to voting issues with respect to the Final Order.

Action: Mr. Sloane moved Commission adoption of the Final Order Partially Sustaining and Partially Modifying NMED Secretary's Permitting Action in WQCC 07-11 (A) as amended. Mr. Chavarria seconded.

The Chair requested a roll-call vote.

Roll Call Vote:

Mr. Chavarria	yes
Mr. Schmitt-Petersen	abstain
Mr. Vigil	yes
Mr. Glass	yes
Ms. Bada	no
Ms. Goad	yes
Mr. Dominguez	yes
Mr. Sloane	yes
Mr. Bland	abstain
Mr. Jones	yes
Ms. Krapfl	abstain
Mr. Hutchinson	no
Mr. Goldstein	yes

The motion passed.

Reconvening of Commission discussion in re:

Item 7. A. **Approval of schedule for the development of regulations applicable to discharges from dairy facilities as required by NMSA 1978, Section 74-6-4 K (2009) of the Water Quality Act. William Olson, NMED/GWB; Adolfo Mendez, NMED/OGC.**

B. Proposed dairy schedule by Dairy Industry Group for a Clean Environment (DIGCE) in re: development of regulations applicable to discharges from dairy facilities, pursuant to Senate Bill 206, as amended, effective date June 19, 2009. DIGCE, Dalva L. Moellenberg, Esq., T.J. Trujillo, Esq.; Adolfo Mendez, NMED/OGC.

Mr. Mendez appeared for the parties and set out the revised schedule that had been agreed upon. The schedule culminated in the public hearing before the Commission taking place on March 9, 2010 followed by publication of the revised regulation booklets August 31, 2010.

There was a brief discussion relating to Commission appointment of a Hearing Officer to act in this matter.

Action: Mr. Sloane moved that the Commission approve NMED's revised Proposed Schedule for Development of Dairy Facility Regulations and further that the Commission Chair act as Hearing Officer. Mr. Dominguez seconded. The motion passed unanimously.

The Chair announced agenda Item 5., Presentation to the Commission and request for approval of Nonpoint Source Mgt. Program Planning Document. Abe Franklin, NMED/SWQB.

Item 5. Presentation to the Commission and request for approval of Nonpoint Source Mgt. Program Planning Document. Abe Franklin, NMED/SWQB.

There was Commission discussion with Mr. Franklin regarding various aspects of the planning document.

Action: Mr. Hutchinson moved Commission approval of the Nonpoint Source Mgt. Program Planning Document 2009, as amended. Mr. Glass seconded. The motion passed unanimously.

The Chair then announced that in his view the Motion to Dismiss, contained in agenda Item 8., should be the first issue to be dealt with by the Commission with respect to the next item.

Item 8. Petition in re: Peabody Energy's Petition for Review or Clarification of NMED Directive to MMD, WQCC 08-15 (A). Consideration and decision of Amigos Bravos' Motion to Intervene; Peabody Energy's Motion to Strike Amigos Bravos' Reply in Support of Motion to Intervene; and, NMED's Motion to Dismiss. Stuart Butzier, Esq., Modrall Law Firm for Peabody Energy; Megan Anderson, Esq., Western Environmental Law Center for Amigos Bravos, and Eric Ames, NMED/OGC for New Mexico Environment Department.

Mr. Ames, on behalf of NMED, noted that the Department's position with respect to this case was very straightforward; the Water Quality Act simply does not give the Commission jurisdiction in this matter.

Mr. Ames set out the rather extensive background of this case which directly involves the uses of mine impoundments and the designation of those impoundments as surface waters of the State. He then explained why the Department maintains its basic contention that the Commission does not have jurisdiction in this matter and requested that the Commission grant the Department's Motion to Dismiss.

Mr. Butzier, representing Peabody Energy, stated that in Peabody's view, the Commission does have jurisdiction in this matter and explained in detail why Peabody believes its view to be accurate.

Mr. Butzier further noted that it was Peabody's view that it had no forum in which to be heard outside of the Commission. He also disputed the view that Peabody could deal with its issues during the upcoming Triennial Review which will be heard by the Commission in December. He requested that the Commission deny the Department's Motion to Dismiss.

Following additional comments by Mr. Ames and Mr. Butzier, a lengthy Commission discussion ensued.

Mr. Shandler discussed with the Commission his views with respect to resolution of this case. Mr. Butzier objected to the opinions expressed by Mr. Shandler.

Action: Ms. Bada moved that the Commission grant NMED's Motion to Dismiss. Mr. Sloane seconded. The motion passed unanimously.

Item 9. Next meeting: August 11, 2009, 9:00 a.m., State Capitol Building Room 317, 490 Old Santa Fe Trail, Santa Fe, NM 87501.

Item 10. Other business

Mr. Goldstein suggested that the Commission's September meeting be set on September 15, 2009. The Commission agreed with that meeting date.

Item 9. Adjournment

Action: The Chair adjourned the meeting at 3:00 p.m.

Signature on file

Jon Goldstein, Acting Chair