

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

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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

**Draft Minutes
New Mexico Water Quality Control Commission
Regular Meeting
September 11, 2012
9:00 a.m.
New Mexico State Capitol Building Room 307
490 Old Santa Fe Trail
Santa Fe New Mexico 87501**

MEMBERS PRESENT:

Butch Tongate	Chair, Environment Department
D.L. Sanders	Office of the State Engineer
Larry Dominguez	Department of Agriculture
Mike Sloane	Department of Game & Fish
Heidi Krapfl	Department of Health
Daniel Sanchez	Oil Conservation Division
Steve Glass	NM Municipal Environmental Quality Association
Edward Vigil	Member-at-Large
John Waters	Member-at-Large
Hoyt Pattison	Member-at Large

MEMBERS ABSENT:

Doug Bland	Bureau of Geology and Mineral Resources
Clark Taylor	Soil and Water Conservation Commission
Dave Gatterman	State Parks Division

OTHERS PRESENT:

Sean Cunniff, New Mexico Attorney General's Office
Sally Worthington, Office of the Hearing Officer
Please see attached sign-in sheets

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

Item 1. Roll Call.

Roll was taken; it was noted that a quorum was present.

Item 2. Approval of Agenda.

Action: Mr. Pattison moved approval of the Agenda. Mr. Waters seconded the motion. The motion passed unanimously.

Item 3. Approval of minutes of August 14, 2012 meeting.

Action: Mr. Glass moved approval of the Minutes. Mr. Dominguez seconded the motion. The motion passed unanimously.

Item 4. Request for Hearing in WQCC 12-05 (V), Petition for Variance for the Lee Hill Leach Stockpile, Discharge Permit 1568. Freeport-McMoran Chino Mines Company, Petitioner. Dalva Moellenberg of Gallagher & Kennedy for Petitioner. Charles de Saillan, NMED/OGC, for the Ground Water Bureau.

Action: Germaine Chappelle was introduced by Mr. Moellenberg and gave a brief introduction of the petition for variance. Mr. de Saillan stated that the Environment Department does not oppose the variance petition but they do recommend that it be subject to a number of conditions set forth in their response to the variance petition. Mr. de Saillan summarized the conditions for the Commission.

Mr. Glass made a motion to set the hearing for the December meeting. Mr. Sanchez seconded the motion. Ms. Orth was appointed Hearing Officer. Mr. Cunniff asked that the petitioner file an explicit document waiving their right to a hearing in ninety days and the petitioner agreed to do so. The motion passed unanimously.

Item 5. Consideration of Motion in WQCC 12-01 (R) to Approve Revised Schedule for Development of Copper Mine Regulations, 20.6.2 NMAC. Misty Braswell, NMED/OGC; Bruce Frederick, NMELC; TJ Trujillo and Dal Moellenberg, Gallagher & Kennedy.

Action: Misty Braswell, attorney for the Environment Department, presented the request to the Commission to approve the revised schedule for the development of the copper mine rule. The participants in the rule-making process have requested additional time to allow public comment so they are asking that the hearing be held in January instead of December. They are asking that the Commission issue an order approving the revised schedule.

Mr. Trujillo stated that they support the extension and thanked all the parties that were involved in the advisory committee and commended them for keeping to the schedule.

Mr. Sloane made a motion to approve the revised scheduling. Mr. Glass seconded the motion. The motion passed unanimously.

Item 6. Request for Hearing in WQCC 12-09, Petition to Amend 20.6.6 NMAC- The Dairy Rule. Dairy Industry Group for a Clean Environment (DIGCE), Petitioner. Dalva Moellenberg and TJ Trujillo of Gallagher & Kennedy for Petitioner. Misty Braswell, NMED/OGC for the Ground Water Bureau.

Action: Mr. Moellenberg, representing DIGCE, stated that they are petitioning the Commission to consider amendments to three parts of the rule and that they view it as a fairly narrow request for amendments. Hearings in 2010 resulted in the Commission's adoption of The Dairy Rule in December of 2010 and its subsequent publication. DIGCE filed an appeal of the original Dairy Rule and that generated some discussions among the stakeholders that resulted in a set of agreed upon rule amendments adopted by the Commission in November of 2011. In 2012 the Department has begun the process of issuing permits with conditions consistent with the Dairy Rules. A number of permits have been issued and dairies are looking at implementation of conditions. DIGCE believes that a number of dairies are considering filing variance petitions to address these issues. DIGCE asks that the Commission set a hearing, based on some discussion of the timing of the required public notices and so forth, in December of this year.

Mr. Schoeppner of the Ground Water Bureau provided the Commission with an update on the status of the dairy permits and variances.

The discussion then centered on an email from Jerry Nivens on behalf of the Citizen Dairy Coalition and their concern that DIGCE's request for a hearing could be in violation of NMSA § 74-6-4, which requires the WQCC to adopt regulations applicable to the dairy industry only after an advisory committee has been convened to make recommendations. Counsel for the Commission advised that it is evident that it is one of those statutory provisions where no one can say with any certainty exactly what the legislature intended.

Mr. Waters made a motion to set the hearing in December and have Ms. Orth as the hearing officer. Mr. Vigil seconded the motion.

Mr. Glass pointed out that we already have two hearings scheduled for December and this would be a third and would probably require more than one day.

Commissioners discussed whether the Rule should be re-opened for amendments so soon following implementation.

A voice vote was taken and the motion passed with Commissioner Sloane, Commissioner Krapfl and Commissioner Sanchez voting nay.

Item 7. Other business and announcement of any enforcement actions taken on behalf of the Commission.

Action: None.

Item 8. Next meeting:

October 9, 2012

Item 9. Adjournment.

The Chair adjourned the meeting at 10:40 am.



Commission Chair