

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



**In the Matter of:**

**PROPOSED ADOPTION OF  
NEW MEXICO CERTIFIED UTILITY  
OPERATOR CODE OF  
PROFESSIONAL CONDUCT  
20.7.4.16 NMAC**

No. WQCC 16-01 (R)

**NEW MEXICO ENVIRONMENT DEPARTMENT, SURFACE WATER QUALITY  
BUREAU'S PETITION TO AMEND THE SURFACE WATER QUALITY STANDARDS  
(20.7.4 NMAC) AND REQUEST FOR HEARING**

The Surface Water Quality Bureau ("Bureau") of the Resource Protection Division ("Division") of the New Mexico Environment Department ("Department") hereby petitions the Water Quality Control Commission ("Commission") to amend a portion of the Commission's regulations in Title 20, Chapter 7, Part 4, of the New Mexico Administrative Code titled "*Utility Operator Certification*" ("Rules"). The Bureau seeks to amend 20.7.4 NMAC by adding a proposed Subpart 16, titled "Code of Professional Conduct." This code expresses in general terms the level of professional conduct expected of certified operators in the state of New Mexico. The code shall raise awareness of the importance of the actions of water and wastewater operators to public safety and the protection of the environment. The code shall also provide requirements for water and wastewater operators to follow when performing activities that affect public health and the environment and shall set forth the consequences of failure to comply with such requirements.

### Jurisdictional Authority

Pursuant to NMSA 1978, §§ 61-33-1 to -10 (2015), (“Utility Operators Certification Act”), the Commission is authorized to amend the Rules. Specifically, the Legislature has provided the Commission with the authority to “adopt rules providing standards and criteria for the certification of operators based on their qualifications and their ability to operate public water supply systems or public wastewater facilities of the various classifications” and to “adopt and file under the State Rules Act rules necessary to carry out the provisions of the Utility Operators Certification Act.” NMSA 1978, § 61-33-4(B) and (D). The rule amendment must comply with NMSA 1978, § 74-6-6.

### Hearing Date & Hearing Officer

The Bureau requests that the Commission set the hearing date for the **June 14, 2016** Commission meeting, or the next meeting thereafter if the Commission chooses not to meet on that date. The Bureau expects the public hearing to last for thirty (30) minutes depending on the level and extent of public involvement and participation. The Bureau has, as noted below, attempted to obtain pre-hearing comments from the public to assist in expediting the public hearing and adoption process.

### Pre-Petition Public Involvement & Notice

The Bureau has, prior to this petition, solicited input from the public on the proposed Code of Professional Conduct. On February 16, 2015, the Bureau sent notice of a public meeting to all stakeholders to be held in NMED’s District 1 Office on April 3, 2015. This notice was also published in the Albuquerque Journal and the Las Cruces Sun Times. At the public meeting, Bureau staff was available to meet with stakeholder groups for discussions regarding

their issues of concern with the proposed Code of Professional Conduct. The Bureau reviewed and incorporated relevant comments from this meeting into the draft code. On September 8, 2015, the New Mexico Utility Operator Certification Program published notice that the Utility Operators Certification Advisory Board would discuss and vote on the Code of Professional Conduct at their regularly scheduled quarterly meeting held at the NMED District 1 Office in Albuquerque on September 25, 2015. At this meeting, the Utility Operators Certification Advisory Board voted to adopt the Code of Professional Conduct.

If set for hearing pursuant to Section 302 of the Commissions' *Guidelines for Water Quality Control Commission Regulation Hearings* (Approved November 10, 1992; Amended June 8 1993), the Bureau will open the formal public comment period following publication of the proposed amendments in the required newspapers and delivery of public notice to required persons and entities.

**WHEREFORE**, the Bureau requests that the Commission set on the above-requested date a hearing to address the proposed Rule amendments.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT  
OFFICE OF GENERAL COUNSEL

s/ Annie Maxfield  
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3 Attachments:

1. Statement of Reasons, 1 pg
2. Proposed Code of Professional Conduct, 20.7.4.16 NMAC, 2 pgs
3. Proposed Order for Hearing, 1 pg

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *NEW MEXICO ENVIRONMENT DEPARTMENT, SURFACE WATER QUALITY BUREAU'S PETITION TO AMEND THE UTILITY OPERATOR CERTIFICATION RULES (20.7.4 NMAC) AND REQUEST FOR HEARING*, including attachments as indicated, was served on the following parties on this the 23rd day of March, 2016 via hand delivery:

Ms. Pam Castaneda, Administrator  
Water Quality Control Commission  
Room N-2168, Runnels Building  
1190 St. Francis Dr.  
Santa Fe, New Mexico 87505

s/ Annie Maxfield  
Annie Maxfield  
Assistant General Counsel  
Office of General Counsel  
New Mexico Environment Department

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## STATEMENT OF REASONS

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The Utility Operators Certification Act (“Act”), NMSA 1978, §§ 61-33-1 to -10 (2015), requires appropriate levels of certification for all individuals who operate or allow the operation of a public water supply system or public wastewater facility. The Act also provides for the Water Quality Control Commission to adopt rules to set standards for certified operators in carrying out their duties.

The Utility Operators Certification Advisory Board (“Board”) determined that a Code of Professional Conduct is necessary to professionalize the certified utility operator discipline, as well as implement consequences in the event that a certified utility operator does not abide by the Code. The Board approved the Code of Professional Conduct at their regularly scheduled meeting on September 25, 2015. The Board cites the following reasons for approving each paragraph:

- Proposed 20.7.4.16.A NMAC: This paragraph expresses in general terms the level of professional conduct expected of certified utility operators in the state of New Mexico. This ethical code shall have the purpose of raising awareness of the importance of the actions of water and wastewater utility operators to public safety and protection of the environment.
- Proposed 20.7.4.16.B NMAC: This paragraph requires that all certified utility operators understand the Code of Professional Conduct and demonstrate familiarity with all utility operator certification regulations. This paragraph also sets forth the consequences that a certified utility operator will face if he or she does not abide by 20.7.4.16.C NMAC.
- Proposed 20.7.4.16.C NMAC: This paragraph provides a core set of values and standards for certified utility operators to follow when performing activities that affect public health and the environment.

**New Mexico Certified Utility Operator Certification Advisory Board**

**Draft 20.7.4.16 NMAC – Code of Professional Conduct**  
**September 25, 2015**

**20.7.4.16 NMAC CODE OF PROFESSIONAL CONDUCT**

A. This code expresses in general terms the level of professional conduct expected of certified operators in the state of New Mexico. This Code of Professional Conduct is intended to guide the actions of certified operators and depends upon the integrity of each certified operator to conduct themselves in a responsible and straightforward manner in operating public water supply systems and public wastewater facilities.

B. All certified operators are charged with understanding this Code of Professional Conduct and are expected to be familiar with the provisions of these rules and the utility operator certification regulations. Failure to follow the Code of Professional Conduct shall be considered gross incompetence by the department. The department shall first seek the advisement of the Utility Operators Certification Advisory Board prior to any application of enforcement made pursuant to this Code of Professional Conduct.

C. The certified operator shall:

- (1) protect the safety, health, and welfare of the public in the performance of the operator's duties;
- (2) report to the proper authority or the department as necessary any conduct that would endanger the safety, health and welfare of the public in regards to the operation of a public water supply system or public wastewater facility;
- (3) submit objective and truthful information in all reports, statements and testimony as required by state and federal law;
- (4) conscientiously and proficiently operate and maintain public water supply systems and public wastewater facilities;
- (5) act honestly, responsibly, ethically and lawfully in a manner that enhances the reputation of the profession;
- (6) avoid any conflict of interest that could influence the operator's professional judgment and promptly report any such conflict of interest to the operator's employer as necessary;  
and
- (7) not falsify any academic or professional qualifications and shall not misrepresent such qualifications to the operator's employer, the department or any member of the public.

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**20.6.4.16 NMAC** ) )  
\_\_\_\_\_) )

No. \_\_\_\_\_

**ORDER FOR HEARING**

The New Mexico Water Quality Control Commission (“Commission”), through its duly appointed Chairperson, now Orders that the petition by New Mexico Environment Department, Surface Water Quality Bureau (“Bureau”), as referenced above, be set for public hearing pursuant to NMSA 1978, § 74-6-1 to -17 (“Water Quality Act”), NMSA 1978, § 61-33-1 to -10 (“Utility Operators Certification Act”) and *Guidelines for Water Quality Control Commission Regulation Hearings* (Approved November 10, 1992; Amended June 8, 1993) (“*Guidelines*”) on June 14, 2016, and continue until completion or as may be Ordered. The Commission Orders that the Bureau prepare and issue public notice of the hearing in accordance with Section 302 of the Commission’s *Guidelines*.

**NOW ORDERED**, this the \_\_\_\_ day of April 2016, by the Commission and as attested by the Chairperson’s signature below.

\_\_\_\_\_  
Chair  
New Mexico Water Quality Control Commission