

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT**



**In the Matter of:
PROPOSED AMENDMENT
To 20.6.2.3000 NMAC and 20.6.2.5000 NMAC**

WQCC 14-15 (R)

PROCEDURAL ORDER

A. HEARING DATE & LOCATION

- a. The public hearing will be held on July 14 and 15, 2015 at the Artesia City Hall Chambers, located at 511 W. Texas Ave., Artesia, NM, 88210. The hearing will begin at 9:00 a.m. and conclude at 5:00 p.m. In the event more time is needed, the hearing will continue the next day in the same location beginning at 9:00 a.m.
- b. All deadlines set forth below are designed to provide the Hearing Officer with the legal argument and pre-filed technical testimony necessary to begin the hearing on July 14, 2015 and to proceed efficiently until the conclusion of the hearing. The Hearing Officer, Administrator, and counsel of record participated in a teleconference on May 7, 2015, to agree to the deadlines below.

B. FILING AND SERVICE OF DOCUMENTS

- a. The filing of any document as required by this Order shall be accomplished by delivering the document to the Commission Administrator (“Administrator”), Pam Castaneda, located at 1190 St. Francis Dr., Suite S-2102, Santa Fe, New Mexico 87502; Telephone: (505) 827-2425. E-mail: pam.castaneda@state.nm.us
- b. Any person filing any document shall:
 - i. 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.
 - ii. The original document filed with the Administrator must be single-sided; copies may be double-sided.
- 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.

- C. NOTICE OF HEARING
 - a. Public notice of the hearing shall be given at least 30 days prior to the hearing pursuant to Water Quality Control Commission Guidelines, Section 302.

- D. PARTICIPATION BY GENERAL PUBLIC
 - a. Any member of the general public may present non-technical testimony and exhibits at the hearing. No prior notification shall be required.
 - 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.

- E. TECHNICAL TESTIMONY
 - a. In order to present technical testimony at the hearing, a Party must file a notice of intent to present technical testimony no later than 5 p.m. June 15, 2015. The notice shall:
 - i. Identify the person or entity for whom the witness (es) will testify;
 - ii. 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;
 - iii. Attach the full direct testimony of each technical witness, which shall include an express basis for all expert opinions offered;
 - iv. Include the text of any recommended modifications to the proposed regulatory change; and
 - v. Identify and attach all exhibits to be offered by the person at the hearing.
 - 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. on June 29, 2015. The notice shall comply with the requirements set out above in Section E(a). 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.
 - c. The Hearing Officer shall enforce Section E(a) through the exclusion of technical testimony or exhibits, as applicable.
 - d. At the hearing, persons presenting technical testimony shall not read their full, pre-filed testimony but shall adopt it under oath and may present a brief summary prior to standing for cross-examination.

- F. CONDUCT OF HEARINGS
 - a. The rules of civil procedure and the rules of evidence shall not apply, but may be looked upon for guidance.
 - 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:
 - i. 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.

- ii. Parties filing a notice of intent to present technical testimony may make an opening statement.
- iii. Each Party will present its case; Cross examination by panel is allowed.
- iv. The Parties shall present any rebuttal testimony in the same order.
- v. The Parties may present surrebuttal testimony at the discretion of the Hearing Officer.
- vi. The Hearing Officer shall provide an opportunity for testimony from members of the general public. Specifically, the Hearing Officer will provide an opportunity for public comment once all of the parties have concluded their cases. The public may also comment during appropriate breaks in testimony, as determined by the Hearing Officer.
- vii. Members of the general public who wish to present testimony shall indicate their intent on a sign-in sheet provided by the Administrator.
- viii. At the close of the hearing, the Hearing Officer shall announce that the record is closed.

G. TESTIMONY AND CROSS EXAMINATION

- a. All testimony and public comment will be taken under oath or affirmation.
- b. The Hearing Officer shall admit any relevant evidence, unless the Hearing Officer determines that the evidence is incompetent or unduly repetitious.
- 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.

H. EXHIBITS

- a. Any person offering an exhibit at the hearing that was not appended to a notice of intent shall provide at least one copy for every other Party and the Hearing Officer.
- b. All exhibits shall be marked with a designation identifying the person offering the exhibit and shall be numbered or lettered sequentially.
- 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 PowerPoint presentations) are used, legible copies shall be submitted for the record. If demonstrative exhibits, including PowerPoint presentations, are based on technical testimony, said exhibits must be timely filed pursuant to above Sections E(a) and E(b).

I. TRANSCRIPT OF PROCEEDING

- a. The petitioner will pay for the preparation of the transcript that is the official record of the proceeding.
- b. Any person desiring a copy of the transcript may obtain a copy at his or her own cost, or may review the copy of the transcript maintained by the Administrator.

J. POST HEARING SUBMISSIONS

- a. The Hearing Officer will allow the Parties to submit written closing argument and proposed statement of reasons following receipt of the final transcript.

K. DELIBERATION AND DECISION

- a. The Commission may attend any part or all of the hearing.
- b. The Commission will issue its decision on the proposed changes in a suitable format, which shall include its statement of reasons for the action taken.
- c. The Commission's written decision and statement of reasons shall be the official version of the Commission's action.

A handwritten signature in black ink, appearing to read "M. J. Chavez". The signature is written in a cursive, somewhat stylized font.

Morris J. Chavez
Hearing Officer

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Procedural Order has been served via e-mail, regular U.S. mail and hand-delivered to the following parties on May 15, 2015.

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