

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

IN THE MATTER OF PROPOSED AMENDMENTS  
TO 20.6.2 NMAC, THE COPPER RULE



WQCC 12-01 (R)

New Mexico Environment Department,  
Petitioner.

**PROCEDURAL ORDER**

**GENERAL**

In conducting the hearing for the above-captioned matter 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.

**PART I**

**HEARING DATE AND PRE-HEARING BRIEFING**

**101. HEARING DATE.**

101.A. The Petition was presented at the Commission's November 13, 2012 meeting and the hearing in this matter was scheduled by the Commission to begin April 9, 2013.

101.B. All deadlines set out below are designed to provide the Commission with the legal argument and pre-filed technical testimony necessary to begin the hearing on April 9 and to proceed efficiently from that date until the hearing concludes. The Hearing Officer, Commission Administrator and Counsel of record participated in a teleconference on November 20, 2012 to agree to the deadlines below.

**102. PRE-HEARING BRIEFING.**

102.A. Briefs on the basis or scope of the Commission's legal authority to adopt the Petition, or in support of motions presented as "dispositive" motions, or intended to assist the Commission in understanding the legal framework associated with moving to a "point of compliance" regulatory scheme for ground water discharge permits, may be filed until 5 p.m. December 14, 2012.

102.B. Responses to briefs filed pursuant to Section 102.A may be filed until 5 p.m. January 11, 2013.

102.C. Replies to responses filed pursuant to Section 102.B may be filed until 5 p.m. January 25, 2013.

102.D. The Hearing Officer will invite representatives of other organizations and industries subject to the Water Quality Commission Regulations to participate in the pre-hearing briefing in order to provide the Commission with all relevant argument and information concerning the Commission's authority.

102.E. The Hearing Officer and Commission Administrator will seek the concurrence of the Commission Chair in setting a Commission meeting on February 12, 2013, for the purpose of obtaining rulings on the motions presented. The Administrator will inform all Parties of such a meeting at least 10 days prior to the meeting.

## PART II

### DOCUMENT FILING

#### 201. FILING AND SERVICE OF DOCUMENTS.

201.A. The filing of any document as required by this Order shall be accomplished by delivering the document to the Commission Administrator, Pam Castaneda, 1190 St. Francis Drive, Suite N-2150, Santa Fe, New Mexico 87502. Telephone: 505.827.2425. E-mail: pam.castaneda@state.nm.us.

201.B. Any person filing any document shall:

1. Provide the Administrator with an original and fourteen copies of the document; and
2. 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. The service list will be available in the office of the Commission Administrator and maintained on the Commission webpage.
3. The original document filed with the Administrator must be single-sided; copies may be double-sided. Voluminous background information may be submitted electronically on discs for ten of the fourteen copies required.

201.C. 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.

201.D. The Administrator shall assure the record in this matter is posted on the Commission's webpage, and updated as necessary.

## PART III

#### 301. NOTICE OF HEARING.

301.A. The Commission, by and through the Hearing Officer and 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.

301.B. The Administrator shall mail the notice to the Parties as shown on the service list, 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.

301.C. 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;
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).

### 302. TECHNICAL TESTIMONY.

302.A. In order to present technical testimony at the hearing, a person must file a notice of intent to present technical testimony no later than 5 p.m. February 22, 2013. The notice shall:

1. Identify the person or entity 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, which shall include an express basis for all expert opinions offered;
4. Include the text of any recommended modifications to the proposed regulatory change; and
5. Identify and attach all exhibits to be offered by the person at the hearing.

302.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 technical testimony no later than 5 p.m. March 15, 2013. The notice shall comply with the requirements set out above in Section 302.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.

302.C. The Hearing Officer shall enforce Section 302.A through the exclusion of technical testimony or exhibits, as applicable.

302.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 no longer than 30 minutes prior to standing for cross-examination.

302.E. Any Party desiring to strike the testimony of another Party's witness or exhibit shall file a motion to strike or exclude the testimony or exhibit by 5 p.m. March 25, 2013. The Hearing Officer and Counsel of record will participate in a teleconference on March 29, 2013 for argument and potential resolution of any motions filed.

303. PARTICIPATION BY GENERAL PUBLIC.

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

303.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.

304. LOCATION OF THE HEARING. - - The hearing shall be held primarily in Santa Fe, where all technical testimony will be presented. The Hearing Officer and Administrator will travel to Silver City to accept non-technical public comment in a proceeding that will be recorded and transcribed for the record. The Administrator shall provide timely notice of this session to the general public, the Parties and the Commission.

PART IV

HEARING PROCEDURES

401. CONDUCT OF HEARINGS.

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

401.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:

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. Parties filing a notice of intent to present technical testimony may make an opening statement.
3. The Department shall present its case first.
4. Other Parties who have filed a notice of intent to present technical testimony will present their cases next, beginning with those generally supporting the Petition, followed by those generally opposing the Petition. The Hearing Officer shall establish a specific order for the Party presentations in a teleconference on March 29, 2012.
5. The Parties shall be entitled to cross-examination in the same order as their presentations, followed by persons who have filed Entries of Appearance.
6. The Parties shall present any rebuttal testimony in the same order.
7. The Parties may present sur-rebuttal testimony in the discretion of the Hearing Officer.
8. The Hearing Officer shall provide an opportunity each day of hearing for testimony from members of the general public, some of which will be outside normal working hours. Evening public comment sessions are planned for April 10 and April 11, 2013; the Administrator will publish additional information closer to the hearing date.
9. Members of the general public who wish to present testimony shall indicate their intent on a sign-in sheet.

10. The hearing will continue as necessary from April 9 through April 10, 11, 16, 17, 18, 23, 24, 25, 30, May 1, May 2, and other dates as set by the Hearing Officer in consultation with the Parties and the Commissioners.
11. 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. The Administrator shall identify the deadline for filing the submittals when the final transcript is received.

#### 402. TESTIMONY AND CROSS EXAMINATION.

- 402.A. All testimony and public comment will be taken under oath or affirmation.
- 402.B. The Hearing Officer shall admit any relevant evidence, unless the Hearing Officer determines that the evidence is incompetent or unduly repetitious.
- 402.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.

#### 403. EXHIBITS.

- 403.A. Any person offering an exhibit at hearing that was not appended to a notice of intent shall provide at least one copy for every other Party, the Hearing Officer, the Commissioners and the Court Reporter.
- 403.B. All exhibits shall be marked with a designation identifying the person offering the exhibit and shall be numbered or lettered sequentially.
- 403.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 power point presentations) are used, legible copies shall be submitted for the record. The content of demonstrative exhibits, including PowerPoint presentations, must be based on technical testimony timely filed.

#### 404. TRANSCRIPT OF PROCEEDING.

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

- 405.A. The Hearing Officer shall allow the Parties to submit proposed statements of reasons and written closing argument following receipt of the final transcript.

#### 406. DELIBERATION AND DECISION.

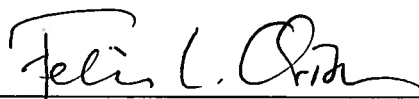
- 406.A. Commissioners may attend any part or all of the hearing, including the public comment session in Silver City. The Hearing Officer will instruct them on how they may participate.

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

406.C. 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.

407. NOTICE OF COMMISSION ACTION.

407.A. The Administrator shall provide notice of the Commission's action to the Parties and to all other persons expressly requesting such notice. The Commission's action will be promptly posted on the Commission's webpage.

A handwritten signature in black ink that reads "Felicia L. Orth". The signature is written in a cursive style with a large, sweeping initial "F".

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Felicia L. Orth, Hearing Officer