



New Mexico Environment Department

Rule Making Process

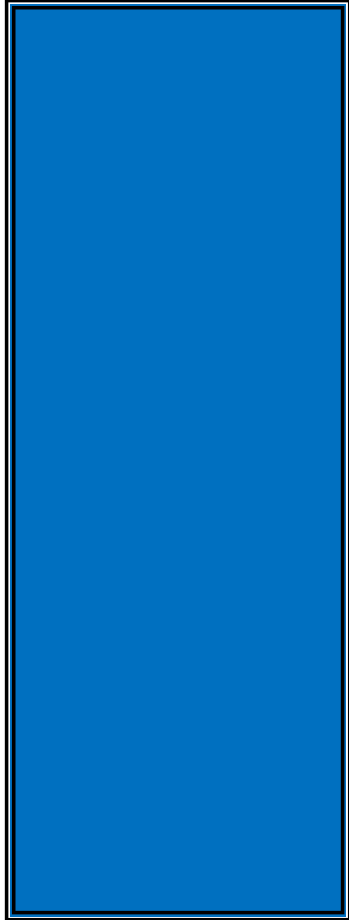
Jason Herman, Program Manager

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Presentation Outline



- Regulations and Laws
- Steps by Step Rule Making Process
- Before the Hearing
- At the Hearing
- After the Hearing



Regulations and Laws

Statutes and Regulations that Control Rule Making

- Water Quality Act (74-6-1 NMSA 1978)
- Produced Water Act (HB 0546 Amends 74-6-2 and 74-6-4 NMSA 1978)
- Rulemaking Procedures - Water Quality Control Commission (20.1.6 NMAC)
- Ground and Surface Water Protection (20.6.2 NMAC)



Regulations and Laws

Examples of Recent Permitting Rule Changes

- 2011 - Supplemental Permitting Requirements For Dairy Facilities (20.6.6 NMAC)
- 2013 - Supplemental Permitting Requirements For Copper Mine Facilities (20.6.7 NMAC)
- 2018 - Updates and Changes to Ground and Surface Water Regulations 20.6.2 NMAC



WQA Rule Making Guidance

- ❑ Based on credible scientific data and other evidence appropriate under the Water Quality Act.
- ❑ Value of the water for water supplies, propagation of fish and wildlife, recreational purposes and agricultural, industrial and other purposes
- ❑ Character and degree of injury to or interference with health, welfare, environment and property;
- ❑ The public interest, including the social and economic value of the sources of water contaminants;
- ❑ Technical practicability and economic reasonableness of reducing or eliminating water contaminants from the sources involved and previous experience with equipment and methods available to control the water contaminants involved;
- ❑ Successive uses, including but not limited to domestic, commercial, industrial, pastoral, agricultural, wildlife and recreational uses;
- ❑ Feasibility of a user or a subsequent user treating the water before a subsequent use;
- ❑ Property rights and accustomed uses; and
- ❑ Federal water quality requirements;



WQA Rule Making Guidance

- Types of evidence presented during recent rule makings.....
 - Expert witness testimony supported by exhibits
 - Peer reviewed journal articles related to the subject matter
 - Federally adopted practices and standards
 - Reports and other scientific publications



Step by Step Rule Making

- Establish Advisory Committee
- Develop a rule development scope and schedule
 - Gather any evidence or supporting documentation
- Draft proposed rule or changes using strike through and underlined text to show additions and deletions
- Submit draft rule and hold public meetings for public comment
- Meet separately with stakeholders to discuss comments
- Petition WQCC with a request for hearing along with revised proposed draft rule



Step by Step Rule Making (Cont.)

- Pre-hearing motions and briefs (remand, stay, dismissal, postpone etc.)
- Submission of Notices of Intent to Present Technical Testimony
 - Testimony will include evidence and supporting best available science that was collected prior to drafting the rule
 - Testimony will include reference to exhibits supporting the testimony
- Submission of Notices of Intent to Rebuttal Technical Testimony
- Public notice for the hearing is published 60 days before the hearing date
 - Newspaper publications, mail/email to interested parties, and mail/email to local government entities



Step by Step Rule Making (Cont.)

- Administrative Hearing is held much like a judicial proceeding
 - Parties who submitted NOIs have each witness present their testimony
 - Exhibits can be entered into evidence to support testimony
 - Witnesses are cross examined with possible rebuttal questions
 - Members of the public are given the opportunity to provide comment at different stages of the hearing
- Post hearing pleadings
 - Closing arguments and findings of fact
- WQCC Issues a final order and statement of reason
 - SOR includes an explanation of the different proposed or disputed sections of the rule, what the WQCC determined will be used, and the reasons why the WQCC determined what version would be used.



20.6.7 NMAC Copper Rule Adoption

- 2009 Water Quality Act Amendments directed the Commission to promulgate industry specific rules for the copper mine and dairy industries
- Petition filed with WQCC on October 30, 2012
- Amended petition filed February 18, 2013
- 10 days of hearing held between April 9th and May 3rd, 2013



20.6.7 NMAC Copper Rule Adoption

- Technical Testimony was given by hearing participants from a wide variety of sectors
 - ▣ NMED (two witnesses)
 - ▣ William C. Olson (witness on his own behalf)
 - ▣ The NM Attorney General (two witnesses)
 - ▣ Freeport-McMoRan (nine witnesses)
 - ▣ Gila Resources Information Project and Turner Ranch Properties Inc. (two witnesses)
 - ▣ Amigos Bravos (two witnesses)
- Public Comment is made at different times during the hearing process as determined by the Hearing Officer



20.6.7 NMAC Copper Rule Adoption

- September 25, 2013, the rule is adopted by the WQCC
- December 1, 2013, the rule became effective
- Interested parties and technical witnesses at the hearing appealed the decision of the WQCC
- In 2018 the appellate court sustained the WQCC decision to adopt the rule.



Copper Rule Hearing Quick Facts

- More than 361 pages of direct technical testimony was entered
- During the hearing participants entered more than 216 exhibits into evidence
- More than 142 pages of rebuttal testimony and 775 pages of closing arguments were entered into the record
- During the hearing process more than 115 orders, motions, responses, objections and notices were filed totaling over 1,732 pages of documents
- After the hearing more than 1,388 pages of comments were received from the public



Conclusion and Summary

- ❑ Efforts to draft and develop the Copper rule began in November of 2011.
- ❑ Final adoptions of the rule was complete on December 1, 2013. Two full years!
- ❑ NMED defense and resource allocation continued for another 5 years when the appellate case concluded
- ❑ Copper mine discharges and environmental threats were well known with robust research available
- ❑ During the hearing for the Copper Rule **all parties agreed** that copper mining is a necessary activity to have occurring in the state.