



Communities For Clean Water

October 17, 2016

Michelle Hunter, Chief
Ground Water Quality Bureau
New Mexico Environment Department
P. O. Box 26110
Santa Fe, NM 87502
By email to: NMENV.GWQBrulerev@state.nm.us.

RE: Proposed Revisions to Ground and Surface Water Protection Regulations – 20.6.2.7 NMAC

Dear Ms. Hunter:

Communities for Clean Water (CCW) is a network of organizations whose mission is to ensure that community waters impacted by Los Alamos National Laboratory (LANL) are kept safe for drinking, agriculture, sacred ceremonies, and a sustainable future. Our growing network includes Concerned Citizens for Nuclear Safety (CCNS), Amigos Bravos, Honor Our Pueblo Existence (HOPE), the New Mexico Acequia Association, Partnership for Earth Spirituality, and Tewa Women United. CCW brings together the vast expertise and commitment of widely respected and well-tested advocacy groups from culturally diverse backgrounds. Collectively CCW represents the only community-based coalition in Northern New Mexico that has been monitoring and advocating for better public water policy to address the toxic threats from LANL to the Pajarito Plateau and the Rio Grande. As the sacred homeland of the Pueblo Peoples it is vitally important that clean water be protected on the Pajarito Plateau. Since 2004 CCW has participated in numerous state and federal regulatory proceedings related to ground and surface water protections. We write today to comment on the New Mexico Groundwater Bureau's proposed revisions to 20.6.2 NMAC, New Mexico's Water Quality Regulations. Strong water quality regulations are essential for CCW to be able to achieve our mission of keeping water downstream of LANL safe for future generations.

CCW has numerous concerns with the New Mexico Environment Department's ("Department") proposed changes to 20.6.2 NMAC. We urge NMED to address our concerns and reconsider several of the proposed changes.

1. Discharge Permit Amendments

CCW is opposed to the proposed addition of "discharge permit amendments" to the regulations. Discharge permit amendments reduce public participation in important permitting decisions including the increase of the volume of discharge and the increase of the concentration of pollutants in the discharge. In addition, and most egregiously, as written, the Department's September 19th draft could result in no public participation in decisions regarding introducing new pollutants to New Mexico's groundwater resources. Under NMED's proposal these types of changes to a permit could be made without undergoing the public participation oversight currently required for such changes. This proposed change, included in the draft proposal at 20.6.2.7.D(4)(d), is clearly in violation of the New Mexico Quality Act as it allows the discharge of a new pollutant, at any level below the 3103 standards, without public notice or input. In addition, CCW questions the basis for allowing changes up to 10 percent to both the amount of discharge and the concentrations of the discharge without a permit modification, which requires a robust public process. What is the basis of this 10 percent number? Community members living downstream and down gradient from discharges to ground or surface water discharges should have the opportunity to oppose changes to the quantity or concentration of pollutants being discharged near their homes. CCW opposes this proposed change.

2. Changes to Variance Regulations

CCW is concerned about the Department's proposed changes to the variance provisions at 20.6.2.1210. Specifically we oppose eliminating the 5-year variance limit from the regulations. The proposed change allows an open-ended amount of time to be granted for variances, meaning that a polluter could have a variance from meeting water quality standards for decades or more. Without a variance time limit there is no assurance that a review to determine if the need for a variance still exists. Variance term limits ensure a regular review of applicable technology and site conditions to determine if the situation has changed and achievement of standards is now possible. In addition, CCW is opposed to the proposal to expand the Secretary's authority to grant alternative abatement standards in excess of 200 percent of the abatement standard for non-human health standards. This increase of authority could result in alternative abatement standards being approved at levels

substantially higher than state standards without a public hearing process. Public participation in decisions that impact water quality is essential for safeguarding New Mexico's precious water resources.

3. Notice of Action Taken

At 20.6.2.3109.B there is existing language stating that "persons who participated in a permitting action" will be notified of final action taken. CCW requests a definition of "persons who participated in a permitting action". Does this mean anyone who commented on the permit or gave public comment on the permit? Or is this narrowly interpreted to only mean anyone who was an official party in the permitting proceedings? CCW requests a clarification of how this is interpreted by the Department. In addition CCW proposes that the Department add language to allow anyone who requests to be notified of a final decision to receive a copy of the final action. Proposed language:

The secretary shall notify the applicant or permittee by certified mail of the action taken and the reasons. Notice shall also be given by mail to persons who participated in the permitting action and to any person who has requested in writing to be notified.

This will ensure that people who have been following the permitting process, but have not engaged in any formal way via comments, public comments or technical testimony can still receive notice of a final permitting decision. For example you could have a person who lives near a discharge that is very concerned about the impacts of the discharge but didn't have the resources or ability to actively participate in the permitting action. This person should still be able to be notified when a final decision is made.

4. Chromium Standards

The Department is proposing to double the concentration of chromium that may be released in a discharge. Chromium at 24 times the New Mexico standard has been found in the regional drinking water aquifer below Los Alamos National Laboratory and is migrating southeast towards the Pueblo de San Ildefonso. Doubling the chromium standard would negatively impact the ongoing cleanup efforts at LANL. In addition, by allowing LANL to leave double the amount of Chromium in the regional aquifer the effect of this proposed change is to pass the clean up burden onto those using the regional aquifer for drinking water.

In closing, Communities for Clean Water urges NMED to not move forward with the proposed changes to the variance provisions and to abandon the proposed addition of "discharge permit amendments" and to add language to the clarifying who receives notice of final permitting actions.

5. Exemptions for Discharge Permit Requirements

The proposed change does not cite applicable sections of the New Mexico Hazardous Waste Act nor the federal Resource Conservation and Recovery Act (RCRA), unlike other sections under the exemptions. See 20.6.2.3105, Parts A, B, F, J, L, and M. NMED should provide cites to the applicable sections of the New Mexico Hazardous Waste Act and RCRA.

The proposed new regulatory language states that certain discharges "regulated" under the HWA are not subject to the WQA if certain "substantive" requirements are met and the Secretary finds that there is "no hazard." Thus, the regulation attempts to address the issue of HWA (etc.) exemption under different standards from those contained in the statute. It is questionable whether the agency can issue a regulation that addresses the issue of exemption in a different manner than the statute. Moreover, the procedures under the proposed regulatory exemption are not stated, and there is no requirement of public notice and comment and a possible hearing. It is not clear what is meant by "discharges regulated under the HWA." Thus, it is not clear whether the Secretary could, without public participation, find that certain discharges are "regulated" under the HWA (even if no permit is outstanding), that "substantive" requirements are met, and that there is no "hazard," thus eliminating any WQA coverage.

Clarifying language is needed as well as language about how the public will participate in the decision-making process. Further, CCW objects to the shift of decision-making power from the public to the Secretary to "determine that no hazard to public health would result." The public must be involved in the process of exempting effluent or leachate discharges from the New Mexico Hazardous Waste Act and RCRA

Sincerely,

Marian Naranjo
Honor Our Pueblo Existence
mariann2@windstream.net

Joni Arends
Concerned Citizens for Nuclear Safety
jarends@nuclearactive.org

Joan Brown and Marlene Perrotte
Partnership for Earth Spirituality
JoanKansas@swcp.com and Marlenep@swcp.com

Rachel Conn
Amigos Bravos
rconn@amigosbravos.org