



## Concerned Citizens for Nuclear Safety

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By email to: [NMENV.GWQBrulerev@state.nm.us](mailto:NMENV.GWQBrulerev@state.nm.us)

Steve Huddleson, P.G., C.P.G.  
Manager, Pollution Prevention Section  
Ground Water Quality Bureau  
New Mexico Environment Department  
1190 St. Francis Drive  
Santa Fe, NM 87505

Re: Public Comments about Proposed Changes to New Mexico's Surface and  
Ground Water Protection Regulations 20.6.2 NMAC

Dear Mr. Huddleson:

Concerned Citizens for Nuclear Safety (CCNS) is a Santa Fe based non-governmental organization that formed in 1988 to address community concerns about the transportation of nuclear waste from Los Alamos National Laboratory (LANL) to the then proposed Waste Isolation Pilot Plant. Since that time CCNS has been involved in federal and state permitting processes, including ground water discharge permits proposed and issued by your Bureau, as well as surface water discharge permits.

CCNS is deeply concerned about the proposed changes to New Mexico's Surface and Ground Water Protection regulations that reduce or eliminate the public's due process rights required in permit decision-making processes. CCNS has reviewed the November 2015 Ground Water Quality Bureau's Hit List and find the Department's attempt to eviscerate the public's rights to participate in permitting decision-making alarming.

CCNS urges the Department to strike the proposals that would:

1. Add a definition for a "discharge permit amendment." The New Mexico Water Quality Act does not authorize the Department to amend a discharge permit, only to renew or modify a permit. The Department is proposing to exceed its authority.



Further, the Department should withdraw language at 20.6.2.3106.G NMAC.

2. Allow the Department to issue a formal letter to renew a permit. The Water Quality Act is clear that public participation is required in permit renewal decision-making. The Department is again proposing to exceed its authority.
3. Allow the Department to issue permit variances in perpetuity. The Water Quality Act authorizes the Water Quality Control Commission to issue variances for no more than five years. The goal is for the facility to come into compliance with the surface and ground water protection regulations. If a facility requires additional time exceeding five years, it is required to go before the Commission. Public notice and opportunity for public input is required. Again, the Department is proposing to exceed its authority.

The Department must withdraw its proposal for 20.6.2.1210.D NMAC and restore the decision-making process to the Water Quality Control Commission.

4. Allow the Department to conduct an internal five-year review of a variance. The Water Quality Act is clear that the facility must come before the Water Quality Control Commission. Again the Department is proposing to exceed its authority.

The Department must withdraw its proposal for 20.6.2.1210.D NMAC and ensure the decision-making process remains with the Water Quality Control Commission.

5. Reduce the size of the public notice sign required to be posted at the facility from 2 feet by 3 feet to a mere 11 inches by 17 inches. 20.6.2.3108.B.(1) NMAC. A 2 x 3 foot sign is too small; it should be required to be larger (at least 3 feet x 4 feet) so that the public can see the sign when driving past the facility and be able to learn about proposed changes at the facility, who to contact for more information, and how to participate in the decision-making process.

A sign should be required for the public notice and participation requires for a Stage I abatement plan proposal. 20.6.2.4108.B NMAC.

6. Allow for the creation of alternative abatement standards based on "technical infeasibility." 20.6.2.4103.F NMAC. There is no definition of technical infeasibility, or criteria to determine if technical infeasibility exists.

The Department must withdraw its proposal for 20.6.2.4103.F NMAC.

CCNS provides the following comments:

1. The standard for ethylene dibromide (EDB) detection is many magnitudes too high at 0.0001 mg/L. 20.6.2.3103.A.(2) NMAC. The U.S. Environmental Protection Agency (EPA) Maximum Contaminant Level (MCL) for drinking water is 50 parts per trillion (ppt). The detection limit for EDB is 10 ppt.

The Department must correct the EDB standard as part of the proposed revision of the regulations.

2. With regard to the exemptions from Discharge Permit Requirements at 20.6.2.3105 NMAC, how will the public be notified if and when effluent or leachate discharges, regulated under the Resource Conservation and Recovery Act (RCRA), would not be required to obtain a discharge permit? Proposed 20.6.2.3105.N NMAC. Further, the Department must provide the criteria that the Secretary would use to determine that “no hazard to public health would result.” Id.

CCNS supports the proposed clarification of the exemption for RCRA at 20.6.2.3105.N, with the caveat that public notification and the “no hazard to public health would result” criteria be part of the proposed language.

3. Proposed changes to the regulations require notification to “persons who participated in the permitting action.” For example, 20.6.2.3109.B NMAC. The Department must clarify who are those “persons who participated in the permitting action.” Does it mean someone who received a notice from the Department’s facility mailing list? Someone who submitted public comments? Someone who participated in a public hearing? The definition must be consistent throughout 20.6.2 NMAC.

Further, 20.6.2.4105.B NMAC does not include notification to “persons who participated in the permitting action.” This should be corrected.

4. CCNS supports the proposed changes to the permit fees and fee amounts. 20.6.2.3114 NMAC Tables 1 and 2.
5. Language should be included in the proposed changes to the regulations that require the Department to post electronically edited (redline/strikeout, etc.) versions of draft permits on the Department’s website, similarly to the proposed changes to these regulations. Our recent experience with Groundwater Discharge Permit 1835 for LANL, which was subject to a public hearing, is the impetus for the comment. The Department made changes to the draft permit prior to the hearing. We learned about the proposed changes through the written technical testimony of the Department’s witness, Steve

Huddleston. When asked, we were told that there was no electronically edited version of the draft permit available. It is amazing that in the 21<sup>st</sup> century, no electronically edited version of the draft permit subject to a hearing was made available to the parties, nor even a simple errata sheet.

Language should be included in the proposed revisions that requires the Department to post electronically edited versions of the draft permits on the Department's website. Our suggestion not only applies to those permits subject to a public hearing, but those that are not.

On August 12, 2016 CCNS emailed Steve Huddleson with questions about the heading at the top of the page for the proposed revisions, which are below. We did not receive a satisfactory response, and now ask for a written response to our questions.

Hi Steve,

I hope you can answer my questions about the heading on the proposed changes to 20.6.2 - downloaded from the NMED website:

1. What does it mean that the document "contains the preliminary text of sections with the Department's initial proposal for changes to 20.6.2 NMAC"?
2. How does the Department define "preliminary text"?
3. What is the process for revision of the preliminary text?
4. How does the Department define "initial proposal"?
5. What is the process to change the initial proposal?
6. Please describe the process for the public to be notified of the proposed changes.
7. Will another draft proposal be released for public review and comment?

The materials indicate that the Department plans to take the proposed changes to the WQCC meeting in October. Is that still the schedule?

Thank you for your time.

Best,

Joni

Please add CCNS at [ccns@nuclearactive.org](mailto:ccns@nuclearactive.org) to your update list about this regulatory process. CCNS requests to be informed about when this matter will come before the Water Quality Control Commission this fall.

Thank you for your careful consideration of our comments. Please contact us with any questions or concerns you may have.

Sincerely,

Joni Arends  
Executive Director