

**CCW and GRIP Talking Points about the Triennial Review of
New Mexico's Surface Water Quality Regulations
Public Hearing Begins on Tuesday, July 13th, 2021 - Public Comments Needed**

Communities for Clean Water (CCW) and the Gila Resources Information Project (GRIP) prepared four documents to help you prepare for the Triennial Review. They are: these talking points, a fact sheet about the Triennial Review process with virtual connection information, a backgrounder about the NM Water Quality Control Commission (WQCC) and NM's water quality regulations, and a sample public comment letter you can use, modify and submit.

CCW and GRIP have filed a *Notice of Intent to Present Technical Rebuttal Testimony and Nontechnical Rebuttal Testimony*. <https://www.env.nm.gov/water-quality-control-commission/wqcc-20-51-r/>, Item 34. Our witnesses are Elder Kathy Wan Povi Sanchez, the Sayain Project Coordinator and past Director of Tewa Women United; Pam Homer, Environmental Scientist; Allyson Siwik, Executive Director of Gila Resources Information Project; and Professional Engineer James R. Kuipers, Kuipers and Associates.

CCW and GRIP are Challenging Some New Definitions and Proposed Amendments to Existing Definitions. This Triennial Review is focused on proposed amendments to important definitions to provide additional protections to New Mexico waters.¹ The definitions include the following new and amended definitions:

1. The current **Objective** of the Water Quality Standards is to:

A. The purpose of this part is to establish water quality standards that consist of the designated use or uses of surface waters of the state, the water quality criteria necessary to protect the use or uses and an antidegradation policy.

B. The state of New Mexico is required under the New Mexico Water Quality Act (Subsection C of Section 74-6-4 NMSA 1978) and the federal Clean Water Act, as amended (33 U.S.C. Section 1251 et seq.) to adopt water quality standards that protect the public health or welfare, enhance the quality of water and are consistent with and serve the purposes of the New Mexico Water Quality Act and the federal Clean Water Act. It is the objective of the federal Clean Water Act to restore and maintain the chemical, physical and biological integrity of the nation's waters, including those in New Mexico. This part is consistent with Section 101(a)(2) of the federal Clean Water Act, which declares that it is the national goal that wherever attainable, an interim goal of water quality that provides for the protection and propagation of fish, shellfish and wildlife and provides for recreation in and on the water be achieved by July 1, 1983. Agricultural, municipal, domestic and industrial water supply are other essential uses of New Mexico's surface water; however, water contaminants resulting from these activities will not be permitted to lower the quality of surface waters of the state

¹ Proposed language is in red. ~~Strikeout~~ indicates proposed language to be removed.

below that required for protection and propagation of fish, shellfish and wildlife and recreation in and on the water, where practicable.

C. Pursuant to Subsection A of Section 74-6-12 NMSA 1978, this part does not grant to the water quality control commission or to any other entity the power to take away or modify property rights in water. 20.6.4.6 NMAC.

The New Mexico Environment Department (NMED) is proposing to add a new objective as a Section D. It reads:

“D. These surface water quality standards serve to address the inherent threats to water quality due to climate change. [20.6.4.6 NMAC - Rp 20 NMAC 6.1.1006, 10/12/2000; A, 5/23/2005; A, XX/XX/XXXX]”

CCW and GRIP propose the following clarifying language to the NMED proposal:

D. A further purpose of these ~~These~~ surface water quality standards ~~is serve~~ to address the inherent threats to water quality due to climate change. 20.6.4.6 NMAC

Reference: *Rebuttal Testimony of Pamela E. Homer on Behalf of Communities for Clean Water and Gila Resources Information Project*, p. 3 – 5.

2. The NMED is proposing a new definition for “**Climate Change**,” which reads:

“‘Climate change’ refers to any significant change in the measures of climate lasting for an extended period of time, typically decades or longer, and includes major changes in temperature, precipitation, wind patterns or other weather-related effects. Climate change may be due to natural processes or human-caused changes of the atmosphere, or a combination of the two.” 20.6.4.7.C(4) NMAC.

CCW and GRIP find the NMED’s proposed definition to be limited. CCW and GRIP propose the following language:

“‘Climate change’ refers to any significant change in the measures of climate lasting for an extended period of time, typically decades or longer, and includes major changes in temperature, precipitation, wind patterns or other weather-related effects. Climate change ~~is due primarily to anthropogenic emissions of greenhouse gases into the atmosphere, in combination with may be due to natural processes or human-caused changes of the atmosphere, or a combination of the two.~~” 20.6.4.7.C(4) NMAC.

Reference: *Rebuttal Testimony of Pamela E. Homer on Behalf of Communities for Clean Water and Gila Resources Information Project*, p. 3 – 5.

3. The NMED is proposing a new definition for “**Contaminants of Emerging Concern,**” which reads:

“‘Contaminants of emerging concern’ or ‘CECs’ refer to water contaminants including, but not limited to, pharmaceuticals and personal care products that may cause significant ecological or human health effects at low concentrations. CECs are generally chemical compounds that, although suspected to potentially have impacts, may not have regulatory standards, and the concentrations to which negative impacts are observed have not been fully studied.”
20.6.4.7.C(7) NMAC.

Los Alamos National Laboratory (LANL), a Department of Energy facility, and the New Mexico Mining Association (NMMA) are opposing adding a definition for CECs and monitoring requirements to the standards.

CCW and GRIP opposed the term “Contaminants of emerging concern” and propose the term “**Emerging Contaminants.**” CCW and GRIP proposed the following clarifications to the NMED proposed definition:

C.(7) “**Emerging contaminants**” ~~Contaminants of emerging concern” or “CECs” refer to water~~ means contaminants, including, but not limited to pharmaceuticals and **ingredients in** personal care products, that may cause significant **adverse** ecological or human health effects at low concentrations. ~~CECs~~ **Emerging contaminants** are **generally** chemical compounds that, although suspected to potentially have ~~impacts-adverse effects~~, may not have regulatory standards, and the concentrations to which ~~negative impacts~~ **adverse effects** are observed **may not** have ~~not~~ been fully studied. **An emerging contaminant may be a toxic pollutant if it falls within the definition of that term. [Renumber as 20.6.4.7.E(3).]**

Reference: *Rebuttal Testimony of Pamela E. Homer on Behalf of Communities for Clean Water and Gila Resources Information Project*, p. 7.

4. LANL is proposing to substantially limit the number of waters that flow through the canyons to the Rio Grande that receive protections under the Human Health – Organism Only (HH-OO) criteria for pollutants. These pollutants include PCBs, methylmercury, and DDT. The criteria protect human health by ensuring that pollutants are not bioaccumulating in fish and other aquatic organisms at levels that dangerous to human health. LANL’s proposed change would limit the waters to which these criteria apply, which reads:

20.6.4.11(G). Human health-organism only criteria in Subsection J of 20.6.4.900 NMAC apply to those waters with a designated, existing or attainable ~~aquatic life~~ fish consumption use. **If a tributary does not have an attainable fish consumption use, then HH-OO criteria do not apply to the tributary. If the fish consumption designated use is not attained in the first downstream segment with an attainable fish consumption designated use, then the tributary should be assigned a load allocation as required by 40 CFR Part 130. ~~When limited aquatic life is a~~**

~~designated use, the human health-organism only criteria apply only if adopted on a segment specific basis. The human health-organism only criteria for persistent toxic pollutants, as identified in Subsection J of 20.6.4.900 NMAC, also apply to all tributaries of waters with a designated, existing or attainable aquatic life use.~~

Reference: *Rebuttal Testimony of Pamela E. Homer on Behalf of Communities for Clean Water and Gila Resources Information Project*, p. 9 - 10.

5. The NMED is not proposing any changes to the existing definition of “**Toxic Pollutant.**” 20.6.4.7.T(2) NMAC.

CCW and GRIP propose adding one sentence to clarify that the listed federal and state toxic pollutants are included in the definition:

“‘Toxic pollutant’ means those pollutants, or combination of pollutants, including disease-causing agents, that after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will cause death, shortened life spans, disease, adverse behavioral changes, reproductive or physiological impairment or physical deformations in such organisms or their offspring. **The term includes the toxic pollutants listed in the federal regulations at 40 CFR 401.15 and the groundwater quality regulations at 20.6.17.T(2) NMAC as those lists may be amended.**” 20.6.4.7.T(2) NMAC.

In contrast, LANL and the NMMA are proposing to narrow the definition. They are recommending the following changes:

“‘Toxic pollutant’ means those pollutants, or combination of pollutants, ~~including disease-causing agents, that after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will cause death, shortened life spans, disease, adverse behavioral changes, reproductive or physiological impairment or physical deformations in such organisms or their offspring~~ **listed by the EPA Administrator under section 307(a) of the federal Clean Water Act, 33 U.S.C. § 1317(a) or in the list below.** 20.6.4.7.T(2) NMAC.

Note: Section 307(a) of the federal Clean Water Act is the Toxic Pollutant List, which was updated in 1977 to the Priority Pollutant List to make implementation of the Toxic Pollutant List more practical.²

Reference: *Rebuttal Testimony of Pamela E. Homer on Behalf of Communities for Clean Water and Gila Resources Information Project*, p. 5 – 6.

² For more information, visit <https://www.epa.gov/eg/toxic-and-priority-pollutants-under-clean-water-act>

6. “**Toxic Pollutants**” are further defined under *General Criteria* at 20.6.4.13.F(1). The NMED is proposing to add the following language, which CCW and GRIP oppose:

(1) Except as provided in 20.6.4.16 NMAC, surface waters of the state shall be free of toxic pollutants, **including but not limited to contaminants of emerging concern and those toxic pollutants listed in 20.6.2 NMAC**, from other than natural causes in amounts, concentrations or combinations that affect the propagation of fish or that are toxic to humans, livestock or other animals, fish or other aquatic organisms, wildlife using aquatic environments for habitation or aquatic organisms for food, or that will or can reasonably be expected to bioaccumulate in tissues of fish, shellfish and other aquatic organisms to levels that will impair the health of aquatic organisms or wildlife or result in unacceptable tastes, odors or health risks to human consumers of aquatic organisms.

CCW and GRIP oppose the proposed NMED language.

Reference: *Rebuttal Testimony of Pamela E. Homer on Behalf of Communities for Clean Water and Gila Resources Information Project*, p. 5 - 6.

7. CCW and GRIP propose the following language be added to Sec. F of 20.6.4.13:

F. An emerging contaminant shall be monitored if it may be present in effluent or receiving waters.

Reference: *Rebuttal Testimony of Pamela E. Homer on Behalf of Communities for Clean Water and Gila Resources Information Project*, p. 7.

8. LANL is proposing to eliminate or reduce the use of Monitoring Methods for **PFAS** and **PCBs**. They are proposing the following language to 20.6.4.12(E):

“The commission may establish a numeric water quality criterion at a concentration that is below the ~~minimum quantification level~~ **lowest minimum level (ML) of the analytical methods approved by EPA under 40 CFR part 136 for the measured pollutant or pollutant parameter**. In such cases, the water quality standard is enforceable at the ~~minimum quantification level~~ **ML of the sufficiently sensitive method approved by EPA under 40 CFR part 136.**”

What does this mean? LANL is trying to use monitoring methods that do not detect contaminants at the levels of NM’s water quality standards. For example, if the NM water quality protection standard is 5 units, LANL is proposing to use methods that can only detect the pollutant to 10 units, thus showing no detection of contamination.

Reference: *Rebuttal Testimony of Pamela E. Homer on Behalf of Communities for Clean Water and Gila Resources Information Project*, p. 7 - 9.