

**STATE OF NEW MEXICO  
BEFORE THE ENVIRONMENT IMPROVEMENT BOARD**

**PROPOSED REVISIONS TO THE LIQUID WASTE  
DISPOSAL AND TREATMENT FEE REGULATIONS  
20.7.11 NMAC (FEES)**

**No. EIB 11-08 (R)**

**REBUTTAL TESTIMONY**

**OF**

**LINK SUMMERS**

**JULY 25, 2011**

**Q. Please state your name and business address**

A. My name is Link Summers and my business address is P.O. Box 1600, Taos, NM  
87571

**Q. Did you previously file testimony in this case?**

A. Yes, I filed testimony on July 15, 2011.

**Q. What is the purpose of your testimony?**

A. To address some of the issues in the direct testimony of NMED and its witnesses  
My rebuttal testimony in narrative form is as follows:

The word "accountability" as it applies to government and, in this case, the New Mexico Environment Department, is found throughout the documentation of the hearing that created the liquid waste fee as well as the Department's financial statements. (LS Exhibit 5 and LS Exhibit 9(Direct Testimony Exhibit) ) It is obvious that almost no one in the industry trusted NMED to fulfill any of the promises it made to induce the EIB and industry to grant and support the fees it requested (Randy Traynor testimony pp 97 - 104 LS Exhibit 5). Safeguards, such as periodic reporting to EIB)were adopted in the futile belief that NMED had any intention of honoring its commitments, made under oath. NMED, at the EIB hearing, clearly stated the proposed use of funds. They were to hire 5 liquid waste specialists (presumably individuals who had both experience and knowledge to successfully perform the functions of permitting and inspecting liquid waste systems which functions include site evaluations, system design, system installation including materials, maintenance, operations and testing, including interpreting wastewater laboratory results.

To further train the presumably pre-qualified individuals who would be hired to be "liquid waste specialists", proceeds from the fund were to be used to find a highly qualified individual with educational credentials and "hands on" practical liquid waste experience to be the trainer. The only other position to be funded from the liquid waste fund was someone to keep an accurate accounting of the fees. Since all the fees are collected in the field offices, the task is relatively simple and straight forward. Common sense would dictate that the person who took this position would be able to audit permits issued with fees collected to assure that no permits were issued without the appropriate fee being collected. So states the regulation.

NMED's actual use of funds was completely different from what was tendered. There is no evidence that NMED made any diligent effort to hire individuals actually qualified to do these jobs.

The problem the proposed rule change addresses remains the search for a legally enforceable method of holding NMED accountable. McQuillan, presumably with the help of the OGC, concocted the idea of a broad group of "core" personnel to circumvent the very narrow list of positions that could be funded from the liquid waste fund put forth at the fee hearing.(LS Exhibit 8 a - Direct Testimony Exhibit). The direct testimony presented by NMED contains the statements of four of these current or former "core" personnel, Dennis McQuillan, Tom Brandt, Brian Schall, and Roberta Vigil. Although the issue is whether the fees are proper and whether some form of accountability is appropriate, with regard to these four individuals underlying that is their credibility. Do they have a financial interest in their testimony. The liquid waste fee was established to put 5 liquid waste specialists in the field to permit and inspect liquid waste systems., a

trainer and a bookkeeper. NMED testified unequivocally that "These will not be people sitting at desks in Santa Fe." (Page 6 LS Exhibit 5). McQuillan, Brandt, and Vigil all sit at desks in Santa Fe. Schall sits at a desk in Albuquerque. All are being paid from the liquid waste fees. The performance record of these "core" personnel including McQuillan, Brandt, and Vigil are deplorable yet free from scrutiny due to the direct funding disbursement mechanism of the proceeds of the liquid waste fund.

For example read the report on Farmington (LS Exhibit 1). Read the report on Farmington RV Park liquid waste systems (LS Exhibit 2). Both reports should result in the immediate termination of those in management who oversaw the debacle.

But they all claim "Willful Blindness". The same is true for the 170 unapproved systems being installed in Ruidoso with permits issued by NMED. (LS Exhibit 3). Read the full Robert Caswell investigation (LS Exhibit 4 - cover page only - full document available on request). McQuillan, liquid waste program manager, claims no knowledge of the investigation centering around Farmington Office Manager Misseri, although McQuillan was authoring one of his many papers with Misseri while the scandal was taking place (McQuillan Resume).

With regard to the stellar department accountants - How is it possible that none of their reports include any mention of the allegations and findings of the Caswell Farmington Investigation. Clearly permits were issued without payment. Vigil makes no disclosure to EIB or anyone else, like the New Mexico Legislature, of the Federal Agencies that relied on her reports as well as those of the accountants. See 18 USC 1346.

Has anyone in the department made any effort to help the victims of the liquid waste disaster in Farmington, Angel Fire, Red River, Cloudcroft, Ruidoso or countless other

areas in New Mexico. What has been done to protect the public from the damage caused by leaking septic tanks. Ask anyone who works in the field about the effects of animal waste on liquid waste systems.

But don't ask anyone at NMED about accountability.

The only tool I can see to force NMED to be accountable is accurate reporting and scrutiny of the program as it actually is. And the only entity with any authority that I can see is the Environment Improvement Board.

Also I object to NMED's proposed rule change as improperly noticed and inappropriately and untimely submitted. It was never published. Therefore it should be stricken.

Respectfully submitted

Link Summers