

COPY

STATE OF NEW MEXICO  
BEFORE THE WATER QUALITY CONTROL COMMISSION



\_\_\_\_\_)  
)  
**In the Matter of:** )  
)  
**PROPOSED AMENDMENTS TO** )  
***STANDARDS FOR INTERSTATE*** )  
***AND INTRASTATE WATERS,*** )  
**20.6.4 NMAC** )  
)  
\_\_\_\_\_)

No. WQCC 14-05 (R)

**MOTION TO STRIKE PORTIONS OF AMIGOS BRAVOS’  
PROPOSED AMENDMENTS AND STATEMENT OF BASIS**

On September 30, 2014, Amigos Bravos, through its counsel, submitted to the Water Quality Control Commission (“WQCC” or “Commission”) a petition (“Petition”) to amend certain parts of 20.6.4 of the New Mexico Administrative Code (“NMAC”). The Petition was timely submitted in relation to the above-referenced action. The Surface Water Quality Bureau (“SWQB”) of the Resource Protection Division (“RPD”) of the New Mexico Environment Department (“Department”) herein moves and requests that the Hearing Officer review the petition by Amigos Bravos and strike and remove from the Petition Sections I and II as they are contrary to the Commission’s, *GUIDELINES FOR WATER QUALITY CONTROL COMMISSION REGULATION HEARINGS* (Approved November 10, 1992; Amended June 8, 1993) (“*Guidelines*”), Part III, Section 301.

**I. FACTS**

On June 25, 2014, the SWQB filed its petition for amendment to certain portions of 20.6.4 NMAC. The Commission’s Administrator designated the petition as WQCC No. 14-05 (R). On July 10, 2014, the Hearing Officer entered a Scheduling Order for the action.

*Scheduling Order*, WQCC No. 14-05 (July, 10, 2014). The Scheduling Order allowed any other person or party to propose additional amendments to the State’s Surface Water Quality Standards in addition to those proposed by the SWQB. These additional petitions for regulatory change to 20.6.4 NMAC were required to be submitted and filed with the Commission’s Administrator on or before September 30, 2014. *Id.*

The SWQB suggests that certain sections of the Amigos Bravos Petition are arguments against the SWQB’s proposed regulatory amendments as found in its original petition dated June 25, 2014. Specifically, Section I of Amigos Bravos’ Petition asks that the Commission reject the SWQB’s *proposed amendment* to Section 20.6.4.10(F) NMAC. *See* Petition, p. 2-5 (emphasis added). Additionally, Amigos Bravos, again, in Section II of its Petition, asks that the WQCC, through its appointed hearing officer, deny the SWQB’s *proposed amendment* to Section 20.6.4.16(C) NMAC. *Id.*, p. 5-6 (emphasis added). The Petition, in Section III, in accord with the *Guidelines*, Section 301, properly requests amendments to the existing regulatory code Section 20.6.4.128 NMAC. Finally, the Petition, in Section IV, properly asks for an amendment to Section 20.6.4.900 NMAC.

## II. ARGUMENT

The SWQB suggests that Sections I and II of Amigos Bravos’ Petition are in fact arguments against the proposed SWQB Section 20.6.4 NMAC amendments and are not proposing, as required by Section 301 of the *Guidelines*, or the Scheduling Order, actual amendments to existing regulatory code provisions--an actual “regulatory change” as defined by Section 103 of the *Guidelines*. As such, these Sections and arguments are more properly argued, found, and placed in the later *Notice of Intent to Present Technical Testimony* and supporting testimony and exhibits as required by Section 303 of the *Guidelines* and the Procedural Order

dated July 10, 2014, as entered by the Commission's appointed Hearing Officer. *See e.g.* § 303 (A) Guidelines ("In addition, if a party takes a position on other proposed changes to the standards, i.e., either supports or opposes changes to the standards proposed by another party, the notice shall also include the basis for that support or opposition."). Inclusion of the two Sections in a Petition for regulatory change will cause confusion over what is specifically being proposed by Amigos Bravos. It will also further complicate the required publication and response to these Sections of the Petition as required under the *Guidelines*, Scheduling Order, and Procedural Orders.

### III. RELIEF REQUESTED

The SWQB requests that the Hearing Officer or Commission consider this motion and either strike from the Record Proper (Section 103, *Guidelines*) Sections I and II of Amigos Bravos' Petition or enter an order directing Amigos Bravos to amend their Petition to remove Sections I and II.

Respectfully submitted, this the 24<sup>th</sup> day of November, 2014.

**NEW MEXICO ENVIRONMENT DEPARTMENT  
OFFICE OF GENERAL COUNSEL**



---

Kevin J. Powers, Esq.  
Assistant General Counsel  
New Mexico Environment Department  
1190 St. Francis Drive  
Santa Fe, New Mexico 87505  
Telephone (505) 827-2885  
Kevin.powers@state.nm.us

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Motion to Strike Portions of Amigos Bravos' Proposed Amendments and Statement of Basis* was served on the following parties on this the 24<sup>th</sup> day of November, 2014 via the stated delivery methods below:

Hand delivery:

Ms. Pam Castaneda, Administrator  
Water Quality Control Commission  
Room N-2168, Runnels Building  
1190 St. Francis Dr.  
Santa Fe, New Mexico 87505

U.S. Mail and Email:

*Counsel for Amigos Bravos*  
Erik Schlenker-Goodrich, Esq.  
Western Environmental Law Center  
208 Paseo del Pueblo Sur, #602  
Taos, NM 87571  
[eriksg@westernlaw.org](mailto:eriksg@westernlaw.org)

Kyle Tisdell  
Western Environmental Law Center  
208 Paseo del Pueblo Sur, #602  
Taos, NM 87571  
[tisdell@westernlaw.org](mailto:tisdell@westernlaw.org)

*Counsel for Freeport McMoRan Chino Mines Company*

Dalva L. Moellenberg, Esq.  
Germaine R. Chappelle, Esq.  
1233 Paseo de Peralta  
Santa Fe, NM 87501  
[DLM@gknet.com](mailto:DLM@gknet.com)

[Germaine.chappelle@gknet.com](mailto:Germaine.chappelle@gknet.com)

*Counsel for Peabody Energy*

Stuart R. Butzier, Esq.  
Modrall, Sperling, Roehl, Harris & Sisk, P.A.  
123 East Marcy Street, Suite 201 (87501)  
Post Office Box 9318  
Albuquerque, New Mexico 87504-9318  
[srb@modrall.com](mailto:srb@modrall.com)



---

Kevin J. Powers, Asst. General Counsel  
Office of General Counsel  
New Mexico Environment Department