

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION



IN THE MATTER OF THE PROPOSED
AMENDMENTS TO STANDARDS FOR
INTERSTATE AND INTRASTATE WATERS,
20.6.4 NMAC

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) WQCC No. 14-05(R)
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**AMIGOS BRAVOS' RESPONSE TO THE NEW MEXICO ENVIRONMENT
DEPARTMENT'S MOTION TO STRIKE**

INTRODUCTION

The New Mexico Environment Department ("NMED") has moved to strike Sections I and II of Amigos Bravos' September 30, 2014 Proposed Amendments and Statement of Basis ("Proposed Amendments"). NMED complains that Sections I and II were submitted contrary to Section 301 of the Water Quality Control Commission's ("Commission") Guidelines for Water Quality Control Commission Regulation Hearings ("Guidelines"). Amigos Bravos opposes NMED's motion because it elevates form over substance, misinterprets the Guidelines, and seeks relief that is not warranted. NMED's motion should therefore be DENIED.

ARGUMENT:

**AMIGOS BRAVOS PROPERLY SUBMITTED SECTIONS I AND II OF ITS
PROPOSED AMENDMENTS ON SEPTEMBER 30, 2014**

The Department does not contend that Sections I and II of Amigos Bravos' Proposed Amendments are substantively inappropriate. NMED's argument is purely procedural: that Sections I and II "are *more properly* argued, found, and placed in the later Notice of Intent to Present Technical Testimony," due on December 12th. NMED Mot. at 2 (emphasis added). In so arguing, NMED elevates form over substance and, in the process, wastes the time and resources

of all parties and the Commission itself.¹

NMED's procedural argument is also wrong. Section 301 of the Guidelines does not prohibit parties from objecting to regulatory changes proposed by NMED; section 301 merely states what *must* be contained in a petition for regulatory change but did not preclude Amigos Bravos from filing Sections I and II of its Proposed Changes on September 30th. This is particularly the case given that this rulemaking process was initiated by NMED's original June 25th petition, not by Amigos Bravos. All parties—including NMED—agree that participants in the rulemaking process may object to changes proposed by others. Given that NMED has already staked out what it intends to change in the existing water quality standards with its June 25th petition, Sections I and II of Amigos Bravos' Proposed Amendments do not, in any way, conflict with the general provisions of Section 301. NMED's only objection is about timing.

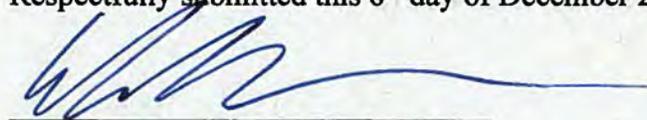
The question of timing is governed by the Commission's July 10th Scheduling Order ("Order"). That Order states only that September 30th was the "[d]eadline for persons other than [NMED] to file proposed changes to surface water standards and statement of basis for the changes." Sch. Or. at 1. The Order does not specify whether those "proposed changes" due on September 30th, are changes to the *existing* "surface water standards" or to the "surface water standards" as proposed for revision by NMED's June 25th initiating petition. Indeed, the Order's staggered schedule, by which NMED submitted its proposed changes three months before all other persons submitted their changes, suggests that proposed changes submitted on September 30th, by "persons other than [NMED]," may also include recommended changes to standards proposed by NMED.

¹ In the future, if NMED has procedural concerns with Amigos Bravos' filings and seeks to avoid unnecessary motion practice before this Commission, Amigos Bravos would welcome a courtesy phone call or email, rather than a motion, to attempt to clarify and resolve such concerns.

That said, even if this Commission agrees and expressly clarifies that the September 30th deadline did, in fact, only pertain to the *existing* surface water standards, that is no basis for striking sections I and II of Amigos Bravos' Proposed Amendments. NMED's basic argument is that the deadline for filing objections to NMED's proposed revision of surface water standards is December 12th. This would mean, at most, that Amigos Bravos filed Sections I and II well in advance of the December 12th deadline. There is nothing improper with filing a document in advance of a deadline. In fact, that is precisely how deadlines are intended to operate. *See Merriam-Webster, Dictionary (2014) (defining deadline as "a date or time before which something must be done" (emphasis added), available at www.m-w.com.*

Nor can NMED complain of prejudice from having *additional time* to address Amigos Bravos' objections to NMED's proposed changes. While NMED weakly complains that these objections will "cause confusion" and "complicate" the process, these complaints are nebulous, unexplained, and unfounded. NMED Mot. at 3. Thus, even if the deadline for filing proposed changes to surface water standards proposed by NMED is December 12th, not September 30th, that is no basis for striking Sections I and II of Amigos Bravos Proposed Changes; at most, these sections were simply filed early.

Respectfully submitted this 8th day of December 2014.



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading was serviced by regular mail and, where an email address is specified, by email, on December 8, 2014 to:

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