STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION

IN THE MATTER OF PROPOSED AMENDMENTS TO GROUND AND SURFACE WATER PROTECTION REGULATIONS, 20.6.2 NMAC	)))))	**No. WQCC 17-03(R)**

New Mexico Environment Department,
Petitioner

WRITTEN REBUTTAL TESTIMONY OF WILLIAM C. OLSON

My name is William C. Olson and I am testifying as a private citizen of New Mexico interested in the protection of New Mexico water resources. I present this written rebuttal testimony in New Mexico Water Quality Control Commission ("Commission") rulemaking hearing No. WQCC 17-03(R) as part of the pre-filed written hearing record related to the New Mexico New Mexico Environment Department ("Department" or "NMED") "*Petition to Amend the Ground and Surface Water Protection Regulations (20.6.2 NMAC) and Request for Hearing*" ("Petition") filed with the Commission on May 1, 2017 and as later amended by NMED on July 27, 2017 and August 7, 2017 ("Petition").

I. INTRODUCTION

Pursuant to the Hearing Officer's June 2, 2017 "*Revised Procedural Order*" and October 2, 2017 "*Order on the Extension of the Deadline for Submittal of Rebuttal Testimony*", the following is my rebuttal testimony regarding the pre-filed written direct testimony of the parties to this hearing. As I testified in my September 11, 2017 written direct testimony, as a hydrologist and citizen of New Mexico with a long-term involvement in Commission rulemaking

and implementation and enforcement of Commission rules, I support the majority of NMED's proposed revisions in the Petition as modified and amended in my direct testimony in **WCO Exhibit 3** titled "*William C. Olson September 11, 2017 Proposed Amendments to NMED Amended Petition Proposed Revisions to 20.6.2 NMAC*". Upon review of the written direct testimony of the parties to the hearing, I have the following rebuttal testimony regarding the parties various proposed rule language and provide some amendments to portions of their proposals. The purpose of my rebuttal testimony is to provide the Commission with information, expert opinion and recommended rule language that will prevent and abate water pollution and protect water quality in an effective, efficient and reliable manner consistent with statutory requirements of the Water Quality Act.

My testimony is contained in exhibits marked **WCO Rebuttal Exhibits 1-2** and constitutes my rebuttal testimony in Commission hearing No. WQCC 17-03(R).

II. REBUTTAL TESTIMONY TO LOS ALAMOS NATIONAL SECURITY, LLC'S PRE-FILED DIRECT TESTIMONY OF ROBERT S. BEERS

Mr. Beers testified on page 5 of his September 11, 2017 written direct testimony that Los Alamos National Security, LLC ("LANS") is proposing to adopt a new section 20.6.2.10 NMAC to incorporate specific statutory exemptions in a separate section. He states that the purpose of this is to better inform the regulated community and public on the scope of the regulations and conform with the language of the Water Quality Act. This is a reasonable concept. However, the proposed language set forth by LANS in Item 2 of its August 7, 2017 "*Corrected Proposed Changes to Regulations and Statement of Basis*" does not conform with the language of the Water Quality Act and omits portions of the statutory language. Consequently, I

do not support LANS' language unless it is amended as follows to conform with the Water Quality Act:

William C. Olson Rebuttal Amendments to LANS Proposed 20.6.2.10 NMAC

20.6.2.10 LIMITATIONS/EXEMTIONS: These regulations do not apply to:

A. ~~except as provided in Part 4,~~ any activity or condition subject to the authority of the environmental improvement board pursuant to the Hazardous Waste Act, NMSA 1978, §§ 74-4-1 to -14, the Ground Water Protection Act, NMSA 1978, §§ 74-6B-1 to -14, or the Solid Waste Act NMSA 1978, §§ 74-9-1 to -25 except to abate water pollution or to control the disposal or use of septage and sludge, or

B. any activity or condition subject to the authority of the oil conservation commission pursuant to provisions of the Oil and Gas Act, NMSA 1978, §§ 70-2-12, ~~or~~ and other laws conferring power on the oil conservation commission to prevent or abate water pollution.

Mr. Beers also testified on page 6 of his September 11, 2017 written direct testimony that LANS is proposing to revise 20.6.2.3105.O NMAC to exempt activities regulated under the federal Solid Waste Disposal Act and Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) from the discharge permitting requirements of the Commission rules. There is no statutory exemption in the Water Quality Act for these activities. In fact, some CERCLA sites have operational discharge permits issued under Commission rules. Due to the lack of a statutory exemption and the need for the state to protect its interests in preventing and abating water pollution in New Mexico pursuant to its statutory authority, the Commission should not adopt LANS's proposal for 20.6.2.3105.O NMAC. In addition, if the Commission should adopt my proposed amendments to LANS's proposed 20.6.2.10 NMAC then the Commission should delete NMED's 20.6.2.3105.O NMAC as set out below as it has been replaced by the new exemption section and is redundant.

William C. Olson Rebuttal Amendments to NMED's proposed 20.6.2.3105.O NMAC if New Section 20.6.2.10 NMAC is Adopted

~~O. Any activity or condition regulated under the subject to the authority of the environmental improvement board pursuant to the Hazardous Waste Act, NMSA 1978, §§ 74-4-1 to -14, the Ground Water Protection Act, NMSA 1978, §§ 74-6B-1 to -14, or the Solid Waste Act NMSA 1978, §§ 74-9-1 to -25, or regulated under the federal Resource Conservation and Recovery Act, except to abate water pollution or to control the disposal or use of septage and sludge~~

III. REBUTTAL TESTIMONY TO UNITED STATES AIR FORCE/DEPARTMENT OF DEFENSE PRE-FILED DIRECT TESTIMONY

A. REBUTTAL OF USAF/DOD WITNESS SAMUEL BROCK

Mr. Brock testified in his September 7, 2017 written direct testimony, and as corrected on October 20, 2017, that the United States Air Force/Department of Defense ("USAF/DoD") seeks to clarify the scientific basis for setting standards for toxic pollutants. To accomplish this Mr. Brock proposes a rewrite of the language of 20.6.2.3103.A(2) for establishing how a toxic pollutant standard is determined and adds criteria for sources of acceptable scientific information used in such determinations. NMED in its proposed revisions moved the language for determining toxic pollutants from the definitions section of the rule to the standards but preserved the long-standing language on how the Commission determines toxic pollutants. The USAF/DoD revised language proposed by Mr. Brock rewrites the definition and omits certain portions of existing Commission language about how an appropriate concentration of a toxic pollutant is determined without justification of the omissions and, therefore, such revisions should not be adopted by the Commission. The USAF/DoD also proposes to add language for criteria on acceptable science when determining concentrations of toxic pollutants. This proposal is reasonable, but it is not consistent with the Commission statutory requirement that standards be "*based upon credible scientific data and other evidence appropriate under the Water Quality Act*" (see NMSA 1978 74-6-4.D). In addition, the Commission should not limit appropriate science, as proposed by USAF/DoD, to United States federal agency toxicology information due to the current politicization and suppression of science at the federal level. For the above reasons, I oppose the USAF/DoD language as proposed. Alternately, I propose that the Commission adopt portions of the USAF/DoD scientific criteria language consistent with the

statutory language on Commission powers for setting standards in NMSA 1978 74-6-4.D and existing Commission rule language as follows:

William C. Olson Rebuttal Amendments to NMED's proposed 20.6.2.3103.A(2) NMAC based upon USAF/DoD proposed revisions

(2) Standards for Toxic Pollutants. A toxic pollutant shall not be present at a concentration shown by scientific information currently available to the public to have potential for causing one or more of the following effects upon exposure, ingestion, or assimilation either directly from the environment or indirectly by ingestion through food chains: (1) unreasonably threatens to injure human health, or the health of animals or plants which are commonly hatched, bred, cultivated or protected for use by man for food or economic benefit; as used in this definition injuries to health include death, histopathologic change, clinical symptoms of disease, behavioral abnormalities, genetic mutation, physiological malfunctions or physical deformations in such organisms or their offspring; or (2) creates a lifetime risk of more than one cancer per 100,000 exposed persons. Sources of scientific information for human health risk assessments should be based on credible science and supporting studies conducted in accordance with sound scientific practices as well as data collected by accepted methods. Examples of acceptable sources for scientific information for human health risk assessments include, but are not limited to, the Integrated Risk Information System, EPA's Provisional Peer Reviewed Toxic Values, Agency for Toxic Substances and Disease Registry Minimal Risk Levels and Human Effects Assessment Summary Tables.

B. REBUTTAL OF USAF/DOD WITNESS SCOTT CLARK

Mr. Clark testified in his September 7, 2017 written direct testimony on page 5, lines 7-8 that the USAF/DoD is proposing to adopt a new section 20.6.2.10 NMAC "*ensuring that the proposed amendments to the Rules mirrors the text in Section 74-6-12(B) of the Act*". This is a reasonable concept. However, the proposed language set forth by USAF/DoD on page 4, lines 11-18 does not conform with the language of the Water Quality Act and omits portions of the statutory language. As USAF/DoD's proposed language and rationale for this section is identical to LAN's proposed language for the section, I do not support USAF/DoD's language unless it is amended as I have proposed in my above LANS rebuttal testimony.

Mr. Clark also testified on page 6 of his September 7, 2017 written direct testimony that USAF/DoD is proposing to revise 20.6.2.3105.O NMAC of NMED's Petition language and add a new Section N to exempt activities regulated under the federal Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) from the discharge permitting requirements of Commission rules,

similar to that proposed by LANS. As discussed above, there is no statutory exemption in the Water Quality Act for these activities. In fact, some and CERCLA and RCRA sites have operational discharge permits issued under Commission rules. Due to the lack of a statutory exemption and the need for the state to protect its interests in preventing and abating water pollution in New Mexico pursuant to its statutory authority, the Commission should not adopt USAF/DoD's proposal for 20.6.2.3105.O NMAC or 20.6.2.3105.N NMAC. In lieu of USAF/DoD's proposal for these sections, if the Commission should adopt my proposed amendments to LANS and USAF/DoD's proposed 20.6.2.10 NMAC then the Commission should delete NMED's 20.6.2.3105.O NMAC as set out in my above LANS rebuttal testimony as it has been replaced by the new exemption section and is redundant.

In addition, Mr. Clark recommended on page 7 of his September 7, 2017 written direct testimony that revisions be made to the rules regarding spill notification and compliance with standards. Mr. Clark provides opinion but no testimony on proposed language for rules regarding these issues and therefore the Commission should not consider his recommendations for further amendments.

IV. REBUTTAL TESTIMONY TO NEW MEXICO MINING ASSOCIATION PRE-FILED DIRECT TESTIMONY OF MICHAEL NEUMANN

Mr. Neumann testified on pages 2-4 of his September 11, 2017 written direct testimony that the New Mexico Mining Association ("NMMA") opposes the definition of discharge permit amendment in 20.6.2.7.D(4) NMAC as proposed by the Department in its Petition. He testified that NMMA objects to the volume limitation in NMED's proposed language and proposes that the Commission adopt the definition from 20.6.7.7(B)(19) NMAC in the Copper Mine Rule. In my opinion, the definition of "discharge permit amendment" in the Copper Mine Rule is broad

and, for clarity, needs additional criteria to definitively establish what are truly minor permit changes that can be administratively approved by NMED. In particular, the Copper Mine Rule definition of "discharge permit amendment" could allow multiple amendment requests within a five-year permit term where the sum of the volume of discharge increases, or the sum of increases in the concentration of the water contaminants could exceed 10% of what was allowed in the original permit approval. In addition, the Copper Mine Rule definition does not consider an upper limit on the volume of the discharge that would be considered a minor volume change (i.e. 10% of a several million gallon/day discharge could be a significant change to a permit). These types of permit changes could be significant changes and should be considered permit modifications subject to public notice and public participation. Therefore, NMMA's proposed change to this section should not be adopted. NMED's proposed language creates a more structured framework of administratively issuing discharge permit amendments for minor changes to permits and should be adopted by the Commission. NMED's proposed language provides more clarity for industry and the public by providing clear criteria for defining what are permit modifications subject to public participation and what are minor permit changes that could be adopted administratively.

Mr. Neumann testified on pages 4-6 of his September 11, 2017 written direct testimony that the NMMA proposes alternative language to the variance section of 20.6.2.1210.E on the content of five year review reports and who may request a hearing to re-open an approved variance. NMMA's proposal to clarify that factual issues be "*material*" to the variance are reasonable, but I believe the language needs to be amended and simplified as set out below. Regarding NMMA language on who may request a hearing to re-open a variance, Mr. Neumann on page 6 of his direct testimony states that "*NMMA's language would extend the right to*

request a hearing to only those persons who have appeal rights under the Water Quality Act". While consistency with the Water Quality Act is appropriate, NMMA's proposed language limiting appeals to a person who has "*standing to appeal a permit decision*" is not consistent with the Water Quality Act. The Water Quality Act specifies that appeals of agency and Commission actions can be made by "*a person who is adversely affected*" (see NMSA 1978 74-6-5.O and NMSA 1978 74-6-7.A) and are not limited to a legal standing for appeal. It is also not appropriate to link the five year compliance report submission to a permit renewal. A variance is a deviation from Commission rules that is separate from issuance of a permit even though it may later be incorporated into a permit. A decision on re-consideration of an approved variance must be made within 90 days of availability of the report. Permit renewals have many associated deadlines for submission and review. A deadline for re-consideration of a variance should not be buried within the framework of deadlines for permit renewals where many other issues are under consideration. In addition, NMMA's insertion of proposed language regarding "*substantially different*" circumstances into this section is vague and creates ambiguity about what needs to be included in the report. For the above reasons, the Commission should not adopt NMMA's language on variances as proposed. To address some of NMMA's concerns, I propose the following amendment to this section as follows:

William C. Olson Amendments to NMED's proposed 20.6.2.1210.E NMAC based upon NMMA's proposal

E. For variances granted for a period in excess of five years, the petitioner shall provide to the department for review a variance compliance report at five year intervals to demonstrate that the conditions of the variance are being met, including notification of any changed circumstances or newly-discovered facts that are material to the variance. If such conditions are not being met, or there is evidence indicating changed circumstances or newly-discovered facts or conditions that were unknown at the time the variance was initially granted and which are material to the variance or the conditions under which the variance was approved, the department or any person who is adversely affected may request a hearing before the commission to revoke, modify or otherwise reconsider the variance.

V. REBUTTAL TESTIMONY TO DAIRY PRODUCERS OF NEW MEXICO AND DAIRY INDUSTRY GROUP FOR A CLEAN ENVIRONMENTS PRE-FILED DIRECT TESTIMONY OF ERIC PALLA

Mr. Palla testified on pages 2-3 of his September 11, 2017 written direct testimony that the Dairy Producers of New Mexico and Dairy Industry Group for a Clean Environment (jointly "Dairies") supports NMED's proposal to add a definition of "*discharge permit amendment*" in 20.6.2.7.D(4) NMAC. However, the Dairies seek to amend the language to strike the 50,000 gallon/day upper limit volume limitation and relax the criteria for daily discharge to allow a 20% increase in volume to qualify as a permit amendment. Extensive contamination of ground water resources has occurred from dairy facilities in New Mexico. NMED provided extensive detailed testimony regarding the number of cases of ground water contamination related to dairy facilities in the 2010 Commission Dairy Rule hearings. As of the last compilation of ground water quality at dairy facilities in 2009, NMED documented that, at that time, 57% of the dairy facilities had nitrate-nitrogen contamination of ground water in excess of Commission standards. This contamination was acknowledged by the Commission as a Finding of Fact in its 2011 order adopting the Dairy Rules. The amendments that the Dairies propose are significant permit changes that could affect the public and should be considered permit modifications subject to public notice and public participation. In fact, Mr. Palla on page 3 of his direct testimony acknowledges that "*Dairies recognize that for large volume dischargers or circumstances where a twenty percent change in volume corresponds to major facility changes, twenty percent might be too high to be treated as an amendment*". Due to the potential for dairies to cause extensive contamination of ground water, the potential effects on the adjacent landowners and the Dairies acknowledgement that a 20% increase in volume could be significant, such increases in

discharge volume should be considered permit modifications that allow an opportunity for public input. NMED's proposed language provides more clarity for industry and the public on what are permit modifications requiring public participation and what are minor permit changes that can be administratively approved and should be adopted by the Commission.

Mr. Palla testified on pages 3-4 of his September 11, 2017 written direct testimony that the Dairies propose alternative language to the variance section of 20.6.2.1210.E on the content of five year review reports and who may request a hearing to re-open an approved variance. The Dairies proposed amendments are identical to those proposed for this section by the NMMA. Consequently, my above rebuttal testimony and proposed amendments related to NMMA witness Michael Neumann are also considered my rebuttal testimony for Mr. Palla on this issue.

Mr. Palla testified on pages 9-10 of his September 11, 2017 written direct testimony that the Dairies are proposing to add clarifying language to 20.6.2.4113 NMAC and 20.6.2.4114 NMAC to allow for appeal of a secretary decision on a dispute resolution. I was a member of the Commission during the rulemaking hearings and adoption of the abatement rules. I also implemented and enforced these abatement rules for approximately 16 years after their adoption. The intent of the dispute resolution of 20.6.2.4113 NMAC was to allow a responsible party to contest technical decisions of NMED staff implementing the rule by disputing staff requirements to the Secretary of NMED for a final Secretary decision on a specific technical issue. Agency actions based on the Secretary's decision are incorporated into an abatement plan approval with conditions (subject to a public hearing for final action) or a notice of deficiency regarding the overall abatement plan. Final agency action in this form is explicitly appealable to the Commission under 20.6.2.4114 NMAC. The Rule would be unwieldy for both NMED and the Commission if disputes of each individual technical rule requirement are appealed to the

Commission outside either approval of an overall abatement plan or agency issuance of a notice of deficiency. In addition, dispute resolution under 20.6.2.4113 NMAC is a non-public process between the agency and the responsible party for achieving compromise on technical issues. There is no public participation in dispute resolution. Private resolution of technical issues between the agency and the responsible person does not mean that the public may not object to the Secretary's technical resolution decision during a public hearing on the abatement plan where agency actions become final. If the Commission agrees to adopt the Dairies proposed amendment, then the Commission should also amend the language of 20.6.2.4113 NMAC to make dispute resolution a full public participation process that includes other interested parties currently excluded from negotiations. Based upon the above discussion, the Commission should not adopt the Dairies proposed amendments for this section.

VI. REBUTTAL TESTIMONY TO NEW MEXICO MUNICIPAL LEAGUE ENVIRONMENTAL QUALITY ASSOCIATION'S PRE-FILED DIRECT TESTIMONY OF ALEX PUGLISI

Mr. Puglisi testified on page 3 of his September 11, 2017 written direct testimony that the New Mexico Municipal League Environmental Quality Association's ("NMML") objects to moving the language on how to determine a toxic pollutant from its current location in 20.6.2.7.WW NMAC to a new standard section in 20.6.2.3103.A(2) unless the standard provision is only applied to the list of pollutants contained within the definition of "toxic pollutants. I raised this issue in my September 11, 2017 direct testimony in WCO Exhibit 1 – Written Direct Testimony of William C. Olson, page 9, #V.3, where I proposed the following amended language and the reasons for the change:

20.6.2.3103 STANDARDS FOR GROUND WATER OF 10,000 mg/l TDS CONCENTRATION OR LESS:

A. Human Health Standards

(2) Standards for Toxic Pollutants. A toxic pollutant shall not be present at a concentration shown by scientific information currently available to the public to have potential for causing one or more of the following effects upon exposure, ingestion, or assimilation either directly from the environment or indirectly by ingestion through food chains: (1) unreasonably threatens to injure human health, or the health of animals or plants which are commonly hatched, bred, cultivated or protected for use by man for food or economic benefit; as used in this definition injuries to health include death, histopathologic change, clinical symptoms of disease, behavioral abnormalities, genetic mutation, physiological malfunctions or physical deformations in such organisms or their offspring; or (2) creates a lifetime risk of more than one cancer per 100,000 exposed persons.

Reasons: In 20.6.2.3103.A(2) NMAC, additional language is needed to clarify that the narrative standards for toxic pollutants require that a toxic pollutant, as defined in 20.6.2.7.T(2) NMAC, shall not be present at the specified narrative standard consistent with the intent of the proposed changes and the prior application of the rules.

Consequently, he Commission should adopt my above proposed September 11, 2017 amended language for 20.6.2.3103.A(2) NMAC as supported by NMML's arguments.

VII. REBUTTAL TESTIMONY TO CITY OF ROSWELL PRE-FILED DIRECT TESTIMONY OF JAY SNYDER

Mr. Snyder testified on page 3 of his October 19, 2017 amended written direct testimony that the City of Roswell ("Roswell") proposes that the "*Note*" to the standards at the end of 20.6.2.3103 NMAC of NMED's Petition should be codified in the standards as a new Section D. His testifies as to the importance of having a grandfathering clause but has no testimony about why it should be codified as a new Section D. The "*Note*" is a grandfathering clause not a standard and it is not appropriate to be codified as a standard. For the above reasons, Roswell's proposal for 20.6.2.3103 NMAC should not be adopted.

Mr. Snyder testified on page 3-4 of his October 19, 2017 amended written direct testimony that Roswell proposes to amend 20.6.2.4103.E NMAC by deleting existing Commission language requiring that subsurface water and surface water abatement is not

complete until "*a minimum of eight (8) consecutive quarterly standards from all compliance sampling stations*" meets standards. Roswell replaces this explicit requirement with vague language that abatement is complete when "*sufficient*" samples meet standards. I was a member of the Commission during the 1995 adoption of the abatement rules and subsequently implemented and enforced abatement rules with both NMED and the New Mexico Oil Conservation Division ("NMOCD"). The intent of this requirement is to ensure that water pollution has definitively been abated prior to closure. The existing Commission rule language was adopted because during abatement of water pollution the concentration of water contaminants at individual monitoring stations can vary throughout the year and year to year due to fluctuations in the water levels from seasonal and climatic influences that affect recharge of water. As a hydrologist implementing and enforcing New Mexico water pollution abatement rules for both the NMED and NMOCD for 25 years I have frequently observed this phenomenon. Mr. Snyder testifies on page 3 of his amended direct testimony that sites "*can be satisfactorily monitored with semi-annual or annual sampling to complete abatement*". Less frequent monitoring schedules during abatement activities are often approved and the abatement rules in 20.6.2.4106.C(3) NMAC and 20.6.2.4106.E(4) NMAC allow flexibility in monitoring water quality during implementation of abatement activities, including sampling frequencies such as those referenced by Mr. Snyder. However, upon closure it is necessary that cessation of abatement activities, or clean closure, be demonstrated by 8 quarters of sampling to account for variations in water quality as discussed above. In addition, the language proposed by Roswell is vague and subjective and will lead to disputes over abatement closure requirements with no consistent closure requirement from site to site. Under Roswell's proposed language it is likely that different standards of closure will be applied to different parties at different sites. Due to

limited water supplies in New Mexico and the fact that approximately 90 % of New Mexico residents rely on ground water as a source of drinking water, it is imperative that water pollution be definitively abated by a responsible party to standards. This is best accomplished as demonstrated by 8 consecutive quarters of clean water quality sampling to account for repeated fluctuations in water levels. For the above reasons, Roswell's proposal for 20.6.2.4103.E NMAC should not be adopted by the Commission.

Mr. Snyder testified on page 4-5 of his October 19, 2017 amended written direct testimony in support of Roswell's proposal to amend 20.6.2.4103.F(1)(d) NMAC. Roswell's proposal deletes existing Commission language requiring that an alternate standard for technical infeasibility is only applicable at sites where the reduction in the concentration of water contaminants "*would be less than 20 percent of the concentration at the time technical infeasibility is proposed*". Roswell replaces this with language that allows technical infeasibility in cases where the reduction in the concentration of water contamination is "*substantially*" less. The language proposed by Roswell is vague and subjective, allows wide variation in criteria for considering technical infeasibility and will lead to disputes over what is "*substantial*". There would be no explicit consistent requirement applied from site to site such that different criteria will be applied to different parties and sites. Roswell's proposal also deletes other existing Commission language requiring that a statistically valid decrease "*cannot*" be demonstrated by fewer than 8 consecutive sampling events and instead allows less frequent "*sufficient sampling as set forth in 20.6.2.4103(E)…*". In my Roswell rebuttal testimony above I addressed the need for 8 consecutive quarters of sampling in making decisions on abatement closure. The same arguments I made above apply here regarding decisions on technical infeasibility. For the above reasons, Roswell's proposal for 20.6.2.4103.F(1)(d) NMAC should not be adopted by the

Commission.

Mr. Snyder testified on page 5 of his October 19, 2017 amended written direct testimony that Roswell proposes to amend 20.6.2.4108.B(4) NMAC by reducing the existing public notice radius for notifying owners and residents of adjacent surface property of a proposed Stage 2 abatement plan from "*one (1) mile*" to "*1/3 of a mile*". As a rationale for this amendment, Mr. Snyder testifies that Roswell's proposal is consistent with the notice requirements regarding discharge permits under 20.6.2.3108 NMAC. It is inappropriate to compare discharge permit public notice requirements with those for abatement of water pollution. The purpose of a discharge permit is to prevent water pollution at a facility. A shorter radius for discharge permits is appropriate because water pollution is not allowed by Commission rules and should not occur. Once water pollution has occurred in violation of Commission rules, the effects of that contamination can extend for large distances from a facility. A more extensive landowner public notification radius is warranted under an abatement plan to notify persons who could potentially be affected. This issue was addressed at the original Commission abatement hearings in 1995. In addition, the Commission has been presented technical evidence at adjudicatory hearing (Dona Dairies and Tyrone mine), alternate abatement standards hearings (LAC Minerals, L-Bar uranium mine) and other rule-making hearings (Dairy Rule and Copper Mine Rule) regarding the extent of water pollution, once it has, occurred and how the effects of that pollution can extend over 1 mile in distance. During my 25 years of experience in working on water pollution abatement with both NMED and NMOCD there were numerous examples of extensive water pollution within NMED and NMOCD case files across many different industries. I have personally worked on many of these sites. In some cases, water pollution at the sites has extended over 1 mile. For the above reasons, Roswell's proposal for 20.6.2.4108.B(4) NMAC

should not be adopted by the Commission.

VIII. CONCLUSION

For the foregoing reasons, I respectfully request that the Commission modify certain portions of the parties proposed amendments to NMED's Petition and not adopt certain parties amendments as explained and illustrated in my above rebuttal testimony. A summary of my proposed rebuttal amendments to specific parties proposed revisions are summarized in **WCO Rebuttal Exhibit 2**

I appreciate the opportunity to submit rebuttal testimony and rebuttal amendments to the pre-filed written direct testimony of the parties to this hearing. I reserve the right to modify my testimony, take new positions and provide additional testimony and exhibits based upon testimony and arguments presented in hearing testimony and filings.

That concludes my rebuttal testimony. Thank you.

I, William C. Olson, swear that the foregoing is true and correct.

William C. Olson