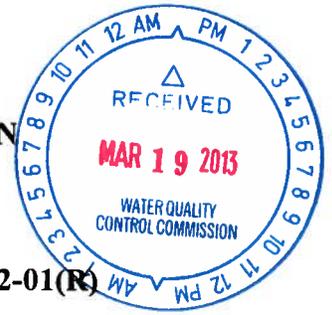


**STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION**



IN THE MATTER OF:)
)
PROPOSED AMENDMENT TO)
PART 20.6.2 NMAC - COPPER RULE)
_____)

No. WQCC 12-01(R)

**AMIGOS BRAVOS' MOTION TO STRIKE
NMED'S NOTICE OF OBJECTION**

Amigos Bravos files this Motion to Strike the New Mexico Environment Department's ("NMED") Notice of Objection to William C. Olson's Notice of Intent to Provide Technical Testimony as a prejudicial and improper pleading. In support, Amigos Bravos provides the following reasons.

1. On February 22, 2013, William C. Olson filed a Notice of Intent to Provide Technical Testimony in this matter.
2. On March 12, 2013, NMED filed a Notice of Objection to William C. Olson's Notice of Intent to Provide Technical Testimony ("NMED's Notice of Objection") claiming that Mr. Olson was in "violation of his professional service contract with the Department." NMED's Notice of Objection, p. 1.
3. NMED claims that "[b]y virtue of his status as an expert consultant assisting the Department with development of the copper rules, Mr. Olson gained access to confidential information, including information protected by the attorney-client privilege and work product doctrine." NMED's Notice of Objection, p. 1. However, NMED does not indicate what information Mr. Olson has or why such information might exist in a public stakeholder process or public rulemaking. If NMED believes Mr. Olson has disclosed confidential information in his Notice of Intent, which violated the contract, it must say what confidential information NMED believes he has disclosed.

4. Though the Procedural Order allows “[a]ny Party desiring to strike the testimony of another Party’s witness or exhibit” to do so by March 25, 2013, NMED does not seek any relief or to strike any of Mr. Olson’s filing. NMED’s Notice of Objection, p.1 (“[w]hile the Department does not seek to strike Mr. Olson’s NOI ...”]; Procedural Order, §302.E.

5. Instead, NMED inappropriately “wishes to be on record as objecting to his violation of the professional services contract” even though it provides no substantiation of any violation. NMED’s Notice of Objection, p. 1. Any such objection has no place in this rulemaking. The WQCC has no jurisdiction over a contractual matter between NMED and Mr. Olson.

6. NMED’s Notice of Objection has no purpose other than to prejudice the New Mexico Water Quality Control Commission (“WQCC”) against Mr. Olson and to improperly attempt to intimidate Mr. Olson to prevent him from testifying in this matter. See Exhibit A, March 1, 2013 letter from Bill Olson to David Martin, NMED Secretary.

7. Shortly after Mr. Olson filed his Notice of Intent to Provide Technical Testimony, NMED’s General Counsel, Ryan Flynn, called Mr. Olson and accused him of violating the confidentiality clause of his contract, though Mr. Flynn did not indicate what confidential information was disclosed, and Mr. Olson denies any such violation. Exhibit A, March 1, 2013 letter from Bill Olson to David Martin, NMED Secretary.

8. NMED then filed its Notice of Objection “reserve[ing] all other rights of recourse outside of this administrative proceeding.” NMED’s Notice of Objection, p. 2. This language serves no purpose and has no place in this proceeding.

9. Mr. Olson’s March 1, 2013 letter explains that in the fall of 2012, NMED informed him that his services would not be required for attending and providing expert witness testimony at the rule-making hearing and his contract was terminated effective December 1, 2012. Exhibit A.

10. Because Mr. Olson is no longer contractually obligated to NMED, he has a right to participate in this administrative proceeding as a member of the public. See NMSA 1978, 74-6-

6(D), providing that “[a]t the hearing, the commission shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.”

11. The Rules of Civil Procedure for the District Courts, upon which the WQCC may rely for guidance (*see* Procedural Order, §401.A), provide that “any redundant, immaterial, impertinent, or scandalous matter” may be stricken from a pleading. Rule 1-012(F) NMRA. Alleged violation of a terminated professional services contract is immaterial to this matter and it is inappropriate for NMED to bring it into this rulemaking. .

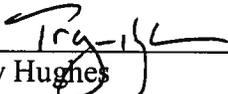
12. According to the Guidelines for Water Quality Control Commission Regulation Hearings, the Hearing Officer has authority for the fair and impartial consideration of issues arising in proceedings. Guidelines, §104.B. Additionally, the Rules of Civil Procedure are designed to afford fairness to all parties. *See, e.g., In re T.C.*, 118 N.M. 352, 354, (Ct. App. 1994) (noting that the Rules of Civil Procedure provide fairness and certainty in proceedings). NMED’s Notice of Objection is an improper litigation tactic and its acceptance into the record violates that concept of fairness.

CONCLUSION

This proceeding is an administrative rulemaking, not a contract dispute. NMED has inappropriately brought its unsubstantiated allegations regarding a terminated contract into this rulemaking and it should be stricken. Amigos Bravos’ respectfully requests that NMED’s Notice of Objection be stricken from this proceeding.

Respectfully submitted:

HIGH DESERT ENERGY + ENVIRONMENT LAW
PARTNERS, LLC

By: 
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Attorney for Amigos Bravos

CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2013, I sent Amigos Bravos' Motion to Strike by email to the following:

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Tracy Hughes

MAR 04 2013

William C. Olson
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Lamy, New Mexico 87540
(505) 466-2969

March 1, 2013

Certified Mail - Return Receipt Requested

F. David Martin, Secretary
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502-5469

RE: Copper Mine Rule - William C. Olson Testimony

Dear Secretary Martin:

During 2012, I worked under a professional services contract to assist the New Mexico Environment Department (NMED) in the development of a Copper Mine Rule that would achieve the goals of the New Mexico Water Quality Act (WQA) for prevention of pollution of New Mexico ground water and surface water resources. In the fall of 2012, NMED informed me that my services would not be required for attending and providing expert witness testimony at the New Mexico Water Quality Control Commission (WQCC) rule-making hearings pursuant to the contract. At that point, I had completed all other scope of work tasks and my contract was terminated effective December 1, 2012. NMED Resource Protection Division Director James H. Davis thanked me for my work in his November 5, 2012 correspondence to me on the termination of the contract. I also received positive input on my services from you, NMED staff and the various stakeholder members on my role in the rule development activities.

I have found it rewarding to work with you and NMED and therefore find it regrettable that I need to inform you of an incident that occurred this week regarding a New Mexico Environment Department employee under your supervision. As you may be aware, on February 22, 2013, I filed a Notice of Intent (NOI) to Present Technical Testimony in The Matter of Proposed Amendments to 20.6.2 NMAC, The Copper Mine Rule, WQCC 12-01(R). I am presenting independent testimony solely on my own behalf as a public citizen, and not for any other party. In my testimony, I present factual documentary evidence and expert opinion on the application of the WQA and WQCC rules in the prevention of ground water pollution in New Mexico. I also offer some proposed amendments to improve the rule and provide consistency with statutory and regulatory requirements. My purpose is to provide objective facts and information to the WQCC to assist in their consideration of adoption of a Copper Mine Rule.

After the filing of my Notice of Intent to Provide Technical Testimony with the WQCC, on February 25, 2013, NMED General Counsel Ryan Flynn called me and told me that he would be sending me a letter in a day or two seeking reimbursement for monies I was paid under my prior contract with NMED. Mr. Flynn told me that I had violated the confidentiality clause of



F. David Martin
March 1, 2013
Page 2 of 2

the contract. I explained to him that I neither relied upon nor disclosed confidential information in my prepared testimony. I also told him that I had not violated the confidentiality clause, and had no intention of doing so in the future. Mr. Flynn did not indicate to me what confidential information he believed that I have disclosed. Mr. Flynn also informed me that he had told me before that I should remain "neutral" in this matter.

Mr. Flynn's phone call to me is very disturbing. It appears that he is attempting to influence my testimony for a public hearing of the WQCC by threatening to seek recovery of payments under my prior contract. It is my understanding that such an action would have to be in the form of litigation on behalf of the State of New Mexico as approved by New Mexico Attorney General. I have been advised that Mr. Flynn's actions could be considered intimidation of a witness under §30-24-3(A)(2), which is a very serious criminal matter. I have also been advised that it appears he may be attempting to prevent my right to free speech, which would be a violation of my civil rights actionable under 42 USC §1983.

As a member of the public, I have a right to file a Notice of Intent to Provide Technical Testimony at the WQCC public hearing on the Copper Mine Rule, and provide facts and expert and personal opinion. I also have a right to testify at the WQCC hearing, subject to rulings of admissibility.

Again, I regret having to inform you of this, however, the seriousness of the issue warranted that I bring it to your attention. If you wish to discuss this with me personally, I welcome you to contact me.

Sincerely,



William C. Olson

cc: Ryan Flynn, General Counsel
Anthony J. Forte, NM Risk Management Division Director
Albert Lama, NM Chief Deputy Attorney General