

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION



In the Matter of)
PROPOSED AMENDMENT)
TO 20.6.6 NMAC (Dairy Rule))

Nos. WQCC 12-09(R) and 13-08(R)

ATTORNEY GENERAL’S OBJECTION TO TESTIMONY OF TRAIS KLIPHUIS

The Attorney General objects to the substituted testimony filed March 18, 2015 by the New Mexico Environment Department (“NMED”) of Trais Kliphuis. Ms. Kliphuis’s fact testimony is not based on personal knowledge, NMRA Rules 11-602 and 11-802, and her technical testimony is not based on sufficient knowledge, skill, experience, training or education, NMRA Rule 11-703.¹ As grounds for this motion, the Attorney General states:

1. On October 3, 2014, the Hearing Officer issued a Procedural Order requiring evidentiary motions to be filed by December 1, 2014 (after direct and rebuttal testimony and exhibits were to be filed). Procedural Order, § 302.E.

2. On March 18, 2015, NMED moved for leave to substitute direct and rebuttal testimony of Trais Kliphuis, Director, NMED Water Protection Division, in lieu of the direct and rebuttal testimony of Jerry Schoeppner, former Chief, NMED Ground Water Quality Bureau. NMED’s Motion for Leave to File Amended Notices of Intent to Present Technical and Rebuttal Testimony (Mar. 18, 2015).

3. The Attorney General did not object to NMED’s motion, but preserved the right to raise objections to the testimony. *See id.* ¶ 17.

4. While there currently is no deadline to file evidentiary objections to the substituted testimony, the Attorney General files this objection to preserve objections.

¹ The Rules of Evidence do not directly apply in this proceeding, but are looked to for guidance. Procedural Order, § 401.A (Oct. 3, 2014).

5. In the substituted testimony, Ms. Kliphuis gives fact testimony and technical testimony.

6. Ms. Kliphuis's fact testimony is not based on personal knowledge, but upon information given to her by others. As such, it is objectionable. *See* NMRA Rules 11-602, 11-802.

7. Ms. Kliphuis's technical testimony is not based on sufficient knowledge, skill, experience, training or education because she does not have training or experience as a hydrologist, and does not have sufficient experience implementing the Water Quality Control Commission Regulations at 20.6.2 NMAC or 20.6.6 NMAC. As such, her technical testimony is objectionable. NMRA Rule 11-703.

For the foregoing reasons, the Attorney General objects to Ms. Kliphuis's fact testimony that is not based on personal knowledge and to her technical testimony that is not based on sufficient knowledge, skill, experience, training or education.

Respectfully submitted,

HECTOR BALDERAS
NEW MEXICO ATTORNEY GENERAL



Tannis L. Fox
Assistant Attorney General
Environmental Protection Division
Office of the New Mexico Attorney General
P.O. Box 1508
Santa Fe, New Mexico 87504
T 505.827.6695
F 505.827.4444
tfox@nmag.gov

Counsel for Attorney General of New Mexico

Certificate of Service

I certify that the following were served with the foregoing pleading by email on March 26, 2015:

Robert A. Stranahan, IV
Dalva Moellenberg
Anthony J. Trujillo
Gallagher and Kennedy, P.A.
1233 Paseo de Peralta
Santa Fe, New Mexico 87501-2758

Jeffrey Kendall
General Counsel
Christopher Atencio
Kay R. Bonza
Assistant Generals Counsel
Office of General Counsel
New Mexico Environment Department
P.O. Box 5469
Santa Fe, New Mexico 87502-5469

Jon Block
Bruce Frederick
New Mexico Environmental Law Center
1405 Luisa Street, #5
Santa Fe, New Mexico 87505-4074

Wade Jackson
New Mexico Economic Development Department
1100 S. St. Francis Drive, #1060
Santa Fe, New Mexico 87504-4147



Tannis L. Fox