

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



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

**WQCC 12-09 (R) and  
WQCC 13-08 (R)**

**DIGCE's AMENDED RESPONSE TO THE ATTORNEY GENERAL'S  
MOTION TO DISQUALIFY HEARING OFFICER**

Petitioner the Dairy Industry Group for a Clean Environment, Inc. (hereinafter, "DIGCE") filed a response to the Attorney General's Motion to Disqualify Hearing Officer on March 23, 2015. It has come to our attention that the incorrect motion was referenced in the introductory paragraph. Therefore, DIGCE hereby opposes the Attorney General's Motion to Disqualify Hearing Officer ("Motion") and joins in the New Mexico Environment Department's Response filed on March 20, 2015. In addition, DIGCE opposes the Motion on the grounds that it is untimely and could unduly prejudice DIGCE by delaying the hearing on these long-pending matters.

**Procedural History**

1. The Commission, at its regular meeting on September 9, 2014, appointed Mr. Christopher Saucedo as the Hearing Officer in these matters. The meeting minutes show that Mr. Saucedo participated in the meeting by telephone conference and identify him as being employed by his law firm.
2. The Attorney General filed an Entry of Appearance in this matter on October 17, 2014. Consequently, the Attorney General has been, or should have been, aware of the Commission's appointment of the Hearing Officer and the nature of his engagement since then.
3. The hearing on this matter originally was set for December 9, 2014. The Attorney General made no objection to the Hearing Officer prior to that hearing date. Due to other

proceedings, including petitions filed in the Supreme Court, the hearing of these matters was continued from December 9, 2014. Following the conclusion of those matters, at its meeting on January 13, 2015, the Commission rescheduled the hearing on these matters to begin on April 6, 2015 in Roswell, still with Mr. Saucedo as the Hearing Officer.

4. Public notices of the hearing were issued in January 2015 with supplemental public notices issued by Order of the Hearing Officer in February 2015.

5. The Attorney General waited to file his Motion until March 9, 2015, less than a month before the hearing on these matters is scheduled to begin, even though all of the information on which the Attorney General bases his motion was apparent for several months prior.

6. In a separate motion, the "Coalition" has raised the pendency of the Attorney General's Motion as a reason why the hearing scheduled to begin on April 6, 2015, should be continued for at least two months.

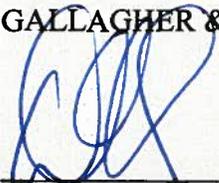
7. DIGCE will be prejudiced if the Motion is granted and, as a result, the hearing on these matters is once again delayed. DIGCE has been waiting on a hearing on its Petitions in these matters since September 2012 and August 2013. In the meantime, dairy operators continue to receive discharge permits and to file Variance Petitions to obtain relief from the same permit conditions that are the subject of the proposed dairy rule amendments. Moreover, DIGCE has been required to prepare and pay for publication of multiple public notices of the scheduled hearings.

8. Based on the foregoing, in addition to the reasons cited by NMED in which DIGCE joins, DIGCE contends that the Motion should be denied as being untimely.

**WHEREFORE**, DIGCE respectfully requests that the Hearing Officer and/or the Commission deny the Motion. In the event that the Motion is granted and, as a result, the hearing on these matters is postponed, DIGCE requests that the Attorney General be ordered to pay all costs of new public notices made necessary as a result of the Motion and its late filing.

Respectfully Submitted,

GALLAGHER & KENNEDY, P.A.



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**Certificate of Service:**

I hereby certify that a true and accurate copy of the foregoing pleading was served upon the following parties of record by mail, hand-delivery and/or electronic mail this Tuesday, March 24, 2015:

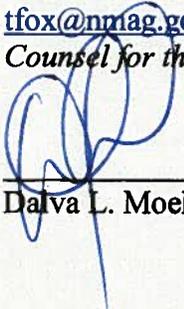
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