

STATE OF NEW MEXICO  
WATER QUALITY CONTROL COMMISSION



**In the Matter of:** )  
 )  
**PROPOSED AMENDMENT** )  
**TO 20.6.2 NMAC (Dairy Rules)** )

**MOTION TO STRIKE TESTIMONY ON LEGISLATIVE HISTORY**

The Dairy Industry Group for a Clean Environment (hereinafter, "DIGCE"), by and through undersigned counsel, hereby submits this Motion to Strike Testimony on Legislative History.

New Mexico adopted the *Uniform Statute and Rule Construction Act* (hereinafter, the "Act") in 1997. See Section 12-2A-1 to 12-2A-20 NMSA 1978. The Act applies to rules adopted by the WQCC. See Section 12-2A-1 NMSA 1978. DIGCE moves that all testimony by NMED witness Mr. Olson offering alleged legislative history for the purpose of interpreting the Water Quality Control Act should be stricken pursuant to the Act.

Pursuant to the Act, "[t]ext of a statute...is the primary, essential source of its meaning." Section 12-2A-19 NMSA 1978. In turn, Section 12-2A-20 NMSA 1978 provides the following other aids for construction of a rule:

- A. In considering the text of a statute...in light of Sections 2 through 7 and Sections 18 and 19 of the...Act, and the context in which the statute...is applied, the following aids to construction may be considered in ascertaining the meaning of the text:
  - (1) the meaning of a word or phrase may be limited by the series of words or phrases of which it is a part; and
  - (2) the meaning of a general word or phrase following two or more specific words or phrases may be limited to the category established by the specific words or phrases.
- B. In addition to considering the text of a statute...in light of Sections 2 through 7 and Sections 18 and 19 of the...Act, the context in which the statute...is applied and the aids to construction in Subsection A of this

section, the following aids to construction may be considered in ascertaining the meaning of the text:

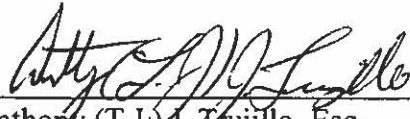
- ...
  - (3) an official commentary published and available before the enactment or adoption of the statute or rule;
  - (4) an administrative construction of the same or similar statute...of this state;
  - (5) a previous statute...on the same subject;
- C. If, after considering the text of a statute...in light of Sections 2 through 7 and Sections 18 and 19 of the...Act, the context in which the statute...is applied and the aids to construction in Subsections A and B of this section, the meaning of the text or its application is uncertain, the following aids to construction may be considered in ascertaining the meaning of the text:
- (1) the circumstances that prompted the enactment or adoption of the statute or rule;
  - (2) the purpose of a statute or rule as determined from the legislative or administrative history of the statute or rule; and
  - (3) the history of other legislation on the same subject.

Based on these aids for construction, most of the testimony by William Olson set forth in NMED NOI Attachment 1 at pages 4 through 9 deals with legislative history. However, such testimony is inappropriate under the Act, as the New Mexico Environment Department (hereinafter, "NMED") has failed to make any showing that the plain language of the statute is vague and that other aids of construction were applied to ascertain the meaning of statutory language prior to relying on legislative or administrative history. For example, Mr. Olson fails to give instances where the text of a statute or rule is unclear and, therefore, it is necessary to use legislative history.

Accordingly, Mr. Olson's testimony on legislative history violates the Act and should be stricken from the record. Likewise, DIGCE reserves the right to object to any other testimony offered by parties dealing with legislative history without a proper showing under the Act.

**WHEREFORE**, DIGCE respectfully requests that the testimony offered by William Olson dealing with legislative history be stricken and that the Water Quality Control Commission grant such further and additional relief on this issue as may be appropriate.

Respectfully Submitted,



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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 this, Tuesday, April 06, 2010:

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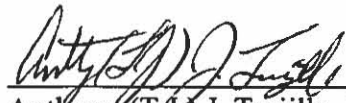
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