

I. BASIS FOR JURISDICTION AND EMERGENCY STATUS.

1. This original mandamus proceeding, filed by Petitioners, two environmental organizations that participated in the rule-making process for enacting new groundwater discharge regulations for dairies, in accordance with Rule of Appellate Procedure 12-504 NMRA, presents urgent questions regarding the constitutional limits of executive power and the Separation of Powers under N.M. Const. Art. III, § 1. The Court has jurisdiction to hear this case pursuant to the New Mexico Constitution, which grants the “supreme court ... original jurisdiction in *quo warranto* and *mandamus* against all state officers, boards and commissions.” N.M. Const. Art. VI, § 3.

2. Emergency status is requested as the violations of the New Mexico Constitution have caused the illegal failure of the State Records Center to publish duly enacted regulations of the Water Quality Control Commission ["WQCC"], which regulations were to be published January 14, 2011 with an effective date of January 31, 2011. Failure to publish these regulations violates a clear statutory duty under the State Rules Act, NMSA 1978, Section 14-4-1, *et seq.*

II. BACKGROUND FACTS REQUIRE ISSUANCE OF MANDAMUS.

3. At the close of business on December 15, 2010--following a point-by-point discussion of the proposed regulations the previous day-- --the WQCC

adopted a new set of regulations for discharges from dairy facilities, pursuant to SB206 and the Water Quality Act (“WQA”). *See* Petitioners' Exhibit 1, Minutes of the Water Quality Control Commission (December 14-15, 2010) 4-9, at 9. The adoption of the dairy regulations followed a lengthy stake-holder process conducted at sites around the state and an extensive year-long administrative hearing process that included twelve (12) days of formal public hearings (and a set of transcripts totaling nearly 2600 pages).

4. On December 23, 2010, a date stamped return was made on the Transmittal Form, showing that the rules had been officially filed with the State Records Center at 10:07AM. Later that same day, Attorney Charles Noble of the Office of General Counsel, notified lawyers for the parties participating in the dairy regulations rule-making process that the new regulations had been filed and were slated for publication on January 14, 2011, with an effective date of January 31, 2011. *See attached* Petitioners' Exhibit 2, date stamped NMAC Transmittal Form (December 23, 2010); Petitioners' Exhibit 3, copy of email message from Charles Noble to the parties' attorneys (December 23, 2010).

5. However, on January 4, 2011, after Susana Martinez became Governor of New Mexico, her acting Secretary of the Environment, Raj Solomon,¹

¹ Mr. Solomon has since been replaced by Respondent Martin.

purportedly “cancelled” the WQCC’s rule filing, not pursuant to any direction from the WQCC, but as a direct response to urgent email requests made by the Governor’s general counsel (Jessica Hernandez) and the Director of the Administrative Law Division of the State Records Center (John Martinez). *See attached* Petitioners’ Exhibits 5 through 10, email messages among Ms. Hernandez, Mr. Solomon, Mr. Martinez, Ms. Jaramillo and others.

6. As a result of Mr. Solomon’s alleged “cancellation,” the State Records Administrator (Sandra Jaramillo) failed to publish Part 20.6.6 in the New Mexico State Register as required by law.

7. In their concerted efforts to “cancel” the WQCC’s December 23th rule filing at the State Records Center, Mr. Martinez, Ms. Hernandez, and Mr. Solomon all invoked Governor Martinez’ January 1st Executive Order No. 2011-001, which is described below and attached hereto as Petitioners’ Exhibit 4.

8. Upon the filing of Part 20.6.6 with the State Records Center, the State Records Act imposed on Ms. Jaramillo a non-discretionary ministerial duty to timely publish Part 20.6.6 NMAC in the State Register. Based upon the above facts, Petitioners seek in this proceeding a writ of mandamus to compel Ms. Jaramillo to perform this non-discretionary ministerial duty.

9. The New Mexico Constitution imposes on the Governor a duty to “take care that the laws be faithfully executed.” N.M. Const. Art. V, § 4. Based upon the above facts, through the actions of her general counsel and her acting Secretary of the Environment, the Governor breached this duty by unlawfully attempting to “cancel” the WQCC’s rule filing, thus preventing Ms. Jaramillo from executing her duties under the State Records Act. Petitioners seek a writ of mandamus enjoining further interference and compelling the Governor and the Secretary, respectively, to refrain from exceeding their constitutional and statutory authorities.

10. Additionally, the Court of Appeals has exclusive appellate jurisdiction to review all rules adopted by the WQCC under the WQA. NMSA 1978, § 74-6-7. The time to file an appeal in the Court of Appeals under both of these environmental laws begins to run upon the “filing of the [rule] under the State Rules Act.” NMSA 1978, § 74-6-7(A) (emphasis added). Based upon the above facts, by purportedly “canceling” the WQCC’s rule filing and subjecting Part 20.6.6 NMAC to “review” under Executive Order No. 2011-001, the Governor and the Secretary have unconstitutionally usurped the power of the judiciary and interfered with the appellate jurisdiction of the Court of Appeals. Petitioners seek a writ of mandamus in this proceeding to compel the Governor and the Secretary to

refrain from violating the Separation of Powers, N.M. Const. Art. III, §1. Moreover, as the Governor's Executive Order creates an entirely new public policy requirement for WQCC rule-making, Petitioners have a unique stake in this matter as organizations that fully participated in the lengthy and intense stake-holder process and formal rule-making leading to the WQCC's adoption of the dairy regulations (which followed on the Legislature's initiation of the process through adoption of SB206). Thus, the Governor has interfered with Legislative process.

III. ADDITIONAL FACTS SUPORT ISSUANCE OF MANDAMUS

11. In 2009, the Legislature amended, by enacting SB206, Section 74-6-4 and 74-6-5 of the Water Quality Act. The amendments required the Commission to "specify in regulations the measures to be taken to prevent water pollution and to monitor water quality." NMSA 1978, § 74-6-4(K).

12. The 2009 WQA amendments also *require* the Commission to adopt regulations for the dairy industry, stating, in pertinent part:

The commission may adopt regulations for particular industries. The commission shall adopt regulations for the dairy industry and the copper industry. The commission shall consider, in addition to the factors listed in Subsection E of this section, the best available scientific information. The regulations may include variations in requirements based on site-specific factors, such as depth and distance to ground water and *geological* and hydrological conditions. The constituent agency shall establish an advisory committee composed of

persons with knowledge and expertise particular to the industry category and other interested stakeholders to advise the constituent agency on appropriate regulations to be proposed for adoption by the commission. The regulations shall be developed and adopted in accordance with a schedule approved by the commission. The schedule shall incorporate an opportunity for public input and stakeholder negotiations.

NMSA 1978, § 74-6-4(K) (emphasis added). Based upon these facts, there was (and is) a clear directive from the Legislature that dairy regulations be adopted-- and the facts below summarize that extensive public process.

13. On December 22, 2009, the Department filed a Petition for Regulatory Change and Request for Hearing.² The following day, the Hearing Officer issued an Order setting the hearing for March 9, 2010. On December 28, 2009, a Notice of Docketing was issued. On January 14, 2010, parties filed a Joint Motion to Reschedule Hearing and for a Procedural Order Regarding the Presentation of Hearing Testimony. On January 15, 2010, a Scheduling Order and a Procedural Order were issued. On January 26, 2010 a Notice of Public Hearing was issued.

14. On March 8, 2010, Notices of Intent to Present Technical Testimony were filed on behalf of Amigos Bravos, Caballo Concerned Citizens, Food and

² Procedural information and documents are publicly available at:
<http://www.nmenv.state.nm.us/OOTS/HearingOfficer/DairyRegs/NMED-WQCC-DairyPleadingLog.htm>

Water Watch and the Sierra Club, Rio Grande Chapter ("the Coalition"), the New Mexico Environment Department ("the Department" or "NMED"), and the Dairy Industry Group for a Clean Environment ("DIGCE").

15. On March 25, the Hearing Officer issued his first amended Scheduling Order, rescheduling a prehearing conference. On March 29, 2010 the Coalition, the Department and DIGCE each filed a Notice of Intent to Present Technical Testimony. On March 30, the Hearing Officer issued his First Prehearing Procedural Order.

16. On April 9, 2010, Affidavits of Publication were filed showing that the Notice of Hearing was timely published in the Albuquerque Journal, the Hobbs News Sun, the Las Cruces Sun News, the Clovis News Journal and the Portales Tribune.

17. On April 12, 2010, NMED filed correspondence showing that the Small Business Advisory Committee had twice been contacted concerning the proposed regulations, once on December 22, 2009 and again on February 1, 2010.

18. On April 12, 2010 the Hearing Officer issued an Order on Prehearing Motions and on April 13, 14, 15 and 16 2010 the Commission conducted a hearing in this matter, but the hearing was not completed.

19. On May 4, 2010, the Hearing Officer issued an Order resuming the hearing on June 8, and to continue thereafter. Hearing were held on June 8, 9, 10, 11, 14, 15, 16 and 17.

20. Following the conclusion of the hearings, a Notice of Transcript was issued on July 8, 2010 making available for public inspection the twelve (12) volumes of transcripts covering the twelve (12) hearing days in the rule-making.

21. On August 23, 2010, the parties to the rule-making filed their respective proposed statements of reasons and closing arguments.

22. On December 14 and 15, 2010, the WQCC met to discuss the Hearing Officer's Report in the case and the Proposed Statement of Reasons. As stated above, these were discussed and adopted at that time. *See* Petitioners' Exhibit 1 at 8-9.

III. A WRIT OF MANDAMUS IS NECESSARY IN THIS CASE.

23. It is both necessary and proper for Petitioners to seek a writ of mandamus in the Supreme Court. As held by this Court:

[When] issues of sufficient public importance are presented which involve a legal and not a factual determination, we will not hesitate to accept the responsibility of rendering a just and speedy disposition.

State ex rel. Bird v. Apodaca, 91 N.M. 279, 282, 573 P.2d 213, 216 (1977). This Petition presents the Court with purely legal issues of great public importance.

24. First, Respondents are not just preventing the publication of one rule; they are arbitrarily preventing the otherwise routine publication of *thirty-two rules* that were adopted by various boards and commissions during the last Administration. *See* Petitioners' Exhibit 10. The Court's decision in this case will constitute binding precedent as to all the alleged "cancelled" rule filings.

25. Second, this case involves the Separation of Powers Doctrine, because Respondents' purported "cancellation" of the WQCC's rule filing and mandated "review" of Part 20.6.6 NMAC under Executive Order No. 2011-001 unconstitutionally intrudes, as set forth above and elaborated upon below, on the proper functions of both the legislative and judicial branches. Not only have the Governor's actions in this matter interfered with lawful process under laws enacted by the Legislature--including SB206 which specifically directed the WQCC to schedule and enact dairy regulations--but her actions are also preempted by the Court of Appeals' exclusive appellate jurisdiction to review final orders and rules of the WQCC. The Governor has no appellate jurisdiction and no other authority to review or set aside the WQCC's regulations. *See* NMSA 1978, §§ 74-6-7(A),

(B) (conferring appellate jurisdiction on Court of Appeals and establishing exclusive grounds for setting aside the WQCC's rules).

26. This Court has held that, "Mandamus is appropriate to compel the performance of an affirmative act by another where the duty to perform the act is clearly enjoined by law and where there is no other plain, speedy and adequate remedy in the ordinary course of law" and that this Court will "exercise [its] power of original jurisdiction in mandamus if the case presents a purely legal issue that is a fundamental constitutional question of great public importance." *Adjustments v. New Mexico Pub. Regulation Comm'n*, 2000 NMSC 35, 129 N.M. 787, 14 P.3d 525, at ¶ 6 (internal citations and quotes omitted); *see also State ex rel. Taylor v. Johnson*, 1998 NMSC 15, 2-4, 125 N.M. 343, 961 P.2d 768 (addressing on mandamus "an even more fundamental concept: respect for the rule of law" by the executive).

27. This is just such a case. As stated above, Petitioners seek a writ of mandamus to both compel the "performance of an affirmative act" and to "prohibit unlawful or unconstitutional official action." Petitioners have no other "plain, speedy and adequate remedy in the ordinary course of law," both because of the prolonged time an action in District Court would require, and because of ambiguity

over whether the alleged “cancelled” rule filing has deprived the Court of Appeals of jurisdiction. *See* NMSA 1978, §74-6-7.

IV. MANDAMUS IS LEGALLY AND FACTUALLY NECESSARY.

A. Indisputable Factual Basis For Issuing Mandamus.

28. Pursuant to Section 14-4-3 of the State Rules Act, the Records Center “note[d]” on the NMAC Transmittal Form the “date and hour of filing.”

Petitioners' Exhibit 2 (NMAC Transmittal Form). The “date and hour of filing” noted thereon is “*2010 Dec 23 AM 10:07.*” *Id.* The regulations of the State

Records Administrator define “filing” as:

[The] process by which one paper copy of a part or amendment, the corresponding electronic copy and the NMAC transmittal form are delivered to the records center and, if accepted by the records center, are date stamped and accessioned.

§ 1.24.1.7 (J) NMAC (defining “filing”). There is, thus, no question that the Records Center “accepted” Part 20.6.6 NMAC for “filing.”

29. On January 1, 2011, Susana Martinez became Governor of the State of New Mexico. On the same day, Governor Martinez issued Executive Order No. 2011-001, which provided in pertinent part:

All proposed and pending rules and regulations, excluding those not under the authority of the Governor, are suspended for a period of review of 90 days unless excepted as set forth below.

Petitioners' Exhibit 4. The Governor's Executive Order "suspended" all "proposed and pending rules" in order to subject them to a ninety-day "common sense" review by the task force established in the Order. *Id.*

30. *At 9:24 A.M.* on January 4, 2011, the "Director of the Administrative Law Division (ALD) at the State Records Center and Archives" (John Martinez) sent an email to the Governor's general counsel (Jessica Hernandez). Petitioners' Exhibit 5. In this email, which he apparently sent on his own initiative, Mr. Martinez stated the following to Ms. Hernandez:

I have read Executive Order 2011-001 which establishes a 90-day freeze on rule-making. I am writing you because there are 34 rules that were filed during the last administration but will not be published in the New Mexico Register until January 14, 2011. We plan on publishing these rules unless we receive written notification from the issuing authorities in the respective agencies that these rule filings should be pulled back. The major issue for the ALD is that today is the rule filing deadline meaning that we will have to know by the end of today if any of these rule filings will not be published. Beginning tomorrow, the text will be type set and cannot be changed after that point.

I have attached a report of the 34 filings that are slated to be published on January 14, 2011. Please note that the State Records Center and Archives (noted in the report as the Commission of Public Records) is an independent agency not under the authority of the Governor.

Id. (email and attached table entitled "*Rules to Be Published in Volume XXII Issue 1 of the New Mexico Register – January 14, 2011.*")

31. *At 10:52 A.M.* on the same day, Ms. Hernandez emailed her response to Mr. Martinez:

Thank you for your e-mail. Executive Order 2011-001 applies to these regulations. They are suspended unless they go through the exemption process set out in the executive order. They should not be published today. If you want written notification from the issuing authorities, please send me the list of your point people for these agencies on these issues. I will communicate with them and get that notification. Thank you.

Petitioners' Exhibit 6. Mr. Martinez never questioned, and Ms. Hernandez never explained, why Part 20.6.6 NMAC should be regarded as a “proposed or pending” rule given the fact that the WQCC had *adopted* the Part 20.6.6 as a final rule on December 15, 2010 and *filed* it with the State Records Center on December 23, 2010. Petitioners' Exhibit 2 (date and time stamped NMAC Transmittal Form).

32. *At 12:09 P.M.* on the same day, Mr. Martinez responded back to Ms. Hernandez, by email, explaining to her:

We will need written notification from the respective Issuing Agencies stating the desire to cancel the rule filing that occurred last month. The Issuing Authority is the person in the position who is authorized by statute to issue the rules for the agency. Usually this is the secretary of a department, director of an agency, or chairperson of a board. I have attached the list of Issuing Authorities for those rules that filed last month in accordance with the State Rules Act but not yet published in the New Mexico Register. I have excluded the rules for the Commission of Public Records – State Records and Archives since those are exempt from the Executive Order.

Petitioners' Exhibit 7. The list attached to Mr. Martinez' email identified "Sarah Cottrell, Chair" of the "Water Quality Control Commission" as the "issuing authority" for Part 20.6.6 NMAC. *Id.*

33. *At 2:48 P.M.* on the same day, Ms. Hernandez sent an email to the employees of several executive agencies, including the New Mexico Environment Department ("NMED"). Ms. Hernandez informed the employees of the following:

John H. Martinez, the Director of the Administrative Law Division, has brought to my attention that your respective agencies and divisions have pending rules that are scheduled to be finalized today for publication in the New Mexico register. The list of such rules for your agencies is attached. As you may have seen, Governor Martinez issued an executive order suspending all pending rules and regulations for a period of 90 days. Because these rules are not yet finalized, they are subject to the executive order and therefore suspended. Mr. Martinez has told me that he will refrain from printing the rules in the New Mexico register if he receives written notification from each of you today. This notification to suspend publication is necessary to comply with the executive order. Accordingly, the Governor's Office requests that you sent [sic] that written notification to John Martinez immediately.

Petitioners' Exhibit 8 (emphasis added.)

34. *At 4:49 P.M.* on the same day, the "Acting Cabinet Secretary of the New Mexico Environment Department" (Raj Solomon) sent an email to John Martinez. Petitioners' Exhibit 9. In accordance with the requests of Ms. Hernandez and Mr. Martinez, Mr. Solomon wrote:

... I request that you suspend publication of the following environmental rules to comply with Governor Martinez' Executive order 2011-001:

- 1) [Part] No. 20.6.6 NMAC, Filed 12/13/2010; and
- 2) [Part] No. 20.2.100 NMAC, Filed 12/27/2010.

Id.

35. *At 12:06 P.M.* the next day, Mr. Martinez emailed Ms. Hernandez:

Thank you for your assistance in notifying the issuing authorities of the rules that were filed but not yet published. We have received notifications to cancel rule filings from all of the issuing authorities that were contacted. I have attached a list of the cancelled rule filings.

Petitioners' Exhibit 10 (email with attachment entitled "cancelled Rule Filings" showing "cancellation" of thirty-two rule filings, including Part 20.6.6 NMAC).

Neither Mr. Solomon nor any other employee of NMED had authority to rescind or cancel publication of a regulation of the WQCC.

36. None of the emails described above identify the WQCC, any WQCC member, or WQCC counsel as an addressee or sender. *See email addresses on* Petitioners' Exhibits 5 through 10.

B. Legal Basis For Issuing Mandamus.

37. None of the emails described above cite to any statutory authority of the Secretary of the Environment to unilaterally cancel the WQCC's rule filing or negate the administrative actions of the WQCC. In fact, NMSA 1978 §8-7A-13

explicitly exempts "All powers, duties and responsibilities of the water quality control commission under Sections 47-6-11, 74-6-3 through 74-6-8, 74-6-10 and 74-6-12 NMSA 1978" from the "authority of the secretary [of the environment]." *Id.*

38. The WQCC therefore has exclusive statutory authority to adopt rules under the WQA, such as Part 20.6.6 NMAC. Moreover, SB206 added sub-part K to NMSA 1978 §74-6-4, which states, in pertinent part, that "The commission may adopt regulations for particular industries" and "The commission *shall* adopt regulations for the dairy industry[.]" *Id.* (emphasis added); *see generally* NMSA 1978, §§74-6-4, 74-6-5, 74-6-7, 74-6-11 (giving the WQCC authority to promulgate regulations applying to persons and entities outside of the department, broad authority to regulate water quality, and act in an emergency). Neither the Governor nor the Secretary of the Environment has *any* authority to adopt, repeal, or amend rules under the Water Quality Act.

39. The WQA requires, in pertinent part that, "No regulation or water quality standard or amendment or repeal thereof shall be adopted until after a public hearing." NMSA 1978, § 74-6-6(A). Although four public members of the WQCC are appointed by the Governor for four year terms, NMSA 1978, § 74-6-3(A)(11), and although "any person" may petition the WQCC to adopt a new rule or repeal an existing one (NMSA 1978, §74-6-6(B)), the WQCC is not under

the Governor's direct control and neither she nor the Secretary of the Environment has any authority to set aside or modify the WQCC's rules, with or without a hearing. Instead, the Court of Appeals has exclusive appellate jurisdiction to review the WQCC's rules and, in some instances, uses that authority to remand and/or overturn them. NMSA 1978, §§ 74-6-7(A). The effect of the Executive Order, as applied, is to violate the New Mexico Constitution, Article III, §1, by usurping the exclusive jurisdiction of the Court of Appeals to review final rules of the WQCC.

40. The Records Center is "under the supervision and control" of the State Records Administrator (Sandra Jaramillo). NMSA 1978, § 41-3-8 (1959). Once the WQCC filed Part 20.6.6 NMAC with the Records Center, Ms. Jaramillo had a ministerial duty to "have the rule published in a timely manner in the New Mexico register and compiled into the New Mexico Administrative Code." NMSA 1978, §14-4-3(1995). The Missouri Supreme Court observed in a similar case that the office with the ministerial duty to publish regulations has no discretion to fail to publish a properly, duly filed regulation. *Missouri Coalition for the Env't. v. Joint Comm. on Admin. Rules*, 948 S.W.2d 125, 131-132 (Mo. S.Ct. 1997).

41. Neither the Governor nor Mr. Solomon had any valid authority to unilaterally "cancel" the WQCC's filing of Part 20.6.6 NMAC with the Records

Center or to otherwise interfere with the normal process of law by which rules are routinely filed and published by the Records Center.

42. The Governor cannot, consistent with the Separation of Powers requirement in the New Mexico Constitution, Article III, §1, enlarge her power, or that of any executive agency or officer, by Executive Order. *Cf. Fullilove v. Carey*, 91 Misc. 2d 531, 533, 398 N.Y.S.2d 226, 227-228 (Sup. Ct. 1977) (“Where an executive order extends and expands requirements of statutes, it does not serve the enforcement function and therefore constitutes an unwarranted exercise of legislative power”); *Application of Bowers*, 203 Misc. 653, 655, 121 N.Y.S.2d 629, 631 (Sup. Ct. 1952) (holding that “the Governor cannot, by executive order or otherwise, enlarge” the “jurisdiction” of a commission).

43. Petitioners also contend, as this Court stated in another context, that “the Governor usurped the legislative function, initiating public policy changes which should find their genesis in the Legislature.” *State of New Mexico ex rel. Taylor v. Johnson*, 125 N.M. 343, 344, 961 P2d 768 (1998). “The New Mexico Constitution requires that the Legislature first have the opportunity to debate and vote on core policy changes: only then may the Governor exercise . . . veto power and force the Legislature to consider a veto over-ride.” *Id.* The Governor desires, according to her Executive Order, a business friendly policy criteria in the

consideration of every regulation. *See generally*, Petitioners' Exhibit 4. Despite the fact that the regulations at issue were lawfully submitted to the New Mexico Small Business Advisory Committee, *see supra* at ¶17, the Governor wants more than the existing law requires or allows--and her Order demands that all agencies submit to a new requirement for the review of rules, one created by Executive fiat.

44. The Governor's usurpation of legislative prerogatives through Executive Order 2011-001 violates the Separation of Powers requirements of the New Mexico Constitution, Art. III, §1, which is a cornerstone of democratic government. *Taylor, supra* at 349, *citing Gregory v. Ashcroft*, 501 U.S. 452, 458-59 (1991); *The Federalist No. 47* (James Madison) (discussing Montesquieu) (citations omitted); *see also Humphrey's Executor v. United States*, 295 U.S. 602, 629 (1935). Only the Legislature has the constitutional jurisdiction to create new, substantive law as Executive Order 2001-001 attempts to do. In this mayter, the Governor has, in effect, "legislated" and interfered with the exclusive jurisdiction of the the Court of Appeals. Petitioners ask the Court to provide the relief requested below and set right the balance of power required under the New Mexico Constitution, Art. III, §1.

REQUESTED RELIEF

WHEREFORE, Petitioners respectfully request the following relief:

- (1) An order compelling Ms. Jaramillo to publish Part 20.6.6 NMAC in the New Mexico State Register forthwith;
- (2) An order compelling the Governor and the Secretary of the Environment to rescind Mr. Solomon's purported cancellation of the WQCC's filing of Part 20.6.6 NMAC with the State Records Center; and
- (3) An order compelling the Governor and the Secretary of the Environment to refrain from further interference with the proper and lawful filing and publication of rules under the State Rules Act.
- (4) That the Court award Petitioners any other relief it deems equitable and just.

Respectfully submitted:

NEW MEXICO ENVIRONMENTAL LAW CENTER

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Attorneys for Amigos Bravos and
Caballo Concerned Citizens Group

VERIFICATION BY PETITIONERS

I, Brian Shields, Executive Director of Amigos Bravos, Inc., have read the forgoing Petition and state, under oath, that the statements contained in the Petition are true and correct to the best of my knowledge, information and belief.

Brian Shields for Petitioners

CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing paper to be hand-delivered and emailed to the following persons pursuant to NMRA 12-307 on the 13th day of January, 2011:

Jonathan M. Block

Honorable Susana Martinez Governor of the State of New Mexico Jessica Hernandez, General Counsel Office of the Governor 490 Old Santa Fe Trail Room 400 Santa Fe, NM 87501 jessica.hernandez@state.nm.us <i>Respondent</i>	F. David Martin Secretary, NMED Tannis Fox, General Counsel 1190 St. Francis Drive Santa Fe, NM 87502-5469 tannis.fox@state.nm.us <i>Respondent</i>
Honorable Gary King New Mexico Attorney General, Stephen Vigil, Assistant AG (WQCC Counsel) Toney Anaya Building 2550 Cerrillos Road Santa Fe, New Mexico 87505 svigil@nmag.gov <i>Attorney General</i>	Sandra Jaramillo State Records Administrator, John Martinez, Director, ALD State Records and Archives Center 1205 Camino Carlos Rey Santa Fe, NM 87507 sandra.jaramillo@state.nm.us john.martinez4@state.nm.us <i>Respondent</i>


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Respectfully submitted:


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Attorneys for Amigos Bravos and
Caballo Concerned Citizens Group

VERIFICATION BY PETITIONERS

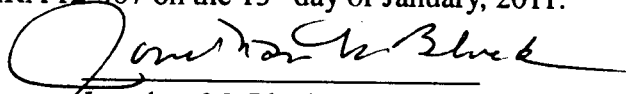
I, Brian Shields, Executive Director of Amigos Bravos, Inc., have read the forgoing Petition and state, under oath, that the statements contained in the Petition are true and correct to the best of my knowledge, information and belief.



Brian Shields for Petitioners

CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing paper to be hand-delivered and emailed to the following persons pursuant to NMRA 12-307 on the 13th day of January, 2011:


Jonathan M. Block

<p>Honorable Susana Martinez Governor of the State of New Mexico Jessica Hernandez, General Counsel Office of the Governor 490 Old Santa Fe Trail Room 400 Santa Fe, NM 87501 jessica.hernandez@state.nm.us</p> <p><i>Respondent</i></p>	<p>F. David Martin Secretary, NMED Tannis Fox, General Counsel 1190 St. Francis Drive Santa Fe, NM 87502-5469 tannis.fox@state.nm.us</p> <p><i>Respondent</i></p>
<p>Honorable Gary King New Mexico Attorney General, Stephen Vigil, Assistant AG (WQCC Counsel) Toney Anaya Building 2550 Cerrillos Road Santa Fe, New Mexico 87505 svigil@nmag.gov</p> <p><i>Attorney General</i></p>	<p>Sandra Jaramillo State Records Administrator, John Martinez, Director, ALD State Records and Archives Center 1205 Camino Carlos Rey Santa Fe, NM 87507 sandra.jaramillo@state.nm.us john.martinez4@state.nm.us</p> <p><i>Respondent</i></p>

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

1190 St. Francis Drive, Room N2150

Post Office Box 26110

Santa Fe, New Mexico 87502

Telephone (505) 827-2425 Fax (505) 827-0310



Constituent Agencies

Environment Department
Office of State Engineer
Game and Fish Department
Oil Conservation Division
Department of Agriculture
Department of Health
State Parks Division
Soil and Water Conservation Commission
Bureau of Geology and Mineral Resources
Municipal/County Representative
Members-at Large

DRAFT

New Mexico Water Quality Control Commission

Regular Meeting

December 14-15, 2010

9:00 a.m.

New Mexico State Capitol Building Room 317

490 Old Santa Fe Trail

Santa Fe New Mexico 87505

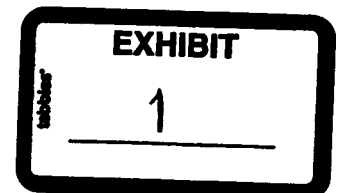
MEMBERS PRESENT:

Sarah Cottrell	Acting Chair (in part)
Carlos Romero	Acting Chair (in part)
Cheryl Bada	State Parks Division (in part)
Bill Brancard	State Parks Division (in part)
Larry Dominguez	Department of Agriculture
Mike Sloane	Department of Game & Fish
Doug Bland	Bureau of Geology and Mineral Resources
Howard Hutchinson	Soil and Water Conservation Commission
Greg Lewis	Office of the State Engineer
Heidi Krapfl	Department of Health
Brad Jones	Oil Conservation Division (in part)
Edward Hansen	Oil Conservation Division (in part)
Steve Glass	County of Bernalillo, Municipal/County Representative
Edward Vigil	Member-at-Large
Maxine Goad	Member-at-Large
Harold W. Tso	Member-at-Large

OTHERS PRESENT:

Please see attached sign-in sheets

Felicia Orth, NMED/OOTS
Laurie Leibowitz, NMED/OOTS
Stephen Vigil, NM Attorney General's Office



Mr. Brancard	yes
Mr. Dominguez	no
Mr. Sloane	yes
Mr. Hutchinson	no
Mr. Bland	yes
Mr. Vigil	no
Mr. Hansen	yes
Mr. Romero	yes
Mr. Glass	abstain

The motion passed, seven votes in the affirmative; three in the negative, with one abstention.

Mr. Hutchinson wrote a dissent, and Mr. Vigil and Mr. Dominguez indicated they would join the dissent, which will be attached to the Statement of Reasons as the minority view.

Item 5. (formerly Item 6) Hearing to consider proposed settlement agreement and accept public comment in WQCC 07-07 (A), Chamisa Hills Golf and Country Club, Appellant.

A hearing transcript of the Commission's hearing, which occurred on December 14, is available in the office of the Water Quality Control Commission Administrator, New Mexico Environment Department, 1190 St. Francis Drive, Runnels Building Room 2150, Santa Fe, New Mexico 87505.

Roll was called again. The following Commissioners were present: Commissioners Lewis, Jones, Bada, Dominguez, Sloane, Hutchinson, Bland, Goad, Vigil, Glass, Tso, Krapfl and Commission Chair Cottrell. Also present were NMED Hearing Officer Felicia Orth and staff member Laurie Leibowitz.

Immediately following the close of the hearing, the Commission moved into deliberations.

Action: Mr. Bland moved that the Commission approve the settlement reached by the parties, and to authorize the Secretary to issue the permit with the modifications discussed during the Commission's deliberations. Mr. Hutchinson seconded.

Roll Call Vote:

Mr. Lewis	yes
Ms. Goad	yes
Ms. Krapfl	yes
Mr. Dominguez	yes

Action: Mr. Sloane moved that the Commission adopt the Department's language for 60-mil liners for impoundments at dairies as primary containment. Mr. Jones seconded.

A voice vote was taken and it was unanimous—the motion passed.

Action: Mr. Sloane moved that the Commission require a double-lined system with leak detection at 50 feet or less depth to ground water. Mr. Lewis seconded.

A voice vote was taken and was inconclusive.

Roll Call Vote:

Mr. Lewis	yes
Ms. Goad	yes
Ms. Krapfl	no
Mr. Dominguez	no
Mr. Sloane	yes
Mr. Hutchinson	no
Mr. Bland	no
Mr. Vigil	no
Mr. Jones	yes
Ms. Cottrell	yes
Mr. Glass	no
Ms. Bada	no
Mr. Tso	yes

The motion failed, six votes in the affirmative; seven in the negative.

Action: Mr. Sloane moved that the Commission adopt the Department's language regarding setbacks. Ms. Bada seconded.

A voice vote was taken and it was unanimous—the motion passed.

Action: Ms. Bada moved that, as to part of Section 3206, the Commission adopt the language from the March 29th version of the proposed rule in order to remove the requirement that applicants provide the names of business entities, directors, officers, members or partners; i.e., that the last phrase in subsection c(1)(b) of Section 3206 be removed. Mr. Vigil seconded.

A voice vote was taken and it was unanimous—the motion passed.

Action: Mr. Hutchinson moved that the Commission adopt DIGCE's suggested language in Section 3220, specifically to insert language regarding "practicable" and "due diligence" so that it would read "If a visual inspection indicates a flow meter is not functioning to measure flow, the permittee shall repair or replace the flow meter within 30 days of discovery, or as soon as practicable, using due diligence." Mr. Dominguez seconded.

A voice vote was taken and was inconclusive. A hand vote was taken: Mr. Dominguez, Mr. Vigil, Mr. Tso and Mr. Hutchinson voted "aye"; Commissioners Sloane, Lewis, Goad, Cottrell, Jones, Bland and Krapfl voted "nay"—the motion failed. [Ms. Bada was not yet present.]

Action: Mr. Dominguez moved to adopt the Hearing Officer's recommendation to add the language regarded favorably by DIGCE that "Leachate generated from the silage storage area shall be collected and contained on an impervious surface or the stormwater impoundment before disposal." Mr. Jones seconded.

A voice vote was taken and the motion passed unanimously.

[Ms. Bada joined the meeting.]

Action: Mr. Dominguez moved that the Commission strike the language that says "an individual certified by the American Society of Agronomy as a Certified Crop Advisor (CCA) or Certified Professional Agronomist (CCAG) and by" so that a person certified as a comprehensive nutrient management planner could sign off on a plan. Mr. Hutchinson seconded.

A hand vote was taken and there were six "ayes" and six "nays" (unidentified)—the motion failed.

Action: Mr. Sloane moved, in Section 3223, to put a colon after the word "contamination" and strike the words "including but not limited to." Mr. Hutchinson seconded.

A voice vote was taken and Ms. Cottrell was the only "nay"—the motion passed.

Action: Mr. Dominguez moved, in Sections 3223A(3)(b), 3223A(4)(a)(ii), 3223A(4)(b)(ii) and 3223A(5)(b), that the Commission add language allowing for an extension of time to install monitoring wells, specifically, "provided that NMED may grant a one-time extension of 60 days or good cause shown." Mr. Vigil seconded.

A voice vote was taken and was inconclusive. A hand vote was taken and there were seven "ayes" and five "nays" (unidentified)—the motion passed.

Action: Mr. Sloane moved to adopt the Hearing Officer's recommendation in Section 3223L to deny the request from DIGCE, and to require preparation and submittal of quarterly ground water elevation contour maps. Ms. Krapfl seconded.

A hand vote was taken, with seven "ayes" (unidentified)—the motion passed.

Ms. Krapfl **yes**

Mr. Jones **yes**

Mr. Romero **yes**

The motion passed unanimously.

Item 6. Other business

None.

Item 7. Next meeting:

January 11, 2011, 9:00 a.m.

Chino Building, Porter Hall, Santa Fe, N.M.

Item 8. Adjournment:

The Chair adjourned the meeting.

Acting Commission Chair

NMAC TRANSMITTAL FORM

1.24.10 NMAC

[Sequence # _____]

1. Issuing Agency	2. Agency Code (CFR)
Water Quality Control Commission	667

3. Agency Address
1190 St. Francis Drive Santa Fe, New Mexico 87505

4. Contact Person			
Name	Chuck Noble	Phone #	(505) 827-0127
FAX #	(505) 827-1628		
E-mail	chuck.noble@state.nm.us		

5. Type of Rule/Action					
New	<input checked="" type="checkbox"/>	Amendment	<input type="checkbox"/>	Renumber	<input type="checkbox"/>
Repeal	<input type="checkbox"/>	Emergency	<input type="checkbox"/>		
6. Total number of pages	40	7. Hearing date	4/13-16/10; 6/8-17/10	8. Effective date	01/31/2011

9. NMAC Number		
Title	Chapter	Part
20	6	6


10. NMAC Name		
Title	Chapter	Part
Environmental Protection	Water Quality	Ground Water Protection - Supplemental Permitting Requirements for Dairy Facilities

11. Amendment Description	12. Amendment's NMAC Citation
13. Most recent filing date (if applicable)	

14. Are there any materials incorporated by reference?	
No <input type="checkbox"/> Yes <input checked="" type="checkbox"/>	Reference // Internet site
Please list attachments and Internet site(s) if applicable	1. See Attachment A to NMAC Transmittal Form
	2.

15. If materials are attached, has copyright permission been received?			
No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/>	Public domain <input type="checkbox"/>	

16. Legal citation(s) that allows the Issuing Agency to regulate and the Issuing Authority to promulgate regulations on this subject (provide all that apply)
New Mexico Water Quality Act, NMSA 1978 Section 74-6-4; NMSA 1978 Section 74-6-10

17. Signature & Title of Issuing Authority (Delegated authority must be on file)	
Name: Sarah Cottrell	Check if delegated authority <input checked="" type="checkbox"/>
Title: Chair, Water Quality Control Commission	
	Date Signed: 12/21/10
Signature	Date Signed

Subject: Dairy Rule

From: "Noble, Chuck, NMENV" <chuck.noble@state.nm.us>

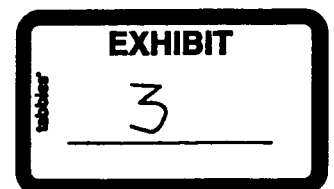
Date: Thu, 23 Dec 2010 21:38:32 +0000

To: "Moellenberg, Dalva L." <DLM@gknet.com>, "Trujillo, TJ" <ajt@gknet.com>, Jonathan Block <jblock@nmelec.org>

CC: Stephen Vigil <svigil@nmag.gov>

The dairy rule was filed with the State Records Center today. The effective date will be January 31, 2011. It is codified as 6.2.6 NMAC and will be published on Jan. 14.

Charles F. Noble
Assistant General Counsel
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, NM 87505
(505) 827-0127



State of New Mexico
Office of the Governor

Susana Martinez
Governor

Contact: Scott Damell
(505) 321-3943

For Immediate Release
January 1, 2011

**GOVERNOR SUSANA MARTINEZ SIGNS FIRST EXECUTIVE ORDER,
CREATES SMALL BUSINESS TASK FORCE TO RECOMMEND RED-
TAPE CUTS**

*Executive Order Would Also Freeze Pending And Proposed Regulations For 90
Days*

SANTA FE – Today, Governor Susana Martinez signed her first executive order, which establishes a small business task force to identify red-tape regulations that are harmful to business growth and job creation in New Mexico and report its findings to the Governor. The task force, chaired by Secretary-designate of Economic Development, Jon Barela, will conduct its review over a 90-day period, during which all proposed and pending regulations will be frozen.

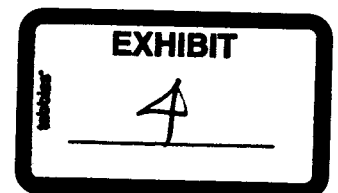
The full text of the executive order is below:

EXECUTIVE ORDER 2011-001

**FORMATION OF A SMALL BUSINESS-FRIENDLY TASK FORCE;
ESTABLISHING A 90-DAY REVIEW PERIOD FOR ALL PROPOSED AND PENDING RULES
AND REGULATIONS**

WHEREAS, New Mexico's citizens, their government, and all persons doing business in this State have a mutual interest in the proper administration of government and business, requiring common sense administrative rules and regulations that are comprehensible, reasonable, consistent, predictable, responsive, and without undue redundancy;

WHEREAS, one of the priorities of the Governor of New Mexico is establishing a common sense approach to executive rules and regulations, in accordance with the constitutional authority to direct the departments and agencies of the State of New Mexico, by establishing a "Small Business-Friendly Task Force" chaired by the Secretary of Economic Development;



WHEREAS, most proposed and pending rules and regulations can be temporarily suspended without detriment to the health or welfare of the citizens of New Mexico;

WHEREAS, ninety days is a reasonable time to review such proposed and pending rules and regulations, to examine them from various perspectives as to their workability, reasonableness, and determine whether they are proper and necessary;

WHEREAS, such an effort is timely given current unemployment levels and state budget difficulties, in order to create economic opportunity for each and every New Mexican, while protecting and preserving the health, safety and welfare of our community.

THEREFORE, I, Susana Martinez, Governor of the State of New Mexico, by the authority vested in me by the Constitution of the State of New Mexico and by its statutes, do hereby **ORDER** and **DIRECT**:

1. All proposed and pending rules and regulations, excluding those not under the authority of the Governor, are suspended for a period of review of 90 days unless excepted as set forth below.
2. Proposed and pending regulations shall not be suspended if doing so would:
 - a. Adversely impact public health;
 - b. Adversely impact public safety or security;
 - c. Fail to comply with a judicial order or deadline;
 - d. Prevent the respective department or agency from carrying out its essential functions and duties; or
 - e. Prevent qualification for any federal funds or certifications.
3. Each department or agency shall submit to the Office of the Governor a comprehensive listing of proposed and pending rules and regulations, for review not later than January 14, 2011.
4. Any proposed or pending rules and regulations to which this Order applies and the department or agency believes should be treated as an exception pursuant to paragraph 2, shall be separately identified as such, with a statement as to the basis for the exception and how it applies.
5. The Office of the Governor may, with the advice of the head of the department or agency affected, determine whether any rule or regulation initially excepted under paragraph 2 shall remain excepted. The Office of the Governor may, with the advice of the head of the department or agency affected, determine whether any rule or regulation not initially excepted under paragraph 2 shall also be excepted.
6. Each department and agency shall also review all of its existing rules and regulations with a view to enhancing the purpose of this Task Force, and no later than January 31, 2011, identify to the Secretary of Economic Development each rule or regulation, the rescinding or revision of which could significantly enhance the business environment in New Mexico through economic development and employment growth.
7. The Task Force shall, at a minimum, consist of the Secretaries of Taxation and Revenue, Workforce Solutions, General Services, and others whom the Governor may designate.

8. The Task Force shall make a report to the Governor no later than 90 days from the effective date of this order, and shall continue, as needed, to make specific legislative and regulatory recommendations to achieve economic growth and stability in New Mexico.
9. This Order does not create any legal rights on the part of any person or entity and shall not be a basis for a challenge to rules or regulations or any other action or inaction by any New Mexico governmental department or agency.

THIS ORDER supersedes any other previous orders, proclamations, or directives to the extent they are in conflict. This Executive Order shall take effect immediately.

ATTEST:

DONE AT THE EXECUTIVE OFFICE THIS
_____ day of _____, 2011.

DIANNA DURAN
SECRETARY OF STATE

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO

SUSANA MARTINEZ
GOVERNOR OF NEW MEXICO

###

Martinez, John, SRCA

From: Martinez, John, SRCA
Sent: Tuesday, January 04, 2011 9:24 AM
To: Hernandez, Jessica, GOV
Cc: Gutierrez, Bianca, GOV; Jaramillo, Sandra, SRCA
Subject: Executive Order 2011-001
Attachments: xxii01 pdf

Dear Jessica Hernandez,

My name is John Martinez and I am the Director of the Administrative Law Division (ALD) at the State Records Center and Archives. The ALD is the central filing point for all rules promulgated by Executive Branch agencies and is also the publisher of the New Mexico Register and the compiler of the New Mexico Administrative Code (NMAC). The New Mexico Register is the official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico, which is available online at <http://www.nmcpr.state.nm.us/nmregister/>. The State Rules Act mandates that "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register" (Section 14-4-5 NMSA 1978). The New Mexico Register is published twice each month, usually around the 15th and the last day. The last issue was published on December 30, 2010 and the next issue is scheduled for January 14, 2011.

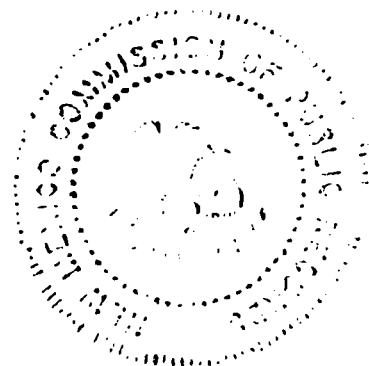
I have read Executive Order 2011-001 which establishes a 90-day freeze on rulemaking. I am writing you because there are 34 rules that were filed during the last administration but will not be published in the New Mexico Register until January 14, 2011. We plan on publishing these rules unless we receive written notification from the issuing authorities in the respective agencies that these rule filings should be pulled back. The major issue for the ALD is that today is the rule filing deadline meaning that we will have to know by the end of today if any of these rule filings will not be published. Beginning tomorrow, the text will be type set and cannot be changed after that point.

I have attached a report of the 34 rule filings that are slated to be published on January 14, 2011. Please note that the State Records Center and Archives (noted in the report as the Commission of Public Records) is an independent agency not under the authority of the Governor.

Please contact me if you have any questions.

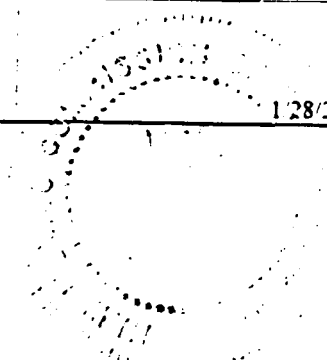
Sincerely,
John H. Martinez
Director, Administrative Law Division

New Mexico Commission of Public Records – State Records Center and Archives
1205 Camino Carlos Rey
Santa Fe, NM 87507
505-476-7941



Rules to Be Published in Volume XXII Issue 1 of the New Mexico Register - January 14, 2011

Agency	Filed	Type	Rule Number	Description	Comments	Effective Date
Environmental Improvement Board - Air Quality Control	12/27/2010	New Rule	20.2.100 NMAC	Air Quality - Greenhouse Gas Reduction Program.		1/1/2013
Real Estate Appraisers Board	12/17/2010	Amendment	16.62.1 NMAC	Amendment to 16.62.1 NMAC [14], filed 8-12-2004.		1/16/2011
Real Estate Appraisers Board	12/17/2010	Amendment	16.62.7 NMAC	Amendment to 16.62.7 NMAC [10, 12 & 13], filed 8-12-2004.		1/16/2011
Real Estate Appraisers Board	12/17/2010	Amendment	16.62.8 NMAC	Amendment to 16.62.8 NMAC [12, 14 & 15], filed 8-12-2004.		1/16/2011
Real Estate Appraisers Board	12/17/2010	Amendment	16.62.12 NMAC	Amendment to 16.62.12 NMAC [8], filed 8-12-2004.		1/16/2011
Real Estate Appraisers Board	12/17/2010	Amendment	16.62.13 NMAC	Amendment to 16.62.13 NMAC [15], filed 8-12-2004.		1/16/2011
Real Estate Appraisers Board	12/17/2010	Amendment	16.65.2 NMAC	Amendment to 16.65.2 NMAC [8, 11, 12, 13 & 14], filed 9-15-2009.		1/16/2011
Real Estate Appraisers Board	12/17/2010	Amendment	16.65.3 NMAC	Amendment to 16.65.3 NMAC [8 & 9], filed 9-15-2009.		1/16/2011
Records, Commission of Public	12/29/2010	Amendment	1.13.10 NMAC	Amendment to 1.13.10 NMAC [11], filed 6-15-2005.		1/14/2011
Records, Commission of Public	12/29/2010	Amendment	1.13.11 NMAC	Amendment to 1.13.11 NMAC [8], filed 7-1-2003.		1/14/2011
Regulation and Licensing Department - Administrative Services Division	12/23/2010	Repeal	16 NMAC 1.1	Repealer; repeals 16 NMAC 1.1, filed 11-3-1995.		1/23/2011
Regulation and Licensing Department - Administrative Services Division	12/23/2010	New Rule	16.1.1 NMAC*	Parental Responsibility Act Compliance.	*Replaces 16 NMAC 1.1, effective 1-23-2011.	1/23/2011
Regulation and Licensing Department - Administrative Services Division	12/23/2010	New Rule	12.2.15 NMAC	Sale of Recycled Metals.		1/23/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Amendment	14.5.1 NMAC	Amendment to 14.5.1 NMAC [2, 7 & 9], filed 5-27-2004.		1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Amendment	14.5.2 NMAC	Amendment to 14.5.2 NMAC [2, 8, 10 & 11], filed 5-27-2004.		1/28/2011



Rules to Be Published in Volume XXII Issue 1 of the New Mexico Register - January 14, 2011

Agency	Filed	Type	Rule Number	Description	Comments	Effective Date
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Amendment	14.5.3 NMAC	Amendment to 14.5.3 NMAC [2 & 9], filed 5-27-2004.		1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Repeal	14.7.2 NMAC	Repealer; repeals 14.7.2 NMAC, filed 8-16-2007.		1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	New Rule	14.7.2 NMAC*	Building Codes General - 2009 New Mexico Commercial Building Code.	*Replaces 14.7.2 NMAC, effective 1-28-2011.	1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Repeal	14.7.3 NMAC	Repealer; repeals 14.7.3 NMAC, filed 8-16-2007.		1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	New Rule	14.7.3 NMAC*	Building Codes General - 2009 New Mexico Residential Building Code.	*Replaces 14.7.3 NMAC, effective 1-28-2011.	1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Repeal	14.7.4 NMAC	Repealer; repeals 14.7.4 NMAC, filed 8-16-2007.		1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	New Rule	14.7.4 NMAC*	Building Codes General - 2009 New Mexico Earthen Building Materials Code.	*Replaces 14.7.4 NMAC, effective 1-18-2011.	1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Amendment	14.7.5 NMAC*	2009 New Mexico Non-Load Bearing Baled Straw Construction Building Standards. Amendment to 14.7.5 NMAC [2 & 8], filed 8-16-2007.	*Part name amended.	1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Repeal	14.7.6 NMAC	Repealer; repeals 14.7.6 NMAC, filed 8-16-2007.		1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	New Rule	14.7.6 NMAC*	Building Codes General - 2009 New Mexico Energy Conservation Code.	*Replaces 14.7.6 NMAC, effective 1-28-2011.	1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Amendment	14.7.7 NMAC*	2009 New Mexico Existing Building Code. Amendment to 14.7.7 NMAC [2, 8, 9 & 11], filed 8-16-2007.	*Part name amended.	1/28/2011

Rules to Be Published in Volume XXII Issue 1 of the New Mexico Register - January 14, 2011

Agency	Filed	Type	Rule Number	Description	Comments	Effective Date
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Amendment	14.7.8 NMAC*	2009 New Mexico Historic Earthen Buildings. Amendment to 14.7.8 NMAC [2]. filed 8-16-2007.	*Part name amended.	1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Repeal	14.8.2 NMAC	Repealer; repeals 14.8.2 NMAC. filed 8-16-2007.		1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	New Rule	14.8.2 NMAC*	Plumbing Codes - 2009 New Mexico Plumbing Code.	*Replaces 14.8.2 NMAC. effective 1-28-2011.	1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Repeal	14.9.2 NMAC	Repealer; repeals 14.9.2 NMAC. filed 8-16-2007.		1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	New Rule	14.9.2 NMAC*	Mechanical Codes - 2009 New Mexico Mechanical Code.	*Replaces 14.9.2 NMAC. effective 1-28-2011.	1/28/2011
Regulation and Licensing Department - Construction Industries Division	12/28/2010	Amendment	14.10.4 NMAC	Amendment to 14.10.4 NMAC [11, 14 & 15]. filed 1-24-2008.		1/28/2011
Water Quality Control Commission	12/23/2010	New Rule	20.6.6 NMAC	Water Quality - Ground Water Protection - Supplemental Permitting Requirements For Dairy Facilities.		1/31/2011
Council for Purchasing from Persons with Disabilities	12/30/2010	Amendment	2.40.5 NMAC	Amendment to 2.40.5 NMAC [7 thru 11, 14 & 15]. filed 3-15-2007.		1/15/2011



Martinez, John, SRCA

From: Hernandez, Jessica, GOV
Sent: Tuesday, January 04, 2011 10:52 AM
To: Martinez, John, SRCA
Cc: Gutierrez, Bianca, GOV; Jaramillo, Sandra, SRCA; Stackpole, Matthew, GOV
Subject: RE: Executive Order 2011-001

John,

Thank you for your e-mail. Executive Order 2011-001 applies to these regulations. They are suspended unless they go through the exemption process set out in the executive order. They should not be published today. If you want written notification from the issuing agencies, please send me the list of your point people for these agencies on these issues. I will communicate with them to get that notification. Thank you.

Jessica Hernandez
General Counsel to Governor Martinez

From: Martinez, John, SRCA
Sent: Tuesday, January 04, 2011 9:24 AM
To: Hernandez, Jessica, GOV
Cc: Gutierrez, Bianca, GOV; Jaramillo, Sandra, SRCA
Subject: Executive Order 2011-001

Dear Jessica Hernandez,

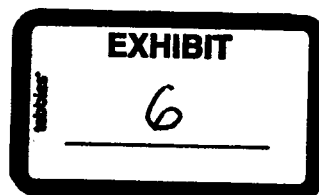
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I have read Executive Order 2011-001 which establishes a 90-day freeze on rulemaking. I am writing you because there are 34 rules that were filed during the last administration but will not be published in the New Mexico Register until January 14, 2011. We plan on publishing these rules unless we receive written notification from the issuing authorities in the respective agencies that these rule filings should be pulled back. The major issue for the ALD is that today is the rule filing deadline meaning that we will have to know by the end of today if any of these rule filings will not be published. Beginning tomorrow, the text will be type set and cannot be changed after that point.

I have attached a report of the 34 rule filings that are slated to be published on January 14, 2011. Please note that the State Records Center and Archives (noted in the report as the Commission of Public Records) is an independent agency not under the authority of the Governor.

Please contact me if you have any questions.

Sincerely,
John H. Martinez
Director, Administrative Law Division



Martinez, John, SRCA

From: Martinez, John, SRCA
Sent: Tuesday, January 04, 2011 12:09 PM
To: Hernandez, Jessica, GOV
Cc: Gutierrez, Bianca, GOV; Stackpole, Matthew, GOV; Jaramillo, Sandra, SRCA; 'tmaestas@nmag.gov'
Subject: RE: Executive Order 2011-001
Attachments: RuleAuthorities.pdf

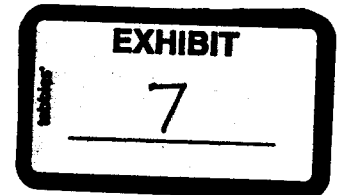
Jessica,

Thank you for your response. We will need written notification from the respective Issuing Authorities stating the desire to cancel the rule filings that occurred last month. The Issuing Authority is the person in the position who is authorized by statute to issue rules for an agency. Usually this is the secretary of a department, director of an agency, or chairperson of a board. I have attached the list of Issuing Authorities for those rules filed last month in accordance with the State Rules Act but not yet published in the New Mexico Register. I have excluded the rules for the Commission of Public Records – State Records Center and Archives since those are exempt from the Executive Order.

Please contact me if you have questions.

John H. Martinez
Director, Administrative Law Division

From: Hernandez, Jessica, GOV
Sent: Tuesday, January 04, 2011 10:52 AM
To: Martinez, John, SRCA
Cc: Gutierrez, Bianca, GOV; Jaramillo, Sandra, SRCA; Stackpole, Matthew, GOV
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Subject: Executive Order 2011-001



Dear Jessica Hernandez,

My name is John Martinez and I am the Director of the Administrative Law Division (ALD) at the State Records Center and Archives. The ALD is the central filing point for all rules promulgated by Executive Branch agencies and is also the publisher of the New Mexico Register and the compiler of the New Mexico Administrative Code (NMAC). The New Mexico Register is the official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico, which is available online at <http://www.nmcpr.state.nm.us/nmregister/>. The State Rules Act

mandates that "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register" (Section 14-4-5 NMSA 1978). The New Mexico Register is published twice each month, usually around the 15th and the last day. The last issue was published on December 30, 2010 and the next issue is scheduled for January 14, 2011.

I have read Executive Order 2011-001 which establishes a 90-day freeze on rulemaking. I am writing you because there are 34 rules that were filed during the last administration but will not be published in the New Mexico Register until January 14, 2011. We plan on publishing these rules unless we receive written notification from the issuing authorities in the respective agencies that these rule filings should be pulled back. The major issue for the ALD is that today is the rule filing deadline meaning that we will have to know by the end of today if any of these rule filings will not be published. Beginning tomorrow, the text will be type set and cannot be changed after that point.

I have attached a report of the 34 rule filings that are slated to be published on January 14, 2011. Please note that the State Records Center and Archives (noted in the report as the Commission of Public Records) is an independent agency not under the authority of the Governor.

Please contact me if you have any questions.

Sincerely,
John H. Martinez
Director, Administrative Law Division

New Mexico Commission of Public Records – State Records Center and Archives
1205 Camino Carlos Rey
Santa Fe, NM 87507
505-476-7941



Environmental Improvement Board - Air Quality Control

Issuing Authority: Gay Dillingham - Chair

Contact: Brad Musick

505-476-4321

brad.musick@state.nm.us

Filed	Type	Rule Number	Description	Effective Date
12/27/2010	New Rule	20.2.100 NMAC	Air Quality - Greenhouse Gas Reduction Program.	1/1/2013

Real Estate Appraisers Board

Issuing Authority: Wayne Ciddio, Executive Secretary - Real Estate Commission

505-222-9829

wayne.ciddio@state.nm.us

Filed	Type	Rule Number	Description	Effective Date
12/17/2010	Amendment	16.62.1 NMAC	Amendment to 16.62.1 NMAC [14], filed 8-12-2004.	1/16/2011
12/17/2010	Amendment	16.62.7 NMAC	Amendment to 16.62.7 NMAC [10, 12 & 13], filed 8-12-2004.	1/16/2011
12/17/2010	Amendment	16.62.8 NMAC	Amendment to 16.62.8 NMAC [12, 14 & 15], filed 8-12-2004.	1/16/2011
12/17/2010	Amendment	16.62.12 NMAC	Amendment to 16.62.12 NMAC [8], filed 8-12-2004.	1/16/2011
12/17/2010	Amendment	16.62.13 NMAC	Amendment to 16.62.13 NMAC [15], filed 8-12-2004.	1/16/2011
12/17/2010	Amendment	16.65.2 NMAC	Amendment to 16.65.2 NMAC [8, 11, 12, 13 & 14], filed 9-15-2009.	1/16/2011
12/17/2010	Amendment	16.65.3 NMAC	Amendment to 16.65.3 NMAC [8 & 9], filed 9-15-2009.	1/16/2011

Regulation and Licensing Department - Administrative Services Division

Issuing Authority: Kelly O'Donnell, Superintendent

505-476-4508

kellyv.odonnell@state.nm.us

Contact - Vadra Baca, Acting Deputy Director

505-476-4642

vadra.baca@state.nm.us

Filed	Type	Rule Number	Description	Effective Date
12/23/2010	Repeal	16 NMAC 1.1	Repealer; repeals 16 NMAC 1.1, filed 11-3-1995.	1/23/2011
12/23/2010	New Rule	16.1.1 NMAC*	Parental Responsibility Act Compliance.	1/23/2011
12/23/2010	New Rule	12.2.15 NMAC	Sale of Recycled Metals.	1/23/2011

Regulation and Licensing Department - Construction Industries Division

Issuing Authority: Lisa D. Martinez, Construction Industries Division Director

Contact: Jose Rudy Romero

505-476-4598

joser.romero@state.nm.us

Filed	Type	Rule Number	Description	Effective Date
12/28/2010	Amendment	14.5.1 NMAC	Amendment to 14.5.1 NMAC [2, 7 & 9], filed 5-27-2004.	1/28/2011
12/28/2010	Amendment	14.5.2 NMAC	Amendment to 14.5.2 NMAC [2, 8, 10 & 11], filed 5-27-2004.	1/28/2011
12/28/2010	Amendment	14.5.3 NMAC	Amendment to 14.5.3 NMAC [2 & 9], filed 5-27-2004.	1/28/2011

12/28/2010	Repeal	14.7.2 NMAC	Repealer: repeals 14.7.2 NMAC, filed 8-16-2007.	1/28/2011
12/28/2010	New Rule	14.7.2 NMAC*	Building Codes General - 2009 New Mexico Commercial Building Code.	1/28/2011
12/28/2010	Repeal	14.7.3 NMAC	Repealer: repeals 14.7.3 NMAC, filed 8-16-2007.	1/28/2011
12/28/2010	New Rule	14.7.3 NMAC*	Building Codes General - 2009 New Mexico Residential Building Code.	1/28/2011
12/28/2010	Repeal	14.7.4 NMAC	Repealer: repeals 14.7.4 NMAC, filed 8-16-2007.	1/28/2011
12/28/2010	New Rule	14.7.4 NMAC*	Building Codes General - 2009 New Mexico Earthen Building Materials Code.	1/28/2011
12/28/2010	Amendment	14.7.5 NMAC*	2009 New Mexico Non-Load Bearing Baled Straw Construction Building Standards. Amendment to 14.7.5 NMAC [2 & 8], filed 8-16-2007.	1/28/2011
12/28/2010	Repeal	14.7.6 NMAC	Repealer: repeals 14.7.6 NMAC, filed 8-16-2007.	1/28/2011
12/28/2010	New Rule	14.7.6 NMAC*	Building Codes General - 2009 New Mexico Energy Conservation Code.	1/28/2011
12/28/2010	Amendment	14.7.7 NMAC*	2009 New Mexico Existing Building Code. Amendment to 14.7.7 NMAC [2, 8, 9 & 11], filed 8-16-2007.	1/28/2011
12/28/2010	Amendment	14.7.8 NMAC*	2009 New Mexico Historic Earthen Buildings. Amendment to 14.7.8 NMAC [2], filed 8-16-2007.	1/28/2011
12/28/2010	Repeal	14.8.2 NMAC	Repealer: repeals 14.8.2 NMAC, filed 8-16-2007.	1/28/2011
12/28/2010	New Rule	14.8.2 NMAC*	Plumbing Codes - 2009 New Mexico Plumbing Code.	1/28/2011
12/28/2010	Repeal	14.9.2 NMAC	Repealer: repeals 14.9.2 NMAC, filed 8-16-2007.	1/28/2011
12/28/2010	New Rule	14.9.2 NMAC*	Mechanical Codes - 2009 New Mexico Mechanical Code.	1/28/2011
12/28/2010	Amendment	14.10.4 NMAC	Amendment to 14.10.4 NMAC [11, 14 & 15], filed 1-24-2008.	1/28/2011

Water Quality Control Commission

Issuing Authority: Sarah Cottrell, Chair - Water Quality Control Commission

Contact: Chuck Noble
505-827-0127
chuck.noble@state.nm.us

Filed	Type	Rule Number	Description	Effective Date
12/23/2010	New Rule	20.6.6 NMAC	Water Quality - Ground Water Protection - Supplemental Permitting Requirements For Dairy Facilities.	1/31/2011

Council for Purchasing from Persons with Disabilities

Issuing Authority: Andrew Winnegar, State Purchasing Council from Persons with Disabilities
505-466-6563
ajwinnegar@comcast.net

Filed	Type	Rule Number	Description	Effective Date
12/30/2010	Amendment	2.40.5 NMAC	Amendment to 2.40.5 NMAC [7 thru 11, 14 & 15], filed 3-15-2007.	1/15/2011

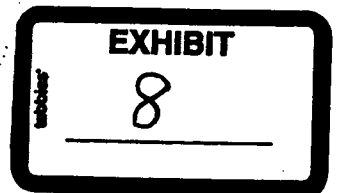
Martinez, John, SRCA

From: Hernandez, Jessica, GOV
Sent: Tuesday, January 04, 2011 2:48 PM
To: Musick, Brad, NMENV; Ciddio, Wayne, RLD; kelly.odonnell@state.nm.us; Baca, Vandra, RLD; Romero, Jose R., RLD; Noble, Chuck, NMENV; ajwinnegar@comcast.net
Cc: Martinez, John, SRCA; Gardner, Keith, GOV
Subject: Necessary Written Notification to Suspend Publication of Rules
Attachments: RuleAuthorities.pdf

Importance: High

John H. Martinez, the Director of the Administrative Law Division, has brought to my attention that your respective agencies and divisions have pending rules that are scheduled to be finalized today for publication in the New Mexico register. The list of such rules for your agencies is attached. As you may have seen, Governor Martinez issued an executive order suspending all pending rules and regulations for a period of 90 days. Because these rules are not yet finalized, they are subject to the executive order and therefore suspended. Mr. Martinez has told me that he will refrain from printing the rules in the New Mexico register if he receives written notification from each of you today. This notification to suspend publication is necessary to comply with the executive order. Accordingly, the Governor's Office requests that you send that written notification to John Martinez immediately. He needs it today. I have copied him on this e-mail for your convenience. Thank you for your cooperation.

Jessica Hernandez
General Counsel to Governor Martinez



Martinez, John. SRCA

2011 JAN 4 PM 4:57

From: Solomon, Raj, NMENV
Sent: Tuesday, January 04, 2011 4:49 PM
To: Martinez, John, SRCA
Cc: Gardner, Keith, GOV; Hernandez, Jessica, GOV
Subject: Written Notification to Suspend Publication of Environmental Rules

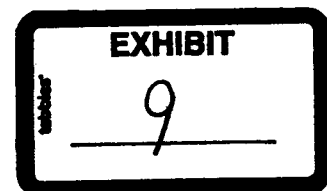
Dear Mr. Martinez:

As Acting Cabinet Secretary of the New Mexico Environment Department, I request that you suspend publication of the following environmental rules to comply with Governor Martinez's Executive order 2011-001:

- 1) Rule No. 20.6.6 NMAC, Filed 12/23/2010; and
- 2) Rule No. 20.2.100 NMAC, Filed 12/27/2010.

Sincerely,

Raj Solomon, P.E.
Acting Cabinet Secretary
New Mexico Environment Department



Martinez, John, SRCA

From: Martinez, John, SRCA
Sent: Wednesday, January 05, 2011 12:06 PM
To: Hernandez, Jessica, GOV
Cc: Gutierrez, Bianca, GOV; Gardner, Keith, GOV; 'tmaestas@nmag.gov'; Jaramillo, Sandra, SRCA; Stackpole, Matthew, GOV
Subject: Canceled Rule Filings
Attachments: CanceledRules.pdf

Dear Jessica,

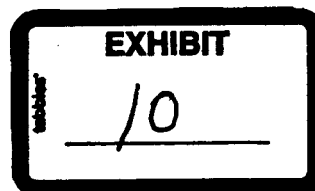
Thank you for your assistance in notifying the issuing authorities of the rules that were filed but not yet published. We have received notifications to cancel rule filings from all of the issuing authorities that were contacted. I have attached a list of the canceled rule filings.

Please contact me if there are questions about rules or the rulemaking process. We have developed an online course that covers the basics of rulemaking in New Mexico. The course is available 24 hours a day and is open to anyone. A person simply needs to send an email to staterules@state.nm.us requesting registration for the course and I will register them.

Sincerely,
John H. Martinez
Director, Administrative Law Division

New Mexico Commission of Public Records – State Records Center and Archives
1205 Camino Carlos Rey
Santa Fe, NM 87507

505-476-7941



Canceled Rule Filings

Environmental Improvement Board - Air Quality Control				
Filed	Type	Rule Number	Description	Canceled
12/27/2010	New Rule	20.2.100 NMAC	Air Quality - Greenhouse Gas Reduction Program.	1/4/2011
Real Estate Appraisers Board				
Filed	Type	Rule Number	Description	Canceled
12/17/2010	Amendment	16.62.1 NMAC	Amendment to 16.62.1 NMAC [14], filed 8-12-2004.	1/4/2011
12/17/2010	Amendment	16.62.7 NMAC	Amendment to 16.62.7 NMAC [10, 12 & 13], filed 8-12-2004.	1/4/2011
12/17/2010	Amendment	16.62.8 NMAC	Amendment to 16.62.8 NMAC [12, 14 & 15], filed 8-12-2004.	1/4/2011
12/17/2010	Amendment	16.62.12 NMAC	Amendment to 16.62.12 NMAC [8], filed 8-12-2004.	1/4/2011
12/17/2010	Amendment	16.62.13 NMAC	Amendment to 16.62.13 NMAC [15], filed 8-12-2004.	1/4/2011
12/17/2010	Amendment	16.65.2 NMAC	Amendment to 16.65.2 NMAC [8, 11, 12, 13 & 14], filed 9-15-2009.	1/4/2011
12/17/2010	Amendment	16.65.3 NMAC	Amendment to 16.65.3 NMAC [8 & 9], filed 9-15-2009.	1/4/2011
Regulation and Licensing Department - Administrative Services Division				
Filed	Type	Rule Number	Description	Canceled
12/23/2010	Repeal	16 NMAC 1.1	Repealer; repeals 16 NMAC 1.1, filed 11-3-1995.	1/4/2011
12/23/2010	New Rule	16.1.1 NMAC*	Parental Responsibility Act Compliance.	1/4/2011
12/23/2010	New Rule	12.2.15 NMAC	Sale of Recycled Metals.	1/4/2011
Regulation and Licensing Department - Construction Industries Division				
Filed	Type	Rule Number	Description	Canceled
12/28/2010	Amendment	14.5.1 NMAC	Amendment to 14.5.1 NMAC [2, 7 & 9], filed 5-27-2004.	1/5/2011
12/28/2010	Amendment	14.5.2 NMAC	Amendment to 14.5.2 NMAC [2, 8, 10 & 11], filed 5-27-2004.	1/5/2011
12/28/2010	Amendment	14.5.3 NMAC	Amendment to 14.5.3 NMAC [2 & 9], filed 5-27-2004.	1/5/2011
12/28/2010	Repeal	14.7.2 NMAC	Repealer; repeals 14.7.2 NMAC, filed 8-16-2007.	1/5/2011
12/28/2010	New Rule	14.7.2 NMAC*	Building Codes General - 2009 New Mexico Commercial Building Code.	1/5/2011
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12/28/2010	New Rule	14.7.3 NMAC*	Building Codes General - 2009 New Mexico Residential Building Code.	1/5/2011
12/28/2010	Repeal	14.7.4 NMAC	Repealer; repeals 14.7.4 NMAC, filed 8-16-2007.	1/5/2011
12/28/2010	New Rule	14.7.4 NMAC*	Building Codes General - 2009 New Mexico Earthen Building Materials Code.	1/5/2011
12/28/2010	Amendment	14.7.5 NMAC*	2009 New Mexico Non-Load Bearing Baled Straw Construction Building Standards. Amendment to 14.7.5 NMAC [2 & 8], filed 8-16-2007.	1/5/2011

12/28/2010	Repeal	14.7.6 NMAC	Repealer: repeals 14.7.6 NMAC. filed 8-16-2007.	1/5/2011
12/28/2010	New Rule	14.7.6 NMAC*	Building Codes General - 2009 New Mexico Energy Conservation Code.	1/5/2011
12/28/2010	Amendment	14.7.7 NMAC*	2009 New Mexico Existing Building Code. Amendment to 14.7.7 NMAC [2, 8, 9 & 11]. filed 8-16-2007.	1/5/2011
12/28/2010	Amendment	14.7.8 NMAC*	2009 New Mexico Historic Earthen Buildings. Amendment to 14.7.8 NMAC [2]. filed 8-16-2007.	1/5/2011
12/28/2010	Repeal	14.8.2 NMAC	Repealer: repeals 14.8.2 NMAC. filed 8-16-2007.	1/5/2011
12/28/2010	New Rule	14.8.2 NMAC*	Plumbing Codes - 2009 New Mexico Plumbing Code.	1/5/2011
12/28/2010	Repeal	14.9.2 NMAC	Repealer: repeals 14.9.2 NMAC, filed 8-16-2007.	1/5/2011
12/28/2010	New Rule	14.9.2 NMAC*	Mechanical Codes - 2009 New Mexico Mechanical Code.	1/5/2011
12/28/2010	Amendment	14.10.4 NMAC	Amendment to 14.10.4 NMAC [11, 14 & 15]. filed 1-24-2008.	1/5/2011
Water Quality Control Commission				
Filed	Type	Rule Number	Description	Canceled
12/23/2010	New Rule	20.6.6 NMAC	Water Quality - Ground Water Protection - Supplemental Permitting Requirements For Dairy Facilities.	1/4/2011
Council for Purchasing from Persons with Disabilities				
Filed	Type	Rule Number	Description	Canceled
12/30/2010	Amendment	2.40.5 NMAC	Amendment to 2.40.5 NMAC [7 thru 11, 14 & 15]. filed 3-15-2007.	1/4/2011