

FOR IMMEDIATE RELEASE
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**CITIZENS COALITION SUES GOVERNOR IN NM SUPREME COURT OVER
PRINTING OF NEW DAIRY RULE**

SANTA FE, N.M. – The Citizens Coalition filed suit today in New Mexico Supreme Court against the State Governor, Susana Martinez, the Secretary of the New Mexico Environment Department, and the New Mexico State Records Administrator, in response to the move to halt printing of the adopted dairy regulation in the State Register. Papers were served on the above offices this afternoon.

The Citizens Coalition, represented by the New Mexico Environmental Law Center (NMELC), petitioned the court for a writ of mandamus to compel the Governor and NMED Secretary, F. David Martin, to comply with existing law, and to compel Sandra Jaramillo of the State Records Center to codify and publish the dairy regulation in the State Register.

“The Governor and her staff cannot disregard the law,” said Jonathan Block, NMELC Staff Attorney. “When the Board adopts a rule and files it with the State Records Center, the law requires the rule to be published in the State Register. That’s how regulations become enforceable law. The Governor cannot circumvent the law or expand her powers by executive order.”

The Executive Order was put into effect just minutes after the Governor’s swearing in at midnight on January 1st, 2011. The Order imposes a ninety day hold on all “proposed or pending” rules.

However, the dairy rule had already been adopted by the Water Quality Control Commission (WQCC) in December 2010, making it a final rule and outside the scope of the Executive Order.

The petition filed in the Supreme Court today argues that neither the Governor nor the Environment Department has any authority to adopt, repeal or amend rules, and that the Governor and the Secretary have unconstitutionally usurped legislative power and interfered with the appellate jurisdiction of the Court of Appeals.

“The WQCC followed a well-established public process that allows for fair and careful evaluation of large amounts of technical data and the representation of many points of view”, said Rachel Conn, Policy Director at Amigos Bravos, a member of the Citizens Coalition. “This process was used to adopt the new dairy regulations and it must be used to remove an old regulation”, Conn continued. “The Governor is attempting to eliminate this open and public process.”

The petition requests an order compelling Ms. Jaramillo to codify and publish the rule in the State Register in accordance with law, an order compelling Secretary Martin to rescind the purported cancellation of the filing of the rule, and an order compelling the Governor and Secretary to refrain from further interfering with the lawful process by which rules are filed.

“We are just trying to make sure that the rule of law prevails,” said Jerry Nivens of Caballo Concerned Citizens, another member of the Coalition. “We assume that a former prosecutor would also seek to ensure that she and her staff follow the law.”

Background

In 2008, the New Mexico Environment Department (NMED) denied a dairy permit for the first time in the State’s history. This action (which was eventually reversed) galvanized the industry and they went to the Legislature seek to ensure that no dairy would ever again be denied a permit.

The 2009 Legislature passed SB206, which ordered NMED to develop industry-specific rules for the dairy and copper mining industries. Because of the complex and time-consuming nature of such an effort, NMED was given permission to do one set of regulations at a time; dairy went first.

NMED began holding public meetings in dairy counties, primarily in eastern New Mexico. The industry complained that NMED was moving too fast and that they needed their experts at the meetings. NMED said experts weren’t needed yet because they were seeking comment from residents and operators in dairy country.

In Summer 2009, NMED issued a preliminary draft regulation. The dairy industry complained and NMED set up a stakeholder process. Stakeholders included NMED staff, representatives from the dairy industry, and members of the Citizens Coalition. The meetings went on for several months and resulted in significant concessions to industry. Nevertheless, industry still complained about key portions of the regulations involving monitoring wells and synthetic liners, even though these represent standard practice on the majority of dairies in New Mexico.

After several more drafts, a final draft regulation went to the Water Quality Control Commission (WQCC). Industry and the Citizens Coalition presented their recommended changes as well. All parties submitted substantial amounts of technical documentation to the WQCC. The WQCC held several weeks of public meetings involving public testimony as well as expert witness testimony and cross-examination of experts by all parties.

In December 2010, the WQCC adopted a final regulation, which incorporated some but not all of the changes suggested by industry and the Citizens Coalition. The adopted regulation, along with the proposed Statement of Reasons (the legal and technical basis for approval), were sent to the State Records Office for printing, at which time they would go into effect.

Members of the Citizens Coalition are:

- Caballo Concerned Citizens
- Citizens For Dairy Reform
- Rio Valle Concerned Citizens
- Rio Grand Chapter - Sierra Club
- Food And Water Watch
- Amigos Bravos

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