

**Brooks, David K., EMNRD**

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**From:** Altomare, Mikal, EMNRD  
**Sent:** Thursday, April 16, 2009 1:18 PM  
**To:** Brooks, David K., EMNRD  
**Cc:** Chavez, Carl J, EMNRD; Sanchez, Daniel J., EMNRD; Fesmire, Mark, EMNRD; VonGonten, Glenn, EMNRD; 'Ocean Munds-Dry'; damon@americulture.com; Damon Seawright  
**Subject:** RE: Case No. 14246- Corrected/Clarified Draft Discharge Permit regarding Raser/Los Lobos - GT001

*Examiner Brooks,*

*Once again I must raise an objection to the most recent submission made by Mr. Seawright, which again contains substantive purported (and contested) evidentiary material, submitted after the close of the record. I respectfully request that this, and the previous submission made by Americulture, be excluded from the administrative record as submissions after the closure of the record, and that the parties be formally instructed that no further submissions be made regarding this matter.*

*Thank you,*

*Mikal Altomare*

*OCD Attorney*



Mikal M. Altomare

Assistant General Counsel

Oil Conservation Division

Energy, Minerals & Natural Resources Department

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Santa Fe, NM 87505

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[mikal.altomare@state.nm.us](mailto:mikal.altomare@state.nm.us)

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**From:** Damon Seawright [mailto:dseawright@gmail.com]

**Sent:** Thursday, April 16, 2009 1:11 PM

**To:** Altomare, Mikal, EMNRD; Brooks, David K., EMNRD

**Cc:** Chavez, Carl J, EMNRD; Sanchez, Daniel J., EMNRD; Fesmire, Mark, EMNRD; VonGonten, Glenn, EMNRD; 'Ocean Munds-Dry'; damon@americulture.com

**Subject:** RE: Case No. 14246- Corrected/Clarified Draft Discharge Permit regarding Raser/Los Lobos - GT001

Mr. Examiner and Parties,

AmeriCulture respectfully maintains that its submission is valid and should be included in the administrative record based on the following:

- The submission embodies issues largely brought forth through testimony during the April 7<sup>th</sup> hearing. On more than one occasion during cross-examination, Carl Chavez stated under oath that the OCD would consider the inclusion of certain requirements in the permit. Given these assurances brought forth during testimony, AmeriCulture expected to receive a modified draft permit. From what we have observed since the hearing is that the OCD has no intention of considering said requirements and is simply denominating the April 10<sup>th</sup> version of the permit as a "cleaned-up" version of the April 3<sup>rd</sup> version.

- AmeriCulture did not have sufficient time to study and provide comments on the draft permit, having only received the draft permit four days prior to the hearing. AmeriCulture and the general public are entitled to a 30 day public comment period, which we were not afforded. The version of the permit found at the link listed in the Public Notice bears little resemblance to the April 3<sup>rd</sup> or the April 10<sup>th</sup> version of the draft permit. Therefore, AmeriCulture was not afforded its rightful opportunity to review and comment on the content of the permit. During my April 10<sup>th</sup> conversation with Ms. Altimare, she referenced a brine well emergency in Eastern New Mexico as having played a role in the lateness of the draft permit. While this event may have legitimately delayed the production of the draft permit for AmeriCulture's review, we do not accept this unforeseen circumstance as a valid reason to infringe upon our statutory right to review, and provide comment on, the draft permit.
- The existing application is not administratively complete. In order to be administratively complete, the location of the wells must be identified. The purported date of determination of administrative completeness, May 28<sup>th</sup>, 2008, pre-dated the new and dramatically different well locations by about four months. AmeriCulture was told on February 26<sup>th</sup>, 2009 during a phone conversation with Carl Chavez that there would be a re-determination of administrative completeness after the (then) upcoming hearing and that there would be a final hearing after that (a position he later retracted shortly before the April 7<sup>th</sup> hearing). AmeriCulture may have done things quite differently had we not been told this. During testimony, Carl referenced flexibility in the re-siting of wells. In reality, the referenced flexibility is to occur *after* the granting of a permit, not *before* a draft permit is written.
- The existing application was not properly noticed. During testimony, Carl Chavez indicated that he was unaware that there has *never* been a 2 feet by 3 feet posting of the public notice (containing the new injection well locations) posted at the site as required by NMAC 20.6.2.3108.B(1). The OCD has simply overlooked this requirement, though having been made aware of it during testimony. According to Subsection B of the same section, the application is to provide the department proof of notice. It is impossible for this statutory step to have been satisfied given that no posting was ever made for the current injection well locations.
- According to NMAC 20.6.2.3109, *any* post hearing submissions are to be included in the administrative record.
- During testimony by Mr. Hayter, it was determined that Raser intends to construct an injection well with a completion depth short of confining cap rock to "kill too birds with one stone" – shoring up AmeriCulture's water table and injecting spent effluent. As brought forth in testimony, this strategy *necessitates* the hydraulic connection of vulnerable ground water to chemically contaminated power plant effluent. This represents an egregious violation of the Water Quality Act and the lack of inclusion of AmeriCulture's concerns brought forth through the expert testimony of James Witcher, in the form of additional permit requirements, represents a disregard for OCD's obligation to protect regional ground waters.
- Just as Ms. Altimare argues that AmeriCulture did not have leave to submit additional evidence, we were not informed that the OCD had been granted leave to submit its draft permit beyond the administrative record deadline.

AmeriCulture is simply seeking the opportunity to provide comments regarding the draft permit. Neither AmeriCulture, nor the public, were given their entitled time period to review the draft permit, having received it just four days before the hearing. Ms. Altimare's objection represents a gross double standard: a) the statutory requirements for posting and administrative completeness are being side stepped; b) the statutory obligation that "any post hearing submissions" be included in the administrative record is being ignored; and c) AmeriCulture's statutory comment period of "at least 30 days" is being denied. Meanwhile, a closing of the administrative record (the timeline of which OCD itself was unable to meet), not required by statute, is being argued to prevent comments intended to protect ground waters from being considered in the granting of the application.

AmeriCulture respectfully asks that its previous electronic submission, dated April 10<sup>th</sup>, 2009, be entered into the administrative record.

Respectfully Yours,

Damon Seawright  
President  
AmeriCulture, Inc.

**From:** Altomare, Mikal, EMNRD [mailto:Mikal.Altomare@state.nm.us]  
**Sent:** Tuesday, April 14, 2009 9:16 AM  
**To:** Brooks, David K., EMNRD  
**Cc:** Chavez, Carl J, EMNRD; Sanchez, Daniel J., EMNRD; Fesmire, Mark, EMNRD; VonGonten, Glenn, EMNRD; Damon Seawright; Ocean Munds-Dry; damon@americulture.com  
**Subject:** RE: Case No. 14246- Corrected/Clarified Draft Discharge Permit regarding Raser/Los Lobos - GT001  
**Importance:** High

Mr. Examiner and parties –

The Division respectfully objects to the submission made electronically by Mr. Seawright/Americulture as referenced below, on April 10, 2009 on the basis that the administrative record was closed to evidence at the close of the hearing with the sole exception of the submission of the corrected/updated version of the draft permit for review and consideration by the Examiner. Mr. Seawright did not request, and was not granted leave to submit additional evidence or comment subsequent to the close of the hearing on April 7, 2009, and on this basis, the OCD would object to the April 10, 2009 submission from Americulture becoming part of the administrative record in this matter.

Sincerely,  
Mikal Altomare  
OCD Attorney

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Mikal M. Altomare

Assistant General Counsel  
Oil Conservation Division  
Energy, Minerals & Natural Resources Department  
1220 South St. Francis Drive  
Santa Fe, NM 87505  
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**From:** Damon Seawright [mailto:damon@vtc.net]  
**Sent:** Friday, April 10, 2009 10:26 PM  
**To:** Altomare, Mikal, EMNRD; Brooks, David K., EMNRD; 'Ocean Munds-Dry'; damon@americulture.com; Jeffrey Harris  
**Cc:** Chavez, Carl J, EMNRD; Sanchez, Daniel J., EMNRD; Fesmire, Mark, EMNRD; VonGonten, Glenn, EMNRD; 'Gary Seawright'  
**Subject:** RE: Case No. 14246- Corrected/Clarified Draft Discharge Permit regarding Raser/Los Lobos - GT001

Ms. Altomare,

Please find attached a post hearing submission by AmeriCulture.

Sincerely,

Damon Seawright  
AmeriCulture, Inc.

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Sincerely,  
Mikal Altomare  
OCD Attorney



Mikal M. Altomare

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Sincerely,

Damon Seawright  
AmeriCulture, Inc.

**From:** Altomare, Mikal, EMNRD [mailto:Mikal.Altomare@state.nm.us]  
**Sent:** Friday, April 10, 2009 10:37 AM  
**To:** Brooks, David K., EMNRD; Ocean Munds-Dry; damon@vtc.net; damon@americulture.com  
**Cc:** Chavez, Carl J, EMNRD; Sanchez, Daniel J., EMNRD; Fesmire, Mark, EMNRD; VonGonten, Glenn, EMNRD  
**Subject:** Case No. 14246- Corrected/Clarified Draft Discharge Permit regarding Raser/Los Lobos - GT001

Examiner Brooks, Ms. Munds-Dry and Mr. Seawright,

Please find attached (in PDF format) the following documents:

1. Corrected/Clarified Draft Discharge Permit for the above-referenced case in redlined/tracked changes format, reflecting the corrections/clarifications made since the last draft, and
2. The same Corrected/Clarified Draft Discharge Permit in **CLEAN** form, without the redlined/tracked changes.

Please advise if the attachments do not transmit properly or you are unable to open them for some reason.

Sincerely,

Mikal Altomare

<<RaserGT-001-4-10-2009\_permitdraftCLEAN.pdf>> <<RaserGT-001-4-10-2009\_permitdraftREDLINE.pdf>>

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