

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In The Matter Of:

4 ADEQ
5 Air Quality Permit No. 55223
6 Rosemont Copper Project

7 Place ID: 135845

No. 13A-A006-DEQ
No. 13A-A007-DEQ
No. 13A-A010-DEQ

8 **CASE MANAGEMENT ORDER No. 14**

9 Granting Rosemont's Motion for Leave to
10 File

11 Denying ADEQ's Motion in Limine
12 Regarding Misael Cabrera

13 Denying Rosemont's Motion in Limine

14 Denying ADEQ's Motion in Limine
15 Regarding Dr. Fisher's Supplemental
16 Witnesses

17 Granting SSSR's Motion for Leave to File

18 Mr. Zeagler's Request for Clarification

19 Establishing Supplemental Filing Deadlines
20

21 **Rosemont's Motion for Leave to File**

22 On July 1, 2013, Rosemont filed a Motion requesting that it be allowed to file
23 supplemental documents and witness lists after reviewing the other parties' Prehearing
24 Briefs. SSSR filed a Response stating that it had no objection. No other party filed a
25 Response.

26 Rosemont stated that if necessary, it would file the supplemental material on
27 July 8, 2013, which was before the deadline for other parties to respond to the
28 Rosemont's Motion. Rosemont did not file any supplemental material, but the ALJ does
29 not have sufficient information to determine whether Rosemont did not find it
30 appropriate to file or whether it was waiting for the ALJ to issue a ruling.

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2 In other pending Motions, Rosemont and ADEQ have argued that certain
3 Appellants have not adequately disclosed their witness's anticipated testimony.
4 Considering the pending Motions collectively, it is appropriate to allow the parties an
5 opportunity to supplement their existing filings.

6 Rosemont may make a supplemental filing addressing issues it believes
7 Appellants did not adequately describe prior to submission of their Prehearing Briefs.
8 All other parties will then be given an opportunity to file any objections to Rosemont's
9 filing.

10 **IT IS ORDERED** that on or before July 18, 2013, Rosemont may make a
11 supplemental filing addressing issues, if any, that Appellants did not address in detail
12 prior to the submission of Prehearing Briefs;

13 **IT IS FURTHER ORDERED** on or before July 22, 2013, the other parties may
14 file any objections to Rosemont's supplemental filing.

15 **ADEQ's Motion in Limine Regarding Misael Cabrera**

16 ADEQ argues that Mr. Cabrera's testimony should be excluded because he had
17 no involvement in ADEQ's administrative review and issuance of the Permit, and
18 because Mr. Zeagler did not provide a summary of Mr. Cabrera's proposed testimony.

19 Mr. Zeagler filed a Response arguing that he did disclose Mr. Cabrera's
20 proposed testimony, which relates to AERMODO modeling procedures, and that this
21 information is related to an issue he has raised on appeal.

22 The relevance of evidence is best considered during the hearing, consequently
23 ADEQ's Motion in Limine is denied.

24 Mr. Zeagler's witness list, however, does not comply with Case Management
25 Order No. 10, because he did not provide a fair statement of each witness's testimony.
26 Instead, Mr. Zeagler provided only a listing of witnesses and a listing of issues, with the
27 import being that all witnesses will testify on all issues.¹

28 Considering the other pending Motions, it is appropriate to allow Mr. Zeagler the
29 opportunity to provide the required information.
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¹ The parties are reminded that needless cumulative evidence may be excluded. A.R.S. § 41-1092.07(D).

1 **IT IS ORDERED** that on or before July 18, 2013, Mr. Zeagler must provide a fair
summary of each witness's expected testimony;

2 **IT IS FURTHER ORDERED** that if Mr. Zeagler does not provide the required
3 information, his witnesses will not be allowed to testify;²

4 **IT IS FURTHER ORDERED** on or before July 22, 2013, the other parties may
5 file any objections to Mr. Zeagler's supplemental filing.

6 **Rosemont's Motion in Limine**

7 Mr. Zeagler

8 Rosemont argues that Mr. Zeagler should be excluded from the hearing because
9 he did not file a Prehearing Brief. Rosemont argues that such a filing was mandatory
10 based on discussion at the prehearing conference, but does not cite any portion of the
11 audio record to support its argument. Alternatively, Rosemont argues that Mr. Zeagler's
12 evidence should be limited to issues raised in his public comments and notice of
13 appeal.

14 In his Response, Mr. Zeagler argues Rosemont's Motion should be disregarded
15 because it was filed after the deadline. Mr. Zeagler also filed a Request for Clarification
16 that is considered as a Supplemental Response.

17 Although Rosemont's Motion was filed after the deadline, it could not have been
18 filed before that date because that was also the deadline for filing Prehearing Briefs.
19 The ALJ's intention was to allow the parties to file Prehearing Briefs, but not to require
20 them. Consequently, without a specific citation to the audio record to show that filing
21 was mandatory, Rosemont's Motion is denied. The issues for hearing are however
22 limited to those issues raised in the Appellants' comments.³ See A.R.S. § 41-
23 1092.03(B).

24 **IT IS ORDERED** denying Rosemont's Motion in Limine regarding Mr. Zeagler.

25 SSSR

26 Rosemont argues that evidence related to alternatives cited in the Forest
27 Service Environmental Impact Statement ("EIS") should be excluded because these are
28 outside the scope of the hearing and are not relevant to this matter. SSSR filed a
29 Response asserting that the EIS information is relevant to its Issue 6. Rosemont's
30

² Or, in cases where other parties have also named these witnesses, Mr. Zeagler's examination will be limited to the issues raised by the other parties.

³ It appears that neither Mr. Zeagler's nor Dr. Fisher's comments have been listed as proposed exhibits.

1 argument that the EIS is not relevant is best considered at the hearing. Consequently,
2 Rosemont's Motion in Limine is denied.

3 Rosemont also argues that SSSR should be required to provide more
4 information related to Dr. Hart's calculations. Rosemont asserts that it is "entitled to
5 notice and review of Dr. Hart's alternate calculations prior to the hearing," but it
6 provides no legal authority to support this assertion.

7 SSSR's Response shows that Dr. Hart has not yet done any calculations.

8 Rosemont has not demonstrated that SSSR must provide any additional
9 information relating to Dr. Hart's proposed testimony.

10 **IT IS ORDERED** denying Rosemont's Motion in Limine regarding SSSR.

11 Dr. Fisher

12 Rosemont argues that in his Prehearing Brief Dr. Fisher has raised for the first
13 time a claim that ADEQ's decision was based on political pressure (i.e., that this claim
14 was not raised in Dr. Fisher's comments).

15 In Response, Dr. Fisher argues that this evidence is relevant to the issues for
16 hearing and that Rosemont presented no authority to show that "newly discovered
17 evidence" that "could not have been stated in Appellant's comments or notice of
18 appeal" should be excluded.

19 The relevance of evidence is best considered at the hearing. Consequently,
20 Rosemont's Motion is denied. The parties are advised however, that the issues for
21 hearing are limited to those raised in Appellants' comments. See A.R.S. § 41-
22 1092.03(B).

23 **IT IS ORDERED** denying Rosemont's Motion in Limine regarding Dr. Fisher.

24 **ADEQ's Motion in Limine Regarding Dr. Fisher's Supplemental Witnesses**

25 ADEQ argues that Dr. Fisher's supplemental witnesses should be excluded
26 because he has not demonstrated that these witnesses have relevant evidence. ADEQ
27 also argues that Dr. Fisher did not comply with Case Management Order No. 10
28 because he did not provide a summary of each witness's proposed testimony.

29 Dr. Fisher filed a Response asserting that it "self-evident" that these witnesses'
30 testimony "was tied directly" to his supplemental exhibits. Dr. Fisher also argues that
the proposed testimony is relevant to his argument that political involvement and

1 political interference were a factor in ADEQ's deliberations related to the Rosemont
2 Mine.

3 Dr. Fisher has not complied with the requirement that he provide a fair summary
4 of each witness's proposed testimony.

5 **IT IS ORDERED** that on or before July 18, 2013, Dr. Fisher must provide a fair
6 summary of each witness's proposed testimony;

7 **IT IS FURTHER ORDERED** that if Dr. Fisher does not provide the required
8 information, his witnesses will not be allowed to testify;⁴

9 **IT IS FURTHER ORDERED** on or before July 22, 2013, the other parties may
10 file any objections to Dr. Fisher's supplemental filing.

11 **ADEQ's Motions in Limine Regarding Trevor Baggione and Robert Arpino**

12 ADEQ filed Motions in Limine regarding Trevor Baggione and Robert Arpino.
13 SSSR filed a Response stating that it had no objection to those Motions. No other
14 Responses were filed.

15 **IT IS ORDERED** granting ADEQ's Motions in Limine regarding Trevor Baggione
16 and Robert Arpino.

17 **SSSR's Leave to File**

18 SSSR requests leave to file supplemental exhibits related to ADEQ's meeting
19 notes.

20 **IT IS ORDERED** that on or before July 18, 2013, SSSR may file its proposed
21 exhibits;

22 **IT IS FURTHER ORDERED** on or before July 22, 2013, the other parties may
23 file any objections to SSSR's supplemental filing.

24 **Mr. Zeagler's Request for Clarification**

25 Mr. Zeagler filed a Request for Clarification that was considered as a
26 Supplemental Response to Rosemont's Motion in Limine. Because the ALJ has denied
27 that Motion in Limine and the deadline for filing Prehearing Briefs has passed, Mr.
28 Zeagler's Request is moot.⁵

29 Done this day: July 16, 2013.
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⁴ Or, in cases where other parties have also named these witnesses, Dr. Fisher's examination will be limited to the issues raised by the other parties.

⁵ The ALJ does not find it necessary to determine whether Mr. Zeagler's Request should be considered a request for legal advice.

/s/ Thomas Shedden
Thomas Shedden
Administrative Law Judge

Copy e-mailed this 16th day of July, 2013 to all persons on the approved mailing list:

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<https://portal.azoah.com/oedf/documents/13A-A006-DEQ/index.html>

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