

NEW MEXICO GROUND WATER ASSOCIATION ANTITRUST COMPLIANCE POLICY AND GUIDELINES

Adopted by the NMGWA Board on May 9, 2008

One of the major goals of the New Mexico Ground Water Association (“NMGWA”) is to create an environment where New Mexico ground water industry members, well owners and others with ground water interests can meet and share information, with the understanding that all NMGWA activities will be conducted in accordance with federal antitrust laws. The NMGWA recognizes the importance of antitrust laws to preserve and foster competition, and it is committed to a policy that requires strict compliance with these laws. The NMGWA Board of Directors, therefore, has adopted this Antitrust Compliance Policy and Guidelines. The purpose of this document is to educate NMGWA members about federal antitrust laws, which are applicable to trade association activities, and to provide a basic guide to assist the NMGWA board members, officers, staff and members in conducting NMGWA-sponsored meetings and other activities in compliance with federal antitrust laws.

ANTITRUST POLICY

It is the policy of the NMGWA to strictly comply with the antitrust laws of the United States. Because NMGWA members are competitors, there is a risk that communications between members may constitute unlawful competitive behavior in violation of federal antitrust laws. To ensure that antitrust laws are not violated, and that there is no appearance of anticompetitive activity, all NMGWA board members, officers, staff and members must familiarize themselves with the NMGWA Antitrust Guidelines set forth below, and must agree to conduct all NMGWA-sponsored meetings and activities, including social gatherings, in strict accordance with the Antitrust Guidelines. The Antitrust Guidelines are intended to provide basic guidance about antitrust laws that may be applicable to NMGWA-sponsored activities—they do not address every potential violation of antitrust laws. Legal counsel should be consulted concerning specific situations raising antitrust implications.

ANTITRUST GUIDELINES

Basic Description of Antitrust Laws The objective of federal antitrust laws is to foster and preserve competition. Because a trade association is a group of competitors that gathers together to pursue a common business purpose and to share information about the way they conduct their business, there is a risk of anti-competitive behavior. Therefore, a trade association is subject to strict scrutiny under the antitrust laws and must act carefully to ensure its activities do not create a situation that could be construed as a violation of the antitrust laws.

Federal antitrust law is established by several federal statutes, and the two statutes most applicable to a trade association are the Sherman Act and the Federal Trade Commission Act. Section 1 of the Sherman Act prohibits all contracts, combinations or conspiracies that restrain trade, such as price fixing, restricting production, boycotts, and division of customers or territories. 15 U.S.C. § 1. Because a trade association is, by definition, a “combination” of competitors, it provides the perfect setting for an antitrust violation.

Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, prohibits “unfair methods of competition in or affecting commerce.” The restriction on unfair competition applies to illegal actions committed by a single individual or company and to joint acts between competitors. The Federal Trade Commission has broad discretion to determine what constitutes unfair competition.

Antitrust compliance is important because trade association members who violate the law may be convicted of a felony, receive a jail sentence of up to 10 years, or at the very least be assessed civil fines and penalties of up to \$100 million for a corporation or \$1 million for an individual. See Antitrust Criminal Penalty Enhancement and Reform Act of 2004.

Under court interpretations of the Sherman Act, certain activities are so plainly anti-competitive that courts have labeled them “per-se illegal,” meaning they are always illegal, regardless of the underlying circumstances. Per-se violations of the Sherman Act that are common to trade association activities but are strictly forbidden include:

1. **Price Fixing.** Any agreement among competitors that will affect the price to be charged for a product or service can be considered price fixing, including credit terms, discounts and shipping charges.
2. **Bid Rigging.** Sharing information with a competitor, agreeing with a competitor not to bid on a project or any other bid activity with the intent to reduce competition and ensure higher prices for industry members constitutes bid rigging.
3. **Customer Allocation.** Agreements to divide or allocate markets or customers, as well as agreements not to pursue a competitor’s customer, are per-se illegal.
4. **Territorial Market Allocation.** Any agreement to divide customers or not to enter a market based on geographic location is per-se illegal.
5. **Group Boycotts.** Competitors may not agree not to do business with a particular customer or to take any sort of joint action against a competitor.

Other types of activities may be illegal, depending on the circumstances. Whether these activities are illegal depends on a court’s analysis of the purpose of the restraint and its effect on competition. If the activity is found to constitute an unreasonable restraint of trade, it is illegal:

1. **Standards Setting.** Product standard setting by a trade association generally is legal if it improves product quality or increases safety. However, all interested parties should have an opportunity to participate in the development of the standard. Standards may be illegal if they harm an existing or potential competitor or eliminate certain products or competitors from the marketplace.
2. **Certification.** A trade association can certify products or the expertise of its members only if granting or denying certification does not limit or restrain competition.
3. **Information Exchange.** Sharing non-public information about pricing, marketing, material costs, and other matters may be illegal if it discloses pricing strategies and evidences an attempt to stabilize prices or inhibit competition.
4. **Lobbying.** Certain types of lobbying activities by competitors are illegal. It is important to obtain legal advice concerning lobbying campaigns to ensure compliance with antitrust laws.

ANTITRUST CHECKLIST—PROHIBITED ACTIVITIES

This checklist identifies basic antitrust principles to guide NMGWA board members, officers, staff and members in conducting NMGWA-sponsored meetings and activities, including social gatherings. Trade association gatherings necessarily involve communication and collaboration among competitors. Therefore, such activities must be undertaken with extreme care to avoid even the appearance of an anticompetitive purpose or intent. This checklist does not provide a comprehensive list of all prohibited activities. The NMGWA should contact counsel concerning specific situations requiring interpretation of, or advice about, federal antitrust law.

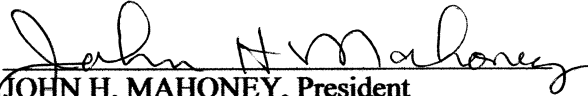
1. Do not discuss or exchange information with actual or potential competitors regarding any of the following matters at NMGWA-sponsored meetings, activities or social gatherings:
 - a. Your company's current or future prices, anticipated price changes, profit levels, price differentials, mark-ups, discounts, warranties, allowances, credit terms, costs, production levels, production plans, capacity, sales, etc.
 - b. Plans concerning the design, production, distribution or marketing of particular products or services, including proposed territories or customers.
 - c. Limitation of sales to particular territories, customers or classes of customers or allocation of markets in general.
 - d. Refusal to sell to or purchase from, or termination or modification of sales or purchase arrangements with, customers, distributors, or other third parties.
 - e. Limiting or eliminating competition in any way, or efforts to create a monopoly.
2. Do not disparage other companies or their products or services. Do not agree to exclude or discriminate against any company.
3. Do not discuss or exchange information regarding the above matters during social gatherings incidental to NMGWA-sponsored meetings or activities, even in jest.
4. Do not meet without NMGWA officers or staff present.
5. Do not engage in "off the record" conversations concerning sensitive or confidential matters about how your company competes or does business.

ANTI-TRUST CHECKLIST—REQUIRED ACTIVITIES

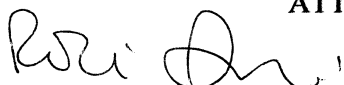
1. All NMGWA meetings must follow a pre-circulated agenda. NMGWA staff will review the agenda before the meeting to determine whether any agenda item might raise antitrust issues and, if so, how to ensure discussion of the agenda item does not violate antitrust laws.
2. Avoid discussion of all matters not on the agenda for NMGWA meetings.
3. NMGWA members shall be reminded about the NMGWA Antitrust Compliance Policy and Guidelines at the beginning of each meeting.
4. Complete meeting minutes shall be prepared and kept for all meetings and should note that attendees were reminded about the NMGWA Antitrust Compliance Policy and Guidelines. The minutes must accurately reflect all matters discussed, and all actions taken, at the meeting.
5. Immediately protest any discussions or meeting activities that appear to violate the antitrust laws or the NMGWA Antitrust Compliance Policy and Guidelines. If the discussions continue, leave the meeting and advise NMGWA staff of the potentially illegal activities.

Each NMGWA board member, officer, staff member, individual member, or corporate member representative shall review this Antitrust Compliance Policy and Guidelines annually and sign and return the attached "Agreement to Comply with NMGWA Antitrust Compliance Policy and Guidelines" (the "Agreement") to the NMGWA Secretary. Each new NMGWA member shall sign the Agreement upon admission to, and as a condition of, membership, and annually thereafter.

PASSED, SIGNED, APPROVED AND ADOPTED BY THE GOVERNING BODY OF THE NEW MEXICO GROUND WATER ASSOCIATION on this 9th day of May, 2008.



JOHN H. MAHONEY, President
New Mexico Ground Water Association

ATTEST:


ROBIN IRWIN, Executive Secretary
New Mexico Ground Water Association

Agreement to Comply with NMGWA Antitrust Compliance Policy and Guidelines

Member Copy

The undersigned is an officer, board member, staff member, individual member or representative of a corporate member of the New Mexico Ground Water Association. The undersigned acknowledges receipt and review of the New Mexico Ground Water Association's May 9, 2008, Antitrust Compliance Policy and Guidelines and agrees to abide by them.

Member Name: _____

By: _____
(Signature)

Name: _____
(Printed)

Title (if company representative):

Date: _____

RETURN TO:
NMGWA
P.O. BOX 1556
BERNALILLO, NM 87004