

STATE OF NEW MEXICO  
BEFORE THE WATER QUALITY CONTROL COMMISSION



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)  
**In the Matter of:** )

**PROPOSED AMENDMENT** )  
**TO 20.6.2 NMAC (Dairy Rules)** )  
)  
)  
\_\_\_\_\_ )

No.: WQCC 09-13 (R)

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**NEW MEXICO ENVIRONMENT DEPARTMENT'S  
RESPONSE TO DIGCE'S MOTION TO DISMISS  
FOR VIOLATIONS OF SECTION 74-6-4(K) NMSA 1978**  
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The New Mexico Environment Department ("Department" or "NMED") hereby responds to the Dairy Industry Group for a Clean Environment's ("DIGCE") Motion to Dismiss for Violations of Section 74-6-4(K) NMSA 1978 ("Motion to Dismiss"). For the reasons stated below DIGCE's Motion to Dismiss should be denied.

**I. DIGCE AGREED TO THE RULE DEVELOPMENT SCHEDULE IT NOW  
ATTACKS.**

On July 14, 2009, the Department and DIGCE appeared before the Water Quality Control Commission ("Commission") each proposing schedules for the development of dairy rules. Please see the copy of the Commission's July 14, 2009 meeting minutes attached to this response as Exhibit 1. The Department proposed a schedule with a November 2009 hearing date. DIGCE's counsel, Mr. Anthony (T.J.) J. Trujillo, and Mr. Walter Bradley of Dairy Farmers of America, a constituent group of DIGCE, argued that DIGCE needed more time. Exhibit 1, p. 3.

The Department and DIGCE agreed to attempt to resolve any differences over the schedule during the Commission's lunch recess. Exhibit 1, p. 4. The Department and DIGCE met and successfully negotiated an agreed upon schedule, which moved the hearing date from November 2009 to March 9, 2010. Exhibit 1, p. 5. The Commission unanimously approved the agreed upon schedule. *Id.* The Commission's approved schedule is attached to this response as Exhibit 2.

DIGCE now moves to dismiss the entire rulemaking process despite agreeing to the schedule for the rulemaking before the Commission. Oddly, as grounds for its motion, DIGCE cites events and correspondence (DIGCE Exhibits 75, 76, 77 and 78) that predate the agreement reached on July 14, 2009. Apparently, DIGCE now attempts to disavow the agreement, stating in its motion that "NMED got the WQCC to approve a schedule after the fact for rule development activities." Motion to Dismiss, p. 1. This plainly ignores that DIGCE agreed to the schedule presented for the Commission's approval. Considering DIGCE's agreement to the schedule approved on July 14, 2009 and DIGCE's subsequent agreement<sup>1</sup> to establish a procedural order and scheduling order for this hearing, DIGCE's motion is spurious.

**II. THERE ARE NO VIOLATIONS OF SUBSECTION K OF NMSA 1978, § 74-6-4 (2009).**

**A. IT IS LEGALLY IMPOSSIBLE TO VIOLATE A LAW THAT IS NOT IN EFFECT.**

DIGCE's argument that the Department violated Subsection K of NMSA 1978, § 74-6-4 (2009) ("Subsection K") by conducting activities before Subsection K became law is absurd. "[T]he general rule is that statutes apply prospectively unless the Legislature manifests clear intent to the contrary." *Gallegos v. Pueblo of Tesuque*, 2002 -NMSC- 012, ¶ 33, 132 N.M. 207.

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<sup>1</sup> On January 14, 2010, the Department, DIGCE and the coalition of citizen and environmental groups submitted a joint motion to reschedule the hearing from March 9, 2010 to the hearing's current date of April 13, 2010. The joint motion is attached as Exhibit 3.

Subsection K does not indicate in any way that it applies retroactively, thus it must apply prospectively from its effective date of June 19, 2009.<sup>2</sup> Consequently, the fact that the Department undertook activities in anticipation of Subsection K becoming law cannot violate Subsection K. Thus, DIGCE's argument has no merit.

**B. DISCUSSION DRAFT AND PUBLIC MEETINGS WERE LEGAL AND APPROPRIATE.**

DIGCE complains that the Department issued a draft of rules and solicited public input before Subsection K became law. As discussed above this does not violate the law. It is true that on May 22, 2009, the Department issued a "discussion draft" to begin to educate the dairy industry and the public that the Water Quality Act ("WQA") had been amended<sup>3</sup> and to solicit public comment on the Department's ideas for an appropriate dairy rule. As Mr. William C. Olson testifies in NMED NOI Attachment 1 on page 9 this initial discussion draft was based upon existing standardized discharge permit conditions for dairies, guidance documents, and prior agreements that the Department had reached with the dairy industry. The Department held public meetings from June 1 through June 23, 2009 in communities in Hobbs, Clovis/Portales, Roswell, Mesquite and Los Lunas, to reach out to the public to inform them about the changes to the WQA, to present the Department's ideas for appropriate dairy rules, and to solicit input and comments.

The Department also sought input from the dairy industry as well. The Department invited all permittees of dairy facilities to separate meetings specifically for the dairy industry. The industry meetings were scheduled in Clovis/Portales, Roswell and Mesquite on the

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<sup>2</sup> Under Article 4, Section 23 of the New Mexico Constitution, statutes take effect 90 days after the legislative session in which they are passed.

<sup>3</sup> The governor signed Senate Bill 206 on April 7, 2009, ensuring that it would become law. See <http://www.sos.state.nm.us/09Bills/Chapter194.pdf>.

afternoons of the public meetings. The Department's presentation for these meetings was geared towards permittees. Similar to the public meetings, the purpose of the industry meetings was to inform the dairy industry of the changes to the WQA, to present the Department's ideas for appropriate dairy rules, and to engage the dairy industry in an early dialogue about potential rules. Rather than accepting the Department's invitation to begin a dialogue, DIGCE boycotted the meetings. *See* NMED NOI Exhibit WO-8.

No law prohibited the Department from reaching out to the public and to permittees in this way. In fact, the Department widely publicized its outreach efforts, including notices to interested legislators. Exhibit 4. Rather than applauding the Department's efforts to engage the public and permittees early in the process, DIGCE criticizes the Department, complaining that the Department held its first public meeting only two weeks after the Department issued its May 22, 2009 discussion draft. DIGCE Exhibit 74, p. 1. DIGCE complains that two weeks is insufficient time to analyze such a document. *Id.* However, the purpose of reaching out to the public shortly after the May 22, 2009 discussion draft was to *begin* a dialogue, not to conclude a process. DIGCE intentionally elected not to engage in the process. *See* NMED NOI Exhibit WO-8. To now complain that those early meetings did not afford DIGCE the opportunity to meaningfully participate when DIGCE boycotted the opportunity is nonsensical.

**C. ADVISORY COMMITTEE LAWFULLY ESTABLISHED.**

Lastly, DIGCE argues that the Department's establishment of an advisory committee violated Subsection K. The full text of Subsection K states,

[the commission] shall specify in regulations the measures to be taken to prevent water pollution and to monitor water quality. 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; (emphasis added)

Under Subsection K, the purpose of the advisory committee is to advise the constituent agency “on appropriate regulations.” This function and purpose of an advisory committee is consistent with the Department of the Environment Act at NMSA 1978, § 9-7A-10(A), which states,

"Advisory" means furnishing advice, gathering information, making recommendations and performing such other activities as may be instructed or delegated and as may be necessary to fulfill advisory functions or to comply with federal or private funding requirements and does not extend to administering a program or function or setting policy unless specified by law.

Thus, an advisory committee serves the constituent agency in internal processes. Here, Subsection K directs the Department to establish an advisory committee to solicit such internal advice. After the June 19, 2009 effective date of the amendments to the Water Quality Act, on June 22, 2009, the Department formally established the Dairy Discharge Regulations Advisory Committee under the authority of Subsection K, the Department of the Environment Act at NMSA 1978, § 9-7A-10 and the Executive Reorganization Act at NMSA 1978, § 9-1-9. *See* NMED NOI Exhibit WO-9.

DIGCE alleges that the Department’s establishment of the advisory committee before the Commission approved a schedule violated Subsection K. DIGCE misreads Subsection K. Subsection K directs the Commission to adopt dairy industry specific regulations. The Department’s role is to make a proposal of “appropriate regulations.” The Commission will take the proposals and evidence submitted by the Department, DIGCE, the Coalition of citizen and environmental groups, as well as the public input at the hearing and develop and adopt the rule.

The Department's internal activity to develop its proposal, namely the advisory committee, is not part of the Commission's process.

Finally, even if the Commission did have to approve the advisory committee schedule, it did so on July 14, 2009. The Commission's approved schedule included the Department's advisory committee schedule. That the Commission approved of the activity as the Department was conducting advisory committee meetings is irrelevant as Subsection K does not require prior approval of such an activity. In addition, regardless of that, DIGCE agreed to the Commission approved schedule which included the Department's advisory committee schedule.

### **III. DIGCE'S HAS BEEN AFFORDED ALL THE PROCESS THAT IS DUE.**

Unfortunately, DIGCE bases its due process complaint on a patently false statement. DIGCE's Motion to Dismiss relies on the rebuttal testimony of Mr. Alva Carter. DIGCE argues that its due process was violated because it was given insufficient notice and insufficient time to meaningfully participate and prepare for the Department's activities. Specifically, according to Mr. Carter, the Department scheduled its advisory committee with less than 48 hours notice to DIGCE. This is false.

On May 20, 2009, more than a month before the first advisory committee meeting, Ms. Marcy Leavitt, Water and Waste Management Division Director for the Department, emailed Mr. Walter Bradley of the Dairy Farmers of America ("DFA") and DIGCE with the Department's advisory committee composition. Exhibit 5. The advisory committee composition included four representatives from DIGCE (two for DFA and two for Dairy Producers of New Mexico). *Id.* On May 22, 2009, Ms. Leavitt emailed Ms. Sharon Lombardi of Dairy Producers of New Mexico ("DPNM") and Mr. Bradley of DFA, the constituent organizations of DIGCE, informing them of the immediate availability of the Department's May 22, 2009 discussion draft

and reiterating a previous verbal invitation to nominate representatives for the advisory committee that would meet in late June. Exhibit 6. DIGCE Exhibit 75, dated May 22, 2009, corroborates that DIGCE had been invited to participate in the advisory committee meetings. In DIGCE Exhibit 75, DIGCE was requesting a meeting with the Secretary (which was held on June 5). DIGCE Exhibit 75 states, “[u]ntil such a meeting occurs, DFA and DPNM are hesitant to nominate representatives to an advisory committee.” On May 28, 2009, in anticipation of the June 5 meeting between DIGCE and the Secretary, Ms. Leavitt emailed Mr. Bradley and provided an updated schedule of the Department’s activities, including the dates of the advisory committee meetings (June 26, July 8 and July 15). Exhibit 7.

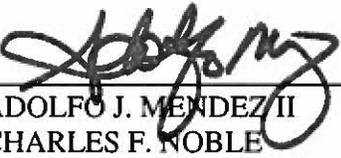
As of June 22, 2009, the date the advisory committee was formally established, only DIGCE had failed to name representatives to the advisory committee. *See* NMED NOI Exhibit WO-9. If Mr. Carter did not have notice until 48 hours before the first advisory committee this is certainly not because the Department had not informed DIGCE. Like with the public and permittee meetings, DIGCE attempts to fault the Department for its own choices not to engage in the process. Generally, due process only requires notice and the opportunity to participate. Here, as with the public and permittee meetings, DIGCE was afforded all due process.

#### **IV. CONCLUSION.**

For the above state reasons, the Department requests that the Hearing Officer deny DIGCE’s Motion to Dismiss.

Respectfully Submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT



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CERTIFICATE OF SERVICE

I hereby certify that a copy of this the New Mexico Environment Department's Response to DIGCE's Motion to Dismiss for Violations of Section 74-6-4(K) NMSA 1978 was served by e-mail on the following parties on April 9, 2010:

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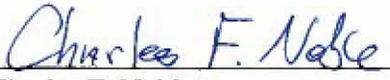
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**Constituent Agencies**

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

**New Mexico Water Quality Control Commission Meeting**

**July 14, 2009**

**9:00 a.m.**

**New Mexico State Capitol Building, Rm. 317**

**490 Old Santa Fe Trail**

**Santa Fe, New Mexico 87501**

**MEMBERS PRESENT:**

Jon Goldstein	NMED/Deputy Secretary
Cheryl Bada	State Parks Division
Larry Dominguez	Department of Agriculture
Howard Hutchinson	Soil and Water Conservation Commission
Brad Jones	Oil Conservation Division
Steve Glass	County of Bernalillo, Municipal/County Representative
Doug Bland	Bureau of Geology and Mineral Resources
Mike Sloane	Department of Game & Fish
Rolf I. Schmitt-Petersen	Office of the State Engineer (sitting in lieu of Greg Lewis)
Heidi Krapfl	Department of Health
Joseph Chavarria	Member-at-Large
Maxine Goad	Member-at-Large
Edward Vigil	Member-at-Large

**MEMBERS ABSENT:**

None

**OTHERS PRESENT:**

Bill Olson, NMED/GWB  
Glenn Saums, NMED/SWQB  
Pam Homer, NMED/SWQB

Abe Franklin, NMED/SWQB  
Rich Powell, NMED/SWQB  
Adolfo Mendez, NMED/OGC

Rick Schaap, Rockview Dairy  
Clinton D. Harden, NM State Senator  
Kirsten Schaap, Rockview Dairy  
Chet Wyant  
Megan Anderson, WELC  
Phillip Troost  
Stuart Butzier, Modrall Law Firm  
Loren Horton  
Mark Hiles, Peabody Energy  
Dean Van Damm  
Beverly Fikse  
Billy Rucker  
Mike D. Coffman, NMED/SWQB  
Jane Hughes  
Andrew Galloway  
Nick Gilbert  
Alice Visser, Parkland Dairy  
Gerry Greathouse  
Mike Stark  
John Dollins  
Tony Taunn  
Alva Carter, DIGCE  
Joyce Medina, NMED

Tim Amezun, Beetstra Family Dairy  
Bill Heather, Landmark Dairy  
Gerard Doldersum, Landmark Dairy  
Joseph Gonzales  
Leila Behnampour  
Jennifer Evans, Modrall Law Firm  
Jay Lazarus, Galisteo Geo Science  
Brian Shield, Amigos Bravos  
Mark A. Smith, NMEMNRD  
Gary Bonestroo  
Tara Bonestroo  
Kent R. Rousch  
Sara McGrath, NMED/GWB  
Eric Hall  
Tracy Hughes, NMED/General Counsel  
Bill Pearson, NMED/GWQ  
Loekje Visser, Parkland Dairy  
Eric Padilla  
Luke Woelber  
Sharon Lombarde  
Walter Bradley, Dairy Farmers of America  
Zachary Shandler, Asst. Atty. Gen.

The meeting was called to order by Mr. Goldstein at 9:05 a.m.

**Item 1. Roll Call:**

The Commission administrator took roll and noted a quorum was present.

The Chair welcomed Heidi Krapfl, new Commission member representing the NM Department of Health.

**Item 2. Approval of Agenda**

Mr. Goldstein noted that, as requested by the interested parties with respect to Item 7 A., approval of the schedule for the development of regulations applicable to discharges from dairy facilities as required by NMSA 1978, Section 74-6-4.K (2009) of the Water Quality Act, William Olson, NMED/GWQB; Adolfo Mendez, NMED/OGC and Item 7 B., proposed dairy schedule by Dairy Industry Group for a Clean Environment (DIGCE) in re: development of regulations applicable to discharges from dairy facilities, pursuant to Senate Bill 206, as amended, effective date June 19, 2009, DIGCE, Dalva L. Moellenberg, Esq., T. J. Trujillo, Esq.; Adolfo Mendez, NMED/OGC, Item 7, A. and B. would heard before Agenda Item 4.

**Action: Mr. Dominguez moved Commission adoption of the Agenda as amended. Mr. Hutchinson seconded. The motion passed unanimously.**

**Item 3. Approval of the meeting minutes of June 9, 2009.**

**Action: Mr. Glass moved Commission approval of the June 9, 2009 meeting minutes. Mr. Bland seconded. The motion passed unanimously.**

**Item 7. A. Approval of schedule for the development of regulations applicable to discharges from dairy facilities as required by NMSA 1978, Section 74-6-4 K (2009) of the Water Quality Act. William Olson, NMED/GWB; Adolfo Mendez, NMED/OGC.**

**B. Proposed dairy schedule by Dairy Industry Group for a Clean Environment (DIGCE) in re: development of regulations applicable to discharges from dairy facilities, pursuant to Senate Bill 206, as amended, effective date June 19, 2009. DIGCE, Dalva L. Moellenberg, Esq., T.J. Trujillo, Esq.; Adolfo Mendez, NMED/OGC.**

Mr. Shandler announced that Adrian Terry, Assistant Attorney General, would act as Commission counsel with respect to this agenda item.

A. Mr. Mendez introduced Bill Olson, Bureau Chief of NMED's Ground Water Bureau. Mr. Mendez and Mr. Olson presented to the Commission the Department's revised proposed schedule for development of dairy facility regulations. Mr. Mendez noted that while Senate Bill 206 directed the Department to adopt regulations with respect to the copper mining industry and the dairy industry, the proposed schedule relating to the adoption of regulations currently before the Commission related only to the dairy industry. He then presented the Commission with background processes that have already taken place, timelines and information relating to the revised future schedule for complying with the Department's understanding of the mandate of Senate Bill 206.

Mr. Goldstein stated that Messrs. Moellenberg and Trujillo would present their client's position with respect to the Department's proposed schedule and that presentation would be followed by public comment, if any.

B. Mr. Trujillo, representing DIGCE, introduced Walter Bradley, representing the Dairy Farmers of America, a constituent group to DIGCE, Alva Carter, Chair of DIGCE and Sharon Lombarde, who is with the Dairy Producers of New Mexico. Mr. Trujillo gave the Commission a very brief background on the groups that have united to address the issue of new dairy regulations. He went on to set forth the industry position with respect to the adoption of new regulations.

Mr. Bradley then discussed the industry position relating to the need for additional time to assure that the regulations are well thought out and that the industry has the opportunity to employ individuals knowledgeable in the field to assess and report their findings regarding the proposed content of new regulations as well as make recommendations relating to that content.

Senator Harden, the sponsor of Senate Bill 206, briefly discussed the bill as well as its impact on the dairy industry and on the State's water resources.

Mr. Goldstein asked for public comments from the audience. Several interested individuals expressed their respective positions relating to new regulations and the need for them to be balanced and fair, taking into consideration the public good as well as industry interests.

The Commission then conducted a lengthy discussion with the parties relating to the regulation development as well as a schedule that would be workable for all involved.

After discussion, it was agreed that the Commission would recess for lunch and the parties would meet independently to attempt to work out their differences relating to a proposed schedule for the development of the dairy regulations.

Following the lunch recess, the Chair announced that since the parties to the dairy regulation issue were still conferring, the Commission would move to Item 6. on today's agenda.

**Item 6. Appointment by the Commission of two regular positions on the Utility Operators Certification Board. Mike Coffman, NMED/SWQB.**

Mr. Coffman proposed that the Commission appoint Albert Mendez and Eric Hall to the Utility Operators Certification Board.

**Action: Mr. Glass moved that the Commission appoint Messrs. Mendez and Hall to the Utility Operators Certification Board. Mr. Hutchinson seconded. The motion passed unanimously.**

The Chair announced that the next matter to be heard by the Commission would be Item 4, Adoption of Statement of Reasons in WQCC 07-11 (A), Alta Vista Subdivision. Presented by Zachary Shandler, Asst. Atty General, Commission Counsel.

**Item 4. Adoption of Statement of Reasons in WQCC 07-11 (A), Alta Vista Subdivision. Presented by Zachary Shandler, Asst. Atty General, Commission Counsel.**

Commission discussion was followed by requests for minor changes in the text of the Final Order Partially Sustaining and Partially Modifying NMED Secretary's Permitting Action in WQCC 07-11 (A).

There was also a discussion among Commission members relating to voting issues with respect to the Final Order.

**Action: Mr. Sloane moved Commission adoption of the Final Order Partially Sustaining and Partially Modifying NMED Secretary's Permitting Action in WQCC 07-11 (A) as amended. Mr. Chavarria seconded.**

The Chair requested a roll-call vote.

**Roll Call Vote:**

Mr. Chavarria	yes
Mr. Schmitt-Petersen	abstain
Mr. Vigil	yes
Mr. Glass	yes
Ms. Bada	no
Ms. Goad	yes
Mr. Dominguez	yes
Mr. Sloane	yes
Mr. Bland	abstain
Mr. Jones	yes
Ms. Krapfl	abstain
Mr. Hutchinson	no
Mr. Goldstein	yes

**The motion passed.**

Reconvening of Commission discussion in re:

**Item 7.     A. Approval of schedule for the development of regulations applicable to discharges from dairy facilities as required by NMSA 1978, Section 74-6-4 K (2009) of the Water Quality Act. William Olson, NMED/GWB; Adolfo Mendez, NMED/OGC.**

**B. Proposed dairy schedule by Dairy Industry Group for a Clean Environment (DIGCE) in re: development of regulations applicable to discharges from dairy facilities, pursuant to Senate Bill 206, as amended, effective date June 19, 2009. DIGCE, Dalva L. Moellenberg, Esq., T.J. Trujillo, Esq.; Adolfo Mendez, NMED/OGC.**

Mr. Mendez appeared for the parties and set out the revised schedule that had been agreed upon. The schedule culminated in the public hearing before the Commission taking place on March 9, 2010 followed by publication of the revised regulation booklets August 31, 2010.

There was a brief discussion relating to Commission appointment of a Hearing Officer to act in this matter.

**Action:     Mr. Sloane moved that the Commission approve NMED's revised Proposed Schedule for Development of Dairy Facility Regulations and further that the Commission Chair act as Hearing Officer. Mr. Dominguez seconded. The motion passed unanimously.**

The Chair announced agenda Item 5., Presentation to the Commission and request for approval of Nonpoint Source Mgt. Program Planning Document. Abe Franklin, NMED/SWQB.

**Item 5. Presentation to the Commission and request for approval of Nonpoint Source Mgt. Program Planning Document. Abe Franklin, NMED/SWQB.**

There was Commission discussion with Mr. Franklin regarding various aspects of the planning document.

**Action: Mr. Hutchinson moved Commission approval of the Nonpoint Source Mgt. Program Planning Document 2009, as amended. Mr. Glass seconded. The motion passed unanimously.**

The Chair then announced that in his view the Motion to Dismiss, contained in agenda Item 8., should be the first issue to be dealt with by the Commission with respect to the next item.

**Item 8. Petition in re: Peabody Energy's Petition for Review or Clarification of NMED Directive to MMD, WQCC 08-15 (A). Consideration and decision of Amigos Bravos' Motion to Intervene; Peabody Energy's Motion to Strike Amigos Bravos' Reply in Support of Motion to Intervene; and, NMED's Motion to Dismiss. Stuart Butzier, Esq., Modrall Law Firm for Peabody Energy; Megan Anderson, Esq., Western Environmental Law Center for Amigos Bravos, and Eric Ames, NMED/OGC for New Mexico Environment Department.**

Mr. Ames, on behalf of NMED, noted that the Department's position with respect to this case was very straightforward; the Water Quality Act simply does not give the Commission jurisdiction in this matter.

Mr. Ames set out the rather extensive background of this case which directly involves the uses of mine impoundments and the designation of those impoundments as surface waters of the State. He then explained why the Department maintains its basic contention that the Commission does not have jurisdiction in this matter and requested that the Commission grant the Department's Motion to Dismiss.

Mr. Butzier, representing Peabody Energy, stated that in Peabody's view, the Commission does have jurisdiction in this matter and explained in detail why Peabody believes its view to be accurate.

Mr. Butzier further noted that it was Peabody's view that it had no forum in which to be heard outside of the Commission. He also disputed the view that Peabody could deal with its issues during the upcoming Triennial Review which will be heard by the Commission in December. He requested that the Commission deny the Department's Motion to Dismiss.

Following additional comments by Mr. Ames and Mr. Butzier, a lengthy Commission discussion ensued.

Mr. Shandler discussed with the Commission his views with respect to resolution of this case. Mr. Butzier objected to the opinions expressed by Mr. Shandler.

**Action:** Ms. Bada moved that the Commission grant NMED's Motion to Dismiss. Mr. Sloane seconded. The motion passed unanimously.

**Item 9.** Next meeting: August 11, 2009, 9:00 a.m., State Capitol Building Room 317, 490 Old Santa Fe Trail, Santa Fe, NM 87501.

**Item 10.** Other business

Mr. Goldstein suggested that the Commission's September meeting be set on September 15, 2009. The Commission agreed with that meeting date.

**Item 9.** Adjournment

**Action:** The Chair adjourned the meeting at 3:00 p.m.

*Signature on file*

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Jon Goldstein, Acting Chair

COPY



***SCHEDULE FOR  
DEVELOPMENT OF DAIRY FACILITY REGULATIONS***

Approved by the Water Quality Control Commission  
July 14, 2009

NMED  
EXHIBIT 2

Work Element	Deliverable	Scheduled Start Date	Scheduled Finish Date	Comments
<b>Planning</b>				
Presentation of dairy regulation development schedule	WQCC informed of dairy regulation development schedule.	April 14, 2009	April 14, 2009	Get on WQCC agenda; provide schedule and copies to WQCC administrator by 3/31.
<b>Regulation Discussion Draft</b>				
Prepare regulation discussion draft	Initial discussion draft of dairy facility regulations prepared.	March 2008	May 20, 2009	
Conduct outreach with dairy industry, other stakeholders	Dairy industry leaders and other stakeholders identified by NMED.	May 8, 2009	July 15, 2009	
	NMED begin identifying potential Advisory Committee members	May 8, 2009	June 22, 2009	
	Initial discussion draft of regulations made available for public comment (posting on NMED website).	May 22, 2009	May 22, 2009	Require submittal of written comments by July 2.
	Notice given of availability of initial discussion draft and schedule of public and permittee meetings.	May 22, 2009	May 22, 2009	
	Public meetings held.	June 1, 2009	June 23, 2009	Hobbs (June 1); Clovis/Portales (June 2); Roswell (June 15); Mesquite (June 16); Los Lunas (June 23).
	Permittee meetings held.	June 2, 2009	June 16, 2009	Clovis/Portales (June 2); At the request of DIGCE, NMED cancelled permittee meeting which had been scheduled for Roswell (June 15) and Mesquite (June 16).
	Amended Water Quality Act (Senate Bill 206) becomes effective.	June 19, 2009	June 19, 2009	

Work Element	Deliverable	Scheduled Start Date	Scheduled Finish Date	Comments
Dairy Regulation Advisory Committee to NMED	Advisory committee created.	June 22, 2009	June 22, 2009	
	Advisory committee meetings held.	June 26, 2009	July 15, 2009	Three meetings planned: June 26; July 8; July 15.
Modify discussion draft of regulations	Revised final discussion draft of dairy facility regulations prepared.	July 15, 2009	August 7, 2009	Revisions to discussion draft based on public and advisory committee input. Provide notice by 8/7/09.
<b>Regulation Development</b>				
Approve schedule for dairy regulation development	Dairy regulation development schedule approved by WQCC.	July 14, 2009	July 14, 2009	
Stakeholder Negotiations	Stakeholder negotiations meetings held.	October 15, 2009	November 30, 2009	
Modify discussion draft of regulations	Revised final draft of proposed dairy facility regulations developed.	November 30, 2009	December 22, 2009	Revisions to discussion draft based upon stakeholder negotiations.
<b>Regulation Adoption</b>				
Petition for Regulatory Change	Petition for regulatory change and request for hearing submitted to WQCC.	December 22, 2009	December 22, 2009	Get on WQCC agenda; provide schedule and copies to WQCC administrator by 12/22.
	Proposed rule provided to Small Business Regulatory Advisory Commission.	December 22, 2009	December 22, 2009	The Small Business Regulatory Advisory Commission is separate and distinct from the Dairy Regulation Advisory Committee. Providing copies to the Small Business Regulatory Advisory Commission is required under NMSA 1978 § 14-4A-4.
Public Notice and Public Input	Hearing scheduled by WQCC.	January 12, 2010	January 12, 2010	WQCC schedule a hearing at the January 12, 2010 meeting for a March 9, 2010 hearing.

Work Element	Deliverable	Scheduled Start Date	Scheduled Finish Date	Comments
	Notice given of availability of proposed rule.	January 15, 2010	January 15, 2010	
	Proposed regulation submitted for publication in NM Register and provided to Small Business Regulatory Advisory Commission.	January 15, 2010	January 15, 2010	Submittal of notice of rulemaking to NM Register for publication.
	Proposed regulation and notice of hearing published.	February 1, 2010	February 1, 2010	NM Register publication and publication in a newspaper of statewide circulation on February 1, 2010.
	Notice of intent submitted to present technical testimony at hearing.	February 16, 2010	February 16, 2010	Submit notice of intent no later than February 16, 2010.
Public Hearing	Hearing held before WQCC.	March 9, 2010		
	Regulations adopted by WQCC.		June 8, 2010	
Project close-out	Final regulation submitted for publication.	July 15, 2010	July 15, 2010	Submittal of final regulation to NM Register no later than July 15 (estimated) for publication on July 30.
	Final regulation published.	July 30, 2010	July 30, 2010	Publish in NM Register.
	Revised WQCC Regulation booklets printed.	August 31, 2010	August 31, 2010	



STATE OF NEW MEXICO  
BEFORE THE WATER QUALITY CONTROL COMMISSION

\_\_\_\_\_)  
)  
**In the Matter of:** )  
)  
**PROPOSED AMENDMENT** )  
**TO 20.6.2 NMAC (Diary Rules)** )  
\_\_\_\_\_)

No.: WQCC 09-13 (R)

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**JOINT MOTION TO RESCHEDULE HEARING AND FOR A PROCEDURAL  
ORDER  
REGARDING THE PRESENTATION OF HEARING TESTIMONY**

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The New Mexico Environment Department ("Department"), Caballo Concerned Citizens, Dairy Industry Group for a Clean Environment ("DIGCE"), and the Sierra Club, Rio Grande Chapter (collectively "the Signatories"), file this stipulated motion for an order to reschedule the hearing in this matter from March 9, 2010 until April 13, 2010, and for a Procedural Order clarifying that (1) participants who intend to present technical testimony must pre-file that testimony with a Notice of Intent to Present Technical Testimony on or before March 8, 2010, (2) rebuttal testimony must be pre-filed on or before March 29, 2010, (3) oral presentation of pre-filed direct and rebuttal testimony will be limited to a fifteen minute summary per witness, and (4) at the hearing, the Parties may orally present testimony responding to the rebuttal testimony filed on March 29, 2010 and redirect testimony following the cross-examination of witnesses, and may

conduct cross-examination of any witness presenting oral or pre-filed testimony for another Party. As grounds for this motion, the Signatories state as follows:

**I. MOTION FOR PROCEDURAL ORDER**

1. The Water Quality Control Commission ("WQCC") guidelines require only a summary of direct testimony to be filed with Notices of Intent to present technical testimony. Such summaries may be very limited, which makes preparation for hearing difficult, can put some parties at a disadvantage, and can lead to extended hearing times. Pre-filed written testimony allows for better hearing preparation by the parties and Commission. In the recent Triennial Review, WQCC No. 08-13, the Hearing Officer issued a procedural order that required prefiled direct and rebuttal testimony, and clarified that the testimony would not be orally presented at hearing. This procedure focused the issues prior to hearing, significantly reduced hearing time and made for more efficient preparation. The signatories to this motion seek a similar Procedural Order from the Commission or its Hearing Officer in this proceeding requiring that: (1) participants who intend to present technical testimony must pre-file their testimony with their Notice of Intent to Present Technical Testimony, (2) rebuttal testimony must be pre-filed, (3) pre-filed direct and rebuttal testimony will not be orally presented at the hearing, except for a summary limited to fifteen minutes per witness and (4) at the hearing, the Parties may orally present testimony responding to the rebuttal testimony filed on March 29, 2010 and redirect testimony following the cross-examination of witnesses, and may conduct cross-examination of any witness presenting oral or pre-filed testimony for another Party. The requested Procedural Order also sets forth clarifications of the WQCC Rulemaking Hearing Guidelines.

2. The Signatories request a decision on this matter before January 19, 2010 because that is the date notice must be submitted to the New Mexico Register for the currently scheduled hearing.

3. A proposed Procedural Order is attached.

## **II. MOTION FOR SCHEDULING ORDER**

4. The Hearing in this matter is currently scheduled to begin on March 9, 2010. Notices of Intent are currently due to be filed on February 16, 2010. Though the Department filed its Petition in this matter with a proposed rule on December 22, 2009, it has agreed to accept further comments on that rule from the participants of the stakeholder process, including the dairy industry and environmental and citizen groups, on January 19, 2010. In order to allow the Department to consider the final comments of the stakeholders and make modifications to its proposed rule, and to accommodate the procedures requested, the signatories seek to reschedule the hearing date to begin on April 13, 2010. A final proposed rule would be filed on January 29, 2010, Notices of Intent to present technical testimony, along with the prefiled direct testimony would be filed on March 8, 2010 and Rebuttal testimony would be filed on March 29, 2010.

5. The Signatories also request that the Notices of Intent to present technical testimony and all prefiled testimony and pleadings be filed with electronic copies, and be placed upon the WQCC website.

6. This motion shall not be construed to waive any party's right to object to any testimony as exceeding the permissible scope.

7. The Signatories request a decision on this matter before January 19, 2010 because that is the date notice must be submitted to the New Mexico Register for the currently scheduled hearing.

8. A proposed Scheduling Order is attached.

### **III. CONSULTATION**

9. The Department contacted the counsel or representative for participants in the stakeholder process for the Dairy Rules. Caballo Concerned Citizens, DIGCE and Sierra Club, Rio Grande Chapter, join in this motion. The Department contacted a representative of Amigos Bravos and the representative expressed general approval of this motion. The Department was unable to contact the representative for final approval from Amigos Bravos by the time of this filing.

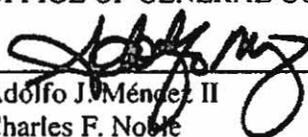
WHEREFORE, the Signatories respectfully request that the Hearing Officer enter an order clarifying that:

(1) participants who intend to present technical testimony must pre-file that testimony with a Notice of Intent to Present Technical Testimony on March 8, 2010, (2) rebuttal testimony must be pre-filed on March 29, 2010, (3) pre-filed direct and rebuttal testimony will not be orally presented at the hearing scheduled to begin on April 13, 2009, except for a summary limited to no more than fifteen minutes per witness, and (4) at the hearing, the Parties may orally present testimony responding to the rebuttal testimony filed on March 29, 2010 and redirect testimony following the cross-

examination of witnesses, and may conduct cross-examination of any witness presenting oral or pre-filed testimony for another Party.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT  
OFFICE OF GENERAL COUNSEL

  
\_\_\_\_\_  
Adolfo J. Méndez II  
Charles F. Noble  
Assistant General Counsel  
New Mexico Environment Department  
P.O. Box 5469  
Santa Fe, New Mexico 87502-5469  
Phone: (505) 827-1031 Fax: (505) 827-1628  
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CABALLO CONCERNED CITIZENS

Telephonically approved on 1/14/10

Jerry Nivens  
P.O. Box 131  
Caballo NM 87931  
Phone: (575) 743-0163  
Email: jerry@caballonm.com

DIGCE

Telephonically approved on 1/14/10

Dal Moellenberg  
Gallagher & Kennedy P.A.  
2575 E Camelback Rd  
Phoenix, AZ 85016  
Phone: (602) 530-8223 Fax: (602) 530-8500  
Email: dlm@gknet.com

SIERRA CLUB, RIO GRANDE CHAPTER

Telephonically approved on 1/14/10

Dan Lorimier  
142 Truman NE  
Albuquerque NM 87108  
Phone: (575) 740-2927  
Email: daniel.lorimier@sierraclub.org

**CERTIFICATE OF SERVICE**

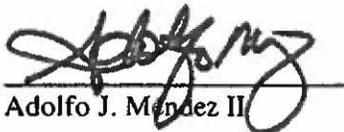
I certify that on January 14, 2010, I served this **JOINT MOTION TO RESCHEDULE HEARING AND FOR A PROCEDURAL ORDER**, by electronic mail, to:

Michael Jensen  
AMIGOS BRAVOS  
P.O. Box 238  
Taos NM 87571  
Phone: 575-758-3874  
Email: mjensen@amigosbravos.org

Jerry Nivens  
CABALLO CONCERNED CITIZENS  
P.O. Box 131  
Caballo NM 87931  
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Dal Moellenberg  
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Email: dlm@gknet.com

Dan Lorimier  
Sierra Club, Rio Grande Chapter  
142 Truman NE  
Albuquerque NM 87108  
Phone: (575) 740-2927  
Email: daniel.lorimier@sierraclub.org

  
Adolfo J. Mendez II

**Leavitt, Marcy, NMENV**

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**From:** Leavitt, Marcy, NMENV  
**Sent:** Wednesday, May 27, 2009 2:14 PM  
**To:** Goldstein, Jon, NMENV; Curry, Ron, NMENV; Stone, Marissa, NMENV  
**Cc:** Schuman, George, NMENV; Olson, Bill, NMENV  
**Subject:** FW: Public and industry meetings announced - SB 206 dairy regulation development  
**Attachments:** Public meeting flyer English 5-09.pdf; Permittee meeting flyer English 5-09.pdf  
FYI - Marcy

Marcy Leavitt, Director  
Water and Waste Management Division  
(505) 827-1758  
(505) 827-2836 (fax)  
marcy.leavitt@state.nm.us

---

**From:** Leavitt, Marcy, NMENV  
**Sent:** Wednesday, May 27, 2009 2:13 PM  
**To:** Roch, Dennis James; 'josephs@plateautel.net'; 'askdennis@denniskintigh.com'; 'noralee@cableone.net'; 'wjgray@pvtnetworks.net'; 'csecows@aol.com'; 'gardners90@yahoo.com'; 'jheaton@caverns.com'; 'sntyler@valornet.com'; 'don.bratton@nmlegis.gov'; 'zachcook@gmail.com'; 'ocate@hotmail.com'; 'rrrvigil@plateaunet.tel'; 'rudy\_s\_martinez@msn.com'; 'donagale@zianet.com'; 'maryhelen.garcia@nmlegis.gov'; Gutierrez, Joni; 'annunex@zianet.com'; 'ncote@zianet.com'; 'dianne38john4132@zianet.com'; Tripp, Don; 'elias@barelalaw.com'; 'ernestc1531@aol.com'; 'eleanorchavez@gmail.com'; 'miguel.garcia@nmlegis.gov'; 'richard.berry@nmlegis.gov'; 'charden@theosogroup.com'; 'petecampos@newmexico.com'; 'senatorgriego@yahoo.com'; 'stuart.ingle@nmlegis.gov'; 'ggkern@valornet.com'; Adair, Rod; 'timothy.jennings@nmlegis.gov'; 'vernon@asbillforsenate.com'; 'leavell4@leaco.net'; 'dianna.duran@nmlegis.gov'; 'cynthia.nava@nmlegis.gov'; 'marykay.papen@nmlegis.gov'; 'john.smith@nmlegis.gov'; 'maryjane.garcia@nmlegis.gov'; 'steve@stevefischmann.com'; Morales, Howie; 'david.ulbarri@nmlegis.gov'; 'senatormssanchez@aol.com'; 'eric.griego@nmlegis.gov'  
**Subject:** Public and industry meetings announced - SB 206 dairy regulation development

To interested legislators - Attached please find an announcement for public and industry group meetings being organized by the Environment Department to provide information and take input on regulations required by SB 206. SB 206 was passed during the 2009 legislative session and requires the Water Quality Control Commission to adopt regulations to prevent water pollution and monitor water quality at dairies. Over the next several months, the Environment Department, as the constituent agency with responsibility for dairy permits, will seek public input and will convene an advisory committee to provide advice on appropriate regulations to be proposed for adoption by the commission. We invite you to attend any or all of these meetings.

Please feel free to contact me at the phone number or e-mail address below if you have any questions about this process.

Marcy Leavitt, Director  
Water and Waste Management Division  
(505) 827-1758  
(505) 827-2836 (fax)  
marcy.leavitt@state.nm.us

4/7/2010

**NMED  
EXHIBIT 4**

**Leavitt, Marcy, NMENV**

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**From:** Leavitt, Marcy, NMENV  
**Sent:** Wednesday, May 20, 2009 3:57 PM  
**To:** 'wbradley@dfamilk.com'  
**Cc:** Schuman, George, NMENV; Mendez, Adolfo, NMENV

**Attachments:** Advisory group composition 5-18-09.doc

Walter – Attached is the proposed advisory group structure. Please feel free to call me with any questions, though I'll be in meetings out of the office all day tomorrow.

Thanks. Marcy

Marcy Leavitt, Director  
Water and Waste Management Division  
(505) 827-1758  
(505) 827-2836 (fax)  
marcy.leavitt@state.nm.us

## Advisory Committee Composition

### ***Technical Specialists (4):***

*Consultants or others with technical skills relevant to the management of dairy wastewater discharges*

1. DFA-nominated representative
2. DPNM-nominated representative
3. NMED-nominated representative
4. NMED-nominated representative

### ***State/Federal agencies (2):***

*Agency stakeholders having involvement with dairies*

1. Natural Resources Conservation Service
2. NM Department of Agriculture

### ***Environmental/public health groups (2):***

*Public stakeholders with interests in environmental and public health protection*

1. Sierra Club
2. NM Public Health Association

### ***Academics (3):***

*Individuals affiliated with universities having expertise relevant to the management of dairy wastewater discharges*

1. NMSU College of Agriculture, Consumer and Environmental Sciences, Agricultural Science Center - Artesia
2. NMSU College of Agriculture, Consumer and Environmental Sciences, Agricultural Science Center - Clovis
3. NM Tech Department of Earth and Environmental Science

### ***Dairy owners/operators (3):***

1. DFA-nominated representative
2. DPNM-nominated representative
3. NMED-nominated representative

### ***Public members (2):***

*Community members who have expressed interest in the regulation of dairy wastewater discharges*

1. NMED-nominated representative
2. NMED-nominated representative

**Total membership: 16**

**Leavitt, Marcy, NMENV**

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**From:** Leavitt, Marcy, NMENV  
**Sent:** Friday, May 22, 2009 3:33 PM  
**To:** 'wbradley@dfamilk.com'; Sharon Lombardi (dpm1@juno.com)  
**Subject:** discussion draft of dairy regs posted on NMED website

Walter and Sharon - I wanted to let you know that a discussion draft of the dairy regulations has been posted on our website at:  
<http://www.nmenv.state.nm.us/gwb/index.html>

This is an initial draft that is intended as a starting point for discussion. The draft incorporates the agreements that were reached during last year's dairy industry group meetings. We expect that the draft will change based on stakeholder and industry comment, advisory group meeting discussions, and subsequent negotiations.

As we've discussed verbally, we are organizing an advisory group pursuant to SB 206 that will begin meeting in late June. We look forward to hearing from each of you with your selection of a dairy representative and a technical expert to participate in the advisory group discussions.

Thank you. Marcy

Marcy Leavitt, Director  
Water and Waste Management Division  
(505) 827-1758  
(505) 827-2836 (fax)  
marcy.leavitt@state.nm.us

**Leavitt, Marcy, NMENV**

---

**From:** Leavitt, Marcy, NMENV  
**Sent:** Thursday, May 28, 2009 4:06 PM  
**To:** 'wbradley@dfamilk.com'  
**Cc:** Curry, Ron, NMENV; Goldstein, Jon, NMENV; Olson, Bill, NMENV  
**Subject:** dairy reg development process  
**Attachments:** Dairy Reg Project Plan 4-09 rev3.doc

Walter – Your phone calls yesterday and today with Secretary Curry and Bill Olson indicate the need to reiterate the plans for development of dairy regulations pursuant to SB 206 so that you can provide clarification to dairy industry representatives. The regulation development plan has largely remained the same as what was presented to the WQCC in April. The only significant changes that were made to the April document were date changes to accommodate dairy industry requests to postpone advisory group and stakeholder negotiation meetings until after June 19, 2009.

The department's intent is to create a transparent process with as many opportunities for public and industry stakeholder input and participation as possible. The discussion draft is the starting point for discussions and incorporates agreements that were reached during the dairy industry group meetings held last year. Additionally, the discussion draft incorporates the dairy permit template that has been the basis for dairy permits for several years.

We will ensure that stakeholders have sufficient opportunity to provide advice and to negotiate the substance of the regulations. To that end we've set up several industry-specific meetings in locations where dairies are concentrated in the state to introduce the discussion draft and get initial feedback. We will also hold advisory group meetings and will schedule subsequent meetings with the industry that are focused on negotiation. We hope to accomplish all of this within a timeframe that allows us to collectively report the results of our efforts to the legislature next year.

It is my understanding that we will be meeting June 5 to discuss these issues further. Please let me know if I can provide any additional clarification or information for you to share with industry representatives.

Marcy

Marcy Leavitt, Director  
Water and Waste Management Division  
(505) 827-1758  
(505) 827-2836 (fax)  
marcy.leavitt@state.nm.us

4/7/2010

**NMED  
EXHIBIT 7**

# **PROJECT PLAN**

## ***DEVELOPMENT OF DAIRY FACILITY REGULATIONS***

New Mexico Environment Department  
May 20, 2009

***Revision History:***

Revision: 1  
Date: March 31, 2009

Revision: 2  
Date: April 10, 2009

Revision: 3  
Date: May 20, 2009

Revision:  
Date:

## **Project Plan: Development of Dairy Facility Regulations**

### ***Background and Statement of Need***

The dairy industry has raised concerns regarding requirements that are often incorporated into Discharge Permits upon permit renewal. Promulgation of rules applicable to all dairy facilities would provide the dairy industry with clearly defined requirements, which would allow dairies to better predict and plan for the costs associated with effective waste management and regulatory compliance activities. Additionally, ground water monitoring data submitted by dairy facilities as required by site-specific Discharge Permits demonstrate that ground water standards are exceeded in ground water at 65 percent of active dairies in New Mexico. Given this circumstance, it is appropriate to consider the promulgation of rules specifically identifying requirements applicable to all dairy facilities in New Mexico rather than determining all such requirements on a site-by-site basis.

### ***Scope Statement***

Identify requirements applicable to all dairy facilities in New Mexico and develop dairy facility regulations for adoption by the WQCC.

### **Work Breakdown Structure (WBS):**

#### **Planning Phase**

- Presentation of dairy regulation development schedule

#### **Regulation Development Phase**

- Prepare proposed regulations
- Conduct outreach with dairy industry and other stakeholders
- Approve schedule for dairy regulation development
- Modify proposed regulations based on input from industry and other stakeholders

#### **Regulation Adoption Phase**

- Public hearing
- Project close-out

## **Project Objectives**

- Dairy facility regulations are adopted by the WQCC.
- Rule-making efforts are recognized by stakeholders as a legitimate effort to respond to the concerns of the dairy industry and other stakeholders.
- Hearing on proposed rules held prior to end of 2009.
- Regulations identify requirements for dairy facilities that will improve regulatory consistency and waste management methods for the protection of ground water quality.
- Scope and enforceability of the regulations are consistent with the authority granted by the WQA.
- Regulations can be effectively implemented given current resource (funding, staff) constraints.

## **Assumptions**

- Other GWQB activities or NMED initiatives will not divert human resources from this project.
- Staff turnover will not result in the departure of project staff.
- In-house information and resources will be sufficient to complete the project.

## **Constraints**

- Project will be competing with other GWQB responsibilities and NMED initiatives for project staffing resources.
- Project manager will not be dedicated solely to this project. Thus, project manager will have to allocate time to other duties and responsibilities in addition to managing this project.

## Project Schedule

WBS	Deliverable	Scheduled Finish Date	Comments
<b>Planning</b>			
Presentation of dairy regulation development schedule	WQCC informed of dairy regulation development schedule.	April 14, 2009	Get on WQCC agenda; provide schedule and copies to WQCC administrator by 3/31.
<b>Regulation Development</b>			
Prepare proposed regulations	Discussion draft of proposed dairy facility regulations developed.	May 20, 2009	
Conduct outreach with dairy industry, other stakeholders	Dairy industry leaders and other stakeholders identified by NMED.	May 8, 2009	Require submittal of written comments by July 2.
	Advisory committee created.	May 15, 2009	
	Discussion draft of regulations made available for public comment (posting on NMED website).	May 22, 2009	
	Discussion draft of regulations provided to Small Business Regulatory Advisory Commission.	May 22, 2009	
	Notice given of availability of discussion draft and schedule of public and permittee meetings.	May 22, 2009	
	Public meetings held.	June 23, 2009	
	Permittee meetings held.	June 16, 2009	
	Advisory committee meetings held.	July 15, 2009	
Industry negotiation meetings held.	August 14, 2009	Meeting schedule to be agreed upon with industry.	

WBS	Deliverable	Scheduled Finish Date	Comments
Approve schedule for dairy regulation development	Dairy regulation development schedule approved by WQCC.	July 14, 2009	Get on WQCC agenda; provide schedule and copies to WQCC administrator by 6/30.
Modify discussion draft of regulations	Revised final draft of proposed dairy facility regulations developed.	August 21, 2009	
<b>Regulation Adoption</b>			
Public hearing	Petition for regulatory change and request for hearing submitted to WQCC.	August 25, 2009	
	Hearing scheduled by WQCC.	September 8, 2009	WQCC would need to schedule a hearing at September 8 meeting to meet notice requirements for a November 10, 2009 hearing.
	Proposed regulation submitted for publication and provided to Small Business Regulatory Advisory Commission.	September 16, 2009	Submittal of notice of rulemaking to NM Register no later than September 16 for publication on September 30.
	Proposed regulation and notice of hearing published.	September 30, 2009	NM Register publication and publication in a newspaper of statewide circulation on September 30, 2009.
	Notice of intent submitted to present technical testimony at hearing.	October 26, 2009	Submit notice of intent to present technical testimony no later than October 26, 2009.
	Hearing held before WQCC.	November 10, 2009	
	Regulations adopted by WQCC.	March 9, 2010	
Project close-out	Final regulation submitted for publication.	April 15, 2010	Submittal of final regulation to NM Register no later than April 15 (estimated) for publication on April 30.
	Final regulation published.	April 30, 2010	Publish in NM Register.
	Revised WQCC Regulation booklets printed.	June 1, 2010	