

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION

COPY



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

No.: WQCC 09-13 (R)

NOTICE OF ERRATA

The New Mexico Environment Department (“Department”) inadvertently submitted an incorrect version of proposed changes to 20.6.2.3227 NMAC with its Notice of Proposed Language Changes filed June 3, 2010. The Department hereby files this Notice of Errata along with the correct version of proposed changes to 20.6.2.3227 NMAC.

Respectfully submitted,

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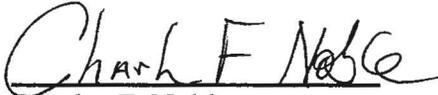
CERTIFICATE OF SERVICE

I certify that on June 7, 2010, I served this **NOTICE OF ERRATA** by electronic mail to:

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Charles F. Noble

20.6.2.3227 CONTINGENCY REQUIREMENTS FOR ALL DAIRY FACILITIES:

A. Exceedance of Ground Water Standards – ~~All Monitoring Wells Except~~

~~Impoundment Monitoring Wells Any Monitoring Well~~: If ~~the constituent concentration in~~ a ground water sample and ~~in~~ any subsequent ~~ground water~~ sample collected from the same monitoring well intended to monitor a contamination source ~~indicate a water contaminant concentration that both~~ other than an impoundment exceeds one or more of the ground water standards of Section 20.6.2.3103 NMAC and exceeds the concentration of such ~~contaminant(s) constituent(s)~~ in a ground water sample collected from the upgradient monitoring well, ~~then~~ the permittee shall take the following actions. ~~For the purpose of this subsection, ground water samples obtained from the source monitoring well and the upgradient monitoring well that are used for comparison of constituent concentrations shall be collected within two days of each other. If in the event~~ ground water quality data for the upgradient monitoring well are not submitted by the permittee, the ground water standards of Section 20.6.2.3103 NMAC shall be the applicable standard used to determine if the requirements of this subsection must be met.

~~(1) For a monitoring well associated with an impoundment: Within 90 days of the subsequent sample analysis date, the permittee shall submit and initiate implementation of a corrective action plan pursuant to Subsection B of this section.~~

~~(2) For a monitoring well not associated with an impoundment: A corrective action plan shall be submitted W-within 90 120 days of the subsequent sample analysis date unless a petition for variance is filed in accordance with paragraph (2) of this subsection. , the permittee may investigate potential sources of contamination that may have caused a standard(s) to be exceeded and shall submit a corrective action plan to the department. The corrective action plan shall describe the results of the investigation of potential sources of the exceedance, describe any repairs made to address the cause of the exceedance, and propose source control measures and a schedule for implementation through completion of source control measures. The implementation schedule shall include a schedule of all proposed corrective action activities and the date that corrective action will be completed. The department shall approve or disapprove the corrective action plan within 30 days of receipt. Within 30 days of department approval the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the corrective action plan. If the department does not approve the corrective action plan, the department shall notify the permittee of the deficiencies by certified mail. The permittee shall submit a revised corrective action plan to the department within 30 days of the date of postal notice of the notice of deficiency. The department shall approve or disapprove the corrective action plan within 30 days of receipt. If the department does not approve the revised corrective action plan, or if the permittee fails to submit a revised plan as required by this subsection, the department may pursue enforcement actions authorized by Section 74-6-10 NMSA 1978.~~

~~(3) The permittee may investigate potential sources of contamination that may have caused a standard(s) to be exceeded. If such an investigation indicates that the source of the contamination is not the source intended to be monitored by the well, the permittee may petition within 120 days of the~~

subsequent sample analysis date for a variance from the requirements of this section in accordance with 20.6.2.1210 NMAC. It is the permittee's burden to prove any claim that the source of the contamination is not the source intended to be monitored by the well. If the petition is denied the permittee shall submit a corrective action plan meeting the requirements of paragraph (1) of this subsection within 60 days of the denial.

(3) ~~If ground water monitoring shows that one or more standards of Section 20.6.2.3103 NMAC continue to be exceeded at least 180 days after the subsequent sample analysis date,~~ The permittee ~~may be~~ shall be required to submit an abatement plan proposal pursuant to Section 20.6.2.4106 NMAC ~~within 60 days of written notice from the department~~ within 60 days of the subsequent sample analysis date. Abatement shall be performed pursuant to Sections 20.6.2.4101, 20.6.2.4103, 20.6.2.4104, and 20.6.2.4106 through 20.6.2.4115 NMAC.

B. Exceedance of Ground Water Standards – Impoundment Monitoring Well: ~~If the constituent concentration in a ground water sample and in any subsequent ground water sample collected from a monitoring well intended to monitor an impoundment(s) exceeds one or more of the ground water standards of Section 20.6.2.3103 NMAC and exceeds the concentration of such constituent(s) in a ground water sample collected from the upgradient monitoring well, then the permittee shall enact one of the following measures. For the purpose of this subsection, ground water samples obtained from the impoundment monitoring well and the upgradient monitoring well that are used for comparison of constituent concentrations shall be collected within two days of each other. If in the event ground water quality data for the upgradient monitoring well are not submitted by the permittee, the ground water standard(s) of Section 20.6.2.3103 shall be the applicable standard(s) used to determine if the requirements of this subsection must be met.~~

(1) Pre-Dairy Rule Liner Not Composed of 40/30-mil HDPE (minimum) or Equivalent: ~~For impoundments utilizing a primary liner installed prior to the effective date of the dairy rules and composed of a material that is not, at a minimum, 40-mil unreinforced HDPE, 30-mil reinforced HDPE, (or other material having equivalent characteristics with regard to permeability, resistance to degradation by ultraviolet light, compatibility with the liquids anticipated to be collected in the impoundment, tensile strength, and tear and puncture resistance), the following actions shall be taken.~~

(a) ~~A corrective action plan shall be submitted within 90~~ 120 days of the subsequent sample analysis date unless a petition for variance is filed in accordance with subparagraph (c) of this paragraph and shall include the following items. The corrective action plan shall describe any repairs or changes in practices made to address the cause of the exceedance, and propose source control measures and a schedule for implementation. The implementation schedule shall include a schedule of all proposed corrective action activities and the date that corrective action will be completed. The department shall approve or disapprove the corrective action plan within 30 days of receipt. If the corrective action plan proposes actions to correct deficiencies with the liner, the proposed actions shall include the following items.

(i) A proposal for reconstruction and relining of an existing impoundment, or construction and lining of a new impoundment. Reconstruction or new construction shall be completed pursuant to Section 20.6.2.3217 NMAC within one year of the subsequent sample analysis date. ~~If in the event~~ a new impoundment is constructed, the existing impoundment shall be permanently closed pursuant to Section 20.6.2.3230 NMAC.

(ii) Reconstruction or construction plans and specifications for the impoundment shall be completed pursuant to Section 20.6.2.3217 NMAC.

(b) Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan. If the department does not approve the corrective action plan, the department shall notify the permittee of the deficiencies by certified mail. The permittee shall submit a revised correction action plan to the department within 30 days of the date of postal notice of the notice of deficiency. The department shall approve or disapprove the revised corrective action plan within 30 days of receipt. If the department does not approve the revised corrective action plan, or if the permittee fails to submit a revised plan as required by this subsection, the department may pursue enforcement actions authorized by Section 74-6-10 NMSA 1978. ~~The permittee shall submit an abatement plan proposal pursuant to Section 20.6.2.4106 NMAC within 90 days of the subsequent sample analysis date. Abatement shall be performed pursuant to Sections 20.6.2.4101, 20.6.2.4103, 20.6.2.4104, and 20.6.2.4106 through 20.6.2.4115 NMAC.~~

(c) The permittee may investigate potential sources of contamination that may have caused a standard(s) to be exceeded. If such an investigation indicates that the source of the contamination is not the impoundment intended to be monitored by the well, the permittee may petition within 120 days of the subsequent sample analysis date for a variance from the requirements of this section in accordance with 20.6.2.1210 NMAC. It is the permittee's burden to prove any claim that the source of the contamination is not the impoundment intended to be monitored by the well. If the variance is denied the permittee shall submit a corrective action plan meeting the requirements of subparagraph (a) of this paragraph within 60 days of the denial.

(d) The permittee may be required to submit an abatement plan proposal pursuant to Section 20.6.2.4106 NMAC within 60 days of written notice from the department. Abatement shall be performed pursuant to Sections 20.6.2.4101, 20.6.2.4103, 20.6.2.4104, and 20.6.2.4106 through 20.6.2.4115 NMAC.

(2) Dairy Rule Liner or Pre-Dairy Rule Liner Composed of 40/30-mil (minimum) HDPE or Equivalent: For impoundments utilizing a primary liner installed after the effective date of the dairy rules and composed of a material that is, at a minimum, 60-mil HDPE (or other material having equivalent characteristics with regard to permeability, resistance to degradation by ultraviolet light, compatibility with the liquids anticipated to be collected in the impoundment, tensile strength, and tear and puncture resistance), or impoundments utilizing a primary liner installed prior to the effective date of the dairy rules and composed of a material that is, at a minimum, 40-mil unreinforced HDPE, 30-mil reinforced

HDPE, (or other material having equivalent characteristics with regard to permeability, resistance to degradation by ultraviolet light, compatibility with the liquids anticipated to be collected in the impoundment, tensile strength, and tear and puncture resistance), the following actions shall be taken.

(a) **Initial Liner:** For impoundments where the existing liner is the initial liner installed, the following actions shall be taken.

(i) A corrective action plan shall be submitted within 120~~90~~ days of the subsequent sample analysis date unless a petition for variance is filed in accordance with item (iii) of this subparagraph. The corrective action plan shall describe any repairs or changes in practices made to address the cause of the exceedance, and propose source control measures and a schedule for implementation. The implementation schedule shall include a schedule of all proposed corrective action activities and the date that corrective action will be completed. The department shall approve or disapprove the corrective action plan within 30 days of receipt. If the corrective action plan proposes actions to correct deficiencies with the liner, the proposed actions shall include repair or replacement of the existing liner, or construction and lining of a new impoundment. If liner include a proposal for the repair of the existing liner pursuant to Section 20.6.2.3217 NMAC, if repair is practicable. Repairs shall be made pursuant to Section 20.6.2.3217 NMAC or using a material that is equivalent to the existing liner with respect to material thickness and composition. Repairs shall be completed within 180 days of the subsequent sample analysis date. If liner repair is not practicable, the corrective action plan shall propose reconstruction and relining of the impoundment pursuant to Section 20.6.2.3217 NMAC or construction and lining of a new impoundment pursuant to Section 20.6.2.3217 NMAC within one year of the subsequent sample analysis date. Reconstruction or construction plans and specifications for the impoundment shall be completed pursuant to Section 20.6.2.3217 NMAC and submitted with the corrective action plan. If a new impoundment is constructed the existing impoundment shall be closed pursuant to Section 20.6.2.3230 NMAC.

(ii) In the event a new impoundment is constructed, the existing impoundment shall be closed pursuant to Section 20.6.2.3230 NMAC.

(iii) Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan. If the department does not approve the corrective action plan, the department shall notify the permittee of the deficiencies by certified mail. The permittee shall submit a revised corrective action plan to the department within 30 days of the date of postal notice of the notice of deficiency. The department shall approve or disapprove the revised corrective action plan within 30 days of receipt. If the department does not approve the revised corrective action plan, or if the permittee fails to submit a revised plan as required by this subsection, the department may pursue enforcement actions authorized by Section 74-6-10 NMSA 1978. The permittee shall submit an abatement plan proposal pursuant to Section 20.6.2.4106 NMAC within 90 days of the subsequent sample analysis date. Abatement shall be performed pursuant to Sections 20.6.2.4101, 20.6.2.4103, 20.6.2.4104, and 20.6.2.4106 through 20.6.2.4115 NMAC.

(iii) The permittee may investigate potential sources of contamination that may have caused a standard(s) to be exceeded. If such an investigation indicates that the source of the contamination is not the impoundment intended to be monitored by the well, the permittee may petition within 120 days of the subsequent sample analysis date for a variance from the requirements of this section in accordance with 20.6.2.1210 NMAC. It is the permittee's burden to prove any claim that the source of the contamination is not the impoundment intended to be monitored by the well. If the variance is denied the permittee shall submit a corrective action plan meeting the requirements of item (i) of this subparagraph within 60 days of the denial.

(iv) The permittee may be required to submit an abatement plan proposal pursuant to Section 20.6.2.4106 NMAC within 60 days of written notification from the department. Abatement shall be performed pursuant to Sections 20.6.2.4101, 20.6.2.4103, 20.6.2.4104, and 20.6.2.4106 through 20.6.2.4115 NMAC.

(b) **Replacement Liner:** If source control measures have been previously implemented such that the existing primary liner replaced a previously installed liner in an impoundment and ground water standard(s) of Section 20.6.2.3103 NMAC continue to be exceeded, such impoundments are authorized to continue to receive wastewater or stormwater pursuant to the following requirements,

(i) The permittee may be required to submit an abatement plan proposal shall be prepared pursuant to Section 20.6.2.4106 NMAC within 60 days of written notice from the department if in the event abatement has not been previously implemented. The abatement plan proposal shall be submitted within 90 days of the subsequent sample analysis date. Abatement shall be performed pursuant to Sections 20.6.2.4101, 20.6.2.4103, 20.6.2.4104, and 20.6.2.4106 through 20.6.2.4115 NMAC.

(ii) ~~Should~~ If the results of abatement activities indicate ~~determine that the~~ replacement liner ~~does~~ is not successfully controlling the source of contamination, the department may modify the discharge permit pursuant to Subsection E of 20.6.2.3109 NMAC and include additional conditions pursuant to Subsection H of 20.6.2.3205 NMAC. The additional conditions shall address, but are not limited to, further source control measures. The requirements of 20.6.2.3215 NMAC shall apply to hearing requests on the proposed additional discharge permit conditions.

B. Exceedance of Ground Water Standards – Impoundment Monitoring Well: If the constituent concentration in a ground water sample and in any subsequent ground water sample collected from a monitoring well intended to monitor an impoundment(s) exceeds one or more of the ground water standards of Section 20.6.2.3103 NMAC and exceeds the concentration of such constituent(s) in a ground water sample collected from the upgradient monitoring well, then within 90 days of the subsequent sample analysis date the permittee shall submit a corrective action plan proposing one or more of the following measures,

(1) For impoundments with a primary liner composed of material other than that required by Subsection D of 20.6.2.3217 NMAC, the corrective action plan shall include the following,

~~(a) A proposal for reconstruction and lining of an existing impoundment, or reconstruction and lining of a new impoundment. Reconstruction or new construction shall be completed pursuant to Section 20.6.2.3217 NMAC within one year of the subsequent sample analysis date. In the event a new impoundment is constructed, the existing impoundment shall be permanently closed pursuant to Section 20.6.2.3230 NMAC.~~

~~(b) Construction plans and specifications for the impoundment shall be completed pursuant to Section 20.6.2.3217 NMAC.~~

~~(2) For impoundments with a primary liner composed of material consistent with that required by Subsection D of 20.6.2.3217 NMAC, the corrective action plan shall include the following:~~

~~(a) A proposal for the repair of the existing liner consistent with Section 20.6.2.3217 NMAC, if repair is practicable. Repairs shall be completed within 180 days of the subsequent sample analysis date. If repair is not practicable, the corrective action plan shall propose to replace the liner pursuant to Section 20.6.2.3217 NMAC or to construct a new lined impoundment pursuant to Section 20.6.2.3217 NMAC within one year of the subsequent sample analysis date. If a new impoundment is constructed, the existing impoundment shall be closed pursuant to Section 20.6.2.3230 NMAC.~~

~~(b) Construction plans and specifications for the proposal shall be completed pursuant to Section 20.6.2.3217 NMAC.~~

C. Monitoring Well Replacement: If information available to the department indicates that a monitoring well(s) required by Section 20.6.2.3223 NMAC is not located hydrologically downgradient of the contamination source it is intended monitor, is not completed pursuant to Section 20.6.2.3223 NMAC or contains insufficient water to effectively monitor ground water quality, a permittee shall install a replacement monitoring well(s). The replacement monitoring well(s) shall be installed within 120 days of the date of postal notice of notification from the department and a survey of the replacement monitoring well(s) shall be performed within 150 days of the date of postal notice of notification from the department. The replacement monitoring well(s) shall be located, installed, completed, surveyed and sampled pursuant to Section 20.6.2.3223 NMAC. The permittee shall develop a monitoring well completion report pursuant to Subsection J of 20.6.2.3223 NMAC and submit it to the department within 180 days of the date of postal notice of notification from the department.

D. Exceedances of Permitted Maximum Daily Discharge Volume: If ~~the daily discharge volume reported pursuant to Subsection C of 20.6.2.3224 NMAC exceeds~~ the maximum daily discharge volume authorized by the discharge permit is exceeded by more than ten percent for any ~~30 daily~~ four average daily discharge volumes ~~measurements~~ within any ~~12-week period~~ 90 consecutive days, the permittee shall ~~complete and~~ submit within 60 days of the ~~fourth~~ thirtieth exceedance: a corrective action plan for reducing the discharge volume; or an application for a modified or renewed and modified discharge permit pursuant to Section 20.6.2.3205 NMAC. Within 30 days of postal notice of department approval, the permittee shall initiate implementation of the corrective action plan.

E. Insufficient Impoundment Capacity: If a survey, capacity calculations, or settled

solids thickness measurements, indicate an existing impoundment is not capable of meeting the capacity requirements required by Subsection D of 20.6.2.3217 NMAC, then within 90 days of the effective date of the discharge permit the permittee shall submit a corrective action plan for department approval. The plan may include, but is not limited to, proposals for constructing an additional impoundment, reducing the maximum daily discharge volume, removing accumulated solids, changing wastewater or stormwater management practices, or installing an advanced treatment system. The corrective action plan shall include a schedule for implementation through completion of corrective actions. The corrective action plan schedule shall propose completion not to exceed one year from the submittal date of the initial corrective action plan. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the corrective action plan. Should the corrective action plan include removal of accumulated solids, solids shall be removed from the impoundment in a manner that is protective of the impoundment liner. The plan shall include the method of removal, and locations and methods for storage and disposal of the solids-slurry. If the plan proposes land application of the solids-slurry, the plan must also include the analytical results of total Kjeldahl nitrogen and chloride obtained from a representative sample of the solids-slurry to be applied.

F. Inability to Preserve Required Freeboard: If a minimum of two feet of freeboard cannot be preserved in the wastewater impoundment, the permittee shall submit a corrective action plan to the department for approval. The corrective action plan shall be submitted within 30 days of the date of the initial exceedance of the freeboard requirement. The plan may include, but is not limited to, proposals for constructing an additional impoundment, reducing the maximum daily discharge volume, changing wastewater management practices, or installing an advanced wastewater treatment system. The corrective action plan shall include actions to be immediately implemented to regain and maintain a minimum of two feet of freeboard until permanent corrective actions have been completed. The corrective action plan shall include a schedule for implementation through completion of corrective actions. The corrective action plan schedule shall propose completion not to exceed one year from the submittal date of the initial corrective action plan. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the corrective action plan.

G. Impoundment – Structural Integrity Compromised: Within 24 hours of discovery, a permittee shall report to the department, any damage to the berms or the liner of an impoundment or any condition that exists that may compromise the structural integrity of the impoundment. Within 15 days of the reported discovery, the permittee shall submit to the department a corrective action plan describing any actions taken or proposed to be taken to repair the damage or condition. Within 30 days of receipt, the department shall respond to the proposed corrective action plan. Repairs to the impoundment liner or berms shall be completed pursuant to Section 20.6.2.3217 NMAC. The corrective action plan shall include a schedule for implementation through completion of corrective actions. The corrective action plan schedule shall propose completion not to exceed one year from the submittal date of the initial corrective action plan. The schedule of corrective actions shall be commensurate to the magnitude and scope of the

activities to be completed. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the corrective action plan.

H. Impoundments Utilizing Primary and Secondary Liners - Primary Liner Leakage:

Within 30 days of the date of discovering that the leakage rate of the leak detection system is increasing or that the functioning automated pump system is unable to keep the interstitial space between the liners free of fluids, the permittee shall submit a corrective action plan for department approval. The corrective action plan shall include a schedule for implementation through completion of corrective actions. The corrective action plan schedule shall propose completion not to exceed one year from the submittal date of the initial corrective action plan. 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the corrective action plan.

I. Unauthorized Discharge - Reporting and Correction:

In the event of a spill or release that is not authorized by the discharge permit, the permittee shall notify the department and take corrective actions pursuant to Section 20.6.2.1203 NMAC. Wastewater or stormwater shall be contained and pumped to a permitted sump, impoundment, or land application area pursuant to the dairy rules. Wastewater or stormwater applied to the land application area shall conform to the requirements of Sections 20.6.2.3221 and 20.6.2.3225 NMAC. The permittee shall repair or replace failed components within 48 hours from the time of failure or as soon as possible.