

## NEW MEXICO ENVIRONMENT DEPARTMENT

### ORDER OF THE SECRETARY SUSPENDING ENFORCEMENT OF 20.6.6 NMAC

1. On January 21, 2011 the Dairy Industry Group for a Clean Environment (“DIGCE”) filed a Notice of Appeal with the New Mexico Court of Appeals to initiate an appeal of 20.6.6 NMAC “Ground Water Protection-Supplemental Permitting Requirements for Dairy Facilities” (the “Dairy Rule”), filed with the New Mexico State Records and Archives on December 23, 2010. On January 31, 2011, the Dairy Rule became effective.
2. On January 28, 2011, DIGCE filed a Motion For Stay of Dairy Rules and Request For Hearing. On February 14, 2011, Amigos Bravos, the Rio Grande Chapter of the Sierra Club, and Caballo Concerned Citizens (“Coalition”) filed its Opposition to the Motion for Stay, and the Environment Department (“NMED” or “Department”) filed its Response to the Motion for Stay.
3. On April 5, 2011, DIGCE, the Coalition and the Department entered into a Stipulation on Motion for Stay (“Stipulation”). Paragraph 7 of the Stipulation states that:

To facilitate the settlement discussions, NMED will issue an order suspending enforcement of the requirements of the Rule for dairy owners and operators to submit new permit applications (including applications to renew existing permits) or to pay fees, and for NMED to issue new permits under the Rule, and providing that NMED will take no enforcement action for the period described below against any person responsible for a dairy for noncompliance with the Rule, provided that any dairy facility who has an application due under the Rule shall submit a written notice to the department of its intent to file an application under the Rules within the timeframe specified under this Stipulation. Such written notice shall be submitted on or before May 2, 2011 for owners and operators required to submit applications under the Rule on or before that date and on or before the due date for a permit renewal application for other permittees. This suspension shall continue for the period of the settlement discussions, which shall coincide with the Court of Appeals’ extension of the time to file the administrative record with the Court, and shall terminate upon the filing of the administrative record. If the parties reach agreement on changes to the Rules to present to the Commission, the suspension shall continue in effect until the Commission takes final action on the rule changes. Any person required to submit a permit application or to pay fees under the new Rules during the period of the suspension or within 90 days after the suspension

shall have until 90 days after the termination of the suspension to file the permit application or to pay fees in accordance with the Rules, except as NMED may provide on a case by case basis.

4. The WQCC was notified of the Stipulation at an open meeting held on April 5, 2011.

THE SECRETARY HEREBY ORDERS:

1. Enforcement of the requirements of the Dairy Rule for dairy owners and operators to submit new permit applications pursuant to 20.6.6.35 NMAC (including applications to renew existing permits) or to pay fees, and for NMED to issue new permits under the Rule, is hereby suspended for the period described below.
2. During the suspension period described below, NMED will take no enforcement action against any person responsible for a dairy for noncompliance with the Dairy Rule, provided that any dairy facility who has an application due under the Dairy Rule shall submit a written notice to the department of its intent to file an application under the Dairy Rules within the timeframe specified under this Stipulation. Such written notice shall be submitted on or before May 2, 2011 for owners and operators required to submit applications under the Rule on or before that date and on or before the due dates for a permit renewal application for other permittees.
3. The suspension shall continue for the period of the settlement discussions, which shall coincide with the Court of Appeals' extension of the time to file the administrative record with the Court, and shall terminate upon the filing of the administrative record. If the parties reach agreement on changes to the Rules to present to the Commission, the suspension shall continue in effect until the Commission takes final action on the rule changes.
4. Any person required to submit a permit application or to pay fees under the new Rules during the period of the suspension or within 90 days after the suspension shall have until 90 days after the termination of the suspension to file the permit application or to pay fees in accordance with the Rules, except as the Department may provide on a case by case basis.
5. The Department may issue permits under the Dairy Rule during the suspension period if requested by an applicant
6. Following the suspension period, the Department may issue a schedule staggering the due dates for applications

ISSUED THIS 6 DAY OF APRIL, 2011.



David Martin  
Secretary