

**STATE OF NEW MEXICO  
WATER QUALITY CONTROL COMMISSION**

**IN THE MATTER OF:** ) **No: WQCC 20-14(A)**  
**THE PETITION FOR** )  
**HEARING ON RENEWAL OF SEPTIC DISPOSAL** )  
**FACILITY DISCHARGE PERMIT DP-465 FOR** )  
**S&R SEPTIC** )

**THE NEW MEXICO ENVIRONMENT DEPARTMENT’S RESPONSE  
TO PETITIONER’S MOTION TO STAY PROCEEDINGS**

The New Mexico Environment Department (“NMED”) opposes the Petitioner’s Motion to Stay Proceedings for the reasons outlined below.

1. In his Order, the NMED secretary relied upon rationales that provide important context for his denial of DP-465. The Water Quality Act states that NMED shall deny any permit application if, within the past 10 years, the applicant has exhibited willful disregard for environmental laws of the state or failed to disclose any required information. NMSA 1978, §§ 74-6-5(E)(4)(b) and (e).

2. Among the examples that implicate those provisions is the Petitioner’s failure to submit a permit renewal prior to expiration of the preceding one, which would have effectively prevented the expiration. Instead, the petitioner continued to discharge for approximately two months without a valid permit before submitting a renewal application. 20.6.2.3106(G) NMAC.

3. Prior to expiration, the Petitioner had failed to comply with several terms of the permit including maintenance of signage, installation of proper splash pads prescribed and required in 2012, and submission of monitoring reports for the past three years – the last equaling a failure to disclose required information. NMED brought all of this to the Petitioner’s attention during a December 28, 2017 inspection, yet each item remained unaddressed when a follow-up letter was sent eight months later.

4. Circumstantial evidence of illegal disposal of fats, oils and grease is also strong. NMED collected samples under chain of custody protocol for laboratory analysis for those constituents on

September 27, 2018, and analytical data from a certified lab shows these constituents at concentrations 100 times higher than what is found at other, similarly situated septage facilities.

5. Although NMED elected to exercise some enforcement discretion once the Petitioner submitted the renewal application, it remains true that a valid permit has not been in place for approximately two years. This means, ironically, that a stay of the Secretary's Order would not put the Petitioner in an improved legal position. Because there is no permit to fall back on, discharges would remain improper. Thus, this objection is as much about principle as practicality. The time for delays, postponements and procrastination should be over. The time for compliance is now.

6. The Hearing Officer's recommendation agreed that the "Applicant's history of permit violations and its failure to timely apply for permit renewal are certainly troubling. The concerns expressed ... about Applicant's operations and the Bureau's uneven history of enforcement do have a substantial basis." H.O. Report p. 5.

7. Denying the motion for stay will not irreparably harm the Petitioner because A) it would not reinstate a valid permit that authorizes it to discharge and B) the Petitioner has acknowledged that it discharges at the Taos Wastewater Treatment Plant "quite a bit." Hearing Transcript, Vol. 1, p. 258. He further attested to discharging at the "Pojoaque facility." Hearing Transcript, Vol. 1, p. 224.

WHEREFORE, the Respondent requests that the WQCC deny the Motion to Stay Proceedings and retain the Secretary's Order in full effect.

Respectfully submitted,

/s/ Owen Johnson  
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## CERTIFICATE OF SERVICE

I hereby certify that the foregoing Response has been sent to the following party by electronic mail this 13<sup>th</sup> day of March 2020.

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