

**BEFORE THE WATER QUALITY CONTROL COMMISSION
FOR THE STATE OF NEW MEXICO**



In the Matter of:

**PROPOSED
AMENDMENTS TO GROUND
AND SURFACE WATER
PROTECTION REGULATIONS,
20.6.2 NMAC**

No. WQCC 17-03(R)

**NOTICE OF INTENT TO PRESENT WRITTEN REBUTTAL TESTIMONY ON
BEHALF OF DAIRY PRODUCERS OF NEW MEXICO'S AND DAIRY INDUSTRY
GROUP FOR A CLEAN ENVIRONMENT**

The Dairy Producers of New Mexico (DPNM) and Dairy Industry Group for a Clean Environment (DIGCE) hereby submit this Notice of Intent to Present Written Rebuttal Testimony in this proceeding in accordance with Hearing Officer's orders. Dairies hereby state:

1. Person for whom the witness(es) will testify:

The witnesses will testify for DPNM and DIGCE and their members.

2. Identify each technical witness the person intends to present and state the qualifications of that witness including a description of their educational and work background:

Dairies present the following witness, whose educational and work background is presented in an Dairies Exhibit B filed with his direct written testimony:

Eric Palla

3. Attach the full written direct testimony of each technical witness, which shall include an express basis for all expert opinion offered:

The written rebuttal testimony of Mr. Palla is attached.

4. Include the text of any recommended modifications to the proposed regulatory change:

The text of Dairies' recommended modifications and amendments were included in the written direct testimony and the Dairies' prior pleadings. No new changes are proposed with this testimony.

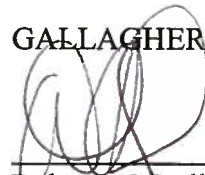
5. Identify and attach all exhibits to be offered by the person at the hearing:

Written Rebuttal Testimony of Eric Palla, offered as Dairies' Exhibit C.

WHEREFORE, DPNM and DIGCE respectfully request that the Water Quality Control Commission accept this filing on behalf of DPNM and DIGCP. Further, DPNM and DIGCE reserve the right to supplement this pleading and its attachments in accordance with the governing rules and Scheduling Order.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Intent was served by email to all parties on October 27, 2017.

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DAIRIES EXHIBIT C

**REBUTTAL TESTIMONY OF ERIC PALLA
ON BEHALF OF DIGCE AND DPNM**

A. Introduction and Qualifications

My name is Eric Palla and I currently serve as President of the Board of Directors of the Dairy Industry Group for a Clean Environment (“DIGCE”) and offer this testimony as a representative of DIGCE. As part of my role with DIGCE, I participated in the Dairy Rule proceedings and am familiar with how the Dairy Rule operates to regulate dairies. I also operate a dairy near Clovis, New Mexico and have personally handled the discharge permit process for my dairy operation. Consequently, I am familiar with the regulations in both 20.6.2 and 20.6.6 NMAC as they apply to dairies. I hold a Bachelor of Science degree in Ag Business from Texas A&M University. A copy of my current resume is attached as Dairies Exhibit B to my Direct Testimony.

B. Rebuttal Regarding Discharge Permit Amendments

As I testified in my direct testimony, Dairies support the Department’s proposed rule amendments regarding “discharge permit amendments” subject to a few changes to the definition of that term. I provide this rebuttal testimony in response to the proposed rule amendments offered

by Amigos Bravos and the Gila Resources Information Project (AB/GRIP), all of which are opposed by DIGCE and DPNM. AB/GRIP proposes two different alternatives for a definition of “discharge permit amendment” and DIGCE and DPNM oppose both alternatives because they are too limited and would require time-consuming permit modifications for simple permit changes that are necessary for dairies to continue day-to-day operations. Ms. Martin’s testimony in support of the AB/GRIP proposal does not consider the detailed requirements for dairy discharge permits and the likely need for permit changes.

Discharge permits for dairies now address many details of our operations under the Dairy Rule, 20.6.6 NMAC. As a result of these detailed permit requirements, permits are much more likely to need changes over the five or more year period of a discharge permit. These changes may be as a result of changes to operations, a need to replace features such as flow meters and monitoring wells, addition of new equipment, etc. If these changes require a change to a discharge permit, we cannot afford to wait the many months it typically takes to receive a permit modification without adversely impacting our dairy operations. Consequently, dairies need to retain the flexibility to allow discharge permit amendments for minor permit changes through a relatively speedy discharge permit amendment process, such as the Department has proposed.

With regard to some of the specifics, AB/GRIP would limit applications to amendments to once per year. That is arbitrary and does not account for unanticipated operational changes that dairies may need to make. As another example, AB/GRIP wants to require a permit modification for any change in location of a monitoring device. Dairies may need to change the location of flow meters and other monitoring devices due to operational changes, and such simple changes should not require permit modifications. AB/GRIP also proposes notice procedures for discharge permits that would make a discharge permit amendment process similar to a discharge permit

modification with all of the attendant delays. These are just a couple of examples of why the AB/GRIP proposal is too restrictive, how they did not take into account the needs of dairy operations in their direct testimony, and how those proposals would harm New Mexico dairy businesses and other industries.

C. Variances

As discussed in my direct testimony, DIGCE and DPNM agree with the Department's proposal to remove the five-year limit on variances, with some minor language changes. Dairies oppose all of the changes to the Department's proposal that have been offered by AB/GRIP and William Olson. AB/GRIP's and Mr. Olson's direct testimonies relating to variances appears to assume that all variances will result in ground water pollution. That is not the case, particularly for dairies. The Dairy Rule, 20.6.6 NMAC, includes very detailed requirements for the design of certain facilities and other aspects. Because of these specific requirements, dairies may need to seek variances to allow alternative designs or other variation from the specific rule requirements in order to employ new technologies or to account for the specific circumstances of a particular dairy. AB/GRIP and Mr. Olson's proposals would add new and burdensome requirements for what should typically be more simple petitions for variances from the dairy rules. For these reasons, the Commission should be simplifying the variance procedure, not adding new, unnecessary and burdensome requirements for variance petitions and hearings.

As an example, AB/GRIP wants to add requirements to consider the interests of other parties, to require additional showing of business hardships, and to require a showing that the rule from which a variance is sought "would result in an arbitrary and unreasonable taking of the applicant's property." These additions would make a petition for a variance from the dairy unnecessarily complex and costly, and these requirements are not relevant for simple variance

requests that would, for example, allow for the use of a new technology instead of use of a technology required by the dairy rule.

D. Fees

AB/GRIP proposes to add fees for discharge permit amendments that are not proposed by the Department and to remove a provision allow for waiver of fees for simple applications. The \$500 fee proposed by AB/GRIP is more than some fees for discharge permits, and I do not see any analysis justifying such a fee. Consequently, DIGCE and DPNM oppose the fee proposal by AB/GRIP.

E. Abatement

DIGCE and DPNM oppose the amendment offered by the City of Roswell to remove the language in 20.6.2.4103.D specifying that abatement is complete if eight consecutive quarters of sampling show compliance. I am concerned that this change would leave the period for sampling entirely to the Department's discretion. I do understand the testimony in support of this change is based on a situation where the Department has approved sampling less frequently than quarterly, and that should be accommodated in the rule. However, when quarterly sampling is required by a permit, the existing language should remain in place to limit the Department's discretion.

DIGCE and DPNM oppose the Department's proposal to eliminate the ability for the Department to make a "technical infeasibility" determination when a statistical demonstration is made that cleanup efforts will not achieve standards. The Department's testimony appears to be based on a legal theory that I am not qualified to address. However, I understand that this provision has been in place for over twenty years and that without this provision, all of these issues will have to go to the Commission for a hearing. I do not see anything in the Department's testimony indicating that it has had any difficulty making these types of determinations.

DIGCE and DPNM also oppose the changes to the abatement rules offered by William Olson. Mr. Olson proposes to require a discussion of present and foreseeable future uses of water in a petition for alternative abatement standards. I believe that with sufficient information regarding the site and the surrounding area, the Commission will have enough information to assess the petition. Mr. Olson also proposes additional public notice requirements for alternative abatement standards, but since a Commission hearing already is required and there are notices required for that, I do not see why additional public notices should be needed. Multiple public notices are a costly and burdensome requirement for dairies.

DIGCE and DPNM also oppose the amendment to the criteria for the adoption of alternative abatement standards offered by AB/GRIP, which would always require a demonstration of technical infeasibility in addition to one of the other criteria. I cannot find any testimony from AB/GRIP that supports this change, so there is nothing to rebut and I hope that the Commission will simply disregard this proposal.

This concludes my direct written testimony on behalf of the Dairies.

Eric Palla