

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT**

**IN THE MATTER OF THE APPLICATION
OF ORGAN MOUNTAIN VIEW RV RESORT WWTF
DISCHARGE PERMIT APPLICATION FOR DP-1936,
A WASTEWATER TREATMENT FACILITY FOR A RV PARK**

No. GWQB 23-39(P)

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

I. Introduction

This matter came before Hearing Officer Gregory Chakalian on the Notice of Filing of Public Hearing Determination filed in the Office of Public Facilitation on April 24, 2023, and the Notice of Hearing and Appointment of Hearing Officer on April 26, 2023. The Parties, Organ Mountain View RV Resort (OMV) and the New Mexico Ground Water Quality Bureau (GWQB), attended a prehearing scheduling conference on April 26, 2023, and a Scheduling Order was filed the following day.

Pursuant to the Scheduling Order the Draft Discharge Permit was scheduled for a public hearing, which was held on July 25, 2023. The hearing was held in-person at the Town of Mesilla's Community Center and via the WebEx virtual platform. During the hearing approximately twenty members of the public appeared in-person and two public members joined via WebEx to cross-examine the witnesses and provide general comment. Their relevant comments are considered below. Notably, during the public hearing, the GWQB added a condition to the Draft Permit in response to the public's concerns.

In sum, OMV met its burden of persuasion by a preponderance of evidence in support of approval of the Draft Permit as revised with the added condition. Accordingly, GWQB's determination to issue the Draft Permit should be upheld via the attached Final Order.

OMV timely submitted a Statement of Intent to present technical testimony on July 11, 2023. It did not comply with 20.1.4 NMAC, and with the stipulation of the GWQB, an Amended Scheduling Order was filed providing an additional 3-days to file the Statement of Intent. On July 14, 2023, OMV filed its Statement of Intent with 4 Exhibits that were entered into evidence by stipulation of the GWQB at the hearing. OMV presented the testimony of one witness, Mr. Adrian Renteria, P.E., and the Design Civil Engineer for the Facility, who adopted his prefiled written testimony under oath and provided a summary for the public. OMV was represented by its owner Samuel Kane, Esq.

GWQB timely filed a Statement of Intent to present technical testimony along with 5 Exhibits that were entered into evidence at the hearing by stipulation of OMV. GWQB presented the testimony of two witnesses, Ms. Avery Young and Mr. Jason Herman, who adopted their prefiled written testimony under oath and provided summaries for the public. GWQB was represented by Mr. Mason Walker, Esq, Assistant General Counsel with the New Mexico Environment Department.

II. Burden of Persuasion and Standard for Permit Issuance

The Department's regulations establish the burdens of persuasion for each party to the hearing. 20.1.4.400.A(1) NMAC provides:

Burden of Persuasion: The Applicant or Petitioner has the burden of proof that a permit, license, or variance should be issued and not denied. This burden does not shift. The Division has the burden of proof for a challenged condition of a permit or license which GWQB has proposed. Any person who contends that a permit condition is inadequate, improper, or invalid, or who proposes to include a permit condition shall have the burden of going forward to present an affirmative case on the challenged condition.

In turn, 20.1.4.400.A(3) NMAC provides "[t]he Hearing Officer shall determine each matter in controversy by a preponderance of the evidence."

Based on the credible, relevant, and reliable evidence found in the Record Proper, as defined under 20.1.4.7 NMAC, I recommend that the Cabinet Secretary of Environment approve the referenced Final Order and issue the Draft Permit with conditions.

III. Findings of Fact

a. OMV's Services and the Facility

1. Adobe Palms RV and Mobile Home Park, proposes to operate Organ Mountain View RV Resort Wastewater Treatment Facility (OMV) located at the intersection of Baylor Canyon Road and Bataan Memorial East (US Highway 70), approximately eleven miles northeast of Las Cruces, New Mexico, in Section 3, Township 22 South, Range 03 East, in Doña Ana County (Facility). Young Written Testimony, p. 2, ln. 19-21.
2. Organ Mountain View RV Resort is owned by Mr. Samuel I. Kane. AR 0067, 0156, 0185.

b. Discharge Permit History and Events Leading to Administrative Hearing

3. A ground water discharge permit is required for OMV's Facility because the Applicant is discharging effluent in manner such that the effluent may move directly or indirectly into groundwater within the meaning of 20.6.2.3104 NMAC. Herman Written Testimony, p. 4, ln. 11-12.
4. The discharge is such that effluent may move into groundwater of the State of New Mexico, which has an existing total dissolved solids (TDS) concentration of less than 10,000 mg/L within the meaning of 20.6.2.3101(A) NMAC. Herman Written Testimony, p. 4, ln. 12-15.
5. The discharge is into or within a place of withdrawal of groundwater for the present

or the reasonably foreseeable future use within the meaning of the Water Quality Act (“WQA”), NMSA 1978, § 74-6-5(E)(3), and 20.6.2.3103 NMAC. Herman Written Testimony, p. 4, ln. 15-17.

6. According to the application and materials contained in the administrative record, the depth to ground water is approximately 110 feet below ground surface at the proposed discharge site. Young Written Testimony, p. 3, ln. 4.
7. On December 9, 2021, the GWQB received an Application from Adrian Renteria, P.E. of A&E Engineering on behalf of the Applicant Organ Mountain View RV Resort. AR 0180-0220; Avery Young Written Testimony, p. 3, ln. 17-18.
8. On February 11, 2022, the GWQB submitted the Public Notice of Groundwater Discharge Permit Applications Submitted to the Department for Review (Public Notice 1) in English and Spanish. AR. Nos. 0163-0178.
9. On March 22, 2022, the GWQB determined that the Application was administratively complete and sent an Administrative Completeness Determination and Applicant’s Public Notice Requirements letter, with instructions, to the Applicant. The Applicant was required to post a sign at the Facility, post a public notice flyer at the Thomas Branigan Memorial Library, mail a public notice flyer to property owners within 1/3 mile of the Facility, and place a display ad in the Las Cruces Sun News. AR. Nos. 0156-0162.
10. On February 10, 2023 the GWQB published “Groundwater Discharge Permits Proposed for Approval” (Public Notice 2) in English and Spanish. Young Written Testimony, p. 5, ln. 16-17.
11. Beginning on February 7, 2023, the Bureau received public comments on the draft

permit, which included requests for a public hearing. Young Written Testimony, p. 5, ln. 12-13.

12. Pursuant to 20.7.3 NMAC, the Liquid Waste Disposal and Treatment Regulations, an RV with water and sewer hookups discharge 100 gallons per day per space. The Applicant proposes to have 50 spaces at Organ Mountain View RV Park; therefore, Liquid Waste Regulations estimate that the proposed RV Park will produce up to 5,000 gallons per day. The proposed wastewater treatment plant A&E Engineering designed for the Application can treat up to 9,000 gallons per day. Therefore, NMED has determined that the proposed wastewater treatment facility is adequately sized to service the proposed RV Park. Young Written Testimony, p. 7, ln. 1-8.

13. The Applicant proposes to dispose of treated wastewater via a subsurface, pressure dosed leach field; therefore, there will be no treated wastewater at the surface for rain events to mobilize. Young Written Testimony, p. 7, ln. 9-11.

14. The permit includes adequate monitoring of the discharge. The permit requires the Applicant to submit quarterly monitoring reports, which is the strictest timetable for monitoring report submittals. The permit establishes a total nitrogen discharge limit of 20 mg/L, which is protective of groundwater that is 110 feet below the ground surface due to the biological processes that occur in the vadose zone. The permit requires quarterly sampling of the effluent to ensure that it is meeting the total nitrogen discharge limit. The permit also requires the Applicant to install a monitoring well downgradient of the subsurface, pressure dosed disposal field to verify that the permit is achieving the expected results pursuant to 20.6.2.3107(A)(8) NMAC. Young Written Testimony, p. 7, ln. 12-20.

15. Monitoring reports submitted to the Department are public records and are available to the public at any time through an Inspection of Public Records request. Young Written Testimony, p. 7, ln. 21-22.
16. The permit has an entire section dedicated to operational requirements for the Facility to adhere to including adequate access controls on the proposed system to restrict access, regular inspections of the subsurface, pressure dosed disposal field to ensure proper operations, proper management of solids generated by the treatment facility to ensure effective operation of the system, regular settling tank inspections to ensure effective operations, and to utilize operators certified at the correct level to operate the treatment facility in accordance with 20.7.4 NMAC, the Utility Operator Certification Regulations. Due to the numerous operational conditions that set out specific requirements tailored to the proposed facility, NMED believes the permit adequately addresses the operations of the facility. Young Written Testimony, p. 8, ln. 1-10.
17. On April 24, 2023, the Secretary issued a hearing determination pursuant to 20.6.2.3108(M) NMAC, finding substantial public interest. Notice of Hearing and Appointment of Hearing Officer.
18. The Bureau completed all public notice requirements for the draft permit pursuant to 20.6.2.3108 NMAC. Young Written Testimony, p. 5, ln. 16-17.
19. The Bureau timely filed a Statement of Intent to Present Technical Testimony, which included written testimony from Avery Young and Jason Herman, as well as Exhibits. NMED Statement of Intent.
20. OMV timely filed a Statement of Intent to Call Expert Witnesses. Organ Mountain

View RV Resort's Notice of Intent to Call Expert Witnesses.

21. Organ Mountain View RV Resort timely filed a Statement of Intent to Present Testimony pursuant to 20.6.2.3110(C) NMAC, and 20.1.4.300(B) NMAC. Organ Mountain View RV Resort's Statement of Intent to Present Testimony.

c. Summary of Public Hearing

22. A public hearing was held on July 25, 2023, with a hybrid format. The in-person portion of the hearing was held at the Mesilla Community Center, Mesilla, New Mexico to allow members of the public to participate in the hearing and offer in-person public comment and cross-examine witnesses. *See generally* WebEx audio recording filed July 27, 2023.
23. The parties presented testimony and offered exhibits, all of which were admitted into the Record Proper as defined by 20.1.4.7 NMAC. *Id.*
24. All persons wishing to participate in the hearing or offer general comment were provided with the opportunity to do so. *Id.*
25. Prior to and during the hearing on the matter, OMV and GWQB's witnesses presented testimony that supports the approval of DP-1936. Jason Herman Written Testimony, NMED Ex. 1. Avery Young Written Testimony, NMED Ex. 3. Adrian Renteria Pre-Filed Testimony, Organ Mountain View RV Resort Ex. 5.
26. The expert technical witnesses were aligned in providing technical testimony, evidence and opinions demonstrating that the Draft Permit (DP-1936) with the stipulated modifications at the public hearing, is consistent with the groundwater protection regulations. Jason Herman Written Testimony, NMED Ex. 1. Avery Young Written Testimony, NMED Ex. 3. Adrian Renteria Pre-Filed Testimony, Organ

Mountain View RV Resort Ex. 5; WebEx audio recording, filed July 27, 2023, beginning at 15:18 through 27:47.

27. GWQB's technical witnesses Jason Herman and Avery Young further provided technical testimony and expert opinions that the issuance of DP-1936 would not pose a hazard to public health or an undue risk to property. Jason Herman Written Testimony, p. 1-8. Avery Young Written Testimony, p. 1-9.
28. Organ Mountain View RV Resort's expert technical witness Adrian Renteria provided testimony demonstrating OMV's willingness to comply with each of Draft Permit's terms and conditions. Adrian Renteria Pre-Filed Testimony, Organ Mountain View RV Resort Ex. 5; WebEx audio recording, filed July 27, 2023, beginning at 15:18 through 27:47.
29. Avery Young and Jason Herman testified at the hearing, adopting their written testimony under oath, and providing a summary of the same. *Id.*
30. According to the application and materials contained in the administrative record, the depth to ground water is approximately 110 feet below ground surface at the proposed discharge site. Young Written Testimony, p. 3, ln. 4.
31. The proposed discharge permit contains conditions for approval which the Bureau believes are necessary under the Regulations to protect ground water quality. Young Written Testimony, p. 6, ln. 23-25.
32. The revised discharge permit contains recommended changes to the draft discharge permit for approval, which the Bureau believes are necessary for clarification and in response to public comments received during the public comment period. Young Written Testimony, p. 8, ln. 15-22 and p. 9, ln. 1-4 and Exhibit 5.

33. During the hearing the Bureau proposed the addition of another permit condition for the Monitoring and Reporting section of the draft discharge permit. The Bureau proposed adding a new condition with the following text, “The Permittee shall submit the name and level of certification for the operator(s) of record for the Facility in the quarterly monitoring reports. [Subsection A of 20.6.2.3107 NMAC]”. See WebEx audio recording, filed July 27, 2023, beginning at 1:48:18.
34. The conditions proposed in the draft permit are typical for facilities receiving domestic wastewater using a package plant wastewater treatment system and low-pressure disposal for disposal of wastewater. Young Written Testimony, p. 6, ln. 25-28.
35. The Bureau has determined that the proposed permit satisfies all necessary requirements of the Regulations and requires the discharge to be conducted in a manner such that neither a hazard to public health nor undue risk to property will result. Young Written Testimony, p. 9, ln. 9-10; Herman Written Testimony, p. 8, ln. 4-5.
36. Although some of the Facility’s neighbors provided general public comment concerning the issuance of DP-1936, none of the public members set forth credible, relevant and reliable evidence to support denial of the Draft Permit. AR 0001-0017.

IV. Conclusions of Law

1. The authority for water quality management in New Mexico is provided through the Water Quality Act, NMSA 1978, §§ 74-6-1 to -17 (1991 as amended through 2019).
2. Under the Water Quality Act, water is defined as all water, including water situated wholly or partly within or bordering upon the state, whether surface or subsurface,

public or private, except private waters that do not combine with other surface or subsurface water. NMSA 1978, § 74-6-2(H).


3. The Bureau issues groundwater discharge permits pursuant to the Water Quality Act and the New Mexico Ground and Surface Water Protection Regulations (“Regulations”), 20.6.2 NMAC.
4. Groundwater discharge permits are intended to establish the terms and conditions pursuant to which a permittee may discharge contaminants in a manner that is consistent with groundwater protection. NMSA 1978, § 74-6-5.
5. Applicant OMV has the burden of persuasion and proof that a permit, license, or variance should be issued and not denied. 20.1.400(A)(1) NMAC.
6. The Hearing Officer shall determine each matter in controversy by a preponderance of the evidence. 20.1.400(A)(3) NMAC.
7. The Secretary shall approve a groundwater discharge permit provided that the requirements of 20.6.2.3109(C) NMAC are met and the proposed discharge permit “demonstrates that neither a hazard to public health nor undue risk to property will result” and the proposed discharge does not exceed the 20.6.2.3103 NMAC groundwater standards. 20.6.2.3109(C) NMAC.
8. GWQB implements the Regulations’ provisions as they apply to domestic and industrial discharges with the potential to adversely impact groundwater. 20.6.2 NMAC.
9. GWQB Draft Permit is fully compliant with New Mexico’s Ground Water Protection Regulations and consistent with similar groundwater discharge permits issued by the agency.

10. All public notice requirements in 20.6.2 NMAC were met for the proposed permit.
11. OMV and GWQB complied with the public participation requirements of 20.6.2.3.3108 and 20.1.4 NMAC.
12. OMV's application for a groundwater discharge permit includes all information required by 20.6.2.3106 NMAC.
13. Approval and issuance of DP-1936 includes provisions for adequate sampling and monitoring of groundwater.
14. Draft Permit DP-1936 lawfully describes the actions required of OMV in the event of an unauthorized discharge.
15. The issuance of Draft DP-1936 in its current form includes the added condition (stipulated by OMV) that the "Permittee shall submit the name and level of certification for the operator(s) of record for the Facility in the quarterly monitoring reports."
16. If operated in compliance with the conditions in the Draft Permit, the Facility will not result in a hazard to public health or an undue risk to property.
17. The Draft Permit, with the addition in paragraph 19, as shown in NMED Exhibit 5, complies with all applicable requirements of the Regulations and the WQA.
18. Pursuant to 20.1.4.400 NMAC, Applicant OMV has met its burden of persuasion by a preponderance of credible, relevant, and reliable evidence that DP-1936 should be approved and not denied.
19. GWQB did not have a burden of persuasion at the public hearing because OMV stipulated to all permit conditions including the additional condition.
20. No public member provided evidence to support denial of the Draft Permit.

V. Recommended Final Order

A draft Final Order consistent with these findings of fact and conclusions of law is attached and incorporated herein by reference.

Respectfully submitted,

By:  Digitally signed by
Gregory Chakalian
Date: 2023.08.17
08:36:38 -04'00'

Gregory Ara Chakalian
Administrative Law Judge
Office of Public Facilitation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Hearing Officer's Preliminary Report and Recommended Decision and Final Order was served on the following on this 15th day of August 2023:

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**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT**

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OF ORGAN MOUNTAIN VIEW RV RESORT WWTF
DISCHARGE PERMIT APPLICATION FOR DP-1936,
A WASTEWATER TREATMENT FACILITY FOR A RV PARK**

No. GWQB 23-39(P)

FINAL ORDER

This matter comes before the New Mexico Cabinet Secretary of Environment following a public hearing conducted by Gregory Chakalian, Administrative Law Judge, Office of Public Facilitation (appointed Hearing Officer) on July 25, 2023, via the Webex virtual platform, and in-person at the Town of Mesilla Community Center, Mesilla, New Mexico.

Adobe Palms RV and Mobile Home Park, proposes to operate Organ Mountain View RV Resort Wastewater Treatment Facility located at the intersection of Baylor Canyon Road and Bataan Memorial East (US Highway 70), approximately eleven miles northeast of Las Cruces, New Mexico, in Section 3, Township 22 South, Range 03 East, in Doña Ana County. The depth to ground water is approximately 110 feet below ground surface at the proposed discharge site.

The Applicant proposes to have 50 spaces at Organ Mountain View RV Park; therefore, Liquid Waste Regulations estimate that the proposed RV Park will produce up to 5,000 gallons per day. The proposed wastewater treatment plant A&E Engineering designed for the Application can treat up to 9,000 gallons per day. The Applicant proposes to dispose of treated wastewater via a subsurface, pressure dosed leach field; therefore, there will be no treated wastewater at the surface for rain events to mobilize.

Having considered the Hearing Record as defined in 20.1.4.7 NMAC, including all post-hearing submittals and the Hearing Officer's Report, and being otherwise fully advised in this matter,

THE CABINET SECRETARY OF ENVIRONMENT HEREBY ADOPTS THE HEARING OFFICER'S REPORT AND FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IT IS THEREFORE ORDERED:

The application for Discharge Permit No. 1936 is hereby granted, and the final permit shall be issued by the Ground Water Quality Bureau in the form set forth in the current Draft Permit.

DocuSigned by:

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DS


JAMES C. KENNEY,
Cabinet Secretary of Environment

NOTICE OF RIGHT TO REVIEW

Pursuant to NMSA 1978, § 74-6-5(O), any person who participated in this permitting action and who is adversely affected by the action may file a petition for hearing before the Water Quality Control Commission, c/o Pamela Jones, Board Administrator, 1190 St. Francis Drive, Santa Fe, New Mexico 87502. The petition shall be made in writing to the Board's Administrator within thirty days from the date notice is given of this action and comply with the requirements outlined above.

Certificate of Service

I hereby certify that on August 17, 2023, A copy of the Final Order was sent via electronic mail to the persons listed below. A hard copy will be mailed upon request.

Via Email:

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Madai Corral

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