

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION



NEW MEXICO ENVIRONMENT DEPARTMENT,
GROUND WATER QUALITY BUREAU,

Complainant

WQCC 17-08 (A)

v.

ABEL VILLALPANDO D.B.A. ROCKHILL DAIRY,
ROCKHILL DAIRY, L.L.C.

Respondent.

NEW MEXICO ENVIRONMENT DEPARTMENT'S CLOSING ARGUMENT

Pursuant to the direction of the New Mexico Water Quality Control Commission ("Commission"), TR 125:20 – 126:25, and 20.1.3.21.B NMAC, the Ground Water Quality Bureau ("Bureau") of the New Mexico Environment Department ("Department") hereby submits its closing argument and proposed findings of fact and conclusions of law in the above captioned matter.

I. INTRODUCTION AND STANDARD

The Commission held a hearing in this matter pursuant to NMSA 1978, Section 74-6-10(G) (1993) and the rules governing compliance order hearings, 20.1.3.2.A(4) NMAC. In the hearing, the Department bears the burden of proving, by a preponderance of the evidence, that the violation occurred and that the assessed civil penalty is appropriate. 20.1.3.19.J and 20.1.3.20.C(5) NMAC. Preponderance of the evidence means the greater weight of the evidence or that an argument is more likely true than not true. *See* UJI 13-304 NMRA. Once the Department establishes its case, the Respondent, here Rockhill Dairy, LLC ("Rockhill Dairy") and Abel Villalpando dba Rockhill Dairy, must provide adverse evidence to the Department's case or defenses to the allegations. 20.1.3.19.J NMAC.

Following the hearing and the filing of the proposed findings of fact and conclusions of law, the hearing officer issues a recommended decision including findings of fact; conclusions regarding all material issues of law or discretion, including reasons; a proposed final order; and a determination if the Department

acted within its discretion in assessing the civil penalty or a different penalty amount with attached reasoning. 20.1.3.21.C NMAC.

Thus, the Commission must decide if the Department showed that it is more likely true than not that the alleged violation occurred and that the penalty is more likely appropriate than not. If the Commission determines that the Department did this, then the Commission must determine if Rockhill Dairy and Mr. Villalpando presented adverse evidence or established any defenses that mitigate the violation or penalties. Once the Commission makes that determination, it may adopt, modify, or set aside the hearing officer's recommended decision. 20.1.3.21.D (1) NMAC. The Commission may also change the amount and the nature of the civil penalty, if any, recommended by the hearing officer. 20.1.3.21.D(2) NMAC.

Based on the evidence admitted at the hearing held on May 8, 2018, and the testimony provided, the Department respectfully requests that the Commission determine that Mr. Villalpando dba Rockhill Dairy, and Rockhill Dairy violated the Water Quality Act, NMSA 1978, Sections 74-6-1 to -17 ("WQA"), as alleged in administrative compliance order GWQB 17-03 (CO) ("Compliance Order"). Further, the Department respectfully requests that the Commission find that the assessed civil penalty is appropriate and within the Department's discretion.

II. BACKGROUND

Groundwater discharge permits are foundational to ground water protection, and Rockhill Dairy is required to obtain a discharge permit but failed to do so. No person shall cause or allow effluent to discharge so that it may move directly or indirectly into groundwater unless discharging pursuant to a discharge permit issued by the Department secretary. NMSA 1978, § 74-6-5(A); 20.6.2.3104 NMAC; TR 18:19-24. Those intending to discharge from a dairy facility must apply for a discharge permit pursuant to 20.6.6.8 NMAC; if a discharge permit was expired on December 31, 2011, and the Department has received no application for renewal, the permittee, owner of record of the dairy facility, or the holder of the expired permit must apply for a discharge permit renewal, renewal and modification, or closure pursuant to the Dairy Rule, within 90 days of August 1, 2015. TR 19:1-10. The Commission heard testimony from the Bureau's

Agriculture Compliance Section Manager, Nancy McDuffie, that the Bureau issues ground water discharge permits pursuant to the WQA, specifically NMSA 1978, Section 74-6-5; the New Mexico Ground and Surface Water Protection Regulations, 20.6.2 NMAC (“Commission Regulations”); and the Supplemental Permitting Requirements for Dairy Facilities. 20.6.6 NMAC (“Dairy Rule”). TR 14:25-15:17. Discharge permits establish terms and conditions under which permittees discharge contaminants in a manner that is protective of groundwater. TR 15:18-21.

Rockhill Dairy is a dairy facility discharging up to 80,000 gallons per day of wastewater as defined by 20.6.6.7 NMAC. TR 16:6-10. Rockhill Dairy is discharging effluent in a manner such that the effluent may move directly or indirectly into groundwater within the meaning of 20.6.2.3104 NMAC, making it subject to the requirements of the WQA and the Commission Regulations. NMED Exhibit 2, ¶ 15; TR 16:11-14, 18:7-11. Further, this discharge may move into groundwater that has an existing total dissolved solids concentration of less than 10,000 mg/L within the meaning of 20.6.2.3101 NMAC, and the discharge is into or within a place of withdrawal of groundwater for present or reasonably foreseeable future use. TR 18:11-18. DP-952 issued on September 26, 2010, indicates a depth to ground water of approximately 105 feet. NMED Exhibit 4, p. 1.

Rockhill Dairy received a discharge permit from the Bureau, DP-952, on September 26, 2005. TR 19:17-20; NMED Exhibit 2, ¶ 17; NMED Exhibit 4. DP-952 allowed a discharge of up to 80,000 gallons per day of dairy wastewater from a milking parlor to a concrete sump, through a screen solids separator into a synthetically lined lagoon for storage, and finally land application via center pivot and flood irrigation to 293 acres of irrigated cropland under cultivation. NMED Exhibit 4, p. 1. Included in the DP-952 cover letter are instructions for permit renewal. NMED Exhibit 4, cover letter; TR 20:3-7. The Bureau mailed DP-952 to Abel Villalpando, Owner, 304 Ojibwa Road, Dexter, New Mexico 88230. NMED Exhibit 4. Mr. Villalpando testified that he was aware of DP-952 and the conditions contained therein. TR 101:3-102:1.

III. ALLEGED VIOLATIONS

The Department alleged that Rockhill Dairy has discharged without a permit since September 26, 2010 because DP-952 expired, and Rockhill Dairy did not submit a complete application for renewal.

NMED Exhibit 2, ¶¶ 17 and 33; NMED Exhibit 4, cover letter; TR 19:17-20. Ms. McDuffie identified several attempts by the Bureau to secure voluntary compliance with the permitting requirements, citing to specific communications. NMED Exhibits 5, 7, 8, 9, 11, 12, and 13; TR 33:12-15. This included an application reminder letter mailed to Mr. Villalpando at 7254 Vineyard Road, Dexter, New Mexico 88230, on December 30, 2011. NMED Exhibit 5; TR 20:8-25. The Bureau did this as a courtesy. TR 21:1-5. There is no law or regulation requiring the Bureau to notify permittees that a permit is nearing expiration or that a renewal application due date is approaching; that burden rests on the permittee. *Id.*

Rockhill Dairy appears to have received the letter at that address since the Bureau received a renewal application and permit fee check from Rockhill Dairy on March 28, 2012. NMED Exhibit 6; TR 21:12-22:3. While the Bureau was unable to locate a copy of the filed application, TR 21:25-22:23, Mr. Villalpando stated he likely filled out this application by copying the application form from his expired permit. TR 90:19-91:2. Shortly thereafter, the Bureau evaluated the application for the information required by 20.6.6.10 and .12 NMAC, including if the applicant used the correct application form as required by 20.6.6.10 NMAC. TR 22:5-22. On December 31, 2011, the Commission amended the applicable regulations, resulting in a revised application for the newly required items. TR 20:10-18; NMED Exhibit 5. Since the application was on an unapproved form, the Bureau determined the application was administratively incomplete. TR 21:16-24. If an applicant uses the incorrect application form, e.g. a pre-Dairy Rule application form, the Bureau will not have the information required by the Dairy Rule to adequately draft a discharge permit. TR 22:14-23:2.

Administrative completeness is not an arbitrary term; an administratively complete application is required before the Bureau may issue a discharge permit. NSMA 1978, § 74-6-5(D) (2009). The Commission also established requirements for administratively complete permit applications. 20.6.2.3108.A NMAC. The Bureau summarizes the 3108(A) requirements as enough information to determine the quantity of the discharge, the quality of the discharge, and the location of the discharge; without this information, the Bureau cannot draft an adequate discharge permit. TR 22:7-11. Further, the Dairy Rule requires information beyond what is required by 20.6.2.3108.A NMAC, including, among other

things, a description of the facility's flow metering system, the depth to the shallowest ground water and ground water flow direction, monitoring well construction and identification information, surface soil and vadose zone geology, a location map, a flood zone map, engineering and surveying information, and documentation regarding the land application area. 20.6.6.10.G and .12 NMAC.

Ms. McDuffie stated that the Bureau attempted to contact Rockhill Dairy at 304 Ojibwa Road, Dexter, New Mexico regarding the administratively incomplete application on April 4, 2012. NMED Exhibit 7; TR 23:3-24:9. However, Rockhill Dairy failed to respond to this notice. TR 24:6-9. The Bureau sent a second notice of administrative incompleteness on July 6, 2012. NMED Exhibit 8; TR 24:11-24. Receiving no response, the Bureau sent a Notice of Violation to Rockhill Dairy at 304 Ojibwa Road, Dexter, New Mexico on October 17, 2012. NMED Exhibit 9; TR 25:2-20. This Notice of Violation included notice of potential penalties should Rockhill Dairy fail to come into compliance. *Id.*

During this time, the Department participated in the adoption, stay, appeal, and ultimate amendment of the Dairy Rule, occurring between 2011 and the effective date of the most recent amendment in August of 2015. TR 25:24-26:11. Throughout the rulemaking process, the uncertainty surrounding the Dairy Rule made permitting and enforcement troublesome for the Bureau. TR 29:23-30:9. Still, between 2012 and 2013, the Bureau issued 126 draft permits for applications received prior to March 30, 2012. TR 29:23-25. Five dairies did not submit timely applications before their existing discharge permits expired. TR 29:25-30:3. Of those five, three had ceased operations, and the other two were Creekside Dairy and Rockhill Dairy. TR 29:25-30:5.

On April 27, 2016, with Mr. Villalpando present, Ms. McDuffie and one of her staff, Ms. Cassie Brown, inspected Rockhill Dairy. TR 30:12-31:1, 91:15-17. The Bureau and Mr. Villalpando discussed the Dairy Rule permitting requirements at this meeting. TR 30:16-31:1, 91:18-20. According to Ms. McDuffie, Mr. Villalpando verbally agreed to submit a permit renewal application within 90 days, i.e. July 25, 2016. TR 31:2-14. The Bureau memorialized the discussion and the agreed application deadline to avoid further compliance action by July 25, 2016 in a letter dated June 7, 2016. NMED Exhibit 11; TR 31:2-14. The Bureau received no response and after July 29, 2016, considered Mr. Villalpando to continue to be in

violation of the WQA, the Commission Regulations, and the Dairy Rule. NMED Exhibit 12; TR 31:17-32:19.

Mr. Villalpando testified that he knew that he needed to submit an application after speaking with Ms. McDuffie, but because he believed that the Bureau was going to require him to complete expensive compliance measures, he did not to submit an application for renewal after their meeting. *See* TR 91:18-93:11. Further statements from Mr. Villalpando suggest that while he knew that he needed a discharge permit, he operated Rockhill Dairy and discharged wastewater without confirming or even knowing if he had actually received a renewed discharge permit. TR 93:17-94:21.

Receiving no response to the June 7, 2016 reminder letter, the Bureau issued a Second Notice of Violation to Rockhill Dairy on July 29, 2016. NMED Exhibit 12; TR 31:21-32:9. The Bureau sent the Second Notice of Violation to the mailing address on file for Rockhill Dairy via certified mail return receipt requested, but it was returned without signature. TR 32:10-19.

The Bureau issued an administrative compliance order to Rockhill Dairy on September 22, 2017, nearly a year and a half after Ms. McDuffie contacted Mr. Villalpando in person on April 27, 2016. NMED Exhibit 2; TR 32:21-33:11. The Bureau sent the administrative compliance order to Rockhill Dairy via certified mail return receipt requested and via FedEx to 304 Ojibwa Road, Dexter, New Mexico. NMED Exhibit 13; TR 36:10-37:3. The receipts show that Rockhill Dairy received the Compliance Order. NMED Exhibit 13. Respondent timely filed a request for hearing within 30 days of service of the Compliance Order. Respondent's Answer and Request for Hearing. Prior to issuance of the Compliance Order, Ms. McDuffie stated that the Bureau attempted eight separate times to compel voluntary compliance in the seven years between the expiration of DP-952 and issuance of the Compliance Order. TR 32:24-33:19.

The Bureau cited only one violation with two parts in the Compliance Order: first, Mr. Villalpando and Rockhill Dairy were in continuous violation of 20.6.2.3104 NMAC, discharging so that the effluent would move directly or indirectly into ground water without a discharge permit, since DP-952 expired on September 27, 2010; second, Mr. Villalpando and Rockhill Dairy were in continuous violation of 20.6.6.8 and 20.6.6.10 NMAC since January 1, 2012, for discharging from a dairy facility without a discharge

permit. NMED Exhibit 2; TR 34:4-35:2. Mr. Villalpando states that he submitted several applications for Rockhill Dairy, yet he provided no evidence to support these submittals, and Ms. McDuffie's testimony directly contradicts this argument. TR 109:22-111:10; *see e.g.* TR 20:10-18.

The Bureau argues that the history of ignored communications, including face-to-face communications, and the fact that Rockhill Dairy did not submit an administratively complete permit application until 2018 is sufficient to demonstrate that Rockhill Dairy was discharging without a valid discharge permit since September 2010.

IV. CIVIL PENALTY

The maximum civil penalty for violations of Section 74-6-5 NMSA 1978, permitting requirements, is \$15,000 per day per violation. NMSA 1978, § 74-6-10(C)(1) (1993). Here, the Bureau assessed a total civil penalty of \$226,800 for discharging without a discharge permit. NMED Exhibit 2, ¶ 38; TR 37:12-15. Ms. McDuffie testified that the Bureau arrived at this amount by first calculating a gravity penalty based on the potential for harm and the extent of deviation. TR 37:16-42:24; NMED Exhibit 15.

The Bureau found a moderate potential for harm because of a significant potential for groundwater contamination through permeable sands, gravels, and clays and a depth to groundwater of 105 feet. TR 38:24-39:15; NMED Exhibit 15, p. 1. Ms. McDuffie testified that 2009 groundwater monitoring data indicated levels of total dissolved solids, chloride, and nitrate at Rockhill Dairy that exceed the 20.6.2.3013 NMAC human health standards. TR 39:11-23. Mr. Villalpando did not challenge Ms. McDuffie's testimony regarding use of this factor at the time the Bureau made the civil penalty calculation. TR 45:25-46:17.

Additionally, failure to timely submit a permit application is listed in the Bureau's civil penalty policy as an example of a violation with serious implications for the regulatory program as a whole, meriting substantial penalty. NMED Exhibit 14, p. 6. Moderate potentials for harm include violations for permitting issues and compliance with permit conditions, similar to the alleged violations in the Compliance Order. In comparison, outright dumping violations are major potentials for harm; failure to pay permit fees but otherwise complying with the regulatory and permit conditions are minor potentials for harm. *See* NMED Exhibit 14, p. 8. DP-952 is nearly 15 years old; there have been two substantial revisions to the applicable

regulations since that time. NMED Exhibit 14, cover letter; TR 25:24-26:11; *see* 20.6.6 NMAC. Based on the potential threat to ground water and the civil penalty policy, the Bureau acted within its established use of discretion in calculating the potential for harm.

Second, the Bureau determined a major extent of deviation from the regulatory requirements. TR 40:5-13. The Bureau made this determination because its files showed that Rockhill Dairy did not respond to repeated requests to comply with a necessary requirement – obtaining a groundwater discharge permit. *Id.* Ms. McDuffie testified that ignoring requests to submit a complete permit renewal application is a major deviation. TR 40:12-13; NMED Exhibit 15, p. 1. Without a permit, the Bureau has few options for regulating discharges except abatement if there is contamination, 20.6.2.1203.A NMAC, or ordering the discharger to cease discharging altogether, 20.6.2.1220 NMAC. Since permitting is fundamental to groundwater protection, *see* NMSA 1978, Section 74-6-5(A), the Bureau's major extent of deviation determination is within its discretion as established by the civil penalty policy. The civil penalty policy includes a penalty matrix once the Bureau determines the gravity levels, and the matrix lists a moderate/major violation as a \$9,000 penalty as permitted by NMSA 1978, Section 74-6-10.1(A) and violations of NMSA 1978, Section 74-6-5 (failure to obtain a discharge permit). NMED Exhibit 14, p. 10; TR 40:14-45.

Additionally, the civil penalty policy requires multi-day penalties for moderate/major violations. TR 40:15-24; NMED Exhibit 14, p. 13. Assessing a multi-day penalty beyond 60 days is discretionary. NMED Exhibit 14, p. 13; NMED Exhibit 15. The appropriate multi-day penalty for a moderate/major penalty is \$4,500 to \$2,250. NMED Exhibit 14, p.13. The Bureau chose a multi-day penalty of \$3,000 per day. TR 40:24-41:2; NMED Exhibit 15.

Ms. McDuffie testified that from the expiration of the permit until the issuance of the administrative compliance order, Mr. Villalpando and Rockhill Dairy were in violation of the Water Quality Act, 20.6.2 NMAC, and 20.6.6 NMAC for 2,553 days. TR 42:25-43:3. Of those 2,553 days, Mr. Villalpando and Rockhill Dairy continued to be in violation of the WQA and the regulations for 513 days after Ms. McDuffie discussed the permitting requirements in person at his facility on April 27, 2016. *See* TR 33:6-11; NMED

Exhibits 2 and 11. Thus, the assessed multi-day penalty for 60 days accounts for a very small percentage of the time that Rockhill Dairy has been in noncompliance, including the time after Ms. McDuffie's meeting with Mr. Villalpando. TR 43:13-16.

The civil penalty policy further allows for other penalty modifiers based on the circumstances. The Bureau did not calculate the economic benefit of non-compliance for this penalty. TR 42:17-19. However, the Bureau added a willfulness/negligence adjustment. The Bureau must consider five factors in determining whether to add a modifier of willfulness/negligence. NMED Exhibit 14, p. 19. They are:

- How much control the violator had over the violative events;
- The foreseeability of the violative events;
- Whether the violator took reasonable precautions against the violative events;
- Whether the violator knew or should have known of the associated hazards; and
- Whether the violator knew or should have known of the legal requirement which was violated, though lack of knowledge of the legal requirement should never be used as a basis to reduce a penalty. *Id.*

Ms. McDuffie testified that the Bureau observed continuous violation of the applicable regulations and repeated refusal to comply with the WQA and the Commission Regulations. TR 41:3-13. Indeed, Mr. Villalpando had complete control over the facility and the events. TR 41:3-8. Mr. Villalpando testified that he prepared the last application for renewal. TR 98:23-99:8. He is the owner of Rockhill Dairy. NMED Exhibit 3; TR 17:6-18:3. He has been, at least, the registered agent for Rockhill Dairy, LLC since October of 1995. NMED Exhibit 3. As owner and registered agent, he is responsible for notices for his facility and corporation. NMSA 1978, § 53-11-11(B) (1967); 12.3.2.8.3.E(2) NMAC. The notices and conversations demonstrate that Mr. Villalpando was aware of the hazards and that a legal requirement was violated. *See e.g.* NMED Exhibit 11. The violations were foreseeable since DP-952 lists the expiration date and renewal instructions. NMED Exhibit 4, cover letter. Given these factors, Ms. McDuffie testified that the Bureau added a multiplier for negligence/willfulness. TR 41:3-13; NMED Exhibit 15. Mr. Villalpando testified that

based on his belief that the Bureau would require expensive compliance measures, he did not submit a permit application. TR 107:2-12. Such reasoning supports the Bureau's determination that there was a willful decision to not submit a permit application.

The Bureau also considered other facility compliance issues in calculating the assessed civil penalty. NMED Exhibit 15; TR 41:14-42:7. The Bureau may add a history of noncompliance modifier when a party previously violated the WQA requirements at the same or a different site. NMED Exhibit 14, p. 20. Factors to consider include: similarity of the previous violation; how recent the previous violation was; the number of previous violations (includes notices of violation or written notification, however informal, that a violation exists); and the violator's response to the previous violations in regard to correcting the problem. NMED Exhibit 14, p. 20. The Bureau may establish a history of noncompliance even in the absence of similar violations where there has been a disregard of environmental requirements contained in the WQA and the Commission regulations. NMED Exhibit 14, p. 20. Ms. McDuffie testified that the Bureau added history of noncompliance because it alleged, though has not proven, similar violations at another facility under Mr. Villalpando's control, and the Bureau sees this as a consistent pattern of disregard and indifference to environmental protection. TR: 41:14-42:7; NMED Exhibit 15.

No downward adjustment was appropriate for good-faith efforts to comply since no good-faith efforts were taken. TR 42:8-11; NMED Exhibit 15. The Bureau's penalty policy indicates that no good-faith effort adjustment is warranted when corrective efforts are taken after the Bureau detects the violation since the gravity based component matrix already takes into compliance good-faith efforts to comply after the Compliance Order. NMED Exhibit 14, p. 19. Ms. McDuffie's and Mr. Villalpando's testimonies show that it was not until the Bureau issued the Compliance Order that Rockhill Dairy submitted a complete application. TR 43:17-24, 107:19-21.

Given these factors, the Bureau respectfully requests that the Commission find that the Bureau acted within its discretion in calculating the assessed civil penalty.

V. DEFENSES AND ADVERSE EVIDENCE

Having established its case as to the violations and appropriateness of the penalties, the burden shifts to Mr. Villalpando and Rockhill Dairy to provide adverse evidence or defenses to the violations or assessed civil penalties. 20.1.3.19.J NMAC. The Department addresses the points raised in testimony since no exhibits were submitted.

First, the Department addresses the perceived gaps in compliance action. The record shows gaps in compliance communications between the Bureau and Rockhill Dairy between October 17, 2012, and July 30, 2015. NMED Exhibit 9; TR 28:19-29:12. However, the record and Ms. McDuffie's testimony suggest that these gaps correspond to rulemakings and negotiations directly applicable to dairy regulation and permitting renewals, particularly, adoption of 20.6.6 NMAC on December 31, 2011, and amendment of 20.6.6 NMAC on June 16, 2015. TR 25:21-26:19; 20.6.6.5 and 20.6.6.12 NMAC; NMSA 1978, § 74-6-6(E) (1993). Ms. McDuffie noted uncertainty for the Bureau and the regulated community in issuing permits and enforcement difficulties during this time. TR 29:19-30:9. Still, these perceived gaps were not assessed multi-day penalties. The multi-day penalty was capped at two months, and Rockhill Dairy had an additional 513 days after meeting with Ms. McDuffie on April 27, 2016, to come into compliance before the Bureau issued the Compliance Order on September 22, 2017, also not included in the multi-day penalty calculation.

Second, the Department addresses perceived confusion over the permitting requirements and argues that permit conditions are different than the requirement to apply for a permit renewal. Rockhill Dairy's reasoning for not submitting a complete permit application appears to be that the regulation amendment changes were too confusing for compliance. TR 102:14-103:16. The Bureau acknowledges that there are documents missing from the record (*see e.g.* TR 21:16-22:3, acknowledging that the Bureau was unable to locate the submitted application from March 2012 in its records), but there is no evidence in the record that Rockhill Dairy was required to do anything beyond the regulatory requirements at the time. *See e.g.* NMED Exhibit 7. Mr. Villalpando testified that he received conflicting instructions as to what he was required to include on his permit application. TR 102:14-103:16. However, the consistent documented requests did not address liners or other ground water protection activities; rather the documented requests

consistently ask for an application for renewal on the correct application form. *See* NMED Exhibits 5, p 2; 7, 8, 9, 11, and 12. Ultimately, refusal to submit a permit application rests on Rockhill Dairy, not the Bureau. Mr. Villalpando knows that it is his dairy's responsibility to complete the permit application, not the Bureau's. TR 94:19-95:2.

VI. CONCLUSION

This compliance matter should never have come to this point. This matter could have been resolved in 2010 with submittal of a timely application. It could have been resolved in 2012 with submittal of the correct application form. It could have been resolved at any number of points between 2010 and today, especially following the Bureau's in-person meeting with Mr. Villalpando. The Bureau has learned much in the attempts to compel Rockhill Dairy into compliance, and it has begun to implement some of those changes, such as pre-permitting inspections. However, the record is clear. Rockhill Dairy was in violation of the Water Quality Act and the Commission Regulations for years. The Bureau requested voluntary compliance, and that failed. After these efforts, the Bureau issued the Compliance Order with the assessed penalty. The Bureau respectfully requests that the Commission uphold the Compliance Order and the assessed penalty. To do otherwise would undercut the foundational mechanism of the Water Quality Act: issuance of discharge permits that are protective of groundwater, as well as the integrity and function of the regulatory program.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT

/s/ Christopher N. Atencio

Christopher N. Atencio
Office of General Counsel
121 Tijeras Avenue NE, Suite 1000
Albuquerque, NM 87102
Telephone: (505) 222-9554
christopher.atencio@state.nm.us

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing New Mexico Environment Department's Proposed Findings of Fact and Conclusions of Law was delivered as described below to all parties on June 14, 2018.

Via First-Class U.S. Mail and electronic mail:

Abel Villalpando,
304 East Ojibwa Road
Dexter, NM 88230
starrynightdairy1@yahoo.com
Respondent for Creekside Dairy

Via First-Class U.S. Mail and electronic mail:

Stephen Vigil
New Mexico Attorney General's Office
P.O. Drawer 1508
Santa Fe, NM 87504
svigil@nmag.gov
Counsel for Water Quality Control Commission

Via Hand-Delivery:

Pam Castañeda,
Commission Administrator
P.O. Box 5469
Santa Fe, NM 87502

/s/ Christopher N. Atencio
Christopher N. Atencio