

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION



NEW MEXICO ENVIRONMENT DEPARTMENT,
GROUND WATER QUALITY BUREAU,

Complainant

WQCC 17-07(A)

v.

**ABEL VILLALPANDO D.B.A. CREEKSIDE DAIRY;
CREEKSIDE DAIRY, L.L.C.**

Respondent.

NEW MEXICO ENVIRONMENT DEPARTMENT'S CLOSING ARGUMENT

Pursuant to the direction of the chair of the New Mexico Water Quality Control Commission (“Commission”), TR 140:22-24, 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 the conduct of public compliance order hearings, 20.1.3.2.A(4) NMAC. Pursuant to 20.1.3 NMAC, 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. A 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 Creekside Dairy, LLC (“Creekside Dairy”) and Abel Villalpando dba Creekside 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 provided the greater weight of evidence or showed that it is more likely true than not that the violation occurred and that the penalty is more likely appropriate. If the Commission determines that the Department has done this, then the Commission must determine if Creekside Dairy, LLC and Mr. Villalpando have presented adverse evidence or established any defenses that mitigate the violation or penalties. Once the Commission makes that determinations, 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 April 10, 2018, and the testimony provided, the Department respectfully requests that the Commission determine that Mr. Villalpando dba Creekside Dairy, and Creekside Dairy violated the Water Quality Act as alleged in administrative compliance order GWQB 17-02 (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 the Water Quality Act, and the Department alleged that Creekside 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. A person intending to discharge from a dairy facility shall submit an application for a discharge permit pursuant to 20.6.6.8 NMAC; if a discharge permit was expired on December 31, 2011, and an application for renewal has not been received by the Department, the permittee, owner of record of the dairy facility, or the holder of the expired permit shall submit, within 90 days of August 1, 2015, an application for a discharge permit renewal, renewal and modification, or closure pursuant to the Dairy Rule. TR 35:10-20. At the hearing, the Commission heard testimony from the Bureau's Agriculture Compliance

Section Manager, Nancy McDuffie. NMED Exhibit 1; TR 18:8-21. Ms. McDuffie testified that Bureau issues ground water discharge permits pursuant to the Water Quality Act, NMSA 1978, Sections 74-6-1 to -17 (“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 32:2-13. Discharge permits establish terms and conditions under which permittees discharge contaminants in a manner that is protective of groundwater. TR 32:18-21.

Creekside Dairy is a dairy facility discharging up to 56,000 gallons per day of wastewater as defined by 20.6.6.7 NMAC. TR 32:25-33:7. Ms. McDuffie testified that Creekside 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 34:16-20. 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 34:21-35:2.

Ms. McDuffie testified that the Bureau received no monitoring data since 2009, but that the 2009 data indicated a depth to ground water of 29 feet. TR 67:21-68:1. DP-913 issued on June 16, 2004, indicates a depth to ground water of approximately 45 feet. NMED Exhibit 4, p. 1; TR 69:10-15. The permit application from 2009 noted a depth of 50 feet. NMED Exhibit 6; TR 68:2-5. Mr. Villalpando disputes that the monitoring data was not submitted and claims, without evidence, submittal of all necessary data to the Department since 2009. TR 83:12-16; 97:14-25, 104:12-24. Mr. Villalpando’s estimation of the depth to ground water is 150 or 300 to 400 feet, out of range of what the Bureau testified to and what was listed on the permit application he submitted, and swore to its accuracy, in 2009. TR 120:24-121:5, 126:22-127:18; NMED Exhibit 6, p. 1.

Creekside Dairy received a discharge permit from the Bureau, DP-913, on June 16, 2004. TR 35:23-25; NMED Exhibit 2, ¶ 17; NMED Exhibit 4. DP-913 allowed a discharge of up to 56,000 gallons per day

of dairy wastewater through a solids separator to a clay-lined lagoon and, ultimately, application to 260 acres of flood-irrigated cropland. NMED Exhibit 4, p. 1. Included in the DP-913 cover letter are instructions for renewing a discharge permit. NMED Exhibit 4, cover letter; TR 36:9-13. The Bureau mailed DP-913 to Abel Villalpando, Owner, 304 Ojibwa Road, Dexter, New Mexico 88230. NMED Exhibit 4. Mr. Villalpando testified that he received DP-913. TR 115:8-13.

III. ALLEGED VIOLATIONS

The Department alleged that Creekside Dairy has been discharging without a permit since June of 2009 because DP-913 expired, and Creekside Dairy did not submit a complete application for renewal. NMED Exhibit 2. DP-913 expired June 16, 2009. TR 35:25; NMED Exhibit 2, ¶ 17; NMED Exhibit 4, cover letter. Throughout her testimony, 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, 10, 11, 12, 13, and 14. This included an application reminder letter mailed to Mr. Villalpando at 304 Ojibwa Road, Dexter, New Mexico 88230, on July 2, 2009. NMED Exhibit 5; TR 36:14-24. The Bureau did this as a courtesy. TR 59:16-60:4. There is no law or regulation requiring the Bureau to notify a permittee that its permit is nearing expiration or that a renewal application due date is approaching; that burden rests on the permittee. *Id.*

Mr. Villalpando and Creekside Dairy appear to have received the letter at that address since the Bureau received a renewal application from Mr. Villalpando one week later on July 9, 2009. NMED Exhibit 6; TR 36:35-12. Mr. Villalpando personally filled out that application and signed it in 2009. TR 127:5-10. Shortly thereafter, the Bureau evaluated the application for the information required by 20.6.2.3106 and .3108 NMAC; the Bureau noted missing items and inconsistency with the Bureau's records, including: a physical address and the township, range, and section for the entire dairy facility. NMED Exhibit 7; TR 37. Without location information, the Bureau could not determine what compliance measures would be necessary because it could not prepare a draft discharge permit until it had an administratively complete application. TR 37:13-20. Mr. Villalpando's statements highlight the importance of the location information. He stated that he thought the Bureau had all the information that it needed in his original 2004

permit, but he also stated that he added more farm ground to his facility since the original permit was issued. TR 82:6-10. Without Mr. Villalpando's notification, the Bureau would be unaware of the additional farm ground and a potential source of contamination.

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. Applicants must provide the name and address of the proposed discharger; the location of the discharge, including a street address, if available, and sufficient information to locate the facility with respect to surrounding landmarks; a brief description of the activities that produce the discharge described in the application; a brief description of the expected quality and volume of the discharge; and the depth to and total dissolved solids concentration of the ground water most likely to be affected by the discharge. 20.6.2.3108.A NMAC. The Bureau summarizes this 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 37:13-20.

The Bureau attempted to contact Creekside Dairy at the same address regarding the administrative incompleteness of the application on July 24, 2009. NMED Exhibit 7; TR 37:21-38:5. However, Creekside Dairy failed to respond to this notice. TR 38:6-9. The Bureau sent an additional reminder letter on December 30, 2011; though this letter was inexplicably sent to 7254 Vineyard Road, Dexter, New Mexico 88230. NMED Exhibit 8; TR 38:12-21. Still, the letter sent to 7254 Vineyard Road resulted in Creekside Dairy filing a renewal application on March 28, 2012, with a check for the permit and filing fees signed by Carlos Villalpando for Creekside Dairy, LLC and listing an address for Creekside Dairy of 7254 Vineyard Road, Dexter, New Mexico 88230. NMED Exhibit 9; TR 38:22-39:7.

While the Bureau's records do not contain the application submitted on March 28, 2012, the records indicate that this application was also administratively incomplete for missing items and for being on an application form that was no longer in use. NMED Exhibit 10; TR 39:8-20. Mr. Villalpando corroborated this partly by testifying that he used the same application that he had used previously in 2004. TR 123:21-

124:10. Again, because of missing items, the Bureau sent a notice of the administrative incompleteness to Mr. Villalpando on April 4, 2012. NMED Exhibit 10; TR 39:14-20. Creekside Dairy failed to respond to this notice. TR 39:21-24.

Receiving no response, the Bureau sent a second notice of administrative incompleteness to Creekside Dairy at 304 Ojibwa Road, Dexter, New Mexico on July 6, 2012. NMED Exhibit 11; TR 39:21-40:5. Again receiving no response, the Bureau issued a Notice of Violation to Creekside Dairy on October 17, 2012, including notice of potential penalties should the dairy fail to come into compliance. NMED Exhibit 12; TR 40:6-19.

On December 31, 2011, the Commission amended the applicable regulations, resulting in a revised application for the newly required items; the Bureau revised the application again following the 2015 amendments. TR 75:23-76:6; NMED Exhibit 12, p. 1. In 2015, the Bureau sent a reminder to all dairy facilities, including Creekside Dairy at 304 Ojibwa Road, Dexter, New Mexico on July 30, 2015, advising of the amendments to 20.6.6 NMAC and the need to submit applications for renewal. NMED Exhibit 13; TR 41:12-23. Creekside Dairy failed to respond to this reminder. TR 41:24-25.

On April 27, 2016, with Mr. Villalpando present, Ms. McDuffie and one of her staff, Ms. Cassie Brown, inspected Creekside Dairy. TR 42:11-21, 112:1-9. Mr. Villalpando disputes that this was an inspection, but regardless of the nature, the Bureau and Mr. Villalpando discussed the Dairy Rule permitting requirements at this meeting. TR 42:25-43:5, 112:1-9. According to Ms. McDuffie, Mr. Villalpando verbally agreed to submit a permit renewal application within 90 days, i.e. July 25, 2016. *Id.* The Bureau memorialized this discussion and the agreed deadline to submit a completed application for renewal to avoid further compliance action, July 25, 2016. NMED Exhibit 14; TR 42:22-43:14. 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 15, offer of proof; TR 43:15-44:12.

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 112:10-113:4.

Receiving no response, the Bureau issued an administrative compliance order on September 22, 2017, giving plenty of time for compliance after contacting Mr. Villalpando in person in April of 2016. NMED Exhibit 2; TR 44:2-18. The Bureau sent the administrative compliance order to Creekside Dairy via both certified mail return receipt requested and via FedEx to 304 Ojibwa Road, Dexter, New Mexico. NMED Exhibit 16; TR 48:3-21. The receipts indicate that Creekside Dairy received the Compliance Order. NMED Exhibit 16. The Petitioner timely filed a request for hearing within 30 days of service of the compliance order.

The Bureau cited only one violation with two parts in the Compliance Order: first, Mr. Villalpando and Creekside 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-913 expired on June 16, 2009; second, Mr. Villalpando and Creekside 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 45:1-10.

The Bureau argues that the history of ignored communications, including face-to-face communications, and the fact that Creekside Dairy did not submit an administratively complete permit application until 2018 is sufficient to demonstrate that Creekside Dairy was discharging without a valid discharge permit since June of 2009.

IV. CIVIL PENALTY

The WQA sets a maximum penalty for civil penalties for violations of Section 74-6-5 NMSA 1978, permitting requirements, at \$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, p. 8; 49:6-9. 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. NMED Exhibit 18; TR 50:13-51:24.

The Bureau determined there was 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 29 feet. TR 50:17-25. Ms. McDuffie testified that 2009 groundwater monitoring data indicated levels of total dissolved solids, chloride, and nitrate at Creekside Dairy that exceeded the 20.6.2.3013 NMAC human health standards. TR 51:1-7. Mr. Villalpando disputes the allegation of exceeded ground water quality standards but provided no evidence to the contrary in terms of expert testimony or monitoring reports. TR 116:5-12.

Additionally, failure to timely submit a permit application is outlined 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 17, 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 17, p. 8. Mr. Villalpando argued there is no harm to groundwater, that the permit issued in 2004 is fine for protection. TR 81:13-18, 117:6-7. However, DP-913 is nearly 15 years old; there have been two substantial revisions to the applicable regulations since that time. NMED Exhibit 13; TR 40:23-41:11, 122:13-15; *see* 20.6.6 NMAC. Based on the potential threat to ground water and the direction from 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 51:14-22. The Bureau made this determination because its files showed that Creekside Dairy did not respond to repeated requests to comply with a necessary requirement – obtaining a groundwater discharge permit. *Id.* Ms. McDuffie testified that the Bureau considers ignoring requests to submit a complete permit renewal application as a major deviation. TR 51:14-22. 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 regulating groundwater, *see* NMSA 1978, Section 74-6-5(A), the Bureau's determination that this is a major

extent of deviation 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).

Additionally, the civil penalty policy requires multi-day penalties for moderate/major violations. TR 52:5-11; NMED Exhibit 17, p. 13. Assessing a multi-day penalty beyond 60 days is discretionary. NMED Exhibit 17, p. 13; NMED Exhibit 18; TR 52:5-11; TR 70:23-71:5. The appropriate multi-day penalty for a moderate/major penalty is \$4,500 to \$2,250. NMED Exhibit 17, p.13. The Bureau chose a multi-day penalty of \$3,000 per day. TR 52:5-11; NMED Exhibit 18.

Ms. McDuffie testified that from the expiration of the permit until the issuance of the administrative compliance order, Mr. Villalpando and Creekside Dairy were in violation of the Water Quality Act, 20.6.2 NMAC, and 20.6.6 NMAC for 3,020 days. TR 55:6-10. Of that 3,020 days, Mr. Villalpando and Creekside 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 42:13-16; NMED Exhibit 14. Thus, the Bureau's assessed multi-day penalty for 60 days accounts for a very small percentage of the time that Creekside Dairy has been out of compliance, including the time after Ms. McDuffie's meeting with Mr. Villalpando. TR 55:6-19.

The civil penalty policy also allows for other penalty modifiers based on the circumstances. The Bureau did not calculate the economic benefit of non-compliance due to the number of unknowns in this situation. TR 54:21-55:5. However, the Bureau did add a willfulness/negligence adjustment. The Bureau must consider five factors in determining whether to add a modifier of willfulness/negligence. NMED Exhibit 17, 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 45:1-14. Indeed, Mr. Villalpando had complete control over the facility and the events. TR 45:14-17. Mr. Villalpando himself testified to preparing and signing the last application for renewal. TR 127:5-10. He is the owner of Creekside Dairy. NMED Exhibit 3; NMED Exhibit 6, p.2. He has been, at least, the registered agent for Creekside Dairy, LLC since May of 2001. 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 made aware of the hazards and that a legal requirement was violated. *See e.g.* NMED Exhibit 14. The violations were foreseeable since DP-913 lists the expiration date and renewal instructions. NMED Exhibit 4. Given these factors, Ms. McDuffie testified that the Bureau added a multiplier for negligence/willfulness. TR 52:12-53:14; NMED Exhibit 18. Mr. Villalpando testified that based on his belief that the Bureau would require expensive compliance measures, he did not submit a permit application. TR 112:10-113:4. 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 18; TR 45:18-25. 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 17, 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 17, 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 17, 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: 52:24-53:14; NMED Exhibit 18.

No downward adjustment was appropriate for good-faith efforts to comply since no good-faith efforts were taken. TR 54:2-5; NMED Exhibit 18. The Bureau's penalty policy indicates that no good-faith effort adjustment is warranted when efforts to correct the violation 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 Bureau discovers the violation. NMED Exhibit 17, p. 19. Mr. Villalpando's and Ms. Irvin's testimony suggest that it was not until the Bureau issued the Compliance Order that Creekside Dairy submitted a complete application. TR 95:6-10, 102:21-22, 103:10-12.

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 Creekside 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 Creekside Dairy between July 24, 2009, and December 30, 2011, and between October 17, 2012, and July 30, 2015. NMED Exhibits 7, 8, 12, and 13. 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 40:20-41:11; 20.6.6.5 and 20.6.6.12 NMAC; NMSA 1978, § 74-6-6(E) (1993). Ms. McDuffie noted the uncertainty for the Bureau and the regulated community in issuing permits and enforcement difficulties during this time.

TR 42:1-9. However, these perceived gaps were not assessed multi-day penalties; the multi-day penalty was capped at two months.

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. The Bureau acknowledges that there are documents missing from the record without which it is unclear what may or may not have been required on permit applications from 2010 through 2011. *See* TR: 60:10-61:12. However, there is no evidence in the record that Creekside Dairy was required to do anything beyond the regulatory requirements at the time. *See e.g.* NMED Exhibit 4. Mr. Villalpando testified that he received conflicting instructions as to what he was required to include on his permit application. TR 100:16-101:4. However, the consistent documented requests did not address liners or other ground water protection activities, *see* TR 83:23-85:2; rather the documented requests consistently ask for address and location information and completed application forms. *See* NMED Exhibits 5, 7, 8, 10, 11, 12, and 14.

Creekside Dairy's reasoning for not submitting a complete permit application appears to be that the changes required by regulation amendments were too confusing for compliance. TR 82:8-22. As such, Mr. Villalpando testified that it is partially the Bureau's fault that no permit was submitted. TR101:13-18. He explains this as the Bureau's failure in processing paperwork or requiring different requirements for his permit. TR 102:9-20. Yet he admits that not all the required information, e.g. the physical address, was included. TR 102:12-17.

Additionally, Mr. Villalpando testified that he was unaware of the posting requirements for permit applications in 2018, yet he testified that the letter, NMED Exhibit 7, says what it was he was supposed to do. TR 123:12-124:14. Still, Ms. McDuffie discussed the permitting requirements in person and his need to submit a complete permit application. TR 112:1-9. It is telling that in the nine years since his permit expired, Mr. Villalpando only became aware of what the Bureau has been attempting to communicate for years after the Bureau issued the Compliance Order. Ultimately, refusal to submit a permit application rests on Creekside Dairy, not the Bureau. Mr. Villalpando knows that it is his dairy's responsibility to complete the permit application, not the Bureau's. TR 113:16-23.

VI. CONCLUSION

This compliance matter should never have come to this point. This matter could have been resolved in 2009 with submittal of a complete application. The Bureau has learned much in the attempts to compel Creekside Dairy into compliance, and it has begun to implement some of those changes, such as pre-permitting inspections. However, the record is clear. Creekside Dairy was in violation of the Water Quality Act and the Commission Regulations for years. The Bureau requested voluntary compliance, and it 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.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing New Mexico Environment Department's Closing Argument was delivered as described below to all parties on May 10, 2018.

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