

Abel Villalpando
304 East Ojibwa Road
Dexter, NM 88230
(575)317-1938



WQCC 17-07(A)

Creekside Dairy GWQB 17-02 (CO)

Paragraph 1, 2, 3, 4, and 5 are New Mexico regulations.

Paragraph 6 assumes waste water passes through the vadose zone and enters ground water.

Paragraph 7 is correct

Paragraph 8 is correct

Paragraph 9 is correct

Paragraph 10 I do not know

Paragraph 11 is correct

Paragraph 12 is correct

Paragraph 13 is correct

Paragraph 14 Creekside discharges up to 36,000 gallons of waste water per day

Paragraph 15 is correct

Paragraph 16 is correct

Paragraph 17 I do not know

Paragraph 18 I do not know

Paragraph 19 I do not know

Paragraph 20 I do not know

Paragraph 21 I do not know

Paragraph 22 I do not know

Paragraph 23 I do not know

Paragraph 24 I do not know

Paragraph 25 I know some of

Paragraph 26 I do not know

Paragraph 27 I do not recall the complete conversation

Paragraph 28 I do not know

Paragraph 29 I do not know

Paragraph 30 I do not know

Paragraph 31 I do not know as to whether I had an active discharge permit as of June 2009

Paragraph 32 I did submit a complete application for renewal

Paragraph 33 I do not know

Paragraph 34 I do not know

Paragraph 35 I have not continuously violated 20.6.2.3104 NMAC. I have not discharged any water that has directly or indirectly gone into ground water. A lot of this paragraph is not willful or negligent. It is in part due to my confusion caused by changes in New Mexico

regulations. I have followed every requirement to discharge water above those required by State of New Mexico. I have never contaminated any ground water or had an illegal discharge. This in fact shows adherence I have for environmental protection.

Paragraph 36 and 37 I agree to do

Paragraph 38 Understood

Paragraph 39 Understood

Paragraph 40 and 41 I object to

Paragraph 42 I request a hearing

Paragraph 43 Request for hearing will be sent

Paragraph 44, 45, and 46 Will be done

Paragraph 47 Done to the best of my ability

Paragraph 48, 49, 50, and 51 Understood

Paragraph 52 I wish to have settlement discussions

Paragraph 53, 54, 55, 56, and 57 Understood

GRAVITY-BASED PENALTY

Paragraph 1 I do not agree with the majority that is in this paragraph.

Carol Shwin signed for Abel
Villa/Pando

STATE OF NEW MEXICO

NEW MEXICO ENVIRONMENT DEPARTMENT
WATER PROTECTION DIVISION

_____))
In the Matter of:))
))
ABEL VILLALPANDO, d/b/a))
CREEKSIDE DAIRY; CREEKSIDE))
DAIRY, LLC,))
))
Respondent.))
_____)

No.: GWQB 17- 02 (CO)

**ADMINISTRATIVE COMPLIANCE ORDER
REQUIRING COMPLIANCE AND ASSESSING A CIVIL PENALTY**

Pursuant to the New Mexico Water Quality Act (“WQA”), NMSA 1978, Sections 74-6-1 to -17 and New Mexico Water Quality Control Commission Regulations (“WQCC Regulations”), 20.6.2 NMAC, and pursuant to a delegation of authority from the Secretary of the New Mexico Environment Department (“NMED”), the Director of the Water Protection Division of NMED hereby issues this Administrative Compliance Order (“Order”), on behalf of NMED’s Ground Water Quality Bureau (“Bureau” or “Complainant”), to Abel Villalpando, d/b/a Creekside Dairy, and Creekside Dairy, LLC (“Respondent”). The purpose of this Order is to enforce the WQA and WQCC Regulations, assess a civil penalty for Respondent’s violations of the WQA and WQCC Regulations, and require Respondent to comply with the WQA and WQCC Regulations.

I. FINDINGS OF FACT

1. Pursuant to the NMSA 1978, Section 9-7A-4 (1991), NMED is an executive agency within the government of the State of New Mexico. Pursuant to a NMSA 1978, Section

74-6-2(K)(1) (2003), NMED is a constituent agency of the New Mexico Water Quality Control Commission.

2. The Complainant is an organizational unit of NMED within its Water Protection Division. The Complainant was created pursuant to the authority granted to the Secretary of NMED under NMSA 1978, Section 9-7A-6(B)(3) (1991).

3. Pursuant to NMSA 1978, Section 74-6-10(A)(1) (1993), whenever, on the basis of any information, a constituent agency determines that a person violated or is violating a requirement, regulation, or water quality standard adopted pursuant to the WQA or a condition of a permit issued pursuant to that act, the constituent agency may issue a compliance order requiring compliance immediately or within a specified time period or issue a compliance order assessing a civil penalty.

4. Pursuant to NMSA 1978, Section 9-7A-6(B), the Secretary of NMED has every power expressly enumerated in the laws, whether granted to the secretary, the department, or any division of the department.

5. Pursuant to NMSA 1978, Section 9-7A-6(B)(2), the Secretary of NMED may delegate authority to subordinates as necessary and appropriate. Pursuant to a delegation of authority from the Secretary of NMED, the Director of the Water Protection Division of NMED has the authority to issue Administrative Compliance Orders on behalf of the Complainant.

6. Dairy wastewater contains total Kjeldahl nitrogen ("TKN"), which consists of ammonia nitrogen and organic nitrogen. Ammonia, nitrogen, and organic nitrogen are water contaminants that have the potential to alter the physical, chemical, biological, or radiological qualities of water and to adversely affect human health and the environment. Ammonia nitrogen and organic nitrogen from livestock waste readily transform into nitrate as nitrogen ("NO₃-N")

as they pass through the vadose zone and enter ground water. Resulting nitrate concentrations in ground water can exceed the human health standard set forth in Paragraph (9) of Subsection (A) of 20.6.2.3103 NMAC.

7. Nitrate is a water contaminant that has the potential to alter the physical, chemical, biological, or radiological qualities of water and to adversely affect human health and the environment. The human health standard for nitrate in ground water is 10.0 mg/l. 20.6.2.3103 NMAC.

8. No person shall cause or allow effluent to discharge so that it may move directly or indirectly into ground water unless he is discharging pursuant to a discharge permit issued by the Secretary of NMED. 20.6.2.3104 NMAC.

9. No person shall discharge from a dairy facility without a discharge permit. A person intending to discharge from a dairy facility shall submit an application for a discharge permit. 20.6.6.8 NMAC.

10. If a discharge permit for a dairy facility 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 discharge permit shall within 90 days of August 1, 2015, submit to the department an application for a discharge permit renewal, renewal and modification, or closure. 20.6.6.35 NMAC.

11. Respondent owns and operates a company doing business by the name of Creekside Dairy, LLC.

12. Creekside Dairy is a facility that meets the definition of "dairy facility" as described in 20.6.6.7 NMAC.

13. Respondent is a "person" as defined in Section 74-6-2(I) of the WQA and

Subsection JJ of 20.6.2.7 NMAC.

14. Respondent discharges up to 56,000 gallons per day (“gpd”) of wastewater, as defined by 20.6.6.7 NMAC, from the production area of Creekside Dairy.

15. The discharge of effluent, in the form of dairy wastewater, from Respondent’s facility is subject to the requirements of the WQA and the WQCC Regulations.

16. The Discharge Site is located approximately 7 miles north of Artesia, New Mexico, within Section 1, T16S, R25E, Eddy County. Creekside Dairy and the land application fields are owned by Abel Villalpando. The facility’s physical address is 7785 Roswell Highway, Lake Arthur, New Mexico 88253.

17. Discharge Permit Number 913 (“DP-913”) was issued to Respondent for Creekside Dairy on June 16, 2004, and subsequently expired on June 16, 2009.

18. The Bureau sent an application reminder letter on July 2, 2009. An application for renewal was received by the Bureau on July 9, 2009, and was subsequently deemed administratively incomplete. Several items were missing or inconsistent with NMED’s records for this facility, including the location of the discharge, (including: a physical address) and township, range and section for the entire dairy facility. The Bureau sent a notice of administrative incompleteness to Creekside Dairy on July 24, 2009.

19. Respondent did not respond to the notice of administrative incompleteness.

20. The Bureau mailed a certified letter/return receipt requested on December 30, 2011, to notify Respondent that an application for discharge permit renewal, renewal and modification, or renewal for closure was due by March 30, 2012.

21. On January 31, 2012, 20.6.6 NMAC became effective and provided dairy specific permitting requirements in addition to the ground water permitting requirements of 20.6.2

NMAC.

22. The Bureau received a Ground Water Discharge Permit Renewal application for the facility on March 28, 2012. Bureau staff reviewed the application and a letter was sent April 4, 2012, notifying Respondent that the application was deemed administratively incomplete. The Bureau sent Respondent a second notice of administrative incompleteness on July 6, 2012.

23. Respondent did not respond to the second notice of administrative incompleteness.

24. The Bureau issued a Notice of Violation ("NOV") to Respondent on October 17, 2012, for failure to submit complete facility location information, as required by 20.6.2.3106 and 20.6.2.3108 NMAC, and failure to submit a discharge permit renewal application for a dairy facility in accordance with 20.6.6.8 and .10 NMAC.

25. In June 2015, the Water Quality Control Commission amended 20.6.6 NMAC to include revised permitting conditions and requirements for dairy facilities.

26. The Bureau sent via first class mail an announcement to all dairy facilities on August 1, 2015, regarding the WQCC approval of amendments to 20.6.6 NMAC and a reminder of the timeline requirements for applications pursuant to 20.6.6.35 NMAC.

27. Bureau staff conducted an inspection at Creekside Dairy on April 27, 2016, where Respondent verbally agreed to submit a new permit application within 90 days of the inspection (i.e. by July 25, 2016).

28. The Bureau sent an application reminder letter to Respondent on June 7, 2016, to memorialize the verbal agreement requirements and remind Respondent that failure to correct the violation would result in formal enforcement action.

29. The Bureau issued a second NOV on July 29, 2016, for failure to submit an

application for permit renewal. The NOV provided an additional 30 days for Respondent to submit an application.

30. The Bureau sent the NOV to Respondent via certified mail/return receipt requested to the address provided, but it was returned to the Bureau without signature of receipt.

31. Respondent has continuously discharged dairy wastewater at the facility without an active discharge permit since June 16, 2009.

32. Respondent did not submit a complete application for renewal when twice informed the submitted applications were administratively incomplete.

33. Respondent did not submit an application for renewal within 90 days from August 1, 2015, to comply with Subsection C of 20.6.6.35 NMAC.

34. To date, Respondent has not submitted a completed permit application.

II. VIOLATION

35. Respondent has continuously violated 20.6.2.3104 NMAC since June 16, 2009, by discharging from the Respondent's facility at the Discharge Site so that it would move directly or indirectly into groundwater without a discharge permit issued by the Secretary of NMED. Further, Respondent has continuously violated 20.6.6.8 and .10 NMAC since January 31, 2012 (effective date of 20.6.6 NMAC), by discharging from a dairy facility without a discharge permit. Respondent has repeatedly refused to comply with the WQA and WQCC Regulations which shows a degree of willfulness and/or negligence. Respondent had complete control over the events constituting the violation and chose to disregard several requests to come into compliance. Since other permitted facilities owned by Respondent have had similar violations, this disregard shows a consistent pattern of noncompliance by Respondent and his corporations even though the facilities are at different geographic locations. This reflects, at best,

a systemic indifference to environmental protection. Consequently, the adjustment for history of noncompliance has been added.

III. COMPLIANCE ORDER

36. Based upon the foregoing findings and conclusions, Respondent is hereby ordered to complete the following corrective actions in order to comply with the WQA and WQCC Regulations:

Respondent shall submit a complete application in accordance with 20.6.6.12 NMAC for discharge permit renewal no later than 30 days from the date this Order becomes final.

The application must be accompanied by the appropriate fees found in 20.6.2.3114 NMAC.

37. The application and other associated documents or information to be submitted to the Bureau under the terms of this Order shall be sent to:

Nancy McDuffie
New Mexico Environment Department
Ground Water Quality Bureau
P.O. Box 5469 – 1190 St. Francis Dr.
Santa Fe, New Mexico 87502 – 5469
(505) 827-2900

38. Failure to comply with the requirements set forth in Paragraph 36 above may subject Respondent to the assessment of an additional civil penalty. Section 74-6-10(F) of the WQA authorizes the assessment of an additional civil penalty of not more than \$25,000 for each day of continued noncompliance if Respondent fails to submit an application as required by this Order. If Respondent fails to timely comply with the application requirements, NMED may seek to assess an additional civil penalty of not more than \$25,000 for each day of noncompliance.

IV. CIVIL PENALTY

39. Section 74-6-10(C)(1) (1993) of the WQA authorizes assessment of a civil penalty of up to \$15,000 per day for noncompliance with the provisions of Section 74-6-5 of the WQA, including a regulation adopted or a permit issued pursuant to that section.

40. NMED hereby assesses a civil penalty in the amount of Two Hundred Twenty Six Thousand, Eight Hundred dollars (\$226,800.00) for the violation set forth in Paragraph 35 above. The penalty is based upon the penalty calculation narrative attached to this Order. *See Attachment 1.*

41. Payment of the civil penalty is due no later than 30 calendar days after this Order becomes final. Payment shall be made by certified or cashier's check payable to the State of New Mexico and mailed (certified) or hand delivered to the Bureau at the following address:

Michelle Hunter, Bureau Chief
Ground Water Quality Bureau
New Mexico Environment Department
1190 St. Francis Dr., Suite N-2250
Santa Fe, NM 87505

Written notification of the payment shall also be provided to the following address:

Christopher N. Atencio, Assistant General Counsel
Office of General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Ste. 1000
Albuquerque, New Mexico 87102
Telephone: (505) 222-9554
Facsimile: (505) 383-2064

V. NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

42. Pursuant to Section 74-6-10(G) of the WQA, Respondent has the right to answer this Order and to request a public hearing.

43. If Respondent: (a) contests any material or legal matter upon which the Order is
Administrative Compliance Order
Creekside Dairy
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based; (b) contends that the amount of the penalties proposed in the Order is inappropriate; (c) contends that Respondent is entitled to prevail as a matter of law; or (d) otherwise contests the appropriateness of the Order, Respondent may mail or deliver a written Request for Hearing and Answer to the Order to the WQCC, at the following address:

Pam Castaneda, Commission Administrator
Water Quality Control Commission
P.O. Box 5469
Santa Fe, NM 87502
Telephone: (505) 827-2425

44. Respondent must file the Request for Hearing and Answer to the Order within 30 days after Respondent's receipt of the Order.

45. Respondent must attach a copy of this Order to its Request for Hearing and Answer to the Order.

46. A copy of the Answer and Request for Hearing must also be served on counsel for NMED at the following address:

Christopher N. Atencio
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Suite 1000
Albuquerque, New Mexico 87102-3400

47. Respondent's Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Order with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, Respondent should so state, and Respondent may deny the allegation on that basis. Any allegation of the Order not specifically denied shall be deemed admitted. Respondent's Answer shall also include any affirmative defenses upon which Respondent intends to rely. Any affirmative defense not asserted in the Answer, except a defense asserting lack of subject matter jurisdiction, shall be

deemed waived.

48. WQCC's Adjudicatory Procedures, 20.1.3 NMAC, shall govern the hearing if Respondent requests a hearing.

VI. FINALITY OF ORDER

49. This Order shall become final unless Respondent files a Request for Hearing and Answer to the Order with the WQCC within 30 days of receipt of this Order.

50. The failure to file an Answer constitutes an admission of all facts alleged in the Order and a waiver of the right to a hearing under Section 74-6-10(G) of WQA concerning this Order.

51. Unless Respondent requests a hearing and files an Answer, the penalty proposed in this Order shall become due and payable without further proceedings within 30 days after receipt of this Order.

VII. SETTLEMENT

52. Whether or not Respondent requests a hearing and files an Answer, Respondent may confer with NMED concerning settlement. NMED encourages settlement consistent with the provisions and objectives of the WQA and applicable WQCC Regulations. To explore the possibility of settlement in this matter, Respondent may contact the attorney assigned to this case at the following address:

Christopher N. Atencio
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Ste. 1000
Albuquerque, New Mexico 87102
Telephone: (505) 222-9554

53. Settlement discussions do not extend the 30-day deadline for filing of

Respondent's Request for Hearing and Answer to the Order, or alter the deadlines for compliance with this Order. Settlement discussions may be pursued as an alternative to and simultaneously with the hearing proceedings.

54. Respondent may appear at the settlement conference alone or represented by legal counsel.


55. Any settlement reached by the parties shall be finalized by written settlement agreement and a stipulated final order. A settlement agreement and stipulated final order must resolve all issues raised in the Order, must be final and binding all parties to the Order, and may not be appealed.

VIII. COMPLIANCE WITH OTHER LAWS AND WAIVER

56. Compliance with the requirements of this Order does not relieve Respondent of the obligation to comply with all other applicable laws and regulations.

IX. TERMINATION

57. This Order shall terminate when Respondent certifies that all requirements of this Order have been met, and NMED has approved such certification, or when the Secretary approves a stipulated final order.



Bruce Yurdin, Division Director
Water Protection Division
New Mexico Environment Department

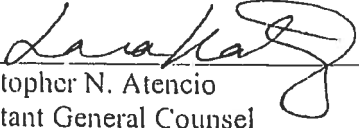
9/22/2017
Date

CERTIFICATE OF SERVICE

I hereby certify that on 4/28, 2017, a true and accurate copy of the Administrative Compliance Order Requiring Compliance and Assessing a Civil Penalty was served as indicated on Respondent at the following address:

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Abel Villalpando
Creekside Dairy
304 Ojibwa Road
Dexter, NM 88230

For 
Christopher N. Atencio
Assistant General Counsel
New Mexico Environment Department

**ABEL VILLALPANDO, d/b/a
CREEKSIDE DAIRY PENALTY ASSESSMENT
NARRATIVE FOR PENALTY CALCULATION
09/25/17**

VIOLATION: Discharging without Obtaining a Permit pursuant to 20.6.2.3104 and 20.6.6.10 NMAC.

1. GRAVITY-BASED PENALTY

(a) Potential for Harm: MODERATE

Risk of Ground Water Contamination: The native sediments in the discharge area are made up of permeable sands, gravels, and clays; the depth to groundwater is approximately 29 feet. Based upon these factors, there is a significant potential for discharge that may cause ground water contamination. The most likely ground water contamination would be elevated nitrate, chloride, and total dissolved solids (TDS). The most recent groundwater monitoring data from the facility (2009) exceeded the WQCC human health standards for groundwater for nitrate, chloride, and TDS.

Potential Seriousness of Contamination: Dairy wastewater contains Total Kjeldahl Nitrogen (TKN), chlorides, sulfates, and total dissolved solids (TDS), contaminants that are a risk to human health and the environment.

(b) Extent of Deviation from Requirement: MAJOR

Creekside Dairy has ignored repeated requests by the Bureau to voluntarily come into compliance. As a result, Creekside Dairy is not meeting the necessary requirements for dairy wastewater discharges.

(c) Calculation of Multi-Day Penalty: Creekside Dairy's milking center alone has discharged wastewater continuously since the most recent discharge permit expired on June 16, 2009. The Bureau sent an application reminder letter on July 2, 2009. An application for renewal was received by the Bureau on July 9, 2009, and the Bureau subsequently deemed it administratively incomplete. A notice of administrative incompleteness as sent to Creekside Dairy on July 24, 2009.

On December 30, 2011, a letter was sent certified mail/return receipt requested to notify the permittee that an application for discharge permit renewal, renewal and modification, or renewal for closure was due by March 30, 2012. On March 28, 2012, the Bureau received a Ground Water Discharge Permit Renewal application for the facility. The Bureau reviewed the application and a certified letter/return receipt requested was sent on April 4, 2012, notifying the applicant that the application was deemed administratively incomplete. On July 6, 2012, the Bureau sent the applicant a second certified letter/return receipt requested of notice of administrative incompleteness. On October 17, 2012, the Bureau issued a certified letter/return receipt requested of Notice of Violation to Creekside Dairy, DP-913 for failure to submit complete facility location information as required by 20.6.2.3106 and 20.6.2.3108

NMAC and failure to submit a discharge permit renewal application for a dairy facility in accordance with 20.6.6.8 and .10 NMAC.

Pursuant to the Ground Water Quality Bureau Civil Penalty Assessment Policy, violations characterized as Moderate/Major must include a multi-day adjustment. As such, the Department assesses a multi-day adjustment of 60 days multiplied by the applicable modifier of \$3,000.

(d) In assessing the degree of willfulness and/or negligence, the following factors were considered: Abel Villalpando d/b/a Creekside Dairy had complete control over the events constituting the violation and chose to disregard several warnings. Abel Villalpando d/b/a Creekside Dairy knew of the hazards associated with the conduct and knew the legal requirements which were violated contained in the WQA and WQCC Regulations.

(e) History of noncompliance: Since Abel Villalpando violated Water Quality Act requirements at a different permitted site under his control in the same manner, this is clear evidence that Mr. Villalpando was not deterred by the previous enforcement response. Previous enforcement on Abel Villalpando d/b/a Creekside Dairy and Rockhill Dairy alerted the respondent to the compliance problem. There has been a disregard of environmental requirements contained in the WQA and WQCC Regulations. This disregard shows a consistent pattern of noncompliance even though the facilities are at different geographic locations. This reflects, at best, an indifference to environmental protection. Consequently, the adjustment for history of noncompliance does apply.

2. ADJUSTMENT FACTORS

- (a) Good Faith: Not applicable.
- (b) Willfulness/Negligence: 10%
- (c) History of noncompliance: 10%
- (d) Ability to pay: Not applicable.
- (e) Environmental Project: Not applicable.
- (f) Other Unique Factors: Nonc.

3. ECONOMIC BENEFIT:

Not determined.

4. PENALTY AMOUNT:	Gravity Based Penalty	\$9,000
	Multi-Day (# days X penalty)	+\$3,000 x 60 days
	Total Prior to Adjustments	\$0
	Adjustment Factors	+ 20%
	Economic Benefit	+\$0
	TOTAL AFTER ADJUSTMENTS	\$226,800

