

STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION



IN THE MATTER OF THE PETITION)
BY COMET CLEANERS OF LAS CRUCES, INC.)
TO ALLOW CORRECTIVE ACTION)
AND REVERSE REQUIREMENT FOR)
ABATEMENT PLAN)
Comet Cleaners of Las Cruces, Inc.)
Petitioner)

WQCC 19-33

**PETITION TO ALLOW CORRECTIVE ACTION PLAN
AND REVERSE REQUIREMENT FOR ABATEMENT PLAN**

Comes now Comet Cleaners of Las Cruces, Inc., (Comet) at 2001 E Lohman, Las Cruces, New Mexico 88001 to the extent and for its Petition states:

1. Comet has been operating a dry cleaning facility at 2001 E Lohman, Las Cruces, New Mexico 88001 since approximately 1994. It was a dry drop off store for several years before installing a plant. Comet has only been a tenant, not owner, at the location. Two previous operators had dry cleaning operations from 1988 until 1994 at the location. Comet Cleaners of Las Cruces, Inc. has been the operator since 1994. Dan Schneider is not the operator of Comet. To the extent he is a responsible or potential responsible party, Dan Schneider joins this Petition.
2. Various environmental analysis have been done at the site. In 2012 a correction action plan and report conducted pursuant to oversight by the New Mexico Environment Department Ground Water Bureau (GWB) was conducted and a no further action letter was issued. In 2014 the GWB issued a guidance document that added VISL screening levels to the NMED guidance document entitled "Risk Assessments Guidance for Site

Investigations and Remediation, volume 1, Soil Screening Guidance for Human Health Risk Assessments”.

3. The guidance document has never been approved by the Water Quality Control Commission. It was not proposed by NMED when the Water Quality Control Commission regulations were modified in 2018. Rather the only statements regarding VISLs in the revised regulations is contained in 20.6.2.4103.A(2) Section 4103.A(2) does not require abatement and clearly does not involve groundwater. Venting rather than abatement is a regularly used method to address VISLs. This regulation goes beyond the scope of the Water Quality Act and the Water Quality Act does not provide Any statutory authority for 4103.A(2).
4. GWB should be limited to the request set forth and in its August 20, 2018 letter which contains no reference or discussion of additional ground water investigation.
5. After the August 20, 2018 letter, Comet submitted a Voluntary Abatement Plan which was never approved or subject to an NOD. That Plan is withdrawn.
6. On July 22, July 31 and August of 2019, GWB informally requested and required an Abatement or VRP Plan. The July 31, 2019 letter sets a 30 day deadline. The August 20, 2018 official letter required either a corrective action report (CAR) or Abatement Plan. (Exhibit 1)
7. It appears the GWB has withdrawn, without any justification, the CAR option. Comet anticipates the issues raised in the August 20, 2018 letter can be resolved by a CAR similar to several recent sites in Albuquerque and elsewhere including Petroglyph Plaza and Galles on Lomas.


8. Verbal communication followed by vague abatement plan demands have suggested the abatement plan must 1.) include a costly and unnecessary groundwater investigation. Groundwater was addressed in a 2012 NFA. It is not mentioned in the August 20, 2018 letter.
9. Verbal communication have threatened that an appeal of excessive, unwarranted and illegal requirements would be fruitless because of the makeup of the WQCC. These statements violate the independence of the WQCC and suggest members would not follow their legal and technical fact-finding duties.
10. This appeal is pursuant to 20.6.2.4114 NMAC and 20.1.3 *et seq.* NMAC.

Petitioner requests a ruling that for the reasons above any abatement requirements based on VISL regulation, 20.6.2.4103.A(2), invalid as matter of law and should be reversed.

Alternatively any abatement requirements in addition to those set forth in the August 20, 2018 letter are invalid as a matter of law, violate the 2012 NFA and should be reversed. A CAR should be deemed appropriate and sufficient to resolve the issues set forth in the August 20, 2018 letter (in the unlikely event.) Petitioner requests the relief set forth and any other relief justice requires.

Respectfully submitted,

DOMENICI LAW FIRM, P.C.



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From: "Jesus, Dezbah, NMENV" <Dezbah.Jesus@state.nm.us>
Date: July 31, 2019 at 12:23:23 PM MDT
To: Dan Schneider <danschneider1021@gmail.com>
Cc: "Martinez, Edward" <ehmartinez@ziaeec.com>, "Ball, Justin, NMENV" <Justin.Ball@state.nm.us>
Subject: Re: [EXT] Re: Comet Cleaners - path forward

Dan,

It's still possible to choose between the Voluntary Remediation Program (VRP) or Abatement, and a decision will be needed within the next month.

To help you weigh options, I've attached the regulations for both the VRP and Abatement.

-Abatement regulations are in Section 4000 through 4115 (pages 32-40) of 20.6.2. NMAC.

-VRP regulations are 20.6.3 NMAC (file attached). VRP has some benefits that are not specified in the Abatement regs, such as Certificate of Completion (20.6.3.500 NMAC).

In general, a site can transfer from the VRP to Abatement, but not from Abatement to the VRP. There may be a couple of occasions where a site has moved from the Abatement to the VRP, but it's rare and challenging to do so. If you would like to discuss differences between the two, please contact me within the next couple of weeks (8/16).

NMED uses the most current version of the following references to obtain screening levels for soil, soil vapor, and groundwater:

- *NMED Risk Assessment Guidance for Site Investigations and Remediation, Volume I Soil Screening Guidance for Human Health Risk Assessments* (<https://www.env.nm.gov/hazardous-waste/guidance-documents/>)

- *New Mexico Standards for Ground Water of 10,000 mg/l TDS Concentration or Less* (20.6.2.3103 NMAC, attached pg. 19-21)

- U.S. Environmental Protection Agency Regional Screening Levels for constituents not listed in NMED Risk Assessment Guidance document and/or 20.6.2.3103 NMAC (<https://www.epa.gov/risk/regional-screening-levels-rsls-generic-tables>, target hazard quotient = 1)

Let me know if you have any questions.

Thank you,

Dezbah

Dezbah Jesus

NMED GWQB

505-222-9555

From: Dan Schneider <danschneider1021@gmail.com>

Sent: Friday, July 26, 2019 4:37 PM

To: Jesus, Dezbah, NMENV

Cc: Martinez, Edward; Ball, Justin, NMENV

Subject: [EXT] Re: Comet Cleaners - path forward

Dezbah,

I need to get with Eddie and see what his thoughts and time schedule may be before sending a new proposal. The Abatement Program is the most likely route, as per our initial proposal, but that may change once the initial testing is completed. Is it permissible to change programs after the initial testing, if so desired?

Also, what are the cleanup standards for the Abatement program? I would like to be clear on the target amounts as per the NMED regulations before we begin or make the final decision as to which path to take and how to proceed.

I will be out of town next week, but will consult with Eddie upon my return.

Dan