

COPY



**STATE OF NEW MEXICO
BEFORE THE
WATER QUALITY CONTROL COMMISSION**

_____)
In the Matter of:)
PROPOSED AMENDMENT)
_____)
TO 20.6.6 NMAC (Dairy Rule))
_____)

No. WQCC 12-09 (R)

December 31, 2012

**THE COALITION REPLY TO
DIGCE'S RESPONSE TO THE COALITION MOTION
AND MEMORANDUM OF LAW TO
RECONSIDER AND DISMISS THE PETITION**

Amigos Bravos, Caballo Concerned Citizens, and the Sierra Club Rio Grande Chapter ("the Coalition"), hereby respectfully reply to DIGCE's "Response To Motion And Memorandum of Law For Reconsideration And Dismissal Of The Petition" ["DIGCE Response"] to the Coalition's Motion and Memorandum of Law For Reconsideration and Dismissal Of The Petition ["Coalition Motion To Dismiss"]. DIGCE misrepresents the core argument of the Coalition Motion To Dismiss, stating the Coalition did not address the statutory right to petition for amendment or repeal of a rule. That is patently false.

The Coalition in no way challenged a person's right pursuant to the statute to petition the Water Quality Control Commission ["WQCC"] for a rule change. In fact, the Coalition challenged DIGCE's continuing failure to comply with the statutory requirements regarding filing such petitions for Dairy (and Copper) regulations--and the

error this creates for the WQCC in allowing an improper petition to be heard. That failure, the Coalition contends, is fatal to DIGCE's petition. For that reason, the Coalition requested--and continues to request--that the WQCC, rather than allowing an illegal proceeding to go forward, reconsider its decision and dismiss the petition.

The Coalition, as follows in "The Coalition Reply To DIGCE's Response To The Coalition Motion And Memorandum Of Law For Reconsideration And Dismissal Of The Petition" ["Coalition Reply"] replies, point for point, to DIGCE's Response, concluding that reconsideration of the decision to allow this defective petition to go forward is in order, and renewing its request that the WQCC grant the motion for reconsideration and dismiss the petition.

1. Stakeholder Process New Mexico Environment Department "Shall" Initiate Is Consistent With The Water Quality Act.

DIGCE correctly points out that "[i]n reviewing and interpreting a statute, a court or, in this instance, the Commission, must consider all parts of a statute as a whole and interpret the statute to give effect to all parts and not to render one part to be meaningless or surplusage." DIGCE Response page 1, citing *International Association of Firefighters v. City of Carlsbad*, 2009-NMSC-097.¹ That is precisely the reason the Coalition

¹ A reviewing court will only look to the entire statute where there is ambiguity and legislative intent is unclear. The cases cited in the Coalition Motion To Dismiss, incorporated by reference herein, make plain that this is the case. The Coalition contends that the statutory requirements of 74-6-4.K are unambiguous regarding the method to be used to create dairy (and copper) industry regulations that prevent pollution and monitor the effectiveness of the required preventative measures. This is a unique requirement within the Water Quality Act, hence it is sensible that the legislature required a different process for initiating such regulations. Moreover, as is demonstrated herein above, the right to petition is preserved--but in the context of a constituent agency directed stakeholder-expert advisory committee process that is intended to present the Water Quality Control Commission with regulations based upon "best available scientific information."

contends that the language in NMSA 1978, §74-6-4.K must be construed in a way that preserves the clear, plain-language legislative intent that Dairy (and Copper) industry regulations can only be promulgated by following a specific procedure that intentionally differs from other WQCC processes. Significantly, the intention of the Dairy (and Copper) regulations also differs in that, rather than allowing pollution by permitted amounts, they are proscriptive to prevent pollution and monitor for the effectiveness of such preventative measures as the regulations require. The petition processes under 74-6-6.B apply to all other regulated entities not specified under 74-6-4.K. There is no conflict here between the provisions. That assertion is merely DIGCE's specious and misleading attempt to divert the WQCC from applying the requisite plain language of 74-6-4.K to DIGCE's petition which was submitted outside the requisite process.

Moreover, it is also the plain language of 74-6-4.K that the New Mexico Environment Department ["NMED"] (the "constituent agency" for enforcing the dairy regulations) initiation of the process of making regulations for the Dairy (and Copper) industries is mandatory:

The constituent agency shall establish an advisory committee composed of persons with knowledge and expertise particular to the industry category and other interested stakeholders to advise the constituent agency on appropriate regulations to be proposed for adoption by the commission. The regulations shall be developed and adopted in accordance with a schedule approved by the commission. The schedule shall incorporate an opportunity for public input and stakeholder negotiations[.]

NMSA 1978, Section 74-6-4.K (as amended through 2012) (emphasis added). This, too, is reasonable, given the fact that these regulations--which the NMED will enforce--are

preventative regulations with mandatory monitoring that are quite unlike the regulations contemplated in the rest of the statute, "[S]hall specify...the measures to be taken to prevent water pollution and to monitor water quality. *Id.* (emphasis added). Again, patently, the Legislature examined the question of how to clean up the massive pollution that the Dairy and Copper industries are creating due to lack of adequate environmental stewardship and it made an intentional choice as to how these problems should be solved by enacting 74-6-4.K.

The legislative solution embodied in 74-6-4.K is simple: make preventative regulations created through an NMED-directed stakeholder process with a technical and stakeholder advisory committee using the best available scientific information. The notion of any inconsistency created by these requirements is DIGCE's red herring. The argument that petitioner's rights have, in any way, been reduced is specious. Rather, the petition process for the Dairy and Copper industries has been placed within the context of the procedures described in 74-6-4.K. If DIGCE wanted to initiate this process, it should have begun with a formal request to NMED to set up the advisory committee and convene the stakeholder process. In the event that NMED would not convene the advisory committee, DIGCE should have brought that matter to the attention of the WQCC.

2. **74-6-4.K Provides An Orderly Process For Producing Dairy (and Copper) Regulations.**

There is no basis for DIGCE's allegation that the NMED has been given a "veto"

over the petition process. An Inspection of Public Records ("IPRA") request to the NMED turned up no letters, emails or any other correspondence from DIGCE or its counsel to NMED requesting that NMED initiate a stakeholder process as required by 74-6-4.K. In fact, the sole communications that NMED could unearth on this subject show that DIGCE scheduled discussion with NMED for February 1, 2012. *See* Coalition Reply Exhibit 'A' attached hereto. DIGCE provided the Water Quality Bureau with a "draft" of the petition it filed in this case as early as mid-May of 2012. *See* Coalition Reply Exhibit 'B', email from Jerry Schoeppner, NMED Water Quality Bureau Chief, with attached copy of DIGCE "discussion" draft of proposed rule changes, attached hereto. DIGCE admits as much on page 3 of its Reply.

These documents demonstrate that DIGCE's representation to the WQCC that it invited the Coalition to participate in meaningful discussions of its petition prior to filing it is simply ludicrous. Sending the Coalition at the end of July an invitation to comment on the proposal DIGCE had scheduled for hearing on the WQCC September calendar is no invitation at all. The petition was already a "done deal." There would have been no time to conduct discussion before DIGCE came before the WQCC with the petition at the beginning of September. DIGCE's inference that providing the petition to the Coalition before it was filed was an honest attempt to initiate meaningful discussions is absurd.

Finally, the Coalition followed Commissioner Sloan's admonition to the parties at the December 11, 2012, WQCC meeting when the proceeding on the petition and pending motion was convened and adjourned at DIGCE's request. Commissioner Sloan

suggested that the parties attempt to settle matters in dispute. Responding to the Coalition's request that such settlement discussion take place, DIGCE indicated that it would not have discussions with certain members of the Coalition. By attempting to control Coalition participation as a condition for even beginning discussions, DIGCE has, in effect, vetoed any attempt to settle matters.

3. Settlement Of DIGCE's Appeal Was A Continuation Of The Properly Initiated Process.

DIGCE's representation to the WQCC that the settlement of the Court of Appeals case of the initially enacted dairy regulations was precedent for adopting regulations without a stakeholder process and not following the statutory process is patently incorrect and misleading. The same parties to the initial rule making--all parties to DIGCE's Court of Appeals action--participated in the settlement of that action. This process included the same experts, the same stakeholders, and the same agency personnel. No precedent was set in the settlement regarding 74-6-4.K process that differed from the process used to create the regulations which DIGCE appealed. The settlement was merely a continuation of that process. However, the settlement, which was ratified by the WQCC, was based upon DIGCE's commitment to the statement in the settlement agreement that it settled all of its outstanding issues with the dairy regulations through the revisions made at that time. Now we learn that less than a month after the regulations went into effect, without informing the other stakeholders or making a formal request to convene the stakeholder process, DIGCE went to NMED to propose changes to the same portions of the

regulations that it had, along with the Coalition and the NMED, just jointly presented to the WQCC for ratification and approval under the settlement as a condition for withdrawing its appeal.

Clearly, while the instant petition belies DIGCE's commitment to the settlement--it is not based upon any precedent regarding the proper statutory procedure under 74-6-4.K. The WQCC only ratified a settlement of the issues DIGCE raised in the initial dairy rule making process. Conversely, the changes to the rules proposed by the current petition did not arise in the prior proceeding. Instead the subject matter of the DIGCE petition comprises the same portions of the regulations DIGCE previously "signed off" on in the settlement that the WQCC approved.

4. Use of "Best Available Scientific Information" Is Consistent With The Requirement For An Expert Advisory Committee.

The significance of including "best available scientific information" rather than being just one more evidentiary factor for the WQCC to consider in deliberating over proposed dairy (or copper) regulations is that it dovetails with the procedural requirement that NMED (the constituent agency with the personnel expertise to evaluate the regulations) convene an advisory committee "composed of persons with knowledge and expertise particular to the industry category and other interested stakeholders to advise the constituent agency on appropriate regulations to be proposed for adoption by the commission." NMSA 1978, Section 74-6-4.K (as amended through 2012). It is significant that DIGCE did not submit, in its pre-filed expert testimony any "best

available scientific information" that would warrant changing the current regulations. The initial hearing on the dairy regulations supported the requirements DIGCE now petitions to change outside the stakeholder-advisory committee process and without the participation of the NMED and its experts.

There is no reason to go forward with a hearing under these circumstances. It is a waste of valuable time and resources. DIGCE admits it began this process in February of 2012 and provided the NMED with a draft of the petition in mid-May. There is no evidence that DIGCE formally requested NMED to convene the requisite stakeholder-advisory committee process under 74-6-4.K. Rather, NMED has chosen not to participate in this matter under the NOI process. That is a very good reason for the WQCC to reconsider action on the petition and dismiss it with direction to DIGCE that it make a formal request to NMED to initiate a stakeholder process and set up an advisory panel if it wants to affect a change in the existing dairy regulations.

Finally, there is no basis in WQCC regulations for considering the Coalition's Motion to Dismiss "untimely". The Coalition's Motion to Dismiss alleges a violation of the statute. It would be appropriate for the WQCC to make a decision on the merits of the Motion to Dismiss before going forward on the petition.

CONCLUSION

The law and facts as set forth above and in the Coalition Motion To Dismiss require that there be a stakeholder process initiated by NMED to create dairy regulations, and that dairy regulations be based upon the best available scientific information to arrive

at regulations that will prevent and monitor groundwater contamination from dairies. The petition before the Commission was not arrived at via the requisite statutory process. As a matter of law, DIGCE's petition violates the procedural requirements of 74-6-4.K. Additionally, DIGCE's pre-filed testimony contains no "best available scientific information" supporting the proposed rule changes. Hence, DIGCE has no case to present in support of its otherwise illegal petition. The existing regulations should remain as they are now unless and until the WQCC is presented with a petition that was created utilizing the requisite statutory process under 74-6-4.K.

Wherefore, the Coalition respectfully renews its request WQCC grant the motion to reconsider and dismiss the petition.

Respectfully submitted:

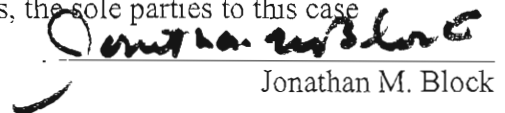
THE COALITION

By: 

Jonathan M. Block, Staff Attorney
Bruce Frederick, Eric Jantz, Douglas Meiklejohn
New Mexico Environmental Law Center
1405 Luisa St. #5, Santa Fe, NM 87505-4074
(505) 989-9022 Ext. 22

CERTIFICATE OF SERVICE

I, Jonathan Block, hereby certify that on 31st day of December, 2012, an original and fourteen (14) copies of the foregoing Reply with attached Reply Exhibits 'A' and 'B' were served on the office of the Commission Administrator and a copy sent as a PDF via email and mailed, First Class U.S. Postage prepaid, to counsel for Petitioners, the sole parties to this case


Jonathan M. Block

Subject: Your IPRA Request
From: "Hower, Jennifer, NMENV" <Jennifer.Hower@state.nm.us>
Date: 11/14/2012 12:08 PM
To: "Jon Block (jblock@nmelc.org)" <jblock@nmelc.org>



Jon-

Pursuant to your IPRA request, I had people scour e-mail accounts and files for any correspondence between NMED and the dairy industry regarding the proposed dairy rule amendments. Aside from what has already been provided, there was no correspondence that would be responsive to your request. Jim Davis did find the attached e-mail, but he couldn't recall the exact subject of the meeting it is discussing. We are providing it anyway just in case the proposed dairy regs were discussed.

Have a good afternoon,
Jennifer

Jennifer L. Hower
Deputy General Counsel
New Mexico Environment Department
5500 San Antonio Dr. NE
Albuquerque, NM 87109
Office: (505) 222-9550
Cell: (505) 500-7628
Fax: (505) 222-9510

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2012.0.2221 / Virus Database: 2441/5394 - Release Date: 11/14/12

— Attachments: —

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17.9 KB

Davis, Jim, NMENV

From: wbradley@dfamilk.com
Sent: Tuesday, January 31, 2012 10:16 AM
To: Marshall, Clint, NMENV
Cc: Davis, Jim, NMENV; Schoeppner, Jerry, NMENV
Subject: RE: Wednesday meeting Feb. 1 Albq.

Marshall,

Not to worry we'll get it right and no harm done. As of 10 minutes ago we have 2 producers for sure and one "maybe" plus myself.

Feel free to call me at anytime,

Walter

"Marshall, Clint, NMENV" <clint.marshall@state.nm.us>

01/31/2012 09:56 AM

To "wbradley@dfamilk.com" <wbradley@dfamilk.com>

cc "Davis, Jim, NMENV" <Jim.Davis@state.nm.us>, "Schoeppner, Jerry, NMENV" <jerry.schoeppner@state.nm.us>

Subject RE: Wednesday meeting Feb. 1 Albq.

Walter,

My apologies for the misunderstanding. It was my understanding that after I sent you the email establishing the date and time of the meeting, you would contact me with the names of one or two producers. When I did not hear back from you, I called a few myself. It now looks like we will have three or four producers at the meeting, which is fine for the technical discussions that are planned. Are you planning on attending?

Clint Marshall, Program Manager
Pollution Prevention Section
Ground Water Quality Bureau
New Mexico Environment Department
clint.marshall@state.nm.us
505-827-0027

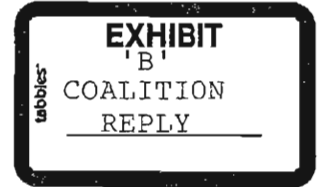
From: wbradley@dfamilk.com [<mailto:wbradley@dfamilk.com>]
Sent: Monday, January 30, 2012 8:36 PM
To: Marshall, Clint, NMENV
Subject: Wednesday meeting Feb. 1 Albq.

Clint,

I must have misunderstood but I was waiting on a call from you regarding producers to attend the meeting then I would secure them. I was understanding you wanted maybe 2 producers and in the meeting we asked Eric to consider and he has and will attend. Also Chairman of DIGCE Alva Carter Jr. will attend and I have visited with Gary Bonestroo and Al Squire who called me after your contact and Gary will attend and AL possibly. So we are set and I will give you a call tomorrow just to touch base.

Thanks,
Walter

Subject: FW: Scanned from a Xerox multifunction device
From: "Schoeppner, Jerry, NMENV" <jerry.schoeppner@state.nm.us>
Date: 11/8/2012 1:42 PM
To: Jon Block <jblock@nmelc.org>
CC: "Mascarenas, Melissa, NMENV" <melissa.mascarenas@state.nm.us>



Jon:
Attached is the only record the Ground Water Quality Bureau has related to your IPRA request dated October 23, 2012.

Jerry

Jerry Schoeppner
Chief, Ground Water Quality Bureau
(505)827-2919, fax (505)827-2965
jerry.schoeppner@state.nm.us
www.nmenv.state.nm.us

-----Original Message-----

From: gwb.scanner@state.nm.us [<mailto:gwb.scanner@state.nm.us>]
Sent: Thursday, November 08, 2012 1:38 PM
To: Schoeppner, Jerry, NMENV
Subject: Scanned from a Xerox multifunction device

Please open the attached document. It was scanned and sent to you using a Xerox multifunction device.

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multifunction device Location: Runnels GWQB N2100
Device Name: gwbxerox

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Version: 2012.0.2221 / Virus Database: 2441/5384 - Release Date: 11/09/12

— Attachments: —

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CONFIDENTIAL—FOR LIMITED DISTRIBUTION
DIGCE DISCUSSION DRAFT OF PROPOSED DAIRY RULE CHANGES
GALLAGHER & KENNEDY DRAFT—5/16/2012

20.6.6.20 OPERATIONAL REQUIREMENTS FOR ALL DAIRY FACILITIES:

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J. **Flow meter installation.** A permittee shall employ a flow metering system that uses flow measurement devices (flow meters) to measure the volume of wastewater discharged at the dairy facility. Flow meters shall be installed in accordance with the plans submitted with the application for a new, renewed or modified discharge permit, or those submitted after issuance of a discharge permit to achieve compliance with the dairy rule, pursuant to this section, Subsection C of 20.6.6.17 NMAC, and Subsections G and H of 20.6.6.21 NMAC. Flow meters shall be physically and permanently labeled with the discharge permit number, meter identification nomenclature as specified in a discharge permit, and the month and year of meter installation. All flow meters shall be calibrated in accordance with the manufacturer's requirements prior to installation or reinstallation following repair. The permittee shall maintain copies of the manufacturer's certificate of calibration and the manufacturer's recommended maintenance schedule. Confirmation of installation shall include a description of the device type, manufacturer, meter identification, location, record drawings, and ~~the results of the initial field~~ a copy of the manufacturer's certificate of calibration and a copy of the manufacturer's recommended maintenance schedule completed pursuant to Subsection E of 20.6.6.24 NMAC.

- (1) An applicant or permittee for a new dairy facility shall install flow meters and submit confirmation of flow meter installation to the department before discharging at the dairy facility.
- (2) An applicant or permittee for an existing dairy facility shall install flow meters within 150 days of the effective date of the discharge permit and submit confirmation of flow meter installation to the department within 180 days of the effective date of the discharge permit.

.....

M. **Authorized use of existing flow meters.** An applicant or permittee proposing to use an existing flow meter(s) shall submit documentation demonstrating that the existing flow meter(s) is installed consistent with this section, and Subsections G and H of 20.6.6.21 NMAC, as appropriate. The proposal shall be submitted with an application for a new, renewed and modified discharge permit and shall include the following documentation.

- (1) The location of each existing flow meter indicated on the scaled map required by Subsection U of this section and the identification of the wastewater discharge, or wastewater or stormwater application it is intended to measure.
- (2) A copy of the record drawings or manufacturer plans and technical specifications specific to each existing flow meter, if available.
- ~~(3) A field calibration report for each existing flow meter, completed pursuant to Subsection E of 20.6.6.24 NMAC.~~

O. **Flow meter inspection and maintenance.** A permittee shall visually inspect flow meters on a weekly basis for evidence of malfunction. If a visual inspection indicates a flow meter is not functioning to measure flow, the permittee shall initiate repair or replacement of the meter within ~~30~~ seven days of discovery. The repaired or replaced flow meter shall be installed and calibrated pursuant to ~~the dairy rule~~ subsection J of this section.

- (1) For repaired meters, the permittee shall submit a report to the department with the next quarterly monitoring report following the repair that includes a description of the malfunction; a statement verifying the repair, and a copy of the manufacturer's or repairer's certificate of calibration; and a flow meter field calibration report completed pursuant to Subsection E of 20.6.6.24 NMAC.
- (2) For replacement meters, the permittee shall submit a report to the department with the next quarterly monitoring report following the replacement that includes plans for the device pursuant to Subsection C of 20.6.6.17 NMAC, a copy of the manufacturer's certificate of calibration, and a copy of the manufacturer's recommended maintenance schedule, and a flow meter field calibration report completed pursuant to Subsection E of 20.6.6.24 NMAC.

.....

[20.6.6.20 NMAC - N, 01/31/2011; A, 12/31/2011]

20.6.6.21 ADDITIONAL OPERATIONAL REQUIREMENTS FOR DAIRY FACILITIES WITH A LAND APPLICATION AREA:

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I. **Nutrient management plan.** Nutrients and other constituents required to be monitored under section 20.6.6.25.C and present in wastewater and stormwater shall be applied to irrigated cropland under cultivation in accordance with the requirements of a nutrient management plan (NMP) submitted to the department with the application for a new, renewed, or modified discharge permit. The NMP shall provide for development of a nutrient budget for nitrogen on an annual basis that accounts for the amount of nitrogen from all combined nitrogen sources, including but not limited to wastewater, stormwater, manure solids, composted material, irrigation water and other additional fertilizer(s), along with residual soil nitrogen and nitrogen credits from leguminous crops and that considers estimated and measured nitrogen removal by harvested crops and other losses, considering the monitoring data required to be collected under section 20.6.6.25 NMAC. The NMP shall describe how planned total nitrogen application rates shall be determined each year based upon realistic yield goals for the planned crops. The information used to set the crop yield goals shall be identified in the NMP. The NMP shall address how nitrogen application rates will be adjusted based upon the results of soil tests required by section 20.6.6.25, subsections K and L, consistent with applicable Natural Resource Conservation Service guidance for normal, high and excessive soil nitrogen levels. The NMP shall specify the maximum application rates for wastewater applied through irrigation so as not to exceed the soil intake/infiltration rate, shall be applied toThe application of nitrogen to each field within the land application area shall be in accordance with the NMP, and any departures from the NMP due to growing conditions or other factors shall be addressed in the update to the NMP for the following year. The NMP shall be developed through utilization of the U.S. department of agriculture natural resources conservation service (USDA-NRCS) national comprehensive nutrient management plan development templates as adopted by the New Mexico office of the USDA-NRCS and in accordance with the USDA-NRCS conservation practice standard for New Mexico, nutrient management - code 590. The NMP shall be developed, signed and dated annually by an individual certified by the American society of agronomy as a certified crop advisor (CCA) or certified professional agronomist (CPAg) and by an individual certified by the New Mexico office of the USDA-NRCS as a nutrient management planner. Plant material and soil sampling protocols in the NMP shall be, at a minimum, equivalent to the requirements of Subsections I, K and L of 20.6.6.25 NMAC. The NMP shall identify the method(s) of crop removal to be employed. The NMP shall be developed for the term of the discharge permit; and updated annually; and implemented pursuant to the dairy rule. The NMP shall be developed, signed and dated annually by an individual certified by the American society of agronomy as a certified crop advisor (CCA) or certified professional agronomist (CPAg) or by an individual certified by the New Mexico office of the USDA-NRCS as a nutrient management planner. The permittee may elect to submit an NMP meeting the requirements of this subsection that is incorporated into a broader plan, such as a comprehensive nutrient management plan or a nutrient management plan prepared to meet the requirements of a permit issued by EPA, in which case only the portions of such plan required by this subsection and section 20.6.6.25 NMAC shall be considered for purposes of the dairy rule. For a renewed permit where the NMP was not submitted in an application, The permittee shall submit the initial NMP by May 1 of the first year the permit is in effect, and the permittee shall submit annual updates to the NMP to the department in the monitoring reports due by May 1 of each year.

.....

M. **Backflow prevention.** A permittee shall protect all water wells used within the land application distribution system from contamination by wastewater or stormwater backflow by installing and maintaining backflow prevention methods or devices. Backflow prevention shall be achieved by a total disconnect (physical air gap separation of at least two times the pipe diameter or complete piping separation when wastewater is being pumped) or by the installation of, at a minimum, a reduced pressure principal backflow prevention assembly (RP) air/vacuum relief valve and a low pressure drain valve located immediately upstream of a check valve between the fresh irrigation water supply discharge head of the well pump and wastewater and stormwater delivery systems.

(1) A permittee for a new dairy facility shall install backflow prevention methods or devices and submit written confirmation of installation to the department before discharging at the dairy facility.

(2) A permittee for an existing dairy facility that lacks backflow protection as required by this subsection shall install backflow prevention methods or devices within 90 days of the effective date of the discharge permit. The permittee shall submit written confirmation of installation to the department within 180 days of the effective date of the discharge permit.

N. ~~Backflow prevention by reduced-pressure-principle check valve backflow prevention assembly device - Inspection and maintenance.~~ A permittee shall inspect each check valve device at least monthly when the well is operating, have each reduced-pressure principle backflow prevention assembly (RP) check valve device inspected and tested by a person qualified by the manufacturer at the time of installation, repair, or relocation, and at least on an annual schedule thereafter. A malfunctioning RP check valve device shall be repaired or replaced within 30 days of discovery, and use of all wastewater supply lines associated with the RP check valve device shall cease until repair or replacement has been completed. Copies of the inspection and maintenance records ~~and test results~~ for each RP check valve device associated with the backflow prevention program for the previous year shall be submitted to the department annually in the monitoring reports due by May 1.

[20.6.6.21 NMAC - N, 01/31/2011; A, 12/31/2011]

20.6.6.24 MONITORING REQUIREMENTS FOR ALL DAIRY FACILITIES:

~~E. Flow meter field calibration. All flow meters shall be capable of having their accuracy ascertained under actual working (field) conditions. A field calibration method shall be developed for each flow meter and that method shall be used to check the accuracy of each respective meter. Field calibrations shall be performed upon installation and, at a minimum, annually thereafter. Flow meters shall be calibrated to within plus or minus 10 percent of actual flow, as measured under field conditions. Field calibrations shall be performed by an individual knowledgeable in flow measurement and in the installation/operation of the particular device in use. The permittee shall submit the results of annual field calibrations to the department annually in the monitoring reports due by May 1. The flow meter calibration report shall include the following.~~

- ~~(1) The location and meter identification nomenclature identified by the department through a discharge permit.~~
- ~~(2) The method of flow meter field calibration employed.~~
- ~~(3) The measured accuracy of each flow meter prior to adjustment indicating the positive or negative offset as a percentage of actual flow as determined by an in-field calibration check.~~
- ~~(4) The measured accuracy of each flow meter following adjustment, if necessary, indicating the positive or negative offset as a percentage of actual flow of the meter.~~
- ~~(5) Any flow meter repairs made during the previous year or during field calibration.~~

[20.6.6.24 NMAC - N, 01/31/2011]