

STATE OF NEW MEXICO  
WATER QUALITY CONTROL COMMISSION



**IN THE MATTER OF THE PETITION  
FOR ALTERNATIVE ABATEMENT STANDARDS  
FORMER PRICE'S VALLEY GOLD NORTH DAIRY,  
BERNALILLO, SANDOVAL COUNTY, NEW MEXICO  
DAIRY**

**WQCC 16-02(A)**

**D&G Price Limited Partnership,**

**Petitioner.**

**NEW MEXICO ENVIRONMENT DEPARTMENT'S  
RESPONSE TO PETITION FOR ALTERNATIVE ABATEMENT STANDARDS**

Pursuant to the Water Quality Control Commission's ("Commission's") abatement regulations at 20.6.2.4103 NMAC, and the Commission's Adjudicatory Procedures at 20.1.3.300(A)(3) NMAC, the New Mexico Environment Department ("Department") hereby submits its response to the Petition for Alternative Abatement Standards Former Price's Valley Gold North Dairy Bernalillo, Sandoval County, New Mexico ("Petition"). D&G Price Limited Partnership ("Petitioner") filed its Petition on April 28, 2016. The Petition requests alternative abatement standards for the former Price's Valley Gold North Dairy ("PVGND") in Sandoval County, New Mexico. The Department supports the requested alternative abatement standards and recommends that the Commission grant the Petition.

**I. BACKGROUND**

PVGND and its predecessor, Ridge Dairy, operated a dairy on property located on the east side of New Mexico Highway 528 in Bernalillo (the "Property") from 1960 through 1998. In 1986, PVGND applied for a discharge permit, and the Department's Ground Water Quality Bureau ("Bureau") approved and issued DP-437 in July 1987. Dairy operations ceased in 1998 and the Property was cleared of all structures by 2006. The Property, except for Lot 5-B, has been sold and

redeveloped into various lots that contain commercial businesses, including Wal-Mart, Firestone Tires, a gasoline station, a strip mall and several fast food restaurants.

In connection with the closure of dairy operations on the Property, investigations and studies were performed which indicated that groundwater standards were exceeded and soil was contaminated on portions of the Property at the time of closure. In 2006, DP-437 was terminated and investigation and remediation of the site has since proceeded under the WQCC's abatement regulations, sections 20.6.2.4000 through 20.5.2.4116 NMAC. Environmental site conditions have been fully characterized and the Stage 1 Abatement Plan has been completed. The site is currently in Stage 2 Abatement and is in Long Term Monitoring. Two interim abatement actions approved by the Bureau have been performed at the site: in situ denitrification was performed in 2008, and a groundwater extraction and discharge system was operated from October 2013 until July 2015. These abatement actions failed to achieve standards, and monitoring wells in the Valley Fill Aquifer continue to show groundwater is impacted by nitrogen, chloride and TDS.

The Petition proposes alternative abatement standards ("AAS") for the Property of 220 mg/L for nitrate, 350 mg/L for chloride, and 3,310 mg/L for TDS. The AAS are requested in perpetuity to facilitate site closure and development, with institutional controls proposed to ensure that the VFA is not used as a potable water supply going forward.

## **II. STANDARD FOR GRANTING ALTERNATIVE ABATEMENT STANDARDS**

Alternative abatement standards fall within the Commission's authority to grant a variance from any requirement of the water quality regulations. Section 74-6-4(H) of the Water Quality Act provides that the Commission:

[M]ay grant an individual variance from any regulation of the commission whenever it is found that compliance with the regulation will impose an unreasonable burden upon any lawful business, occupation or activity. The commission may only grant a

variance conditioned upon a person effecting a particular abatement of water pollution within a reasonable period of time. Any variance shall be granted for the period of time specified by the commission. The commission shall adopt regulations specifying the procedure under which variances may be sought, which regulations shall provide for the holding of a public hearing before any variance may be granted.

NMSA 1978, § 74-6-4(H).

The Commission's abatement regulations provide that a responsible person may submit a petition for approval of AAS any time after submission of a Stage 2 abatement plan. The Commission may approve the AAS if the petitioner demonstrates the following:

(a) compliance with the abatement standard(s) is/are not feasible, by the maximum use of technology within the economic capability of the responsible person; OR there is no reasonable relationship between the economic and social costs and benefits (including attainment of the standards set forth in Section 20.6.2.4103 NMAC) to be obtained;

(b) the proposed alternative abatement standard(s) is/are technically achievable and cost-benefit justifiable; and

(c) compliance with the proposed alternative abatement standards will not create a present or future hazard to public health or undue damage to property.

20.6.2.4103(F)(1) NMAC.

An AAS petition must provide the information required under Subsection 20.6.2.4103(F)(2) of the abatement regulations, as well as that required for variance petitions under Subsection 20.6.2.1210(A) NMAC. 20.6.2.1210(A) NMAC requires that the petition:

- (1) state the petitioner's name and address;
- (2) state the date of the petition;
- (3) describe the facility or activity for which the variance is sought;
- (4) state the address or description of the property upon which the facility is located;
- (5) describe the water body or watercourse affected by the discharge;
- (6) identify the regulation of the commission from which the variance is sought;
- (7) state in detail the extent to which the petitioner wishes to vary from the regulation;
- (8) state why the petitioner believes that compliance with the regulation will impose an unreasonable burden upon his activity; and
- (9) state the period of time for which the variance is desired.

Subsection 20.6.2.4103(F)(2) NMAC requires that an AAS petition also specify:

the water contaminant(s) for which alternative standards(s) is/are proposed, the alternative standard(s) proposed, the three-dimensional body of water pollution for which approval is sought, and the extent to which the abatement standard(s) set forth in Section 20.6.2.4103 NMAC is/are now, and will in the future be, violated.

Under the Commission's Adjudicatory Procedures, the Department must review a petition for variance within sixty days after receipt and file a recommendation with the Commission to grant, grant with conditions, or deny the petition. 20.1.3.300(B) NMAC. If the Department recommends granting the petition, the Commission must hold a public hearing on whether to grant the AAS.

### **III. DEPARTMENT'S RECOMMENDATION**

The Department has reviewed the PVGND Petition and recommends that the Commission grant the Petition in full. Because the Department recommends granting the Petition, the Commission must hold a public hearing. 20.1.3.18(B) NMAC. The Department and Petitioner requested a hearing, and the Commission granted that request on May 10, 2016. The matter has been referred to a hearing officer to schedule the hearing, which the Department and Petitioner have requested to take place in August of 2016, the Commission's docket permitting. *See* Notice of Hearing Determination and Hearing Officer Appointment, WQCC 16-02(A) (May 13, 2016).

### **IV. REASONS**

The Petition sets forth all the required information under 20.6.2.1210(A) NMAC (variance petitions) and 20.6.2.4103(F)(2) NMAC (alternate abatement standard petitions). The Department finds that Petitioner has made the demonstrations required for approval of alternate abatement standards under 20.6.2.4103(F)(1) NMAC, as discussed below.

#### **A. Compliance with the applicable abatement standards is not technically achievable**

Petitioner has demonstrated that the abatement standards at 20.6.2.3013 NMAC – 10 mg/L nitrate, 250 mg/L chloride, and 1,000 mg/L TDS – are not technically achievable. *See* Pursuant to

20.6.2.4103(F)(1)(a) NMAC. Decades of natural attenuation and two engineered cleanup actions (in situ denitrification and groundwater pumping and discharge) have failed to restore groundwater in the VFA to Section 3103 standards. Post-groundwater pumping rebound concentrations in select wells, located in areas where the Valley Fill Aquifer thins and is difficult to hydraulically stress (due to low transmissivity related to minimal aquifer thickness), have reverted to pre-abatement levels. The Valley Fill Aquifer is a stagnant, perched aquifer of limited extent, and the lack of groundwater flow-through with attendant dispersion or intrinsic denitrification makes it very difficult to reduce concentrations despite significant efforts.

Additionally, there is concern that numerous unauthorized discharges from Rio Rancho Lift Station 15 into the Venada Arroyo since the mid 1990's may have adversely impacted groundwater quality in the Valley Fill Aquifer. These discharges, which contain the same constituents as the former dairy waste (nitrate, chloride and TDS), are not within the control or capacity of Petitioner to abate.

**B. There is no reasonable relationship between the economic and social costs and benefits to be obtained**

Petitioner has also demonstrated that there is no reasonable relationship between the costs and benefits of continuing abatement and the social costs and benefits of doing so. *See* 20.6.2.4103(F)(1)(a) NMAC. Because of the nature of the Valley Fill Aquifer, as discussed above, it is likely that no abatement effort at any cost will achieve Section 3103 standards.

Petitioner has proposed the following institutional and government controls to prevent future use of the Valley Fill Aquifer as a source of potable water in order to mitigate social costs from the proposed AAS:

1. Petitioner will record a deed restriction in the Sandoval County real property records prohibiting construction of wells in the Valley Fill Aquifer. The deed notice will provide owners, operators, prospective buyers, and others with notice and information regarding the groundwater condition in the Valley Fill Aquifer. The deep regional Upper Santa Fe Group Aquifer can still be used for water supply on the Property. A copy of the deed notice is included as Appendix H to the Petition.

2. The Department will petition the New Mexico State Engineer under State Engineer regulation 19.27.5.13.A to issue an Order prohibiting construction of a well in the affected water-bearing zone of the Valley Fill Aquifer, Lot 5-B and contiguous portions of Venada Plaza Drive. Appendix H of the Petition includes the necessary information and documentation for the Department to prepare its recommendation for the Order under 19.27.5.13.A if the Commission approves the Petition.

Additionally, the following ordinances and rules further ensure that water from the Valley Fill Aquifer will not be used as source of potable water:

1. The Town of Bernalillo Water Use and Water Rate Ordinance, Ordinance 81, Article 4, Section 11 provides “At such time as a public water main becomes available within two hundred (200) feet of a property line served by a private water well, a direct connection shall be made to the public water system in compliance with this Ordinance, within 90 days.” Water and sewer lines have been installed along existing streets in the Venada Plaza Development. *See* Petition, Appx. G. Thus, under the above ordinance, city water supply will be provided to all buildings on the Property.

2. The New Mexico State Engineer’s regulations at 19.27.4 NMAC contain provisions that prevent construction of a water supply in contaminated groundwater. *See* 19.27.4.29 NMAC (requiring wells to be constructed to prevent contamination, inter-aquifer exchange of water, flood

water contamination of aquifer, and infiltration of surface water); 19.27.4.29.D NMAC (requiring that all wells be set back from potential sources of contamination in accordance with NMED regulations and other applicable ordinances and regulations); 19.27.4.30.A NMAC (requiring annular seals when necessary to prevent flow of contaminated or low quality water); 19.27.4.30.A(4) NMAC (requiring annulus sealing and proper screening in wells which encounter non-potable, contaminated, or polluted water at any depth to prevent commingling of such water with any potable or uncontaminated water).

With the above institutional and government controls and requirements in place to prevent ingestion of groundwater in the Valley Fill Aquifer, the AAS will allow the Department to close out abatement so that the Property can be fully redeveloped. Without the AAS, the Property will remain idle. Therefore, the economic and social benefits of the proposed AAS (which include the above-described institutional and government controls), outweigh the benefits of continuing abatement which is unlikely to achieve 3103 standards.

**C. The proposed AAS are technically achievable and cost-benefit justifiable**

Petitioner has demonstrated the proposed AAS have been achieved, and their approval will allow immediate submission of an Abatement Completion Report and termination of abatement. The cost of submission of the Abatement Completion Report is negligible relative to what has been spent on abatement activities up to this point. Approval of the AAS will allow development to be completed on the Property, which presently lies in a partial state of development, thereby benefitting the Town of Bernalillo. *See* 20.6.2.4103(F)(1)(b) NMAC.

**D. The proposed AAS will not create a hazard to public health or undue damage to property**

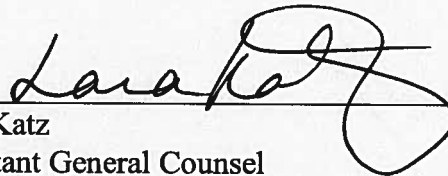
The institutional and government controls outlined above will prevent human exposure to or ingestion of the nitrate impacted groundwater of the Valley Fill Aquifer, rendering the AAS protective of public health. Chloride and TDS are not Section 3103.A contaminants and do not present a human health concern. The proposed AAS will free the Property for completion of development, and thus will not cause undue harm thereto. *See* 20.6.2.4103(F)(1)(c) NMAC.

**V. CONCLUSION**

For the foregoing reasons, the Department recommends that the Commission grant the proposed alternate abatement standards as set forth in the Petition. Given this recommendation and the WQCC's May 13, 2016 Notice of Hearing Determination & Hearing Officer Appointment, the Department requests that the hearing officer proceed with scheduling the hearing.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT



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Lara Katz  
Assistant General Counsel  
New Mexico Environment Department  
P.O. Box 5469  
Santa Fe, New Mexico 87502  
(505) 827-2982  
*Counsel for the New Mexico Environment Department*

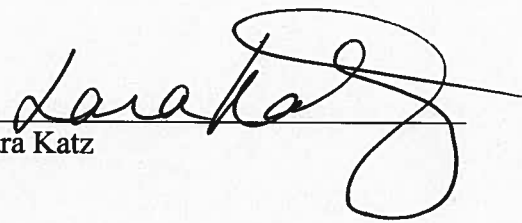


**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Response to Petition for Alternative Abatement Standards was filed with the Administrator of Boards and Commissions and was served on the following parties of record on June 16, 2016:

Pete V. Domenici, Jr.  
Domenici Law Firm, PC  
320 Gold Ave. SW, Suite 1000  
Albuquerque, NM 87102  
*Counsel for Petitioner*

Wade Jackson, General Counsel  
NM Economic Development Department  
Joseph Montoya Building  
1100 South St. Francis Dr.  
Santa Fe, NM 87505  
*Counsel for the Water Quality Control Commission*

  
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Lara Katz