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Dion Smith (Stagecoach Hills Neighborhood Assoc.)
El Prado, N.M. 87529

Cody Barnes - Commission Administrator
Water Quality Control Commission
P.O. Box 5469
Santa Fe, NM 87502

IN THE MATTER OF: THE PETITION FOR HEARING ON RENEWAL OF SEPTIC DISPOSAL GWB 19-28(P) FACILITY DISCHARGE PERMIT, (DP-465) FOR S&R SEPTIC, No. WQCC 20-14 A - Petitioner's Motion to Stay

The Hearing Officer suggested approval of the S&R open sewage pit was disheartening and seemed complicit in allowing "business as usual" practice. The Hearing Officer was concerned by the flagrant frequency of non-compliance demonstrated by S&R Septic. Although she was limited to ruling on the basis of the threat of contamination to groundwater by these open pits, the abundance of additional information presented about S&R's disregard for NMED guidelines and remediation protocols; the unclear geology; and the threat to our air since the initial permit was executed was overwhelming. The history redundantly includes:

- Past objections (at each renewal) by Stagecoach Hills Neighborhood Association (SNA) against extending the permits due to local changes in the community (significantly increased population, homes built and businesses) that lead to the development and updating of zoning regulations for land use. The present overlay prohibits the implementation of an open sewage facility due to the environmental and public health threats presented by such a construct. A significant increase in scientific information was presented revealing the serious health threats not only to groundwater, but dangers posed by air contaminants from sewage deposited on the ground surface. Unofficially, during the past 10-12 years there have been reports from nearby families and business workers suffering symptoms related to air contaminants (researched based symptoms).
- There has been an ongoing history of frequent and flagrant non-compliance by the applicant in adhering to the regulations and remedies posed by NMED. In response, NMED demonstrated an inability to adequately monitor, penalize or shut down the operation. S&R has been allowed to continue dumping sewage without a permit for over two years. In my knowledge, if a teacher, lawyer, doctor or even a licensed driver did not conform to the protocol mandated or failed to properly renew their license, there would be a penalty given and/or revocation to continue their practice. As a consequence, of this repeated pattern, S&R has had no motivation to abide by expected standards.
- The non-compliant behaviors have obviously demonstrated a blatant disregard for the well-being and health of the SNA residents and surrounding communities, as well as the authority of NMED.
- The public hearing further revealed that adequate geological information essential for assuring the safety for groundwater water was never acquired. The previous permit approvals were

granted in part because the depth to water was assumed to be greater than 500' and therefore the groundwater was thought to be safe from contamination. Only within the present permit process has the permeability of the rock section between the surface and the water table become an issue. Sixty-five percent of the section consists of highly permeable, vertically fractured Servillita Basalt. The ubiquitous fractures and joints in the basalt flows facilitate rapid downward movement of effluent toward the water table.

- The burden of proof for demonstrating the groundwater is safe should be the responsibility of the governing agency (i.e. NMED) and the Petitioner. A thorough investigation has never been done by either. Working off assumptions provides no security for safety.
- Even worse, the sewage dumped by S&R **was never treated**. At this time, we have updated research that connects sewage on the ground and related transmission of airborne pathogens that present a real threat to human health (presented in hearing). It should be considered in the decision. The residents and businesses of the Taos community do not need a large source of airborne pathogens (i. e. the S&R sewage pits), let alone a risk to their drinking water.
- Adding to the madness, the fact that there is a local waste water treatment facility that the Petitioner can access. Past use of the pit has allowed S&R Septic to gain a competitive business advantage over the other 12 sewage haulers in Taos County, who all discharge at the Taos Valley Regional Wastewater Treatment and Reclamation Facility. The facility has considerable unused capacity and could easily process the sewage that S&R discharges regularly into the pits. Taxpayers are justifiably outraged when they learn that sewage is being dumped on the ground, so that one company profits, rather than utilizing the unused capacity of this plant. The only burden to S&R is probably financial due to having to resort to using the treatment facility like the other haulers. For the surrounding community, this open sewage pit is a water, air contamination and health threat.

It is understandable that the initial permit was issued in 1987 at a time when no one was living in the area and when environmental issues and concerns were in their infancy. However, the dynamics of the area have significantly changed since then. In addition to population growth, laws and standards have been developed for the purpose of justice, protection and guidance. These new laws were meant to adapt and conform to these significant changes and updated factual information. Failure to address these legal issues according to **present** facts promotes injustice and doesn't adequately protect those who government and law are missioned to serve.

Grandfathering is appropriate for some situations but not all. Due process has been served and there is nothing unjust at this juncture in denying the permit extension, based on the history of negligence, updated local changes, law, facts and the option for S&R to use the appropriate local treatment facility. Potential water and air contamination are not casual issues and past history does nothing to secure trust that S&R will adhere to required permit conditions, or that NMED will effectively monitor and enforce those required conditions. In addition, the borehole meant to test and ascertain the geological conditions and penetration of sewage in the area can potentially open a "can of toxic worms" if it is not drilled and completed so the effluent doesn't seep downward toward the water table.

There has been enough information presented to recognize that the Final Order of Secretary Kenney should stand firm. The appeal should not and need not proceed and the motion to stay should be denied.

Dion Smith

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

**IN THE MATTER OF:
THE PETITION FOR
HEARING ON RENEWAL OF SEPTIC DISPOSAL
FACILITY DISCHARGE PERMIT, DP 465 FOR**

NO: GWB 19 - 28(P)

S&R SEPTIC (DP 465),

Petitioner.

CERTIFICATE OF SERVICE

I CERTIFY that on March 13, 2020 I sent to the parties listed here, via email only, a true and correct copy of the Dion Smith Response to Motion to Stay

Pete Domenici pdomenici@domenicilaw.com

Jeanne Washburn jwashburn@domenicilaw.com

Herman, Jason, NMENV Jason.Herman@state.nm.us

Johnson, Owen, NMENV Owen.Johnson@state.nm.us

jcbrockmann@newmexicowaterlaw.com jcbrockmann@newmexicowaterlaw.com

jfstein@newmexicowaterlaw.com jfstein@newmexicowaterlaw.com

camulcahy@newmexicowaterlaw.com camulcahy@newmexicowaterlaw.com

nprice@newmexicowaterlaw.com nprice@newmexicowaterlaw.com>

rfsanchez@nmag.gov

Cody Barnes Cody.Barnes@state.nm.us

Jerry Hanson jha2570@comcast.net

DATED this 14th day of March 2020.

Respectfully submitted,
Dion Smith
259 Calle Feliberto
El Prado, N.M. 87529
dimundo53@gmail.com