STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION

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CONTROL COMMISSION

In the Matter of:	)	
PROPOSED AMENDMENT	)	**No. WQCC 12-09 (R) and**
TO 20.6.6 NMAC (Dairy Rule)	)	**No. WQCC 13-08 (R)**
	)	

NEW MEXICO ENVIRONMENT DEPARTMENT'S
NOTICE OF INTENT TO PRESENT TECHNICAL TESTIMONY

The Ground Water Quality Bureau ("GWQB") of the Resource Protection Division of the New Mexico Environment Department ("NMED" or "Department"), pursuant to Section 302.A.1 to 5 of the Procedural Order issued on October 3, 2014, hereby files this Notice of Intent to Present Technical Testimony at the Proposed Amendment to 20.6.6 NMAC ("Dairy Rule") hearing scheduled to commence on December 9, 2014.

1. Entity Represented by the Technical Witness

The technical witness will testify for the GWQB of the Resource Protection Division of NMED.

2. Name and Qualifications of the Technical Witness

The Department will call the following witness at the hearing to present direct technical testimony:

Jerry Schoeppner. Jerry Schoeppner is the Chief of the GWQB. He has worked in the GWQB for 11 years, and has worked for NMED since January 1993. Mr. Schoeppner has been in charge of implementing the Dairy Rule since the rule took effect in December 2011. Mr. Schoeppner holds a Bachelor of Science degree in Geology from New Mexico State University.

Mr. Schoeppner's qualifications and work background are further described in his written testimony, included as NMED Exhibit 1, and his résumé is included as NMED Exhibit 2.

3. List and Description of Exhibits

The Department submits the following exhibits:

NMED Exhibit 1	Written Testimony of Jerry Schoeppner
NMED Exhibit 2	Résumé of Jerry Schoeppner

4. Reservation of Rights

The Department reserves the right to call any other person to present original and/or rebuttal testimony in response to another notice of intent or public comment filed in this matter or to any testimony or exhibit offered at the public hearing.

Respectfully submitted,

GROUND WATER QUALITY BUREAU
NEW MEXICO ENVIRONMENT DEPARTMENT

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	)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing New Mexico Environment Department's Notice of Intent to Present Technical Testimony in the above-referenced matter was served on the following parties of record via e-mail and/or regular first-class mail on October 17, 2014:

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DIRECT TESTIMONY OF JERRY SCHOEPPNER
October 17, 2014

I. INTRODUCTION

My name is Jerry Schoeppner and I am the Chief of the Ground Water Quality Bureau ("GWQB") of the New Mexico Environment Department ("Department" or "NMED"). I have held this position since June 2011. I also held this position from July 2003 to July 2004. As Chief, I oversee four Programs: Pollution Prevention Section, Remediation Oversight Section, Superfund Oversight Section, and the Mining Environmental Compliance Section. The Pollution Prevention Section manages all aspects of ground water discharge permitting for industrial, domestic and agricultural operations under the Water Quality Act, NMSA 1978, Sections 74-6-1 to -17, ("WQA") and the Water Quality Control Commission ("WQCC" or "Commission") regulations, 20.6.2 and 20.6.6 NMAC, which include dairies. Management of ground water discharge permits includes reviewing discharge permit applications, issuing discharge permits, conducting inspections, approving and overseeing corrective actions, closure plans, and abatement of contaminated ground water, participating in public meetings and public hearings and enforcing the WQA and WQCC regulations. In addition, as Chief, I participate in the determination of compliance and enforcement priorities, assignment of management staff responsibilities, and recruitment of program personnel.

1 Prior to my current position, I worked in the Mining Environmental Compliance Section
2 of the GWQB for seven years as a Geoscientist providing review and oversight of ground water
3 discharge permits and closure and abatement plans for various mining operations. Prior to that
4 position, I was Chief of the Petroleum Storage Tank Bureau ("PSTB") for three years providing
5 oversight of two Programs: the Remedial Action Program and the Inspection Program. Prior to
6 that position, I held various technical and supervisory positions with PSTB over a seven year
7 period: Water Resource Specialist, Geologist, Supervisor and Acting Manager in the Remedial
8 Action Program. In that capacity, I was responsible for reviewing and approving environmental
9 investigations, overseeing complex environmental and hydrologic investigations; and reviewing
10 environmental and technical reports regarding investigation of and restoration of petroleum
11 contaminated sites. Prior to my 21 years at NMED, I worked four years as a field geologist for a
12 civil engineering consulting firm, Tierra Engineering, where I was responsible for project
13 management and performance of engineering and environmental investigations related to road
14 construction, subdivision development, and dam safety. Prior to that, I was a laboratory
15 technician and supervisor for three years with Controls for Environmental Pollution, a
16 commercial laboratory. In that capacity, I was responsible for overseeing and conducting
17 environmental testing of various media for radionuclides.
18 I have a Bachelor of Science degree in Geology from New Mexico State University. A
19 copy of my resume is NMED Exhibit 2.
20 The purpose of my testimony is to describe the regulatory framework in which discharge
21 permits are reviewed and processed by the GWQB, to provide a summary of the history and
22 implementation of 20.6.6 NMAC ("Dairy Rule") since it was adopted by the WQCC, and to

1 describe the administrative burdens faced by the GWQB in implementing the Dairy Rule.

2 **II. HISTORY OF THE DAIRY RULE**

3 The regulations found in 20.6.2 NMAC ("Part 2 Regulations") were adopted in 1977
4 pursuant to the WQA, to protect ground water and surface water quality. The Legislature
5 amended the WQA in 2009 to require the WQCC to adopt industry-specific dairy and copper
6 mining wastewater discharge regulations. *See* NMSA 1978, § 74-6-4(K). The Dairy Rule was
7 the first rule to be developed pursuant to these amendments and used a stakeholder process that
8 included participation from industry representatives, the regulated community, private citizens
9 and environmental groups. After a hearing and deliberations, the Commission adopted the Dairy
10 Rule in December 2010. The Dairy Industry Group for a Clean Environment ("DIGCE") filed
11 an appeal of the rule January 11, 2011 in the Court of Appeals and implementation of the Dairy
12 Rule was postponed while the parties to the rulemaking engaged in settlement discussions.
13 Following negotiations amongst the dairy industry; the Department; Amigos Bravos, Caballo
14 Concerned Citizens, and the Rio Grande Chapter of the Sierra Club (collectively the
15 "Coalition"), the Commission approved an amended Dairy Rule in November 2011, which took
16 effect on December 31, 2011.

17 On September 4, 2012, DIGCE filed a petition to amend the Dairy Rule requesting three
18 specific changes: (1) to allow the use of chemigation valves as a means of providing backflow
19 prevention; (2) to eliminate the requirement to field calibrate flow meters; and (3) to revise
20 requirements in the Nutrient Management Plan ("NMP"), and eliminate the requirement for
21 certification of the NMP by both a certified professional agronomist or certified crop advisor and
22 a person certified by the NRCS as a nutrient management planner ("First Petition"). On

1 December 7, 2012, the Coalition filed a Motion for Reconsideration and Memorandum of Law to
2 Reconsider the Petition and for Dismissal of the Petition, arguing that the appropriate procedure
3 was not followed pursuant to NMSA 1978, Section 74-6-4(K). The First Petition was continued
4 on December 11, 2012, until January 8, 2013. On January 8, 2013, the Commission denied the
5 Coalition's Motion to Dismiss. The First Petition was continued again, and the Commission set
6 a hearing date for July 2013. An Unopposed Motion to Continue was filed on June 7, 2013, and
7 the First Petition was scheduled for hearing on September 10, 2013. Before the hearing took
8 place, DIGCE filed a second petition to amend the Dairy Rule on August 5, 2013 ("Second
9 Petition"). This petition included 27 proposed amendments. DIGCE also requested that the
10 WQCC hold a single hearing on the first and second petitions; the Commission approved the
11 request to combine the hearing on the petitions, which is the matter currently in front of the
12 Commission (collectively "Proposed Amendments"). This hearing was originally scheduled for
13 March 2014, but was postponed several times and is now scheduled to commence on December
14 9, 2014.

15 Following continuance of the hearing to December 2014, NMED convened a Dairy Rule
16 Technical Working Group ("TWG") made up of technical specialists from NMED and New
17 Mexico Department of Agriculture. The purpose of the TWG was to inform NMED's position
18 on the Proposed Amendments as well as facilitate discussion about the dairy industry in New
19 Mexico. The TWG hosted meetings where the interested parties, the Coalition and DIGCE,
20 could make presentations to the TWG on the Proposed Amendments and have open and candid
21 discussion about the regulation of dairies. The TWG made conference rooms available in
22 Albuquerque on May 16 and June 24, 2014. DIGCE participated on both days, and the Coalition

1 elected not to participate. The TWG provided equal time to the Coalition and DIGCE on each
2 day and all the meetings were recorded. Additionally, the TWG hosted a public meeting on the
3 evening of July 29, 2014, in Roswell, NM. This public meeting allowed for presentations on the
4 Proposed Amendments by DIGCE and the Coalition as well as information from the TWG. The
5 TWG provided additional time for public comment following the discussion. Notice of the
6 public meeting was provided via email on July 3, 2014, to the interested parties; posted on
7 NMED's website and in NMED's southeast field offices on July 16, 2014; and, published in
8 newspapers in Roswell, Clovis/Portales, Lovington, Las Cruces and Albuquerque on July 18,
9 2014. The GWQB also sent the notice to the 460 email addresses that make up the WQCC
10 interested persons list and the dairy permit holder list. Over 60 people attended the Roswell
11 meeting.

12 **III. REGULATORY FRAMEWORK FOR ISSUANCE OF DISCHARGE PERMITS**

13 The Part 2 Regulations require that all ground water with an existing total dissolved
14 solids concentration of 10,000 milligrams per liter or less be protected for present and potential
15 future use as domestic and agricultural water supply. 20.6.2.3101(A) NMAC. The Part 2
16 Regulations further require that surface waters which are gaining because of ground water flow
17 be protected for uses designated in the New Mexico Water Quality Standards. 20.6.2.3101(A)
18 NMAC. The WQCC sets ground water quality standards that must not be exceeded by
19 contaminants discharged from a facility. *See* NMSA 1978, § 74-6-4(D). 20.6.2.3104 and
20 20.6.2.3105 NMAC also require that a facility obtain a discharge permit if the facility discharges
21 effluent or leachate containing water contaminants in excess of the ground water standards or
22 any other toxic pollutant that may move directly or indirectly into ground water. The focus of a

1 discharge permit is to protect ground water quality. Prior to adoption of the Dairy Rule, the Part
2 2 Regulations exclusively governed ground water discharges from dairy facilities; the Dairy Rule
3 supplements these regulations. 20.6.6.6 NMAC.

4 A discharge permit is defined in the Part 2 Regulations as a discharge plan approved by
5 NMED. 20.6.2.7(O) NMAC. Prior to a facility discharging or when NMED informs a facility
6 that a discharge permit is required, the Part 2 Regulations require the facility owner to submit a
7 discharge plan (i.e. application for a discharge permit) that contains detailed information about
8 the facility and the discharge system. 20.6.2.3106 NMAC.

9 The Part 2 Regulations require discharge permits for many types of facilities in New
10 Mexico, including domestic wastewater treatment plants, industrial plants, and food processing
11 facilities. A discharge plan submitted to NMED by an applicant contains four components: (1)
12 an operational plan; (2) a monitoring plan; (3) a contingency plan; and (4) a closure plan.
13 20.6.2.3106 NMAC and 20.6.2.3107 NMAC. The operational plan describes how the discharge
14 system will be constructed, operated and maintained; the monitoring plan describes what
15 instrumentation will be installed to monitor the discharge and ground water, including a schedule
16 and list of monitoring parameters; the contingency plan describes corrective actions that will be
17 taken in the event of operational failures or exceedances of ground water standards; and the
18 closure plan describes how the facility will be closed when operations cease.

19 Whereas the Part 2 Regulations allow the applicant to propose a variety of options to
20 satisfy operational, monitoring, contingency, and closure requirements, the Dairy Rule lists
21 specific operational, monitoring, contingency, and closure methods dairies must follow,
22 precluding the dairy permit applicant from proposing, and the Department from accepting,

1 variations in requirements based on site-specific factors without first seeking a variance from the
2 Commission. 20.6.6.18 NMAC. In the Part 2 Regulations that apply to non-dairy permits,
3 several requirements, including contingency plans and closure, are deferred to workplans that are
4 submitted after the issuance of the permit for specific and particularized situations. However, the
5 Dairy Rule provides very specific and prescriptive requirements for each part of a dairy
6 discharge permit and application. *See, e.g.* 20.6.6.11 NMAC; 20.6.6.16 NMAC; 20.6.6.17
7 NMAC; 20.6.6.20 NMAC. This requires much more extensive application submittals from
8 parties seeking a dairy discharge permit, and requires more GWQB staff time to review and
9 ensure that all Dairy Rule requirements are included and adequately met.

10 After NMED reviews an application for a discharge permit under the Part 2 Regulations
11 and determines it is administratively and technically complete, the available information is
12 evaluated to determine if the proposed discharge plan would prevent contaminants in the
13 discharge from causing exceedances of the ground water quality standards contained in
14 20.6.2.3103 NMAC. If NMED determines that the proposed discharge plan would likely prevent
15 exceedances of the ground water quality standards and meets the requirements of the WQCC
16 Regulations, staff prepare a draft discharge permit with conditions for approval. If NMED
17 determines that the proposed discharge plan would likely not prevent exceedances of the ground
18 water quality standards, the discharge plan is disapproved.

19 A discharge permit is generally issued for a period of five years. NMSA 1978, § 74-6-5.
20 The permit remains in effect after the expiration date as long as the permittee submits an
21 application for discharge permit renewal at least 120 days before the expiration of a Part 2
22 discharge permit or one year before the expiration of a Dairy Rule discharge permit, and the

1 permittee is not "in violation" of the permit on the date of expiration. 20.6.2.3106(F) NMAC
2 and 20.6.6.10(A) NMAC.

3 **IV. IMPLEMENTATION OF THE DAIRY RULE**

4 NMED began implementing the Dairy Rule following its effective date of December 31,
5 2011. This put into motion a rigorous schedule for issuing draft dairy discharge permits over an
6 18-month period beginning in January 2012 and ending in June 2013, in accord with
7 20.6.6.35(D) NMAC. However, because DIGCE appealed the original rule and permitting
8 schedule adopted by the Commission in December 2010, and the amended Dairy Rule, effective
9 December 31, 2011, did not include a revised schedule, the Department lost one year (December
10 2010 to December 2011) to issue permits in accordance with the new rule. This required the
11 Department to shift staff from other ground water permitting programs to assist in meeting the
12 aggressive and shortened permit schedule imposed by the Dairy Rule. The Department's
13 Agriculture Team was forced to delay permitting and enforcement of most non-dairy facilities in
14 order to successfully meet this Dairy Rule permit schedule.

15 A total of the 126 draft permits were issued between January 2012 and June 2013 in
16 accordance with the schedule in the Dairy Rule; 21 permits were finalized, 102 facilities
17 submitted comments, and 9 variance petitions were submitted in which a hearing was scheduled
18 before the Commission. The Department recommended denial of an additional variance petition,
19 and the permittee did not request a hearing. The 102 facilities that submitted comments to the
20 Department also informally requested variances from the Dairy Rule. Many of the submittals
21 requested a variance from the entire rule but did not provide site-specific conditions to support
22 the request. Therefore, these requests were not formalized and a hearing was not scheduled by

1 the Commission. In addition, GWQB received 17 requests for a permit hearing.

2 NMED met with many of the permittees who filed variances. With an inability for
3 NMED to use its discretion during discussions, in light of the prescriptive nature of the Dairy
4 Rule, meetings with permittees who filed variances were rather unproductive. Even where the
5 Department was willing to negotiate a joint variance in certain areas (such as the number and
6 location of monitoring wells needed at a particular facility required to detect ground water
7 pollution, or whether an engineered clay-liner at a particular facility could effectively protect
8 ground water), both NMED and the permittee were concerned about the substantial resources
9 necessary to bring a joint variance to a hearing before the WQCC. Each party would likely
10 require legal services and technical testimony to support the criteria for a variance that the
11 Commission must review per 20.6.2.1210 NMAC, as well as the additional criteria in the Dairy
12 Rule pursuant to 20.6.6.18 NMAC.

13 Conversely, with permits for industrial and domestic facilities issued pursuant to the Part
14 2 Regulations, NMED can negotiate site-specific provisions with the permit applicant, and if
15 both parties agree on permit terms and requirements, NMED can then move forward to public
16 notice of a draft permit or issuance of a final permit if no public comments are received, without
17 the need to file a variance petition. However, the Dairy Rule does not allow NMED this
18 flexibility to work with an applicant, or to approve alternate and equally protective permit
19 requirements based on comments from an applicant or the public. For any technical options
20 other than those specified in the Dairy Rule to be incorporated into a dairy permit, NMED and/or
21 the applicant must file a variance petition with the Commission pursuant to 20.6.6.18 NMAC,
22 and present the matter at a public hearing seeking approval of the Commission for the variance.

1 So, following efforts made by NMED to meet with permittees, many permittees requested stays
2 of enforcement for permit requirements at issue in the variance requests, in order to see if
3 proposed changes to the Dairy Rule would be successful.

4 As examples for the benefit of the Commission, NMED held the following meetings and
5 discussions with dairy permittees and their representatives to discuss filed or anticipated variance
6 requests:

7 - On October 31, 2012, NMED staff and counsel met with representatives of an
8 operational dairy to discuss variance of the facilities requirements, but any agreement
9 would have required a hearing before the Commission. The permittee ultimately
10 requested a stay of enforcement for those requirements at issue in its variance request
11 until after the WQCC ruled on the First Petition.
12 - On April 11, 2013, consultants and representatives from a lending company in the
13 process of foreclosing on a dairy and representatives of another dairy seeking a
14 closure discharge permit met with NMED to discuss negotiation of a joint variance
15 for the facilities and alternate closure requirements that could be supported by the
16 Department. Progress halted when the dairy representatives requested longer and
17 more detailed meetings after the WQCC ruled on the First Petition.
18 - On May 1, 2013, NMED staff met with attorneys and consultants for a closed and
19 vacant dairy to discuss a joint variance for areas of agreement; however, the dairy
20 representatives requested a stay of enforcement of the requirements at issue in the
21 variance petition and deferral of discussion until after the WQCC ruled on the First
22 Petition.

1 - On July 10, 2013, NMED staff met with another dairy to negotiate a joint variance or
2 closure permit for the foreclosed facility; however, this matter is also stalled until
3 resolution of the First Petition.
4 - On July 12, 2013, NMED representatives met with consultants and owner
5 representatives of nine dairies, to discuss their general issues with the draft permits,
6 the Dairy Rule requirements for monitoring wells, and the challenge of meeting Dairy
7 Rule monitoring requirements at dairies under abatement (where there is documented
8 ground water contamination that must be addressed in an Abatement Plan under
9 20.6.2.4000 to 20.6.2.4999 NMAC). However, in light of the expenses related to
10 going before the WQCC with a variance petition, the dairies declined to participate in
11 settlement discussions until the requirements of the Dairy Rule were clearer and
12 settled.
13 Although NMED expended substantial time and effort to try to negotiate and establish
14 facility-specific solutions for dairies that NMED supported, most dairy representatives expressed
15 reservations about the substantial resources that would be needed in seeking WQCC approval of
16 their variance requests, even if requesting a variance jointly with the Department. A hearing
17 requires significant resources which include: the creation of an Administrative Record, drafting
18 testimony with supporting exhibits, reviewing and commenting on other party's testimony, and
19 participating in the hearing. These dairy representatives indicated they would prefer to wait until
20 after the WQCC ruled on the First Petition set for September 2013, since rule changes made by
21 the WQCC in response to the petition might make moot parts or all of the dairies' variance
22 requests. As a result, NMED was not able to negotiate any settlement or joint variance with

1 dairies that have appealed or sought variances from Dairy Rule requirements. Altogether,
2 NMED granted eight dairies requests for a stay of enforcement of the matters at issue in their
3 variance petitions until the matters were decided.

4 On top of the issues created for NMED by the lack of flexibility provided in the rule,
5 DIGCE's petitions in September 2012 and August 2013 to amend the Dairy Rule created
6 uncertainty for continued implementation of the rule. The Department continued and completed
7 issuance of draft permits following DIGCE's first filing to comply with the June 2013 deadline
8 as set by 20.6.6.35 NMAC. Additionally, NMED engaged in meetings with permittees as
9 outlined above. However, the Department did not complete review of the comments received on
10 all of the draft permits issued by the Department between January 2012 and June 2013 or issue
11 final permits due to the pending hearing on the Proposed Amendments (first set for September
12 2013, then March 2014 following the filing of the Second Petition, and subsequently moved to
13 December 2014 following DIGCE's filing of an unopposed motion to continue the hearing in
14 February 2014), and due to the compressed permitting schedule caused by the initial one-year
15 delay while the rule was negotiated and amended. If the Department had issued final permits
16 and the Dairy Rule was subsequently amended, the Department would likely be required to re-
17 issue the permits, wasting valuable staff time which could be used to address other permitting
18 and enforcement matters in the GWQB. Therefore, the Department suspended finalizing draft
19 permits in order to avoid duplication of effort.

20 DIGCE's First Petition was scheduled to go to hearing on September 10, 2013. Once the
21 hearing was rescheduled for late 2014, NMED again turned its attention back to issuance of final
22 permits due to the long period of time that had elapsed since the drafts were issued (June 2013)

1 and the fact that many months would pass before the hearing would be held.

2 NMED began issuing final dairy permits by priority based on the following criteria: (1) if
3 the current permit was expired and not administratively continued; (2) if the facility had existing
4 groundwater contamination; (3) depth to groundwater; and (4) if the facility did not have
5 monitoring wells. To date, an additional 21 permits have been finalized. As a response to
6 issuance of these additional 21 final permits, NMED has received 3 variances and 4 requests for
7 permit review before the Commission. Therefore, out of the 126 draft permits issued since the
8 effective date of the Dairy Rule, 42 permits have been finalized, and 12 variance petitions and 4
9 requests for permit review have been received. Three variance petitions have been resolved.

10 **V. ADMINISTRATIVE BURDEN**

11 The Agriculture Team of the GWQB is responsible for managing all agricultural facilities
12 including dairies. The team at the time that the Dairy Rule was adopted consisted of a Team
13 Leader and four technical staff. Shortly after the Dairy Rule was adopted, two team staff
14 resigned, including the Team Leader and supervisor. In order to complete issuance of draft
15 permits required under the Dairy Rule, two staff were temporarily assigned to the Agriculture
16 Team from other permitting teams. Once all expired permits were issued in June 2013, these two
17 staff returned to their previous teams, thus leaving a shortage of staff to address comments on the
18 drafts and to issue final permits. Due to lack of funding throughout the permitting programs in
19 the GWQB, these positions have not yet been filled resulting in the Agriculture Team having 3
20 out of 6 positions vacant. Due to lack of resources to fill positions in the permitting program,
21 compounded by high caseloads, the permitting program has a 45% vacancy rate which makes it
22 extremely difficult to administer the Dairy Rule. A base budget increase to fund existing

1 positions will again be requested in the 2015 legislative session. If it is not approved, the
2 permitting program will continue to be insufficiently funded to fill all existing positions, which
3 will increase the administrative and resource burden in implementing the Dairy Rule.

4 The fees for dairy permits remained the same for dairies throughout the various
5 amendments of the Rule and are woefully inadequate to cover the cost of managing permits for
6 dairies. The fee for a five-year permit for a dairy ranges from $1,150 (for a discharge of less
7 than 10,000 gallons per day) to $4,600 (for a discharge of 100,000 gallons per day or greater).
8 The fee for obtaining a discharge permit for a dairy has remained the same since 2001.
9 Managing a dairy permit involves reviewing a discharge permit application for administrative
10 and technical completeness; creating a draft permit, issuing the draft permit for public review
11 and comment, reviewing comments and requests for hearing including hearings on variance
12 requests, participating in public meetings and hearings, drafting a final permit based on the
13 administrative record, inspecting each facility, addressing compliance issues, reviewing quarterly
14 monitoring reports and environmental data, and overseeing abatement if groundwater
15 contamination is present. Increasing the fees to more accurately reflect oversight costs would
16 provide additional funding to fill vacant positions.

17 As previously testified, the Department received 9 variance requests from 21 final
18 permits that were issued between March 2012 and June 2013 and 3 variance requests out of the
19 21 final permits issued between July 2014 and October 2014. This equates to an average of
20 ~29% variance requests of final permits. Out of the remaining 84 draft permits, if 29% result in
21 variance petition requests, the Department can expect that an additional 24 dairies will request a

1 variance. It will be a considerable burden on the Department to prepare for so many variance
2 hearings before the Commission.

3 Providing NMED discretion to approve alternative methods that are equally protective of
4 ground water would allow NMED to work with permittees and interested parties on site-specific
5 permit conditions with equivalent protections for ground water without the need for a variance
6 from the WQCC in every situation. Areas warranting alternatives and more Department
7 discretion are alternate monitoring well networks (number of wells, location of wells, and well
8 construction), an alternate schedule for installation of monitoring wells, an alternate schedule for
9 surveying monitoring wells, and alternate liners that demonstrate equivalent protection of ground
10 water. Providing the Department more discretion would eliminate the need for a Commission
11 hearing and variance from the prescriptive Dairy Rule requirements. This would streamline
12 approval of final permits and still offer equivalent protection of ground water, while maintaining
13 the option for a permittee to seek a variance before the Commission if they so choose. It would
14 also allow the Department, the public, and the permittees to avoid the substantial legal and
15 technical costs of a variance hearing before the WQCC. Providing more discretion to the
16 Department on dairy permits would be consistent with the GWQB's method of reviewing and
17 approving site-specific requirements for other ground water discharge permits, including
18 industrial and domestic waste permits, yet would still provide a predictable and consistent
19 framework for regulation of dairies that is protective of ground water.

20 Additionally, the existing Dairy Rule includes a schedule for issuing draft permits. If the
21 Rule were to be amended, the Department proposes that an additional schedule for revised dairy
22 permits would not be necessary. 20.6.6.35 NMAC. The Department is committed to issuing

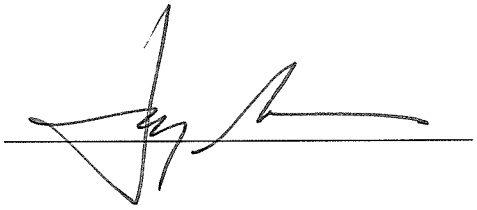
draft and final dairy permits as quickly as possible given current budget and staff resources, prioritizing based on threats to human health and the environment.

VI. CONCLUSION

In conclusion, as the Administrative Record demonstrates, implementation of the Dairy Rule has been burdensome for the Department. Amending the Dairy Rule to provide NMED with more discretion to approve additional alternatives in limited areas where the Department has identified the need for flexibility while maintaining equivalent protection of ground water would streamline implementation of the Dairy Rule and would significantly reduce or eliminate the administrative burden of implementing the rule.

Thank you. That concludes my direct testimony.

Respectfully submitted,



Gerard A. Schoeppner, PG-3240

Professional Profile

- **Results oriented environmental administrator and project manager** with 25 years of experience in both private and public sectors, skilled in managing complex and multi-faceted programs and projects to successful results
- **Experienced communicator and public speaker**, having represented the interests of public regulatory agencies and private companies

Highlights of Professional Accomplishments and Experience

Program administration and planning

- Managed the Ground Water Quality Bureau and the Petroleum Storage Tank Bureau to meet department goals and objectives and in compliance with the USEPA's guidelines. Duties included; managing the Corrective Action Fund, preparing and managing the operating budget, participating in strategic planning, conducting periodic staff meetings, attending Department meetings, conducting personnel management including supervising staff, hiring, firing and completing personnel actions, approving time reports, leave forms and overtime requests, conducting annual performance evaluations, participating in technical advisory and regulation revision committees, implementing changes to improve processes and coordinate work between various programs (GWQB - Pollution Prevention, Superfund Oversight, Mining Environmental Compliance, Remediation Oversight, and Grants and Planning Sections, PSTB - Remediation, Prevention and Inspection, Information Technology, and Financial Programs), presenting updates to the Petroleum Storage Tank Oversight Committee, presenting information to legislative interim committees, reviewing proposed legislation and completing bill analysis, developing written policies and completing paperwork and budget tracking necessary for Bureau operation
- Managed the Remedial Action Program of the Petroleum Storage Tank Bureau by tracking and assigning sites to staff, preparing program budgets, conducting periodic staff meetings, implementing changes to improve the program, coordinating Remedial Action Program staff work with Reimbursement and Prevention and Inspection Programs, oversight of staff training and paperwork management, and completing administrative paperwork necessary for program operation

Project management

- Currently leader of the Administrative Order on Consent team with project management responsibilities for remediation of historic mine sites. Responsible for maintaining consistency in management of sites and supervision of 3 technical staff in the Ground Water Quality Bureau's Mining Environmental Compliance Section
- Responsible for reviewing and issuing mining discharge permits, as well as oversight of cleanup activities in accordance with the Water Quality Control Commission abatement requirements and the Comprehensive Environmental Response, Compensation, and Liability Act
- Responsible for coordination with federal and state agencies on mine permitting procedures, developing, conducting and reporting on geohydrologic site investigations, reviewing and approval of discharge permits and pollution prevention plans, oversight of remediation work plan implementation, developing, conducting and reporting on environmental investigations to evaluate risks to human health and the environment posed by contamination, reviewing, commenting, and approving work plans and reports prepared by USEPA or responsible parties, and participating in and/or oversight of site investigations performed by USEPA or responsible parties
- Special projects have included participation in regulation revision committees and technical advisory committees that reviewed and approved technical scopes of work, and evaluated RFP's and proposals
- Performed contractor oversight at leaking underground storage tank sites
- Reviewed and approved technical scopes of work, technical reports, and budgets related to the

investigation and cleanup of releases of petroleum from underground storage tanks
- Ensured completion of paperwork and database management activities
- Conducted fieldwork in conjunction with corrective action activities at leaking underground storage tank sites

Technical work
- Performed soil and groundwater sampling, geologic mapping, drill logging and percolation tests
- Collected, organized and interpreted field and laboratory data associated with mines, mills, leaking underground storage tanks, road construction, housing developments, and Dam projects
- Wrote and reviewed technical reports and presented findings to clients
- Attended and presented at public meetings and hearings, and legislative hearings on projects and regulation revisions
- Supervised all phases of laboratory work including solving technical and laboratory production problems
- Accumulated and reviewed data for reports generated by the laboratory
- Performed various radiochemical analyses on various matrices
- Performed radiochemical analysis on water and wastewater samples to determine the presence of Strontium 89/90 and Radium 225/226

Professional History

State of New Mexico/Environment Department/Ground Water Quality Bureau, Santa Fe, NM – Bureau Chief, July 2011-present

State of New Mexico/Environment Department/Ground Water Quality Bureau/Mining Environmental Compliance Section, Santa Fe, NM – AOC Team Leader, October 2007-present

State of New Mexico/Environment Department/Ground Water Quality Bureau/Mining Environmental Compliance Section, Santa Fe, NM – Geoscientist, July 2004-October 2007

State of New Mexico/Environment Department/Ground Water Quality Bureau, Santa Fe, NM – Bureau Chief, July 2003-July 2004

State of New Mexico/Environment Department/Petroleum Storage Tank Bureau, Santa Fe, NM – Bureau Chief, October 2000-July 2003

State of New Mexico/Environment Department/Petroleum Storage Tank Bureau, Santa Fe, NM – Acting Remedial Action Program Manager, February 1999-May 2000 and August 1995-January 1997

State of New Mexico/Environment Department/Petroleum Storage Tank Bureau, Santa Fe, NM – Geologist, January 1993-October 2000

Tierra Engineering Consultants, Santa Fe, NM – Field Geologist, May 1989-January 1993

Controls for Environmental Pollution, Santa Fe, NM – Group Leader/lab technician, October 1987-May 1989

Selected Professional Certifications
- Professional Geologist, State of Wyoming, License # PG-3240
- OSHA 40-hour hazardous materials worker

Education
Bachelor of Science, Geology, New Mexico State University, Las Cruces, New Mexico, August 1987

References furnished upon request