

**STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF ENVIRONMENT**



**IN THE MATTER OF THE )  
APPLICATION OF S & R SEPTIC )  
FOR THE RENEWAL OF )  
A SEPTAGE DISPOSAL FACILITY )  
DISCHARGE PERMIT, DP-465 )**

**GWB 19-28 (P)**

**FINAL ORDER**

This matter comes before the Secretary of Environment following a hearing before a Hearing Officer on October 16 and 21, 2019, in Taos, New Mexico.

S & R Septic (Applicant) seeks the renewal of its discharge permit for the planned discharge of up to 9,857 gallons per day of domestic septage into thirteen unlined disposal cells totaling 2.31 acres on a rotational basis; and for the planned discharge of up to 8,333 gallons per month of liquid/semi-solid/solid domestic-wastewater-treatment-facility and/or package-treatment-plant sludge to three cells totaling .46 acres on a rotational basis. The property is located approximately three miles northwest of Taos on the north side of Highway 64, in Taos County, New Mexico.

The Ground Water Bureau (Bureau) supported the renewal of the permit with conditions staff believed necessary to protect public health and welfare and the environment. Several members of the community urged denial of the application based on Applicant’s history of non-compliance, odor, vectors, airborne pathogens, nearby development, and potential contamination of ground water, among other things.

Having considered the administrative record in its entirety, including all post-hearing submittals, the Hearing Officer’s Report and comments thereon; and being otherwise fully advised regarding this matter;

THE SECRETARY HEREBY DENIES THE PERMIT APPLICATION FOR THE REASONS STATED BELOW, AND ADOPTS THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

**FINDINGS OF FACT**

**A. The Facility**

1. S & R Septic (Applicant) is a domestic-septage and sludge disposal company originally permitted in 1987. Since then, it has gone through several permit renewals, the most recent of which was in December 2012. The 2012 permit allowed discharge of up to 9,857 gallons per day (not to exceed 69,000 gallons per week) of domestic septage to 13 unlined disposal cells totaling 2.31 acres on a rotational basis. It also allowed discharge of up to 8,333 gallons per month (not to exceed 100,000 gallons per year) of liquid/semi-solid/solid domestic-wastewater-treatment-facility and/or package-treatment-plant sludge to three cells totaling 0.46 acres on a rotational basis. Applicant applied to retain those limits; its application was not timely. **AR Doc. 4.**
2. The term of a discharge permit is generally five years from the date the permit is issued. 20.6.2.3109(H) NMAC. The holder of a discharge permit must submit an application for renewal at least 120 days before the permit expires for it to be administratively continued. 20.6.2.3106(G) NMAC. **NMED Exh. 1, p.2.**
3. When measured on a *per-acre* basis, the allowable discharge is 4,267 gallons per day. That is more than any other active septage facility in New Mexico, excepting Barry's Septage (DP-1878), the elevated limit for which is effectively nullified by an additional restriction limiting it to 200 pounds of total nitrogen per year. **NMED Exh. 8; Testimony Vol II, pg. 326.**

4. The facility is located on Tune Drive approximately three miles northwest of Taos, NM on the north side of Highway 64.
5. Contaminants of concern to the Department are nitrogen species and pathogens in particular, but may also include other chemicals such as formaldehyde due to varying materials and strategies associated with septic-tank use. **NMED Exh. 1, pgs. 6-7.**

#### **B. Geology and Hydrology of the Site**

6. The facility is located on the Costilla Plains between the Taos Plateau and the Sangre de Cristo Mountains. In this area, groundwater is typically found in the alluvial sediments, which consist of deposits from the Holocene, early Quaternary and late Tertiary Ages known, collectively, as the Santa Fe Group. That Group, in turn, is interbedded with clay deposits and volcanic rocks such as servilleta basalt. **NMED Exh. 1, p. 6.**
7. The facility is also within the Los Cordovas Fault Zone, which has a north-south orientation. There is fracturing of bedrock and, in general, the fractures are not cemented. **NMED Exh. 1, p. 6, referencing NMED Exhs. 3, 4 and 5.**
8. Based on a well located one mile away, the New Mexico State Engineer (OSE) recorded water depth at approximately 500 feet. Records are insufficient regarding perched groundwater. **NMED Exh. 1, p. 6.**
9. The OSE well log for the Waste Management of New Mexico well profiled 102 feet of brown gravel and clay from eight to 110 feet below surface. The Mark D. Miller well log profiled 89 feet of clay and gravel from 10 to 99 feet below surface. **Exh. Snyder 1, part 2.**

10. The 1999 Shomaker Report estimated nitrogen migration below the Applicant's facility at 15-30 feet after 12 years of operation. **AR Doc. 1.**
11. Modeling in the 2000 Duke Engineering Report predicts said migration of nitrogen contaminants below the facility to have reached depths of at least 70 feet after 32 years of operation. **AR Doc. 2; NMED Exh. 1, pg. 6.**
12. Until Applicant's environmental consultant performed a site investigation in October of 2019, no follow-up studies had been performed at the facility regarding vertical migration of contaminants since the Shomaker/Duke reports. **NMED Exh. 1, p. 7.**
13. EA Engineering describes the 2019 investigation as "limited." **Exh. Snyder 1, p. 1.** Near-surface gravels prevented air-rotary drilling beyond 35 feet below ground surface. Three grab samples and one split-spoon sample were obtained. **Exh. Snyder 1, part 4.**

### **C. Regulatory History of the Permit**

14. On February 4, 1987, Mr. Steve Rael submitted a discharge permit application for the S&R Septic septage disposal facility.
15. On April 7, 1987, NMED issued discharge permit DP-465 to Mr. Rael authorizing the discharge of 12,000 gallons per day (gpd) of septage into shallow ponds at the facility.
16. On July 25, 1990, NMED approved a modification to DP-465 increasing the allowable discharge volume to 20,000 gpd.
17. On June 10, 1992, NMED approved the renewal of DP-465.
18. On July 28, 1999, NMED approved the modification and renewal of DP-465, which decreased the allowable discharge volume to 10,000 gpd and changed the operational plan from shallow ponds to twelve shallow disposal cells.

19. On May 14, 2001, NMED required Mr. Rael to modify DP-465 to install additional fencing around the perimeter of the facility.
20. On September 12, 2001, Dr. William Mansker, on behalf of Mr. and Mrs. Rael, submitted a request and application for renewal of DP-465.
21. On October 18, 2001, NMED deemed Mr. Rael's application administratively complete in accordance with 20.6.2.3108.A NMAC.
22. Following public notice of the proposed discharge permit renewal, NMED received a number of letters from members of the community, including requests for a public hearing from Doug West of the Stagecoach Neighborhood Association, Wayne Ludvigson of the Hondo Mesa Community Association, Roger C. Sanders of the Council of Neighborhood Associations, Carol Richman, and Alex Kurtz.
23. On December 6, 2001, the Secretary of NMED determined that a public hearing would be held regarding the proposed renewal of DP-465 because of significant public interest.
24. On February 21, 2002 and March 22, 2002, NMED held meetings with Mr. and Mrs. Rael to discuss the concerns of NMED and the public pertaining to the facility's proposed method of disposal. At those meetings, NMED requested Mr. and Mrs. Rael to submit additional information and a revision to the permit renewal application.
25. On April 12, 2002, Dr. Mansker, on behalf of S&R Septic, submitted an amended permit renewal application to NMED.
26. On July 17, 2002, NMED entered the draft discharge permit renewal into the administrative record.

27. On July 19, 2002, NMED received a letter from Dr. Mansker on behalf of S&R Septic stipulating to all conditions contained in the draft discharge permit renewal dated July 17, 2002.
28. On October 8, 2002, following public notice, NMED held a public hearing regarding the renewal of DP-465. During the hearing, NMED, the Permittee and ten members of the public provide testimony. On April 30, 2003, NMED issued a final order approving the permit with additional conditions based on the hearing record.
29. On May 22, 2003, the renewal permit was issued by the GWQB with conditions.
30. On March 1, 2005, a joint NMED and U.S. EPA inspection found further operational deficiencies. The U.S. EPA proposed a \$32,500 penalty, which was reduced in a consent agreement to \$1,800 on May 2, 2007.
31. Between August 10, 2005 and January 25, 2008, NMED received five complaints about the facility. NMED inspected the facility once in response to a complaint and three times as routine inspections.
32. On April 11, 2008, grease trap and carwash grit waste was de-authorized by NMED, which required the facility to discontinue accepting these types of wastes for onsite disposal.
33. Between May 16, 2008 and August 31, 2012, NMED received multiple renewal applications and application amendments from the permittee. During this time NMED also received complaints, objections, and comments from many members of the public and from the permittee.
34. On October 29, 2012, NMED issued a response to comments and a revised draft permit with additional conditions and revisions.

35. Between November 13 and November 28, 2012, NMED received additional objections and complaints from members of the public on the revised draft of the renewal permit.
36. On December 27, 2012, NMED issued a revised renewal permit.
37. On December 27, 2017, the 2012 discharge permit expired without the submission of an application for renewal.
38. On December 28, 2017, NMED inspected the facility, informed the permittee of the expired permit term, and provided copies of the application form. The inspection revealed deficiencies with the signage at the front gate, which was supposed to provide emergency contact information and warn against unauthorized entry; and signage within the facility, which was supposed to facilitate a rotational disposal schedule among the cells, as required by the permit. Additionally, the permittee was informed that he had failed to submit monitoring reports for the previous three years, and had not constructed the splash pads required by the 2012 renewal permit.
39. On February 22, 2018, NMED received the renewal application for the expired discharge permit, DP-465. **AR Doc 4.**
40. On May 15, 2018, the application was deemed administratively complete and public notice instructions were provided to the Applicant.
41. Pursuant to 20.6.2.3108(A) NMAC, Applicant undertook the initial public-notice, making its renewal application known, on June 22, 2018. **AR Doc. 10.**
42. On June 22, 2018, NMED fulfilled the department's first public notice responsibilities  
20.6.2.3108.A NMAC

43. On September 24, 2018, the Applicant provided the required affidavit of completion and proof of first public notice completion. 20.6.2.3108.C NMAC
44. On August 27, 2018, having failed to achieve voluntary compliance following the December 28, 2017 inspection, NMED issued a Notice of Non-Compliance (NONC) to the permittee for the signs, missing monitoring reports, and lack of splash pads. The permittee completed construction of the splash pads, and submitted photo documentation and the missing monitoring reports by October 25, 2018.
45. On September 27, 2018, the Bureau received a report from the NMED Environmental Health Bureau field office that a NMED field technician witnessed an S&R Septic pumper truck pumping grease trap waste from a restaurant in Taos. NMED inspectors attempted to perform an inspection at the facility the next day (September 28, 2018). The permittee refused to allow the inspectors entry to the facility. Inspectors returned on Monday, October 1, 2018, and observed Cell 13 covered in a thin layer of fresh dirt. The inspectors collected soil samples from the cell and tested for Total Petroleum Hydrocarbons (TPH) and total recoverable fats, oils and grease (FOG). Results from the samples showed elevated levels of both TPH and FOG. Samples were collected from two other septage disposal facilities and compared to the results from Cell 13. The comparison showed that levels of TPH and FOG in Cell 13 were 100 times greater than septage disposal cells at other facilities. Inspectors requested all pumping records and disposal manifests for the reported time frame. The permittee provided the requested manifests, which did not include any documentation for the reported pumping of the restaurant grease trap.

46. On November 14, 2018, the Bureau received and responded in the negative to a request for temporary closure of the facility from the Stagecoach Neighborhood Association.
47. On April 29, 2019, the Bureau provided the Applicant with the draft permit prior to the second public notice and comment period. 20.6.2.3108.J NMAC.
48. On May 24, 2019, public notice was published in the Taos News and Albuquerque Journal and mailed out to all required interested parties. 20.6.2.3108.J NMAC. **AR Docs 38, 39.**
49. Between May 24 and June 24, 2019, the second public notice comment period, multiple concerned members of the public contacted Mr. Herman to voice their objections to the facility and to permit renewal. The Bureau received ten requests for a hearing, from individual residents, a neighborhood association, a local water district and multiple adjacent business owners. The Bureau also received objections and complaints that did not include a request for hearing from one resident, a retired petroleum geologist, and an adjacent business owner. **AR Docs. 40-53.**
50. The Public Involvement Plan was duly revised, **AR Doc. 54**, and notice of a public hearing – in both English and Spanish – was published in the Albuquerque Journal and Santa Fe New Mexican on or before September 15, 2019. **AR Docs. 55, 56.**

#### **D. The Hearing**

51. A hearing was held October 16, 2019, at the Taos County Commission Chambers beginning at 5:30 p.m. Exceeding the available time, it was continued on October 21, 2019, at the Taos Civic Plaza and Convention Center beginning at 10 a.m. When the

initial evening of testimony ran long, notice of a continuance was sent to all interested parties informing them of the new day, time and location.

52. In addition to the Applicant and the Department, three others made entries of appearance and/or submitted notices to present technical information. These were the El Prado Water and Sanitation District, Jerome Hansen and Dion Smith.
53. In total, 14 people testified or delivered verbal comment. The Applicant presented three witnesses – Jay Snyder, Jim McCann and Steve Rael – and the Department presented one: Jason Herman. Of the public comments, eight generally opposed the permit or sought additional investigation before issuance while two generally supported the permit.
54. Jay Snyder has bachelor's degrees in geology and meteorology, and master's degrees in geophysics and geological engineering. Mr. Snyder is a licensed professional engineer in New Mexico, a licensed geologist in 14 states, certified as a hydrogeologist by the state of California and as a professional hydrologist by the American Institute of Hydrology. Mr. Snyder has done contaminant study for 30 years, site investigations and characterization, all the way to cleanup and closure. Mr. Snyder has been qualified as an expert witness with the Water Quality Control Commission and in NMED public hearings. Mr. Snyder works for EPA Regions 6 and 9, and has worked directly for the state of New Mexico, responsible parties, and permittees. Mr. Snyder was accepted as an expert witness in geology, hydrogeology and geologic engineering. **Testimony Vol. 1, pgs. 88-89, 97.**

55. Jim McCann has been licensed as a well driller in New Mexico for at least four years and has drilled hundreds of wells in the state, including wells near the Applicant's site. He is also licensed in other states. **Testimony Vol. 1, pg. 165.**
56. Steve Rael is the owner of Applicant S & R Septic.
57. Jason Herman is the domestic waste team leader for the Bureau's Pollution Prevention Section, has worked for the Bureau for two years, and has written thirty ground water permits. He worked in ground water treatment and regulatory industries in Florida for more than eight years. Mr. Herman has a bachelor's degree in environmental planning and design, a master's degree in community regional planning, and a second master's degree in water resources management. **Testimony Vol. 2, pgs. 314-316.**
58. Jerome Hansen, a trained geologist and member of the Stagecoach Neighborhood Association, made extensive use of Google-Earth slides depicting the facility over 2-3 decades. He expressed concern about permeability of the underlying rock and potential contamination of groundwater. **Testimony Vol. 1, pg. 20.**
59. Phillip Tafoya testified to the value of the service provided by the Applicant and asked how the hearing was initiated. The hearing officer provided a response to his question. **Testimony Vol. 1, pg. 178.** Tafoya favored renewal of the permit.
60. Mary Lane Leslie spoke on behalf of the Stagecoach Neighborhood Association. She testified that other septage haulers in the area utilize the municipal wastewater-treatment plant for disposal rather than exposed cells. She asserted that pathogens in the septage are dangerous to human health and asked that permit conditions address vectors and potential airborne contaminants. She worried that the

Department lacks adequate resources to oversee and monitor the facility based on historical violations of the permit. She ultimately asked that the Applicant be required to use the wastewater-treatment plant. **Testimony Vol. I, pgs. 183-197.**

61. Norbert Mondragon disfavored renewal of the permit due in part to reservations about the Department's lack of manpower and reliance on self-reporting by the facility. He also expressed frustration with the narrow focus on groundwater when he considers airborne pathogens similarly concerning. **Testimony Vol. I, pgs. 204-06.**
62. Dion Smith, a member of the Stagecoach Hills Neighborhood Association, also objected to airborne contaminants as a potential cause of disease. He has received complaints about odors and conducted research on the health effects of breathing sewage fumes. He listed hydrogen sulfide, carbon dioxide, methane and ammonia as gases typically associated with septage. He expressed concern about the Department's lack of manpower for enforcement and encouraged disposal at the wastewater-treatment plant. **Testimony Vol. I, pgs. 267-273.**
63. John Painter spoke on behalf of the El Prado Water and Sanitation District, located north of Taos. He holds a level-4 certification and operator's license from the Department's drinking water bureau. The District relies on several production wells, including one near the Applicant's facility. While Painter did not think it is currently impacted, he expressed concern about the future and stressed the need for additional monitoring. He encouraged drilling at least one borehole at the facility and ensuring that the Applicant does not dispose of fats/oils/grease or hydrocarbons at the facility. **Testimony Vol. II, pg. 303-304.**

64. Lois Rodin discussed the functioning of sewage-cell systems and what distinguishes an effective one from a poor one. She felt the Applicant could dispose at the wastewater-treatment plant. **Testimony Vol. II, pgs. 311-312.**
65. Cherylin Atcity is the environmental program manager for the Taos Pueblo Environmental Office. She expressed concern that renewal of the permit could harm subsurface water and, by extension, wildlife, such as bison herds. **Testimony Vol. II, pg. 313.**
66. Douglas Daubert read a statement from prior witness Jerome Hansen, who could not appear for the second day of proceedings. Through Daubert, Hansen stated that the Applicant's counsel failed to serve him with a significant amount of information, which resulted in his being caught off guard during cross-examination. **Testimony Vol. II, pg. 346.**
67. Daubert was uncomfortable with a proposed reduction in boreholes from five to one and did not think it could adequately test for off-site seepage. He also emphasized the Applicant's gaps in monitoring reports, encouraged disposal at the wastewater-treatment plant, and called for denial of the permit. He also submitted a newspaper article about Applicant's operations from 1995 that drew an objection on the grounds of hearsay. **Testimony Vol. II, pg. 348-351.**
68. Bruce Popham, who worked closely with the Florida environment department, related his surprise at discovering open-pit dumping upon his relocation to Taos. He considers the facility a risk to the well fields. **Testimony Vol. II, pg. 354.**

### **E. Negotiated Permit Conditions**

69. On October 21, 2019, just prior to commencing the continued hearing, the Applicant, the Bureau, and El Prado verbally negotiated modifications to Conditions 21 and 22 of the discharge permit, relating to a geohydrological evaluation beneath the facility. Testimony Vol. II, pgs. 319-323, and Attachment 1.
70. The evaluation required in the draft permit included a minimum of one borehole going to the basalt layer, at least one moisture monitoring device, a monitoring well and a second borehole in the event a saturated zone above the basalt was identified, several representative soil or lithologic samples, chemical analysis, and potentially a vadose-zone monitoring system. *Id.*
71. The negotiated permit conditions did not include any provision for financial assurance to guarantee that the work would be carried out as required, notwithstanding the significant expense and the permittee's poor compliance history.

### **DISCUSSION**

The Hearing Officer noted that Applicant's history of permit violations and its failure to timely apply for permit renewal were "certainly troubling." Having reviewed that history in full, and having deliberated on the nature and persistence of those violations, I believe they require the denial of this permit application under the New Mexico Water Quality Act, NMSA 1978, § 74-6-5(E).

Section E provides that "the constituent agency shall deny any application for a permit.... if: .....(4) the applicant has, within the ten years immediately preceding the date of submission of the permit application: ..... (b) refused or failed to disclose any

information required under the Water Quality Act; ..... [or] (e) exhibited a history of willful disregard for environmental laws of any state .....

Setting aside the 2005 violations found in the joint inspection by NMED and the U.S. EPA as outside the ten-year timeframe preceding the most recent permit application, and setting aside the newspaper article from October 1995 as both out of time and hearsay, the Applicant's recent history reflects multiple refusals and failures to disclose required information and willful disregard for the terms of its permit and the New Mexico Groundwater Regulations.

First, although its 2012 discharge permit expired on December 27, 2017, the Applicant continued to operate the facility, thereby discharging without a permit in violation of the Water Quality Act and Regulations. Second, a December 28, 2017 inspection revealed deficiencies with signage both at the front gate and within the facility, in violation of the permit. Third, Applicant failed to submit monitoring reports for three years, in violation of the permit, law, and regulation. Fourth, as of December 27, 2017, Applicant had not constructed splash pads required by the terms of the 2012 discharge permit. Fifth, Applicant had still not come into voluntary compliance eight months later, on August 27, 2018 as to splash pads, monitoring reports, or signage, and the Bureau was compelled to issue a subsequent notice of non-compliance. Sixth, on September 27, 2018, a field technician witnessed an S&R Septic pumper truck pumping grease trap waste from a restaurant in Taos, in violation of its permit limitations. Seventh, when the inspectors attempted to perform an inspection at the facility the next day, the permittee refused to allow the inspectors entry to the facility. Eighth, when the inspectors did enter and collect soil samples, Total Petroleum Hydrocarbons (TPH) and total recoverable fats, oils and

grease (FOG) levels were 100 times greater than septage disposal cells at other facilities.

Ninth, when inspectors requested all pumping records and disposal manifests for the relevant dates, the Applicant provided manifests which did not include any documentation for the reported grease trap pumping location.

The Groundwater Regulations and the discharge permits issued by the Bureau are designed to protect public health and the environment. When a permittee violates those provisions, it puts public health and the environment at risk. Applicant's refusal to allow the inspectors to enter the facility, its failure to submit monitoring reports for three years, and its failure to document by manifest the grease trap pumping location were violations of the Water Quality Act, the Regulations, and the permit, and undermined the Bureau's ability to provide regulatory oversight for a discharging facility.

With limited enforcement staff, the Department must rely upon permittees to honor the terms of their permits, and to provide the required records and site access. Where a permittee has shown an unwillingness to do so, future permits shall be denied.

Finally, in this matter, had Applicant's poor compliance history not been the basis for the decision to deny the permit application, approval would not have been granted without including an appropriate amount of financial assurance to guarantee that the necessary work would have been performed. As the Bureau notes, after 33 years of operation, and a projection that contaminants would have reached at least 70 feet below the surface by this time, it would be critical to understand the depth and concentration of all facility-related contaminants, and to know whether there are any saturated zones above the basalt, or lithological zones capable of creating a perched aquifer.

## CONCLUSIONS OF LAW

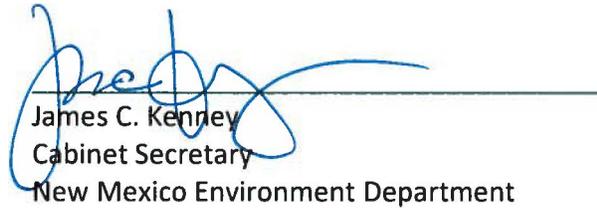
1. The Water Quality Control Commission (WQCC) "may require persons to obtain from a constituent agency designated by the commission a permit for the discharge of any water contaminant." NMSA 1978, § 74-6-5(A).
2. The WQCC has adopted regulations implementing the Water Quality Act at 20.6.2 NMAC.
3. The regulations at 20.6.2.3104 NMAC provide that "no person shall cause or allow effluent or leachate to discharge so that it may move directly or indirectly into ground water unless he is discharging pursuant to a discharge permit issued by the secretary."
4. Applicant S & R Septic is a "person" within the meaning of the regulations. 20.6.2.7(JJ) NMAC.
5. The Department is an agency of the executive branch of the state of New Mexico, created by statute. NMSA 1978, § 9-7A-6(B)(3) (1991).
6. The Secretary has jurisdiction over the subject matter of the Application and the parties to this proceeding, and has authority to issue or deny ground water discharge permits based upon information submitted in a permit application and relevant information received during the public hearing. NMSA 1978, §74-6-5, 20.6.2.3109 NMAC.
7. Activities described by S & R Septic in the Application require a groundwater discharge permit to be evaluated by the Department. 20.6.2.3104 and 20.6.2.3018 NMAC.

8. The Water Quality Act provides that a constituent agency shall "either grant the permit, grant the permit subject to conditions, or deny the permit." NMSA 1978, § 74-6-5(D).
9. The Department provided the public, including the Applicant, with notice of the proposed discharge permit in accordance with the regulations at section 20.6.2.3108(H) NMAC.
10. The Department provided the public, including the Applicant, an opportunity to comment on the proposed discharge permit in accordance with the regulations at 20.6.2.3108(K) NMAC.
11. The Department provided the public, including the Applicant, with notice of the public hearing in accordance with the regulations at 20.6.2.3110 and 20.1.4.200 NMAC.
12. A public hearing was held on the proposed discharge permit in accordance with the regulations at 20.6.2.3110 and 20.1.4 NMAC.
13. The Applicant bears the burden of proving that a permit should be issued and not denied. Paragraph (1) of Subsection A of 20.1.4.400 NMAC.
14. In administrative hearings under the Water Quality Act, the standard of proof is a preponderance of the evidence. Paragraph (3) of Subsection A of 20.1.4.400 NMAC.
15. The Act sets forth the grounds for which the Secretary shall deny an application for a discharge permit. NMSA 1978, § 74-6-5(E).
16. Substantial evidence is present in the administrative record and was presented at the public hearing that the Application should be denied under NMSA 1978, §74-6-5(E)(4)(b) and (e).

17. The Applicant's recent history reflects multiple refusals and failures to disclose required information under the New Mexico Water Quality Act, and willful disregard for the Act, the terms of its permit and the New Mexico Groundwater Regulations.

IT IS THEREFORE ORDERED:

1. The time for the Hearing Officer to submit her report was extended from January 2 to January 3, 2020.
2. The application for the discharge permit is denied.
3. The permittee shall begin closure of the facility consistent with the provisions of discharge permit DP-465 and the provisions of the Groundwater Regulations.



James C. Kenney  
Cabinet Secretary  
New Mexico Environment Department

NOTICE OF RIGHT TO REVIEW

Any person who participated in this permitting action and who is adversely affected by the action may file a petition for review by the Water Quality Control Commission, c/o Cody Barnes, 1190 St. Francis Drive, Suite 2100 S, Santa Fe, New Mexico 87502. The petition shall be made in writing to the Commission within thirty days from the date notice is given of this action.

Certificate of Service

I hereby certify that on February 19, 2020 a copy of the foregoing Final Order was emailed to the persons listed below. A copy can be mailed via U.S. first-class mail upon request.

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