



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

April 5, 2024

John DeRuyter, Member
Bright Star Dairy
P.O. Box 167
Mesquite, NM 88048

RE: Draft Discharge Permit Renewal, DP-340, Bright Star Dairy

Dear John DeRuyter:

The New Mexico Environment Department (NMED) hereby provides notice to you of the proposed approval of Ground Water Discharge Permit Renewal, DP-340, (copy enclosed), pursuant to Subsection H of 20.6.2.3108 NMAC. NMED will publish notice of the availability of the draft Discharge Permit in the near future for public review and comment and will forward a copy of that notice to you. Please note, the following conditions need to be addressed in accordance to 20.6.2 NMAC and 20.6.6 NMAC:

- Financial assurance is now being required for facilities that are under abatement and/or corrective action plans to address groundwater contamination. The financial assurance conditions are in B103.B through F in the draft discharge permit.

Prior to making a final ruling on the proposed Discharge Permit, NMED will allow 30 days from the date the public notice is published in the newspaper for any interested party, including the Discharge Permit applicant, i.e., yourself, to submit written comments and/or a request a public hearing. A hearing request shall set forth the reasons why a hearing is requested. NMED will hold a hearing in response to a timely hearing request if the NMED Secretary determines there is substantial public interest in the proposed Discharge Permit.

Please review the enclosed draft Discharge Permit carefully. Please be aware that this Discharge Permit may contain conditions that require the permittee to implement operational, monitoring or closure actions by a specified deadline.

Please submit written comments or a request for hearing to my attention at the address below, through the online portal accessible at <https://nmed.commentinput.com/comment/search> or via email to Aracely.tellez@env.nm.gov or acs.general@env.nm.gov . If NMED does not receive written comments or a request for hearing during the public comment period, the draft Discharge Permit will become final.

Thank you for your cooperation during the review process. Feel free to contact me with any questions at Aracely.tellez@env.nm.gov or acs.general@env.nm.gov

Sincerely,

SCIENCE | INNOVATION | COLLABORATION | COMPLIANCE

Ground Water Quality Bureau | 1190 Saint Francis Drive, PO Box 5469, Santa Fe, New Mexico 87502-5469

Telephone (505) 827-2900 | www.env.nm.gov/gwqb/

Aracely Tellez

Water Resources Professional III

Enc: Draft Discharge Permit Renewal, DP-340

cc: Linda Armstrong, Consultant, lindaarmstrong@zianet.com
ACS Reading File



MICHELLE LUJAN GRISHAM
GOVERNOR

JAMES C. KENNEY
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Ground Water Quality Bureau

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Draft: April 5, 2024

**GROUND WATER QUALITY BUREAU
DISCHARGE PERMIT – RENEWAL
EXISTING DAIRY FACILITY with EVAPORATION ONLY
Issued under 20.6.2 and 20.6.6 NMAC**

Facility Name: Bright Star Dairy
Discharge Permit No: DP-340
Facility Location: 13520 S. Stern Dr
Mesquite, NM 88048
Section 5 & 6 Township 25S, Range 3E
Sections 25 & 36, Township 24S, Range 2E
Sections 30 & 31, Township 14S, Range 3E

County: Doña Ana

Permittee Name: John DeRuttyer, Member
Mailing Address: P.O. Box 167
Mesquite, NM 88048

Permitting Action: **Renewal**
Source Classification: Agriculture- Dairy

Permit Issuance Date: DATE
Permit Expiration Date: DATE

NMED Permit Contact: Aracely Tellez, Water Resources Professional III
Telephone Number/Email: 505-629-8864 / aracely.tellez@env.nm.gov
Main Bureau/Section Contact: (505) 827-2900 / acs.general@env.nm.gov

JUSTIN D. BALL
Chief, Ground Water Quality Bureau

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PART A GENERAL INFORMATION

A100 Introduction

- A. The New Mexico Environment Department (NMED) issues this Discharge Permit Renewal (Discharge Permit), DP-340, to John DeRuyter (Permittee) pursuant to the New Mexico Water Quality Act (WQA), NMSA 1978, §§ 74-6-1 through 74-6-17, and the New Mexico Ground and Surface Water Protection Regulations, 20.6.2 NMAC and the Supplemental Permitting Requirements for Dairy Facilities (Dairy Rule), 20.6.6 NMAC. NMED's purpose in issuing this Discharge Permit is to control the discharge of water contaminants from Bright Star Dairy, LLC (dairy facility) for the protection of groundwater and those segments of surface water gaining from groundwater inflow, for present and potential future use as domestic and agricultural water supply and other uses, and to protect public health.
- B. The Permittee is discharging up to 11,250 gallons per day (gpd) of effluent from Bright Star Dairy. This discharge or leachate may move directly or indirectly into groundwater of the State of New Mexico which has an existing concentration of 10,000 milligrams per liter (mg/L) or less of total dissolved solids (TDS) within the meaning of 20.6.2.3104 and 20.6.2.3101(A) NMAC. These discharges may contain water contaminants or toxic pollutants elevated above the standards of 20.6.2.3103 NMAC in compliance with the terms and conditions of this Discharge Permit.
- C. The Permittee is authorized to discharge water contaminants pursuant to this Discharge Permit which contains requirements authorized or specified by the Dairy Rule on condition that the Permittee complies with the Dairy Rule and this Discharge Permit, which are enforceable by NMED.

A101 Terms of Permit Issuance

- A. **Permit Duration** - Pursuant to WQA 74-6-5(I) and 20.6.2.3109.H NMAC, the term of a Discharge Permit shall be for the fixed term of **five years** from the effective date of the Discharge Permit.
- B. **Permit Fees** – As a discharge permit associated with a dairy facility, the Permittee shall remit an annual permit fee payment equal to one-tenth of the applicable permit fee from table 1 of 20.6.2.3114 NMAC on the first occurrence of August 1 after the effective date of this Discharge Permit, and annually thereafter until expiration or termination of this Discharge Permit [20.6.6.9.A NMAC].
- C. **Permit Renewal** - To renew this Discharge Permit, the Permittee shall submit, in accordance with 20.6.6.10 NMAC, an application and any associated fees for renewal, renewal and modification, or renewal for closure at least one year before the discharge permit expiration date, unless closure of the facility is approved by NMED before that date.
- D. **Transfer of Ownership** - This Discharge Permit is being issued to John DeRuyter (Permittee) as identified in **Section A100** above. In accordance with 20.6.6.8 NMAC, the Permittee, any

listed owner(s) of record, and any [other] holder(s) of an expired discharge permit are responsible for complying with the conditions listed herein and the Dairy Rule. If during the duration of this Discharge Permit a change in the list of responsible persons is required, transfer of ownership shall be completed in accordance with 20.6.6.34 NMAC as described further in Item D of **Part C101** of this Discharge Permit.

A102 Applicable Regulations

- A. **Scope** - This Discharge Permit applies solely for the regulation of process wastewater or stormwater generated as a result of dairy facility operations and does not include regulation of domestic wastewater at the facility [20.6.6.20.Y NMAC]. Domestic wastewater generated at the facility is treated or disposed of pursuant to 20.7.3 NMAC.
- B. The Permittee is discharging from a facility that meets the definition of “dairy facility.” 20.6.2.3000 through 20.6.2.3114 NMAC and Part 20.6.6 NMAC (Dairy Rule) apply to discharges specific to dairy facilities and their operations.
- C. The discharge from the dairy facility is not subject to any of the exemptions of 20.6.2.3105 NMAC.
- D. Groundwater quality as observed in on-site monitoring wells is subject to the criteria of 20.6.2.3101 and 20.6.2.3103 NMAC unless otherwise specified in this Discharge Permit.
- E. Complying with the applicable requirements of 20.6.2 and 20.6.6 NMAC does not relieve a dairy facility’s owner, operator or Permittee from complying with the requirements of other applicable local, state and federal regulations or laws.

A103 Additional Information Requirements

- A. **No Further Action Required**. The Permittee has satisfied the requirements of 20.6.6.10 and 20.6.6.12 NMAC prior to the effective date of this Discharge Permit.

A104 Facility: Physical Description

- A. This dairy facility meets the definition of “existing facility.”
- B. This dairy facility is located at 13520 S. Stern Dr, approximately two miles southeast of Mesquite, in Sections 5 and 6, Township 25S, Range 3E; Sections 25 and 36, Township 24S, Range 2E; and Sections 30 and 31, Township 24S, Range 3E, in Doña Ana County.
- C. This dairy facility is comprised of the following wastewater system components as identified in the application and the administrative record which includes the original Discharge Permit issued on July 8, 1987 and subsequently renewed and/or modified on August 7, 1991; December 18, 1991; October 9, 2001; and April 3, 2015, and May 23, 2019 as of the effective date of this Discharge Permit:
 - 1. Combination Wastewater /Stormwater impoundments:

- a. **Impoundment 1** – a 40 mil HDPE synthetically lined retention impoundment used to store both wastewater and stormwater for disposal by evaporation. Impoundment 1 is located at the western margin of the facility. Originally constructed in 1973 as an earthen stormwater pond, Impoundment 1 was synthetically lined in 2006 and has a current storage capacity of 19.2 Ac-ft.
- b. **Impoundment 2** – a 60 mil HDPE synthetically lined retention impoundment used to store both wastewater and stormwater for disposal by evaporation. Impoundment 2 is located at west of the corrals and east of the Impoundment 1. Originally constructed in 1995 with a clay liner, Impoundment 2 was synthetically lined in April 2017 and has a current storage capacity of 13.34 Ac-ft.

These system components are identified as potential sources of groundwater contamination. A list of all wastewater system components authorized to discharge under this Discharge Permit is provided in **Section B100**.

A105 **Facility: Documented Hydrogeologic Conditions**

- A. Groundwater most likely to be affected at this dairy facility is at a depth of approximately 36-54 feet and had a pre-discharge total dissolved solids concentration of approximately 1,686 milligrams per liter.
- B. Data collected from on-site monitoring wells document groundwater contamination attributed to one or more wastewater system components at this dairy facility. Groundwater quality standards for nitrate, chloride, and total dissolved solids have been exceeded according to the criteria of 20.6.2.3101 and 20.6.2.3103 NMAC. This facility is currently under abatement to address these exceedances.
- C. There are no perennial surface waters existing within the bounds of the facility. The closest perennial surface water system to the facility is the Rio Grande, approximately three miles west of the facility. The Rio Grande is 1,885 miles (3,034 km) long and is the fourth longest river system in the United States. Its headwater originate in the San Juan Mountains of Colorado, and it flows through New Mexico and along the boundary between Texas and Mexico to the Gulf of Mexico.

PART B **FACILITY SPECIFIC REQUIREMENTS**

B100 **Facility: Authorized Discharge**

- A. The Permittee is authorized to discharge water contaminants as part of facility operations subject to the following requirements:
 1. The Permittee is authorized to discharge up to 11,250 gpd of wastewater from the production area. Wastewater flows to a concrete sump and is pumped through a screen solids separator followed by two sand separators prior to being discharged to a synthetically lined combination wastewater and stormwater impoundment for storage prior to transfer to second synthetically lined impoundment for disposal by evaporation.

2. The Permittee is authorized to use the following impoundments for the following purposes in accordance with 20.6.6.20.B NMAC:
 - a. **Impoundment 1** – authorized to receive wastewater and stormwater for disposal by evaporation. This impoundment **exists** as of the effective date of this Discharge Permit
 - b. **Impoundment 2** – authorized to receive wastewater and stormwater for disposal by evaporation. This impoundment **exists** as of the effective date of this Discharge Permit

- B. This Discharge Permit authorizes only those discharges specified herein. Any unauthorized discharges, such as spills or leaks must be reported to NMED in a corrective action conducted pursuant to 20.6.2.1203 NMAC.

- C. The Permittee shall provide written notice to NMED regarding any changes to the status of wastewater discharges at the facility in accordance with 20.6.6.20.A NMAC as summarized in **Table B1** below:

Table B1
NMED Required Notification for Authorized Discharge

Activity	Notification of Estimated Date	Verification of Actual Date
Cessation of wastewater discharge	Not required	Within 30 days of cessation of discharge
Resumption of Discharge	Minimum 30 days prior to resumption	Within 30 days of resumption

B101 **Facility: Existing System Controls**

- A. The Permit requires the following existing system controls at this dairy facility as described below:
 1. **Impoundments** - The Permittee shall maintain operations of the existing impoundment(s) as listed in **Section A104** above in accordance with conditions listed in **Table B2** to achieve compliance with the Dairy Rule. The wastewater impoundment [system] shall be designed to achieve compliance with the storage capacity requirements of 20.6.6.17.D NMAC.
 2. **Flow Meters** - The dairy facility was existing as of the effective date of the Dairy Rule (December 31, 2011) and measures the volume of wastewater discharged from the production area to wastewater impoundment(s) using the following flow meters:
 - a. **Pit Meter** - located south side of the milking parlor to measure the volume of all freshwater contributing to the wastewater discharged to wastewater impoundment systems; providing an estimate of the volume of wastewater generated from the production area.
 3. **Manure Solids Separator** - The dairy facility was existing as of the effective date of the Dairy Rule (December 31, 2011) and employs the following manure solids separation

system:

- a. **Manure Solids Separator** – A screen separator followed by a passive multi-cell concrete sand separator system
- 4. **Monitoring Wells** - The dairy facility was existing as of the effective date of the Dairy Rule (December 31, 2011) and uses [the following] monitoring wells to supply data representative of groundwater quality:
 - a. **340-01** - hydrologically downgradient of Impoundment 1 and located approximately 500 ft northeast of Impoundment 1.
 - b. **340-02** - hydrologically cross-gradient of Impoundment 2 and located off the southeast corner of Impoundment 2.
 - c. **86/340-01** - hydrologically upgradient of the former land application and located along Missionary Ridge Road.
 - d. **70/86/340-01** – hydrologically downgradient of the former land application and located along the property boundary of the Mountain View Dairy land application area.
 - e. **126-12** – hydrologically upgradient of all contamination sources at the facility and located at 421492.11 Northing, 1510198.45 Easting, adjacent to Farmland Rd.
 - f. **42-10** – hydrologically downgradient of Impoundment 2 and located approximately 1,000 ft northeast of the milking parlor on the eastern side of I-10.
- B. As of the effective date of this Discharge Permit, a total of 6 monitoring wells are documented at or near this dairy facility. All facility monitoring wells are subject to the facility-specific monitoring requirements outlined in **Section B102** as well as any general monitoring requirements outlined in **Table C1** of this Discharge Permit:

Although the above monitoring wells are not monitored pursuant to a facility specific abatement plan, Bright Star Dairy, LLC is included in the Doña Ana Dairies Abatement Plan. Issuance of this discharge permit does not relieve Bright Star Dairy, LLC of its responsibility to abate groundwater in accordance with 20.6.2.4000-4116 NMAC.

B102 Facility: Conditions for Operation

- A. **Impoundment(s)** - The Permittee shall manage all existing impoundments at the dairy facility in accordance with 20.6.6 NMAC and the conditions summarized in **Table B2** below.

**Table B2
 Impoundment(s)**

Engineering, Surveying and Construction and/or Improvements
a) None required.
Operations and Maintenance of All Impoundments
b) Maintain operation of the following existing impoundments in compliance with this section:

**Table B2
 Impoundment(s)**

<p>Impoundment 1 and 2</p> <p>c) Maintain storage impoundment to contain the maximum daily discharge volume of 11,250 gpd authorized by this discharge permit and two feet of freeboard as required by 20.6.6.17.D NMAC. [20.6.6.22 NMAC]</p> <p>d) Maintain impoundments to prevent conditions which could affect the structural integrity of the impoundments and associated liners in accordance with 20.6.6.20.P NMAC.</p> <p>e) Repair or replace the faulty pipe(s) or fixture(s) within 72 hours of discovery of an unauthorized discharge. [20.6.6.20.Q NMAC]</p>
<p>Inspection and Monitoring All Impoundments</p>
<p>f) Visually inspect impoundments and surrounding berms on a monthly basis to ensure proper condition and control vegetation growing around the impoundments in a manner that is protective of the liners. [20.6.6.20.P NMAC]</p> <p>g) Visually inspect pipes and fixtures on a weekly basis for evidence of leaks or failure. In areas where pipes and fixtures cannot be visually inspected because they are buried, visually inspect the area directly surrounding the features for evidence of leaks or failure (e.g., saturated surface soil, surfacing wastewater, etc.). [20.6.6.20.Q NMAC]</p> <p>h) Estimate or measure the volume of all wastewater discharged to the wastewater or combination wastewater/stormwater impoundment(s) using flow meters. [20.6.6.24.C NMAC]</p> <p>i) Collect composite wastewater samples from each impoundment used for disposal of wastewater by evaporation semi-annually, in accordance with 20.6.6.26 NMAC, and analyze for nitrate as nitrogen, total Kjeldahl nitrogen, chloride, total sulfur, and total dissolved solids pursuant to 20.6.6.24.B NMAC.</p>
<p>Recordkeeping and Reporting All Impoundments</p>
<p>j) Report any unauthorized discharges to NMED pursuant to 20.6.2.1203 NMAC.</p> <p>k) Unless otherwise specified in this Discharge Permit, submit all monitoring information quarterly as part of the required Quarterly Monitoring Report in accordance with the general reporting schedule listed in Table C1 of this Discharge Permit.</p> <p>l) Report composite wastewater sample results to NMED semi-annually as part of the Quarterly Monitoring Reports due May 1 and November 1. [20.6.6.26 NMAC]</p> <p>m) Notify NMED within 24 hours of discovery of any observed impoundment condition(s) that may impact the structural integrity of a berm or liner or that may result in an unauthorized discharge. [20.6.6.20.P NMAC]</p> <p>n) Maintain written records at the dairy facility of all facility inspections including repairs and replacements.</p>

B. Stormwater Management - The Permittee shall manage stormwater at the dairy facility in accordance with 20.6.6 NMAC and the conditions summarized in **Table B3** below.

**Table B3
 Stormwater Management
 Engineering and Surveying**

<p>a) None required.</p>
<p>Operations and Maintenance</p>
<p>b) Implement stormwater management by observing the facility for the presence of standing liquid after every precipitation event as follows: [20.6.2.3109 NMAC]</p>

Table B3
Stormwater Management

<ul style="list-style-type: none"> • Maintain stormwater conveyance. [20.6.6.20.H NMAC] • Divert stormwater to minimize stormwater ponding and infiltration. Stormwater shall be diverted to wastewater impoundment system [20.6.6.20.H NMAC] • Maintain diversions for facility stormwater run-on and run-off to prevent ponding within areas used for manure and compost stockpiling. [20.6.6.20.S NMAC]
Inspection and Monitoring
c) Visually inspect all facility pipes and fixtures on a weekly basis for evidence of leaks or failure. [20.6.6.20.Q NMAC]
Recordkeeping and Reporting
d) None required.

- C. **Manure Solids Separator** - The Permittee shall employ manure solids separation at the dairy facility in accordance with 20.6.6.20.F NMAC and the conditions summarized in **Table B4** below.

Table B4
Manure Solids Separator

Engineering and Surveying
a) None required.
Operations and Maintenance
b) Regularly remove all manure solids (and any composted material) from the separation systems for appropriate disposal per 20.6.6.20.S NMAC.
c) Collect and contain all manure solids and leachate generated from those solids as part of the manure solids separation system on an impervious surface prior to disposal.
Inspection and Monitoring
d) None required.
Recordkeeping and Reporting
e) None required.

- D. **Flow Meters** – Pursuant to 20.6.6.20 NMAC, the Permittee shall employ a flow metering system that uses flow measurement devices (flow meters) to measure the volume of wastewater discharged from the production area of the dairy facility. All flow meters employed at a dairy facility shall be managed in accordance with applicable sections of 20.6.6 NMAC and the conditions listed in **Table B5** below.

Table B5
Flow Meters

Engineering and Surveying
f) None required.

**Table B5
 Flow Meters**

Operations and Maintenance
<p>g) The following flow meter(s) are approved for continued use in compliance with 20.6.6.20.J NMAC: Pit Meter.</p> <p>h) Calibrate meter(s) in accordance with the manufacturer’s requirements prior to installation or reinstallation following repair and label all installed flow meters in accordance with 20.6.6.20.J NMAC.</p>
Inspection and Monitoring
<p>i) Using flow meter(s) installed on the fresh water supply line(s), measure the volume of all sources contributing to the wastewater discharged to the impoundment(s) authorized to contain wastewater. Readings from flow meter(s) on water supply lines are used to estimate wastewater volumes discharged to wastewater or combination wastewater/stormwater impoundment(s) without adjustments or deductions to the meter readings. [20.6.6.20.N NMAC]</p> <p>j) Visually inspect flow meters on a weekly basis for evidence of malfunction. If a visual inspection indicates a flow meter is not functioning to measure flow, the Permittee shall initiate repair or replacement of the meter within seven days of discovery. [20.6.6.20.O NMAC]</p>
Recordkeeping and Reporting
<p>k) Maintain copies of the manufacturer’s certificate of calibration and the manufacturer’s recommended maintenance schedule at the facility.</p> <p>l) Record of meter readings at intervals not to exceed monthly. The average daily discharge volume for each recording interval shall be calculated by dividing the difference between the meter readings by the number of days between meter readings. [20.6.6.24.C NMAC]</p> <p>m) Record meter readings (without adjustments or deductions) and submit in the Quarterly Monitoring Report [20.6.6.20.N NMAC]. Include the date, time and units of each measurement, and calculations for the average daily volumes of wastewater discharged to the impoundments, reported in gallons per day. [20.6.6.24.C NMAC]</p> <p>n) For meters requiring repair, submit a report to NMED on the quarter following the repair that includes a description of the malfunction, a statement verifying the repair, and a copy of the manufacturer’s or repairer’s certificate of calibration.</p> <p>o) For meters requiring replacement, submit a report to NMED on the quarter following the replacement that includes plans for the device pursuant to 20.6.6.17.C NMAC, a copy of the manufacturer’s certificate of calibration, and a copy of the manufacturer’s recommended maintenance schedule.</p>

- E. **Monitoring Well(s)** - Per 20.6.6.23.A NMAC, a Permittee is required to install a sufficient number of monitoring wells at appropriate depths and locations to monitor groundwater quality upgradient of a dairy facility and hydrologically downgradient of each source of groundwater contamination: wastewater, stormwater, and combination wastewater/stormwater impoundments. The approved groundwater monitoring well system at a dairy facility is detailed in **Table B6** below.

**Table B6
 Groundwater Monitoring Wells**

Engineering and Surveying
<p>a) None required.</p>

**Table B6
 Groundwater Monitoring Wells**

Operations and Maintenance
<p>b) Operate and maintain the following facility groundwater monitoring well(s) in compliance with 20.6.6.23.A NMAC and this section of this Discharge Permit: 70/86/340-01, 86/340-01, 340-01, 340-02, 126-12, and 42-10</p> <p>c) Verify all facility monitoring wells are permanently identified in accordance with 20.6.6.23.C NMAC.</p>
Inspection and Monitoring
<p>d) Perform quarterly groundwater sampling in accordance with 20.6.6.23.F NMAC to comply with the required monitoring reporting schedule listed in Table C1.</p> <p>e) Analyze collected groundwater sample(s) according to the methods listed in 20.6.6.24.B and 20.6.2.3107.B NMAC. Pursuant to 20.6.6.24.B NMAC, sample constituents that require analysis and reporting to NMED include: nitrate as nitrogen, total Kjeldahl nitrogen, chloride, sulfate and total dissolved solids. [20.6.6.23.G NMAC]</p> <p>f) Prior to the expiration date of this Discharge Permit, NMED shall have the option to perform one downhole inspection of each monitoring well identified in this Discharge Permit. NMED shall establish the inspection date and provide at least 60 days' notice to the Permittee by certified mail. The Permittee shall have any existing dedicated pumps removed at least 48 hours prior to NMED inspection to allow adequate settling time of any sediment agitated as a result of pump removal.</p> <p>Should a facility not have existing dedicated pumps, but decide to install pumps in any of the monitoring wells, NMED shall be notified at least 90 days prior to pump installation so that a downhole well inspection can be scheduled prior to pump placement. [20.6.2.3107 NMAC]</p>
Recordkeeping and Reporting
<p>g) A Quarterly Monitoring Report shall be filed with NMED in accordance with the general reporting schedule listed in Table C1. Each Quarterly Monitoring Report shall contain, at a minimum, the following information: [20.6.6.23.G NMAC]</p> <ul style="list-style-type: none"> • Facility map with location and number of each well in relation to the contamination source it is intended to monitor • Depth-to-shallowest groundwater measurements • Field parameter measurements and parameter stabilization log • Analytical results (including the laboratory quality assurance and quality control summary report) • Groundwater elevation contour maps utilizing elevation contours of 2 ft or less in accordance with 20.6.6.23.L NMAC

B103 Facility: Conditions for Closure

- A. The Permittee shall comply with the requirements of 20.6.6.30 NMAC and shall submit to NMED all information or documentation required by the applicable portions of 20.6.6.30 NMAC.
- B. Within nine (9) months of the issuance date of this Discharge Permit (by DATE), the Permittee shall submit a detailed closure plan for NMED's approval to prevent the exceedance of standards of 20.6.2.3103 NMAC in groundwater after the cessation of operation. The closure

plan shall include at least a 30% level of design, a description of closure measures, maintenance and monitoring plans, post-closure maintenance and monitoring plans, and other measures necessary to prevent or abate such contamination, e.g., a corrective action plan.

1. The Permittee shall ensure that the closure plan is sufficiently detailed to address the steps necessary to close the dairy, associated impoundments, and any other wastewater related infrastructure. Further, the detailed closure plan shall address all the closure actions covered in B103.G of this permit which include manure solids removal from pens and impoundments, characterization of wastes to be disposed of on-site and off-site, the plugging and abandonment of monitoring wells, all post-closure activities, and ongoing maintenance for all impoundments, and any other wastewater related infrastructure until closure is completed.
 2. The Permittee shall ensure, as necessary, that the closure plan addresses all necessary corrective actions, that at a minimum addresses actions to delineate the nature and extent of any groundwater contamination, contaminant source control measures, and any actions to abate water pollution consistent with the requirements and provisions of Section 20.6.2.4101 as approved by NMED.
 3. The Permittee shall ensure that the closure plan addresses post-closure care, including the continued groundwater monitoring required under the Discharge Permit. NMED considers all closure and post-closure activities to constitute “complete closure.”
 4. The Permittee shall ensure the closure plan has sufficient detail to estimate the cost of complete closure of all wastewater related infrastructure, post-closure monitoring, and all necessary corrective actions for the purpose of establishing and maintaining financial assurance. The detailed closure plan shall provide sufficient detail to estimate the cost of operation and maintenance of the groundwater monitoring system. Inherent in this detail is an estimate of the time (after the cessation of Facility operation) that the groundwater monitoring system will have to remain in place and in operation, i.e., until WQCC groundwater standards have been met for at least eight consecutive quarters.
- C. Within 90 days from the date of NMED’s approval of the closure plan, the Permittee shall submit a detailed cost estimate (Estimate) for NMED’s approval based on the detailed closure plan for complete closure required by Condition B103.B. The Estimate shall be based on the cost of hiring a third party to conduct complete closure. The Estimate shall include direct costs associated with third-party implementation of the closure plan, contingency costs in the amount of 15 percent of the direct costs, the cost of an independent project manager and contract administration, and NMED oversight and administration costs, including indirect costs. The Estimate shall forecast the worst-case scenario for complete closure over the five-year period of this Discharge Permit; if a new permit is not issued after five years, the Estimate for the worst-case scenario shall be updated annually each year after five years and any financial assurance shall be adjusted accordingly.

1. The Permittee shall adjust the Estimate for inflation over the five-year period for complete closure and shall project the amount needed for each of the five years for the worst-case scenario for all activities included in complete closure.
- D. Within 90 days from the date of NMED's approval of the closure cost estimate (Estimate), the Permittee shall submit to NMED for approval its proposed financial assurance instrument(s) that meets the requirements below.
1. The amount of financial assurance shall be sufficient to cover the cost of implementing complete closure as described in the closure plan and the Estimate required by Conditions B103.B and B103.C of this Discharge Permit. The Permittee shall not propose any form of self-guarantee. The financial assurance instrument(s) shall ensure that funds will be available to implement complete closure if at any time the Permittee is unable, unwilling, or otherwise fails to implement any portion of the closure plan as required by this Discharge Permit. If the financial assurance instrument(s) entails incremental costs of maintaining the instrument(s), i.e., costs for a trustee, the Permittee shall increase the amount of the financial assurance to include all such costs.
 2. The Permittee shall name NMED as the sole beneficiary in each financial assurance instrument(s).
 3. The financial assurance instrument(s) shall include a method for adjustments due to changes in inflation, new technologies, and NMED approved revisions to the closure plan based on continued investigations or other information and shall be adjusted no less frequently than every five years such that, at all times, the amount of financial assurance provided by the Permittee shall be sufficient to perform complete closure at any time during the following five years from the update.
 4. Within 30 days after NMED approves the draft financial assurance instrument(s) the Permittee shall execute the financial assurance instrument and submit it to NMED for final acceptance.
 5. Within 30 days of the implementation of the financial assurance instrument(s), the Permittee shall establish a trust to receive and disburse funds, which may arise as the result of forfeiture of financial assurance. The trust shall name NMED as the beneficiary. The trust agreement shall be in a form satisfactory to the State Board of Finance and shall be subject to approval by the Governor pursuant to NMSA 1978, § 46-4-1 through 9. The Permittee shall maintain the trust until complete closure has occurred and NMED terminates any existing discharge permit in effect at the time. Upon forfeiture of financial assurance, the forfeited amount shall transfer from the financial assurance instrument into the trust for use by NMED or a third-party for any activities or costs related to complete closure.
 6. The Permittee may propose alternative financial assurance instrument(s) from time to time subject to NMED's written approval and acceptance. The Permittee shall not replace any approved financial assurance instrument(s) without NMED's written approval.

7. Unless released by NMED in writing, the financial assurance instrument(s) shall remain in effect until complete closure and final termination of this Discharge Permit and shall remain in place at all times, including lapses in Discharge Permit coverage, late Discharge Permit renewal, or temporary shutdown of facilities covered under this Discharge Permit.
8. Should circumstances warrant more frequent adjustments than provided for in the approved financial assurance instrument(s), NMED may require them in writing and the Permittee shall make the adjustment within 180 days.
9. No more frequently than once every 12 months, the Permittee may request that NMED review remaining activities required for complete closure, including alternate closure activities that NMED has approved. The Permittee's request for review shall describe the activities that have been completed and shall contain an updated Estimate for all remaining complete closure activities.

If NMED approves the Permittee's description of activities that have been completed, the remaining activities of complete closure, and the Estimate for remaining complete closure activities, NMED will notify the Permittee of appropriate adjustments that the Permittee may make to the amount of financial assurance.

When the WQCC revises the financial assurance regulations and those regulations become effective, the Permittee shall evaluate and, if necessary, revise the financial assurance instrument to comply with the revised WQCC regulations.

- E. The Permittee shall adhere to the following stipulations for cancellation, non-renewal, forfeiture, or release of the financial assurance instrument(s).
 1. Cancellation or Non-renewal: Each financial assurance instrument shall require the financial assurance provider to give at least 120 days written notice to NMED and the Permittee prior to cancellation or non-renewal of the financial assurance instrument. If NMED receives notice of cancellation or non-renewal from a financial assurance provider, the Permittee shall propose an alternate financial assurance mechanism to NMED within 30 days of the notice. If NMED approves the alternate financial assurance mechanism, the Permittee shall execute it and submit it to NMED for final acceptance within 30 days of NMED approval. If the Permittee fails to obtain alternate financial assurance acceptable to NMED within 30 days of NMED approval, the current financial assurance shall be subject to forfeiture.
 2. Forfeiture: If NMED determines that implementation of all or any part of complete closure is required and that the Permittee is unable or unwilling or will otherwise fail to conduct all or any part of complete closure as required by this Discharge Permit, then NMED may proceed with forfeiture of all or part of the financial assurance.

Prior to beginning a forfeiture proceeding, NMED will provide written notice by certified mail to the Permittee and to all financial assurance providers, if applicable. NMED's notice will inform the parties of the determination to forfeit all or a portion of the financial

assurance. If NMED's access to the financial assurance is threatened due to time constraints, NMED may begin a forfeiture proceeding and provide written notice contemporaneously with that proceeding. NMED's written notice will state the reasons for the forfeiture and the amount to be forfeited.

The forfeited amount shall be based on the total cost of performing complete closure in accordance with this Discharge Permit and all applicable laws and regulations. NMED will also advise the Permittee and all financial assurance providers, if applicable, of the conditions under which forfeiture may be avoided. Such conditions may include an agreement that the Permittee, a financial assurance provider, or an NMED-approved third party, will perform complete closure in accordance with this Discharge Permit and all applicable laws and regulations, and the entity has demonstrated it has the financial ability and technical qualifications to do so.

All financial assurance forfeited shall become immediately payable to the trust or as otherwise provided in the NMED-approved instrument. NMED or a third-party will utilize forfeited funds to perform complete closure. If the forfeited amount is insufficient, the Permittee shall be liable for the remaining costs. If the amount forfeited is more than necessary to complete closure, NMED will refund the excess amount to the entity from whom it was collected.

- F. Release: NMED will release or modify the financial assurance instrument when NMED determines that all activities of complete closure have been performed according to the closure plan requirements of this Discharge Permit and the Discharge Permit has been terminated.
- G. For permanent closure, the following closure actions shall be completed upon permanent cessation of wastewater discharge:
1. Notify NMED of closure plans within 30 days of cessation.
 2. Provide NMED with a **Disposal Plan** for closure activities: Implement **Disposal Plan** upon NMED approval.
 3. Remove all manure solids and compost from surface areas.
 4. Empty all facility impoundments of wastewater within 6 months of cessation.
 5. Empty all facility impoundments of stormwater within 1 year of cessation.
 6. Complete removal of manure solids from wastewater impoundments within 2 years of cessation
 7. Perforate or remove impoundment liner(s), as applicable, re-grade impoundments with clean fill, and blend area with surrounding surface topography to prevent ponding within 2 years of cessation
 8. Dispose all wastes according the approved **Disposal Plan**.
 9. Perform post-closure monitoring at facility monitoring wells, 70/86/340-01, 86/340-01, 340-01, 340-02, 126-12, 42-10, for a minimum of eight consecutive groundwater sampling

events to confirm that the standards of 20.6.2.3103 NMAC are not exceeded and the total nitrogen concentration in groundwater is less than or equal to 10 mg/L. If monitoring results show a failure of one or both of these conditions, the Permittee shall implement contingency requirements pursuant to 20.6.6.27 NMAC (**Section B103**).

10. Upon written notification by certified mail from NMED, abandon all remaining facility well(s) previously used for monitoring pursuant to 19.27.4 NMAC and 20.6.6.30.C NMAC and in accordance with NMED's *Monitoring Well Construction and Abandonment Guidelines* and any other applicable local, state, and federal regulations.

B104 **Facility: Contingency Plan**

- A. In the event NMED or the Permittee identifies any failures of the Discharge Permit or system not specifically noted herein, NMED may require the Permittee to develop for NMED approval a contingency or corrective action plan and schedule to cope with the failure(s) [20.6.2.3107.A(10) NMAC].
- B. Facility conditions that will invariably require Permittee action under one or more contingency plans include:
 1. **Exceedance of groundwater quality standards** – Constituent concentration(s) in one or more groundwater samples collected from a monitoring well intended to monitor contamination sources at a dairy facility including impoundments exceed (1) one or more of the groundwater standards of 20.6.2.3103 NMAC and (2) reported constituent concentration(s) in one or more groundwater samples collected from the upgradient monitoring well for four consecutive quarters.
 2. **Ineffective groundwater monitoring well(s)** – One or more monitoring well(s) required by 20.6.6.23 NMAC are (1) not located hydrologically downgradient of the contamination source(s) intended to monitor, (2) not completed pursuant to 20.6.6.23 NMAC or (3) contains insufficient water to monitor groundwater quality effectively.
 3. **Exceedance(s) of permitted maximum daily discharge volume** - The maximum daily discharge volume authorized by this Discharge Permit is exceeded by more than ten percent for any four average daily discharge volumes within any 12-week period.
 4. **Insufficient impoundment capacity** - A survey, capacity calculations, or settled solids thickness measurements indicate an existing impoundment is not capable of meeting the capacity requirements required by 20.6.6.17.D NMAC.
 5. **Inability to maintain required freeboard** - A minimum of two feet of freeboard cannot be preserved in one or more wastewater impoundment(s) or free capacity below the two-foot freeboard level cannot be maintained in one or more combination wastewater/stormwater or stormwater impoundment(s) used for disposal by evaporation in accordance with 20.6.6.17.D NMAC.
 6. **Impoundment(s) structural integrity compromised** - Any damage to the berms or the liner of an impoundment or any condition that exists that may compromise the structural integrity of the impoundment.
 7. **Spills, leaks, unauthorized discharge** - Any spill or release that is not authorized under

this Discharge Permit.

- C. If a contingency or corrective action plan is required, the Permittee shall comply with the requirements of 20.6.2.1203, 20.6.6.27 and 20.6.6.29 NMAC, and shall submit to NMED all information or documentation required by the applicable portions of 20.6.2.1203, 20.6.6.27 and 20.6.6.29 NMAC. The Permittee may be required to abate water pollution pursuant to 20.6.2.4000 through 20.6.2.4115 NMAC, should the corrective action plan not result in compliance with the standards and requirements set forth in 20.6.2.4103 NMAC.

PART C GENERAL CONDITIONS

C100 Introduction

- A. NMED has reviewed the permit application for the proposed [renewal](#) and has determined that the provisions of the Dairy Rule and applicable groundwater quality standards will be met in accordance with this Discharge Permit. General conditions for all Discharge Permits issued by the Ground Water Quality Bureau pursuant to NMAC 20.6.2 as well as specific conditions as applied to the operation and maintenance of a dairy facility with means for wastewater disposal by evaporation only pursuant to 20.6.6 NMAC are summarized on **Table C1**. Unless otherwise specified in Parts A or B of this Discharge Permit, both the general discharge permit conditions (as listed in this part) and facility-specific conditions as listed in **Part B** are mandated to assure continued compliance.

**Table C1
 General Discharge Permit Conditions for a Dairy Facility**

Engineering and Surveying
a) Comply with the requirements of 20.6.6.17 NMAC and submit to NMED all information or documentation required by the applicable portions of 20.6.6.17 NMAC.
Operations and Maintenance
b) Comply with the requirements of 20.6.6.20 and 20.6.6.22 NMAC, and submit to NMED all information or documentation required by the applicable portions of 20.6.6.20 and 20.6.6.22 NMAC.
c) Operate in a manner such that standards and requirements of 20.6.2.3101 and 20.6.2.3103 NMAC are not violated.
d) Manage disposal of all manure solids and composted material generated at the facility in accordance with 20.6.6.20.S NMAC.
e) Repair or replace compromised pipe(s) or fixture(s) within 72 hours of discovery. [20.6.6.20.Q NMAC]
f) Manage all animal mortalities at the facility in compliance with 20.6.6.20.W NMAC.
Inspection and Monitoring
g) Wastewater - Comply with the requirements of 20.6.6.24 and 20.6.6.26 NMAC, and submit to NMED all information or documentation required by the applicable portions of 20.6.6.24 and 20.6.6.26 NMAC.
h) Stormwater - Comply with the requirements of 20.6.6.24 and 20.6.6.26 NMAC, and submit to NMED all information or documentation required by the applicable portions of 20.6.6.24 and 20.6.6.26 NMAC.
i) Groundwater - Comply with the requirements of 20.6.6.23 NMAC and submit to NMED all information or documentation required by the applicable portions of 20.6.6.23 NMAC.

**Table C1
 General Discharge Permit Conditions for a Dairy Facility**

j) Visually inspect all facility pipes and fixtures on a weekly basis for evidence of leaks or failure. [20.6.6.20.Q NMAC]
Recordkeeping and Reporting
k) Maintain written records at the dairy facility of any inspection(s), repairs and maintenance conducted on facility infrastructure as related the wastewater management system.
l) Generate monitoring reports that contain monitoring data and information collected pursuant to the Dairy Rule and as described in applicable sections of this Discharge Permit.
m) Retain required records for a minimum period of 10 years from the date of any sample collection, measurement, report or application in accordance with 20.6.6.33 NMAC.
n) Unless otherwise identified in this Discharge Permit, submit monitoring reports to NMED quarterly according to the following schedule: [20.6.6.24.A NMAC] <ul style="list-style-type: none"> • January 1 through March 31 (first quarter) – report due by May 1 • April 1 through June 30 (second quarter) – report due by August 1 • July 1 through September 30 (third quarter) – report due by November 1 • October 1 through December 31 (fourth quarter) – report due by February 1
o) Provide written notice to NMED regarding any changes to the presence of lactating cows at the facility to achieve compliance with 20.6.6.20.A NMAC as follows: <ul style="list-style-type: none"> • Verify with NMED within 30 days of the actual removal/reintroduction
p) Within 90 days of any addition or change to the dairy facility which affect one or more items listed in 20.6.6.20.U NMAC, update and resubmit a facility map pursuant to 20.6.6.17.C NMAC. [20.6.6.20.V NMAC]

C101 Legal

- A. Nothing in this Discharge Permit shall be construed in any way as relieving the Permittee of the obligation to comply with all applicable federal, state, and local laws, regulations, permits or orders [20.6.2 NMAC].
- B. Pursuant to 20.6.2.3109 NMAC, NMED reserves the right to require a Discharge Permit Modification in the event NMED determines that the requirements of 20.6.2 NMAC are being or may be violated or the standards of 20.6.2.3103 NMAC are being or may be violated. This may include a determination that structural controls and/or management practices approved under this Discharge Permit are not protective of groundwater quality, and that more stringent requirements to protect groundwater quality may be required by NMED. The Permittee may be required to implement abatement of water pollution and remediate groundwater quality.
- C. Any violation of the requirements and conditions of this Discharge Permit, including any failure to allow NMED staff to enter and inspect records or facilities, or any refusal or failure to provide NMED with records or information, may subject the Permittee to a civil enforcement action. Pursuant to WQA 74-6-10(A) and (B), such action may include a compliance order requiring compliance immediately or in a specified time, assessing a civil penalty, modifying or terminating the Discharge Permit, or any combination of the foregoing;

or an action in district court seeking injunctive relief, civil penalties, or both. Pursuant to WQA 74-6-10(C) and 74-6-10.1, civil penalties of up to \$15,000 per day of noncompliance may be assessed for each violation of the WQA 74-6-5, the WQCC Regulations, or this Discharge Permit, and civil penalties of up to \$10,000 per day of noncompliance may be assessed for each violation of any other provision of the WQA, or any regulation, standard, or order adopted pursuant to such other provision. In any action to enforce this Discharge Permit, the Permittee waives any objection to the admissibility as evidence of any data generated pursuant to this Discharge Permit. [74-6-10 WQA, 74-6-10.1 WQA]

- D. Pursuant to WQA 74-6-10.2(A-F), criminal penalties shall be assessed for any person who knowingly violates or knowingly causes or allows another person to:
1. Make any false material statement, representation, certification or omission of material fact in an application, record, report, plan or other document filed, submitted or required to be maintained under the WQA;
 2. Falsify, tamper with or render inaccurate any monitoring device, method or record required to be maintained under the WQA; or
 3. Fail to monitor, sample or report as required by a permit issued pursuant to a state or federal law or regulation, is subject to felony charges and shall be sentenced in accordance with the provisions of 31-18-15 NMSA 1978.
- E. Prior to the transfer of any ownership, control, or possession of this permitted facility or any portion thereof, the Permittee shall notify the proposed transferee in writing of the existence of this Discharge Permit and include a copy of this Discharge Permit with the notice in accordance with 20.6.2.3111 NMAC. The transferee(s) shall notify NMED, in writing, of the date of transfer of ownership and provide contact information for the new owner(s) pursuant to 20.6.6.12.B NMAC. Notification of the transfer shall be submitted to NMED within 30 days of the ownership transfer date. [20.6.6.34 NMAC]
- F. Pursuant to WQA 74-6-5(o), the Permittee has a right to appeal the conditions and requirements as outlined in this Discharge Permit through filing a petition for review before the WQCC. Such petition shall be in writing to the WQCC within thirty (30) days of the receipt of this Discharge Permit. Unless a timely petition for review is made, the decision of NMED shall be final and not subject to judicial review.

C102 General Inspection and Entry Requirements

- A. Nothing in this Discharge Permit shall limit in any way the inspection and entry authority of NMED under the WQA, the WQCC Regulations, or any other applicable law or regulation. [20.6.2.3107 NMAC, 74-6-9(B) & (E) WQA]
- B. The Permittee shall allow the Secretary or an authorized representative, upon the presentation of credentials, to: [20.6.2.3107.D NMAC, 74-6-9(B) & (E) WQA]
1. Enter at regular business hours or at other reasonable times upon the Permittee's premises or other location where records must be kept under the conditions of this

Discharge Permit, or under any federal or WQCC regulation.

2. Inspect and copy, during regular business hours or at other reasonable times, any records required to be kept under the conditions of this Discharge Permit, or under any federal or WQCC regulation.
3. Inspect, at regular business hours or at other reasonable times, any facility, equipment (including monitoring and control equipment or treatment works), practices or operations regulated or required under this Discharge Permit, or under any federal or WQCC regulation.
4. Sample or monitor, at reasonable times for the purpose of assuring compliance with this Discharge Permit or as otherwise authorized by the WQA, any effluent, water contaminant, or receiving water at any location before or after discharge.

C103 General Record Keeping and Reporting Requirements

- A. The Permittee shall maintain a written record of the following:
 1. Amount of wastewater, effluent, leachate or other wastes discharged pursuant to this Discharge Permit. [20.6.2.3107.A NMAC]
 2. Operation, maintenance, and repair of all facilities/equipment used to treat, store or dispose of wastewater; to measure flow rates, to monitor water quality, or to collect other data required by this Discharge Permit. Per 20.6.2.3107.A NMAC, this record shall include:
 - a. Repair, replacement or calibration of any monitoring equipment; and
 - b. Repair or replacement of any equipment used in the Permittee's waste or wastewater treatment and disposal system.
 3. Any spills, seeps, and/or leaks of effluent, and of leachate and/or process fluids not authorized by this Discharge Permit. [20.6.2.3107.A NMAC]
- B. The Permittee shall maintain at its facility a written record of all data and information related to field measurements, sampling, and analysis conducted pursuant to this Discharge Permit. The following information shall be recorded and shall be made available to NMED upon request:
 1. The dates, exact place and times of sampling or field measurements;
 2. The name and job title of the individuals who performed each sample collection or field measurement;
 3. The date of the analysis of each sample;
 4. The name and address of the laboratory and the name and job title of the person that performed the analysis of each sample;
 5. The analytical technique or method used to analyze each sample or take each field measurement;
 6. The results of each analysis or field measurement, including raw data;

7. The results of any split sampling, spikes or repeat sampling; and
 8. A description of the quality assurance (QA) and quality control (QC) procedures used.
- C. The Permittee shall furnish to NMED, within a reasonable time, any documents or other information which it may request to determine whether cause exists for modifying, terminating and/or renewing this Discharge Permit or to determine compliance with this Discharge Permit. The Permittee shall also furnish to NMED, upon request, copies of documents required to be kept by this Discharge Permit. [20.6.2.3107.D NMAC, 74-6-9(B) & (E) WQA]

C104 Modifications and/or Amendments

- A. The Permittee shall notify NMED of any changes to the Permittee's wastewater treatment and disposal system, including any changes in the wastewater flow rate or the volume of wastewater storage, or of any other changes to operations or processes that would result in any significant change in the discharge of water contaminants. The Permittee shall obtain NMED's approval, as a modification to this Discharge Permit pursuant to E, F, or G of 20.6.2.3109 NMAC, prior to any increase in the quantity discharged, or any increase in the concentration of water contaminants discharged, above those levels approved in this Discharge Permit. [20.6.2.3107.C NMAC]
- B. The Permittee shall file plans and specifications with NMED for the construction of a wastewater system and for proposed changes that will change substantially the quantity or quality of the discharge from the system. The Permittee shall file plans and specifications prior to the commencement of construction. Changes to the wastewater system having a minor effect on the character of the discharge shall be reported as of January 1 and June 30 of each year to NMED. [20.6.2.1202 NMAC]

Part D MISCELLANEOUS

D100 Supporting On-Line Documents

- A. Copies of the following documents can be downloaded from NMED's web site under Forms.

<https://www.env.nm.gov/forms/>

1. Notice of Intent to Discharge
1. Application for a New Discharge Permit (dairy facility only)
2. Application for Discharge Permit Renewal and/or Modification (dairy facility only)
3. Application for Discharge Permit Renewal for Closure (dairy facility only)

D101 **Definitions**

- A. **“abatement plan”** means a description of any operational, monitoring, contingency and closure requirements and conditions for the prevention, investigation and abatement of water pollution, and includes Stage 1, Stage 2, or Stage 1 and 2 of the abatement plan, as approved by the secretary
- B. **“commission”** means:
 - 1. the New Mexico water quality control commission (WQCC), or
 - 2. NMED, when used in connection with any administrative and enforcement activity
- C. **“dairy facility”** means the production area and the land application area (if applicable), where the discharge and associated activities will or do take place
- D. **“Dairy rule”** means 20.6.6 NMAC, as amended
- E. **“NMED”, “agency”, or “division”** means the New Mexico Environment Department or a constituent agency designated by the **commission**
- F. **“discharge permit”** means a discharge plan approved by NMED
- G. **“discharge permit modification”** means a change to the requirements of a discharge permit that result from a change in the location of the discharge, a significant increase in the quantity of the discharge, a significant change in the quality of the discharge; or as required by the secretary
- H. **“discharge permit renewal”** means the re-issuance of a discharge permit for the same, previously permitted discharge
- I. **“discharge plan”** means a description of any operational, monitoring, contingency, and closure requirements and conditions for any discharge of effluent or leachate which may move directly or indirectly into groundwater
- J. **“discharge site”** means the entire site where the discharge and associated activities will take place
- K. **“discharge volume”** means the measured daily volume of wastewater actually discharged within the production area. This definition does not include the volume of wastewater discharged to a land application area (if applicable).
- L. **“disposal”** means to abandon, deposit, inter or otherwise discard a fluid as a final action after its use has been achieved
- M. **“existing dairy facility”** means a dairy facility that is currently discharging, or has previously discharged and has not been issued a notice from NMED verifying that closure and post-closure monitoring activities have been completed

- N. **"fluid"** means material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state
- O. **"flow meter"** means a device used to measure the volume of water, wastewater or stormwater that passes a particular reference section in a unit of time
- P. **"freeboard"** means the vertical distance between the elevation at the lowest point of the top inside edge of the impoundment and the design high water elevation of the water level in the impoundment
- Q. **"groundwater"** means interstitial water which occurs in saturated earth material and which is capable of entering a well in sufficient amounts to be utilized as a water supply
- R. **"impoundment"** means any structure designed and used for storage or disposal by evaporation of wastewater, stormwater, or a combination of both wastewater and stormwater. A multiple-cell impoundment system having at least one shared berm or barrier whose smallest cells have a cumulative constructed capacity of 10 percent or less of the constructed capacity of the largest cell shall be considered a single impoundment for the purposes of the Dairy Rule. A wastewater or stormwater transfer sump or a solids settling separator is not an impoundment
- S. **"manure"** means an agricultural waste composed of excreta of animals, and residual bedding materials, waste feed or other materials that have contacted excreta from such animals
- T. **"maximum daily discharge volume"** means the total daily volume of wastewater (expressed in gallons per day) authorized for discharge by a discharge permit. This definition does not include the volume of wastewater discharged to a land application area (as applicable)
- U. **"owner of record"** means an owner of property according to the property records of the tax assessor in the county in which the discharge site is located at the time the application was deemed administratively complete
- V. **"Permittee"** means a person who is issued or receives by transfer a discharge permit for a dairy facility or, in the absence of a discharge permit, a person who makes or controls a discharge at a dairy facility.
- W. **"production area"** means that part of the animal feeding operation that includes the following: the animal confinement areas; the manure, residual solids and compost storage areas; the raw materials storage areas; and the wastewater and stormwater containment areas. The animal confinement areas include but are not limited to open lots, housed lots, feedlots, confinement barns, stall barns, free stall barns, milkrooms, milk centers, cowyards, barnyards, hospital pens and barns, and animal walkways. The manure, residual solids and compost storage areas include, but are not limited to, storage sheds, stockpiles, static piles, and composting piles. The raw materials storage areas include, but are not limited, to feed silos, silage storage areas, feed storage barns, and liquid feed tanks. The wastewater and stormwater containment areas include, but are not limited to, settling separators,

impoundments, sumps, run-off drainage channels, and areas within berms and diversions which prohibit uncontaminated stormwater from coming into contact with contaminants

- X. **“responsible person”** means a person who is required to submit a discharge permit or who submits a discharge permit
- Y. **“secretary”** or **“director”** means the secretary of the New Mexico Environment Department or the director of a constituent agency designated by the **commission**
- Z. **“spillway”** means a structure used for controlled releases from an impoundment designed to receive stormwater, in a manner that protects the structural integrity of the impoundment
- AA. **“stormwater”** means direct precipitation and run-off that comes into contact with water contaminants within the production area of a dairy facility
- BB. **“TDS”** means total dissolved solids as determined by the "calculation method" (sum of constituents), by the "residue on evaporation method at 180 degrees" of the "U.S. geological survey techniques of water resource investigations," or by conductivity, as the secretary may determine
- CC. **“toxic pollutant”** means a water contaminant or combination of water contaminants in concentration(s) which, upon exposure, ingestion, or assimilation either directly from the environment or indirectly by ingestion through food chains, will unreasonably threaten to injure human health, or the health of animals or plants which are commonly hatched, bred, cultivated or protected for use by man for food or economic benefit; as used in this definition injuries to health include death, histopathologic change, clinical symptoms of disease, behavioral abnormalities, genetic mutation, physiological malfunctions or physical deformations in such organisms or their offspring; in order to be considered a toxic pollutant a contaminant must be one or a combination of the potential toxic pollutants listed below and be at a concentration shown by scientific information currently available to the public to have potential for causing one or more of the effects listed above; any water contaminant or combination of the water contaminants in the list below creating a lifetime risk of more than one cancer per 100,000 exposed persons is a toxic pollutant. The list of **toxic pollutants** recognized by NMED can be found in 20.6.2.7.T NMAC.
- DD. **“unauthorized discharge”** means a release of wastewater, stormwater or other substances containing water contaminants not approved by a discharge permit
- EE. **“wastewater”** means water, that has come into contact with water contaminants as a result of being directly or indirectly used in the operations of a dairy facility including, but not limited to, the following: washing, cleaning, or flushing barns or other roof-covered production areas; washing of animals; spray-cooling of animals (except in open lots); and cooling or cleaning of feed mills and equipment. Wastewater does not include overflow from the drinking water system or stormwater unless overflow or stormwater that is collected is comingled with wastewater, or it comes into contact with water contaminants as a result of being directly or indirectly used in dairy facility operations

- FF. **“wastes”** means sewage, industrial wastes, or any other liquid, gaseous or solid substance which will pollute any waters of the state

- GG. **“water”** means all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water

- HH. **“water contaminant”** means any substance that could alter if discharged or spilled the physical, chemical, biological or radiological qualities of water; **“water contaminant”** does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954

- II. **“water pollution”** means introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property

D102 **Acronyms**

CQA.....	construction quality assurance
CQC.....	construction quality control
DP.....	discharge permit
FEMA.....	federal emergency management administration
FIRM.....	flood insurance rate map
gpd.....	gallon per day
mg/L.....	milligram per liter
NMAC.....	New Mexico Administrative Code
NMED.....	New Mexico Environment Department
NMP.....	Nutrient Management Plan
NMSA.....	New Mexico Statutes Annotated
PWRS.....	process water retention structure
RCS.....	runoff control structure
TDS.....	total dissolved solids
WQA.....	New Mexico Water Quality Act
WQCC.....	Water Quality Control Commission