

STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF ENVIRONMENT

IN THE MATTER OF: §  
THE APPLICATION OF S&R §  
SEPTIC FOR THE RENEWAL OF A §   GWB 19-28P  
SEPTAGE DISPOSAL FACILITY §  
DISCHARGE PERMIT, DP-465 §

Public Participant Objections to Hearing Officer Report

In accordance with 20.1.4.500.B NMAC and to the Environment Department as Issuing Agency pursuant to 20.1.4.1 NMAC, and 20.6.2.3110. K. Public Hearing Participation, Mary Lane Leslie submits the following objections to the Hearing Officer's report filed January 3, 2020.

Portions of the hearing records which were not included in the hearing officer's report are the basis for these objections to the Hearing Officer's recommendation to renew Rael's septage permit for S&R Septic owner Steve Rael. In the transcript are included these facts:

1. This septage hauler's permit has been historically non-compliant with the conditions of operation as documented in the Groundwater Quality Board's ("GWQB") records. My request to the Water Quality Control Commission is to review the entire GWQB's S&R Septic's file of all non-compliance notices and action:
  - a. August 27, 2018 letter from Michelle Hunter, Chief, Ground Water Quality Bureau of NMED, to Steve Rael states "This letter is to notify you that NMED has determined that the above referenced facility is not operating in compliance with the conditions of the Discharge Permit, the WQCC Regulations and

the Water Quality Act." She cites failure to submit semi-annual monitoring reports showing compliance with the regulations imposed. Also, she mentions lack of appropriate signage, inadequate construction of concrete splash pads, expiration of the permit (12/27/17) without a renewal application submitted on time; and similar deficiencies observed by NMED inspectors (meeting with Rael and Mansker) at the site on 12/28/17. Hunter's letter further says ". . . to date, NMED has not received monitoring reports or received incomplete monitoring reports for 2014-2018.

- b. GWQB's regulations require a permittee to submit an application for renewal six months prior to the expiration date of an existing permit
  - c. Rael's application for renewal for S&R Septic's 2012 permit was due July, 2017.
  - d. Rael did not file an application for renewal until February of 2018, 8 months late, another example of Rael's continuous disregard of water quality regulations.
2. Rael has operated without a permit during the application review and protest period for over 2 years.
  3. The GWQB's regulations are silent on whether it is lawful for a hauler to continue operation during the renewal process; therefore, it is also not within the regulations to allow a septage hauler to continue doing business without a permit during the renewal process.

4. For Rael's permit for S&R Septic to be renewed for five more years from the date the permit is to be reissued simply rewards Rael for:
  - a. ignoring the regulations for his renewal application;
  - b. ignores his history of repeated non-compliance and failure to report and his refusal or lack of cooperation to allow inspections; and
  - c. punishes the public protesters for exercising their rights to object to the conditions and failures of compliance in the operation of S&R Septic.
  - d. The Water Quality Control Commission should review the entire GWQB non-compliance file which is very extensive; a thorough review is essential to making a decision on the renewal which meets the needs of the community as well as making a fair and impartial decision on the application for renewal of S&R Septic's permit.
5. Although the Ground Water Quality Board's ability to monitor and enforce S&R Septic's compliance was made difficult and virtually non-existent during the last administration's term, the real responsibility for compliance was with the owners of S&R Septic.
6. S&R Septic has blatantly and repeatedly failed to comply with conditions and reporting requirements of the GWQB; yet, S&R has experienced no real consequences. (i.e. a \$32,000.00 fine was reduced to \$1,800.00 as stated in the Hearing Officer's report)
7. Such enforcement of fines for non-compliance were so meaningless, it was nothing more than just a small addition to the cost of doing business for S&R; it was NOT a deterrent to ignoring conditions and reporting requirements.

8. Fines and non-compliance notices did nothing to deter the operator's disregard for the conditions to protect human health and safety.
9. The hearing officer does not place any recognition on the other laws governing disposal of septage nor the fact that septage hauled by S&R Septic is removed from individuals' enclosed septic systems and then dumped in open pits which are much less regulated and sanitary than the individual systems.
10. The septage haulers permitting process of New Mexico is itself a violation of the EPA's Sept 1994 Guide to Septage Treatment and Disposal for all persons (including states, municipalities, counties and individuals responsible for the handling of Septage). From the Guide:

“Septage is a highly variable organic waste that often contains large amounts of grease, grit, hair, and debris and is characterized by an objectionable odor and appearance, a resistance to settling and dewatering, and the potential to foam.

These characteristics make septage difficult to handle and treat. The major reason for providing adequate treatment and disposal systems is to protect public health and the environment, as septage may harbor disease-causing viruses, bacteria, and parasites. Septage treatment and disposal facilities are either privately or publicly owned.”

11. S&R is not a treatment facility and is privately owned and not exempt from these laws and the guide.
12. While the Hearing Officer maintains she and the GWQB are governed only by the sub statute of 74-6-1 et seq, the final decision in the renewal, denial, abatement or amendment

of this permit rests with the Water Quality Control Commission, of which the Secretary of the Environment is a member.

13. NMSA 74-1-1 et seq, the New Mexico Environmental Improvement Act, is the governing law over the Water Quality Act, NMSA 74-6-1 et seq.

14. Among federal oversight is The National Pollutant Discharge Elimination System (NPDES)- its Overview states:

- a. “The collection and treatment of domestic sewage and wastewater is vital to public health and clean water. It is among the most important factors responsible for the general level of good health enjoyed in the United States.

15. There is also in 42 U.S.C. §6901 et seq. (1976) The Resource Conservation and Recovery Act (RCRA). This gives EPA the authority to control hazardous waste from the "cradle-to-grave." Quote...it is The Office of Resource Conservation and Recovery (ORCR) which implements RCRA. ORCR’s mission is to protect human health and the environment by ensuring responsible national management of hazardous and nonhazardous waste. Liquid waste is a nonhazardous waste.

16. In the EPA Guide cited above

- a. “The agencies responsible for administering septage disposal programs at the local level must be familiar with the regulations contained in 40 CFR Part 503, “Standards for the Use and Disposal of Sewage Sludge,” published in the Federal Register on February 19, 1993. (EPA) regulations define domestic septage as “either liquid or solid material removed from a septic tank, cesspool, portable toilet, ...”

17. It is an obligation and duty of the Water Quality Control Commission to carry out the laws and the promises of this Governor and her administration to protect the environment and the health and safety of all persons in New Mexico; this is an explicit promise of the Governor in her opening statement for the New Mexico Legislative Session January 21, 2020.

18. It is not unreasonable, nor beyond the powers of the Water Quality Control Commission to deny renewal of this permit based on the long history of non-compliance, the unsanitary operation of the cells, and the changed conditions and development of homes and businesses in close proximity to the septage site, and the great potential for pollution of a huge aquifer providing clean water to most of Taos County.

19. Denial of the renewal is also reasonable based on the evidence of the impending contamination of the huge aquifer under the open, non-conforming Septage cells

20. This aquifer is the sole source of water to now numerous homes and business in this rapidly developing area of Taos County.

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In closing, it is reasonable and within the authority of the Water Quality Control Commission to deny this permit based on the Ground Water Quality Board's records, the history of this operation, the development of the surrounding area, and the impending contamination of this aquifer, the most precious resource of the State of New Mexico

In the alternative it is NOT reasonable, in the event the permit is renewed, to issue the permit for five more years. At best, the permit term should be conditionally issued for six months only to allow the drilling of the monitor well to see the extent of the current seepage, and conditional for one-year renewals to continue monitoring annually for the seepage for five years from the date of expiration of the last permit. That date was December of 2017, so that expiration, if the above

conditions annually are met, would be December, 2022. This permit, if renewed, should be further conditional on full compliance with a penalty of automatic termination of the operator's permit and cessation of all operation if the operator has any future violation or non-compliance as found by the GWQB, or the monitor well shows the seepage near the basalt.

Respectfully submitted,

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