

STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF ENVIRONMENT

IN THE MATTER OF THE APPLICATION OF  
VALLEY MEAT COMPANY FOR GROUND WATER  
DISCHARGE PERMIT RENEWAL, DP-236

No. GWB 13-05 (P)



**HEARING OFFICER'S REPORT, PROPOSED FINDINGS  
AND CONCLUSIONS AND DRAFT FINAL ORDER**

Valley Meat Company ("VMC" or "Applicant") seeks a ground water discharge permit for planned discharges associated with equine slaughter and processing at a facility located seven and one-half miles east of Roswell in Chaves County, New Mexico. The permit would cover discharges up to 8,000 gallons per day of wastewater flowing by gravity to two underground concrete holding tanks used for solids settling and from there to two synthetically-lined surface impoundments to evaporate.

Depth to ground water is approximately 10 feet with a total dissolved solids (TDS) concentration of 2,300 milligrams per liter (mg/l).

The New Mexico Environment Department (NMED) Ground Water Bureau ("Bureau" or "GWQB") supports the issuance of the permit with conditions necessary to protect public health and welfare and the environment.

This matter was heard on October 21-22, 2013, in Roswell, New Mexico. NMED was represented by Kevin Powers and Jeff Kendall of NMED's Office of General Counsel, and the Bureau's position was presented by Ground Water Quality Bureau Chief Gerard Schoeppner and Kimberly Kirby, a Bureau permit manager. Those present on behalf of the Applicant included attorney A. Blair Dunn, VMC owner Ricardo De Los

Santos, permit consultant Chet Wyant, dairy consultant Loney (Lonnie) Ashcraft, and large animal veterinarian Dr. Leonard Blach, DVM.

The New Mexico Attorney General's Office was represented by Ari Biernoff. Front Range Equine Rescue and six residents of Roswell, New Mexico--Ramona Cordova, Cassie Gross, Tanya Littlewolf, Sandy Schaefer, Krystle Smith, and Deborah Trahan—were represented by attorneys Bruce Wagman and Katherine Cisneros. Technical testimony was provided by William C. Olson on behalf of both the Attorney General and the parties represented by Mr. Wagman. John Holland participated on behalf of Equine Welfare Alliance.

Several members of the public participated in questioning and testimony at the hearing, including Jo McNery, Carolyn Schnurr, Patience O'Dowd, Lisa Teal, Beverly Hughes, County Commissioner Kyle D. "Smiley" Wooten, Phil Carter, Susan Carter, County Commissioner James Duffey, Mike Joy, Representative Candy Spence Ezell, Zach Riley, County Commissioner Kim Chesser, Mike Pierce, L.H. Kennedy and Joel Alderete.

The administrative record includes, inter alia, the permit application with attachments, the notice of docketing and hearing officer assignment, notice of the hearing in English and in Spanish; notices of intent to present technical testimony, exhibits and written public comment; the sign-in sheets; the transcripts; post-hearing submittals from the Applicant, the Bureau and the "public parties", jointly; an Index to the Administrative Record and this Report.

The hearing was conducted in accordance with the New Mexico Water Quality Control Commission Regulations, 20 NMAC 6.2.3110 and the Department's Permitting Procedures, 20.1.4 NMAC. The sign-in sheets show 56 names; not everyone signed in.

Every participant was allowed full opportunity to call witnesses, present testimony and other evidence, and cross-examine witnesses called by any other participant.

The hearing was recorded and transcribed by Kathy Townsend of Kathy Townsend Court Reporters. The record was left open only for the parties to submit proposed findings of fact and conclusions of law.

Based on the entire record, I recommend that the discharge permit be denied on the basis of the Applicant's willful disregard of environmental laws in the State of New Mexico over the ten years immediately preceding the submission of the permit application, and continuing subsequently. If the discharge permit is issued notwithstanding the Applicant's compliance history, I recommend that it be issued subject to the discharge permit conditions set out in the Bureau's testimony, and that additional conditions recommended by Mr. Olson be considered for inclusion as well.

#### **APPLICABLE LAW**

New Mexico Water Quality Act, NMSA 1978, Sections 74-6-1 to 74-6-17

New Mexico Water Quality Control Regulations, 20.6.2 NM Administrative Code

New Mexico Solid Waste Act, NMSA 1978, Section 74-9-1, et seq.

New Mexico Solid Waste Management Regulations, 20.9.1 NMAC

Environment Department Permitting Procedures, 20.1.4 NMAC

## RECOMMENDED FINDINGS OF FACT

The following proposed findings of fact are drawn from the record and from the post-hearing submittals by the parties. Facts surrounding the facility and its history of operations are not in dispute.

### FACILITY INFORMATION AND HISTORY

1. VMC, formerly Dairyland Packing Inc., d/b/a Pecos Valley Meat Company, is located at 3845 Cedarvale Road, approximately seven and one-half miles east of Roswell, in Section 17, T11S, R25E, Chaves County, New Mexico. AR 236C-1, Tr. p. 65.
2. The facility is a slaughterhouse, and wastewater generated by slaughter facilities typically contains organic matter, suspended solids, phosphorus, nitrogen, and chlorine, all of which are contaminants regulated under New Mexico law. Section 20.6.2.3103 NMAC; Written Testimony of Kimberly Kirby at 10:27-31.
3. The Bureau originally issued a five-year ground water discharge permit to the Applicant, numbered DP-236, on November 22, 1982.
4. The Applicant began discharging on or about March 7, 1983, into one surface impoundment/lagoon with a manure liner.
5. The Bureau issued discharge permit renewals of DP-236 on November 23, 1987; March 19, 1993; September 8, 1998 and May 19, 2004. During the terms of these permits the facility slaughtered and processed livestock, including cattle, sheep, and other domestic animals.
6. The discharge permit issued in 1998 required the manure-lined impoundment to be replaced with a synthetically-lined impoundment; the new impoundment was

completed prior to 2003. A second synthetically lined impoundment was required by the discharge permit issued in 2004 for additional evaporative capacity. Construction of the second synthetically-lined impoundment was completed in December 2005.

7. The most recent discharge permit issued to the Applicant expired on May 19, 2009. GWB 13-05 (P) Administrative Record, hereafter "AR 236C-," document number 87. That permit, issued in May 2004, required the Applicant to submit a renewal application 180 days before permit expiration, by November 19, 2008 (see page 10, paragraph 38). At the same time, Section 20.6.2.2106(F) NMAC and NMSA 1978, §74-6-5 (H) required that the Applicant submit a renewal application 120 days before expiration, by January 19, 2009.

8. VMC did not submit any discharge permit renewal application before DP-236 expired in May 2009.

9. To remain continually covered by the ground water discharge permitting provisions from May 19, 2009 forward, VMC would have to have been in full compliance with all relevant Water Quality Act regulations; and would have to have submitted a complete renewal application by January 19, 2009. See 20.6.2.3106.F NMAC. Neither condition was met.

#### PERMIT APPLICATION FOLLOWING EXPIRATION OF DP-236

10. On May 7, 2010, the Bureau sent a Notice of Violation to VMC noting that DP-236 had expired, that no permit renewal application had been submitted, and requiring that the company submit a discharge permit application. AR 236C-109.

11. On June 3, 2010, the Bureau received a discharge plan application from VMC signed by Ricardo De Los Santos. AR 236C-110.

12. On June 6, 2010, the Bureau sent VMC a letter requiring that the facility issue the first of the two (2) required public notices, also known as "PN1." Included with the letter was the required notice that was, within thirty (30) days, to be placed on-site as well as published in the local newspaper, the Roswell Daily Record. AR 236C-111.

13. On December 8, 2010, Kimberly Kirby, a Bureau permit manager, sent an email to VMC permitting consultant Chet Wyant indicating that the GWQB had not received confirmation that PN1 had been published in accordance with 20.6.2.3108.D NMAC. Also contained in this communication was a request by Ms. Kirby that Mr. Wyant address concerns related to the actual number of monitoring wells and the closure information of two prior monitoring wells. Further, Ms. Kirby asked that Mr. Wyant address where offal was being, or would be, shipped for disposal or whether the facility was composting this material onsite. AR 236C-112.

14. On December 28, 2010, the Bureau received from VMC proof of PN1 publication as well as information on the monitoring wells and composting operations. AR 236C-113.

15. On May 11, 2011, Ms. Kirby performed an onsite inspection of the facility. AR 236C-114. Following the inspection, on May 12, 2011, Ms. Kirby, noticing that the facility's name had changed to "Valley Meat Company, LLC," asked for additional information on ownership and asked again about how the offal was being managed. AR 236C-115.

16. On June 22, 2011, the Bureau received from VMC a letter addressing the name change and stating that VMC would proceed with onsite composting. AR 236C-115.

17. Between June 22, 2011 and May 3, 2013, the record reflects no contact between the Bureau and VMC.

18. On May 3, 2013, following a news article on May 1, 2013 and several public inquiries, the Bureau contacted VMC requesting the facility's response to several key permit issues. AR 236C-122. This information was necessary to complete the technical evaluation of the application submitted earlier for general livestock processing.

19. VMC had in the meantime decided to change its operations, to switch from cattle slaughter and processing to equine slaughter and processing, and had ceased operations in April 2012 in order to make the switch. Tr. p. 95.

20. On May 10, 2013, the Bureau received, via email, a letter from VMC responding to the questions posed by Jennifer Pruett, GWQB Pollution Prevention Section (PPS) manager, in the Bureau's May 3, 2013 letter. AR 236C-125.

21. After review of VMC's response, Ms. Kirby proceeded with the development of the initial draft of the discharge permit. The first draft of DP-236 was mailed to VMC, return receipt requested, on May 24, 2013. AR 236C-130.

#### DRAFT PERMIT AND PUBLIC NOTICE

22. The first draft discharge permit mirrored prior permit terms and conditions, and contained several additional permit conditions. GWQB NOI, Exhibit 9. Although the facility still proposed to discharge no more than 8,000 gallons per day (gpd) of wastewater generated from livestock processing, the Bureau proposed that an additional monitoring well be installed hydrologically downgradient of the south wastewater storage impoundment to further monitor potential impacts to ground water quality. This additional condition requires VMC to propose a location for the new monitoring well

within sixty (60) days of the effective date of the permit and installation within one hundred twenty (120) days of the effective date of the permit.

23. On May 31, 2013, as required by Subsection K of 20.6.2.3108 NMAC, the draft discharge permit was published on the Department's GWQB website and published in the required newspapers, including the Albuquerque Journal and Roswell Daily Record. The notice of availability for comment was also directly sent to the facility specific mailing list, a.k.a. "interested parties list." AR 236C-131. This began the required thirty (30) day comment period as required by 20.6.2.3108.K NMAC. The deadline for submission of public comments was adjusted to July 1, 2013 due to the thirtieth day falling on a weekend.

24. During the comment period numerous comments and requests for hearing were received. In total, the GWQB received four hundred sixty-seven (467) comments. See, e.g., AR 236C-132, 236C-134, 236C-136, 236C-139, 236C-142, 236C-144, 236C-146, and 236C-147.

25. Bureau and Department staff attempted to classify comments and concerns into the following categories: 1) horse slaughter as generally inhumane (245); 2) VMC's prior history and environmental violations (107); 3) the impact that the facility will have on water quality (257); and 4) VMC's owner's prior criminal felony history (64).

26. In review of the comments specifically related to "water quality" concerns, the majority were of a general nature, but 25 of the comments did contain, with some specificity, concerns about the facility's potential to impact to the local environment.

27. On June 20, 2013, under signature of Ricardo De Los Santos, VMC filed its own comments on the proposed draft renewal permit. AR 236C-140 and 145.



28. On July 9, 2013, in addition to making several other statements and requests, VMC submitted a request to temporarily discharge pursuant to 20.6.2.3106 NMAC. AR 236C-148.

29. On July 11, 2013, the Bureau sent to VMC, through VMC's attorney Mr. Dunn, a letter asking for clarification of Mr. De Los Santos's prior criminal background. This inquiry was prompted by the Bureau's receipt of numerous public comments regarding his history and the possible impact on permit issuance pursuant to NMSA 1978, §74-6-5. The letter outlined VMC's prior verbal response on this issue and requested that VMC confirm the Bureau's understanding of their response(s). AR 236C-150.

30. The Bureau sent a separate letter to VMC on July 11 regarding its current permit status and its request for temporary permission to discharge. AR 236C-151. The Bureau clarified that the facility did not have continued permit coverage because of VMC's failure to submit a timely application for renewal of DP-236. The Bureau acknowledged receipt of VMC's request to temporarily discharge. *Id.*

31. On July 17, 2013, the Bureau denied VMC's request to temporarily discharge. AR 236C-15.

32. On July 17, 2013, the Bureau provided to Secretary-Designate Ryan Flynn (Secretary), a memorandum requesting a determination of whether substantial public interest existed and if a public hearing was required pursuant to Subsection K of 20.6.2.3108 NMAC. The Secretary, on that same day, found that substantial public interest did exist and ordered that a hearing occur to receive further public comment. AR 236C-157.

33. Upon receipt of the Secretary's determination, the Department Hearing Clerk docketed the matter as GWB 13-05 (P) and, pursuant to 20.6.2.3110 NMAC, assigned Felicia Orth as the Hearing Officer. AR 236C-158.

34. On July 30, 2013, considering comments from VMC and Mr. Dunn that in the absence of a discharge permit VMC planned to 'pump and haul' waste water from the facility, the Bureau immediately sent a letter to VMC requesting further clarification and information on that planned activity. AR 236C-164. The record reflects no response to this letter from VMC.

35. On August 15, 2013 a scheduling conference was held by the Hearing Officer with counsel for the parties, including the Bureau, VMC, and Front Range Equine Rescue (FRER). The hearing was scheduled for October 21<sup>st</sup> and October 22<sup>nd</sup>, 2013 in Roswell; all concurred in these dates. AR 236C-170.

36. On September 13, 2013, the Bureau issued the required minimum thirty (30) day public notice of the date, time, and location of the public hearing. The notice was published in the local newspaper and newspaper of general circulation, on the Department's website, and via U.S. mail or email to all who had submitted comments.

#### PRE-HEARING SCHEDULE

37. The Procedural Order issued by the Hearing Officer set forth the deadlines for: 1) submittal of the Administrative Record (due September 11, 2013); 2) submittal of the Notice of Intent to Present Technical Testimony including written direct technical testimony (due October 9, 2013); and 3) a pre-hearing conference call (on October 18, 2013). The parties were to submit any pre-trial motions on or before the October 18, 2013 conference call.

38. On September 11, 2013, the GWQB submitted the Administrative Record to the Hearing Clerk and notified all parties of the filing. On September 12, 2013, the Hearing Clerk filed a revised Service List for GWB 13-05 (P).

39. On October 9, 2013, the Department, FRER, VMC, and Mr. John Holland, President of Equine Welfare Alliance, Inc., filed Notices of Intent to Present Technical Testimony (NOIs).

40. VMC provided the written testimony of Ricardo De Los Santos, general manager and principal owner of VMC, Chet Wyant, consultant for VMC, Lonnie Ashcraft, a consultant that had previously worked for VMC, and Leonard Blach, Doctor of Veterinary Medicine. In addition to the testimony of these four witnesses, VMC provided as an exhibit the draft discharge permit, DP-236 and its comments on the draft permit. AR-DP-236 140, 145.

41. The Bureau submitted fourteen exhibits, including the written testimony of Bureau Chief Jerry Schoepner and permit manager Kimberly Kirby and a revised draft discharge permit. The revised draft permit included conditions added pursuant to comments received through the public comment phase.

42. FRER and the New Mexico Attorney General's Office (NMAGO) jointly filed a NOI on behalf of the "...*State of New Mexico, the New Mexico Attorney General's Office, Front Range Equine Rescue and six residents of Roswell, New Mexico.*" As part of this joint NOI, FRER and the NMAGO provided the written testimony of Mr. William C. Olson.

43. The only other party providing written testimony in a NOI was John Holland, President of Equine Welfare Alliance. Mr. Holland provided several exhibits primarily related to compliance issues and concerns at horse slaughter facilities outside the State of New Mexico.

#### PRE-TRIAL MOTIONS

44. During the October 18, 2013 telephone conference, the Bureau filed three pre-trial motions. The first motion was to determine the various interests of the parties in FRER's and the Attorney General's NOI. The second motion was to strike the entry of the New Mexico Attorney General's Office into the proceedings. The last motion was to exclude and/or to limit the testimony of Mr. William C. Olson. FRER and the Attorney General's office stated verbally that Bruce Wagman represented only FRER and the six residents of Roswell, New Mexico. The Assistant Attorney General, Ari Biernoff, stated that he represented the interest of the State of New Mexico. Both Mr. Wagman and Mr. Biernoff stated they had jointly hired William Olson and that his testimony was on behalf of both parties.

45. The Hearing Officer found that the verbal response of FRER and the AG's office as to the identity of parties and respective counsel was sufficient and denied the GWQB's first motion. The GWQB's other two motions, supported by VMC, but opposed by FRER and the Attorney General, were denied based on the breadth of public participation contemplated in the Ground Water Regulations and the Department's Permitting Procedures, and past matters in which other constitutional officers within the executive branch had appeared and participated in the Department's hearings.

46. At the start of the hearing, VMC and the Bureau renewed their objections to participation by the Attorney General's Office and by Mr. Olson, who is a former Ground Water Quality Bureau Chief. The rulings remained the same. Tr. pp. 17-21.

#### EVIDENCE ON BEHALF OF THE APPLICANT VMC

47. Applicant VMC presented four witnesses: owner/operator Ricardo De Los Santos, agricultural consultant Lonnie Ashcraft, permitting consultant Chet Wyant and large-animal veterinarian Dr. Leonard Blach, DVM. VMC's NOI is at No. 11 in the Hearing Clerk's Pleading File.

48. Mr. De Los Santos' pre-filed testimony is appended to VMC's NOI as Exhibit A.

49. Mr. De Los Santos believes the facility was built sometime in 1982. He initially leased the business, and later purchased the operation. The facility previously processed livestock, primarily cattle, also goats, sheep and hogs. The facility has employed, at times, fifty (50) to fifty-five (55) employees. He made the decision to switch to equine slaughter for economic reasons. Neither Valley Meat nor Mr. De Los Santos has any experience slaughtering horses. Tr. pp. 62-66, 103.

50. Mr. De Los Santos first spoke with the United States Department of Agriculture (USDA) about equine slaughter in November 2011. VMC's cattle processing operations ceased in April 2012 to switch from cattle processing to equine processing, because the USDA will not issue a grant of inspection for both species. Tr. pp. 95-96.

51. VMC has a contract to slaughter 120 head per day and plans to send the offal to a company in Dallas until they can build their own rendering plant, for which they already have all the components. Tr. pp. 72-73. Although Mr. De Los Santos approached the

Solid Waste Bureau for permission to compost, the Solid Waste Bureau will not allow any composting of offal onsite. Tr. p. 72, l. 10.

52. Mr. De Los Santos stated that over the last ten years he has not had any criminal convictions. His only felony conviction was in 1978, for which he received probation. Tr. pp. 28-29.

53. Mr. Ashcraft's pre-filed testimony, with supporting documentation, is appended to VMC's NOI as Exhibit C.

54. Mr. Ashcraft testified regarding the installation of impoundment liners at two (2) wastewater impoundments. Mr. Ashcraft believes that the liners were properly installed and that the facility has four (4) monitoring wells. Mr. Ashcraft indicated that based on his experience, the liners and monitoring wells were operating as designed and he believes that the facility is protective of ground water. Tr. pp. 29-34, 38, 62-63.

55. Mr. Wyant's pre-filed testimony is appended to VMC's NOI as Exhibit B.

56. Mr. Wyant testified that he became involved with VMC in May 2010 when he was asked to assist in preparation of the permit renewal application for DP-236. The facility permit was initially issued for 8,000 gpd of livestock processing wastewater discharge; Mr. And Mrs. De Los Santos did not want to seek an increase in gpd in the most recent renewal application. Tr. pp. 34-36, 134.

57. Mr. Wyant explained that the wastewater from the kill floor and the rest of the processing area goes through a common drain via a gravity line into two (2) underground concrete holding tanks used for solids settling. From those two tanks it goes by buried, closed pipeline to the first wastewater pond that was built, then pumped over a berm common to the two ponds into a finishing or evaporation pond. Unless there is a leak

from the liners or the piping, there should be no discharge to ground water or surface water. Tr. pp. 67-68.

58. Mr. Wyant and Mr. Ashcraft agreed that whether the facility was processing horses or other livestock it should not affect the overall wastewater operations of the facility. Mr. Wyant read the definition of "livestock" from the Livestock Code, Section 77-2-1.1, NMSA 1978: "'Animals' or 'livestock' means all domestic or domesticated animals that are used or raised on a farm or ranch, including the carcasses thereof, and exotic animals in captivity, and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae upon any land in New Mexico...." Tr. pp. 37-39.

59. Mr. Wyant believes that if the discharge permit is issued, it will be sufficient to protect the environment from groundwater discharge. Tr. pp. 61-62.

60. Mr. Wyant described the two lines of defense to assure that the lagoons do not leak: monthly visual inspections of the impoundments, particularly above the water line; and downgradient monitoring wells. Mr. Ashcraft agreed with this assessment. Tr. pp. 68-69.

61. Dr. Blach's pre-filed testimony is appended to VMC's NOI as Exhibit D.

62. Dr. Blach testified that on average seven percent of the body weight of any animal is blood. Cows typically weigh more than horses, particularly bulls. The offal associated with a cow is much greater than that for a horse, because the cow has a huge stomach, an udder and great volumes in the colon and intestine. Based on his experience, due to the general cleanliness of the animal, a cow will require more process water than a horse. Tr. pp. 41-45.

63. Dr. Blach further testified that with the exception of vaccines, there are common veterinary drugs used for cattle and horses, including antibiotics, prostaglandins, Meclizines, Butazolidins, antihistamines, steroids, etc. Based on his experience these drugs metabolize out of the animal over short periods of time, depending upon the specific medications, dosages, and duration of treatment. In the cattle business, there are certain withdrawal times that must be adhered to in order to assure that the milk or meat is clear and edible. At the time of slaughter, a USDA veterinarian checks for drug residues; if tested positive, the animal is condemned. Tr. pp. 46-49.

64. Dr. Blach stated the most commonly cited drug used in horses was "Bute," or Butazolidin, an anti-inflammatory drug. Bute withdrawal times are well known for cattle and for horses. In most cases these drugs are metabolized within thirty (30) days from administration. Dr. Blach is unaware of any commonly administered veterinary medication that persists or remains permanent in the meat or milk of cattle or other livestock animal. Tr. pp. 50-55.

65. Dr. Blach acknowledged that there are some veterinary drugs that are banned when used on animals going to slaughter, but an animal given a substance is not necessarily forever condemned from being a food animal. Tr. pp. 144, 164-165, 169. Dr. Blach is unaware of any substance potentially in horse blood that would be caustic enough to damage plastic liners such as at the wastewater impoundment liners. Tr. p. 62.

66. Mr. De Los Santos acknowledged that VMC had exceeded the 8,000 gpd discharge limit and stated that these were times when they were processing more than 150 head per day. He expects that 30-40 gallons per animal will be required for processing and cleaning at the end of the day. Tr. p. 56-58.



67. Mr. De Los Santos was unaware that the electromagnetic meter measuring wastewater volume must be calibrated, but agreed that if the discharge permit is issued he would comply with the requirement to calibrate any discharge meter under sections 22 and 23 of the draft discharge permit. Tr. pp. 76-77.

68. Ground water directional flow has never been properly determined at the site, but Mr. De Los Santos agreed that he would conduct a ground water directional flow study as required by revised draft discharge permit condition number 21. Tr. pp. 77-78, 168.

69. Mr. De Los Santos also agreed to install an additional monitoring well required by the GWQB and included in the revised draft permit as condition number 15. Tr. pp. 82, 168.

70. Mr. De Los Santos and the other VMC witnesses were unable to say at the hearing whether the system receives wastewater from bathrooms, kitchens, and other domestic uses such that this water went to the surface impoundments. Mr. De Los Santos agreed that prior to facility operation and permit issuance the facility would determine whether domestic wastewater is part of the facility's overall waste stream, and if so, VMC will eliminate the co-mingling of wastewaters. Tr. pp. 80, 167-168.

71. On rebuttal, Mr. De Los Santos stated that he was aware of a horse processing facility on the Mescalero Reservation in the mid-1980s. When they bleed the horses, the blood does not go down the drain, but into barrels. The USDA has a drug testing program for carcasses; those that "hot" or positive are immediately tanked. He knows that samples are drawn for monitoring wells, but is not too familiar with contamination. Tr. pp. 384-389.

72. On rebuttal, Dr. Blach stated that he believes cattle are medicated a lot more on a daily basis than the outside horse population in New Mexico, with the exception of horses at the racetrack. He believes an insignificant number of racing horses would be sent to slaughter; good runners will go to a home. Horses that are sent for slaughter will probably have to be fed for 4-6 months in order to improve the texture of the meat. Tr. pp. 389-392.

73. Dr. Blach further stated that after 120 days, very few of the medications on the list of medications administered to horses will be detectable in the blood or tissue of a horse. Some of the metabolites of the aminoglycosides may still be detectable on a liver or kidney swab. Most of the drugs will have been eliminated from the horse's body through urine or feces. The drug labels do not require the collection of urine or feces to prevent dissemination in the environment. Tr. pp. 392-399.

74. Dr. Blach does not know where VMC will obtain the horses it intends to slaughter, except that they come from feedlots. Tr. pp. 399-400.

75. All exhibits offered by VMC were admitted, including the written statements of the witnesses, the draft discharge permit and the company's comments on the draft discharge permit. Tr. p. 63.

#### EVIDENCE ON BEHALF OF THE BUREAU

76. The Bureau presented permit manager Kimberly Kirby and Bureau Chief Jerry Schoeppner as witnesses. The Bureau NOI is at No. 10 in the Hearing Clerk's Pleading File.

77. Mr. Schoeppner's pre-filed testimony is appended to the Bureau's NOI as Exhibit 3.

78. Mr. Schoeppner has been the GWQB Bureau Chief since June 2011. GWQB NOI, Exhibit 3, P. 1, L. 2. In this position, Mr. Schoeppner oversees the Pollution Prevention Program. In addition to the analysis performed by GWQB staff for this permit renewal, he was responsible for investigating permitting questions related to NMSA 1978, §74-6-5 (E). After reviewing information received from VMC and the Pollution Prevention Program staff Kimberly Kirby, Mr. Schoeppner determined there was no sufficient basis to deny the permit renewal. GWQB NOI, Exhibit 3, P. 11-13.

79. Although some comments received during the public comment phase had alleged that VMC had “willfully” violated its prior permit terms and conditions, Mr. Schoeppner found that many of VMC’s violations were common to similarly situated facilities and did not rise to “willful” within the context of NMSA 1978, §74-6-5 (E). GWQB NOI, Exhibit 3, P. 14, L. 2. Additionally, Mr. Schoeppner found that most, but not all, compliance issues were addressed by VMC once identified by GWQB staff. GWQB NOI, Exhibit 3, P. 14, L. 3.

80. Mr. Schoeppner believes that the revised proposed permit, which includes the additional conditions added by Ms. Kirby to the first draft permit, meets the requirements of the WQA and the WQCC regulations and he recommends that the draft discharge permit be issued. GWQB NOI, Exhibit 3, P. 14, L. 20.

81. Kimberly Kirby has been with the GWQB for approximately twelve and a half (12 ½) years. GWQB NOI, Exhibit 8, P. 1, L. 12. As part of her current duties, Ms. Kirby is responsible for receiving, reviewing, drafting, issuing, and inspecting ground water discharge permit applications, including the discharge permit application for VMC.

82. Ms. Kirby, through her pre-filed testimony, stated that the facility was first permitted in November of 1982, with its most recent ground water permit expiring in May 2009. GWQB NOI, Exhibit 8, P. 2. The primary wastes regulated by the ground water discharge permit are those found in 20.6.2 NMAC. GWQB NOI, Exhibit 8, P. 10-11. The wash water from a slaughterhouse typically contains various amounts of water, organic matter (including fats/grease), suspended solids, phosphorus and nitrogen, and may also contain disinfecting and cleaning chemicals such as chlorine. *Id.*

83. Reviewing comments received during the PN2, Ms. Kirby examined the various concerns raised and found that no sufficient basis exists to deny the permit. Ms. Kirby proposed an additional permit condition based on testimony filed by Mr. Olson. The additional condition is for a leak detection program of the two (2) solids settling tanks and related piping. Tr. P. 174, L. 21.

84. All exhibits offered by the Bureau were admitted, including resumes and written statements of the witnesses, notice of the hearing in English and in Spanish, a letter from the USDA to VMC, an Administrative Compliance Order and Stipulated Final Order related to violations of the Solid Waste Act and Solid Waste Management Regulations, a revised draft discharge permit with attached monitoring well construction conditions, a summary of monitoring well ground water analytical data, ground water flow direction documentation, a summary of wastewater analytical data, and lagoon capacity worksheets. Tr. pp. 175, 179.

#### EVIDENCE ON BEHALF OF THE EQUINE WELFARE ALLIANCE

85. Mr. Holland's written statements and supporting documentation are at No. 12 in the Hearing Clerk's Pleading File.

86. Mr. Holland, President of Equine Welfare Alliance, Inc., runs a small sanctuary. He testified that there is no market for the byproducts of equine slaughter, and that systems designed to treat wastewater from cattle operations have not successfully worked for horses.

87. Mr. Holland provided a slideshow on the history of horse slaughter and the compliance history of horse slaughter operations outside the State of New Mexico, in Belgium, Illinois and Texas. Tr. pp. 187-209.

88. VMC and the Bureau objected to the inclusion in the record of Mr. Holland's testimony and documentation. Although some of Mr. Holland's evidence was of attenuated relevance to the discharge permit in question, the evidence was not excluded on the basis that the appropriate weight could be given to it. Tr. pp. 209-210.

#### EVIDENCE ON BEHALF OF FRER, NMAGO AND SIX ROSWELL RESIDENTS

89. FRER, the AG's Office and six residents of Roswell--Ramona Cordova, Cassie Gross, Tanya Littlewolf, Sandy Schaefer, Krystle Smith, and Deborah Trahan (SRR)--presented William Olson as their joint witness.

90. Mr. Olson's pre-filed testimony is the first document appended to the FRER/NMAGO/SRR NOI, No. 13 in the Hearing Clerk's Pleading File.

91. Mr. Olson stated that the discharge permit application before the Department now does not indicate on its face that VMC plans to slaughter horses; it merely requests a renewal of prior applications for a discharge permit. To Mr. Olson's knowledge, the Department has never received an application for a horse slaughter facility. Considering the new type of facility and the drugs that are prohibited in food animals but are given to horses, Mr. Olson believes it would be prudent for the Bureau to take the time to evaluate

potential contaminants in the wastewater, potential threats to public health and the possibility of toxic pollutants that might be generated. Tr. pp. 217-224.

92. A lot of monitoring reports are missing, but those that were submitted by VMC show that 13% of the time, VMC exceeded its permitted discharge of 8,000 gpd. Tr. p. 225.

93. When Mr. Olson reviews the administrative record, including the evaporation calculations, he concludes that VMC was slaughtering about 17 head per day, and generating about 5,000 gpd, or 300 gallons per head being run at the time. He also studied a paper from the European Commission that did not address horses but shows for cattle the generation of 200 gallons wastewater per thousand pounds. Tr. pp. 233-36.

94. Mr. Olson's primary concern is that depth to ground water at the site is shallow and there is a high potential for ground water contamination as a result of discharges. He is also concerned about the facility's compliance history. He believes the permit should be denied. If the permit is granted, he recommends double-lined impoundments, an inspection of the below-grade concrete tanks, and an expansion of ground water monitoring. Tr. pp. 237-241.

95. Mr. Olson stated that he is relying on the declarations of the veterinarians that a variety of chemicals are present in the horses and could potentially become water contaminants. The Bureau would have the authority to regulate the pharmaceuticals discussed if they contain toxic pollutants or have the potential to cause undue risk to property. Mr. Olson agreed that there is not a specific standard within Section 3103 of the Ground Water Regulations that has a designated concentration limit with effects on public health. Tr. pp. 276, 295-297.

96. Mr. Olson acknowledged that numerous facilities besides VMC had lapsed permits for failure to submit or submittal of a late renewal application. Tr. pp. 324-327.

97. All of Mr. Olson's exhibits were admitted, some of them over the objection of VMC. The exhibits include driller's logs for the four monitoring wells at VMC, Ms. Kirby's note to file concerning permit evaluation materials, VMC's table of recent monitoring results, a USDA letter, a table of banned and dangerous substances commonly given to horses sent to slaughter, numerous declarations from persons familiar with the drugs, substances and treatment given to American horses, articles and fact sheets about veterinary pharmaceuticals in agricultural soil and water, VMC permitting and enforcement documents, testimony from the Dairy Rule matter and the Copper Rule matter before the Water Quality Control Commission, and a pleading from a federal lawsuit by FRER against the USDA. Tr. pp. 243-254.

#### PUBLIC COMMENT

98. Fifteen (15) people provided oral public comment at the hearing. The file also contains numerous written comments, in support and in opposition to the requested discharge permit.

99. The commenters at hearing supporting the issuance of the permit included Chaves County Commissioners Kyle D. "Smiley" Wooten, James Duffey and Kim Chesser; Mike Joy; state Representative Candy Spence Ezell; Zach Riley of the New Mexico Cattle Growers Association; rancher Mike Pierce; and Joel Alderete of the New Mexico Farm and Livestock Bureau.

100. The commenters at hearing opposing the issuance of the permit included Jo McNery, President of Animal Welfare Alliance in Roswell; Carolyn Schnurr, on

behalf of the American Society for Prevention of Cruelty to Animals; Patience O'Dowd for Citizens Against Equine Slaughter and the Wild Horses Observers Association; Lisa Teal, a concerned citizen of Roswell with signatures from 3,489 citizens of the U.S.; Beverly Hughes, for the American Horse Protection Alliance; Phil Carter for Animal Protection of New Mexico and the Equine Protection Fund; and Susan Carter.

101. One commenter, L.H. Kennedy, offered remarks related to the land title for the facility and her claim to it.

#### SITE HYDROGEOLOGY AND GROUND WATER QUALITY

102. The Valley Meat facility is located within the Roswell ground water basin in an area with shallow ground water, which increases the likelihood of contamination from wastewater discharges at the site. The Roswell ground water basin consists of a carbonate artesian aquifer overlain by a leaky confining bed, which in turn is overlain by a shallow alluvial aquifer. Along the eastern boundary of the basin, the alluvial aquifer is hydraulically connected to the Pecos River. Approximately 350,000 acre-feet of water per year is diverted from wells in the basin, mostly for irrigation but also for municipal and other uses. Olson Written Test. at 6; Kirby Written Test. at 6-7.

103. The aquifer most likely to be affected by discharges in the vicinity of the Valley Meat site is the shallow alluvial aquifer. The shallow alluvial aquifer is composed of valley fill deposits of sand, gravel, silt, and clay that partly fill the Pecos Valley. Recharge to the shallow alluvial aquifer is from precipitation, return flow from irrigation, and upward leakage from the artesian aquifer. The general direction of



ground water flow in the shallow alluvial aquifer is eastward to the Pecos River, then southward. Id.

104. The chloride content of ground water in the Roswell basin fluctuates annually. In general, the chloride content is lowest in the spring and highest after the irrigation season in the fall. The chloride concentration of water in the shallow aquifer in the Roswell basin in 1978 ranged from 20 mg/l in the western part of the aquifer to 3,700 mg/l in the east near Hagerman. Olson Written Test. at 7.

105. Monitor well drilling at the Valley Meat site shows that the underlying site geology is composed largely of silty sand and clayey sand with some gravel at the base of the monitoring wells. Olson Written Test. at 5, Exs. 2-3; AR 236C-95; AR 236C-107.

106. Depth to ground water in these monitoring wells is extremely shallow, ranging approximately from 4 to 10 feet below ground surface, and is highly susceptible to ground water contamination. AR 236C-87; Olson Written Test. at 3.

107. The direction of ground water flow at the Valley Meat site is uncertain because there has been no discharge permit requirement to submit this information, and monitor well water table elevation data is rarely submitted in monitoring reports as required under Valley Meat's past permit. Olson Written Test. at 7.

108. Facility monitoring well water quality data over a 10-year period between 1994 to 2004 shows that samples around the impoundments have not been consistently obtained despite the requirement that samples routinely be taken pursuant to the terms of the prior NMED- approved permits. The available data over this time period show the following: nitrate concentrations in ground water ranged from 0.06 - 11 mg/l;

chloride ranged from 594 – 1,200 mg/l; and total dissolved solids ranged from 2,200 – 4,440 mg/l. Olson Written Test. at 7, Ex. 4; AR 236C-83.

109. While the majority of the nitrate samples that Valley Meat submitted were within the WQCC nitrate standard of 10 mg/l, when NMED sampled the monitoring wells on April 1, 1998, the nitrate samples in the west and north wells exceeded the allowed concentration. Olson Written Test. at 8, Ex. 4.

110. Valley Meat did not provide samples of the nitrate concentration in these areas again until 2001. And again in 2006, the nitrate level in the western area exceeded the allowed concentration. Olson Written Test. at 8, Ex. 5; AR 236C-110.

#### WASTEWATER QUALITY

111. Wastewater generated by slaughter facilities typically contains organic matter, suspended solids, phosphorus, nitrogen, and chlorine, all of which are contaminants regulated under New Mexico law. Kirby Written Test. at 10.

112. VMC's wastewater includes blood from washdown of equipment, employees' hands and clothing, and the facility, as well as manure, dirt, and cleaning products. Kirby Written Test. at 10-11; De Los Santos Oral Test. at Tr. p. 98:12-24.

113. Lagoon wastewater quality monitoring over a 10-year period, between 1994 and 2004, shows that the lagoon wastewater contains high concentrations of water pollutants. The available data over this time period shows the following: nitrate concentrations in the impoundment ranged from 0.03 – 0.41 mg/l; Total Kjeldhal Nitrogen ("TKN") ranged from 151 – 504 mg/l; chloride ranged from 203 – 4,000 mg/l; and total dissolved solids ranged from 1,640 – 9,600 mg/l. These

concentrations exceed the standards for ground water as provided in 20.6.2.3103 NMAC, and if overflow or leakage occurs, there is a high likelihood of ground water contamination due to the extremely shallow depth to the ground water at the Valley Meat facility site. Olson Written Test. at 8, Ex. 4.

114. The United States Department of Agriculture Food Safety and Inspection Service (USDA FSIS) is also responsible for monitoring slaughterhouse activities at VMC. In January 2010, a USDA FSIS district manager conducted a plant review at VMC and noticed large piles of dead animals and animal carcasses that Mr. De Los Santos claimed he was “composting,” but which the USDA FSIS district manager described as “rotting.” Additionally, the USDA FSIS district manager inspected the evaporation ponds and noted that the liquid inside the ponds was red, likely from blood from the cattle slaughterhouse. These observations led the USDA FSIS district manager to notify the New Mexico Health Department of Valley Meat’s potential environmental violations and to ask for assistance in eliminating the health hazards at Valley Meat. Olson Written Test. at 8-9, Ex. 6.

#### VMC’s WILLFUL DISREGARD OF ENVIRONMENTAL LAWS

115. Throughout the permit history for the Valley Meat facility, NMED has been concerned about water pollutants contained in the slaughterhouse wastewater and the potential for these water pollutants to cause contamination of the underlying ground water resources. *See, e.g.*, AR 236C-42 (September 3, 1987 letter from NMED to Pecos Valley Meat noting more than a year and a half of delinquent monitoring reports which “not only require more staff time and unnecessary expense of our tax revenues, but also compromise the state’s effort to protect ground water

quality”); 236C-72 (March 27, 2003 field trip report noting overflow of effluent from synthetic-lined lagoon, apparent flow of effluent into drainage area); 236C-88 (May 25, 2004 field trip report documenting unpermitted wastewater discharge and “express[ing] concerns about all the potential carcasses in the area, not only as a threat to ground water in and of themselves, but on how the high organic matter would affect the base of the lagoon to say nothing of the bones on the liner.”); 236C-102 (November 9, 2005 field trip report concluding that unpermitted wastewater discharge had continued for a year and a half and noting presence of dead animals dumped alongside an open-air barn); 236C-109 (May 7, 2010 Notice of Violation to Valley Meat).

116. At the time the initial discharge permit was issued, the Valley Meat facility was permitted for disposal of cattle slaughter wastewater by routing wastewater through concrete septic tanks to a manure-lined impoundment, and then the wastewater was used to irrigate 60 adjoining acres. AR 236C-6, 236C-7.

117. In its September 8, 1998 approval of a renewal of DP-236, the Bureau required that VMC install a single-lined synthetic impoundment for storage of its wastewater within one year of the date of the discharge permit, and within two years, to stop using its manure-lined lagoon and fill it with soil. Kirby Written Test. at 2; AR 236C-69, Specific Requirement 2 and Condition for Approval 4. This 1998 permit renewal also increased VMC’s monitoring requirements, mandating that it provide reports on its monitoring wells on a quarterly basis, pump its septic tank twice per year, and submit the pumping manifests to the Bureau on an annual basis. AR 236C-69, Conditions for Approval 5, 2.

118. A March 27, 2003 report from a field inspection of VMC by Bureau inspectors Kimberly Kirby, Karma Anderson and David Mercer noted that the synthetic-lined lagoon overflowed its banks, and effluent appeared to have flowed into the drainage area that drains into the nearby Pecos River. In addition, the clay-lined lagoon had not been closed out and still contained effluent, in violation of VMC's discharge permit conditions. The inspectors notified Mr. De Los Santos that "this was a very bad situation, effluent should not be overflowing the lagoon and it certainly should not be allowed to flow into any drainage area." AR 236C-72.

119. A May 25, 2004 field trip report from an inspection by Kimberly Kirby and Robin Just of the Department concluded that "it is apparent that dead animals are still being disposed of by and on the facility" despite Valley Meat's assurances that it had discontinued doing so; inspectors found numerous piles of manure and trash filled with dead animal carcasses and parts, noting that "most of these pits and piles are on the edge of a wetland." The report also "expressed concerns about all the potential carcasses in the area, not only as a threat to ground water in and of themselves, but on how the high organic matter would affect the base of the lagoon to say nothing of the bones on the liner"; and documented unpermitted wastewater discharges from Valley Meat's rendering of dead and downer cattle in an open-air barn. AR 246C-88.

120. VMC's past history of unauthorized wastewater discharges from its rendering operation is of particular concern because the company has stated its intention to build a rendering plant on its property, operations which are not contemplated by its present Discharge Permit application. De Los Santos Oral Test. at 72:11-19.

121. In its May 19, 2004 approval of a renewal of DP-236, NMED required that Valley Meat, still only processing cattle for slaughter, install a second single-lined synthetic impoundment for storage and disposal of wastewater by total evaporation. Kirby Written Test. at 2; AR 236C-87, Requirement 6.

122. Additionally, within 120 days of the issuance of the Discharge Permit renewal, the Bureau required VMC to plug and abandon the two existing monitoring wells on the east and west sides of the clay-lined lagoon, and to install two new monitoring wells. AR 236C-87, Requirements 16 and 17. The 2004 renewal also required VMC to provide documented proof that it was transporting blood, hides, and other slaughter byproducts to be rendered off-site. AR 236C-87, Requirement 12. The second synthetically lined lagoon and new monitoring wells, which were *conditions of operation* for the 2004 permit, were not completed until 2006. AR 236C-107, AR 236C-108.

123. After VMC's discharge permit expired, VMC continued to operate its slaughterhouse, in violation of New Mexico law. AR 236C-109. For three years, VMC discharged wastewater from its slaughterhouse operations without any oversight from NMED, and without a valid wastewater discharge permit. AR 236C-109, AR 236C-153; Kirby Written Test. at 2; De Los Santos Oral Test. at 95:14-18.

124. Prior to May 2013, VMC never informed the Department that it intended to change its operations from cow slaughter to horse slaughter. AR 236C-128. The Department first learned that VMC intended to switch from cow slaughter to horse slaughter through the media. AR 236C-122.

125. The Bureau requested additional information from VMC on May 3, 2013, regarding whether it intended to change the type of livestock to be processed and whether there would be any change in the volume and quality of wastewater discharges with its new operations. AR 236C-122.

126. On May 9, 2013, VMC indicated to the Bureau that it was changing its operations from the previously permitted cattle slaughterhouse, and now was seeking to begin processing equines for the first time. At that time, VMC did not provide any information that the Bureau requested on the changes to the volume and quality of wastewater discharges as a result of the intended new operations, or any other changes related to the slaughter of horses as opposed to cows. AR 236C-128.

127. Since the original issuance of DP-236 in 1982, VMC has repeatedly violated the terms and conditions of its discharge permit, WQCC rules, and other state and federal laws and regulations related to the operation of its facility. Olson Written Test. at 13.

128. On September 3, 1987, NMED's predecessor, the New Mexico Environmental Improvement Division, notified VMC that it failed to submit one and one-half years of monitoring information for June 1986, December 1986, and June 1987. AR 236C-42.

129. On January 8, 1992, the Bureau issued a Notice of Non-Compliance to VMC informing it that monitoring reports from 1990 and 1991 had not been submitted as required by VMC's permit and that this was a violation of Section 3-104 of the WQCC regulations (currently WQCC rule 20.6.2.3104 NMAC). AR 236M-7.

130. On August 24, 1995, the Bureau notified VMC that none of its required monitoring reports had been submitted for two years (since approval of renewal of the permit on March 19, 2003). Olson Written Test. at 13, Ex. 33; AR 236C-61.

131. On March 19, 2003, the Bureau issued a Letter of Non-Compliance to VMC notifying it of the following violations of the conditions of the September 8, 1998 permit renewal:

- a. Failure to submit yearly pumping manifests for 4 years, from 1999 – 2002, that should have confirmed whether VMC had pumped wastewater and solids from the septic tank twice per year.
- b. Failure to submit information on closure of the existing clay and manure lined lagoon.
- c. Failure to monitor water quality for March, June, September, and December of 1999; March, September, and December of 2000; June and December of 2001; and March, June, and December of 2002. The Bureau also noted that the monitoring reports that were submitted for 2001 and 2002 were incomplete.
- d. Failure to construct a synthetically lined impoundment within one year of the permit's issuance.
- e. Failure to submit semiannual wastewater sampling results for all of 1999 and for March 2000 and March 2002.
- f. Failure to submit semiannual metering discharge records for 4 years, from 1999–2002.



g. Failure to prepare and submit Land Application Data Sheets semi-annually for 4 years, from 1999 – 2002. AR 236C-71.

132. This ongoing lack of monitoring eliminated the ability to analyze the wastewater, and therefore eliminated the ability to determine if the local environment and the connected waterways were being endangered.

133. In a March 27, 2003 field inspection report of VMC by Bureau inspectors Kimberly Kirby, Karma Anderson, and David Mercer, NMED observed noted several drainage issues, namely that that the synthetic-lined lagoon had overflowed, effluent appeared to have flowed into the drainage area, potentially draining into the Pecos River, and the clay-lined lagoon still had not been closed out, all in violation of the Discharge Permit conditions in what the inspectors called a “a very bad situation.” AR 236C-72.

134. Shortly after the March 2003 inspection, the Bureau learned that VMC failed to install a functional flow meter that would provide required discharge volume information. AR 236C-74.

135. In 2003, Valley Meat’s engineering consultant alerted NMED that the company appeared to discharging in excess of the permitted 8,000 gpd limit. AR 236C-74.

136. On at least three site inspections, NMED documented that Valley Meat was discharging unknown volumes of unpermitted wastewater from its rendering operation of dead and downer cattle in an open-air barn. AR 236C-88, 236C-92, 236C-102.

137. Soon after VMC's 2004 permit renewal, Department staff performed an inspection and observed numerous violations of state law. Onsite, although Mr. De Los Santos assured the inspectors that he was no longer disposing of dead animals on his property, the inspectors quickly discovered that Mr. De Los Santos was continuing to bury dead animals buried on the property. Not only did the rotting carcasses threaten the shallow ground water and environment, but bones near the site for the second synthetically lined lagoon created a risk of a punctured liner of the lagoon, which could lead to a contaminated water table.

138. Additionally, the inspectors learned that VMC was rendering dead and non-ambulatory (downer) animals from nearby dairies, then discharging wastewater produced by this process into its lagoon – without approval for the extra discharge in its permit. VMC was also draining wastewater from the downers' holding pen into its lagoon, without obtaining approval from the Department for this new discharge. AR 246C-88. Mr. De Los Santos had been warned more than a year prior about burying dead animals on VMC's premises. AR 236C-72.

139. VMC was in violation of its 2004 discharge permit renewal for 16 months when it ignored the Department's mandatory deadline to monitor ground water contamination by installing two monitoring wells. AR 236C-87, Monitoring, Reporting, and Other Requirements #16; AR 236C-107.

140. As memorialized in a February 3, 2005 report, a field inspection conducted by Kimberly Kirby and Christina Kelso of NMED determined that construction on the second synthetically-lined lagoon had not even begun, even though under the 2004 permit renewal construction was to be completed by September 2004;

and that the unpermitted discharge from the rendering of dead and downer cattle continued unabated. AR 236C-69, Conditions for Approval #4; AR 236C-71, 236C-74, 236C-92.

141. In a November 9, 2005 field trip report, Ms. Kirby found that VMC was continuing to make unauthorized wastewater discharges from its rendering operations, a year-and-a-half after being advised that it needed to bring such discharges into compliance; noted pooling of blood and water on the side of the barn where the rendering took place; documented the reappearance of manure piles filled with animal parts and other waste; and observed wastewater overflow from the synthetically-lined lagoon where VMC had pushed up dirt berms around the perimeter of the lagoon to stop overflows. AR 236C-102.

142. As documented on February 7, 2006, VMC was 15 months past NMED's deadline in its construction of a synthetically lined lagoon to collect its toxic discharge, intended to protect against ground water contamination. AR 236C-108.

143. VMC, through the technical testimony of its witness Chet Wyant, has acknowledged the vital role that monitoring wells play in helping to detect leakage from the facility's wastewater lagoons or damage to the lagoon liners. Ashcraft Oral Test. at 69:138-18.

144. On January 23, 2009, USDA FSIS notified VMC that USDA FSIS was suspending the assignment of inspectors because VMC failed to meet food safety regulations as required by federal law. Olson Written Test. at 14, Ex. 36.

145. On May 7, 2010, NMED issued a Notice of Violation to VMC for failing to renew its permit and discharging without a permit since May 19, 2009. Olson Written Test. at 14, Ex. 35; AR 236C-109. Mr. De Los Santos and Valley Meat's intentional violation of the Water Quality Act continued for three solid years, during which De Los Santos operated a slaughterhouse without any discharge permit as required by 20.6.2.3106(F) NMAC.

146. On July 23, 2010, USDA FSIS again suspended inspections at VMC, for failure to sample for E. Coli, required by 9 CFR 310.25. Olson Ex. 37.

147. On February 24, 2012, USDA FSIS notified VMC that inspections were suspended a third time for a humane handling violation, specifically that VMC failed to stun a cow in four attempts. Olson Written Test. at 15, Ex. 38.

148. On August 2, 2012, the Department issued an Administrative Order Requiring Compliance and Assessing a Civil Penalty for failure to register a composting operation; for failing to properly dispose of solid waste, specifically thousands of cubic yards of material consisting of bones, hides, and heads mixed with manure; and for failing to properly compost offal based on the uncovered animal parts and whole carcasses dumped in compost piles. Each day of violation constituted a separate violation by VMC, and an \$86,400 fine was assessed for VMC's years of continued violations. Olson Written Test. at 15, Ex. 39.

149. According to a Department review of ground water monitoring submissions for DP-236 over a 10 year period from 1994 – 2003, VMC has not submitted the required monitoring results 53% of the time (17 missed sampling events out of 32 required). Olson Written Test. at 15, Ex. 4.

150. Valley Meat has continued this pattern of failing to submit monitoring reports more recently. A review of the monitoring reports submitted during the last ten years shows that Valley Meat has not submitted quarterly monitoring reports approximately half of the time. *See* Exhibit 1 to FRER/NMAGO/SRR Closing Argument.

151. In the period between June 3, 2000 and May 24, 2013, if each day is considered a separate violation as set out in the statutes, Valley Meat committed thousands of violations of New Mexico environmental laws. *Id.*

## **DISCUSSION**

### **DISCHARGE PERMIT “RENEWAL”**

VMC is proposing to open a horse slaughter facility at a site where previously there had been a cattle slaughter facility, but where no permitted activity has occurred for over four years. AR 236C-128, 236C-109. Although the parties and the Hearing Officer and even the caption on the pleadings refer to the “renewal” of DP-236, “renewal” is not an apt description of the permitting action contemplated here. VMC is essentially asking for a new discharge permit for its new operations. The Ground Water Quality Control Regulations do not contain any provision for the revival of an already expired discharge permit.

### **“WILLFUL DISREGARD” FOR ENVIRONMENTAL LAWS**

Valley Meat has violated both the Water Quality Act and the Solid Waste Act in numerous ways consistently for more than a decade. Both of these acts were adopted to protect the environment and public health, safety and welfare. VMC has continued its violations in spite of repeated requests, demands, and warnings from Department

personnel. Under the applicable New Mexico statute, Section 74-6-5(E), if an applicant for a wastewater discharge permit such as VMC has, in the ten years prior to submitting its application, acted in willful disregard of environmental laws, the application must be denied.

I recommend that the Secretary find “willful disregard” on the part of the Applicant—this is a mixed question of law and fact—and deny the permit.

“Willful disregard” is not defined in the Water Quality Act or the New Mexico statute on statutory construction. The definitions of “willful” in New Mexico case law provide guidance: “‘Willfully’ denotes the doing of an act without just cause or lawful excuse.” *State v. Rosaire*, 123 N.M. 701, 945 P.2d 66, 1997-NMSC-034; citing *State v. Masters*, 99 N.M. 58, 653 P.2d 889 (Ct. App. 1982). The conduct must suggest “intentional and substantial disregard... of duties and obligations...” *Chicharello v. Employment Security Division, NMDOL*, 122 N.M. 635, 930 P.2d 170, 1996-NMSC-077.

VMC and Mr. De Los Santos provided no testimony on what just cause or lawful excuse existed to violate the Water Quality Act and the Solid Waste Act so consistently over the ten years prior to submitting the permit application. Nor was there evidence that the violations were unintentional or inadvertent. The picture that forms when reviewing VMC’s compliance history is of a facility trying to operate in a regulated industry without much concern for regulations or regulators.

Two other reported opinions should be considered in considering whether VMC must be denied its permit; both involve permits issued by this Department. The first is *Pickett Ranch, LLC v. Ron Curry*, 140 N.M. 49, 139 P.3d 209, 2006-NMCA-082.

The Department issued a solid waste permit to the City of Tucumcari; an adjacent neighbor opposed the new landfill and appealed on several grounds, including an argument that the City had a poor history of compliance at its existing landfill. The Court upheld the permit, finding that although the record certainly included evidence of non-compliance, characterized as “average” by staff, no administrative compliance orders were issued and consistent correction of problems occurred over the years when notices of violation were sent.

Although Mr. Schoeppner testified that VMC’s compliance history was “not unique” among facilities with discharge permits, in addition to the enforcement efforts that the Ground Water Bureau endeavored to undertake, the Solid Waste Bureau was compelled to issue an administrative compliance order to VMC, and its corrective measures have not been complete or consistent over the years. Former Bureau Chief Mr. Olson’s characterizations of VMC’s history included “abysmal” and “extraordinarily poor.”

The document attached to FRER/NMAGO/SSR’s closing arguments, labeled as “Exhibit 1” reflects a fair summary of the historic and ongoing violations of New Mexico environmental laws by VMC. Although violations can be counted in different ways (see, e.g., footnote 2 of Exhibit 1), by counting each day of a violation as “one,” pursuant to express provisions in both the Water Quality Act and the Solid Waste Act, FRER/NMAGO/SSR counted more than 5,000 violations by VMC just in the ten years prior to the date of its most recent permit application, with some violations continuing to the present time.

The other case I would encourage the Secretary to review is *In re Final Order of Alta Vista Subdivision DP-1498*, 150 N.M. 694, 265 P.3d 745, 2011-NMCA-097.

Another discharge permit matter, addressing wastewater for a mobile home park in Taos, the Court's discussion speaks to the seriousness of the Department's mandate to deny ground water discharge permits where one of the bases under Section 74-6-5(E) is met, as well as to the calculation of the ten-year period.

VMC attempts in its arguments to shift negative focus to the Bureau for the expired permit in 2009 and the lack of regulatory contact between June 2011 and May 2013. The negative focus is misplaced. Both the regulations and VMC's 2004 discharge permit set out the clear requirement that VMC submit a timely permit renewal application. When the Bureau notified VMC that the permit had expired without such an application, a review of the correspondence from Bureau staff shows that they was careful not to indicate that the expired permit could be renewed, but rather demanded simply a "discharge permit application" so that VMC was no longer operating without a permit. And although regulatory contact should have continued between 2011-2013, VMC itself had decided without contacting the Bureau to change its operations and close the facility in April 2012 to switch to equine slaughter and processing.

#### OTHER ARGUMENTS MADE

FRER/NMAGO/SSR asserted a number of arguments in opposition to the issuance of the ground water discharge permit to VMC. My recommendation is based on the facility's compliance history and not other considerations raised during the hearing process.



Specifically, FRER/NMAGO/SSR seek several findings of fact and conclusions of law on potential human public health risks and undue risks to property posed by pharmaceuticals administered to horses, particularly racehorses.

Considering the totality of the evidence offered, weighing particularly testimony by Mr. Olson and Dr. Blach, and in the absence of pertinent standards adopted by the New Mexico Water Quality Control Commission, I decline to recommend those findings and conclusions.

FRER/NMAGO/SSR also seek several findings of fact and a conclusion of law concerning expected volume of discharge, and the difference between the volume of wastewater associated with horses versus cattle. I have included findings related to VMC's previous violations of the discharge volume limits, but the evidence on the point going forward that 8,000 gpd is insufficient to cover the scale of the slaughtering planned by VMC was conflicting and ambiguous, with numbers extrapolated from expressions of averages, studies of other animals and testimony from those without experience in horse slaughter. I decline to recommend those findings and the related conclusion.

FRER/NMAGO/SSR also seek several findings of fact and a conclusion of law concerning VMC's stated intention to pump and haul if a ground water discharge permit is not issued. See proposed FOF 119-123 and COL 31: "If Valley Meat seeks to pump and haul all of its wastewater offsite for final disposal, a discharge permit is still required pursuant to 20.6.2.3104 NMAC. Pumping and hauling does not void the permit requirements."

The question of whether pumping and hauling all wastewater from VMC requires a discharge permit is outside the scope of this hearing, and a matter for the Bureau to address in the event the company acts on its stated intention.

The draft permit before the Secretary does not contemplate pumping and hauling, and the company has not responded to the Bureau's requests for information on the topic. I decline to recommend those findings and the related conclusion.

### CONCLUSION

VMC's long history of avoiding regulation and those measures such as monitoring and reporting that are necessary for regulatory oversight indicates that VMC will not take sufficient measures to assure ground water protection, to properly dispose of offal, or to comply with its permit. In my opinion, this history rises to the level of "willful disregard" for the environmental laws of New Mexico and the discharge permit application should be denied.

If the Secretary concludes that VMC's compliance history does not rise to the level of "willful disregard" and the discharge permit is issued, I recommend that it be issued subject to the discharge permit conditions set out in the Bureau's testimony, and that the additional conditions recommended by Mr. Olson be considered as well.

### CONCLUSIONS OF LAW

The findings made and the discussion above lead to the following conclusions.

1. The Water Quality Control Commission (WQCC) is charged by the New Mexico Legislature, through the Water Quality Control Act (WQA), NMSA 1978, 74-6-1 (2013), *et. seq.*, to be the agency to prevent or abate water pollution in the state. NMSA 19788, §74-6-4 (D).

2. As part of this duty, the WQCC is responsible for developing and enacting water quality standards for both surface and ground waters of the state. NMSA 1978, §74-6-4 (C); *see also Phelps Dodge Tyrone, Inc. v. New Mexico Water Quality Control Comm'n (Phelps Dodge)*, 2006-NMCA-115, ¶ 16. The water quality standards are intended to protect, at minimum, the public's health and welfare, enhance the quality of the water and achieve the purposes of the WQA. NMSA 1978, §74-6-4 (C).

3. The WQCC and WQA require every person that conducts or proposes an activity that could lead to a discharge to the surface or ground water of the state, and is not specifically exempted, obtain a discharge permit from the Department. NMSA 1978, §74-6-5 (A); 20.6.2.1201.A NMAC (2013); *see also Phelps Dodge*, 2006-NMCA-115, ¶ 16. Discharge without a permit or discharge contrary to the WQA could subject the person or applicant to administrative enforcement actions or civil and criminal penalties in state district courts. NMSA 1978, §74-6-10, -10.1 and -10.2; 20.6.2.1220 NMAC.

4. The GWQB, upon submission of a notice of intent to discharge, will notify the applicant whether a permit is or is not required. 20.6.2.1201.D NMAC. Where the Department determines that a permit is required, the Department may require "submission of plans, specifications and [any] other relevant information that it deems necessary." NMSA 1978, §74-6-5 (C).

5. A "discharge permit" is a discharge plan that has been approved by the Department. 20.6.2.7.R NMAC. "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 ground water." 20.6.2.7.R NMAC.

6. The discharge permit application must outline, in general, the location of the facility, type of operation(s), quality and quantity of the wastewater, prior or existing ground water quality, plans, specifications, maps, and depth to ground water among other things. 20.6.2.3106.C NMAC; 20.6.2.3107 NMAC; 20.6.2.3109 NMAC.

7. No discharge permit may be issued for more than five (5) years. NMSA 1978, § 74-6-5 (H). If the applicant is renewing an existing permit, the applicant must first be in compliance with the WQA and submit an application for discharge permit renewal at least one hundred twenty (120) days before the permit expiration date. 20.6.2.3106.F NMAC.

8. By regulation, the WQCC has authorized the Secretary of the Department to determine whether or not to issue, issue with condition, or deny permits for ground water discharge based upon information submitted in a permit application and information received, if applicable, during a public hearing. NMSA 1978, §74-6-5; 20.6.2.3109 NMAC; *Phelps Dodge*, 2006-NMCA-115, ¶ 16.

9. Once the Department has deemed the application administratively complete the applicant is required within 30 days to provide public notice (PN-1) in accordance with 20.6.2.3108 NMAC. In addition to PN1, a second public notice is required. 20.6.2.3108 NMAC.

10. The Department must allow for public comment on any draft permit for no less than thirty (30) days. 20.6.2.3108.K NMAC. Where the Secretary determines there exists “substantial public interest,” a public hearing will be held. *Id.* The Secretary must then notify, in writing, all parties of the time, date, and location of the public hearing. *Id.* In

no event shall the hearing occur earlier than thirty (30) days from the written hearing determination notice. 20.6.2.3108.L NMAC.

11. If substantial public interest exists and a public hearing is to occur, the Secretary may appoint an impartial hearing officer to preside over the hearing. 20.6.2.3110 NMAC.

12. If appointed, the hearing officer will conduct the hearing in accordance with 20.6.2.3110 NMAC and 20.1.4 NMAC. A final report from the hearing officer is later presented to the Secretary for final action on the permit in accordance with 20.6.2.3110 NMAC. *Id.*

13. In making his or her decision, the Secretary must deny an application for a permit where:

“(1) the effluent would not meet applicable state or federal effluent regulations, standards of performance or limitations; (2) any provision of the WQA would be violated; (3) the discharge would cause or contribute to water contaminant levels in excess of any state or federal standard. Determination of the discharge's effect on ground water shall be measured at any place of withdrawal of water for present or reasonably foreseeable future use. Determination of the discharge's effect on surface waters shall be measured at the point of discharge; or (4) *the applicant has, within the ten years immediately preceding the date of submission of the permit application:* (a) knowingly misrepresented a material fact in an application for a permit; (b) refused or failed to disclose any information required under the Water Quality Act; (c) been convicted of a felony or other crime involving moral turpitude; (d) been convicted of a felony in any court for any crime defined by state or federal law as being a restraint of trade, price-fixing, bribery or fraud; (e) *exhibited a history of willful disregard for environmental laws of any state or the United States;* or (f) had an environmental permit revoked or permanently suspended for cause under any environmental laws of any state or the United States.”

NMSA 1978, §74-6-5 (E) (emphasis added).

14. VMC is a “person” as defined by the WQA. NMSA 1978, §74-6-2 (H). The facility’s proposed activities, livestock processing, generate a discharge which could potentially move directly or indirectly to ground water and thus requires a permit. NMSA 1978, §74-6-5; 20.6.2.3106.B NMAC.

15. VMC has proposed “renewal” of its ground water discharge permit, DP-236, pursuant to NMSA 1978, §74-6-5 and 20.6.2 NMAC. The facility’s last ground water discharge permit, issued on May 19, 2004, expired on May 19, 2009 because an application for renewal was not submitted in a timely manner, pursuant to Subsection F of 20.6.2.3106 NMAC.

16. VMC filed a discharge plan application on June 3, 2010, but the discharge plan renewal application was incomplete. The GWQB requested on several occasions additional information from the applicant necessary to complete its technical review of the discharge plan.

17. Although raised by many public commenters, Mr. De Los Santos’s prior criminal convictions are outside the scope of NMSA 1978, §74-6-5 (E) as too stale.

18. The GWQB, through their testimony and by the agreement and consent of VMC, has met their burden of persuasion for the additional conditions and terms included in the revised draft discharge permit in accordance with Paragraph (1) of Subsection A of 20.1.4.400. NMAC. If the discharge permit is issued, the discharge permit should be issued as proposed in GWQB Exhibit 9 with an additional condition for the testing of the solids settling tanks for leakage.

19. If the discharge permit is issued, the conditions imposed by GWQB are reasonable and are necessary to protect ground water quality.

20. The discharge permit should not be issued on the basis of the applicant's continued willful disregard of New Mexico's environmental laws.

21. VM failed to close out its clay and manure lined lagoon by 09/08/2000, as required by its 1998 discharge permit, and this failure constituted a violation of Section 74-6-5 NMSA 1978.

22. In 2004 and 2005, VM discharged water from rendering dairy byproducts into its lagoon, even though this was not a permitted discharge, in violation of Section 74-6-5(J)(5) NMSA 1978 and 20.6.2.3107(C) NMAC, and continued to do so even after NMED directed it to stop.

23. Valley Meat's Discharge Permit DP-236 expired on May 19, 2009, and the permit application that is the subject of this hearing is required to be processed as a new permit.

24. Between May 19, 2009, and April 2012, Valley Meat was in daily violation of the Water Quality Act and 20.6.2.3104 NMAC, which prohibits any person from causing or allowing effluent or leachate to discharge without a discharge permit.

25. Valley Meat has repeatedly and knowingly violated the basic permit monitoring requirements of each Discharge Permit and renewal that it has been issued since its first permit was approved in 1982 despite repeated notifications from NMED of these permit violations. This is a violation of 20.6.2.3104 NMAC, which requires that a permittee operate its facility consistent with the terms and conditions of its discharge permit.

26. Valley Meat operated an unauthorized rendering operation and discharged wastewater without a permit despite repeated notifications from NMED that a permit modification was required for the rendering operation discharges. This is a violation of 20.6.2.3104 NMAC which requires that no person shall cause or allow effluent or leachate to discharge without a discharge permit.

27. Valley Meat violated the Water Quality Act and the terms of its permit by failing to take specific steps to improve its lagoon system and close out its clay and manure-lined lagoon, which were conditions of its 1998 and 2004 permit renewals.

28. Valley Meat violated the Water Quality Act and 20.6.2.3104 NMAC, which prohibits any person from causing or allowing effluent or leachate to discharge without a discharge permit, when it discharged wastewater from the rendering of dairy cows without modifying its permit to cover the new discharge, even after being told to stop by NMED personnel.

29. For years, Valley Meat failed to register as a composting operation, in violation of New Mexico's Solid Waste Act, and ignored NMED's requirements that it cease its illegal composting operation, in willful disregard of New Mexico's Solid Waste Act.

30. For years, Valley Meat failed to properly dispose of solid waste, specifically thousands of cubic yards of material consisting of bones, hides, and heads mixed with manure, in violation of New Mexico's Solid Waste Act, ignored NMED's requirements that it stop dumping, piling, and burying animal carcasses and parts around its facility, in willful disregard of New Mexico's Solid Waste Act.



31. Based upon Valley Meat's history of willful disregard for environmental laws and regulations under the Water Quality Act and the Solid Waste Act, Valley Meat's application for Discharge Permit DP-236 is denied pursuant to Section 74-6-5(E)(4)(a) NMSA 1978.

**RECOMMENDED FINAL ORDER**

A Final Order consistent with the recommendation above is attached.

Respectfully submitted,



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FELICIA L. ORTH, Hearing Officer