



MICHELLE LUJAN GRISHAM  
GOVERNOR

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CABINET SECRETARY

## **NOTICE OF VIOLATION**

### **Certified Mail - Return Receipt Requested**

April 14, 2023

Jason Flores, Owner  
Dan Dee Dairy  
181 East Darby Road  
Dexter, NM 88230

**RE: Notice of Violation, Dan Dee Dairy, DP-533**

Dear Jason Flores:

On June 28, 2019, the New Mexico Environment Department (NMED) issued a Discharge Permit Renewal DP-533, (copy enclosed) to Jason Flores, pursuant to Section 20.6.2.3109 NMAC of the New Mexico Ground and Surface Water Protection Regulations. Section 20.6.2.3104 NMAC requires the permittee to comply with the terms and conditions of this Discharge Permit.

NMED has determined that the above referenced facility is operating in violation of the conditions of the Discharge Permit, the Water Quality Act (WQA), 20.6.2 NMAC, and the Supplemental Permitting Requirements for Dairies (Dairy Rule), 20.6.6 NMAC. Prompt action is required as described herein.

#### **A summary of the events resulting in the determination of violations at this facility follows.**

1. On December 9, 2019, NMED sent you a Notice of Non-Compliance (NONC) letter. In the letter, NMED informed you that you had not complied with Condition 1 in Section A101.F of the Discharge Permit, because you had not submitted a Corrective Action Plan (CAP) to NMED. The NONC letter stated that the CAP, intended to address an exceedance of groundwater standards of 20.6.2.3103 NMAC, must be submitted by January 8, 2020.
2. On December 22, 2022, NMED met Eric Conklin of Enviro-Ag Engineering at the Dan Dee Dairy and conducted a compliance inspection. During this inspection, NMED observed and documented that the unlined PWRS-2 contained both wastewater and manure solids. The nearest monitoring well to PWRS-2 is MW-1A which has shown an increase in nitrate-N concentrations from 32 to 170 mg/L from June 2021 through December 2022.

**The requirements of the Discharge Permit, resultant violation(s) and associated actions necessary to correct the violation(s) are identified below.**

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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/](http://www.env.nm.gov/gwqb/)

- With regards to the Corrective Action Plan:
  - a. **Requirement 1:** Both Condition 1 in Section A101.F of the Discharge Permit and the December 9, 2019 NONC letter require the submittal of a Corrective Action Plan to address exceedances of groundwater standards.
  - b. **Violation 1:** As of the date of this letter, NMED has not received your corrective action plan, and concentrations of nitrate-N have increased drastically in MW-1A.
  - c. **Necessary Action 1:** Submit a corrective action plan within 30 days of this letter (**by May 14, 2023**).
- With regards to PWRS-2 (manure):
  - a. **Requirement 2:** Part 20.6.6.30(2) NMAC requires removal of solids prior to closure and 20.6.6.17.C(3) requires removal of manure solids before impoundment improvements such as relining. Additionally, Table B2.d of the Discharge Permit required all manure solids to be removed from PWRS-2 by July 28, 2019.
  - b. **Violation 2:** As of December 22, 2022, you have not completely removed manure solids from PWRS-2. This inaction may be impacting groundwater quality, as demonstrated by the increasing nitrate-N concentrations in MW-1A.
  - c. **Necessary Action 2:** Remove solids from PWRS-2 in a manner consistent with the requirements listed above within **30** days of the date of this letter (**by May 14, 2023**).
- With regards to PWRS-2 (liner):
  - a. **Requirement 3:** As listed in the Discharge Permit A104.C.1.b, B100.A.2.c and Table B2.c), PWRS-2 was required to have a synthetic liner installed before use.
  - b. **Violation 3:** As of December 22, 2022, wastewater was being stored in PWRS-2 without the installation of a synthetic liner. This activity may be impacting groundwater quality by contributing to the increasing nitrate-N concentrations in MW-1A.
  - c. **Necessary Action:** In accordance with 20.6.6.30(2), remove all wastewater from PWRS-2 within 30 days of the date of this letter (**by May 14, 2023**).

Additionally, the Discharge Permit authorized the use of PWRS-2 contingent upon the installation of a synthetic liner or allowed the closure of PWRS-2. Due to the significant increases in nitrate-N in MW-1A that is likely from the wastewater and solids in PWRS-2, subsurface soil investigation must occur **BEFORE** PWRS-2 can be closed or synthetically lined. Within 60 days of the date of this letter (**by May 14, 2023**) a plan must be submitted to investigate the extent of subsurface soil contamination underneath PWRS-2.

Pursuant to WQA § 74-6-5, NMED has authority to terminate or modify the Discharge Permit prior to its date of expiration.

Additionally, NMED may issue a compliance order that assesses a civil penalty pursuant to WQA § 74-6-10, if you fail to comply with this Notice of Violation. NMED may assess civil penalties for up to \$15,000 per day for each violation of the WQA § 74-6-5, any regulation promulgated

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pursuant to that section or any permit issued pursuant to that section. NMED may also assess civil penalties for up to \$10,000 per day for each violation of any other provision of the WQA, or any regulation, standard, or order adopted pursuant to such other provision.

NMED may commence an action in district court for appropriate relief, including injunctive relief, as an alternative to the remedies described above.

Nothing in this letter shall be construed to relieve you of the obligation to comply with all requirements of the Discharge Permit, 20.6.2 NMAC, the WQA, the Dairy Rule, and other applicable federal, state, and local laws, regulations, permits or orders. This letter is intended to obtain voluntary compliance in addressing violations of certain requirements of the Discharge Permit and may not address all violations. It is your responsibility to be familiar with and comply with the Discharge Permit.

Pursuant to the NMED Delegation Order dated March 24, 2023, the Cabinet Secretary has delegated the authority to sign a Notice of Violation under the New Mexico Water Quality Act to the Chief of the Ground Water Quality Bureau. If you have any questions regarding this matter, please contact Jaben Richards at 505-660-8376 / [Jaben.richards@env.nm.gov](mailto:Jaben.richards@env.nm.gov) or [acs.general@env.nm.gov](mailto:acs.general@env.nm.gov).

Sincerely,

Justin Ball, Chief  
Ground Water Quality Bureau

JDB:jr

cc: John Rhoderick, Division Director, Water Protection Division (electronic copy)  
Michael Kesler, District Manager, NMED District III (electronic copy)  
Eric Conklin, Enviro-Ag Engineering, [econklin@enviroag.com](mailto:econklin@enviroag.com) (electronic copy)  
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