

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

IN THE MATTER OF:)	
)	
PETITION FOR REQUEST FOR)	
ALTERNATIVE ABATEMNET STANDARDS)	NO. WQCC 22-45 (A)
FROM REGULATIONS 20.6.2 NMAC,)	
LOT 5B, VENADA PLAZA, BERNALILLO)	
SANDOVAL COUNTY, NEW MEXCIO)	

**NEW MEXICO ENVIRONMENT DEPARTMENT'S
RESPONSE TO PETITION FOR ALTERNATIVE ABATEMENT STANDARDS**

Pursuant to the Water Quality Control Commission's ("Commission's") abatement regulations at 20.6.2.4103 NMAC, and the Commission's Adjudicatory Procedures at 20.1.3.300(A)(3) NMAC, the New Mexico Environment Department ("Department") hereby submits its response to the Petition for Alternative Abatement Standards (“AAS”) Lot 5B, Venada Plaza, Bernalillo, Sandoval County, New Mexico ("2022 Petition") that Vital Holding LLC ("Petitioner") filed on September 16, 2022. The 2022 Petition requests to correct an error in the deed restriction that limits Lot 5B, Venada Plaza (“Lot 5B”) to commercial zoning requirements related to the 2016 Petition for AAS (“2016 Petition”, see attachment 3 of the 2022 Petition) for the former Price’s Valley Gold Dairy (“FPVGD”), which the Commission granted by Final Order on October 14, 2016 (“2016 Order”, attached as Exhibit 1). The Department supports and recommends that the Commission grant the 2022 Petition.

I. BACKGROUND

FPVGD and its predecessor, Ridge Dairy, operated a dairy on property located on the east side of New Mexico Highway 528 in Bernalillo (the "Property") from 1960 through 1998. In 1986, FPVGD applied for a discharge permit, and the Department’s Ground Water Quality Bureau

("Bureau") approved and issued DP-437 in July 1987. Dairy operations ceased in 1998 and the Property was cleared of all structures by 2006. The majority of the Property has been sold and redeveloped into various lots that contain numerous commercial businesses.

In connection with the closure of dairy operations on the Property, soil and groundwater samples were collected, which revealed exceedances of groundwater quality standards and soil contamination on portions of the Property at the time of closure. In 2006, DP-437 was terminated and investigation and remediation of the site has since proceeded under the WQCC's abatement regulations, sections 20.6.2.4000 through 20.6.2.4115 NMAC. Environmental site conditions have been fully characterized and Stage 1 of abatement characterization has been completed. Two interim abatement actions approved by the Bureau have been performed at the site: in situ denitrification was performed in 2008, and a groundwater extraction and discharge system was operated from October 2013 until July 2015 in accordance with the stage 2 abatement plan. These abatement actions failed to achieve standards, and monitoring wells in the Valley Fill Aquifer (VFA) continued to show groundwater impacts by nitrate, chloride, and total dissolved solids (TDS).

In April 2016, D&G Price Limited Partnership submitted a petition for AAS that proposed setting standards at the Property to 220 mg/L for nitrate, 350 mg/L for chloride, and 3,310 mg/L for TDS. On October 14, 2016, the Commission filed the 2016 Order that set forth requirements for institutional controls to prohibit use of the VFA as a potable water supply source. In January 2017, the Department acknowledged completion of abatement for the VFA pursuant to 20.6.2.4112 NMAC (Exhibit 2).

In May 2022, the Petitioner purchased Lot 5B and submitted plans for commercial development to the Town of Bernalillo, which were rejected. The Town of Bernalillo informed the

Petitioner that the draft long-term Comprehensive Plan proposed a zoning change limiting Lot 5B to high density residential. The Town of Bernalillo approved the Comprehensive Plan on June 13, 2022 (see attachment 4 of the 2022 Petition). Given the non-residential purpose deed restriction, the adoption of the Comprehensive Plan designating Lot 5B as high-density residential rendered the property undevelopable.

In hopes that the Commission will approve the modification of the non-residential purpose deed restriction, Petitioner has prepared a plan for high density residential development that will minimize surface water runoff infiltration through engineered controls to mitigate potential adverse effects to the VFA beneath Lot 5B that may alter the approved alternative abatement standards for nitrate, chloride, and TDS concentrations. In addition, stormwater discharges at Lot 5B shall comply with the Southern Sandoval County Arroyo Flood Control Agency (SSCAFCA) Municipal Separate Storm Sewer System (MS4) Permit, which has regulatory oversight through the Department's Surface Water Quality Bureau.

II. STANDARD FOR GRANTING ALTERNATIVE ABATEMENT STANDARDS

Alternative abatement standards fall within the Commission's authority to grant a variance from any requirement of the water quality regulations. Specifically, the Commission:

[M]ay grant an individual variance from any regulation of the commission whenever it is found that compliance with the regulation will impose an unreasonable burden upon any lawful business, occupation or activity. The commission may only grant a variance conditioned upon a person effecting a particular abatement of water pollution within a reasonable period of time. Any variance shall be granted for the period of time specified by the commission. The commission shall adopt regulations specifying the procedure under which variances may be sought, which regulations shall provide for the holding of a public hearing before any variance may be granted.

NMSA 1978, § 74-6-4(H) (2019).

The Commission's abatement regulations provide that a responsible person may submit a petition for approval of an AAS any time after submission of a Stage 2 abatement plan. The Commission may approve the AAS if the petitioner demonstrates the following:

- (a) at least one of the criteria set forth in Paragraph 1 of Subsection E of this Section has been met;
- (b) the proposed alternative abatement standard is technically achievable and cost benefit justifiable; and
- (c) compliance with the proposed alternative abatement standard will not create a present or future hazard to public health or undue damage to property.

20.6.2.4103(E)(3) NMAC.

An AAS petition must provide the information required under Subsection 20.6.2.4103(E)(2) of the abatement regulations, as well as that required for variance petitions under Subsection 20.6.2.1210(A) NMAC, which requires that the petition:

- (1) state the petitioner's name and address;
- (2) state the date of the petition;
- (3) describe the facility or activity for which the variance is sought;
- (4) state the address or description of the property upon which the facility is located;
- (5) describe the water body or watercourse affected by the discharge for which the variance is sought and provide information on uses of water that may be affected;
- (6) identify the regulation of the commission from which the variance is sought;
- (7) state in detail the extent to which the petitioner wishes to vary from the regulation;
- (8) state why the petitioner believes that compliance with the regulation will impose an unreasonable burden upon his activity; and

- (9) state in detail how any water pollution above standards will be abated; and
- (10) state the period of time for which the variance is desired including all reasons, data, reports and any other information demonstrating that such time period is justified and reasonable.

Under the Commission's Adjudicatory Procedures, the Department must review a petition for variance within sixty days after receipt and file a recommendation with the Commission to grant, grant with conditions, or deny the petition. 20.1.3.18.A(3) NMAC. If the Department recommends granting the petition, the Commission must hold a public hearing on whether to grant the AAS pursuant to 20.6.2.4103(E)(4) NMAC.

III. DEPARTMENT'S RECOMMENDATION

The Department supports the Petition and recommends its approval. The modification of the deed restriction as requested in this Petition will not alter the Commission's 2016 requirements concerning the VFA. In addition, the Petitioner has asserted that the property will be developed to minimize surface water runoff infiltration through engineered controls and will manage storm water runoff in accordance with the SSCAFCA MS4 Permit. By implementing the engineered controls and adhering to the requirements of SSCAFCA MS4 permit, the Department is confident that the Petitioner will prevent the alteration of groundwater conditions in the VFA beneath Lot 5B in compliance with the Commission's 2016 Final Order.

IV. REASONS

The Petition sets forth all the required information under 20.6.2.1210(A) NMAC (variance petitions) and 20.6.2.4103(E)(2) NMAC (alternate abatement standard petitions). The Department finds that Petitioner has demonstrated that modification of the deed restriction to allow for high-

density residential development will not adversely impact the Commission's 2016 AAS requirements. NMED recommends approval of this AAS in perpetuity.

V. CONCLUSION

For the foregoing reasons, the Department recommends that the Commission approve the AAS request.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT

Lisa Chai

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Response to the Petition for Alternative Abatement Standards was filed with the Office of Public Facilitation and was served on the following parties of record on November 17, 2022, by certified mail:

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**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**



**IN THE MATTER OF THE PETITION
FOR ALTERNATIVE ABATEMENT STANDARDS
FORMER PRICE'S VALLEY GOLD NORTH DAIRY,
BERNALILLO, SANDOVAL COUNTY, NEW MEXICO**

WQCC 16-02(A)

D&G Price Limited Partnership,

Petitioner

**DECISION AND ORDER GRANTING
ALTERNATIVE ABATEMENT STANDARDS**

This matter comes before the New Mexico Water Quality Control Commission ("WQCC" or "Commission") upon the Petition for Alternative Abatement Standards Former Price's Valley Gold North Dairy Bernalillo, Sandoval County, New Mexico ("Petition") filed by D&G Price Limited Partnership ("Petitioner") on April 28, 2016. A public hearing in this matter was held before the Commission on September 13, 2016. The Commission heard all evidence, deliberated, and voted to approve the Petition for the reasons set forth below.

FINDINGS OF FACT

I. Procedural Findings

1. Pursuant to the Commission's Regulations at 20.6.2 NMAC, the New Mexico Environment Department ("NMED" or "Department") issued ground water discharge permit DP-437 for Price's Valley Gold North Dairy ("PVGND") in 1987. Dairy operations ceased in 1998 and DP-437 was terminated in 2006. *See* Former Price's Valley Gold Dairy Bernalillo, Sandoval County, New Mexico Dairy's Statement of Intent to Present Technical Testimony ("PVGND Statement of Intent"), at 3; Testimony of Ali Furmall, NMED Exhibit 1, at 3.

2. On April 28, 2016, Petitioner submitted the Petition to the Commission requesting approval of alternative abatement standards for three contaminants within the Valley Fill Aquifer. *See* Petition at 5-6.

3. On May 10, 2016, the Department and Petitioner appeared before the Commission during its regular meeting to request a hearing on the Petition, with the Department indicating its intent to support the Petition. The Commission determined that a public hearing would be held on the Petition, and authorized the Chair to appoint a Hearing Officer to schedule the hearing and serve as Hearing Officer pursuant to 20.1.3.10.B NMAC. The Chair appointed Jeffrey N. Holappa, Administrative Law Judge for the New Mexico Environment Department, to serve as Hearing Officer on May 12, 2016.

4. On June 16, 2016, the Department filed its Response to the Petition, in accordance with 20.1.3.18.A(3) NMAC, recommending that the requested alternative abatement standards be granted.

5. On August 11, 2016, the Hearing Officer issued a Scheduling Order pursuant to 20.1.3.18.C(2) and 20.1.3.16.B(2) NMAC, setting the hearing for the Commission's regular meeting on September 13, 2016.

6. Public notice of the hearing on the Petition, which notice expressly included the proposal for well restrictions to be issued by the State Engineer, was published and provided to interested persons as required by 20.1.3.18.C(2) and 20.1.3.16.C NMAC.

7. The Department and Petitioner filed statements of intent to present technical testimony during the public hearing. No other party filed a statement of intent.

8. A public hearing was held before the Commission on September 13, 2016 in Santa Fe, New Mexico, in accordance with the applicable procedures set forth in 20.1.3

NMAC. At the hearing, all persons were provided a reasonable opportunity to present evidence to the Commission and to conduct cross examination.

II. Substantive Findings

A. Background

1. The former PVGND property is located on the east side of New Mexico Highway 528 in Bernalillo, New Mexico. The northern portion of the original dairy has been closed and is occupied by Walmart and other commercial businesses. *See* Petition, Figure 1. The portion of the property subject to the Petition, depicted as Lot 5-B in the Petition at Figure 2, is comprised of approximately 7.4 acres located north of Venada Arroyo and near the intersection of Spanish Bluff Street and Venada Plaza Drive, as shown on the Venada Plaza Plat, Section 36, Township 13N, Range 3E. *See* NMED Exhibit 1, at 2; Pre-Filed Testimony of Jay Snyder (“Snyder Testimony”), at 3.

2. In connection with the closure of dairy operations on the Property, investigations and studies were performed which indicated that groundwater standards were exceeded and soil was contaminated on portions of the Property at the time of closure. *See* NMED Exhibit 1, at 3.

3. In 2006, DP-437 was terminated and investigation and remediation of the site has since proceeded under the WQCC’s abatement regulations, sections 20.6.2.4000 through 20.5.2.4116 NMAC. Environmental site conditions have been fully characterized and the Stage 1 Abatement Plan has been completed. The site is currently in Stage 2 Abatement and is in Long Term Monitoring. *See id.*

4. Two interim abatement actions approved by the Department have been performed at the site: in situ denitrification was performed in 2008, and a groundwater

extraction and discharge system was operated from October 2013 until July 2015. These abatement actions failed to achieve standards, and monitoring wells in the Valley Fill Aquifer continue to show groundwater is impacted by nitrogen, chloride, and total dissolved solids ("TDS"). *See* NMED Exhibit 1, at 3; Synder Testimony at 5-4.

5. The Valley Fill Aquifer is a perched aquifer of limited extent that is hydrologically separate from the Upper Santa Fe Aquifer. While there is some communication between the VFA and the water flowing through the Rio Grande alluvial aquifer, it is not sufficient to move the contamination out of the VFA and into the river. Thus, the contaminated plume is essentially stranded within the VFA. *See* Tr. 58:18 – 63:25; Tr. 81:8.

6. New Mexico's relevant numerical ground water quality standards set forth in 20.6.2.3103 NMAC are: 10.0 mg/l for nitrate, 250.0 mg/l for chloride, and 1000.0 mg/l for TDS. *See* Snyder Testimony at 6.

7. Petitioner has proposed alternative abatement standards ("AAS") for the property of 220 mg/L for nitrate, 350 mg/L for chloride, and 3,310 mg/L for TDS. *See* NMED Exhibit 1, at 4, 10.

8. The AAS are requested in perpetuity to facilitate site closure and development, with institutional controls proposed, including a deed restriction and domestic well restrictions issued by the Office of the State Engineer, to ensure that the VFA is not used as a potable water supply in the future. *See* Petition at 7; Tr 48:20 – 51:10; Tr. 78:3 – 82:9, NMED Exhibit 1, at 7-9.

B. Process and Requirements

9. Alternative abatement standards fall within the Commission's authority to grant a variance from any requirement of the water quality regulations, pursuant to Section 74-6-4(H) of the Water Quality Act.

10. Section 20.6.2.4103.F(1) of the Commission's abatement regulations provides that a responsible person may submit a petition for approval of AAS any time after submission of a Stage 2 abatement plan.

11. Petitioner has completed the Stage 2 abatement process. *See Snyder Testimony at 4; NMED Exhibit 1, at 3.*

12. Pursuant to 20.6.2.4103.F(2), a petition for AAS must identify the water contaminants for which alternative standards are proposed.

13. Pursuant to 20.6.2.4103.F(2), a petition for AAS must identify the alternative standards proposed.

14. Pursuant to 20.6.2.4103.F(2), a petition for AAS must identify the three-dimensional body of water pollution for which approval is sought.

15. Pursuant to 20.6.2.4103.F(1)(a) NMAC, a petitioner for AAS must demonstrate that compliance with the abatement standards in 20.6.2.4103.A is not feasible, by the maximum use of technology within the economic capability of the responsible person, or that there is no reasonable relationship between the economic and social costs and benefits (including attainment of the standards set forth in Section 20.6.2.4103 NMAC) to be obtained.

16. Pursuant to 20.6.2.4103.F(1)(b) NMAC, a petitioner for AAS must demonstrate that the proposed alternative standards are technically achievable and cost-benefit justifiable.

17. Pursuant to 20.6.2.4103.F(1)(c) NMAC, a petitioner for AAS must demonstrate that compliance with the proposed alternative standards will not create a present or future hazard to public health or undue damage to property.

18. A “hazard to public health” exists when water which is used or is reasonably expected to be used in the future as a human drinking water supply exceeds at the time and place of such use, one or more of the numerical standards of Subsection A of 20.6.2.3103 NMAC, or the naturally occurring concentrations, whichever is higher, of any toxic pollutant affecting human health is present in the water. *See* 20.6.2.7.AA NMAC.

19. The Water Quality Act provides that the Commission may grant a variance from a regulation of the Commission for a period of time specified by the Commission. *See* NMSA 1978, § 74-6-4(H) (as amended through 2009).

20. Pursuant to 20.6.2.4103.F(2), a petitioner for AAS must specify the information required for variance petitions under Subsection 20.6.2.1210.A NMAC, including, among other requirements, the period of time for which the variance is requested.

C. Requirements Met – 20.6.2.4103.F(1)(a)

21. The Petitioner has demonstrated that compliance with the abatement standards in 20.6.2.4103.B is not feasible, pursuant to 20.6.2.4103.F(1)(a) NMAC. Several decades of natural attenuation and two engineered cleanup actions – in situ denitrification and groundwater pumping and discharge – have not reduced contaminant concentrations in groundwater in the VFA to the 20.6.2.3103 NMAC standards. After cessation of groundwater pumping, concentrations have reverted to pre-abatement levels in select wells in areas where the VFA thins and is difficult to hydraulically stress (due to low transmissivity related to minimal aquifer thickness). The VFA is stagnant and perched, and the lack of both

groundwater flow-through with attendant dispersion and intrinsic denitrification renders it very difficult to reduce concentrations. *See* NMED Exhibit 1, at 5-7; Snyder Testimony at 8-9.

22. Petitioner has also demonstrated that there is no reasonable relationship between the costs and benefits of continuing abatement and the social costs and benefits of doing so. Because of the nature of the Valley Fill Aquifer, as discussed previously, it is likely that no abatement effort at any cost will achieve Section 3103 standards. *See* NMED Exhibit 1, at 7; Snyder Testimony, at 10.

23. Petitioner has proposed the following institutional and government controls to prevent future use of the Valley Fill Aquifer as a source of potable water in order to mitigate social costs from the proposed AAS:

- a. Petitioner will record a deed restriction in the Sandoval County real property records prohibiting construction of wells in the Valley Fill Aquifer on that portion subject to the AAS. The deed notice will provide owners, operators, prospective buyers, and others with notice and information regarding the groundwater condition in the Valley Fill Aquifer. The deep regional Upper Santa Fe Group Aquifer can still be used for water supply on the Property. A copy of the deed notice is included as Appendix G to the Petition.
- b. The Department will petition the New Mexico State Engineer under State Engineer regulation 19.27.5.13.A to issue an Order prohibiting construction of a well in the affected water-bearing zone of the Valley Fill Aquifer, Lot 5-B and contiguous portions of Venada Plaza Drive. The State Engineer has the

required information and will issue the Order upon the Department's formal request.

See NMED Exhibit 1, at 7-8; NMED Exhibit 4.

24. Additionally, the following ordinances and rules further ensure that water from the Valley Fill Aquifer will not be used as source of potable water:

- a. The Town of Bernalillo Water Use and Water Rate Ordinance, Ordinance 81, Article 4, Section 11 provides "At such time as a public water main becomes available within two hundred (200) feet of a property line served by a private water well, a direct connection shall be made to the public water system in compliance with this Ordinance, within 90 days." Water and sewer lines have been installed along existing streets in the Venada Plaza Development. *See* Petition, Appendix G. Thus, under the above ordinance, city water supply will be provided to all buildings on the Property.
- b. The New Mexico State Engineer's regulations at 19.27.4 NMAC contain provisions that prevent construction of a water supply well in contaminated groundwater. *See* 19.27.4.29 NMAC (requiring wells to be constructed to prevent contamination, inter-aquifer exchange of water, flood water contamination of aquifer, and infiltration of surface water); 19.27.4.29.D NMAC (requiring that all wells be set back from potential sources of contamination in accordance with NMED regulations and other applicable ordinances and regulations); 19.27.4.30.A NMAC (requiring annular seals when necessary to prevent flow of contaminated or low quality water); 19.27.4.30.A(4) NMAC (requiring annulus sealing and proper screening in

wells which encounter non-potable, contaminated, or polluted water at any depth to prevent commingling of such water with any potable or uncontaminated water).

See NMED Exhibit 1, at 8-9.

25. With the above institutional and government controls and requirements in place to prevent ingestion of groundwater in the Valley Fill Aquifer, the proposed AAS will allow the Department to close out abatement so that the Property can be fully redeveloped. Without the AAS, the Property will remain idle. Therefore, the economic and social benefits of the proposed AAS (which include the above-described institutional and government controls), outweigh the benefits of continuing abatement which is unlikely to achieve 3103 standards. *See* Snyder Testimony, at 9-10.

D. Requirements Met – 20.6.2.4103.F(1)(b)

26. Petitioner has demonstrated that the proposed AAS have been achieved, and their approval will allow immediate submission of an Abatement Completion Report and termination of abatement. *See* NMED Exhibit 1, at 9.

27. The cost of submission of the Abatement Completion Report is negligible relative to what has been spent on abatement activities up to this point. *See id.*

28. Approval of the AAS will allow development to be completed on the Property, which presently lies in a partial state of development, thereby benefitting the Town of Bernalillo. *See id.*

29. Petitioner has therefore demonstrated that the proposed AAS are technically achievable and cost-benefit justifiable.

E. Requirements Met – 20.6.2.4103.F(1)(c)

30. The institutional and government controls outlined above will prevent human exposure to or ingestion of the nitrate impacted groundwater of the Valley Fill Aquifer, rendering the AAS protective of public health. *See* NMED Exhibit 1, at 9-10.

31. Chloride and TDS are not Section 3103.A contaminants and do not present a human health concern. *See* NMED Exhibit 1, at 10.

32. The proposed AAS will free the Property for completion of development, and thus will not cause undue harm thereto. *See id.*

33. Petitioner has therefore demonstrated that the proposed AAS will not create a hazard to public health or undue damage to property.

F. Requirements Met - Other

34. Perpetuity is a reasonable period of time for the variance in this case due to the technical infeasibility of conducting further abatement, the controls that will be in place to prevent hazards to public health, and the need to close out abatement so that the property can be economically developed. *See* Tr. 81:24 – 82:9; NMED Exhibit 1, at 7-9; Snyder Testimony, at 9-10.

35. Petitioner has met the requirements of 20.6.2.4103.F(2) by: identifying the information required by Subsection 20.6.2.1210.A; identifying the contaminants for which alternative standards are proposed; identifying the three-dimensional body of water pollution for which the alternative abatement standards are sought; and identifying the extent to which the standards of 20.6.2.4103 are now, and will be in the future, violated. *See* NMED Exhibit 1, at 10; Snyder Testimony, at 6-7.

Conclusions of Law

1. The Commission has jurisdiction to hear and decide this matter pursuant to NMSA 1978, § 74-6-4 (2009), 20.1.3 NMAC, and 20.6.2.4103 NMAC.
2. The Commission has jurisdiction over Petitioner and the former PVGND site pursuant to the Water Quality Act, NMSA 1978, §§ 74-6-1 through -17, 20.1.3 NMAC, and 20.6.2 NMAC.
3. The Commission may take action to accept, modify, or deny Petitioner's petition for alternative abatement standards.
4. Petitioner has met all applicable requirements for the granting of alternative abatement standards in 20.1.3, 20.6.2.1210.A, and 20.6.2.4103.F NMAC.
5. The numerical values proposed in the Petition for the proposed alternative abatement standards are supported by substantial evidence in the record.
6. Approval of the proposed alternative abatement standards in perpetuity is supported by substantial evidence in the record.

ORDER

Based upon these Findings of Fact and Conclusions of Law, a quorum of the Commission renders the following decision and order:

IT IS THEREFORE ORDERED that:

1. The Commission approves alternative abatement standards for the Valley Fill Aquifer as identified in NMED Exhibit 3.

2. The alternative abatement standards are as follows:

Contaminant	Standard
Nitrate	220 mg/l
Chloride	350 mg/l
TDS	3,310 mg/l

3. The alternative abatement standards are granted in perpetuity.

4. As soon as practicable upon issuance of this Order, Petitioner and the Department shall take the necessary steps to implement the institutional controls proposed in the Petition, namely, the deed restriction and the State Engineer well restriction order.

10-14-16

Date



Larry Dominguez, Chair

Water Quality Control Commission

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **Decision and Order Granting Alternative Abatement Standards** was sent via the stated methods below to the following parties on October 14, 2016:

Hand Delivery and email:

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Pam Castañeda, Commission Administrator



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BUTCH TONGATE
Cabinet Secretary - Designate

J.C. BORREGO
Deputy Secretary

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

January 31, 2017

Mr. John Price
D&G Price Limited
2608 Teodoro Road NW
Albuquerque, New Mexico 87107

**RE: Approval of Abatement Plan Completion Report for the Former Price's Valley Gold
North Dairy Valley Fill Aquifer, Bernalillo, New Mexico**

Dear Mr. Price:

The New Mexico Environment Department (NMED) hereby approves the Abatement Completion Report and Workplan for Valley Fill Aquifer (VFA) Well Plugging and Abandonment submitted by EA Engineering, Science, and Technology on October 20 and December 16, 2016 for the site referenced above. The site is located on the east side of NM-528 in Bernalillo, New Mexico as depicted in the enclosed figure. This approval is made by NMED pursuant to Section 4112 of the New Mexico Ground and Surface Water Protection Regulations (20.6.2 NMAC).

Groundwater in two aquifers, the VFA and the Upper Santa Fe (USF), at this site was impacted due to discharges from a dairy that operated from 1960 to 1998. In connection with the closure of dairy operations on the property, D & G Price Limited (D&GP) conducted investigations and studies that indicated that contaminants in groundwater and soil exceeded applicable standards and screening levels on portions of the property. The impacts included nitrate, chloride, and total dissolved solids (TDS) concentrations above the New Mexico groundwater standards listed in 20.6.2.3103 NMAC. Beginning in 1997, D&GP conducted several investigations to assess groundwater impacts and develop abatement plans. D&GP characterized the magnitude and extent of impacts and completed a Stage 1 Abatement Plan. At this site, depth to groundwater ranges from 33 to 53.5 feet in the VFA.

In addition, D&GP conducted two interim abatement actions at the site. The first abatement action was enhanced in situ denitrification in 2008. Sodium acetate and sucrose were introduced into groundwater through a line of injection wells. Although nitrate concentrations decreased in two wells after the injection, they rebounded between 2010 and 2012. The in situ augmentation did not affect chloride or TDS concentrations.

In August 2013, NMED and D&GP entered into a Settlement Agreement (Agreement). In accordance with the terms of the Agreement, D&GP conducted groundwater pumping and discharge from October 2013 to July 2015 to remove one pore volume (14.6 million gallons) from the VFA. Concentrations of nitrate, chloride, and TDS remained above New Mexico groundwater standards in several wells. D&GP submitted a petition for Alternative Abatement Standards (AAS) of 220 mg/L for nitrate, 350 mg/L for chloride, and 3,310 mg/L for TDS on May 4, 2016. NMED supported the AAS petition and the Water Quality Control Commission (WQCC) approved it in a Decision and Order issued October, 14, 2016. A notice of the AAS will be filed on the deed with the Sandoval County Clerk and NMED has requested that the New Mexico Office of the State Engineer issue an order prohibiting drilling new water wells within the VFA on the property.

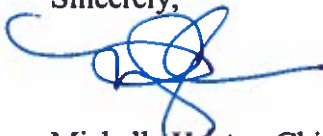
The AAS apply exclusively to concentrations in the VFA and this letter constitutes a partial termination of the Abatement Plan. Concentrations of nitrate in MW-11R in the USF aquifer remain above New Mexico groundwater standards and abatement activities will continue until standards are met.

In order to terminate the Abatement Plan for the VFA at this site, NMED requires that D&GP properly plug and abandon the VFA monitoring wells. Please send proof of this plugging and abandonment to NMED within 90 days of receipt of this letter.

Please be advised that this NMED approval does not relieve D&GP of its responsibility if the plan failed to adequately assess and remediate the extent of contamination at this site. If additional information becomes available indicating that past corrective and abatement actions were inadequate, further efforts may be required in the future. In addition, NMED approval does not relieve D&GP of its responsibility for compliance with any other federal, state or local laws and regulations.

If you have any questions, please contact Justin Ball, State Cleanup Program Team Leader, at (505) 222-9522 or Ali Furmall, Program Manager, at (505) 827-0078. Thank you for your cooperation in this matter.

Sincerely,



Michelle Hunter, Chief
Ground Water Quality Bureau

Enclosure: VFA Boundary Figure

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