

STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF ENVIRONMENT



**IN THE MATTER OF THE APPLICATION  
OF RUCH DAIRY (FORMERLY K & B DAIRY)  
FOR GROUND WATER DISCHARGE PERMIT  
RENEWAL AND MODIFICATION (DP-699)**

**No. GWB 10-25 (P)**

**FINAL ORDER**

This matter comes before the Secretary of Environment following a hearing before the Hearing Officer on November 16, 2010 in Hobbs, New Mexico.

John and Marta Ruch (Applicants) seek a discharge permit for the planned discharge of up to 40,000 gallons per day of dairy wastewater and land application to 100 acres of cropland. The dairy facility, most recently permitted as K & B Dairy, is located at 911 Lovington Highway, in Hobbs, New Mexico.

The New Mexico Environment Department (NMED) Ground Water Bureau (Bureau) supports the issuance of the permit with conditions necessary to protect public health and welfare and the environment. Four members of the community urged denial of the application based on odor, flies, and a history of non-compliance with the applicable ground water regulations.

The Hearing Officer forwarded the hearing record without a recommendation to grant or deny the permit application, and no comments will be accepted on that Report.

Having considered the administrative record, including all post-hearing submittals and the Hearing Officer's Report; and being otherwise fully advised regarding this matter; **THE SECRETARY HEREBY DENIES THE PERMIT APPLICATION FOR THE FOLLOWING REASONS:**

## FINDINGS

1. The original discharge permit for this facility, DP-699, was issued on February 1, 1991 to Buster Goff for the proposed Goff Dairy. Mr. Goff notified the Bureau that the facility had been leased or purchased as Ruch Dairy on June 4, 1994. The discharge permit was renewed and/or modified on July 16, 1996 as Ruch Dairy, and March 27, 2002 as K & B Dairy with Bruno Bruelhart as the responsible party. On March 7, 2003, the Bureau received notice from Mr. Bruelhart that management of K & B Dairy had been transferred to Klaas Sonsma and Gene Koopman.
2. This facility has had a history of non-compliance with DP-699, including confirmed ground water contamination, and numerous spills of wastewater, stormwater and potable water.
3. On December 26, 2006, the Bureau received an application for discharge permit renewal and modification from EnviroCompliance Services on behalf of K & B Dairy. The application proposed the discharge of up to 15,000 gallons per day of agricultural wastewater from the milking parlor to a concrete-lined sump and then to two clay-lined lagoons for storage, followed by land application of wastewater by center pivot sprinkler and flood irrigation to 175 acres of irrigated cropland under cultivation.

4. Ongoing wastewater, stormwater and potable water spills continued to occur throughout 2007 and 2008, as detailed in the testimony of Ms. Arthur.
5. In January 2009, Mr. Koopman informed the Bureau that he was no longer milking at K & B Dairy, and no longer responsible for DP-699; all cattle had been removed by December 30, 2008.
6. In February 2009, Applicants informed the Bureau that they were in control of the facility, and that DP-699 should be issued in their name.
7. In February 2009, the Bureau issued a preliminary draft discharge permit renewal and modification, and set March 25, 2009 as the deadline for response. The preliminary draft DP set out several requirements running from the DP effective date or prior to resuming discharge from the facility.
8. Applicants requested a two-month extension to respond, the Bureau agreed, and the response, received June 1, 2009, requested a much larger discharge of 40,000 gpd and numerous extensions of deadlines for submitting lagoon plans and specifications, installation of a synthetically-lined lagoon, a solids separator, monitoring wells, totalizing flow meter, a grading and drainage plan and closure of old lagoons.
9. The Bureau issued the draft discharge permit on July 21, 2009; the Dairy responded to the draft on August 28, 2009.

10. The Bureau issued a revised draft discharge permit on November 6, 2009, reiterating that the Dairy did not have permission to resume discharging until the Bureau had issued a final version of DP-699.
11. Applicants responded on November 23, 2009, requesting further changes to permit condition deadlines, and indicating that they intended to resume discharging in December 2009 to generate cash flow.
12. On January 2010, the Bureau replied with several reasons, including continuing ground water contamination, why certain actions were required to be completed prior to resuming discharge, and repeating that the Applicants did not have permission to resume discharging until the Bureau had issued a final version of DP-699.
13. Discussions continued in February 2010 between the Bureau and the Applicants, and public notice of the availability of the Second Revised Draft Discharge Permit Renewal and Modification of DP-699 was published on March 24, 2010.
14. On April 29, 2010, the Bureau received a facsimile from Dorothy Runnels opposing renewal of DP-699, and requesting a hearing, which included a petition signed by 57 citizens of Lea County. On May 14, 2010, the Division Director for the Water and Waste Management Division approved the hearing request.
15. On July 16, 2010, the Bureau was informed by a citizen that Ruch Dairy had resumed milking. An inspection on August 10, 2010,

confirmed that the Dairy was milking 400 cows and had around 250 dry cows/heifers. Co-lessees at the site informed the inspector that milking had resumed “around the end of last year” or “sometime in January.” Monthly discharge volumes were not reported in that time; on August 20, Applicants’ consultant stated that the meter was broken.

16. On September 3, 2010, Department counsel corresponded with Applicants’ counsel to note that the Dairy was operating without a discharge permit and without authorization. The Bureau nonetheless requested monitoring reports and other information that would have been required under the permit, and made the necessary publications for the November 16 hearing.
17. The New Mexico Water Quality Regulations define “discharge permit renewal” as “the re-issuance of a discharge permit for the same, previously permitted discharge.” Section 20.6.2.7.Q. NMAC
18. The New Mexico Water Quality Regulations provide that if the holder of a discharge permit submits an application for discharge permit renewal at least 120 days before the discharge permit expires, and the discharger is not in violation of the discharge permit on the date of its expiration, then the existing discharge permit for the same activity shall not expire until the application for renewal has been approved or disapproved. Section 20.6.2.3106.F. NMAC.
19. Pursuant to NMSA 1978, Section 74-6-5, “the constituent agency shall deny any application for a permit if the applicant has, within the ten

years immediately preceding the date of submission of the permit application, knowingly misrepresented a material fact in an application for a permit; refused or failed to disclose any information required under the Water Quality Act.....; or exhibited a history of willful disregard for environmental laws of a state or the United States.”

#### CONCLUSIONS

20. Notwithstanding the simultaneous request for modification of the discharge permit, with the definition of “modification” going to the location, quality or quantity of a discharge, the facts in this matter do not constitute a “discharge permit renewal.”
21. The discharger under DP-699 was in violation of the discharge permit on the date of its expiration; the discharge permit did not continue in effect through the purported transfer to the Ruches.
22. The Applicants knowingly misrepresented a material fact and failed to disclose required information in the final iteration of the application—the fact that they were already operating, without a discharge permit.
23. Applicants further exhibited a history of willful disregard for the laws of New Mexico by operating without a discharge permit for several months.

The Application for renewal and modification is denied. Applicants shall remove the cows from the property within 60 days, and shall create no further discharge unless and until a new ground water discharge permit application is approved.



RON CURRY, SECRETARY

#### NOTICE OF RIGHT TO REVIEW

Any person who participated in this permitting action and who is adversely affected by the action may file a petition for review by the Water Quality Control Commission, c/o Administrator, 1190 St. Francis Drive, Santa Fe, New Mexico 87502. The petition shall be made in writing to the Commission within thirty days from the date notice is given of this action.