NEW MEXICO
ENVIRONMENT DEPARTMENT

Resource Protection Division

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Deputy Secretary
BUTCH TONGATE
Acting Division Director

July 3, 2013

Mr. Gary Alan Goss
P.O. Box 7542
Ruidoso, NM 88355

Re: Enclosed Notice of Contemplated Action

Dear Mr. Goss:

Enclosed please find a Notice of Contemplated Action ("Notice") proposing to revoke your certification to operate a public water system in New Mexico. Please read the Notice carefully to understand your rights which include the right to request a hearing and to answer the allegations in the Notice. The process is explained in detail in the Notice.

If you have questions, you may contact Carol M. Parker, Director of Environmental Policy and Planning and Assistant General Counsel at 505-222-9524 or carol.parker@state.nm.us.

Sincerely,

Butch Tongate

Butch Tongate
Acting Division Director

Enclosure

BEFORE THE NEW MEXICO ENVIRONMENT DEPARTMENT
OF THE STATE OF NEW MEXICO

In the Matter of:	)	
Thomas Michael Stewart	)	
and	)	
Gary Alan Goss,	)	**Case No.**
Respondents.	)	

NOTICE OF CONTEMPLATED ACTION

Be advised that the New Mexico Environment Department ("Department") has before it sufficient evidence, which if not rebutted or explained at a formal hearing, will justify the Department revoking the certifications of Thomas Michael Stewart ("Respondent Stewart") and Gary Alan Goss ("Respondent Goss") to operate a public water system. The contemplated action is authorized pursuant to the Utility Operators Certification Act (the "Act"), NMSA 1978, § 61-33-7(B) (gross incompetence) and (C) (dereliction of duty); and the provisions of the Uniform Licensing Act, NMSA 1978, §§ 61-1-1 to -33.

GENERAL NATURE OF THE EVIDENCE

1. The Department issued a Level 4 drinking water operator certification to Respondent Stewart on August 14, 2006 pursuant to the Utility Operator Certification Act ("UOCA"). NMSA 1978, § 61-33-1 to -10.

2. The Department issued a Level 4 drinking water operator certification to Respondent Goss on January 25, 2008 pursuant to UOCA. NMSA 1978, § 61-33-1 to -10.

3. During the months of May and June 2012, Respondent Stewart was working as a certified operator for the Village of Ruidoso ("Village" or "VOR") in a supervisory capacity in which he oversaw water production for the Village drinking water system and supervised several other certified operators including Respondent Goss and another certified operator, Albert Mendez ("Mr. Mendez").

4. During the months of May and June 2012, Respondent Goss was working as a certified operator for the Village in a supervisory capacity in which he oversaw production of treated water throughout the Village, supervised several other certified operators including Mr. Mendez, and was responsible for preparing and submitting certain reports known as "Monthly Operating Reports" or "MORs" to the Department.

5. The Village's drinking water system includes the Grindstone Treatment Plant.

6. The Village's drinking water system is a public water system, because it serves at least fifteen service connections or regularly serves twenty-five persons at least twenty-five days a year. UOCA, § 61-33-2(I); *see also* 20.7.10.100 NMAC (incorporating 40 C.F.R. § 141.2).

7. UOCA requires that all public water systems in New Mexico be operated by, or under the direct supervision of, a certified operator. UOCA, § 61-33-6.

8. A certified operator, such as Respondent, is someone who is qualified to operate one of the classifications of public water system, among other things. UOCA, § 61-33-2(A).

9. UOCA defines "operate" as:

> ...performing any activity, function, process control decision or system integrity decision regarding water quality or water quantity that has the potential to affect the proper functioning of a public water supply system... or to affect human health, public welfare or the environment;

UOCA, § 61-33-2(F).

10. The Village's Grindstone Treatment Plant provides drinking water to its citizens from a surface water source, i.e., the Grindstone Reservoir.

11. The Village is required to treat the water from the Grindstone Reservoir by filtration. 20.7.10.100 NMAC (incorporating 40 C.F.R. § 141.71; *see also* 40 C.F.R. § 141.173).

12. The Grindstone Plant provides conventional filtration.

13. Public water systems that treat water by conventional filtration are required to monitor the turbidity of "representative samples" of the system's treated water. 20.7.10.100 NMAC (incorporating 40 C.F.R. § 141.74(c)(1)).

14. Turbidity is used to assess drinking water quality because it is an easily measured and cost-effective proxy for the ease with which the water can be disinfected—the more turbid the water, the harder it is to disinfect.

15. Turbidity is measured in Nephelometric Turbidity Units ("NTUs").

16. Each day, the turbidity of the finished water is measured every four hours (or more frequently). 20.7.10.100 NMAC (incorporating 40 C.F.R. § 141.74(c)(1); *and see* 40 C.F.R. § 141.173).

17. The turbidity of the system's filtered water must be less than or equal to 0.3 NTU in at least 95% of the measurements taken each month and may not exceed 1 NTU at any time. 20.7.10.100 NMAC (incorporating 40 C.F.R. § 141.173(a)(1) and (2) (populations 10,000 and over) and *see also* 40 C.F.R. § 141.551 (populations below 10,000)).

18. By the 10th of each month following a month in which the water system provides water to the public, a public water system using conventional filtration to treat surface water must report certain turbidity measurements to NMED. 20.7.10.100 NMAC (incorporating 40

C.F.R. § 141.175 (populations 10,000 and over) and *see also* 40 C.F.R. § 141.570 (populations below 10,000)).

19. Respondent Goss, on behalf of the Village, reports its turbidity measurements to the Department Drinking Water Bureau ("DWB") monthly on an MOR.

20. On June 6, 2012, Randall Camp ("Mr. Camp"), the Village Utilities Director and Respondent Stewart, visited the NMED Ruidoso Field Office and reported to John Pijawka ("Mr. Pijawka"), NMED Water Systems Specialist and Joseph Savage ("Mr. Savage"), NMED DWB District IV Area Manager that the Village Grindstone Treatment Plant was not meeting turbidity requirements at the end of May 2012.

21. On June 8, 2012, Mr. Pijawka and Mr. Savage visited the Grindstone Treatment Plant.

22. Shortly after Mr. Pijawka and Mr. Savage arrived, Mr. Mendez told Mr. Pijawka that a filter had been installed on one of the turbidimeters measuring the turbidity of the finished water in the clearwell[1] sometime in May.

23. During May and June 2012, there were two turbidimeters recording the turbidities of the finished water in the clearwell of the Grindstone Treatment Plant: a 1720C Hach turbidimeter with a chart recorder and a 1720E Hach turbidimeter with an electronic datalogger.

24. The 1720C Hach turbidimeter was treated as the "official" turbidimeter for the Grindstone Treatment Plant for purposes of measuring turbidities for reporting to NMED.

25. Despite calibration, the 1720C turbidimeter generally provided lower turbidity readings than the 1720E turbidimeter; as a result, Respondent Goss preferred to use it for demonstrating compliance with drinking water regulatory requirements.

[1] The "clearwell" is the point in the treatment process where chlorine is added before the water goes out to the distribution.

26. Certified operators Mr. Mendez and Timothy Victor Amadeo ("Mr. Amadeo"), who were primarily responsible for checking turbidities at the Grindstone Plant, relied upon the 1720C turbidimeter and entered its readings into an electronic spreadsheet (the "Spreadsheet") from which Respondent Goss would prepare the MOR at the end of the month and submit it to NMED.

27. On May 25, 2012, Respondent Stewart directed Mr. Mendez to install a cartridge filter ("Cartridge Filter") on the inlet line of the 1720C Hach turbidimeter at the Grindstone Treatment Plant.

28. Installing a Cartridge Filter on the inlet line of a turbidimeter would reduce the turbidities read by the turbidimeter and could result in altered turbidity readings being reported to NMED on the MOR.

29. The installation of the Cartridge Filter on the inlet line of the 1720C turbidimeter resulted in turbidity readings which were not from representative samples of the treated water provided to customers as required by 20.7.10.100 NMAC (incorporating 40 C.F.R. § 141.74(c)(1)).

30. After the Cartridge Filter was installed on the inlet line of the 1720C turbidimeter, operators working at the Grindstone Treatment Plant continued to note the turbidity measurements from the 1720C turbidimeter in the Spreadsheet that Respondent Goss used to prepare the MOR and submit it to NMED.

31. On or about June 2, 2012, Mr. Mendez prepared a memo ("Mendez Memo") noting his disagreement with the installation of the Cartridge Filter and gave it to Respondent Goss, his supervisor.

32. At some later point, Respondent Goss and Mr. Amadeo signed the Mendez Memo and Respondent Goss placed it in his file.

33. The Cartridge Filter remained installed on the 1720C turbidimeter for two weeks, from May 25, 2012 to June 8, 2012 (when Mr. Pijawka and Mr. Savage visited the Grindstone Plant), except for a brief period of time when the filter ("Filter") inside the Cartridge Filter may have been changed once around the end of May.

34. When Mr. Savage and Mr. Pijawka visited the Grindstone Treatment Plant on June 8, 2012 and asked Mr. Stewart why the Cartridge Filter was installed on the inlet of the 1720C turbidimeter, Mr. Stewart initially stated that there was no Filter inside the Cartridge Filter.

35. Mr. Savage then asked to have the Cartridge Filter opened and there was a Filter in it, contrary to Respondent Stewart's statement.

36. According to Mr. Camp, Respondent Stewart also stated that the Cartridge Filter had only been on the inlet line of the 1720C turbidimeter for one day.

37. During his June 8, 2012 visit to the Grindstone Treatment Plant, Mr. Savage asked which turbidimeter was being used to report turbidity data to NMED and both Respondent Stewart and Respondent Goss reported that the turbidity readings from the 1720C were being used to report turbidity data to NMED.

38. Mr. Savage directed that the unfiltered 1720E turbidity measurements, not the filtered 1720C measurements, should be used for the MOR for May 2012 which was due to be reported to NMED DWB shortly.

39. The MOR for the Grindstone Treatment Plant for May 2012 that was submitted to NMED DWB on behalf of the Village by Respondent Goss contained turbidities from the unfiltered 1720E turbidimeter.

40. The MOR for the Grindstone Treatment Plant for June 2012 that was submitted to NMED DWB on behalf of the Village by Respondent Goss contained turbidities from the filtered 1720C turbidimeter for June 1 through June 8, 2012.

41. From May 25, 2012 to June 8, 2012, the entries made in the Grindstone Treatment Plant Spreadsheet for the turbidity of the finished water in the clearwell were consistent with the readings of the chart recorder on the 1720C turbidimeter which had been altered by the installation of the Cartridge Filter on its inlet line.

42. UOCA authorizes the Department to suspend or revoke the certification of an operator who is derelict in the performance of a duty, among other things. UOCA § 61-33-7(C).

43. Dereliction of duty is abandonment, especially through neglect or moral wrong, or, a willful failure to perform assigned duties or culpable inefficiency in performing assigned duties.

44. A willful decision by a certified operator to falsify the readings of an instrument used for reporting compliance data to the State is a dereliction of duty because it is an activity that has the potential to compromise human health and public welfare. *See,* UOCA § 61-33-2(A) and (F).

45. Based on the above information and specifically for directing that the Cartridge Filter be installed on an official monitoring device to be used to report compliance data to the Department, the Department is justified in revoking Respondent Stewart's certification to operate a public water system for dereliction of duty. UOCA § 61-33-7(C).

46. Based on the above information and specifically for knowingly reporting altered turbidity measurements which were not the turbidity measurements of representative samples of the water provided to customers, the Department is justified in revoking Respondent Goss's certification to operate a public water system for dereliction of duty. UOCA § 61-33-7(C).

47. Based on the above information and specifically for choosing to report turbidity measurements from the 1720C turbidimeter which were not the maximum turbidity measurements made of the water provided to customers, the Department is justified in revoking Respondent Goss's certification to operate a public water system for gross incompetence. UOCA, § 61-33-7(B).

48. This Notice of Contemplated Action to Respondent Stewart shall become effective twenty days after receipt by Respondent Stewart if Respondent Stewart does not request a hearing. If Respondent Stewart does request a hearing, this Notice of Contemplated Action shall become effective, if appropriate, upon completion of the review to which Respondent Stewart is entitled pursuant to the Uniform Licensing Act. NMSA 1978, § 61-1-1 to -33.

49. This Notice of Contemplated Action to Respondent Goss shall become effective twenty days after receipt by Respondent Goss if Respondent Goss does not request a hearing. If Respondent Goss does request a hearing, this Notice of Contemplated Action shall become effective, if appropriate, upon completion of the review to which Respondent Goss is entitled pursuant to the Uniform Licensing Act. NMSA 1978, § 61-1-1 to -33.

NOTIFICATION OF RIGHTS FOR RESPONDENT STEWART

Pursuant to NMSA 1978, § 61-1-3(E) and (F), every certified utility operator shall be afforded notice and an opportunity to be heard by the Department before any action that may result in the suspension or revocation of the operator's certification.

Unless the allegations contained in this Notice of Contemplated Action are rebutted or explained at a hearing, they constitute grounds for the Department to revoke Respondent Stewart's operator certification.

If Respondent Stewart does not deposit in the mail a written request for a hearing by certified mail-return receipt requested within twenty (20) days from the date of receipt of this Notice of Contemplated Action, the Department will revoke Respondent Stewart's operator certification. Any letter requesting a hearing should be mailed to the following address:

Sally Worthington, Hearing Clerk
New Mexico Environment Department
1190 St. Francis Drive, Room S-2103
Santa Fe, NM 87505

The hearing, if requested, will be conducted pursuant to the New Mexico Uniform Licensing Act, NMSA 1978, §§ 61-1-1 to -33. Pursuant to NMED 1978, § 61-1-8, Respondent Stewart is advised as follows:

A. A person entitled to be heard under the Uniform Licensing Act shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefor to the board or hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the board or the hearing officer. All notices issued pursuant to Section 61-1-4 NMSA 1978 shall contain a statement of these rights.

B. Upon written request to another party, any party is entitled to:

(1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and

(2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

The party to whom such a request is made shall comply with it within ten days after the mailing or delivery of the request. No such request shall be made less than fifteen days before the hearing.

C. Any party may take depositions after service of notice in accordance with the Rules of Civil Procedure for the District Courts. Depositions may be used as in proceedings governed by those rules.

In addition, Respondent Stewart is hereby notified that pursuant to NMSA 1978, § 61-1-4(G), Respondent Stewart shall bear all costs of disciplinary proceedings unless excused from paying all or part of the fees or Respondent Stewart prevails at the hearing and no action is taken pursuant to NMSA 1978, § 61-1-3.

NOTIFICATION OF RIGHTS FOR RESPONDENT GOSS

Pursuant to NMSA 1978, § 61-1-3(E) and (F), every certified utility operator shall be afforded notice and an opportunity to be heard by the Department before any action that may result in the suspension or revocation of the operator's certification.

Unless the allegations contained in this Notice of Contemplated Action are rebutted or explained at a hearing, they constitute grounds for the Department to revoke Respondent Goss's operator certification.

If Respondent Goss does not deposit in the mail a written request for a hearing by certified mail-return receipt requested within twenty (20) days from the date of receipt of this Notice of Contemplated Action, the Department will revoke Respondent Goss's operator certification. Any letter requesting a hearing should be mailed to the following address:

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A. A person entitled to be heard under the Uniform Licensing Act shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefor to the board or hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the board or the hearing officer. All notices issued pursuant to Section 61-1-4 NMSA 1978 shall contain a statement of these rights.

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In addition, Respondent Goss is hereby notified that pursuant to NMSA 1978, § 61-1-4(G), Respondent Goss shall bear all costs of disciplinary proceedings unless excused from paying all or part of the fees or unless Respondent Goss prevails at the hearing and no action is taken pursuant to NMSA 1978, § 61-1-3.

NEW MEXICO ENVIRONMENT DEPARTMENT

Butch Tongate

Butch Tongate, Acting Division Director
Resource Protection Division
New Mexico Environment Department

7/3/13
Date

CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2013, a true and accurate copy of the above pleading was filed with the Hearing Clerk and served certified mail as indicated on the Respondent at the following address:

VIA CERTIFIED MAIL—RETURN RECEIPT REQUESTED
and
VIA REGULAR MAIL

Thomas Michael Stewart
P.O. Box 8362
Ruidoso, NM 88355

Gary Alan Goss
P.O. Box 7542
Ruidoso, NM 88355

f.n.

Carol M. Parker
Office of General Counsel
New Mexico Environment Department