

**STATE OF NEW MEXICO  
SECRETARY OF ENVIRONMENT**

**New Mexico Environment Department  
Environmental Health Division,**

**Complainant,**

**v.**

**No.**

**Village of Ruidoso  
PWS#3513114,**

**Respondent.**

**ADMINISTRATIVE COMPLIANCE ORDER WITH PENALTIES**

Pursuant to the Environmental Improvement Act (“EIA”), NMSA 1978, § 74-1-10, and the Drinking Water Regulations (“DW Regulations”), 20.7.10 NMAC, the Secretary of the New Mexico Environment Department (“NMED”), acting through the Director of the Environmental Health Division (“EHD”) of the NMED, issues this Administrative Compliance Order with Penalties (“Order”) to the Village of Ruidoso to enforce the EIA and the DW Regulations.

**FINDINGS AND CONCLUSIONS**

- 1) NMED is an executive agency within the government of the State of New Mexico, NMSA 1978, § 9-7A-4, and is charged with the administration and enforcement of the EIA and the DW Regulations. NMSA 1978, §§ 74-1-7(A)(2) and -10; 20.7.10 NMAC.
- 2) Respondent owns and operates a public drinking water system (“System”) located in Lincoln County, New Mexico.
- 3) Respondent’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 sixty days a year. 20.7.10.100 NMAC (incorporating 40 C.F.R. § 141.2).
- 4) Respondent’s System includes the Grindstone Treatment Plant.

5) At all relevant times for this Order, Respondent's Grindstone Treatment Plant was providing drinking water to its citizens from a surface water source, i.e., the Grindstone Reservoir.

6) At all relevant times for this Order, Respondent was 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).

7) At all relevant times for this order, the Grindstone Plant provided conventional or direct filtration.

8) Public water systems that treat water by 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)).

9) 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.

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

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

12) 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)).

13) By the 10<sup>th</sup> of each month following a month in which the water system provides water to the public, a public water system using conventional or direct 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).

14) Respondent reports its turbidity measurements to the Department Drinking Water Bureau (“DWB”) monthly on a Monthly Operating Report (“MOR”) which reports six turbidity measurements of its finished water quality for each day, among other things.

15) On June 6, 2012, Randall Camp (“Mr. Camp”), the Village Utilities Director and Tom Stewart (“Mr. Stewart”), the Village Water Production Manager, 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.

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

17) Shortly after Mr. Pijawka and Mr. Savage arrived, a certified operator, Albert Mendez (“Mr. Mendez”) who was working at the Grindstone Treatment Plant that day, told Mr. Pijawka that a filter had been installed on one of the turbidimeters measuring the turbidity of the finished water in the clearwell<sup>1</sup> sometime in May.

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<sup>1</sup> The “clearwell” is the point in the treatment process where chlorine is added before the water goes out to the distribution.

18) 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.

19) The 1720C Hach turbidimeter was treated as the “official” turbidimeter for the Grindstone Treatment Plant for purposes of measuring turbidities for reporting to NMED.

20) Despite calibration, the 1720C turbidimeter often provided significantly lower turbidity readings than the 1720E turbidimeter and Respondent’s operator, Gary Goss (“Mr. Goss”), who was responsible for preparing Respondent’s MORs and submitting them to NMED, preferred to use it for reporting turbidity measurements to NMED.

21) Respondent had no scientific justification for believing that the turbidity readings of the 1720C turbidimeter were more or less accurate or reliable than the 1720E turbidimeter; instead, Respondent used it because it was easier to demonstrate compliance with an instrument that provided lower turbidity readings.

22) 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 Mr. Goss would prepare the MOR at the end of the month and submit it to NMED.

23) On May 25, 2012, Mr. 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.

24) 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.

25) 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)).

26) 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 Mr. Goss used to prepare the MOR for submission to NMED.

27) 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 the Mendez Memo to Mr. Goss, his supervisor.

28) The Cartridge Filter remained installed on the 1720C turbidimeter from May 25, 2012 to June 8, 2012 (i.e., two weeks) 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.

29) On June 8, 2012, when Mr. Savage and Mr. Pijawka visited the Grindstone Treatment Plant, Mr. Savage asked Mr. Stewart why the Cartridge Filter was installed on the inlet of the 1720C turbidimeter; at that time, Mr. Stewart stated that there was no Filter inside the Cartridge Filter.

30) Mr. Savage then asked to have the Cartridge Filter opened and there was a Filter in it, contrary to Mr. Stewart’s statement.

31) Mr. Savage asked which turbidimeter was being used to report turbidity data to NMED and both Mr. Stewart and Mr. Goss reported that the turbidity readings from the 1720C were being used to report turbidity data to NMED.

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

33) The MOR for the Grindstone Treatment Plant for May 2012 that was submitted to NMED DWB on behalf of Respondent contained turbidities from the unfiltered 1720E turbidimeter, as Mr. Savage had requested on June 8, 2012.

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

35) 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.

36) When the installation of the Cartridge Filter on the 1720C turbidimeter came to light, Respondent prepared an inaccurate and incomplete investigation report concluding that the filtered turbidity readings from the 1720C turbidimeter had not been used on Respondent's reporting to NMED which was incorrect from an inspection of Respondent's records.

### **COUNT 1**

37) Respondent has violated 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))

forty-eight times because it has reported turbidity measurements to NMED that were not from representative samples of the water provided to its customers for the dates of June 1 through June 8, 2012, six times each day.

### **COUNT 2**

38) Respondent's use of the 1720C turbidimeter when, despite calibration, it routinely reads lower than the 1720E turbidimeter, threatens violations of the DW Regulations because the regulatory scheme requires a determination of the maximum turbidities to know whether the water can be adequately disinfected and Respondent has no scientific justification for believing that the 1720C is more accurate than the 1720E turbidimeter; lacking such a justification, neither Respondent nor NMED can determine whether turbidity readings from the 1720C are sufficiently accurate or reliable to protect public health.

### **PENALTY**

39) The EIA authorizes NMED to assess a penalty which shall not exceed \$1,000 for each violation per day. NMSA 1978, § 74-1-10(C).

40) Respondent is assessed a \$48,000 penalty for violating 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) for reporting six turbidity measurements per day which were not from representative samples of the water provided to customers on eight days in June 2012.

41) These violations are very serious. False reporting can lead to delays in recognizing critical water quality problems and result in increased risk to public health. In other water systems where falsification of reporting has occurred and initially went undetected by a regulator, some users of the water died or became seriously ill.

42) These violations were deliberate and knowing. Respondent's records clearly demonstrate that the filtered turbidity readings from the 1720C turbidimeter were used for the MOR in the month of June 2012 even after NMED staff visited the Grindstone Treatment Plant on June 8, 2012 and advised Respondent's staff that the 1720E turbidity readings should be used rather than the filtered 1720C turbidity readings for the May MOR.

43) Respondent has not made a good faith effort to comply. Respondent knowingly and deliberately used the turbidity readings from the filtered 1720C turbidimeter when it knew that such measurements were not acceptable, later conducted an inadequate and inaccurate investigation, and failed to address the root cause of its violations; this is inconsistent with a good faith desire to comply with the DW Regulations.

44) Falsifying readings of a compliance instrument creates the potential for significant harm to public health, safety and welfare.

### **ORDER**

45) Respondent shall pay the \$48,000 penalty within forty-five days of the date of this Order unless Respondent requests a hearing as set out below. Payment shall be by certified check payable to NMED and sent to:

Kathy Romero, Financial Manager  
New Mexico Environment Department  
Drinking Water Bureau  
P.O. Box 5469  
Santa Fe, NM 87502

Written confirmation of payment shall be sent to:

Carol M. Parker  
Director of Environmental Policy and Planning and  
Assistant General Counsel  
1190 S. St. Francis Dr.  
Santa Fe, NM 87501

46) Immediately upon receipt of this Order and going forward, Respondent shall comply with all turbidity measurement, monitoring and reporting requirements in the DW Regulations, including but not limited to measuring, monitoring and reporting turbidities of representative samples of water.

47) Respondent shall include a statement in its next Consumer Confidence Report stating that it reported falsified turbidity reports to the state for June 2012.

48) Immediately upon receipt of this Order and going forward, Respondent shall use its 1720E Hach turbidimeter, in accordance with the manufacturer's instructions and specifications, for all future turbidity measurements and reporting of the turbidity of the water in its clearwell at the Grindstone Treatment Plant to NMED.

49) Respondent shall not use the 1720C turbidimeter for any purpose related to compliance with the DW Regulations until it demonstrates that the 1720C turbidity readings are accurate and reliable and NMED DWB has accepted such demonstration in writing. Any demonstration for the purpose of this Paragraph shall include, at a minimum, a report certified by a professional engineer which provides a scientific justification for the accuracy and reliability of its lower measurements of turbidity than the 1720E turbidimeter and demonstrates that the 1720C turbidimeter can be calibrated to agree with other turbidimeters, including but not limited to the 1720E turbidimeter.

50) Immediately upon receipt of this Order and going forward, Respondent's Utilities Director shall review monthly Respondent's measurement, monitoring, reporting and recordkeeping activities relevant to compliance with the DW Regulations, prior to the submission of any MORs to NMED. For each MOR submitted to NMED, Respondent's Utilities Director shall provide a signed statement to NMED DWB which provides as follows:

I certify that I have made reasonable and diligent efforts during the month of \_\_\_\_\_, 20\_\_ to oversee and review the Village of Ruidoso's measurement, monitoring, reporting and recordkeeping activities relevant to compliance with the DW Regulations, and have determined, to the best of my knowledge and belief, that those activities are being conducted accurately and truthfully and that all such activities are being conducted on representative samples as required by the DW Regulations.

These signed statements shall be provided by Respondent at the time Respondent submits each MOR to NMED's DWB until such time as NMED's DWB notifies Respondent, in writing, that such reporting may be discontinued.

51) Failure to comply with this Order may subject Respondent to a penalty of \$1,000 for each violation of this Order or the Department may file an action in district court seeking appropriate relief, including injunctive relief. NMSA 1978, § 74-1-10(D).

**IF RESPONDENT FAILS TO COMPLY WITH THIS ORDER, THE SECRETARY OF NMED MAY ASSESS ADDITIONAL CIVIL PENALTIES NOT TO EXCEED ONE THOUSAND DOLLARS (\$1,000) FOR EACH INSTANCE OF NONCOMPLIANCE WITH THIS ORDER.**

**RIGHT TO ANSWER AND REQUEST A HEARING**

Pursuant to NMSA 1978, § 74-1-10(E) and 20.1.5 NMAC (available at <http://www.nmcpr.state.nm.us/NMAC/parts/title20/20.001.0005.htm>), Respondent has the right to request a hearing. If Respondent (a) contests any material or legal matters upon which this Order is based; (b) contends that Respondent is entitled to prevail as a matter of law; or (c) otherwise contests the appropriateness of this Order, Respondent may mail or deliver within thirty (30) days of receipt of this Order, a written Request for Hearing at the following address:

Hearing Clerk  
New Mexico Environment Department

P.O. Box 5469  
Santa Fe, NM 87502

Respondent must attach a copy of this Order to the Request for Hearing. 20.1.5.200(A)(2)(d) NMAC.

The Request for Hearing shall include an Answer. Respondent's Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in this Order with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, Respondent should so state, and the Respondent may deny the allegation on that basis. Any allegation in this Order not specifically denied shall be deemed admitted.

20.1.5.200(A)(2)(a) NMAC.

Respondent's Answer shall also include any affirmative defenses upon which Respondent intends to rely. Any affirmative defense not asserted in the Answer, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived. 20.1.5.200(A)(2)(b) NMAC.

Respondent's Answer shall be signed under oath or affirmation that the information contained therein is to the best of the signer's knowledge believed to be true or correct.

20.1.5.200(A)(2)(c) NMAC.

### **FINALITY OF ORDER**

Pursuant to NMSA 1978, 74-1-10(E), this Order shall become final unless the Respondent files a Request for Hearing with the Hearing Clerk within thirty (30) days of receipt of this Order.

### **SETTLEMENT CONFERENCE**

Whether or not a Request for Hearing has been filed, Respondent may confer with NMED concerning settlement of this Order. The NMED encourages settlement consistent with

the provisions and objectives of the EIA and the DW Regulations. Settlement discussions neither extend the thirty (30) day deadline for filing a Request for Hearing and Answer, nor alter the deadline imposed for compliance with the mandate of this Order. Settlement discussions may be pursued as an alternative to, and simultaneously with, the hearing proceedings. Respondent may appear at the settlement conference alone or accompanied or represented by legal counsel.

A Stipulated Final Order shall finalize any settlement reached by the parties. The Stipulated Final Order must resolve all issues raised in this Order, shall be final and binding on all parties and may not be appealed.

To explore the possibility of settlement in this matter, contact Carol M. Parker, Director of Environmental Policy and Planning and Assistant General Counsel, New Mexico Environment Department, Office of General Counsel, 1190 S. St. Francis Drive, Santa Fe, NM 87502 or 505-222-9524, or [carol.parker@state.nm.us](mailto:carol.parker@state.nm.us).

### **COMPLIANCE WITH OTHER LAWS**

Compliance with the requirements of this Order does not relieve Respondent of the obligation to comply with all other applicable laws and regulations. This Order does not constitute a waiver, suspension, or modification of the requirements of 20.7.10 NMAC which remain in full force and effect. Issuance of this Order is not an election by the NMED to forego any civil or criminal action otherwise authorized by the EIA or any other law.

### **TERMINATION**

This Order shall terminate when Respondent certifies that all requirements of this Order have been met and the NMED has approved such certification in writing, or when the Secretary approves a Stipulated Final Order.

*Butch Longate*

*7/9/13*

Date

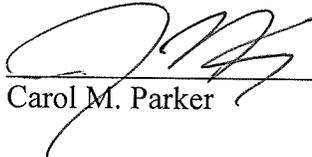
*for* Tom Blaine, P.E.  
Division Director  
Environmental Health Division  
Harold L. Runnels Building  
1190 S. St. Francis Dr. P.O. Box 5469  
Santa Fe, NM 87505

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Administrative Compliance Order was sent on July 9, 2013 via certified mail, return receipt requested and regular mail to the following:

Randall Camp, Utilities Director  
Village of Ruidoso  
313 Cree Meadows Dr.  
Ruidoso, NM 88345

Irma Devine, Village Clerk  
Village of Ruidoso  
313 Cree Meadows Dr.  
Ruidoso, NM 88345

  
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Carol M. Parker