

STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT

NEW MEXICO ENVIRONMENT DEPARTMENT
WATER PROTECTION DIVISION
DRINKING WATER BUREAU,



Complainant,

v.

No. DWB 16-16 (CO)

FRED WHISTLE

and

ANIMAS VALLEY LAND AND WATER COMPANY,

Respondents.

**ADMINISTRATIVE COMPLIANCE ORDER AND
ASSESSMENT OF CIVIL PENALTIES**

1. Pursuant to the Environmental Improvement Act (“EIA”), NMSA 1978, § 74-1-10, and the Drinking Water Regulations, 20.7.10 NMAC, the Acting Secretary of the New Mexico Environment Department (“NMED”), acting through the Director of the Water Protection Division of the NMED, issues this Administrative Compliance Order to Fred Whistle and Animas Valley Land and Water Company (“Respondents”) to enforce the EIA and Drinking Water Regulations.

FINDINGS

2. The NMED is an executive agency within the government of the State of New Mexico and is charged with administration and enforcement of the EIA and Drinking Water Regulations.

3. Respondent Animas Valley Land and Water Company (“AV Water”) owns and operates the Harvest Gold Subdivision public drinking water system (“System”), PWS# NM3511524, located in San Juan County, New Mexico.

4. Respondent Whistle is the general manager of and administrative contact for the System.

5. Each Respondent is a "person" as defined by NMSA 1978, § 74-1-3, and 20.7.10.100 NMAC [incorporating 40 C.F.R. § 141.2].

6. On June 2, 2016, employees from NMED's Drinking Water Bureau ("DWB") conducted an inspection at the System. The inspection resulted from customer complaints and a site visit from technical assistance staff that uncovered issues at the System.

7. On June 10, 2016, Mr. Joe Savage, Surface Water Treatment Rule Administrator at NMED, finalized NMED's report of the June 2, 2016 inspection. The report detailed twenty-one significant deficiencies that were uncovered during the inspection. This report was emailed to Mr. Whistle and received by him on June 10, 2016.

8. As memorialized in the inspection report, NMED required Respondents to consult with DWB within forty-five (45) days of receipt of the report, and provide NMED with a plan that describes how and on what schedule the System would address all significant deficiencies.

9. Mr. Savage issued a Notice of Violation ("NOV") to Respondent Whistle on August 1, 2016 for failure to submit a Corrective Action Plan to correct significant deficiencies identified during the June 2, 2016 inspection at the System. Because Respondents did not submit a Corrective Action Plan for the System, DWB drafted a Corrective Action Plan for the System. Mr. Savage delivered the NOV and Corrective Action Plan to Respondent Whistle on August 1, 2016 via electronic mail.

10. Mr. Savage issued a second NOV to Respondent Whistle on August 12, 2016 for failure to complete an item in the NMED-imposed Corrective Action Plan concerning cross connections that had a deadline of August 10, 2016. This item required Respondents to submit documentation to NMED by August 10, 2016 verifying that a separate line and spigot were installed for the raw and finished water at the sink. Mr. Savage delivered this NOV to Respondent Whistle on August 12, 2016 via electronic mail.

11. Because Respondents did not submit a Corrective Action Plan by July 25, 2016, and because Respondents did not ensure that cross connections were fixed by August 10, 2016, the System has violated two requirements of the New Mexico Drinking Water Regulations and federal Safe Drinking Water Act. Facts concerning each violation are addressed individually below.

12. Violation 1: Failure to Submit Corrective Action Plan. 20.7.10.100 NMAC [incorporating 40 C.F.R. § 141.723(c)] requires public water systems to respond, in writing, to

significant deficiencies no later than forty-five (45) days after receipt of the report, indicating how and on what schedule the system will address significant deficiencies noted in the survey. Respondents did not submit a Corrective Action Plan.

13. The NMED issued a NOV to Respondents on August 1, 2016 for failure to provide a Corrective Action Plan by July 25, 2016. Due to Respondents' failure to provide a Corrective Action Plan, NMED issued a Corrective Action Plan for Respondents to follow.

14. Violation 2: Cross Connections Present. 20.7.10.400.B NMAC requires all parts of a public water supply system to be constructed, operated, and maintained to prevent contamination of the water supply. During the June 2, 2016 inspection, NMED discovered a cross connection that could result in direct contamination of the water delivered to distribution. Specifically, a swivel-port sink fixture is plumbed to the raw water on the "cold" side and finished water on the "hot" side, which constitutes a cross connection. Additionally, a check valve on the west filter was making noise indicative of a loose seal, which could mean a malfunction.

15. The Corrective Action Plan that NMED issued to the Respondents on August 1, 2016 states that the Respondents must correct the cross connection deficiency by installing a separate line and spigot for the raw and finished water at the sink within ten (10) days, which would have been August 10, 2016.

16. To date, NMED has not received documentation that the cross connection problem has been addressed. This task is now thirteen (13) days overdue for completion.

VIOLATIONS

17. VIOLATION 1 – FAILURE TO SUBMIT CORRECTIVE ACTION PLAN. Respondent is in violation of the Drinking Water Regulations, 20.7.10.100 NMAC [incorporating 40 C.F.R. § 141.723(c)]. Respondent was required to submit a Corrective Action Plan to the NMED by July 25, 2016 but failed to do so.

18. VIOLATION 2 – CROSS CONNECTIONS PRESENT. Respondent is in violation of the Drinking Water Regulations, 20.7.10.400.B NMAC. Respondent is required to ensure that any component of a public water system is constructed, operated, and maintained to prevent contamination of the water supply.

ORDERS AND CIVIL PENALTIES

19. Respondent is hereby ordered to perform the following actions to correct the violations listed in paragraphs 17 and 18:

a. VIOLATION 1 – FAILURE TO SUBMIT CORRECTIVE ACTION PLAN. Comply with 20.7.10.100 NMAC [incorporating 40 C.F.R. § 141.723(d)] by correcting significant deficiencies identified in the June 10, 2016 report according to the Corrective Action Plan issued by the NMED, as no Corrective Action Plan was submitted by the System. Pay a penalty of one thousand dollars (\$1,000) within sixty (60) days following receipt of this Order.

b. VIOLATION 2 – CROSS CONNECTION PRESENT. Comply with 20.7.10.400.B NMAC by installing a separate line and spigot for the raw and finished water at the sink, inspecting all check valves for proper function, replacing the noisy valve, and submitting documentation to NMED that these actions have been completed. Pay a penalty of thirteen thousand dollars (\$13,000) within sixty (60) days following receipt of this Order.

20. Submittals required by Paragraph 19 and a certified or cashier's check for fourteen thousand dollars (\$14,000) made payable to the State of New Mexico shall be sent with return receipt requested by either standard U.S. mail or certified mail to:

Alysia Leavitt
Acting Financial Manager
Drinking Water Bureau
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502-5469

21. If Respondents fail to comply with the requirements of paragraph 19 of this order, the Secretary of the NMED may assess additional civil penalties for continued noncompliance with this Order.

NOTICE OF RIGHT TO ANSWER AND REQUEST A HEARING

22. Pursuant to NMSA 1978, §§ 61-33-10(E) and 74-1-10(E), and 20.1.5 NMAC, Respondents have the right to request a hearing. If Respondents: (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, Respondents 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 87502-5469

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

23. The Request for Hearing shall include an Answer. Respondents' Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Order with regard to which Respondents have any knowledge. Where Respondents have no knowledge of a particular factual allegation, Respondents should so state, and the Respondents 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.

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

25. Respondents' Answer shall be signed under oath or affirmation that the information contained therein is to the best of the signer's knowledge belief to be true and correct. 20.1.5.200.A(2)(a) NMAC.

FINALITY OF ORDER

26. Pursuant to NMSA 1978, §§ 61-33-10(E) and 74-1-10(E), this Order shall become final unless the Respondents file an Answer and a Request for Hearing with the Hearing Clerk within thirty (30) days of receipt of this Order.

SETTLEMENT CONFERENCE

27. Whether or not a Request for Hearing has been filed, Respondent may confer with the NMED concerning settlement of this Order. The NMED encourages settlement consistent with the provisions and objectives of the EIA and the Drinking Water 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 discussion may be pursued as an alternative to, or simultaneously with, the hearing proceedings. Respondents may appear at the settlement conference alone or accompanied or represented by legal counsel.

28. 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 the parties, and may not be appealed.

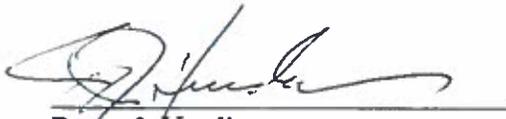
29. To explore the possibility of settlement in this matter, contact Maria J. Medina, Drinking Water Bureau, New Mexico Environment Department, P.O. Box 5469, Santa Fe, NM 87502-5469, or (505) 476-8629.

COMPLIANCE WITH OTHER LAWS

30. Compliance with the requirements of this Order does not relieve Respondents 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 and 20.7.4 NMAC, which remain in full force and effect. Issuance of this Order is not an election by the NMED to forgo any civil or criminal action otherwise authorized under the EIA.

TERMINATION

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



Bruce J. Yurdin
Division Director
Water Protection Division
Harold L. Runnels Building
1190 St. Francis Drive
Santa Fe, NM 87502

8/23/2016
Date

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Administrative Compliance Order and Assessment of Civil Penalty" was sent via certified mail, return receipt requested, on the following party of record on August 25th, 2016:

Fred Whistle
Harvest Gold Subdivision, NM3511524
P.O. Box 5520
Farmington, NM 87499

s/ Annie Maxfield
Annie Maxfield
Assistant General Counsel
New Mexico Environment Department

