

STATE OF NEW MEXICO  
SECRETARY OF ENVIRONMENT



NEW MEXICO ENVIRONMENT DEPARTMENT  
ENVIRONMENTAL HEALTH DIVISION,  
DRINKING WATER BUREAU,

Complainant,

No. DWB 14-17(CO)

v.

JEMEZ VALLEY PUBLIC SCHOOLS,  
PWS # NM3590123,

Respondent.

**ADMINISTRATIVE COMPLIANCE ORDER REQUIRING COMPLIANCE AND  
ASSESSING A CIVIL PENALTY FOR FAILURE TO TAKE CORRECTIVE ACTION  
AND ASSESSING A CIVIL PENALTY FOR ADDITIONAL VIOLATIONS**

Pursuant to Section 74-1-10 of the Environmental Improvement Act (“EIA”), NMSA 1978, Section 74-1-1, et. sec., and Section 20.7.10.300 NMAC of the Drinking Water Regulations (hereinafter referred to as the “Regulations”), the Secretary of the New Mexico Environment Department (“NMED”), acting through the Director of the Environmental Health Division of NMED, issues this Administrative Compliance Order (hereinafter referred to as the “Order”) to Respondent Jemez Valley Public Schools, (hereinafter “Jemez Valley”) to enforce the EIA and the Regulations.

**FINDINGS OF FACT**

1. 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 the Regulations.
2. Respondent is a domestic non-profit association and operates a public water system with a mailing address of 8501 Highway 4, Jemez Pueblo, New Mexico 87024.

3. Respondent owns and operates a drinking water system (hereinafter referred to as the "System") located in Sandoval County, New Mexico.

4. The System provides piped drinking water to approximately four hundred (400) water users and has one (1) service connection. The drinking water is provided year round to the water users and is classified as a Non-Transient Non-Community water system.

5. The System is supplied by a ground water source, and water from this source is pumped to the System through the one well currently in use.

6. NMED issued Administrative Compliance Order #2008-CO-015 to Respondent on November 13, 2008 in order to compel Respondent to take corrective actions pursuant to a compliance schedule for the two violations identified:

a. Violation One: The Regulations, in Section 20.7.10.100 NMAC, incorporating Part 40 CFR Section 141.132(b)(1)(i), require the Respondent to increase monitoring for disinfection byproducts to one sample per treatment plant per quarter. The Regulations, in Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.64(b), MCL for disinfection byproducts, which requires a public water system not to exceed the TTHM MCL of 0.080 mg/L or 80 ppb.

b. Violation Two: The Regulations, in Section 20.7.10.100 NMAC, incorporating Part 40 CFR Section 141.62(b), MCL for inorganic contaminants, require the Respondent to not exceed the Arsenic MCL of 0.010 milligrams per liter (mg/L).

7. Respondent received the Administrative Compliance Order #2008-CO-015 by certified mail on December 8, 2008.

8. Respondent did not request a hearing or enter into a settlement conference with NMED.

9. On January 7, 2009, thirty days (30) after Respondent's receipt of the Administrative Compliance Order #2008-CO-015 it became a final order of the Secretary of NMED.

10. During the course of 2009 Respondent satisfactorily returned to compliance for Violation Two concerning Arsenic MCL exceedances.

11. On October 25, 2011, over two and a half years after the Administrative Compliance Order became final, NMED received correspondence from Respondent seeking an extension of time to comply with Administrative Compliance Order #2008-CO-015 for purposes of Violation One concerning TTHM MCL exceedances.

12. On November 8, 2011, NMED granted Respondent's request to modify Paragraph 12 to read "[N]o later than April 30, 2012, Respondent shall be in full compliance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.64(b), Maximum Contaminant Levels (MCL) for TTHM."

13. Since the Administrative Compliance Order became a Final Order on January 7, 2009, Respondent failed to comply with the Administrative Compliance Order #2008-CO-015 requirement that it increase monitoring to one sample per treatment plant per quarter for one quarter, the Third Quarter of 2013, and a Notice of Violation was sent on November 26, 2013 Re: Failure to collect sample for the Maximum Contaminant Level for Total Trihalomethanes at Jemez Valley Public Schools (WSSID NM35901-23).

14. Most concerning, since the Administrative Compliance Order became a Final Order on January 7, 2009, Respondent has failed to not exceed the TTHM MCL of 0.080 mg/L or 80 ppb for four consecutive quarters.

15. As a result of the continued failure to implement a corrective action plan to NMED identifying the steps that will be taken to bring the water system into full compliance, the System has exceeded the TTHM at each of the following quarterly intervals since the Administrative Compliance Order was issued on November 13, 2008:

- a. Fourth Quarter of 2008: Notice of Violation sent July 12, 2013 Re: Exceedances of the Maximum Contaminant Level for Total Trihalomethanes at Jemez Valley Public Schools (WSSID NM35901-23) with running annual average of 85.86 ppb;
- b. Third Quarter of 2009: Notice of Violation sent November 9, 2009 Re: Exceedance of Total Trihalomethanes MCL at Jemez Valley Public School, NM 3590123 with a running annual average of 84.375 ppb;
- c. Fourth Quarter of 2009: Notice of Violation July 17, 2013 Re: Exceedances of the Maximum Contaminant Level for Total Trihalomethanes at Jemez Valley Public Schools (WSSID NM35901-23) with a running annual average of 97.96 ppb;
- d. First and Second Quarters of 2010: Notice of Violation sent August 2, 2010 Re: Exceedances of Maximum Contaminant Level for Total Trihalomethanes at Jemez Valley Public Schools (WSSID NM35901-23) with running annual averages of 114 ppb and 130 ppb respectively;

- e. Third and Fourth Quarters of 2010: Notice of Violation sent December 20, 2010 – Re: Exceedances of Maximum Contaminant Level for Total Trihalomethanes at Jemez Valley Public Schools (WSSID NM35901-23) with running annual averages of 175 ppb and 183 ppb respectively;
- f. First, Second and Third, Fourth Quarters of 2011 and First, Second and Third Quarters of 2012: Notice of Violation sent September 18, 2012 RE: Exceedances of the Maximum Contaminant Level for Total Trihalomethanes at Jemez Valley Public Schools (WSSID NM35901-23) with running annual averages of 157.285 ppb; 145.07 ppb; 119.475 ppb; 100 ppb; 98.6 ppb; 119.266 ppb; and 136.6 ppb respectively;
- g. Fourth Quarter of 2012: Notice of Violation sent May 3, 2013 – Notice of Violation Re: Exceedances of the Maximum Contaminant Level for Total Trihalomethanes at Jemez Valley Public Schools (WSSID NM35901-23) with a running annual average of 125.2 ppb;
- h. First Quarter of 2013: Notice of Violation sent May 3, 2013 Re: Exceedances of the Maximum Contaminant Level for Total Trihalomethanes at Jemez Valley Public Schools (WSSID NM35901-23) with a running annual average of 132 mg/L;
- i. Second and Fourth Quarters 2013: Notice of Violation November 26, 2013 Re: Exceedances of the Maximum Contaminant Level for Total Trihalomethanes at Jemez Valley Public Schools (WSSID NM35901-23) with running annual averages of 109 ppb and 99 ppb respectively.

16. Respondent has not complied with the Administrative Compliance Order #2008-CO-015 requirement that Respondent submit a proposed corrective plan to NMED identifying the steps that will be taken to bring the water system in to full compliance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.64(b), MCL for disinfection byproducts TTHM.

17. Respondent has not complied with the Administrative Compliance Order #2008-CO-015 requirement to conduct a preliminary engineering report (PER) to determine what options are available to enable long-term compliance with the provisions of 20.7.10.100 NMAC, incorporating 40 C.F.R. Parts 141 and 143.

18. Respondent has not complied with the Administrative Compliance Order #2008-CO-015 requirement that following the approval of the PER by NMED, Respondent shall immediately pursue funding in order to implement the engineering design selected to return the water system to compliance.

19. Respondent has not complied with the Administrative Compliance Order #2008-CO-015 requirement that no later than April 30, 2012, Respondent shall be in full compliance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.64(b), Maximum Contaminant Levels (MCL) for TTHM.

### **CONCLUSIONS OF LAW**

20. Paragraphs 1 through 19 are realleged as if fully set forth below.

21. The System is a “public water system” as defined by 20.7.10.7 NMAC, incorporating 40 C.F.R. § 141.2 because it provides water to the public for human consumption through pipes or other constructed conveyances and has over fifteen (15) service connections and regularly serves over twenty-five (25) individuals daily at least sixty (60) days out of the year.

22. The System is a “Non-Transient Non-Community water system” as defined by 20.7.10.7.N(4) NMAC and adopted in 20.7.10.100 NMAC because it is not a community water system and regularly serves at least 25 of the same persons over 6 months per year.

23. Respondent is a “supplier of water” as defined by 20.7.10.7.S(10) NMAC because it is a person who owns or operates a public water system.

24. To date the System maintains levels in exceedance of the Maximum Contaminant Level for Total Trihalomethanes at Jemez Valley Public Schools (WSSID NM35901-23).

25. Respondent failed to comply with Administrative Compliance Order #2008-CO-015 by failing to submit a sample per treatment plant per quarter for one quarter, the Third Quarter of 2013, for disinfection byproducts.

26. Respondent failed to comply with Administrative Compliance Order #2008-CO-015 by failing to submit a proposed corrective plan to NMED identifying the steps that will be taken to bring the water system in to full compliance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.64(b), MCL for disinfection byproducts TTHM.

27. Respondent failed to comply with the Administrative Compliance Order #2008-CO-015 requirement to conduct a preliminary engineering report (PER) to determine what options are available to enable long-term compliance with the provisions of 20.7.10.100 NMAC, incorporating 40 C.F.R. Parts 141 and 143.

28. Respondent failed to comply with the Administrative Compliance Order #2008-CO-015 requirement that following the approval of the PER by NMED, Respondent shall immediately pursue funding in order to implement the engineering design selected to return the water system to compliance.

29. Respondent has not complied with the Administrative Compliance Order #2008-CO-015 requirement that no later than April 30, 2012, Respondent shall be in full compliance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.64(b), Maximum Contaminant Levels (MCL) for TTHM.

#### **SCHEDULE OF COMPLIANCE**

30. Based upon the above Findings of Fact and Conclusions of Law, Respondent is hereby ordered to:

- a. Continue to monitor for disinfection byproducts to one sample per treatment plant per quarter.
- b. Provide NMED with a detailed corrective action plan to ensure that the TTHM levels at the System meet the MCL for disinfection byproducts and a schedule setting forth dates on which compliance will be achieved within fifteen (15) days of this Order;
- c. Provide NMED with proof of interim measures to address TTHM exceedances on a quarterly basis, which may include, but is not limited to, flushing of the water system or reduced water storage.
- d. Achieve full compliance by not exceeding the TTHM MCL of 0.080 mg/L or 80 ppb for four consecutive quarters by Fourth Quarter 2015.

#### **CIVIL PENALTY**

31. NMSA 1978, § 74-1-10 D(1) of the EIA authorizes the Secretary to assess a civil penalty of up to One Thousand Dollars (\$1,000.00) for each noncompliance with an administrative compliance order.

32. NMED hereby assesses against Respondent a civil penalty of Five Thousand Dollars (\$5,000.00) for the five failures to comply with Administrative Compliance Order #2008-CO-015 set forth herein in Paragraphs 25 through 29.

33. NMSA 1978, § 74-1-10 C., of the EIA authorizes the Secretary to assess a civil penalty for violation of the Regulations that shall not exceed One Thousand Dollars (\$1,000.00) per violation per day.

34. NMED hereby assesses against Respondent a civil penalty of Twenty-One Thousand Dollars (\$21,000.00) for the 21 additional violations wherein the System exceeded the MCL for TTHM of 0.080 mg/L since the issuance of Administrative Compliance Order #2008-CO-015 on the following quarters: 4<sup>th</sup> Quarter 2008; 3<sup>rd</sup>, 4<sup>th</sup> Quarters 2009; 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> Quarters 2010; 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> Quarters 2011; 2<sup>nd</sup> and 3<sup>rd</sup> Quarters 2012; and 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Quarters 2013.

35. Respondent shall pay the total civil penalty of **Twenty-Six Thousand Dollars (\$26,000.00)** by certified or cashier's check made payable to the State of New Mexico and mailed or hand-delivered to:

New Mexico Environment Department  
Office of General Counsel  
Attn: Kathryn S. Becker, Esq.  
Post Office Box 5469  
1190 S. St. Francis Drive, Suite N-4067  
Santa Fe, New Mexico 87505

#### **NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING**

36. Pursuant to 74-1-10.E NMSA 1978 and 20.1.5 NMAC (available at [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us)), Respondent has the right to request a hearing. If Respondent (a) contests any material or legal matter 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 to the following address:

Hearing Clerk  
New Mexico Environment Department  
PO Box 5469  
Santa Fe, New Mexico 87502-5469

37. 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 of this Order not specifically denied shall be deemed admitted. 20.1.5.200.A(2)(a) NMAC.

38. 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.

39. 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 and correct. 20.1.5.200.A(2)(c) NMAC. Lastly, Respondent must attach a copy of this Order to the Request for Hearing. 20.1.5.200.A(2)(d) NMAC.

#### **FINALITY OF ORDER**

40. Pursuant to 74-1-10.E NMSA 1978, 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

41. Whether or not a Request for Hearing has been filed, Respondent may confer with NMED concerning settlement of this Order. NMED encourages settlement consistent with the provisions and objective of the EIA and the Regulations. Settlement discussions neither extend the thirty (30) day deadline for filing a request for hearing and answer nor alter the deadlines imposed for compliance with the mandates 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.

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

43. To explore the possibility of settlement in this matter, contact Kathryn S. Becker, Esq., Office of General Counsel, New Mexico Environment Department, P.O. Box 5469, Santa Fe, New Mexico, 87505, [Kathryn.becker@state.nm.us](mailto:Kathryn.becker@state.nm.us) or at 505-827-2054

## COMPLIANCE WITH OTHER LAWS

44. Compliance with the requirements of this Order does not relieve Respondent of the obligation to comply with all other applicable laws and regulations.

## TERMINATION

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



Tom Blaine, P.E.  
Director, Environmental Health Division  
New Mexico Environment Department

9/02/14

Date

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing “Administrative Compliance Order Requiring Compliance and Assessing a Civil Penalty for Failure to Take Corrective Action and Assessing a Civil Penalty for Additional Violations” was sent via certified return receipt requested mail on the following party of record on August 3, 2014.

*September*

Sherwin Sando  
President  
Jemez Valley Public School District  
8501 Hwy 4  
Jemez Pueblo, NM 87024



Kathryn S. Becker  
Assistant General Counsel  
New Mexico Environment Department