



SUSANA MARTINEZ
Governor

JOHN A. SANCHEZ
Lt. Governor

State of New Mexico
ENVIRONMENT DEPARTMENT
Operations & Infrastructure Division
DRINKING WATER BUREAU
525 Camino de Los Marquez, Suite 4
Santa Fe, New Mexico 87505
Telephone (505)476-8620 Fax (505)476-8656
Toll Free 1-877-654-8720
www.nmenv.state.nm.us/dwb/



DAVID MARTIN
Secretary

RAJ SOLOMON, PE
Deputy Secretary

CERTIFIED RETURN RECEIPT REQUESTED

7005 1820 0001 5707 8850

July 1, 2011

Phillip Fuller
Chippeway Water System
PO Box 162
Cloudcroft, New Mexico 88317

**RE: Administrative Compliance Order, NO. 2011-CO-004, Chippeway Water System,
PWS# NM3565419**

Mr. Fuller:

Please find attached Administrative Compliance Order No. 2011-CO-004, issued to Chippeway Water System, PWS# NM3565419, under the Environmental Improvement Act, NMSA 1978, § 74.1.10 and the Drinking Water Regulations, 20.7.10 NMAC. Please review the Administrative Compliance Order (Order) carefully to understand what actions must be taken to comply with the requirements of the Order. Chippeway Water System has a right to answer the allegations in the Order and request a hearing, pursuant to NMSA 1978, §§ 74.1.10.E (available at www.nmenv.state.nm.us).

If you have any questions or need assistance with meeting the requirements of this Order, please contact Jeff Pompeo, Enforcement Coordinator at 505-476-8620 or via email at Jeff.Pompeo@state.nm.us.

Sincerely,

Raj Solomon PE, Division Director
Operations & Infrastructure Division

cc. Joe Savage, District IV Area Manager
Jacob Sanders, Technical Services Specialist
Chelo Hall, Region 6, EPA (Electronic)
Electronic File
Central File

STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT

NEW MEXICO ENVIRONMENT DEPARTMENT
OPERATIONS AND INFRASTRUCTURE
DIVISION,

Complainant,
v.

No. 2011-CO-004

Chippeway Water System,
PWS# NM3565419,

Respondent.

ADMINISTRATIVE COMPLIANCE ORDER

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 Operations and Infrastructure Division of the NMED, issues this Administrative Compliance Order (“Order”) to Chippeway Water System (“Respondent”) to enforce the EIA, DW Regulations.

FINDINGS

1. 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 DW Regulations.
2. Respondent owns and operates a public drinking water system (“System”) located in Otero County, New Mexico.
3. The System is a Community water system, as defined by Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.2, that regularly provides piped drinking water to approximately thirty (30) year round residents and has approximately forty (40) service connections to serve these year round residents.

4. Respondent, Chippeway Water System, is a “person” as defined by the EIA, NMSA 1978, § 74-1-3 and 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.2.

5. 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141 Subpart C, establishes requirements for Sanitary Surveys.

6. On October 9, 2008, a Notice of Violation was issued to Respondent by the NMED for failure to undergo a sanitary survey.

7. On September 15, 2010, Respondent was notified by NMED in a letter of significant deficiencies (deficiencies) within the System as defined by the DW Regulations.

8. The September 15, 2010, letter identified several General Operating Requirement deficiencies according to 20.7.10.400.B NMAC. These deficiencies are: lack of a secured hatch on the upper storage tank; entry to storage tank is not restricted; leaks along base of upper storage tank; lack of proper security at spring #2; spring #2 is in a state of disrepair which allows unrestricted access to the water supply from outside atmosphere.

9. The September 15, 2010, letter identified two General Operating Requirement deficiencies according to 20.7.10.400.D NMAC. The upper storage tank lacks a screen on the overflow line and vent.

10. 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.402(2)(e)(1), states “Any ground water source sample required under paragraph (a) of this section must be collected at a location prior to any treatment of the groundwater source unless the State approved a sampling location after treatment.”

11. The September 15, 2010, letter identifies two deficiencies of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.402(2)(e)(1). The lower spring (Spring #1) and the upper spring (Spring #2) lack a source water tap prior to treatment.

12. 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.23(a)(1), states “Groundwater systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment beginning in the initial compliance period.”

13. The September 15, 2010, letter identifies two deficiencies of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.402(a)(1). The lower spring (Spring #1) and the upper spring (Spring #2) lack an entry point sample tap after treatment.

14. 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.403(a)(4), requires a groundwater system to consult with the state regarding the appropriate corrective action within 30 days of receiving written notice of deficiencies.

15. On October 18, 2010, a Notice of Violation was issued to Respondent by the NMED for failure to respond in writing to deficiencies identified in the September 15, 2010, letter. The Notice of Violation notified Respondent that it was required to provide public notice of the violation.

16. 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.404(a)(1)(2), states, “A groundwater system with a significant deficiency is in violation of the treatment technique requirement if, within 120 days (or earlier if directed by the State) of receiving written notice by the State of the significant deficiency, the system:

- (1) Does not complete corrective action in accordance with any applicable State plan review process or other State guidance or direction, including State specified interim actions and measures, or
- (2) Is not in compliance with a State approved corrective action plan and schedule.”

17. On January 19, 2011, a Notice of Violation was issued to Respondent by the NMED for failure to complete corrective action for the deficiencies identified in the September 15, 2010 letter. The Notice of Violation notified Respondent that it was required to provide public notice of the violation.

18. Pursuant to, 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.403(a)(2), if directed by NMED, a groundwater system with a groundwater source sample that is fecal indicator positive must comply with the treatment technique requirements of the Ground Water Rule 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141 Subpart S.

19. On October 6, 2010, Respondent was notified by NMED in a letter of Corrective Action Requirements to provide approved treatment that reliably achieves at least 4-log treatment of viruses before or at the first customer for all active sources.

20. The October 6, 2010, letter identified a General Operating Requirement deficiency according to 20.7.10.400.B NMAC and informed the Respondent of the requirement to submit a corrective action plan for a leak in the lower pump station.

21. On November 12, 2010, a Notice of Violation was issued to Respondent by the NMED for failure to comply with 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.403(a)(4) and submit an acceptable corrective action plan within 30 days addressing the deficiency identified in the October 6, 2010 letter.

22. On February 7, 2011, a Notice of Violation was issued to Respondent for failure to comply with 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.403(a)(5) and install treatment as required by the October 6, 2010 letter.

23. 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.86 (d)(ii)(B), states “that all small and medium-sized water systems shall monitor during each six-month monitoring period until:

The system meets the lead and copper action levels during two consecutive six-month monitoring periods.”

24. On June 26, 2010, a Non-sampling Violation was issued to Respondent by NMED for failure to conduct lead and copper compliance sampling for the second compliance period in 2008 and the first compliance period in 2009. The Non-sampling Violation notified Respondent that it was required to provide public notice of the violation.

25. 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141 Subpart O, establishes requirements for publishing and submission of Consumer Confidence Reports (CCR).

26. On July 30, 2009, a Notice of Violation was issued to Respondent by the NMED for failure to submit the 2008 CCR.

27. On July 30, 2009, Respondent was notified by the NMED in a letter of the need to submit the 2008 CCR certification form.

28. On July 22, 2010, a Notice of Violation was issued to Respondent by the NMED for failure to submit the 2009 CCR.

29. 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.21(b)(1), requires the collection of repeat total coliform samples within 24 hours of notification of a total coliform-positive result.

30. On December 23, 2009, a Non-sampling Violation was issued to Respondent by NMED for failure to collect repeat monitoring samples. The Non-sampling Violation notified Respondent that it was required to provide public notice of the violation.

31. On September 23, 2010, a Non-sampling Violation was issued to Respondent by NMED for failure to collect repeat monitoring samples. The Non-sampling Violation notified Respondent that it was required to provide public notice of the violation.

32. 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.21(b)(5), requires the collection of five routine total coliform samples the month following a total coliform-positive result.

33. On November 23, 2010, a Non-sampling Violation was issued to Respondent by NMED for failure to collect the required five routine coliform samples for October 2010. The Non-sampling Violation notified Respondent that it was required to provide public notice of the violation.

34. 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.63, establishes Maximum Contaminant Levels (MCL) for microbiological contaminants in drinking water.

35. On September 23, 2010, a Notice of Violation was issued to Respondent by NMED for violation of the total coliform MCL. The Notice of Violation notified Respondent that it was required to provide public notice of the violation.

36. On December 22, 2010, a Notice of Violation was issued to Respondent by NMED for violation of the total coliform MCL. The Notice of Violation notified Respondent that it was required to provide public notice of the violation.

VIOLATION ONE

37. Respondent is in violation of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141 Subpart C, *Monitoring and Analytical Requirements*, by failing to undergo a sanitary survey.

VIOLATION TWO

38. Respondent is in violation of 20.7.10.400.B NMAC, *General Operating Requirements*. Respondent has failed to correct the following deficiencies: lack of a secured hatch on the upper storage tank; entry to storage tank is not restricted; leaks along base of upper storage tank; lack of proper security at spring #2; and a leak in the lower pump station despite written notification from NMED on September 15, 2010, and October 6, 2010.

VIOLATION THREE

39. Respondent is in violation of 20.7.10.400.D NMAC, *General Operating Requirements*, Respondent has failed to install a screen on the tank overflow line and vent despite written notification from NMED on September 15, 2010.

VIOLATION FOUR

40. Respondent is in violation of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.402(2)(e)(1), *Sampling location*. Respondent has failed to install a source water tap prior to treatment of the lower spring (Spring #1) and the upper spring (Spring #2) despite written notification from NMED on September 15, 2010.

VIOLATION FIVE

41. Respondent is in violation of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.23(a)(1), *Inorganic chemical sampling and analytical requirements*. Respondent has failed to install a sample tap after treatment of the lower spring (Spring #1) and the upper spring (Spring #2) despite written notification from NMED on September 15, 2010.

VIOLATION SIX

42. Respondent is in violation of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.403(a)(4), *Ground water systems with significant deficiencies or source water fecal contamination*, which requires a groundwater system to consult with the State regarding the appropriate corrective action within 30 days of receiving written notice of deficiencies. Respondent failed to respond in writing to deficiencies identified in the September 15, 2010 letter and the October 6, 2010 letter.

VIOLATION SEVEN

43. Respondent is in violation of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.404(a)(1)(2), *Treatment technique violations for ground water systems*, which requires a groundwater system to consult with the State within 120 days of receiving written notice by the State of the significant deficiency. Respondent failed to complete corrective action for the deficiencies identified in the September 15, 2010 letter.

VIOLATION EIGHT

44. Respondent is in violation of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.403(a)(2), *Ground water systems with significant deficiencies or source water fecal contamination*, if directed by the State, a groundwater system with a groundwater source sample that is fecal indicator positive must comply with the treatment technique requirements of the Ground Water Rule 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141 Subpart S. Respondent has failed to submit an “Application for Ground Water Rule 4-log Certification” in order to provide approved treatment that reliably achieves at least 4-log treatment of viruses before or at the first customer for all active sources despite written notification from NMED on October 6, 2010.

VIOLATION NINE

45. Respondent is in violation of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.403(a)(5), *Ground water systems with significant deficiencies or source water fecal contamination*, which requires a groundwater system to consult with the State within 120 days of receiving written notice by the State of the significant deficiency. Respondent has failed to install treatment as required by the October 6, 2010 letter.

VIOLATION TEN

46. Respondent is in violation of Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.86 (d)(ii)(B), *Monitoring requirements for lead and copper in tap water*. Respondent has failed to collect samples for two consecutive six-month monitoring periods despite written notification by the NMED on June 26, 2010.

VIOLATION ELEVEN

47. Respondent is in violation of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.153 *Consumer Confidence Report*, by failing to prepare, publish and certify a Consumer Confidence Report (CCR) for 2008 and 2009.

VIOLATION TWELVE

48. Respondent is in violation of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.21(b)(1), *Coliform Sampling*, which requires public water systems to collect repeat samples if a routine total coliform result is positive. Respondent failed to collect repeat samples for December 2009 and September 2010.

VIOLATION THIRTEEN

49. Respondent is in violation of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.21(b)(5), *Coliform Sampling*, which states if a water system collects fewer than five routine total coliform samples per month and receives a total coliform positive, that water system must collect five routine total coliform samples during the next month. Respondent failed to collect repeat samples for November 2010.

VIOLATION FOURTEEN

50. Respondent is in violation of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.63(a)(2), *Maximum contaminant levels (MCL) for microbiological contaminants*. Respondent violated the MCL for total coliform in September 2010 and December 2010.

RETURN TO COMPLIANCE

Based upon the foregoing findings, Respondent is hereby ordered to comply with the following:

51. By September 30, 2011, comply with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141 Subpart C, and undergo a sanitary survey.

52. By August 1, 2011, submit a proposed corrective action plan to NMED which includes a schedule and identifies steps that will be taken to bring the water system into full compliance with Section 20.7.10.400.B NMAC and Section 20.7.10.400.D NMAC, *General Operating Requirements*, Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.402(2)(e)(1), *Sampling location*, Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.23(a)(1), *Inorganic chemical sampling and analytical requirements*, Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.403(a)(4), *Ground water systems with significant deficiencies or source water fecal contamination*, and Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141 Subpart S.

53. By November 1, 2011, be in compliance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.404(a)(1)(2), *Treatment technique violations for ground water systems* and Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.403(a)(5), *Ground water systems with significant deficiencies or source water fecal contamination*, and address all deficiencies.

54. Upon receipt of this Order, immediately comply with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.86 *Monitoring requirements for lead and copper in tap water*, and collect lead and copper samples that meet action levels during two consecutive six-month monitoring periods.

55. By August 1, 2011, prepare and publish a 2010 CCR in the form and manner required by 40 C.F.R. 141 Subpart O. A copy of the CCR must be submitted to the NMED.

56. Upon receipt of this Order, comply with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.21(b)(1), *Coliform Sampling*, and collect repeat samples once a routine sample for total coliform result is positive.

57. Upon receipt of this Order, comply with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.21(b)(5), *Coliform Sampling*, and collect five routine total coliform samples the month after a total coliform result is positive.

58. Upon receipt of this Order, comply with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.63, *Maximum contaminant levels (MCL) for microbiological contaminants*, and deliver water to its users in compliance with the MCL for total coliform.

59. Submittals made pursuant this Order shall be sent by standard U.S. mail or certified mail with return receipt requested to the following:

Jeff Pompeo, Enforcement Coordinator
New Mexico Environment Department
Drinking Water Bureau
525 Camino de los Marquez, Suite 4
Santa Fe, NM 87505

IF RESPONDENT FAILS TO COMPLY WITH THE REQUIREMENTS OF PARAGRAPHS 51 THROUGH 59 OF 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, §§ 61-33-120.E and 74-1-10.E and 20.1.5 NMAC (available at www.nmenv.state.nm.us), 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:

Hearing Clerk
New Mexico Environment Department
P.O. Box 5469
Santa Fe, New Mexico 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 and correct. 20.1.5.200.A(2)(c) NMAC.

FINALITY OF ORDER

Pursuant to NMSA 1978, §§ 61-33-10.E and § 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 the 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 discussion 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 Jeff Pompeo, Enforcement Coordinator, Drinking Water Bureau, New Mexico Environment Department, 525 Camino de los Marquez, Santa Fe, NM 87505, (505) 476-8630.

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 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

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.



Raj Solomon P.E.
Division Director
Operations and Infrastructure Division
525 Camino de los Marquez, Suite 4
Santa Fe, New Mexico 87505

Date 7/5/11

Certificate of Service

I hereby certify that a copy of the foregoing Administrative Compliance Order was sent on July 6, 2011 via certified return receipt requested to the following:

Mr. Phillip Fuller
Chippeway Water System
PO Box 162
Cloudcroft New Mexico 88317


Bernice Garduno