



BILL RICHARDSON
Governor

State of New Mexico
ENVIRONMENT DEPARTMENT
Water & Wastewater Infrastructure
Development Division
DRINKING WATER BUREAU
525 Camino de Los Marquez, Suite 4
Santa Fe, New Mexico 87505
Telephone (505)476-8620
Fax (505)476-8656
www.nmenv.state.nm.us/dwb/dwbtop.html



RON CURRY
Secretary

JON GOLDSTEIN
Deputy Secretary

Karen E. Gallegos
Director

CERTIFIED RETURN RECEIPT REQUESTED
7006 0810 0005 7274 2409

February 10, 2009

Ms. Sue Padilla
Dona Ana County Utilities Border Region
845 North Motel Blvd.
Las Cruces, NM 88007

RE: ADMINISTRATIVE COMPLIANCE ORDER, NO. 2009-CO-004, DONA ANA COUNTY UTILITIES-BORDER REGION, PWS # NM3501107

Dear Ms. Padilla:

Please find attached an Administrative Compliance Order No. 2009-CO-004, issued to Dona Ana County Utilities Border Region, PWS # NM3501107, under 74-1-10.E NMSA 1978. Please review the Administrative Compliance Order (Order) carefully to understand what actions must be taken to comply with the requirements of the Order. Dona Ana County Utilities Border Region has a right to answer the allegations in the Order 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).

If you have any questions, please call Danny Valenzuela, Enforcement Coordinator of the Drinking Water Bureau, at 1-877-654-8720 or 505-476-8649 or Andy Edmondson, Technical Services Manager, at 505-476-8631.

Sincerely,

Karen E. Gallegos, Director
Water & Wastewater Infrastructure
Development Division

cc. Ernest Valenzuela, Water System Specialist, District III
Danny Valenzuela, Enforcement Coordinator
Chelo Hall, Region 6, EPA
Central File

**STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT**

**NEW MEXICO ENVIRONMENT DEPARTMENT
WATER & WASTEWATER INFRASTRUCTURE
DEVELOPMENT DIVISION
DRINKING WATER BUREAU**

Complainant,

No. 2009-CO-004

v.

**DONA ANA COUNTY UTILITIES-BORDER REGION,
PWS # NM3501107**

Respondent.

ADMINISTRATIVE COMPLIANCE ORDER

Pursuant to the Environmental Improvement Act (“EIA”), NMSA 1978, § 74-1-1, the Secretary of the New Mexico Environment Department (“NMED”), acting through the Director of the Water & Wastewater Infrastructure Development Division of NMED, issues this Administrative Compliance Order (“Order”) to Dona Ana County Utilities Border Region (“Respondent”) to enforce the EIA.

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, the Drinking Water Regulations, 20.7.10 NMAC.
2. Respondent is a domestic non-profit association and operates a public water system with a mailing address of 845 North Motel Blvd, Las Cruces, NM, 88007.
3. Respondent owns and operates a drinking water system (System) located in Dona Ana County, New Mexico.

4. The System is a Community water system that regularly provides piped drinking water to approximately six hundred ten (610) year-round residents and has fifteen (15) service connections to serve these residents.

VIOLATION ONE (1)

5. Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.23, *Inorganic chemical sampling and analytical requirements*, for systems monitoring quarterly for Arsenic, compliance with the Maximum Contaminated Level (MCL) must be based on the running annual average (RAA). Respondent has exceeded the Arsenic MCL RAA of 0.010 milligrams per liter (mg/L) in 2007.

Respondent is in violation of Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b), *Maximum Contaminate Levels (MCL) for inorganic contaminants*, which requires a public water system to not exceed the Arsenic MCL RAA of 0.01 (mg/L). Respondent exceeded the MCL RAA for Arsenic during the first quarter of 2008 with a concentration of 0.047 mg/L, the third quarter of 2008 with a concentration of 0.043 mg/L and the fourth quarter of 2008 with concentration of 0.043 mg/L.

COMPLIANCE

Based upon the foregoing findings and conclusions, Respondent is hereby ordered to:

6. Upon receipt of this Order, immediately pursue funding in order to return the water system to compliance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b), *MCL for inorganic contaminants, Arsenic*.

7. By March 31, 2009, submit a proposed corrective action plan to NMED identifying the steps that will be taken to bring the water system into full compliance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b), *MCL for inorganic contaminants, Arsenic*. The corrective action plan shall include a date for completion of a

preliminary engineering report (PER), method for obtaining funding, and a construction start date. The PER shall follow the requirements of USDA RUS Bulletin 1780-2 and include any alternative water supply options the Respondent or NMED may deem appropriate. Respondent shall provide NMED with a copy of the PER for review and comment.

8. No later than August 31, 2012, Respondent must have a RAA for Arsenic below 0.01 mg/L and be in compliance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b), and provide its members drinking water with concentration of Arsenic below the MCL.

9. Upon receipt of this Order, immediately comply with 40 C.F.R. § 141.201(a), and provide each person served by the water system a notification of the Arsenic MCL violation. A copy of the public notice must be mailed to NMED.

10. Each submittal made pursuant to this Order shall be sent by standard U.S. Mail or certified mail with return receipt requested to the following address:

**New Mexico Environment Department
Drinking Water Bureau
525 Camino de los Marquez
Santa Fe, N.M. 87505
Attn: Andy Edmondson (505) 476-8631**

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

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 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
P.O. Box 26110
Santa Fe, New Mexico 87502-6110**

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 of 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.

Lastly, 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 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.

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.

To explore the possibility of settlement in this matter, contact Danny Valenzuela, Enforcement Coordinator, Drinking Water Bureau, New Mexico Environment Department, 525 Camino de los Marquez, Santa Fe, N.M. 87505, (505) 476-8649.

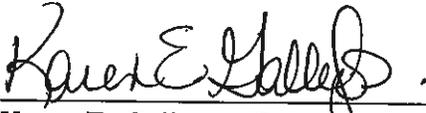
COMPLIANCE WITH OTHER LAWS

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 or 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 Act.

TERMINATION

This Order shall terminate when Respondent certifies that all requirements of this Order have been met and NMED has approved such certification in writing. NMED shall not approve such certification until Respondent has been below the MCL for Arsenic for four consecutive quarters following achievement of full compliance or when the Secretary approves a Final Stipulated Order.

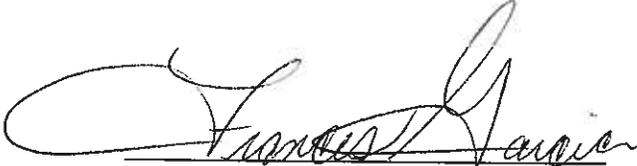
2-10-2009
Date


Karen E. Gallegos, Director
Water & Wastewater Infrastructure
Development Division
525 Camino de Los Marquez, Suite 4
Santa Fe, New Mexico 87505
(505) 476-8611

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Administrative Compliance Order was sent via certified return receipt requested on the following party of record on February 11th, 2009.

Ms. Sue Padilla
Dona Ana County Utilities Border Region
845 North Motel Blvd.
Las Cruces, NM 88007


Frances Garcia