

Enforcement Action Routing Slip

Letter To: Mr. Ron Payne, Pendaries Water System
Signature For: Karen E. Gallegos
Review Date: December 21, 2009
Subject: Administrative Compliance Order No. 2009-CO-031
Date Signed: _____

Comments:

12/23: Signed AD consistent w/ date on letter.
Please make copy of AD for me.

Thanks,
Karen



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

7005-1820-0001-5707-9772

December 21, 2009

Ron Payne
Pendaries Water System
P.O. Box 820
Las Vegas, New Mexico 87701

**RE: Administrative Compliance Order, NO. 2009-CO-031, Pendaries Water System,
PWS# NM3574125**

Mr. Payne:

Please find attached Administrative Compliance Order No. 2009-CO-031, issued to Pendaries Water System, PWS# NM3574125, 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. Pendaries 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 Andy Edmondson, Technical Services Manager at 505-476-8631 or via email at andy.edmondson@state.nm.us.

Sincerely,

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

- cc. Maria Medina, Water System Specialist, District II
- 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
WATER & WASTEWATER INFRASTRUCTURE
DEVELOPMENT DIVISION
DRINKING WATER BUREAU**

Complainant,

No. 2009-CO-031

v.

**Pendaries Water System,
PWS# NM3574125**

Respondent.

ADMINISTRATIVE COMPLIANCE ORDER

Pursuant to the Environmental Improvement Act (“EIA”), NMSA 1978, § 74-1-10, 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 Water & Wastewater Infrastructure Development Division of the NMED, issues this Administrative Compliance Order (“Order”) to Pendaries Water System (“Respondent”) to enforce the EIA and the DW Regulations.

FINDINGS OF FACT

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 the DW Regulations.
2. Respondent owns and operates a public drinking water system (System) located in San Miguel 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

six hundred (600) residents and has approximately one hundred (100) service connections to serve these residents.

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

5. Fluoride samples were collected from Respondent’s Well #3 on November 28, 2007, February 19, 2008, April 29, 2008, February 3, 2009, May 30, 2009, July 14, 2009, and October 6, 2009. Analysis of the samples resulted in Fluoride concentrations of 5.1 milligrams per liter (mg/L), 4.5 mg/L, 4.7 mg/L, 4.4 mg/L, 4.7 mg/L, 5.0 mg/L, and 4.6 mg/L respectively.

6. Fluoride confirmation samples were collected from Respondent’s Well #3 on December 13, 2007 and February 19, 2008. Analysis of the samples resulted in Fluoride concentrations of 5.6 mg/L and 4.4 mg/L respectively.

7. Per Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.23(f)(3), if a State-required confirmation sample is taken for any contaminant, then the results of the initial and confirmation sample shall be averaged. The resulting average shall be used to determine the system’s compliance.

8. Compliance with the Maximum Contaminant Levels (MCL) for Fluoride is determined by a Running Annual Average (RAA) as required by Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.23(i)(1), which states, *if the average at any sampling point is greater than the MCL, then the system is out of compliance. If any one sample would cause the annual average to be exceeded, then the system is out of compliance immediately.*

VIOLATION ONE (1)

9. Respondent is in violation of Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b), *Maximum contaminant levels (MCL) for inorganic contaminants*, which requires a

public water system to not exceed the Fluoride MCL of 4.0 mg/L. Respondent exceeded the MCL for Fluoride in Well #3 in the third quarter of 2008 with a RAA of 4.8 mg/L, fourth quarter of 2008 with a RAA of 4.6 mg/L, first quarter of 2009 with a RAA of 4.7 mg/L, second quarter of 2009 with a RAA of 4.9 mg/L, and third quarter of 2009 with a RAA of 4.8 mg/L.

RETURN TO COMPLIANCE

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

10. By February 15, 2010, 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, Fluoride*. The corrective action plan must include a date for completion of an engineering study to determine the best available option to enable long-term compliance with the provisions of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b), *MCL for inorganic contaminants, Fluoride* and a completion date for implementing the best available option.

11. By February 15, 2013, provide drinking water with a concentration of Fluoride below the MCL of 4.0 mg/L.

12. No later than February 15, 2014, have a RAA for Fluoride below 4.0 mg/L and be in compliance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b).

13. Submittals made pursuant to the EIA, NMSA 1978, § 74-1-10, or the DW Regulations, 20.7.10 NMAC of this Order shall be sent by standard U.S. Mail or certified mail with return receipt requested to the following address:

**Andy Edmondson, Technical Services Manager
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 THIS ORDER, THE SECRETARY MAY ASSESS 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 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 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 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 defense 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. 20.15.200.A(2)(b) NMAC.

Lastly, Respondent's Answers 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, §§ 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 Answers 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 Andy Edmondson, Technical Services Manager, Drinking Water Bureau, New Mexico Environment Department, 525 Camino de los Marquez, Santa Fe, N.M. 87505, (505) 476-8631.

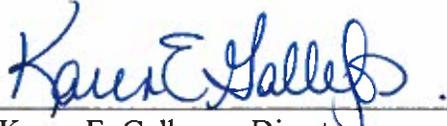
COMPLIANCE WITH OTHER LAWS

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 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. The NMED shall not approve such certification until Respondent's public water system has maintained a RAA for Fluoride at or below the MCL in accordance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b), and 40 C.F.R. § 141.23(i)(1) for five consecutive quarters or when the Secretary approves a Final Stipulated Order.

12-21-2009
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 December _____, 2009.

Mr. Ron Payne
Pendaries Water System
P.O. Box 820
Las Vegas, New Mexico 87701

Frances Garcia