



SUSANA MARTINEZ
Governor

JOHN A. SANCHEZ
Lt. Governor

State of New Mexico
ENVIRONMENT DEPARTMENT
Field 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

BUTCH TONGATE
Deputy Secretary

CERTIFIED RETURN RECEIPT REQUESTED

7005 1820 0001 5707 8188

June 7, 2012

Arthur Romero
Upper Holman MDWCA
PO Box 214
Holman, New Mexico 87723

**RE: Administrative Compliance Order, NO. 2012-CO-005, Upper Holman MDWCA,
PWS# NM3535518**

Mr. Romero:

Please find attached Administrative Compliance Order No. 2012-CO-005, issued to Upper Holman MDWCA, PWS# NM3535518, under the Environmental Improvement Act, NMSA 1978, § 74-1-10, the Drinking Water Regulations, 20.7.10 NMAC, and the Utility Operator Certification Act, NMSA 1978, § 61-33-10. Please review the Administrative Compliance Order (Order) carefully to understand what action must be taken to comply with the requirements of the Order. Upper Holman MDWCA has a right to answer the allegations in the Order and request a hearing, 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 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,

Butch Tongate, Acting Division Director
Field Operations & Infrastructure Division

cc. Joe Martinez, Water System Specialist, District II
Jacob Herrera, Technical Services Specialist
Chelo Hall, Region 6, EPA (Electronic)
Electronic File
Central File

STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT

NEW MEXICO ENVIRONMENT DEPARTMENT
FIELD OPERATIONS AND INFRASTRUCTURE
DIVISION,

Complainant,
v.

No. 2012-CO-005

Upper Holman MDWCA,
PWS# NM3535518,

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 and the Utility Operator Certification Act ("UOCA"), NMSA 1978 § 61-33-10, the Secretary of the New Mexico Environment Department ("NMED"), acting through the Director of the Field Operations and Infrastructure Division of the NMED, issues this Administrative Compliance Order ("Order") to Upper Holman MDWCA ("Respondent") to enforce the EIA, DW Regulations and UOCA.

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, DW Regulations and UOCA.
2. Respondent owns and operates a public drinking water system ("System") located in Mora 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

three hundred twenty-five (325) year round residents and has approximately seventy-four (74) service connections to serve these year round residents.

4. Respondent, Upper Holman MDWCA, is a "person" as defined by the EIA, NMSA 1978, § 74-1-3, the UOCA, NMSA 1978, § 61-33-2.G, and 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.2.

5. Fluoride samples were collected from Respondent's Well #2 on February 3, 2009, April 30, 2009, July 7, 2009, October 10, 2009, March 3, 2010, June 2, 2010, July 27, 2010, November 2, 2010, March 16, 2011, May 18, 2011, July 18, 2011, December 28, 2011, and January 25, 2012. Analysis of the samples resulted in Fluoride concentrations of 3.07 milligrams per liter (mg/L), 3.27 mg/L, 4.2 mg/L, 4.3 mg/L, 4.1 mg/L, 4.0 mg/L, 3.9 mg/L, 4.1 mg/L, 4.0 mg/L, 3.9 mg/L, 4.1 mg/L, 4.2 mg/L, and 4.1 mg/L respectively.

6. 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).

7. On July 7, 2010, a Notice of Violation was issued to Respondent by NMED for violation of the Fluoride MCL at Well #2.

8. On March 9, 2012, a Notice of Violation was issued to Respondent by NMED for violation of the Fluoride MCL at Well #2.

9. 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141 Subpart O, establishes requirements for publishing and submission of Consumer Confidence Reports ("CCR").

10. On July 26, 2010, a Notice of Violation was issued to Respondent by the NMED for failure to submit the 2009 CCR.

11. On July 21, 2011, a Notice of Violation was issued to Respondent by the NMED for failure to submit the 2010 CCR.

12. Pursuant to the Utility Operator Certification Act, NMSA 1978, § 61-33-1 et seq., 20.7.10.400.M NMAC, 20.7.4.20.A NMAC, and 20.7.4.20.C NMAC, Respondent is required to operate its System with a certified operator who meets or exceeds the appropriate level of certification required to operate the System.

13. On April 8, 2011, Respondent was notified by the NMED in a sanitary survey report of the need to employ a certified operator.

VIOLATION 1

Drinking Water Regulations

14. 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 at Well #2 during the second and third quarter of 2010, the fourth quarter of 2011, and the first quarter of 2012 with an RAA of 4.2 mg/L, 4.1 mg/L, 4.1 mg/L, and 4.1 mg/L respectively.

VIOLATION 2

Drinking Water Regulations

15. Respondent is in violation of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141 Subpart O, *Consumer Confidence Reports*, by failing to prepare, publish and certify a Consumer Confidence Report (CCR) for 2009 and 2010.

RETURN TO COMPLIANCE

Drinking Water Regulations

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

16. By July 31, 2012, 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 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b), *MCL for inorganic contaminants*, Fluoride.

17. By July 31, 2015, be in compliance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b), and provide drinking water with concentrations of Fluoride below the MCL of 4.0 mg/L.

18. By July 31, 2016, have a RAA for Fluoride below 4.0 mg/L, and be in compliance with 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.23(i)(1).

19. Within 60 days of receipt of this Order, Respondent shall prepare and publish a 2011 CCR in the form and manner required by 40 C.F.R. 141 Subpart O. A copy of the CCR must also be submitted to NMED within 60 days of receipt of this Order.

20. Submittals made pursuant to 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 16 THROUGH 20 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.

VIOLATION 3

Utility Operator Certification Act

21. Respondent is in violation of the UOCA, NMSA 1978, § 61-33-6, 20.7.4.20.A NMAC, and 20.7.10.400.M NMAC (incorporating NMSA 1978, § 61-33-6 and 20.7.4.A NMAC). NMSA 1978, § 61-33-6 and 20.7.4.A NMAC provide that, "It is unlawful to operate or allow the operation of a public water supply system or public wastewater facility unless the system or facility is operated by or under the supervision of a certified operator who meets or exceeds the appropriate level of certification required to operate the system or facility." Respondent is operating the System without a certified operator despite having received written notification by the NMED on April 8, 2011, that a certified operator was required.

Return to Compliance

Utility Operator Certification Act

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

22. Within 90 days of receipt of this Order, Upper Holman MDWCA public water system shall at all times be operated by or under the supervision of a certified operator who meets or exceeds the appropriate level of certification required to operate the System in accordance with the UOCA, NMSA 1978, § 61-33-6, 20.7.4.20.A NMAC, and 20.7.10.400.M NMAC. Respondent shall submit a written notification of that person's name and a copy of the certified operator's certification to the NMED.

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

Mike Coffman, Program Manager
New Mexico Environment Department
Surface Water Quality Bureau, Facilities Operation Team
5500 San Antonio Drive, NE
Albuquerque, NM 87109

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 22 THROUGH 23 OF THIS ORDER, THE SECRETARY OF NMED MAY ASSESS ADDITIONAL CIVIL PENALTIES NOT TO EXCEED FIVE THOUSAND DOLLARS (\$5,000) PER DAY FOR EACH DAY OF CONTINUED 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 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 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, the DW Regulations and the UOCA. 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.

Butch Tongate
Butch Tongate
Acting Division Director
Field Operations and Infrastructure Division
525 Camino de los Marquez, Suite 4
Santa Fe, New Mexico 87505

6/6/12
Date

Certificate of Service

I hereby certify that a copy of the foregoing Administrative Compliance Order was sent on 6/13, 2012 via certified return receipt requested to the following:

Mr. Arthur Romero
Upper Holman MDWCA
PO Box 214
Holman, New Mexico 87723

Bernice Garduno
Bernice Garduno