



SUSANA MARTINEZ
Governor

JOHN A. SANCHEZ
Lt. Governor

State of New Mexico
ENVIRONMENT DEPARTMENT
ENVIRONMENTAL HEALTH DIVISION
DRINKING WATER BUREAU

1190 St. Francis, PO Box 5469
Santa Fe, New Mexico 87502-5469
Telephone (505) 476-8620 Fax (505) 476-8656
www.nmenv.state.nm.us/dwb/



RYAN FLYNN
Cabinet Secretary-Designate

BUTCH TONGATE
Deputy Secretary

CERTIFIED RETURN RECEIPT REQUESTED
7006 0810 0005 7274 6117

October 28, 2013

Paul Fort
Agua Pura MDWCA
PO Box 163
Chacon, NM 87713

RE: Administrative Compliance Order, NO. 2013-AO-33 Agua Pura MDWCA, PWS# NM3545618

Mr. Fort,

Please find attached Administrative Compliance Order No. 2013-AO-33 issued to Agua Pura MDWCA, for Agua Pura MDWCA, PWS# NM3545618, under the Environmental Improvement Act, NMSA 1978, § 74-1-10, the Drinking Water Regulations, 20.7.10 NMAC. Please review the Administrative Compliance Order (Order) carefully to understand what action must be taken to comply with the requirements of the Order. Agua Pura 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 Maria J. Medina at 505-476-8629 or via email at maria.medina@state.nm.us.

Sincerely,

Tom Blaine PE, Division Director
Environmental Health Division

cc. Joe R. Martinez III, Compliance Officer
Tonia Biggs, Region 6, EPA (Electronic)
DWB website manager
P:\-ENFORCEMENT\Individue PWS Enforcement Info
Central File

STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT

NEW MEXICO ENVIRONMENT DEPARTMENT
ENVIRONMENTAL HEALTH DIVISION,

Complainant,

No. 2013-AO-33

v.

AGUA PURA MDWCA,

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 Environmental Health Division of the NMED, issues this Administrative Compliance Order (“Order”) to Agua Pura 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 and DW Regulations.
2. Respondent owns and operates a public drinking water system (“System”) Agua Pura MDWCA, PWS# NM3545618 located in Mora County, New Mexico.
3. The System is a Community water system, as defined by 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.2], that regularly provides piped drinking water to approximately one hundred and twenty three (123) residents and has approximately seventy two (72) service connections to serve these residents.
4. Respondent, Agua Pura MDWCA, 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. The System uses groundwater that is disinfected before reaching the first customer.
6. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.63], establishes Maximum Contaminant Levels (MCL) for microbiological contaminants in drinking water.
7. On July 11, 2013, a Notice of Violation was issued to Respondent by New Mexico Environment Department Drinking Water Bureau (NMED DWB) for exceeding the MCL for

microbiological contaminants in drinking water for the month of July 2013. The Notice of Violation notified Respondent that it was required to provide public notice of the MCL violation.

8. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.21(a) (2)], Coliform Sampling, which requires public water systems to collect routine total coliform samples.

9. On September 10, 2013, a Notice of Violation was issued to Respondent by NMED DWB for failure to conduct routine total coliform monitoring for August 2013. The Notice of Violation notified Respondent that it was required to provide public notice of the monitoring violation.

10. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.402], requires the collection of microbiological samples from each ground water source in use at the time a total coliform-positive sample was collected using the approved analytical method for source water monitoring as outlined in 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.402 (c)]. These samples must be collected within 24 hours of notification of the total coliform-positive result.

11. On September 10, 2013, a Notice of Violation was issued to Respondent for failure to comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.402], and collect microbiological samples, within 24 hours, from each ground water source in use at the time a total coliform-positive sample was collected during August 2013.

12. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.86], establishes monitoring requirements for lead and copper in tap water.

13. On April 4, 2011, a Notice of Violation was issued to Respondent by the NMED DWB for failure to conduct lead and copper compliance sampling during the 2008 - 2010 monitoring period.

14. 20.7.10.100 NMAC [incorporating 40 CFR 141.132 (c)] defines the monitoring requirements for disinfectant residuals and 20.7.10.100 NMAC [incorporating 40 CFR §141.134(c)(1)] requires monitoring results be submitted within 10 days following the quarter in which the residuals were collected.

15. On May 7, 2012, a Notice of Violation was issued to Respondent by the NMED DWB for failure to submit disinfectant residuals for the first quarter of 2012.

16. On July 23, 2012, a Notice of Violation was issued to Respondent by the NMED DWB for failure to submit disinfectant residuals for the second quarter of 2012.

17. On October 24, 2012, a Notice of Violation was issued to Respondent by the NMED DWB for failure to submit disinfectant residuals for the third quarter of 2012.

18. On January 23, 2013, a Notice of Violation was issued to Respondent by the NMED DWB for failure to submit disinfectant residuals for the fourth quarter of 2012.

19. 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 the System with a certified operator who meets or exceeds the appropriate level of certification required to operate the System.

20. Respondent is operating the System without a certified operator who meets or exceeds the appropriate level of certification required to operate the System

21. On September 16, 2013, a Notice of Violation was issued to Respondent by NMED DWB for violation of the Utility Operator Certification Act.

VIOLATION 1- Drinking Water Regulations

22. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.63], which establishes Maximum Contaminant Levels (MCL) for microbiological contaminants in drinking water. Respondent exceeded the MCL for microbiological contaminants for the month of July 2013.

VIOLATION 2- Drinking Water Regulations

23. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.21(a) (2)], Coliform Sampling, which requires public water systems to collect routine total coliform samples. Respondent failed to collect routine total coliform samples for August 2013.

VIOLATION 3- Drinking Water Regulations

24. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.402], requires the collection of microbiological samples from each ground water source in use at the time a total coliform-positive sample was collected. These samples must be collected within 24 hours of notification of the total coliform-positive result. Respondent failed to collect coliform samples from the sources after a July 2013 positive coliform sample.

VIOLATION 4- Drinking Water Regulations

25. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.86], Monitoring requirements for lead and copper in tap water. Respondent failed to collect compliance samples during the 2008 - 2010 monitoring period.

VIOLATION 5- Drinking Water Regulations

26. Respondent is in violation of 20.7.10.100 NMAC [incorporating 40 CFR 141.132 (c)] monitoring requirements for disinfectant residuals and 20.7.10.100 NMAC [incorporating 40

CFR § 141.134(c)(1)] which requires monitoring results be submitted within 10 days following the quarter in which the residuals were collected. Respondent did not report disinfectant residuals for all four quarters of 2012.

RETURN TO COMPLIANCE-- Drinking Water Regulations

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

27. Upon receipt of this Order, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.63], Maximum Contaminant Levels (MCL) for microbiological contaminants in drinking water and provide drinking water with microbiological contaminants below the MCL.

28. Upon receipt of this Order, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.21] and collect six (6) monthly routine total coliform samples and submit the sample results to NMED DWB by the 10th day of the month following receipt of this Order.

29. By December 31, 2013, be in compliance with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.402], and collect total coliform samples from each ground water source in use at the time a total coliform-positive sample was collected.

30. By July 15, 2014, comply with 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.

31. By January 10, 2014, Respondent must meet the requirements of 20.7.10.100 NMAC [incorporating 40 CFR 141.132 (c)] and 20.7.10.100 NMAC [incorporating 40 CFR §141.134(c)(1)] and submit disinfectant residual monitoring results to NMED DWB within 10 days following the quarter in which the residuals were collected.

32. Submittals made pursuant to paragraphs 27 through 31 of this this Order shall be sent by standard U.S. mail or certified mail with return receipt requested to the following:

Maria J. Medina
New Mexico Environment Department
Drinking Water Bureau
PO Box 5469
Santa Fe NM, 87502

If respondent fails to comply with the requirements of paragraphs 27 through 32 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 6 - Utility Operator Certification Act

33. 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 DWB on September 16, 2013 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:

34. By January 1, 2014 the Agua Pura 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.

35. Submittals made pursuant paragraph 34 of 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

Maria J. Medina
New Mexico Environment Department
Drinking Water Bureau
PO Box 5469
Santa Fe NM, 87502

If respondent fails to comply with the requirements of paragraphs 34 through 35 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 Maria J. Medina, Drinking Water Bureau, New Mexico Environment Department, Harold Runnels Building 1190 St. Francis Dr., Santa Fe, NM 87505, Phone 505-476-8629, email maria.medina@state.nm.us.

COMPLIANCE WITH OTHER LAWS

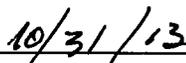
Compliance with the requirements of this Order does not relieve Respondent of the obligation to comply with all other applicable laws and regulations. This Order does not constitute a waiver, suspension, or modification of the requirements of 20.7.10 NMAC and 20.7.4 NMAC which remain in full force and 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.



Tom Blaine PE
Division Director
Environmental Health Division
Harold L. Runnels Building
1190 St. Francis Drive
Santa Fe, New Mexico 87502



Date

Certificate of Service

I hereby certify that a copy of the foregoing Administrative Compliance Order was sent on 11/4, 2013 via certified return receipt requested to the following:

Paul Forte
Agua Pura MDWCA
PO Box 163
Chacon NM, 87713



Jacob Herrera