



STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF ENVIRONMENT

NEW MEXICO ENVIRONMENT DEPARTMENT  
WATER PROTECTION DIVISION  
DRINKING WATER BUREAU

No. DWB/16-15 (CO)

Complainant,

v.

CAMINO REAL REGIONAL UTILITY AUTHORITY

Respondent.

**ADMINISTRATIVE COMPLIANCE ORDER AND ASSESSMENT OF CIVIL  
PENALTY**

Pursuant to NMSA 1978, Section 74-1-10 of the Environmental Improvement Act (“EIA”), NMSA 1978, §§ 74-1-1 to -15, and Section 20.7.10.300 NMAC of the Drinking Water Regulations (“Regulations”), the Secretary of the New Mexico Environment Department (“NMED”), acting through the Director of the Water Protection Division of NMED, issues this Administrative Compliance Order (“Order”) to Camino Real Regional Utility Authority (“CRRUA” or “Respondent”) to enforce the EIA and Regulations.

**I. FINDINGS**

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 and Regulations through its Drinking Water Bureau (“Bureau”).

2. Respondent owns and operates a public drinking water system (“System”), CRRUA, located in Doña Ana County, New Mexico with a mailing address of 845 North Motel Blvd., Las Cruces, NM 88007.

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 20,881 residents and has approximately 1,000 service connections according to the Bureau's data base.

4. Respondent is a "supplier of water" as defined by 20.7.10.100 NMAC, incorporating 40 C.F.R. §142.2 because it is a person who owns or operates a public water system.

5. Respondent is a "person" as defined by the EIA, NMSA 1978, Section 74-1-3, and 20.7.10.100 NMAC, incorporating 40 C.F.R. §141.2.

6. Prior to the formation of CRRUA on January 1, 2013 according to the Bureau's database, the following water systems operated as separate water systems: Dona Ana County Utilities Border Region Water System, Santa Teresa Water System, Santa Teresa Industrial Park, and Sunland Park Water System. These water systems were each issued administrative compliance orders in 2008 and 2009 for violating the Regulations prior to being absorbed by CRRUA. As a result of the formation, the prior administrative compliance orders issued in 2008 and 2009 for the individual water systems, Dona Ana Utilities Border Region Water System, Santa Teresa Water System, Santa Teresa Industrial Park, and Sunland Park Water System, are hereby replaced with this Order with penalties issued to CRRUA.

7. On May 27, 2008, NMED issued Administrative Compliance Order No. 2008-CO-007 to Respondent for the Sunland Park Water System ("Sunland Park ACO") and on May 29, 2008, NMED issued Administrative Compliance Order No. 2008-CO-009 to Respondent for Santa Teresa Industrial Park PWS #NM3594007 ("Industrial Park ACO"), for violating 20.7.10.100 NMAC, incorporating 40 C.F.R. Section § 141.62(b), *Maximum Contaminate Levels* ("MCL") for *inorganic contaminants*, which requires a public water system to not exceed the Arsenic MCL of 0.010 milligrams per liter ("mg/L").

8. Respondent exceeded the Arsenic MCL during the second quarter of 2008, with the level of 0.019 mg/L for the Sunland Park Water System. Additionally, all the wells had Arsenic concentrations above the MCL.

9. Respondent exceeded the Arsenic MCL during the first and second quarters of 2008, with the level of 0.043 mg/L for Santa Teresa Industrial Park.

10. The Sunland Park ACO and the Industrial Park ACO requested Respondent to take the following corrective actions:

a) By June 30, 2008, Respondent must submit a proposed corrective action plan to NMED identifying the steps that will be taken to bring itself into full compliance with the Arsenic MCL exceedance and the Regulations.

b) By September 30, 2008, Respondent shall have conducted a preliminary engineering report ("PER") to determine what options it has available to enable long term compliance with the provisions of 20.7.10.100 NMAC, incorporating 40 C.F.R. parts § 141 and 143.

c) Following approval of the PER by NMED, Respondent shall immediately pursue funding in order to implement the engineering design selected to return the water system to compliance.

d) By February 27, 2009, Respondent shall have secured funding to implement a solution identified in the PER such that full compliance is achieved with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b), *MCL for inorganic contaminants*, Arsenic exceedance.

e) No later than December 2009, Respondent shall be in full compliance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b), *MCL for inorganic contaminants*, Arsenic exceedance.

11. On September 15, 2008, NMED and Respondent entered into a Stipulated Final Order ("SFO") for the Sunland Park Water System (DWB 08-28 (CO)) and Santa Teresa Industrial Park PWS #NM3594007 (DWB 08-29 (CO)) to resolve the Sunland Park ACO and the Industrial Park ACO ("ACO's).

12. The Sunland Park Water System SFO and Santa Teresa Industrial Park SFO both amended the dates within the compliance schedule set forth in the ACO's for each water system. The amended compliance dates were as follows:

a) By March 30, 2009, Respondent was to have conducted a PER to determine what options it has available to enable long term compliance with the provisions of 20.7.10.100 NMAC, incorporating 40 C.F.R. parts 141 and 143.

b) By September 27, 2009, Respondent was to have secured funding to implement a solution identified in the PER such that full compliance is achieved with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b).

c) No later than December 2010, Respondent must have been in full compliance with 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.612(b).

13. Respondent failed to take the corrective actions found in the Sunland Park Water System SFO and Santa Teresa Industrial Park SFO and to date, remains out of compliance.

14. On February 10, 2009, NMED issued Administrative Compliance Order No. 2009-CO-004 to Respondent for Dona Ana County Utilities Border Region, PWS #NM3501107 ("Dona Ana County ACO") for violating Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b), *MCL for inorganic contaminants*, which requires a public water system to not exceed the Arsenic MCL running annual average ("RAA") of 0.010 (mg/L).

15. Respondent exceeded the MCL RAA of 0.010 milligrams per liter (mg/L) in 2007 and also 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 a concentration of 0.043 mg/L.

16. The Dona Ana County ACO requested Respondent to take the following corrective actions:

a) Upon receipt of the ACO, Respondent was to immediately pursue funding 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.

b) By March 31, 2009, Respondent was to have submitted 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).

c) No later than August 31, 2012, Respondent must have had an RAA for Arsenic below 0.010 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.

d) Upon receipt of the Dona Ana County ACO, Respondent was required to 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 have been mailed to NMED.

17. Respondent failed to take the corrective actions and to date, remains out of compliance.

18. Respondent did not request a hearing or enter into a settlement conference with NMED for the Dona Ana County ACO.

19. The Bureau did not receive a return receipt from Respondent, however, the Dona Ana County ACO was not returned to the Bureau as undeliverable.

20. On March 10, 2009 thirty days (30) after Respondent received the Dona Ana County ACO it became a final order of the Secretary of NMED.

21. On December 17, 2009, NMED issued Administrative Compliance Order No. 2009-CO-038 to Respondent for Santa Teresa Water System, PWS #NM3542007 ("Santa Teresa ACO") in order to compel Respondent to take corrective action for the following two (2) violations:

a) Violation One: Respondent is in violation of Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b), *MCL for inorganic contaminants*, which requires a public water system to not exceed the Arsenic MCL of 0.010 mg/L. Respondent exceeded the MCL for

Arsenic in Well #31 during the second quarter of 2009 with a RAA of 0.012 mg/L and the third quarter of 2009 with a RAA of 0.013 mg/L.

b) Violation Two: Respondent is in violation of Section 20.7.10.100 NMAC, incorporating 40 C.F.R § 141.62(b), *MCL for inorganic contaminants*, which requires a public water system to not exceed the Arsenic MCL of 0.010 mg/L. Respondent exceeded the MCL for Arsenic in Well #19 during the third quarter of 2008 with a RAA of 0.014 mg/L, fourth quarter of 2008 with a RAA of 0.013 mg/L, first quarter of 2009 with a RAA of 0.014 mg/L, second quarter of 2009 with a RAA of 0.014 mg/L, and third quarter of 2009 with a RAA of 0.014 mg/L.

22. The Santa Teresa ACO requested Respondent to take the following corrective actions:

a) By February 15, 2010, Respondent must have submitted 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.

b) By February 15, 2013, Respondent must have been in compliance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b) and provide drinking water with a concentration of Arsenic below the MCL of 0.010 mg/L.

c) No later than February 15, 2014, Respondent must have had an RAA for Arsenic below 0.010 mg/L and be in compliance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.23(i)(1), and provide its members drinking water with a concentration of Arsenic below the MCL.

23. Respondent failed to take the corrective actions and to date, remains out of compliance.

24. Respondent did not request a hearing or enter into a settlement conference with NMED.

25. The Bureau did not receive a return receipt from Respondent, however, the Santa Teresa ACO was not returned to the Bureau as undeliverable.

26. On January 17, 2010, thirty days (30) after Respondent's receipt of the Santa Teresa ACO, it became a final order of the Secretary of NMED.

27. On February 24, 2014, the Bureau mailed a certified letter return receipt requested to Respondent informing Respondent that it failed to take corrective action within the allocated timeframe for the Sunland Park SFO, Industrial Park SFO, Dona Ana County ACO, and Santa Teresa ACO. The Bureau also informed Respondent that it may be assessed civil penalties for each instance of noncompliance and also requested documentation verifying any corrective actions it had taken.

28. On March 21, 2014, NMED received correspondence from Respondent requesting an extension of time to meet the compliance requirements of the Santa Teresa ACO. Respondent also acknowledged the Dona Ana County ACO, Sunland Park SFO, and Industrial Park SFO. Respondent also informed the Bureau that an arsenic treatment plant was completed in April 2013, and the water meets EPA standards for Santa Teresa Water System, Santa Teresa Industrial Park and Dona Ana Utilities Border Regional Water System and an arsenic treatment plant was completed August 2011 for the Sunland Park Water System and the water meets EPA standards.

29. Despite Respondent's claims, CRRUA was out of compliance with the Arsenic standards and therefore NMED issued 10 Notices of Violation to CRRUA in 2016 for Arsenic MCL exceedance. Each Notice of Violation contains multiple violations of Arsenic MCL exceedance dating back to 2012 through 2016, for a total of 47 violations.

30. On May 2, 2014, NMED mailed a certified letter return receipt requested ("2014 letter") to Respondent confirming receipt of its extension request. NMED agreed to modify the Santa Teresa ACO by extending the deadline from February 15, 2013 to December 31, 2015 for Respondent to be in compliance with 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b), and provide drinking water with a concentration of Arsenic below the MCL of 0.010 mg/L and

extending the deadline from February 15, 2014 to December 31, 2016 for Respondent to have a RAA concentration for Arsenic below 0.010 mg/L and be in compliance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.23(i)(1).

31. The Bureau did not receive a return receipt from Respondent. However, the 2014 letter was not returned to the Bureau as undeliverable.

32. In 2016, the Bureau issued 10 Notices of Violation to CRRUA for Arsenic MCL exceedance. Each violation letter contains numerous violations of arsenic MCL exceedance dating back to 2012 through 2016.

33. To date, Respondent has not complied with the extension deadlines for the Santa Teresa Water System per the May 2, 2014 letter from NMED.

34. To date, Respondent has not complied with the Sunland Park SFO and Industrial Park SFO requirement to conduct a PER to determine what options it has available to enable long term compliance with the provisions of 20.7.10.100 NMAC, incorporating 40 C.F.R. parts 141 and 143.

35. To date, Respondent has not complied with the Sunland Park SFO and Industrial Park SFO requirement to pursue and secure funding to implement a solution identified in the PER such that full compliance is achieved with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b).

36. To date, Respondent has not complied with the Sunland Park SFO and Industrial Park SFO requirement to be in full compliance with 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b).

37. To date, Respondent has not complied with the Dona Ana County ACO to 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).

38. To date, Respondent has not complied with the Dona Ana County ACO to have a RAA for Arsenic below 0.010 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.

39. To date, Respondent has not complied with the Dona Ana County ACO to provide each person served by the water system a notification of the Arsenic MCL violation pursuant to 40 C.F.R. §141.201(a). Respondent also failed to mail a copy of the public notice to NMED.

40. To date, Respondent has not complied with the Santa Teresa ACO to 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*.

41. To date, Respondent has not complied with the extension request outlined in the May 2, 2014 letter from NMED to be in compliance with 20.7.10.100 NMAC, incorporating 40 C.F.R. §141.62(b), and provide drinking water with a concentration of Arsenic below the MCL of 0.010 mg/L by December 31, 2015 for the Santa Teresa Water System.

42. To date, Respondent has not complied with the extension request outlined in the May 2, 2014 letter from NMED to have a RAA concentration for Arsenic below 0.010 mg/L and be in compliance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. §141.23(i)(1) by December 31, 2016 for the Santa Teresa Water System.

## **II. VIOLATIONS**

43. Respondent violated 20.7.10.100 NMAC, incorporating 40 C.F.R. Section §141.62(b), *MCL for inorganic contaminants*, which requires a public water system to not exceed the Arsenic MCL of 0.010 milligrams per liter (mg/L).

44. Respondent violated 40 C.F.R. §141.201(a) requiring Respondent to provide each person served by the water system a notification of the Arsenic MCL violation. Respondent also failed to provide a copy of the public notice to NMED.

45. All violations contained within this Order are outstanding violations from the Sunland Park SFO, Industrial Park SFO, Dona Ana County ACO, and Santa Teresa ACO.

### **III. SCHEDULE OF COMPLIANCE**

46. Respondent is hereby ordered to:

a) Immediately upon receipt of this Order, Respondent shall 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*.

b) Within thirty (30) days after receipt of this Order, Respondent shall 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 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.

c) Within thirty (30) days after receipt of this Order, Respondent shall be in compliance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. §141.62(b), and provide drinking water with a concentration of Arsenic below the MCL of 0.010 mg/L.

d) Within thirty (30) days after receipt of this Order, Respondent shall have a RAA concentration for Arsenic below 0.010 mg/L and be in compliance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. §141.23(i)(1).

### **IV. CIVIL PENALTY**

47. NMSA 1978, Section 74-1-10(D)(1) of the EIA authorizes the NMED Secretary to assess a civil penalty of up to One Thousand Dollars (\$1,000.00) for each incident of noncompliance with an administrative compliance order.

48. NMSA 1978, Section 74.1.10(C) of the EIA authorizes the NMED Secretary to assess a civil penalty for violation of the Regulations that shall not exceed One Thousand Dollars (\$1,000.00) per violation per day.

49. NMED hereby assesses against Respondent a civil penalty of Two Thousand Dollars and zero cents (\$2,000.00) for the two (2) violations set forth herein in paragraphs 43 through 45.

50. Respondent shall pay the total civil penalty of Two Thousand Dollars and zero cents (\$2,000.00) by certified or cashier's check made payable to the State of New Mexico and mailed or hand delivered to:

Alysia Levitt, Financial Manager  
Drinking Water Bureau  
New Mexico Environment Department  
Post Office Box 5469 (87502)  
1190 S. St. Francis Drive  
Santa Fe, New Mexico 87505

**V. NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING**

51. Pursuant to NMSA 1978, Section 74-1-10(E) and 20.1.5 NMAC (available at <http://www.env.nm.gov>), 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:

Linda Vigil, Hearing Clerk  
New Mexico Environment Department  
PO Box 5469 (87502)  
1190 S. St. Francis Drive  
Santa Fe, New Mexico 87505

52. 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.

53. 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.

54. 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. Lastly, Respondent must attach a copy of this Order to the Request for Hearing. 20.1.5.200(A)(2)(d) NMAC.

#### **VI. FINALITY OF ORDER**

55. Pursuant to NMSA 1978, Section 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.

#### **VII. SETTLEMENT CONFERENCE**

56. Whether or not Respondent submits a Request for Hearing, Respondent may confer with the Bureau concerning settlement. NMED encourages settlement consistent with the provisions and objectives of the EIA and the Regulations. Settlement discussions neither extend the thirty (30) day deadline for filing an Answer and Request for Hearing, 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 *pro se* (without legal counsel) or may be accompanied or represented by legal counsel.

57. 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.

58. To explore the possibility of settlement in this matter, contact Mia A. Napolitano, Esq., Office of General Counsel, New Mexico Environment Department, 121 Tijeras Ave., NE, Suite 1000, Albuquerque, New Mexico 87102, [mia.napolitano@state.nm.us](mailto:mia.napolitano@state.nm.us) or at (505) 383-2060.

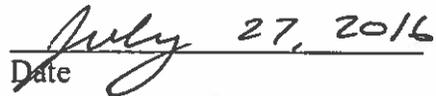
#### **VIII. COMPLIANCE WITH OTHER LAWS**

59. Compliance with the requirements of this Order does not relieve Respondent of the obligation to comply with all other applicable laws and regulations.

#### **IX. TERMINATION**

60. This Order shall terminate when Respondent certifies that all the requirements of this Order have been met, and the Bureau has approved such certification in writing, or when the Secretary of NMED approves a Stipulated Final Order.

  
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Trais Kliphuis  
Director, Water Protection Division  
New Mexico Environment Department

  
\_\_\_\_\_  
Date

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing "Administrative Compliance Order and Assessment of Civil Penalty" was sent via certified return receipt requested mail on the following party of record on July 27, 2016:

Brent Westmoreland  
PO Box 429  
Sunland Park, NM 88063

A handwritten signature in black ink, appearing to read "Mia A. Napolitano", written over a horizontal line.

Mia A. Napolitano  
Assistant General Counsel  
New Mexico Environment Department