NEW MEXICO
ENVIRONMENT DEPARTMENT

SUSANA MARTINEZ
Governor
JOHN A. SANCHEZ
Lieutenant Governor

P.O. Box 5469
Santa Fe, NM 87502-5469
Phone (505) 476-8620 Fax (505) 476-8656
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RYAN FLYNN
Cabinet Secretary
BUTCH TONGATE
Deputy Secretary

CERTIFIED RETURN RECEIPT REQUESTED
7005 1820 0001 5772 1961

September 5, 2014

Douglin Whitted
Dog Canyon MDWCA
25 Terrall Trail
Alamogordo, NM 88310

RE: Administrative Compliance Order, No. 2014-ACO-10 Dog Canyon MDWCA, PWS# NM3534519

Mr. Whitted,

Please find attached Administrative Compliance Order No. 2014-ACO-10 issued to Dog Canyon MDWCA, for Dog Canyon MDWCA, PWS# NM3534519, 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. Dog Canyon 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, Enforcement Coordinator, at 505-476-8629 or via email at maria.medina@state.nm.us.

Sincerely,

Tom Blaine PE, Division Director
Environmental Health Division

cc. John Pijawka, Compliance Officer (Electronic)
Tonia Biggs, Region 6, EPA (Electronic)
P:\~ENFORCEMENT\Individual PWS Enforcement Info
Central File

STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT

NEW MEXICO ENVIRONMENT DEPARTMENT
ENVIRONMENTAL HEALTH DIVISION,

Complainant, No. 2014-ACO-10
v.

DOG CANYON 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 Dog Canyon 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") Dog Canyon MDWCA, PWS# NM3534519, located in Otero 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 twenty-eight (28) residents and has approximately eighteen (18) service connections to serve these residents.

4. Respondent, Dog Canyon 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. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(4)], Ground water systems with significant deficiencies or source water fecal contamination, requires a groundwater system to consult with the State regarding the appropriate corrective action within thirty (30) days of receiving written notice of significant deficiency.

6. On February 21, 2014, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to submit a corrective action plan to the State regarding appropriate corrective actions within thirty (30) days of receiving written notice of deficiencies. The NOV notified Respondent that it was required to provide public notice of the violation.

7. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(5)], Ground water systems with significant deficiencies or source water fecal contamination, requires a groundwater system to either correct significant deficiencies or be in compliance with a State approved corrective action plan within 120 days of receiving written notice by the State of significant deficiency.

8. On July 14, 2014, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to correct significant deficiencies identified in the June 18, 2013, Sanitary Survey within 120 days of receiving notice of deficiencies. The NOV notified Respondent that it was required to provide public notice of the violation.

9. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.86], establishes monitoring requirements for lead and copper in tap water.

10. On June 19, 2014, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to conduct lead and copper sampling during the 2011-2013 monitoring period. The NOV notified Respondent that it was required to provide public notice of the violation.

11. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.23], establishes inorganic chemical sampling and analytical requirements.

12. On March 17, 2014, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to conduct asbestos sampling during the 2011-2013 monitoring period. The NOV notified Respondent that it was required to provide public notice of the violation.

VIOLATION 1- Drinking Water Regulations

13. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(4)], which requires a groundwater system to consult with the State regarding the appropriate corrective action within thirty (30) days of receiving written notice of significant deficiency. Respondent failed to submit a corrective action plan within thirty (30) days of receiving notice by the State.

VIOLATION 2- Drinking Water Regulations

14. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(5)], which requires a groundwater system to either correct significant deficiencies or be in compliance with a State approved corrective action plan within 120 days of receiving written notice by the State of significant deficiency. Respondent failed to correct significant deficiencies identified during the June 18, 2013, Sanitary Survey within 120 days of receiving written notice by the State.

VIOLATION 3- Drinking Water Regulations

15. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.86], which establishes monitoring requirements for lead and copper in tap water. Respondent failed to collect lead and copper compliance samples during the 2011-2013 monitoring period.

VIOLATION 4- Drinking Water Regulations

16. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.23], which establishes inorganic chemical sampling and analytical requirements. Respondent failed to collect an asbestos sample during the 2011-2013 monitoring period.

RETURN TO COMPLIANCE

Drinking Water Regulations

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

17. By September 30, 2014, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(4)], and submit a corrective action plan to the State.

18. By October 31, 2014, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(5)], and correct significant deficiencies identified in the June 18, 2013, Sanitary Survey.

19. By September 30, 2014, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.186], and collect lead and copper compliance samples.

20. By October 31, 2014, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.123], and collect an asbestos compliance sample.

21. Submittals made pursuant to paragraphs 17 through 20 shall be sent by standard U.S. mail or certified mail with return receipt requested to the following:

Maria J. Medina, Enforcement Coordinator
New Mexico Environment Department
Drinking Water Bureau
P.O. Box 5469
Santa Fe, NM 87502-5469

If respondent fails to comply with the requirements of paragraphs 17 through 21 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 5- Utility Operator Certification Act

22. 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 February 6, 2014 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:

23. Within sixty (60) days of receipt of this Order, Dog Canyon 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.

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

Anne Keller, Environmental Specialist
New Mexico Environment Department
Surface Water Quality Bureau
P.O. Box 5469
Santa Fe, NM 87502-5469

Maria J. Medina, Enforcement Coordinator
New Mexico Environment Department
Drinking Water Bureau
P.O. Box 5469
Santa Fe, NM 87502-5469

If respondent fails to comply with the requirements of paragraphs 23 through 24 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, P.O. Box 5469, Santa Fe, New Mexico 87502-5469, (505) 476-8629.

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

9/15/14
Date

Certificate of Service

I hereby certify that a copy of the foregoing Administrative Compliance Order was sent on 9/16, 2014 via certified return receipt requested to the following:

Douglin Whitted
Dog Canyon MDWCA
25 Terrall Trail
Alamogordo, NM 88310

Maria J. Medina