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/

SUSANA MARTINEZ
Governor

JOHN A. SANCHEZ
Lt. Governor

RYAN FLYNN
Cabinet Secretary-Designate

BUTCH TONGATE
Deputy Secretary

CERTIFIED RETURN RECEIPT REQUESTED

 # 7005 1820 0001 5707 8041

June 17, 2013

Troy Poovey
Low Mesa MDWCA
PO Box 4094
Alamogordo, New Mexico 88311

RE: Administrative Compliance Order, NO. 2013-CO-008, Low Mesa MDWCA, PWS# NM3501319

Mr. Poovey:

Please find attached Administrative Compliance Order No. 2013-CO-008, issued to Low Mesa MDWCA, PWS# NM3501319, 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. Low Mesa MDWCA 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 Violette Valerio-Hirschfeld, PWSS Manager at 505-476-8636 or via email at violette.valerio-hirschfeld@state.nm.us.

Sincerely,

Tom Blaine

Tom Blaine PE, Division Director
Environmental Health Division

cc. Ray Melendrez, Southern Region Supervisor
Tonia Biggs, Region 6, EPA (Electronic)
Electronic File
System File

STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT

NEW MEXICO ENVIRONMENT DEPARTMENT
ENVIRONMENTAL HEALTH DIVISION,

Complainant,
v.

No. 2013-CO-008

Low Mesa MDWCA,
PWS# NM3501319,

Respondent.

ADMINISTRATIVE COMPLIANCE ORDER

Pursuant to the Environmental Improvement Act ("EIA"), NMSA 1978, § 74-1-10, and 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 Environmental Health Division of the NMED, issues this Administrative Compliance Order ("Order") to Low Mesa MDWCA ("Respondent") to enforce the EIA and DW Regulations.

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") 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-five (25) year round residents and has approximately fifteen (15) service connections to serve these year round residents.

4. Respondent, Low Mesa 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. 20.7.10.100 NMAC incorporating 40 C.F.R. § 141.86 (d)(ii) states that all small and medium-sized water systems shall monitor during each six-month monitoring period until: The system meets the lead and copper action levels during two consecutive six-month monitoring periods.

6. On November 18, 2011, a Notice of Violation was issued to Respondent by NMED for failure to conduct lead and copper compliance sampling during the 2005 to 2007, 2008 to 2010, or the 2011 compliance periods. The Notice of Violation notified Respondent that it was required to provide public notice of the non-sampling violation.

7. On April 20, 2012, a Notice of Violation was issued to Respondent by NMED for failure to conduct lead and copper compliance sampling during year 2011. The Notice of Violation notified Respondent that it was required to provide public notice of the non-sampling violation.

8. On April 3, 2013, a Notice of Violation was issued to Respondent by NMED for failure to conduct lead and copper compliance sampling during year 2012. The Notice of Violation notified Respondent that it was required to provide public notice of the non-sampling violation.

VIOLATION 1

9. Respondent is in violation of Section 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 lead and copper samples in 2007, 2008, 2009, 2010, 2011 and 2012.

RETURN TO COMPLIANCE

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

10. Upon receipt of this Order, immediately comply with Section 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 that meet action levels during two consecutive six-month monitoring periods.

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

Violette Valerio-Hirschfeld
New Mexico Environment Department
Drinking Water Bureau
1190 St. Francis, PO Box 5469
Santa Fe, New Mexico 87502-5469

IF RESPONDENT FAILS TO COMPLY WITH THE REQUIREMENTS OF PARAGRAPHS 10 THROUGH 11 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.

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 and the DW Regulations. 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 Violette Valerio-Hirschfeld, PWSS Manager, Drinking Water Bureau, New Mexico Environment Department, 1190 St. Francis Drive PO Box 5469, Santa Fe, New Mexico 87502, (505) 476-8636.

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

6/18/13
Date

Certificate of Service

I hereby certify that a copy of the foregoing Administrative Compliance Order was sent on June 19, 2013 via certified return receipt requested to the following:

Mr. Troy Poovey
Low Mesa MDWCA
PO Box 4094
Alamogordo, New Mexico 88311

Violette Valerio-Hirschfeld