



NEW MEXICO
ENVIRONMENT DEPARTMENT



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RYAN FLYNN
Cabinet Secretary
BUTCH TONGATE
Deputy Secretary

CERTIFIED RETURN RECEIPT REQUESTED
7005 1820 0001 5772 3354

July 17, 2015

Paula Valdez
Ojo Feliz MDWCA
PO Box 12
Ojo Feliz, NM 8773

**RE: Administrative Compliance Order, No. 2015-ACO-14 Ojo Feliz MDWCA, PWS#
NM3510018**

Ms. Valdez:

Please find attached Administrative Compliance Order No. 2015-ACO-14 issued to Ojo Feliz MDWCA, for Ojo Feliz MDWCA, PWS# NM3510018, 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. Ojo Feliz 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.env.nm.gov).

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,

Trais Kliphuis
Division Director
Water Protection Division

cc. Alejandro Sandoval, Compliance Officer
Jenna Manheimer, Region 6, EPA (Electronic)
P:\~ENFORCEMENT\Individual PWS Enforcement Info
Central File

**STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT**

NEW MEXICO ENVIRONMENT DEPARTMENT
WATER PROTECTION DIVISION,

Complainant,
v.

No. 2015-ACO-14

OJO FELIZ 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 Water Protection Division of the NMED, issues this Administrative Compliance Order (“Order”) to Ojo Feliz 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”) Ojo Feliz MDWCA, PWS# NM3510018, 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 sixty (60) residents and has approximately twenty four (24) service connections to serve these residents.

4. Respondent, Ojo Feliz 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. § 141.152(b)], requires that all community public water systems must provide a Consumer Confidence Report (CCR) to their consumers and to the State by July 1st of each year.

6. On July 26, 2010, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to provide a CCR for the 2009 calendar year to their consumers and the State by July 1, 2010.

7. On July 21, 2011, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to provide a CCR for the 2010 calendar year to their consumers and the State by July 1, 2011.

8. On July 23, 2012, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to provide a CCR for the 2011 calendar year to their consumers and the State by July 1, 2012.

9. On November 5, 2013, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to provide a CCR for the 2012 calendar year to their consumers and the State by July 1, 2013.

10. On July 29, 2014, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to provide a CCR for the 2013 calendar year to their consumers and the State by July 1, 2014.

11. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.134(c)(1)], defines the monitoring requirements for disinfectant residuals and requires monitoring results be submitted within ten (10) days following the quarter in which the residuals were collected.

12. On May 17, 2012, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to submit disinfectant residuals for the first (1st) quarter of 2012. The NOV notified Respondent that it was required to provide public notice of the violation.

13. On July 23, 2012, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to submit disinfectant residuals for the second (2nd) quarter of 2012. The NOV notified Respondent that it was required to provide public notice of the violation.

14. On October 24, 2012, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to submit disinfectant residuals for the third (3rd) quarter of 2012. The NOV notified Respondent that it was required to provide public notice of the violation.

15. On January 15, 2013, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to submit disinfectant residuals for the fourth (4th) quarter of 2012. The NOV notified Respondent that it was required to provide public notice of the violation.

16. On August 7, 2013, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to submit disinfectant residuals for the second (2nd) quarter of 2013. The NOV notified Respondent that it was required to provide public notice of the violation.

17. On February 18, 2014, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to submit disinfectant residuals for the third (3rd) and fourth (4th) quarters of 2013. The NOV notified Respondent that it was required to provide public notice of the violation.

18. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(4)], requires a ground water system to consult with the State regarding the appropriate corrective action within thirty (30) days of receiving written notice of significant deficiency.

19. On May 27, 2015, 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 the violation.

20. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(5)], requires a ground water 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.

21. On May 27, 2015, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to correct significant deficiencies identified during the November 24, 2014 Sanitary Survey within 120 days of receiving written notice of deficiencies. The NOV notified Respondent that it was required to provide public notice of the violation.

22. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.402(a)(1) and 40 C.F.R. § 141.402(a)(2)], requires public water systems to collect at least one ground water source sample from each ground water source in use at the time of the total coliform positive sample was collected. These samples must be collected within twenty four (24) hours of notification of the total coliform positive result.

23. On February 3, 2015, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to collect a ground water source sample within twenty four (24) hours from each ground water source in use at the time of the total coliform positive sample was collected. The NOV notified Respondent that it was required to provide public notice of the violation.

VIOLATION 1- Drinking Water Regulations

24. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.152(b)], which requires that all community public water systems must provide a Consumer Confidence Report (CCR) to their consumers and to the State by July 1st of each year. Respondent failed to submit a CCR for the 2009, 2010, 2011, 2012, and 2013 calendar years to their consumers and the State by July 1, 2010, July 1, 2011, July 1, 2012, July 1, 2013, and July 1, 2014 respectively.

VIOLATION 2- Drinking Water Regulations

25. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.134(c)(1)], which defines the monitoring requirements for disinfectant residuals and requires monitoring results be submitted within ten (10) days following the quarter in which the residuals were collected. Respondent failed to submit disinfectant residuals for first (1st), second (2nd), third (3rd), and fourth (4th) quarters of 2012 and second (2nd), third (3rd), and fourth (4th) quarters of 2013.

VIOLATION 3- Drinking Water Regulations

26. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(4)], which requires a ground water 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 4- Drinking Water Regulations

27. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(5)], which requires a ground water 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 November 24, 2014, Sanitary Survey within 120 days of receiving written notice by the State.

VIOLATION 5- Drinking Water Regulations

28. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.402(a)(1) and 40 C.F.R. § 141.402(a)(2)], which requires public water systems to collect at least one ground water source sample from each ground water source in use at the time of the total coliform positive sample was collected. These samples must be collected within twenty four (24) hours of notification of the total coliform positive result. Respondent failed to collect at least one ground water source sample after a total coliform positive sample on November 6, 2014.

RETURN TO COMPLIANCE

Drinking Water Regulations

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

29. By August 15, 2015, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.152(b)], and provide a CCR to consumers and the State.

30. Upon receipt of this Order, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.134(c)(1)], and submit disinfectant residual monitoring results to NMED DWB.

31. By August 31, 2015, 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.

32. By September 30, 2015, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(5)], and correct significant deficiencies identified during the November 24, 2014, Sanitary Survey.

33. Upon receipt of this Order, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.402(a)(1) and 40 C.F.R. § 141.402(a)(2)], and collect total coliform samples from each ground water source in use at the time of the total coliform positive sample was collected. Submit the samples results to NMED DWB.

34. Submittals made pursuant to paragraphs 29 through 33 of this Order 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 29 through 34 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

35. Respondent is in violation of the UOCA, NMSA 1978, § 61-33-6, 20.7.4.20.A NMAC, and 20.7.10.400.Q 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 May 27, 2015, 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:

36. Within 60 days of receipt of this Order, Ojo Feliz 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.Q NMAC. Respondent shall submit a written notification of that person's name and a copy of the certified operator's certification to the NMED.

37. Submittals made pursuant to paragraph(s) 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 36 through 37 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.env.nm.gov), 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.



Trais Kliphuis
Division Director
Water Protection Division
P.O Box 5469
Santa Fe, New Mexico 87502-5469



Date

Certificate of Service

I hereby certify that a copy of the foregoing Administrative Compliance Order was sent on 7/17, 2015 via certified return receipt requested to the following:

Paula Valdez
Ojo Feliz MDWCA
PO Box 12
Ojo Feliz, NM 87735



Maria J. Medina