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Luis Lopez, OPF
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STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT

NEW MEXICO ENVIRONMENT DEPARTMENT
WATER PROTECTION DIVISION
DRINKING WATER BUREAU

No. DWB 24-13

Complainant,

v.

CAMINO REAL REGIONAL UTILITY AUTHORITY,

Respondent.

**SECOND AMENDED 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 (“DW Regulations”), 20.7.10 NMAC, the Secretary of the New Mexico Environment Department (“NMED”), acting through the Bureau Chief of the Drinking Water Bureau with concurrence from the Water Protection Division Director of the NMED, issues this Amended Administrative Compliance Order with Penalties (“Order”) to Camino Real Regional Utility Authority (“Respondent”) to enforce the EIA and DW Regulations¹.

I. FINDINGS

1. The NMED is an executive agency within the government of the State of New Mexico which administers and enforces the requirements of the EIA and DW Regulations through its Drinking Water Bureau (“Bureau”).

¹ This Second Amended Administrative Compliance Order is issued solely to address the recalculation of the civil penalty based upon new information recently received by NMED which affects the basis of the civil penalty as required by the New Mexico Environment Department, Drinking Water Bureau Enforcement and Penalty Policy (“Penalty Policy”).

2. Respondent owns and operates a public drinking water system (“System”), Camino Real Regional Utility Authority (CRRUA), PWS# NM3502507, located in Dona Ana County, New Mexico with a mailing address of PO Box 429, Sunland Park, New Mexico, 88063.

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 nineteen thousand four hundred sixty-six (19,466) residents and has approximately seven thousand three hundred eighteen (7,318) service connections to serve these residents, according to the Bureau’s database.

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. Pursuant to Section 20.7.10.400(E) NMAC, “[p]ublic water systems are required to notify NMED-DWB if the safety precautions or preventive measures required to be employed under this section fail to protect the public water system from unauthorized entry or contamination, or if the water supply is endangered for any reason, the supplier of water shall immediately notify the department and take appropriate action to protect the supply.”

7. NMED issued a Notice of Violation (“NOV”) to Respondent on December 12, 2023, for failure to notify NMED that the Industrial Park Arsenic Treatment Plant, the Sunland Park Arsenic Treatment Plant, and the Santa Teresa Community Arsenic Treatment Plant were offline and intentionally bypassed for over a year allowing untreated water into the distribution system.

8. Pursuant to Section 20.7.10.600(C) NMAC, “[i]f the safety of a water supply is endangered for any reason, the supplier of water shall notify persons served by the public water system of appropriate action to protect themselves against any waterborne hazards. If the supplier of water fails to take such action on its own, or at the direction of the department, the department may directly notify the persons served by the system.”

9. NMED issued a NOV to Respondent on December 12, 2023, for failure to notify customers of high pH levels and provide customers with appropriate action to take in order to protect themselves against any waterborne hazards.

10. Pursuant to Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.403(a)(5), ground water systems must either have completed corrective action for any significant deficiencies or be in compliance with a State approved corrective action plan within 120 days of receiving written notice from the State of a significant deficiency.

11. NMED issued a NOV to Respondent on March 16, 2020, for failure to correct significant deficiencies identified during the August 28, 2019, sanitary survey, within 120 days of receiving written notice from the State of significant deficiencies. The NOV notified Respondent of the requirement to provide public notice of the violation.

12. NMED issued a NOV to Respondent on January 17, 2024, for failure to correct significant deficiencies one (1) through four (4) identified during the December 6, 2023, sanitary survey by January 15, 2024. The NOV notified Respondent of the requirement to provide public notice of the violation.

13. Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b)(16) and 141.23(i)(1), defines the Maximum Contaminant Level (MCL) for Arsenic as 0.010 milligrams per liter (mg/L) and states compliance with the MCL for Arsenic is determined by a Running Annual Average (RAA).

14. NMED issued a NOV to Respondent on January 17, 2024, for exceeding the Arsenic MCL at Industrial Park Arsenic TP during the first (1st) quarter of 2024. The NOV notified Respondent of the requirement to provide public notice of the violation.

II. VIOLATIONS

15. Respondent violated 20.7.10.400 E NMAC, by failing to notify NMED that the Industrial Park Arsenic Treatment Plant, the Sunland Park Arsenic Treatment Plant, and the Santa Teresa Community Arsenic Treatment Plant were offline and intentionally bypassed for over a year allowing untreated water into the distribution system.

16. Respondent violated 20.7.10.600 C NMAC, by failing to notify customers of high pH levels and provide customers with appropriate action to take in order to protect themselves against any waterborne hazards.

17. Respondent violated 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.403(a)(5), by failing to correct significant deficiencies identified during the August 28, 2019, sanitary survey within 120 days of receiving written notice from the State of significant deficiencies and significant deficiencies one (1) through four (4) identified during the December 6, 2023, sanitary survey, by January 15, 2024.

18. Respondent violated 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b)(16) and 141.23(i)(1), by exceeding the Arsenic MCL at Industrial Park Arsenic TP during the first (1st) quarter of 2024, with a RAA concentration of 0.035 mg/L.

III. SCHEDULE OF COMPLIANCE²

19. Respondent is hereby ordered to:

a) By March 31, 2024, provide an updated Emergency Response Plan (ERP) which at minimum must include a section of what immediate actions must be taken if the safety precautions and preventative measures employed fail to protect the public water system or if the water supply is endangered for any reason and to notify NMED immediately.

b) By March 31, 2024, provide an updated ERP which must at a minimum include communication strategies of how to notify not only the general population but how to notify the vulnerable population (nursing homes, schools, daycares, etc.) when the safety of the water supply is endangered.

c) By February 28, 2024, correct significant deficiencies identified in the August 28, 2019, sanitary survey and significant deficiencies one (1) through four (4) identified during the December 6, 2023, sanitary survey.

² The parties have agreed to a Stipulated Partial Final Order such that the controversy between the parties related to the Schedule of Compliance, set forth in Section III no longer exist. *See* Stipulated Partial Final Order, filed April 23, 2025. Pursuant to the Stipulated Partial Final Order, the only remaining controversy between the parties concerns the civil penalty assessed for the violations described herein.

d) By March 31, 2024, provide drinking water with concentrations of Arsenic below the MCL of 0.010 mg/L at the Industrial Park Arsenic TP.

e) By March 31, 2025, have a RAA for Arsenic below the MCL of 0.010 mg/L at the Industrial Park Arsenic TP.

20. Submittals made pursuant to Paragraph 27 of this Order shall be sent by standard U.S. mail or certified mail with return receipt requested to the following address:

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

Or via email: maria.medina@env.nm.gov

IV. CIVIL PENALTY

21. 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.

22. 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.

23. The Penalty Policy requires NMED to calculate a penalty per violation, plus a multiple day component. After calculation of the penalty plus multiple day component per violation, the Penalty Policy instructs that NMED is to evaluate whether the violator acted in good faith or bad faith. Upon such evaluation, a bad faith enhancement of up to 50% may be applied if the violator had been previously warned, has a history of noncompliance, knew or should have known that the conduct violated the law or is not taking action to resolve the violation. This enhancement is calculated against the total penalty per violation and rounded to the nearest whole dollar.

24. NMED's Penalty Policy further requires that NMED "*must* recalculate the civil penalty whenever it obtains new information affecting the basis for the civil penalty."

25. During the last thirty days, NMED has learned that Respondent has failed at least two voluntary arsenic tests at the Industrial Park Arsenic TP in 2025. It is important to note that Respondent did not report the results of these tests to NMED's Enforcement Coordinator nor to counsel for NMED in this matter despite the fact that such results are the heart of the violations at issue and the subject of settlement negotiations in this enforcement action.³

26. More specifically, NMED has learned that a voluntary test at the Industrial Park Arsenic TP conducted on April 23, 2025 tested above the maximum contaminant level with 12 parts per billion (12 ppb).

27. Upon information and belief, Respondent did not notify the public of the April 23, 2025 test results demonstrating the exceedance of arsenic contaminants until approximately nine (9) days after it received the report regarding the same.

28. As further evidence of Respondent's bad-faith, NMED learned that Respondent subsequently failed a *second* voluntary test on May 6, 2025, which again indicated that the contaminant levels exceeded at 12 parts per billion (12 ppb) the results of which were again not reported to NMED's Enforcement Coordinator or its counsel of record in this matter.

29. This second failed test came after Respondent's public assurances that Respondent had taken steps to reduce the arsenic levels at the Industrial Park Arsenic TP and implemented "timely and proper corrective actions" to prevent exceedances,

30. Upon information and belief, Respondent did not notify the public of the May 6, 2025 test results demonstrating the continuing exceedance of arsenic contaminants for approximately three (3) days after it received the report regarding the same.

31. Further, a sample collected by NMED in accordance with the 3-year monitoring schedule at Industrial Park Arsenic TP during the second (2nd) quarter of 2025 indicated that the

³ The Amended Administrative Compliance Order, entered on March 1, 2025, instructed Respondent to contact NMED's Enforcement Coordinator and its counsel of record. *See* Amended Administrative Compliance Order, ¶ 32.

contaminant level was 15 parts per billion (15 ppb), illustrating that Respondent's public assurances have been meaningless and ineffective to correct the ongoing deficiencies. NMED, in good conscious, cannot allow Respondent's consumers to be told one thing while continuously being exposed to drinking water contaminated by arsenic.

32. Additionally, NMED has learned that a request has been made to form a citizen's advisory committee to help address the increasing number of complaints from CRRUA's customers regarding the quality of drinking water delivered by Respondent's drinking water system. This call for the creation of a citizen's advisory committee has received widespread support from community leaders and Respondent's customers.

33. The new information learned by NMED during the course of this enforcement action, along with Respondent's failure to promptly report and correct the ongoing issues, has affected the basis for the civil penalty assessed for the violations described herein.

34. The new information learned by NMED during the course of this enforcement action, as described herein, has led NMED to conclude that the continuing cycle of non-compliance by Respondent which compromises the public's access to safe and reliable drinking water requires the application of a bad faith enhancement for each of the violations which are the subject of this enforcement action.

35. Accordingly, NMED has recalculated the civil penalty to be assessed against CRRUA for the violations set forth in Paragraphs 15 through 18 of this Second Amended Administrative Compliance Order.

36. NMED hereby assesses against Respondent a civil penalty of two hundred fifty-two thousand dollars (\$252,000.00) for the violations set forth herein in Paragraphs 15 through 18.

37. Respondent shall pay the total civil penalty of two hundred fifty-two thousand dollars (\$252,000.00) by certified or cashier's check made payable to the State of New Mexico and mailed or hand delivered to:

Mari Reimer, 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 HEARING⁴

38. 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 30 days of receipt of this Order a written Request for Hearing to the following address:

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

39. 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.

40. 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.

⁴ On March 11, 2024, Respondent timely requested a hearing regarding this matter and timely filed an Answer in response to NMED's Amended Administrative Compliance Order. Pursuant to the Stipulated Partial Final Order filed on April 23, 2025, Respondent contests the appropriateness of the civil penalty assessed in this Second Amended Administrative Compliance Order. This matter is currently set for a public hearing before Richard L.C. Virtue, Hearing Officer, on June 17, 2025 at 9:00 a.m. MDT.

41. 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

42. Pursuant to NMSA 1978, Section 74-1-10(E), this Order shall become final unless the Respondent files a Request for Hearing and Answer with the Hearing Clerk within 30 days of receipt of this Order.

VII. SETTLEMENT CONFERENCE

43. 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 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.

44. 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.

45. To explore the possibility of settlement in this matter, contact Maria J. Medina, Enforcement Coordinator, Drinking Water Bureau, P.O. Box 5469, Santa Fe, NM 87502-5469, maria.medina@env.nm.gov or at 505-629-7223. If you want to explore settlement and have retained counsel to represent you in this matter, please contact Tatiana D. Engelmann, Esq., Office of General Counsel, 121 Tijeras Ave., NE, Suite 1000, Albuquerque, New Mexico 87102, tatiana.engelmann@env.nm.us or at 505-231-4055.

VIII. COMPLIANCE WITH OTHER LAWS

46. 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

47. 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.

X. DELEGATION OF SIGNATORY AUTHORITY

48. Pursuant to the NMED Delegation Order dated March 24, 2023, the Cabinet Secretary has delegated the authority to issue Administrative Compliance Orders under 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, NMSA 1978, § 61-33-10 to the Bureau Chief of the Drinking Water Bureau with concurrence from the Water Protection Division Director.

/s/Jonas Armstrong
Jonas Armstrong
Water Protection Division Director
P.O Box 5469
Santa Fe, New Mexico 87502-5469

5/23/2025
Date

I hereby certify that the foregoing was filed and electronically served on this 23rd day of May 2025 to the following:

Richard L.C. Virtue, Hearing Officer
Virtue & Najjar, PC
2204 Brothers Rd.
Santa Fe, New Mexico 87505
rvirtue@virtuelaw.com

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