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NEW MEXICO
ENVIRONMENT DEPARTMENT
Drinking Water Bureau

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JAMES C. KENNEY
Cabinet Secretary

JENNIFER J. PRUETT
Deputy Secretary

CERTIFIED RETURN RECEIPT REQUESTED
7016 2070 0000 6771 7296

September 18, 2019

Les Higgins
Hummingbird Music Camp
104 Hummingbird Lane
Jemez Falls, NM 87025

**RE: Administrative Compliance Order and Assessment of Civil Penalty, No. 2019-ACOP-02
Hummingbird Music Camp, PWS# NM3591023**

Mr. Higgins,

Please find attached Administrative Compliance Order and Assessment of Civil Penalty No. 2019-ACOP-02 issued to Hummingbird Music Camp NC, for Hummingbird Music Camp, PWS# NM3591023, 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 and Assessment of Civil Penalty (Order) carefully to understand what action must be taken to comply with the requirements of the Order. Hummingbird Music Camp NC 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,

Rebecca Roose
Division Director
Water Protection Division

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT**

**NEW MEXICO ENVIRONMENT DEPARTMENT
WATER PROTECTION DIVISION
DRINKING WATER BUREAU**

No.

Complainant,

v.

HUMMINGBIRD MUSIC CAMP NC,

Respondent.

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

Pursuant to 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”), 20.7.10 NMAC, and Section 61-33-10 of the Utility Operator Certification Act (“UOCA”), NMSA 1978 §§ 61-33-1 to -10, the Secretary of the New Mexico Environment Department (“NMED”), acting through the Director of the Water Protection Division, issues this Administrative Compliance Order (“Order”) to Hummingbird Music Camp NC (“Respondent”) to enforce the EIA, UOCA, and the 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 the Regulations through its Drinking Water Bureau (“Bureau”).

2. Respondent owns and operates a public drinking water system (“System”), Hummingbird Music Camp, PWS# NM3591023, located in Sandoval County, New Mexico with a mailing address of 104 Hummingbird Lane, Jemez Falls, New Mexico 87025.

3. The System is a Transient Non-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 one hundred fifty (150) users and has approximately ten (10) service connection to serve these users, 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. On August 20, 2018, NMED issued Administrative Compliance Order and Assessment of Civil Penalty No. 2018-ACOP-02 ("ACO") to Respondent via certified mail return receipt requested for the following violations.

- a) Failure to conduct a Level 1 assessment and report the assessment findings and any corrective actions thirty (30) days of the assessment trigger in violation of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.859(a)(1).
- b) Failure to collect at least one ground water source sample after a total coliform positive sample on May 24, 2016 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).
- c) Failure to be operated by or under the supervision of a certified operator 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).
- d) Failure to notify the public and the State of a failure to conduct a Level 1 assessment and report the assessment findings and any corrective actions within 30 days of the assessment trigger and failure to collect triggered source water monitoring samples following a total coliform positive sample on May 24, 2016 in violation of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.31(d).
- e) Failure to notify public and the State of failure to submit an adequate sampling plan and of failure to complete the required routine total coliform monitoring June through November 2016 and February through March 2017 within one year from

the date of the notice in violation of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.204(c)(1).

- f) Failure to submit corrective action plans in violation of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.403(a)(4);
- g) Failure to 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 deficiencies in violation of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.403(a)(5); and

7. Respondent received the ACO on August 24, 2018.

8. Respondent did not file an answer, request a hearing or enter into a settlement conference with NMED for the ACO.

9. On September 24, 2018, 30 days after Respondent received the ACO it became a final order of the Secretary of NMED.

10. On March 11, 2019, NMED sent a letter via first class mail to Respondent reminding Respondent that the water system is not in compliance with the requirements of the ACO and would seek relief in State District Court for enforcement of final administrative orders.

11. Respondent failed to take all the corrective actions described in the ACO and to date, remains out of compliance.

12. On April 25, 2019, compliance staff visited the Hummingbird Music Camp for a scheduled meeting with the operator and Respondent to assist the System in returning to compliance.

13. Neither Respondent or the operator attended the meeting.

14. On April 25, 2019, the Northern Region Supervisor emailed Respondent and operator outlining the systems outstanding violations.

15. On July 19, 2019, the Northern Region Supervisor emailed Respondent regarding a new violation and outstanding violations.

16. 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.63(c)(1) -(c)(4), establishes Maximum Contaminant Level (“MCL”) for E.Coli.

17. On August 17, 2018, NMED issued an NOV to Respondent for exceedance of the MCL for E.Coli. The NOV notified Respondent that it was required to provide public notice of the violation and to notify customers to boil their water before using.

18. To date, Respondent has failed to collect the required samples to ensure that the water is free of E.Coli and the system is still on a Boil Water Advisory as a result of the failure to collect the samples.

19. 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.859(a)(2), requires a public water system to conduct a Level 2 Assessment and report assessment findings and any corrective actions within 30 days of assessment trigger.

20. On April 29, 2019, NMED issued an NOV to Respondent for failure to conduct a Level 2 Assessment and report assessment findings and any corrective actions within 30 days of assessment trigger. The NOV notified Respondent that it was required to provide public notice of the violation.

21. On May 20, 2019, NMED issued an NOV to Respondent for failure to conduct a Level 2 Assessment and report assessment findings and any corrective actions within 30 days of assessment trigger. The NOV notified Respondent that it was required to provide public notice of the violation.

22. To date, Respondent has failed to conduct a Level 2 Assessment and report assessment findings and any corrective actions within 30 days of assessment trigger.

23. 20.7.4.20.A NMAC states 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”.

24. On June 19, 2019, NMED issued an NOV to Respondent for operating the Hummingbird Music Camp without a certified operator. The NOV notified Respondent that it was required to provide public notice of the violation.

25. To date, Respondent is operating the Hummingbird Music Camp without a certified operator.

26. 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.402(a)(2), requires that ground water systems collect, within 24 hours of notification of the total coliform-positive sample, 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.

27. On July 20, 2016, NMED issued an NOV to Respondent for failure collect at least one ground water source sample within 24 hours from each ground water source in use at the time of the total coliform positive sample on May 24, 2016. The NOV notified Respondent that it was required to provide public notice of the violation. This violation supersedes the violation in paragraph 6(b) of Administrative Compliance Order and Assessment of Civil Penalty No. 2018-ACOP-02 issued on August 20, 2018.

28. On January 3, 2019, NMED issued an NOV to Respondent for failure collect at least one 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 on December 18, 2018. The NOV notified Respondent that it was required to provide public notice of the violation.

29. On March 13, 2019, NMED issued an NOV to Respondent for failure collect at least one ground water source sample within 24 hours from each ground water source in use at the time of the total coliform positive sample on July 15, 2018. The NOV notified Respondent that it was required to provide public notice of the violation.

30. On March 13, 2019, NMED issued an NOV to Respondent for failure collect at least one ground water source sample within 24 hours from each ground water source in use at the time of the total coliform positive sample on August 12, 2018. The NOV notified Respondent that it was required to provide public notice of the violation.

31. On April 2, 2019, NMED issued an NOV to Respondent for failure collect at least one ground water source sample within 24 hours from each ground water source in use at the time of the total coliform positive sample on March 26, 2019. The NOV notified Respondent that it was required to provide public notice of the violation.

32. On April 22, 2019, NMED issued an NOV to Respondent for failure collect at least one ground water source sample within 24 hours from each ground water source in use at the time of the total coliform positive sample on April 16, 2019. The NOV notified Respondent that it was required to provide public notice of the violation.

33. To date, Respondent has not collected at least one ground water source sample from each ground water source in use at the time of the total coliform sample.

34. 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.

35. On May 23, 2018, NMED issued an NOV to Respondent for failure to correct significant deficiencies identified during the December 1, 2017 sanitary survey within 120 days of receiving written notice of the deficiencies. The NOV notified Respondent that it was required to provide public notice of the violation. This violation supersedes the violation in paragraph 27 of Administrative Compliance Order and Assessment of Civil Penalty No. 2018-ACOP-02 issued on August 20, 2018.

36. To date, Respondent has not corrected all significant deficiencies identified during the December 1, 2017, sanitary survey.

37. 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.203(b)(i), § 141.403(a)(7)(ii) and § 141.31(d), requires a Non-Community water system to notify customers of a failure to correct the significant deficiencies identified during a sanitary survey. This notification is required to be completed within 30 days of receiving written notice of the violation and must continue to inform the public until the significant deficiency is corrected. The Non-Community water system
2019-ACOP-02

must certify that the notice was published and the method of publication by submitting a completed Public Notification Certification Form to NMED with 10 days of completing the public notification requirements. A copy of the public notice must be included.

38. On May 23, 2018, a Notice was issued to Respondent by NMED to notify customers of failure to correct the significant deficiencies identified during the December 1, 2017, sanitary survey. This notification was required to be completed within 30 days of receiving written notice of the violation.

39. To date, Respondent has not submitted a copy of the public notice notifying customers of failure to correct the significant deficiencies identified during the December 1, 2017, sanitary survey or a completed Public Notification Certification Form.

40. 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.853(a)(1) and 20.7.10.500.C NMAC, requires Transient Non-Community water systems to conduct coliform sampling at the same rates as like-sized Community water systems.

41. On June 14, 2019, NMED issued an NOV to Respondent for failure to collect a routine total coliform sample for the month of May 2019. The NOV notified Respondent that it was required to provide public notice of the violation.

42. On July 26, 2019, NMED issued an NOV to Respondent for failure to collect a routine total coliform sample for the month of June 2019. The NOV notified Respondent that it was required to provide public notice of the violation.

43. To date, Respondent has failed to collect a routine total coliform sample.

II. VIOLATIONS

44. Respondent violated 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.63(c)(1) - (c)(4), by failing to provide water below the E.Coli MCL and lift the Boil Water Advisory.

45. Respondent violated 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.859(a)(2), by failing to conduct a Level 2 Assessment and report assessment findings and any corrective actions within 30 days of assessment trigger.

46. Respondent violated the UOCA NMSA 1978 § 61-33-6, 20.7.10.400(Q) and 20.7.4.20.A NMAC, by failing to be operated by or be under the supervision of a certified operator.

47. Respondent violated 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.402(a)(2), by failing to collect at least one 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 on May 24, 2016, December 18, 2018, July 15, 2018, August 12, 2018, March 26, 2019, and April 16, 2019.

48. Respondent violated 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.403(a)(5), by failing to correct all significant deficiencies identified during the December 1, 2017, sanitary survey.

49. Respondent violated 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.203(b)(i), § 141.403(a)(7)(ii) and § 141.31(d), by failing to submit a copy of the public notice notifying customers of failure to correct the significant deficiencies identified during the December 1, 2017, sanitary survey and a completed Public Notification Certification Form.

50. Respondent violated 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.853(a)(1) and 20.7.10.500.C NMAC, by failing to collect a routine total coliform sample during May 2019 and June 2019.

III. SCHEDULE OF COMPLIANCE

51. Respondent is hereby ordered to:

a) By October 15, 2019, collect compliance samples to ensure that the water being provided is below the E.Coli MCL.

b) By October 15, 2019, conduct a Level 2 Assessment and report assessment findings and any corrective actions to NMED.

c) By October 15, 2019, Hummingbird Music Camp 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, 20.7.10.400(Q) and 20.7.4.20.A NMAC.

d) By October 15, 2019, collect at least one ground water source sample from each ground water source in use at the time of the total coliform positive sample.

e) By October 15, 2019, correct all significant deficiencies identified during the December 1, 2017 sanitary survey.

f) By October 15, 2019, submit a copy of the public notice notifying customers of failure to correct the significant deficiencies identified during the December 1, 2017 sanitary survey and a completed Public Notification Certification Form.

g) From October 1 through March 31, 2020, collect a total coliform sample for six consecutive months and submit sample results to NMED.

52. Submittals made pursuant to paragraph 51 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 Email:

maria.medina@state.nm.us

IV. CIVIL PENALTY

53. 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.

54. 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.

55. NMED hereby assesses against Respondent a civil penalty of seven thousand dollars (\$7,000) for the seven violations set forth herein in paragraphs 44 through 50.

56. Respondent shall pay the total civil penalty of seven thousand dollars (\$7,000) by certified or cashier's check made payable to the State of New Mexico and mailed, or hand delivered to:

Jacob Weathers, 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

57. 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

58. 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.

59. 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.

60. 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

61. 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 30 days of receipt of this Order.

VII. SETTLEMENT CONFERENCE

62. 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.

63. 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.

64. To explore the possibility of settlement in this matter, contact John Verheul Esq., Office of General Counsel, New Mexico Environment Department, 121 Tijeras Ave., NE, Suite 1000, Albuquerque, New Mexico 87102, John.Verheul@state.nm.us or at (505) 383-2063.

VIII. COMPLIANCE WITH OTHER LAWS

65. 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

66. 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.



Rebecca Roose
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 9/23, 2019:

Les Higgins
Hummingbird Music Camp
104 Hummingbird Lane
Jemez Falls, NM 87025



Maria J Medina