

MICHELLE LUJAN GRISHAM
Governor

HOWIE MORALES
Lt. Governor

**NEW MEXICO
ENVIRONMENT DEPARTMENT**

Drinking Water Bureau

1190 St. Francis Dr.
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www.env.nm.gov/drinking_water/



JAMES C. KENNEY
Cabinet Secretary

JENNIFER J. PRUETT
Deputy Secretary

**CERTIFIED RETURN RECEIPT REQUESTED
7016 2070 0000 6771 7272**

October 18, 2019

Jessica Franklin
Sacramento Mountain Retreat
3081 US HWY 82
Mayhill, NM 88339

**RE: Administrative Compliance Order, No. 2019-ACO-10 Sacramento Mountain Retreat,
PWS# NM3591219**

Ms. Franklin,

Please find attached Administrative Compliance Order No. 2019-ACO-10 issued to Jessica Franklin, for Sacramento Mountain Retreat, PWS# NM3591219, 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. Jessica Franklin 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,

A handwritten signature in cursive script, appearing to read "Rebecca Roose".

Rebecca Roose
Division Director
Water Protection Division

**STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT**

NEW MEXICO ENVIRONMENT DEPARTMENT
WATER PROTECTION DIVISION,

Complainant,
v.

No. 2019-ACO-10

JESSICA FRANKLIN,

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 Jessica Franklin (“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”) Sacramento Mountain Retreat, PWS# NM3591219, located in Otero County, New Mexico.

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 (100) users and has approximately twenty-seven (27) service connections to serve these users.

4. Respondent, Jessica Franklin, 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)], 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.

6. On March 11, 2019, 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 significant deficiency. 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)], 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.

8. On April 15, 2019, an NOV was issued to Respondent by NMED for failure to correct significant deficiencies identified during the November 27, 2018, 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.

9. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.853(a)(1)] and 20.7.10.500 C NMAC, requires all public water systems shall conduct sampling at the rates set forth in 40 CFR Part 141, Subpart C, except that non-transient non-community systems shall conduct coliform sampling at the same rates as like-sized community water systems in 40 CFR 141.21(a)(2) and except that consecutive systems shall sample as required in Subsection E of Section 500 of this part. The department may order a supplier of water, when necessary, to conduct more frequent sampling than is required under 40 CFR Part 141.

10. On July 20, 2018, an NOV was issued to Respondent by NMED for failure to collect a routine total coliform sample during June 2018. The NOV notified Respondent that it was required to provide public notice of the violation.

11. On August 22, 2018, an NOV was issued to Respondent by NMED for failure to collect a routine total coliform sample during July 2018. The NOV notified Respondent that it was required to provide public notice of the violation.

12. On September 17, 2018, an NOV was issued to Respondent by NMED for failure to collect a routine total coliform sample during August 2018. The NOV notified Respondent that it was required to provide public notice of the violation.

13. On October 16, 2018, an NOV was issued to Respondent by NMED for failure to collect a routine total coliform sample during September 2018. The NOV notified Respondent that it was required to provide public notice of the violation.

14. On November 21, 2018, an NOV was issued to Respondent by NMED for failure to collect a routine total coliform sample during October 2018. The NOV notified Respondent that it was required to provide public notice of the violation.

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

16. On August 20, 2019, an NOV was issued to Respondent by NMED for failure to collect a routine total coliform sample during July 2019. The NOV notified Respondent that it was required to provide public notice of the violation.

17. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.854(i)(1), § 141856(a)(4)(i), and § 141.857(a)(4)(i)], requires seasonal public water systems to demonstrate completion of a State-approved start-up procedure prior to serving water to the public.

18. On July 24, 2019, an NOV was issued to Respondent by NMED for failure to complete a State-approved start-up procedure prior to serving water to the public. The NOV notified Respondent that it was required to provide public notice of the violation.

19. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.853(a)(1)], requires systems to develop a written Distribution System Sampling Plan (DSSP) that identifies sampling sites and a sample collection schedule that are representative of water throughout the distribution system no later than March 31, 2016.

20. On September 9, 2019, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to submit an adequate written DSSP that meets the requirements of the Revised Total Coliform Rule (RTCR). The NOV notified Respondent that it was required to provide public notice of the violation.

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

22. On April 15, 2019, a Notice was issued to Respondent by NMED to notify customers of failure to correct the significant deficiencies identified during the November 27, 2018 sanitary survey. This notification was required to be completed within thirty (30) days of receiving written notice of the violation

23. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.203(b)(1), and § 141.203(b)(2), and § 141.31(d)], requires public water systems to notify customers of failure to complete a State-approved start-up procedure prior to serving water to the public. This notification is required to be completed within thirty (30) days of receiving written notice of the violation and must be issued every three (3) months as long as the violation persists. The public water system must certify that the notice was published and the method of publication by submitting a completed Public Notification Certification Form to NMED with ten (10) days of completing the public notification requirements. A copy of the public notice must be included.

24. On July 24, 2019, a Notice was issued to Respondent by NMED to notify customers of failure to complete a State-approved start-up procedure prior to serving water to the public. This notification was required to be completed within thirty (30) days of receiving written notice of the violation.

25. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.204(c)(2)], requires water systems to notify customers of a failure to collect a routine total coliform sample. This notification is required not later than one year after the public water system learns of the violation. The water system must certify that the notice was published and the method of publication by submitting a completed Public Notification Certification Form to NMED with ten

(10) days of completing the public notification requirements. A copy of the public notice must be included.

26. On July 20, 2018, a Notice was issued to Respondent by NMED to notify customers of a failure to collect a routine total coliform sample during June 2018.

27. On August 22, 2018, a Notice was issued to Respondent by NMED to notify customers of a failure to collect a routine total coliform sample during July 2018.

VIOLATION 1- Drinking Water Regulations

28. 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 2- Drinking Water Regulations

29. 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 27, 2018, sanitary survey within 120 days of receiving written notice by the State.

VIOLATION 3- Drinking Water Regulations

30. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.853(a)(1)] and 20.7.10.500.C NMAC, which requires all public water systems shall conduct sampling at the rates set forth in 40 CFR Part 141, Subpart C, except that non-transient non-community systems shall conduct coliform sampling at the same rates as like-sized community water systems in 40 CFR 141.21(a)(2) and except that consecutive systems shall sample as required in Subsection E of Section 500 of this part. The department may order a supplier of

water, when necessary, to conduct more frequent sampling than is required under 40 CFR Part 141. Respondent failed to collect a routine total coliform sample during June 2018, July 2018, August 2018, September 2018, October 2018, June 2019, and July 2019.

VIOLATION 4- Drinking Water Regulations

31. Respondent is in violation of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.854(i)(1), § 141856(a)(4(i), and § 141.857(a)(4)(i)], which requires seasonal public water systems to demonstrate completion of a State-approved start-up procedure prior to serving water to the public. Respondent failed to complete a State-approved start-up procedure prior to serving water to the public.

VIOLATION 5- Drinking Water Regulations

32. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.853(a)(1)], which requires systems to develop a written Distribution System Sampling Plan (DSSP) that identifies sampling sites and a sample collection schedule that are representative of water throughout the distribution system no later than March 31, 2016. Respondent failed to submit a written DSSP by March 31, 2016.

VIOLATION 6- Drinking Water Regulations

33. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.203(b)(i), § 141.403(a)(7)(ii) and § 141.31(d)], which requires a Non-Community water system to notify customers of a failure to correct the significant deficiencies identified in a sanitary survey and must continue to inform the public until the significant deficiency is corrected. The Non-Community water system must certify that the notice was published and the method of publication by submitting a completed Public Notification Certification Form to NMED with ten (10) days of completing the public notification requirements. A copy of the public notice must be included. Respondent failed to submit a copy of the public notice which notified customers of failure to correct the significant deficiencies identified during the November 27, 2018, sanitary survey and a completed Public Notice Certification Form.

VIOLATION 7- Drinking Water Regulations

34. Respondent is in violation of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.203(b)(1), § 141.203(b)(2), and], which requires public water systems to notify customers of failure to complete a State-approved start-up procedure prior to serving water to the public. This notification is required to be completed within thirty (30) days of receiving written notice of the violation and must be issued every three (3) months as long as the violation persists. The public water system must certify that the notice was published and the method of publication by submitting a completed Public Notification Certification Form to NMED with ten (10) days of completing the public notification requirements. A copy of the public notice must be included. Respondent failed to submit a copy of the public notice which notified customers of failure to complete a State-approved start-up procedure prior to serving water to the public and a completed Public Notice Certification Form.

VIOLATION 8- Drinking Water Regulations

35. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.204(c)(2)], which requires water systems to notify customers of a failure to collect a routine total coliform sample. This notification is required not later than one year after the public water system learns of the violation. The water system must certify that the notice was published and the method of publication by submitting a completed Public Notification Certification Form to NMED with ten (10) days of completing the public notification requirements. A copy of the public notice must be included. Respondent failed to notify customers of a failure to collect a routine total coliform sample during June 2018 and July 2018.

RETURN TO COMPLIANCE

Drinking Water Regulations

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

36. By November 30, 2019, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(5)], and correct significant deficiencies identified during the November 27, 2018, sanitary survey (attached).

37. Following the submittal and approval of a written DSSP, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.853(a)(1)] and 20.7.10.500.C NMAC, and collect total coliform samples for six (6) consecutive months and submit the samples results to NMED DWB.

38. By November 30, 2019, comply with 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.854(i)(1), § 141.856(a)(4)(i), and § 141.857(a)(4)(i)], and complete a State-approved start-up procedure.

39. By November 30, 2019, comply with 20.7.10.100 NMAC, [incorporating 141.853(a)(1)], and submit a written DSSP that meets the requirements of the RTCR.

40. By November 30, 2019, comply with [incorporating 40 C.F.R. § 141.203(b)(i), § 141.403(a)(7)(ii) and § 141.31(d)], and submit a copy of the public notice notifying customers of failure to correct the significant deficiencies identified during the November 27, 2018 sanitary survey and a completed Public Notification Certification Form.

41. By November 30, 2019, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.203(b)(1), and § 141.203(b)(2)], and submit a copy of the public notice notifying customers of failure to complete a State-approved start-up procedure prior to serving water to the public.

42. By November 30, 2019, comply with 20.7.10.100 NMAC [incorporating 40 C.F.R. § 141.204(c)(2)], and submit a copy of the public notice notifying customers of failure to collect a routine total coliform sample during June 2018 and July 2018 and a completed Public Notification Certification Form.

43. Submittals made pursuant to paragraphs 36 through 42 of this Order shall be sent by 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

Or

Email: maria.medina@state.nm.us

If respondent fails to comply with the requirements of paragraphs 36 through 43 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 9- Utility Operator Certification Act

44. 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 December 4, 2018 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:

45. By November 30, 2019, Sacramento Mountain Retreat 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.

46. Submittals made pursuant to paragraph 45 shall be sent by certified mail with return receipt requested to the following:

Eric Hall, Utility Operator Certification Program Manager
New Mexico Environment Department
Drinking Water 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

Or

Email: eric.hall@state.nm.us and maria.medina@state.nm.us

If respondent fails to comply with the requirements of paragraphs 45 through 46 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.

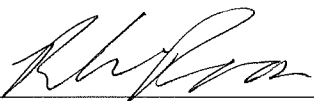
To explore the possibility of settlement in this matter, contact Maria J. Medina, Drinking Water Bureau, New Mexico Environment Department, P.O. Box 5469, Santa Fe, New Mexico 87502-5469, (505) 476-8629.

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 all requirements of this Order have been met and the NMED provides notification of termination in writing, or when the Secretary approves a Stipulated Final Order.



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

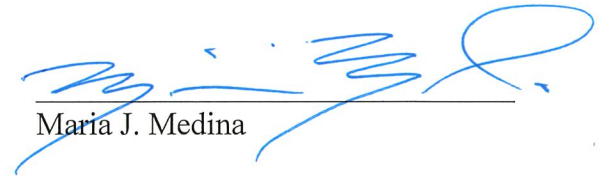
10/18/19

Date

Certificate of Service

I hereby certify that a copy of the foregoing Administrative Compliance Order was sent on oct. 22, 2019 via certified return receipt requested to the following:

Jessica Franklin
Sacramento Mountain Retreat
3081 US HWY 82
Mayhill, NM 88339



Maria J. Medina