

**SUSANA MARTINEZ**  
Governor

**JOHN A. SANCHEZ**  
Lt. Governor

**NEW MEXICO  
ENVIRONMENT DEPARTMENT**

***Drinking Water Bureau***

1190 St. Francis Dr.  
Santa Fe, NM, 87505  
Phone (505) 476-8620 Fax (505) 476-8656  
[www.env.nm.gov/drinking\\_water/](http://www.env.nm.gov/drinking_water/)



**BUTCH TONGATE**  
Cabinet Secretary

**J. C. BORREGO**  
Deputy Secretary

**CERTIFIED RETURN RECEIPT REQUESTED  
7013 2630 0000 9043 9546**

February 5, 2018

Tom Clark  
Sunset Acres Water Company  
134 Yucca Dr.  
Portales, NM 88130

**RE: Administrative Compliance Order, No. 2018-ACO-06 Sunset Acres Water  
Company, PWS# NM3500430**

Mr. Clark,

Please find attached Administrative Compliance Order No. 2018-ACO-06 issued to Tom Clark, for Sunset Acres Water Company, PWS# NM3500430, 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 action must be taken to comply with the requirements of the Order. Tom Clark 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](http://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](mailto:maria.medina@state.nm.us).

Sincerely,

Bruce Yurdin  
Division Director  
Water Protection Division

cc. Compliance Officer (Electronic)  
Region 6, EPA (Electronic)  
P:\~ ELECTRONIC CENTRAL FILE BY WATER SYSTEM

**STATE OF NEW MEXICO**  
**SECRETARY OF ENVIRONMENT**

NEW MEXICO ENVIRONMENT DEPARTMENT  
WATER PROTECTION DIVISION,

Complainant,

No. 2018-ACO-06

v.

TOM CLARK,

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 Water Protection Division of the NMED, issues this Administrative Compliance Order (“Order”) to Tom Clark (“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”) Sunset Acres Water Company, PWS# NM3500430, located in Torrance 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 two hundred forty-seven (247) residents and has approximately ninety (90) service connections to serve these residents.

4. Respondent, Tom Clark, 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. § 141.620 and 141.621], defines monitoring requirements for Stage 2 Disinfection Byproducts Rule (DBP2).

6. On November 18, 2016, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to complete all required DBP2 monitoring during the 2016 monitoring period. The NOV notified Respondent that it was required to provide public notice of the violation.

7. On November 9, 2017, an NOV was issued to Respondent by NMED for failure to complete all required DBP2 monitoring during the 2017 monitoring period. The NOV notified Respondent that it was required to provide public notice of the violation.

8. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.86], establishes monitoring requirements for lead and copper in tap water.

9. On December 11, 2017, an NOV was issued to Respondent by NMED for failure to conduct lead and copper sampling during the 2015, 2016, and 2017 monitoring periods. The NOV notified Respondent that it was required to provide public notice of the violation.

10. 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.

11. On November 21, 2016, an NOV was issued to Respondent by NMED for failure to correct the significant deficiency identified during the June 1, 2016, 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.

12. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.31(d)], requires a public water system to notify customers of the violation and certify that the notice was published and the method of publication by submitting a completed copy of the Public Notification Certification Form to NMED with ten (10) days of completing the public notification requirements. The public water system must include a copy of the public notice made available to customers.

13. On November 18, 2016, a Notice was issued to Respondent by NMED to notify the public and the State of failure to complete the required DBP2 monitoring during the 2016 monitoring period.

14. On November 21, 2016, a Notice was issued to Respondent by NMED to notify the public and the State of failure to correct the significant deficiency identified during the June 1, 2016, sanitary survey.

#### **VIOLATION 1**

15. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.620 and 141.621], which defines the monitoring requirements for Stage 2 Disinfection Byproducts Rule (DBP2). Respondent failed to collect DBP2 samples for the 2016 and 2017 monitoring periods.

#### **VIOLATION 2**

16. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.86], which establishes monitoring requirements for lead and copper in tap water. Respondent failed to collect lead and copper samples during the 2015, 2016, and 2017 monitoring periods.

#### **VIOLATION 3**

17. 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 the significant deficiency identified during the June 1, 2016, sanitary survey within 120 days of receiving written notice by the State.

#### **VIOLATION 4**

18. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.31(d)], which requires a public water system to notify customers of the violation and certify that the notice was published and the method of publication by submitting a completed copy of the Public Notification Certification Form to NMED within ten (10) days of completing the public notice requirements. Respondent failed to submit to NMED a completed copy of the

Public Notice Certification Form and a copy of the public notice within ten (10) days of notifying customers of failure to complete the required DBP2 monitoring during the 2016 monitoring period and failure to correct the significant deficiency identified during the June 1, 2016, sanitary survey.

### **RETURN TO COMPLIANCE**

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

19. Between September 1-September 30, 2018, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.620 and 141.621], and collect a HAA5-IND sample at 25 Block 8 Lot 12 and a TTHM-IND sample at Block 7 Lot 9.

20. Between June 1-June 30, 2018 comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.86], and collect lead and copper samples.

21. By February 28, 2018, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(5)], and correct the significant deficiency identified during the June 1, 2016, sanitary survey (submit an Operations and Maintenance Plan for review and approval).

22. By February 28, 2018, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.31(d)], and submit a copy of the Public Notification Certification Form and a copy of the public notice notifying customers of failure to complete the required DBP2 monitoring during the 2016 monitoring period and failure to correct the significant deficiency identified during the June 1, 2016, sanitary survey.

23. Submittals made pursuant to paragraphs 19 through 22 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](mailto:maria.medina@state.nm.us)

**If respondent fails to comply with the requirements of paragraphs 19 through 23 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.env.nm.gov](http://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 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 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.

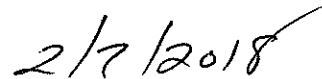
#### **TERMINATION**

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.



Bruce Yurdin  
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 Feb. 7, 2018 via certified return receipt requested to the following:

Tom Clark  
Sunset Acres Water Company  
134 Yucca Dr.  
Portales, NM 88130



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Maria J. Medina