



NEW MEXICO
 ENVIRONMENT DEPARTMENT
Drinking Water Bureau



MICHELLE LUJAN GRISHAM
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HOWIE MORALES
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 Deputy Secretary

CERTIFIED RETURN RECEIPT REQUESTED
7016 2070 0000 6771 7012

December 20, 2019

Margaret Lucero
 Tularosa Water System
 705 St. Francis Drive
 Tularosa, NM 88352

RE: Administrative Compliance Order, No. 2019-ACO-13 Tularosa Water System, PWS# NM3514019

Ms. Lucero,

Please find attached Administrative Compliance Order No. 2019-ACO-13 issued to Tularosa (Village Of), for Tularosa Water System, PWS# NM3514019, 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. Tularosa (Village Of) 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

Cc: Compliance Officer
 Region 6, EPA (Electronic)
 ELECTRONIC CENTRAL FILE BY WATER SYSTEM

**STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT**

NEW MEXICO ENVIRONMENT DEPARTMENT
WATER PROTECTION DIVISION,

Complainant,
v.

No. 2019-ACO-13

TULAROSA (VILLAGE OF),

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 Tularosa (Village Of) (“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”) Tularosa Water System, PWS# NM3514019, located in Otero 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 three thousand nine hundred ninety-six (3996) residents and has approximately one thousand three hundred ten (1310) service connections to serve these residents.

4. Respondent, Tularosa (Village Of), 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. § 141.723], requires water systems to submit a written Corrective Action Plan (CAP) no later than 45 days after receipt of the sanitary survey report, indicating how and on what schedule the system will address significant deficiencies noted in the sanitary survey or be in compliance with an approved CAP and schedule.

6. On April 9, 2018, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to address significant deficiencies noted in the November 16, 2017 sanitary survey within 45 days of receiving the report. The NOV notified Respondent that it was required to provide public notice of the violation.

7. On September 18, 2018, an NOV was issued to Respondent by NMED for failure to address significant deficiencies noted in the November 16, 2017 sanitary survey within 45 days of receiving the report. The NOV notified Respondent that it was required to provide public notice of the violation.

8. On November 7, 2019, an NOV was issued to Respondent by NMED for failure to submit a CAP and failure to address significant deficiencies noted in the March 6, 2019 sanitary survey within 45 days of receiving the report. 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. § 141.75(b), 141.570, and 40 CFR 141.70(c)], requires a public water system that uses a surface water source or a ground water source under the direct influence of surface water to submit a monthly operating report (MOR) to the State.

10. On May 14, 2019, an NOV was issued to Respondent by NMED for failure to submit a MOR for the month of April 2019. The NOV notified Respondent that it was required to provide public notice of the violation.

11. On June 12, 2019, an NOV was issued to Respondent by NMED for failure to submit a MOR for the month of May 2019. The NOV notified Respondent that it was required to provide public notice of the violation.

12. On July 11, 2019, an NOV was issued to Respondent by NMED for failure to submit a MOR for the month of June 2019. The NOV notified Respondent that it was required to provide public notice of the violation.

13. On July 14, 2019, an NOV was issued to Respondent by NMED for failure to submit a MOR for the month of July 2019. The NOV notified Respondent that it was required to provide public notice of the violation.

14. On September 25, 2019, an NOV was issued to Respondent by NMED for failure to submit a MOR for the month of August 2019. The NOV notified Respondent that it was required to provide public notice of the violation.

15. On October 15, 2019, an NOV was issued to Respondent by NMED for failure to submit a MOR for the month of September 2019. The NOV notified Respondent that it was required to provide public notice of the violation.

16. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.203 and § 141.31(d)], requires water systems to notify customers of failure to submit a Monthly Operating Report (MOR) and certify that the notice was published as well as 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.

17. On May 14, 2019, a Notice was issued to Respondent by NMED to notify customers of a failure to submit a MOR during April 2019.

18. On June 12, 2019, a Notice was issued to Respondent by NMED to notify customers of a failure to submit a MOR during May 2019.

19. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.152(b) and 40 C.F.R. § 141.155(c)], 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.

20. On July 8, 2019, an NOV was issued to Respondent by NMED for failure to provide a CCR for the 2018 calendar year to their consumers and the State by July 1, 2019.

VIOLATION 1- Drinking Water Regulations

21. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.723(c)], which requires water systems to submit a written Corrective Action Plan (CAP) no later than 45 days after receipt of the sanitary survey report, indicating how and on what schedule the system will address significant deficiencies noted in the sanitary survey or be in compliance with an approved CAP and schedule. Respondent failed to address the significant

deficiencies noted in the November 16, 2017, sanitary survey within 45 days of receiving the sanitary survey report and failed to submit a CAP and address significant deficiencies noted in the March 6, 2019, sanitary survey within 45 days of receiving the sanitary survey report.

VIOLATION 2- Drinking Water Regulations

22. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.75(b), 141.570, and 40 CFR 141.70(c)], which requires a public water system that uses a surface water source or a ground water source under the direct influence of surface water to submit a monthly operating report (MOR) to the State. Respondent failed to submit a MOR to the State for the months of April 2019, May 2019, June 2019, July 2019, August 2019, and September 2019.

VIOLATION 3- Drinking Water Regulations

23. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.203 and § 141.31(d)], which requires water systems to notify customers of failure to submit a Monthly Operating Report (MOR) and certify that the notice was published as well as 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 failure to submit a MOR during April 2019 and May 2019.

VIOLATION 4- Drinking Water Regulations

24. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.152(b) and 40 C.F.R. § 141.155(c)], 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 2018 calendar year to their consumers and the State by July 1, 2019.

RETURN TO COMPLIANCE

Drinking Water Regulations

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

25. By January 31, 2020, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.723], and correct significant deficiencies noted in the November 16, 2017, sanitary survey and the March 6, 2019, sanitary survey (attached).

26. By January 31, 2020 comply with 20.7.10.100 NMAC [incorporating 40 C.F.R. § 141.75(b), 141.570, and 40 CFR 141.70(c)], and submit a MOR for April 2019, May 2019, June 2019, July 2019, August 2019 and September 2019. Respondent shall submit monthly MORs.

27. By January 31, 2020, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.203 and § 141.31(d)], and submit a copy of the public notice notifying customers of failure to submit a MOR for April 2019 and May 2019 and a completed Public Notification Certification Form.

28. By January 31, 2020, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.152(b) and 40 C.F.R. § 141.155(c)], and provide a 2018 calendar year CCR to consumers and the State.

29. Submittals made pursuant to paragraphs 25 through 28 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 25 through 29 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

30. 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 an NOV by the NMED on June 17, 2019 that a certified operator was required. The NOV notified Respondent that it was required to provide public notice of the violation.

VIOLATION 6

Utility Operator Certification Act

31. Respondent is in violation of 20.7.10.600 C NMAC, which requires water systems to notify customers of the failure to provide an appropriate level of certified operator. Respondent failed to notify customers of failure to provide an appropriate level of certified operator.

RETURN TO COMPLIANCE

Utility Operator Certification Act

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

32. By January 31, 2020, Tularosa 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.

33. By January 31, 2020, comply with 20.7.10.600 C NMAC and submit a copy of the public notice notifying customers of failure to provide an appropriate level of certified operator and a completed Public Notification Certification Form.

34. Submittals made pursuant to paragraphs 32 through 33 shall be sent by certified mail with return receipt requested to the following:

Eric Hall, Environmental Specialist
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 32 through 34 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

12/20/19

Date

Certificate of Service

I hereby certify that a copy of the foregoing Administrative Compliance Order was sent on 12/20, 2019 via certified return receipt requested to the following:

Margaret Lucero
Tularosa Water System
705 St. Francis Drive
Tularosa, NM 88352



Maria J. Medina