



SUSANA MARTINEZ
Governor

JOHN A. SANCHEZ
Lt. Governor

State of New Mexico
ENVIRONMENT DEPARTMENT
Field Operations & Infrastructure Division
DRINKING WATER BUREAU
525 Camino de Los Marquez, Suite 4
Santa Fe, New Mexico 87505
Telephone (505)476-8620 Fax (505)476-8656
Toll Free 1-877-654-8720
www.nmenv.state.nm.us/dwb/



DAVID MARTIN
Secretary

BUTCH TONGATE
Acting Deputy Secretary

CERTIFIED RETURN RECEIPT REQUESTED

7005 1820 0001 5707 7792

September 22, 2011

Elias Archibeque
Algodones WUA
PO Box 618
Algodones, New Mexico 87001

RE: Administrative Compliance Order, NO. 2011-CO-017, Algodones WUA, PWS# NM3535123

Mr. Archibeque:

Please find attached Administrative Compliance Order No. 2011-CO-017, issued to Algodones WUA, PWS# NM3535123, 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 actions must be taken to comply with the requirements of the Order. Algodones WUA has a right to answer the allegations in the Order and request a hearing, pursuant to NMSA 1978, §§ 74.1.10.E (available at www.nmenv.state.nm.us).

If you have any questions or need assistance with meeting the requirements of this Order, please contact Jeff Pompeo, Enforcement Coordinator at 505-476-8620 or via email at Jeff.Pompeo@state.nm.us.

Sincerely,

Butch Tongate, Acting Division Director
Field Operations & Infrastructure Division

- cc. Nora Romero, Water System Specialist, District I
- Jacob Sanders, Technical Services Specialist
- Chelo Hall, Region 6, EPA (Electronic)
- Electronic File
- Central File

STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT

NEW MEXICO ENVIRONMENT DEPARTMENT
FIELD OPERATIONS AND INFRASTRUCTURE
DIVISION,

Complainant,
v.

No. 2011-CO-017

Algodones WUA,
PWS# NM3535123,

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 Field Operations and Infrastructure Division of the NMED, issues this Administrative Compliance Order ("Order") to Algodones WUA ("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") located in Sandoval 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 six hundred seventy five (675) year round residents and has approximately one hundred eighty five (185) service connections to serve these year round residents.

4. Respondent, Algodones WUA, 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. Respondent, Algodones Water System, 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.

6. Water samples were collected from Respondent's Well #2 Treatment Unit on May 8, 2008, September 9, 2008, December 30, 2008, February 25, 2009, April 14, 2009, August 4, 2009, November 2, 2009, March 16, 2010, June 9, 2010, August 26, 2010, October 15, 2010, March 8, 2011, and May 11, 2011. Analysis of the samples resulted in Arsenic concentrations of 0.020 mg/L, 0.021 mg/L, 0.019 mg/L, 0.017 mg/L, 0.020 mg/L, 0.019 mg/L, 0.015mg/L, 0.019 mg/L, 0.019 mg/L, 0.019 mg/L, 0.019 mg/L, and 0.019 mg/L respectively.

7. Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b)(16) requires a Community water system to not exceed the Arsenic Maximum Contaminant Levels (MCL) of 0.010 milligrams per liter (mg/L).

8. Compliance with the Maximum Contaminant Levels (MCL) for Arsenic is determined by a Running Annual Average (RAA) as required by Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.23(i)(1).

9. On July 14, 2009, a Notice of Violation was issued to Respondent by NMED for violation of the Arsenic MCL during the first quarter of 2009. The Notice of Violation notified Respondent that it was required to provide public notice of the MCL violation.

10. On December 14, 2009, a Notice of Violation was issued to Respondent by NMED for violation of the Arsenic MCL during the fourth quarter of 2009. The Notice of Violation notified Respondent that it was required to provide public notice of the MCL violation.

11. On May 25, 2010, a Notice of Violation was issued to Respondent by NMED for violation of the Arsenic MCL during the first quarter of 2010. The Notice of Violation notified Respondent that it was required to provide public notice of the MCL violation.

12. On September 14, 2010, a Notice of Violation was issued to Respondent by NMED for violation of the Arsenic MCL during the second quarter of 2010. The Notice of Violation NOV notified Respondent that it was required to provide public notice of the MCL violation.

13. On November 16, 2010, a Notice of Violation was issued to Respondent by NMED for violation of the Arsenic MCL during the third and fourth quarter of 2010. The Notice of Violation NOV notified Respondent that it was required to provide public notice of the MCL violation.

14. On April 4, 2011, a Notice of Violation was issued to Respondent by NMED for violation of the Arsenic MCL during the first quarter of 2011. The Notice of Violation notified Respondent that it was required to provide public notice of the MCL violation.

15. On June 6, 2011, a Notice of Violation was issued to Respondent by NMED for violation of the Arsenic MCL during the second quarter of 2011. The Notice of Violation notified Respondent that it was required to provide public notice of the MCL violation.

VIOLATION 1

16. Respondent is in violation of Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b)(16), *Maximum Contaminant Levels (MCL) for Arsenic*, which requires a public water system to not exceed the Arsenic MCL of 0.010 mg/L. Respondent exceeded the MCL for Arsenic at Well #2 Treatment Unit during the fourth quarter of 2008, the first, second, third, and fourth quarter of 2009, the first, second, third, and fourth quarter of 2010, and the first quarter of 2011 with a RAA of 0.015 mg/L, 0.019 mg/L, 0.019 mg/L, 0.019 mg/L, 0.018 mg/L, 0.018 mg/L, 0.018 mg/L, 0.019 mg/L, 0.019 mg/L, and 0.019 mg/L respectively.

RETURN TO COMPLIANCE

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

17. By November 31, 2011, submit a proposed corrective action plan to NMED which includes a schedule and identifies steps that will be taken to bring the water system into full compliance with section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b)(16), *MCL for Arsenic*.

18. By November 31, 2012, Respondent shall have completed a final preliminary engineering report (PER) prepared by a professional engineer to determine what options it has available to enable long term compliance with provisions of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141. The PER shall include all options to return to compliance, an estimate of capital costs for each option, and an estimate of the time frame for completing construction, modification, or repair to the System necessary under each option. Respondent shall submit the PER to NMED for review and comments.

19. By November 31, 2014, be in compliance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b)(16), and provide drinking water with concentrations of Arsenic below the MCL of 0.010 mg/L.

20. By November 31, 2015, be in compliance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.23(i)(1) and have a RAA for Arsenic below the MCL of 0.010 mg/L.

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

Jeff Pompeo, Enforcement Coordinator
New Mexico Environment Department
Drinking Water Bureau
525 Camino de los Marquez, Suite 4
Santa Fe, NM 87505

IF RESPONDENT FAILS TO COMPLY WITH THE REQUIREMENTS OF PARAGRAPHS 17 THROUGH 21 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.nmenv.state.nm.us), 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 Jeff Pompeo, Enforcement Coordinator, Drinking Water Bureau, New Mexico Environment Department, 525 Camino de los Marquez, Santa Fe, NM 87505, (505) 476-8630.

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 Respondent certifies that all requirements of this Order have been met and the NMED has approved such certification in writing, or when the Secretary approves a Stipulated Final Order.




Butch Tongate
Acting Division Director
Field Operations and Infrastructure Division
525 Camino de los Marquez, Suite 4
Santa Fe, New Mexico 87505

Date 9/21/11

Certificate of Service

I hereby certify that a copy of the foregoing Administrative Compliance Order was sent on _____, 2011 via certified return receipt requested to the following:

Mr. Elias Archibeque
Algodones WUA
PO Box 618
Algodones New Mexico 87001


Bernice Garduno