

BILL RICHARDSON
Governor

State of New Mexico
ENVIRONMENT DEPARTMENT
Water & Wastewater Infrastructure
Development Division
DRINKING WATER BUREAU
525 Camino de Los Marquez, Suite 4
Santa Fe, New Mexico 87505
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www.nmenv.state.nm.us/dwb/



RON CURRY
Secretary

SARAH COTTRELL
Deputy Secretary

KAREN E. GALLEGOS
Director

CERTIFIED RETURN RECEIPT REQUESTED

7005 1820 0001 5707 9970

August 26, 2010

Glenn Lovato
Ojo Caliente MDWCA
PO Box 275
Ojo Caliente, New Mexico 87549

**RE: Administrative Compliance Order, NO. 2010-CO-006, Ojo Caliente MDWCA,
PWS# NM3506621**

Mr. Lovato:

Please find attached Administrative Compliance Order No. 2010-CO-006, issued to Ojo Caliente MDWCA, PWS# NM3506621, 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. Ojo Caliente MDWCA 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.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 505-476-8630 or via email at Jeff.Pompeo@state.nm.us.

Sincerely,

Karen E. Gallegos, Director
Water & Wastewater Infrastructure
Development Division

- cc. Violette Valerio-Hirschfeld, Water System Specialist, District II
- 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
WATER & WASTEWATER INFRASTRUCTURE
DEVELOPMENT DIVISION
DRINKING WATER BUREAU**

Complainant,

No. 2010-CO-006

v.

**Ojo Caliente MDWCA,
PWS# NM3506621**

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 & Wastewater Infrastructure Development Division of the NMED, issues this Administrative Compliance Order ("Order") to Ojo Caliente MDWCA ("Respondent") to enforce the EIA, DW Regulations and UOCA.

FINDINGS OF FACT

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) located in Taos 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 hundred fifty (350) year round residents and has approximately one hundred thirteen (113) service connection(s) to serve these year round residents.

4. Respondent, Ojo Caliente MDWCA, is a "person[s]" as defined by the EIA, NMSA 1978, § 74-1-3, the UOCA, NMSA 1978, § 61-33-2.G and *see* Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.2.

5. Uranium samples were collected from Respondent's well #2 on May 7, 2008, September 23, 2008, November 20, 2008, March 16, 2009, June 9, 2009, September 21, 2009, December 18, 2009, and March 3, 2010. Analysis of the samples resulted in Uranium concentrations of 38 micrograms per liter ($\mu\text{g/L}$), 37 $\mu\text{g/L}$, 38 $\mu\text{g/L}$, 38 $\mu\text{g/L}$, 40 $\mu\text{g/L}$, 35 $\mu\text{g/L}$, 39 $\mu\text{g/L}$, and 37 $\mu\text{g/L}$ respectively.

6. Compliance with the Maximum Contaminant Level (MCL) for Uranium is determined by a Running Annual Average (RAA) as required by Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.26(c)(3)(i).

7. On June 15, 2009, a corrective Notice of Violation (NOV) was issued to Respondent by NMED for violation of the Uranium MCL.

8. On July 12, 2010, NMED issued a NOV to Respondent for violation of the Utility Operator Certification Act, NMSA 1978, § 61-33-1 et seq., 20.7.10.400.M NMAC, 20.7.4.20.A NMAC, and 20.7.4.20.C NMAC.

VIOLATION ONE (1)
Drinking Water Regulations

9. Respondent is in violation of Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.66(e) *Maximum Contaminant Level (MCL) for Uranium*, which requires a public water system to not exceed the Uranium MCL of 30 µg/L. Respondent exceeded the MCL for Uranium during the first, second, third, and fourth quarter of 2009 and the first quarter 2010 with an RAA of 38 µg/L, 38 µg/L, 39 µg/L, 39 µg/L, and 39 µg/L respectively.

RETURN TO COMPLIANCE
Drinking Water Regulations

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

10. By October 26, 2010, 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. § 141.66(e), *MCL for Uranium*.

11. By October 26, 2013, be in compliance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.66(e), and provide drinking water with concentrations of Uranium below the MCL of 30 µg/L.

12. By October 26, 2014, have a RAA for Uranium below the MCL of 30 µg/L and be in compliance with 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.26(c)(3)(i).

13. Submittals made pursuant to the EIA, NMSA 1978, § 74-1-10, or the DW Regulations, 20.7.10 NMAC of this Order shall be sent by standard U.S. Mail or certified mail with return receipt requested to the following address:

**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 TEN (10) THROUGH THIRTEEN (13) OF THIS ORDER, THE SECRETARY MAY ASSESS CIVIL PENALTIES NOT TO EXCEED ONE THOUSAND DOLLARS (\$1,000) FOR EACH INSTANCE OF NONCOMPLIANCE WITH THIS ORDER.

VIOLATION TWO (2)
Utility Operator Certification Act

14. Respondent is in violation of the Utility Operator Certification Act, NMSA 1978, § 61-33-1 et seq., 20.7.10.400.M NMAC and 20.7.4.20.A NMAC, which states “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 written notification by NMED on July 12, 2010.

VIOLATION THREE (3)
Utility Operator Certification Act

15. Respondent is in violation of the Utility Operator Certification Act, NMSA 1978, § 61-33-1 et seq., 20.7.10.400.M NMAC and 20.7.4.20.C NMAC, which states “the name(s) of the certified operator(s) employed by a public water supply system or public wastewater facility must be on file at all times with the department. A certified operator may be replaced with another certified operator of the required level at any time. The owner shall notify the

department in writing of the name of the new certified operator within thirty days after the replacement of the certified operator.” Respondent failed to notify the NMED in writing of the name of the System’s certified operator.

RETURN TO COMPLIANCE
Utility Operator Certification Act

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

16. By December 1, 2010, Ojo Caliente MDWCA public water system must be operated by or under the supervision of a certified operator who meets or exceed the appropriate level of certification required to operate the System. Respondent shall submit a written notification of that person’s name and a copy of the certified operator’s certification to the NMED.

17. Submittals made pursuant to the UOCA, NMSA 1978, 61-33-1 et seq., 20.7.10.400.M NMAC and 20.7.4.20.A NMAC shall be sent by standard U.S. mail or certified mail with return receipt requested to the following addresses:

**Mike Coffman, Program Manager
New Mexico Environment Department
Surface Water Quality Bureau, Facilities Operation Team
5500 San Antonio Drive, NE
Albuquerque, NM 87109**

**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 SIXTEEN (16) THROUGH SEVENTEEN (17) OF THIS ORDER, THE SECRETARY MAY ASSESS 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.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 laws; 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 to 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 of 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.

Lastly, 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 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.

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. The NMED shall not approve such certification until Respondent's public water system has been operated by or under the supervision of a certified operator who meets or exceeds the appropriate level of certification in accordance with the UOCA, NMSA 1978 § 61-33-1 et seq., 20.7.10.400.M NMAC and 20.7.4.20.A NMAC, for not less than 12 months, and Respondent has maintained the RAA for Uranium at or below the MCL for Uranium for five consecutive quarters in accordance with Section 20.7.10.100 NMAC, incorporating 40 CFR§ 141.66(e), *MCL for Uranium*, and is in compliance with section 20.7.10.100, incorporating 40 CFR§ 141.26(c), *General monitoring and compliance requirements for radionuclides*, or when the Secretary approves a Final Stipulated Order.

August 25, 2010
Date




Karen E. Gallegos, Director
Water & Wastewater Infrastructure
Development Division
525 Camino de los Marquez, Suite 4
Santa Fe, New Mexico 87505
(505) 476-8611

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Administrative Compliance Order was sent via certified return receipt requested on the following party of record on August 26th, 2010.

Mr. Glenn Lovato
Ojo Caliente MDWCA
PO Box 275
Ojo Caliente, New Mexico 87549



Frances Garcia