

STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT

COPY

NEW MEXICO ENVIRONMENT DEPARTMENT
WATER PROTECTION DIVISION,

Complainant,
v.

No. DWB 16-20 (CO)

LONGHORN ESTATES WATER SYSTEM,

Respondent.



**ADMINISTRATIVE COMPLIANCE ORDER AND
ASSESSMENT OF CIVIL PENALTIES**

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 NMED, issues this Administrative Compliance Order (“Order”) to Longhorn Estates Water System (“Respondent”) to enforce the EIA, DW Regulations and UOCA.

FINDINGS

1. 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”) Longhorn Estates Water System, PWS# NM3520005, located in Curry 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 one (201) residents and has approximately seventy six (76) service connections to serve these residents.
4. Respondent, Longhorn Estates Water System, 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. § 141.152(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.

6. On August 8, 2013, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to provide a CCR for the 2012 calendar year to their consumers and the State by July 1, 2013.

7. On December 1, 2014, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to provide a CCR for the 2013 calendar year to their consumers and the State by July 1, 2014.

8. On July 15, 2015, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to provide a CCR for the 2014 calendar year to their consumers and the State by July 1, 2015.

9. 20.7.10.100 NMAC (incorporating 40 C.F.R. § 141.204(c)(1)) requires community water systems to notify customers of the non-sampling violation.

10. On March 8, 2013, a Notice was issued to Respondent by NMED to notify the public of the February 2013 total coliform non-sampling violation.

11. On October 17, 2013, a Notice was issued to Respondent by NMED to notify the public of the September 2013 total coliform non-sampling violation.

12. On December 23, 2013, a Notice was issued to Respondent by NMED to notify the public of the October 2013 total coliform non-sampling violation.

13. 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.

14. On January 9, 2015, 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 violation. The NOV notified Respondent that it was required to provide public notice of the violation.

15. 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.

16. On January 9, 2015, a Notice of Violation (NOV) was issued to Respondent by NMED for failure to correct significant deficiencies identified during the August 16, 2013, 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.

17. On August 7, 2015 the Director of the Water Protection Division, acting under the authority of the Secretary of NMED, issued an Administrative Compliance Order (ACO), 2015-ACO-20, to Respondent for the violations detailed in this Order. The ACO was delivered to Mr. Jake Madril at 46 Saddle, Clovis, New Mexico 88101 on August 10, 2015, via United States postal service, certified mail return receipt no. 7005 1820 0001 5772 3415.

18. On January 6, 2016, NMED sent a letter to Respondent notifying him that he was still not in compliance with the ACO, 2015-ACO-20. The letter was delivered to Mr. Jake Madril at 46 Saddle, Clovis, New Mexico 88101 on January 12, 2016, via United States postal service, certified mail return receipt no. 7005 1820 0001 5772 3866.

19. On April 20, 2016, after three unsuccessful attempts to contact Respondent by telephone, NMED spoke with Mr. Madril to offer technical assistance to return to compliance.

VIOLATION 1- Drinking Water Regulations

20. 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 2012, 2013, and 2014 calendar years to their consumers and the State by July 1, 2013, July 1, 2014, and July 1, 2015 respectively.

VIOLATION 2- Drinking Water Regulations

21. Respondent is in violation of 20.7.10.100 NMAC (incorporating 40 C.F.R. § 141.204(c)(1)), which requires community water systems to notify customers of the non-sampling violation. Respondent failed to notify the public of the February 2013, September 2013, and October 2013 total coliform non-sampling violation.

VIOLATION 3- Drinking Water Regulations

22. 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 4- Drinking Water Regulations

23. 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 one hundred twenty (120) days of receiving written notice from the State of significant deficiency. Respondent failed to correct significant deficiencies identified during the August 16, 2013, Sanitary Survey within one hundred twenty (120) days of receiving written notice from the State.

ORDERS AND CIVIL PENALTIES

Drinking Water Regulations

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

24. By November 1, 2016, 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 CCR to consumers and the State. Pay a penalty of one thousand dollars (\$1,000) within sixty (60) days following receipt of this Order.

25. By November 1, 2016, comply with 20.7.10.100 NMAC (incorporating 40 C.F.R. § 141.204(c)(1)), and notify customers of the non-sampling violations and submit a copy of the notification to the State. Pay a penalty of one thousand dollars (\$1,000) within sixty (60) days following receipt of this Order.

26. By November 30, 2016, comply with 20.7.10.100 NMAC (incorporating 40 C.F.R. § 141.403(a)(4)), and submit a corrective action plan to the State. Pay a penalty of one thousand dollars (\$1,000) within sixty (60) days following receipt of this Order.

27. By December 15, 2016, comply with 20.7.10.100 NMAC (incorporating 40 C.F.R. § 141.403(a)(5)), and correct significant deficiencies identified during the August 16, 2013, Sanitary Survey. Pay a penalty of one thousand dollars (\$1,000) within sixty (60) days following receipt of this Order.

28. Submittals made pursuant to paragraphs 24 through 27 of this Order and a certified or cashier's check for four thousand dollars (\$4,000) made payable to the State of New Mexico shall be sent by standard U.S. mail or certified mail with return receipt requested to the following:

Alysia Leavitt, Financial Manager
Drinking Water Bureau
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502-5469

If Respondent fails to comply with the requirements of paragraphs 24 through 28 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

29. 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 "[i]t 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 NMED on September 6, 2013, January 9, 2015, July 23, 2015, and August 10, 2015 that a certified operator was required.

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

30. Within sixty (60) days of receipt of this Order, Longhorn Estates Water System 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 NMED. Pay a penalty of one thousand dollars (\$1,000) within sixty (60) days following receipt of this Order.

31. Submittals made pursuant to paragraph 30 shall be sent by standard U.S. mail or certified mail with return receipt requested to the following:

Anne Keller, Environmental Specialist
New Mexico Environment Department
Surface Water Quality 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

If Respondent fails to comply with the requirements of paragraphs 30 through 31 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, 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 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 NMED concerning settlement of this Order. 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.

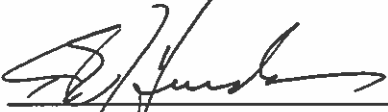
To explore the possibility of settlement in this matter, contact John Verheul, Assistant General Counsel, New Mexico Environment Department, 121 Tijeras Avenue NE, Ste 1000 Albuquerque, NM 87102, (505) 383-2063.

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 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 NMED has approved such certification 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

10/18/2016

Date

Certificate of Service

I hereby certify that a copy of the foregoing Administrative Compliance Order and Assessment of Civil Penalties was sent on October 18th, 2016 via certified mail return receipt requested to the following:

Jake Madril
Longhorn Estates Water System
46 Saddle
Clovis, NM 88101



John Verheul