

STATE OF NEW MEXICO  
SECRETARY OF ENVIRONMENT

NEW MEXICO ENVIRONMENT DEPARTMENT  
WATER PROTECTION DIVISION,



Complainant,  
v.

No. DWB 16-25 (CO)

SAN RAFAEL WATER AND SANITATION  
DISTRICT, PWS# NM3525833

Respondent.



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ADMINISTRATIVE COMPLIANCE ORDER  
WITH CIVIL PENALTIES

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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 San Rafael Water and Sanitation District (“Respondent”) to enforce the EIA and DW Regulations, and to assess a civil penalty for violations of the EIA and DW Regulations.

**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 and DW Regulations.
2. Respondent owns and operates a public drinking water system (“System”), San Rafael Water & Sanitation District, PWS# NM3525833, located in Cibola 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 eight hundred eighty six (886) residents and has approximately three hundred twenty three (323) service connections to serve these residents.

4. Respondent, San Rafael Water and Sanitation District, 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 1<sup>st</sup> of each year.

6. On July 24, 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.

7. On July 10, 2015, an 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.

8. On July 29, 2016, an NOV was issued to Respondent by NMED for failure to provide a CCR for the 2015 calendar year to their customers and the State by July 1, 2016.

9. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(4)], requires a community water system to consult with the State regarding the appropriate corrective action within thirty (30) days of receiving written notice of significant deficiency.

10. On February 24, 2015, an 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.

11. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(5)], requires a community 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.

12. On May 5, 2015, an NOV was issued to Respondent by NMED for failure to correct significant deficiencies identified during the October 16, 2014, 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.

13. On August 7, 2015, NMED issued Administrative Compliance Order number 2015-ACO-17 to Respondent, listing violations 1, 2 and 3 described below, and ordering a return to compliance.

14. On June 13, 2016, an NOV was issued to Respondent by NMED for failure to submit an approved sampling plan that meets the requirements of the Revised Total Coliform Rule (RTCR).

15. On September 23, 2016, an NOV was issued to Respondent by NMED for failure to submit the required number of microbiological samples in accordance with an approved RTCR sampling plan.

16. Beginning on March 24, 2016, and continuing until August 1, 2016, the Bureau provided technical assistance to Respondent, as documented in the Technical Assistance Request included as Attachment 1 to this Order.

### **VIOLATION 1**

17. 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 1<sup>st</sup> of each year. Respondent failed to submit a CCR for the 2013, 2014 and 2015 calendar years to their consumers and the State by July 1, 2014, July 1, 2015 and July 1, 2016 respectively.

### **VIOLATION 2**

18. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(4)], which requires a community 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 3**

19. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(5)], which requires a community 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 significant deficiencies identified during the October 16, 2014, Sanitary Survey within 120 days of receiving written notice by the State.

### **VIOLATION 4**

20. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.853(a)(1)], which requires systems to develop a written sample siting plan in conformance with the Revised Total Coliform Rule (RTCR). Respondent failed to submit a written sample

siting plan after being informed of this requirement in a notification letter sent to each water system on March 11, 2016. NMED issued a Notice of Violation to Respondent detailing this violation on June 13, 2016.

#### **VIOLATION 5**

21. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.855(b)], which requires systems to submit microbiological samples in accordance with an approved RTCR sampling plan. Respondent failed to submit the required samples for June, July and August 2016, and failed to conduct routine total coliform monitoring. NMED issued a Notice of Violation to Respondent detailing this violation on September 23, 2016.

#### **CIVIL PENALTY**

22. In accordance with the Drinking Water Bureau Civil Penalty Policy, NMED hereby assesses a civil penalty of one thousand dollars against Respondent for each violation, for a total civil penalty in this matter of **FIVE THOUSAND DOLLARS (\$5,000)**.

23. Respondent shall pay the total civil penalty of five thousand dollars by certified or cashier's check made payable to the state of New Mexico and mailed or hand delivered to:

David Soveranez, Financial Manager  
Drinking Water Bureau  
New Mexico Environment Department  
Post Office Box 5469 (87502)  
1190 S. St. Francis Drive  
Santa Fe, New Mexico 87505

#### **RETURN TO COMPLIANCE**

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

24. By December 30, 2016, comply with 20.7.10.100 [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.

25. By December 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.

26. By January 31, 2017, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(5)], by correcting significant deficiencies identified during the October 16, 2014 Sanitary Survey.

27. Within 30 days of the receipt of this Order, Respondent shall submit to NMED an approvable written sample siting plan in conformance with the Revised Total Coliform Rule (RTCR).

28. Within 30 days of NMED's approval of the RTCR sample siting plan described above, Respondent shall submit to NMED microbiological samples in accordance with the approved plan.

29. Submittals made pursuant to paragraphs 24 through 28 of this Order shall be sent by standard U.S. mail or 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

30. If Respondent fails to comply with the requirements of paragraphs 24 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.

#### **RIGHT TO ANSWER AND REQUEST A HEARING**

31. 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 either (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.

32. 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.

33. 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.

34. 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**

35. 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**

36. Whether or not a request for hearing has been filed, Respondent may confer with the NMED concerning settlement of this Order.

37. The NMED encourages settlement consistent with the provisions and objectives of the EIA and the DW Regulations.

38. 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.

39. Settlement discussion may be pursued as an alternative to, and simultaneously with, the hearing proceedings.

40. Respondent may appear at the settlement conference alone or accompanied or represented by legal counsel.

41. 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.

42. 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**

43. Compliance with the requirements of this Order does not relieve Respondent of the obligation to comply with all other applicable laws and regulations.

44. 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.

45. Issuance of this Order is not an election by the NMED to forgo any civil or criminal

action otherwise authorized under the EIA.

**TERMINATION**

46. 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.



\_\_\_\_\_  
Bruce Yurdin  
Division Director  
Water Protection Division

11/17/2016  
\_\_\_\_\_  
Date

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Administrative Compliance Order was sent on Nov. 16<sup>th</sup>, 2016 via certified return receipt requested to the following:

Christine Gallegos  
San Rafael Water & Sanitation District  
PO Box 99  
San Rafael, NM 87501

/s/ Andrew P. Knight  
\_\_\_\_\_  
Andrew P. Knight

# Technical Assistance Request (TAR) (draft 031115)

System Info / Request Details from Compliance Officer				Circle Bold or Highlight Type of System								
System Name	Sun Rafael Water and Sanitation District	PWSS # NM3525833	NTNC & CWS Northern NM <sup>4</sup>	NTNC & CWS Southern NM <sup>**</sup>	Transient NCWS <sup>***</sup>							
Requested or Taken By	Maria J. Medina	Date	February 25, 2016									
System Contact	Christine Gallegos	Contact Telephone #s.	505-287-4107									
Action Severity	Normal	Action Severity = Emergency (24 hour), Urgent (1 week), High (1 month), Normal (3 months), Low(> 3 months)										
Specify Acute/Non-Acute Contamination Event or N/A:		NOTE: Acute Event Requires SDWIS Entry by Data Steward as Enforcement Action										
Action Requested	Help with AO requirements. (AO, AO non-compliance letter, and sanitary survey attached)											
RTCR trigger	RTCR Level 1 Assessment Required Y/N?		RTCR Level 2 Assessment Required Y/N?									
Justification	Required assistance before issuing AO with penalties											
Northern/Southern Region Compliance Supervisor Approval:			further instructions from Compliance									
Regulatory Review & Support Supervisor Approval:			further instructions from Enforcement									
Assistance Actions Taken by Technical Services												
Date for Initial Tech Assistance	3/24/16	TA Conducted By	Michael Petersen	Date Forwarded to Data Steward, or N/A								
Description of Action(s) Taken	Date	3/24/16	TA Accepted by System?	YES or NO (bold or highlight)	Determined By							
	<p>3/24) Initial attempt to contact system. I got a phone message saying they were out until 3/30. I left a message explaining technical services. No response.</p> <p>3/30) Second attempt to contact system. Break is off, but nobody picked up phone. Left another phone message.</p> <p><b>SDWIS Action Taken (by TA Provider or Data Steward):</b></p> <table border="1"> <tr> <td>Date</td> <td>4/8/16</td> <td>Task Code(s) Entered</td> <td>TAO</td> <td>Entered By</td> <td></td> </tr> </table>						Date	4/8/16	Task Code(s) Entered	TAO	Entered By	
Date	4/8/16	Task Code(s) Entered	TAO	Entered By								
Date 2	4/11/16	TA Conducted By	MP	Date Forwarded to Data Steward, or N/A								
Description of Action(s) Taken	<p>4/11/16) Successful contact with system. Operator is taking WS2 test at NMRWA conference 4/21. E-mail operational document templates to water system, along with CCR instructions.</p> <p>5/11/16) System is working on O&amp;M plan, will begin RTCR plan &amp; spreadsheet.</p> <p>6/3/16) left phone message for system requesting update on action items.</p> <p><b>SDWIS Action Taken (by TA Provider or Data Steward):</b></p> <table border="1"> <tr> <td>Date</td> <td>6/3/16</td> <td>Task Code(s) Entered</td> <td>TAO</td> <td>Entered By</td> <td></td> </tr> </table>						Date	6/3/16	Task Code(s) Entered	TAO	Entered By	
	Date	6/3/16	Task Code(s) Entered	TAO	Entered By							
Date 3	8/1/16	TA Conducted By	MP	Date Forwarded to Data Steward, or N/A								
Description of Action(s) Taken	<p>7/20) Issue e-mail to system with hard deadline for document submittal July 29, 2016. Offer assistance as needed working through documents. Follow-up phone call Monday 7/25 to confirm delivery of e-mail. E-mail delivery confirmed with Christine Gallegos, she will send me working drafts of documents by end of week.</p> <p>7/29) RTCR sample plan submitted to C O Tanya Trujillo 7/25, no other attachments.</p> <p>8/1) No response from system regarding O&amp;M, ERP, CCRs or physical deficiencies. System previously under A O pre-penalty, recommend enforcement escalation and refer to enforcement coordinator. Close out Technical assistance actions.</p> <p><b>SDWIS Action Taken (by TA Provider or Data Steward):</b></p> <table border="1"> <tr> <td>Date</td> <td>8/1/2016</td> <td>Task Code(s) Entered</td> <td>TAO</td> <td>Entered By</td> <td>MP</td> </tr> </table>						Date	8/1/2016	Task Code(s) Entered	TAO	Entered By	MP
	Date	8/1/2016	Task Code(s) Entered	TAO	Entered By	MP						

<sup>4</sup>north of I-40 = Northern NM, data steward is Ken Marshall; <sup>\*\*</sup>south of I-40 = Southern NM, data steward is Richard Asbury; <sup>\*\*\*</sup>Karen Beezhold enters all events for Transient Non-CWS