



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TEXAS 75202-2733

MAR 11 2016

CERTIFIED MAIL-RETURN RECEIPT REQUESTED: 7005 1820 0003 7449 8165

Mr. John M. Stomp III, P.E.  
Chief Operating Officer, Water Utility Authority  
Albuquerque Bernalillo County Water Utility Authority  
4201 Second Street SW  
Albuquerque, NM 87105

Re: Consent Agreement and Final Order  
Docket Number: CWA-06-2015-1777  
Facility Number: NM0022250

Dear Mr. Stomp:

Enclosed is a proposed Consent Agreement and Final Order (CAFO) containing the terms of agreement in principle. If you do not have any concerns with the CAFO, please have an authorized official for Albuquerque Bernalillo County Water Utility Authority sign the CAFO and return it, with original signature, to the attention of Ellen Chang-Vaughan (6RC-EW) within ten (10) days of receipt of the CAFO.

If you have any questions regarding this matter, please contact Mr. Robert Houston, of my staff, at (214) 665-8565.

Sincerely,

A handwritten signature in black ink, appearing to read "John Blevins".

John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

Enclosure

cc: Charles W. Kolberg  
General Counsel  
P.O. Box 568  
Albuquerque, NM 87103

FILED

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

2016 MAR 17 AM 9:59

REGIONAL OFFICE FOR THE  
EPA REGION VI

In the Matter of:

Albuquerque Bernalillo County Water  
Utility Authority

Respondent

§  
§  
§  
§  
§  
§  
§  
§  
§

Docket No. CWA-06-2015-1777

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the United States Environmental Protection Agency (“EPA”) pursuant to Section 309(g) of the Clean Water Act (“the Act”), 33 U.S.C. § 1319(g). This CAFO is issued in accordance with 40 C.F.R. § 22.18, as described in the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. Part 22.

2. On June 10, 2015, EPA Region 6 issued to Albuquerque Bernalillo County Water Utility Authority (“Respondent”) an Administrative Complaint (“Complaint”) under Section 309(g) of the Act, 33 U.S.C. § 1319(g), which proposed to assess a civil penalty against Respondent, and gave notice of Respondent’s opportunity to request a hearing on the proposed administrative penalty assessment.

3. Respondent and EPA (collectively, “Parties”) agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public’s interest, and that the entry of this CAFO is the most appropriate means of resolving such matters. Compliance with all the terms and conditions of this CAFO resolves only those violations alleged in the Complaint.

4. Respondent admits the jurisdictional allegations of the Complaint; however, for the purposes of full and final settlement of the Complaint, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in the Complaint or the Findings of Fact and Conclusions of Law contained in this CAFO.

5. Respondent expressly waives any right to contest the factual allegations or conclusions of law contained in the Complaint and this CAFO and waives its right to appeal the Final Order set forth herein.

6. Before the taking of any testimony, and without adjudication of any issue of law or fact, the Parties agree to the terms of this CAFO and to its issuance. Respondent consents to the assessment and payment of a civil penalty in the amount and by the method stated below.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. Respondent is a political subdivision of the State of New Mexico and as such is a "person," as that term is defined at Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

8. At all times relevant to this action, Respondent owned or operated a wastewater treatment plant located on Second Street in Albuquerque, Bernalillo County, New Mexico ("facility"), and was therefore an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

9. The Complaint specified Findings of Fact and Conclusions of Law that are hereby incorporated by reference and alleged, among other things, that at the relevant times: Respondent was a "person" that "owned or operated" a facility that acted as a "point source" subject to "discharges" of "pollutants" to identified "waters of the United States" within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2; Respondent and the facility were subject to the provisions of the Act, 33 U.S.C. §§ 1251-1387 *et seq.*, and the National Pollutant Discharge Elimination System ("NPDES") program; and Respondent violated Section 301 of

the Act, 33 U.S.C. § 1311, by discharging pollutants with its wastewater, to waters of the United States, as specified in the Complaint.

10. With the issuance of the Complaint, the New Mexico Environment Department was notified and given an opportunity to consult with EPA regarding the proposed assessment of an administrative penalty against Respondent.

11. EPA notified the public of the Complaint via the internet at <http://www.epa.gov/earth1r6/6en/public.html>, and afforded the public thirty (30) days to comment on the Complaint and proposed penalty. At the expiration of the notice period, EPA received no comments from the public.

### III. TERMS OF SETTLEMENT

#### A. PENALTY PROVISIONS

12. Based on the foregoing Findings of Fact and Conclusions of Law, EPA, Region 6, considering the relevant criteria pursuant to Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), and acting pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), hereby orders that Respondent shall pay to the United States a civil penalty in the amount of thirty-three thousand five hundred dollars (\$33,500.00) to settle the violations as alleged in the Complaint, in accordance with 40 C.F.R. § 22.18(c).

13. Payment shall be made by one of the following methods within thirty (30) days after the effective date of this CAFO:

- a. By mailing a bank check, cashier's check or certified check, payable to "Treasurer of the United States," to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

b. By wire transfer to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

c. By overnight mail (Express, FedEx, DHL, etc.):

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
Phone: 314-418-1028

d. By credit card payments to <https://www.pay.gov>  
(Insert sfo 1.1 in the search field)

"In the matter of Albuquerque Bernalillo County Water Utility Authority, Docket No. CWA-06-2015-1777" should be clearly marked on the check to ensure credit for payment.

14. Respondent shall send simultaneous notices of the payment, including a copy of the check, or other remittance, to each of the following:

- (a) Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733
- (b) Chief, NPDES Compliance Section (6EN-WC)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733
- (c) Chief, Water Legal Branch (6RC-EW)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Respondent's adherence to these procedures will ensure proper credit when payment is received by EPA.

15. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

16. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States that are not paid by the due date and a charge to cover the cost of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

17. EPA will also assess a fifteen dollar (\$15.00) administrative handling charge for administrative costs on unpaid penalties for the first thirty (30)-day period after the payment is due and an additional fifteen dollars (\$15.00) for each subsequent thirty (30)-day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

18. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this Section shall be required to pay, in addition to such penalty and interest, the United States' enforcement

expenses including, but not limited to, attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly non-payment penalty for each quarter during which such failure to pay persists. Such non-payment penalty shall be twenty percent (20%) of the aggregate amount of such person's outstanding penalties and non-payment penalties accrued as of the beginning of each quarter.

19. Failure by Respondent to pay the penalty assessed according to the terms of this CAFO, in full, by its due date, may subject Respondent to a civil action to collect the assessed penalty and any accrued interest and penalties.

20. In the event a collection action is necessary, Respondent shall pay—in addition to any applicable penalty, fees, and interest described herein—all reasonable costs and expenses, including legal expenses and court costs, incurred by the United States for enforcement and collection proceedings for non-payment of the amounts agreed hereunder, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In any such collection action, the validity, amount, and appropriateness of the penalty, and the terms of this CAFO shall not be subject to review.

A. SUPPLEMENTAL ENVIRONMENTAL PROJECT

21. Respondent shall implement a Supplemental Environmental Project ("SEP"), the value of which may not be less than four hundred thousand (\$400,000.00) dollars, which the parties agree is intended to secure significant environmental or public health improvement. The SEP involves the design and construction of a non-potable reuse water line from the Southside Water Reclamation Plant ("SWRP") to the Valle del Oro National Wildlife Refuge ("Refuge") in Albuquerque, New Mexico. The non-potable reuse water line for this project would help create and supply two lagoons and wetlands at the Refuge. It would also provide irrigation to street scape landscaping along a bike path on 2<sup>nd</sup> Street from Rio Bravo to the entrance to the Refuge.

The non-potable reuse water would also be available to meet landscape needs of Mountain View Elementary School, just south of the diversion channel, and neighboring communities should they require reuse water for parks or street median projects. In addition, it may provide drip irrigation to landscape projects within road medians and a trail system being developed through the Mountain View neighborhood which is alongside the route to the Refuge. The non-potable water line would originate at the SWRP where it will be connected to the existing Southside Reuse System within the plant site and then extend east to 2<sup>nd</sup> Street and then south to the Refuge. The total length of the non-potable water line from the SWRP to the refuge is approximately 18,000 feet or about 3.4 miles. A minimum 6 inch PVC pipe will be used for the construction of the line. The water line would be metered and provided with appropriate controls to provide water at needed times and in more amounts if required. All design and construction elements of the SEP shall be completed no later than June 30, 2018.

22. With regard to the SEP, Respondent certifies the truth and accuracy of the following:
  - a. That all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate.
  - b. No part of the SEP expenditure shall include federal funds, including low interest federal loans, federal contracts, or federal grants. Respondent may not deduct from its taxes any expenses incurred as part of this settlement.
23. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.
24. Whether Respondent has complied with the terms of this CAFO regarding the implementation of the SEP shall be the sole determination of EPA.
25. If Respondent fails to satisfactorily complete the SEP by the deadline set forth above, Respondent shall pay stipulated penalties for each day for which it fails to satisfactorily complete the SEP as follows:



<u>Penalty per Violation per Day</u>	<u>Period of Non-compliance</u>
\$200	1 <sup>st</sup> through 30 <sup>th</sup> day
\$300	31 <sup>st</sup> day and beyond

26. Respondent shall submit a status report by June 30, 2016, and June 30, 2017 summarizing the SEP construction activities.

27. Respondent shall submit a SEP Completion Report to EPA within forty-five (45) days after completion of all SEP activities. The SEP Completion Report shall contain the following information:

- a. A detailed description of the SEP as implemented;
- b. documented itemized costs of the SEP, e.g., by copies of purchase orders and receipts or canceled checks, and copies of monthly reports regarding labor costs, equipment costs, and materials purchased;
- c. certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
- d. a summary of the monitoring results including the effectiveness of the permeable pavements, the reduction of the pollutants, etc.

28. In the SEP Completion Report, submitted to EPA pursuant to this CAFO, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

29. Nothing herein shall obligate Respondent to publicize its involvement in the SEP; however, any public statement, oral or written, made by Respondent to publicize its participation in SEP activities shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the EPA for violations of CWA provisions."

30. Respondent by execution of this CAFO, certifies that, as of the date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in any other case or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

#### IV. GENERAL PROVISIONS

31. To execute this Agreement, Respondent shall forward this copy of the CAFO, with original signature, to:

Ms. Ellen Chang-Vaughan (6RC-EW)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

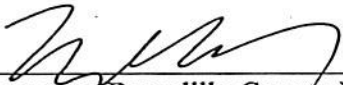
32. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, as described in Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of Respondent's permits or other requirements of the Act by actions pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

33. The provisions of this CAFO shall be binding upon Respondent, its officers or officials, managers, employees, and their successors or assigns, in their capacity on behalf of Respondent.

34. Each party agrees to bear its own costs and attorneys' fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the terms of this CAFO.


35. Each undersigned representative of the Parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.

In recognition and acceptance of the foregoing:

  
\_\_\_\_\_  
Albuquerque Bernalillo County Water Utility Authority

*cdk*

3/7/14  
Date

  
\_\_\_\_\_  
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

3-11-16  
Date

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers', agents', servants', employees', successors', or assigns') obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Issuance Date:

3/15/14

Regional Judicial Officer  
EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 17<sup>th</sup> day of March, 2016, the original of the foregoing Consent Agreement and Final Order was hand-delivered to the Regional Hearing Clerk, U.S. EPA, Region 6 (6RC-D), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy was placed in the United States mail, by certified mail, return receipt requested, addressed to the following:

Original hand-delivered: Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Copy by certified mail,  
return receipt requested: Mr. John Stomp  
Chief Operating Authority  
Albuquerque Bernalillo County Water Utility Authority  
4201 Second St., SW  
Albuquerque, NM 87105

Copy by mail: Charles W. Kolberg  
General Counsel  
P.O. Box 568  
Albuquerque, NM 87103

Mr. James Hogan  
Bureau Chief  
Surface Water Quality Bureau  
New Mexico Environment Department  
P.O. Box 5469  
Santa Fe, NM 87502-5469

Copy hand-delivered: Ms. Ellen Chang-Vaughan (6RC-EW)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Dated: 17 MAR 2016

Jackie Allen