

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

FILED  
2011 OCT 25 AM 10:59  
REGIONAL HEARING CLERK  
EPA REGION VI

In the Matter of	§ Docket No. CWA-06-2011-1906
	§
Mora Mutual Water and	§
Sewer Works Association,	§ Proceeding to Assess a Class I
Mora, NM	§ Civil Penalty under Section 309(g)
	§ of the Clean Water Act
Respondent	§
	§ ADMINISTRATIVE COMPLAINT
NPDES Permit No. NM0024996	§

I. Statutory Authority

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (“the Act”), 33 U.S.C. § 1319(g). The Administrator of EPA delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who further delegated this authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 (“Complainant”). This Class I Administrative Complaint is issued in accordance with, and this action will be conducted under, the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” including rules related to administrative proceedings not governed by Section 554 of the Administrative Procedures Act, 40 C.F.R. §§ 22.50 through 22.52.

Based on the following Findings, Complainant finds that the Mora Mutual Water and Sewer Works Association (“Respondent”) has violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

II. Findings of Fact and Conclusions of Law

1. Respondent is a statutory utility district created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, which is a “municipality” as that term is defined in Section 502(4) of the Act, and as such, is a “person,” as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. At all relevant times, the Respondent owned or operated the Village of Mora wastewater treatment plant located approximately 1 mile east of the Village of Mora, in Mora County, New Mexico (“facility”), and was therefore an “owner or operator” within the meaning of 40 C.F.R. § 122.2.

3. At all relevant times, the facility was a “point source” of a “discharge” of “pollutants” with its municipal wastewater to the receiving waters of the Mora River in Segment No. 20.6.4.307 of the Canadian River Basin, which is considered a “water 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.

4. Because the Respondent owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States, the Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (“NPDES”) program.

5. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

6. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

7. The Respondent applied for and was issued NPDES Permit No. NM0024996 (“permit”) under Section 402 of the Act, 33 U.S.C. § 1342, which became effective on November 1, 2008. At all relevant times, the Respondent was authorized to discharge pollutants from the facility to waters of the United States only in compliance with the specific terms and conditions of the permit.

8. Parts III.C and III.D of the permit require the Respondent to sample and test its effluent and monitor its compliance with permit conditions according to specific procedures, in order to determine the facility’s compliance or non-compliance with the permit and applicable regulations. They also require the Respondent to file with EPA certified Discharge Monitoring Reports (“DMRs”) of the results of monitoring, and Non-Compliance Reports when appropriate.

9. Part I.A of the permit places certain limitations on the quality and quantity of effluent discharged by the Respondent.

10. Certified DMRs filed by the Respondent with EPA in compliance with the permit show discharges of pollutants from the facility that exceed the permitted effluent limitations established in Part I.A of the permit.

11. On March 30, 2011, the facility was inspected by the New Mexico Environment Department. As a result, unsatisfactory findings were specified in the inspection report; violations and/or deficiencies for the evaluated areas include the following: Records/Reports, Facility Site Review, Flow Measurement, Compliance Schedules, and Operations and Maintenance. The entire report of the March 30, 2011, inspection is hereby incorporated into this Order by reference.

12. Pursuant to Part I.C of the permit, Respondent shall submit quarterly progress reports for attainment of state water quality standards-based final effluent limitations for Total Nitrogen and Total Phosphorus for four years from the permit effective date. Part I.C of the permit was violated in that the Respondent has not submitted any quarterly progress reports.

13. Pursuant to Part III.B.3 of the permit, Respondent shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by Respondent as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants and will achieve final compliance with

the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by the Respondent only when the operation is necessary to achieve compliance with the conditions of this permit. Part III.B.3 of the permit was violated in that the lagoons and the dike between the ponds were heavily overgrown with weeds. There was evidence of weakening in the integrity of the dike. The lagoon liners were torn and there was strong evidence that the lagoons do not fully contain the wastewater. The aerators in the lagoon were not working and the facility should have standby power or a generator onsite for use. The facility design flow is 0.052 millions of gallons per day ("MGD") and the reported flow through the facility is 0.54 MGD, which is ten (10) times greater than the designated design flow.

14. Each instance in which the Respondent discharged pollutants to waters of the United States in amounts exceeding the effluent limitations contained in the permit was a violation of the permit and of Section 301 of the Act, 33 U.S.C. § 1311.

15. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), the Respondent is liable for a civil penalty in an amount not to exceed \$16,000 per day for each day during which a violation continues, up to a maximum of \$37,500.

16. EPA has notified the New Mexico Environment Department of the issuance of this Complaint and has afforded the State an opportunity to consult with EPA regarding the

assessment of an administrative penalty against the Respondent as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

17. EPA has notified the public of the filing of this Complaint and has afforded the public thirty (30) days in which to comment on the Complaint and on the proposed penalty as required by Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A). At the expiration of the notice period, EPA will consider any comments filed by the public.

### III. Proposed Penalty

18. Based on the foregoing Findings, and pursuant to the authority of Section 309(g)(1) and Section(g)(2)(A) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(A), EPA Region 6 hereby proposes to assess against the Respondent a civil penalty of five thousand four hundred dollars (\$5,400.00).

19. The proposed penalty amount has been determined based on the statutory factors specified in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), which includes such factors as the nature, circumstances, extent and gravity of the violation(s), economic benefits, if any, prior history of such violations, if any, degree of culpability, and such matters as justice may require.

20. Complainant has specified that the administrative procedures specified in 40 C.F.R. Part 22, Subpart I, shall apply to this case, and the administrative proceedings shall not be governed by Section 554 of the Administrative Practice Act. However, pursuant to 40 C.F.R. § 22.42(b), Respondent has a right to elect a hearing on the record in accordance with 5 U.S.C.

§ 554, and Respondent waives this right unless Respondent in its Answer requests a hearing in accordance with 5 U.S.C. § 554.

#### IV. Failure to File an Answer

21. If the Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, the Respondent must file an Answer to this Complaint within thirty (30) days after service of this Complaint whether or not the Respondent requests a hearing as discussed below.

22. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15 (copy enclosed). Failure to file an Answer to this Complaint within thirty (30) days of service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

23. If the Respondent does not file an Answer to this Complaint within thirty (30) days after service of this Complaint, a Default Order may be issued against the Respondent pursuant to 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability, and could make the full amount of the penalty proposed in this Complaint due and payable by the Respondent without further proceedings thirty (30) days after a Final Default Order is issued.

24. The Respondent must send its Answer to this Complaint, including any request for hearing, and all other pleadings to:

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

The Respondent shall also send a copy of its Answer to this Complaint to the following EPA attorney assigned to this case:

Mr. Scott McDonald (6RC-EW)  
Chief, Water Legal Branch  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

25. The Answer must be signed by the Respondent, the Respondent's counsel, or other representative on behalf of the Respondent and must contain all information required by 40 C.F.R. §§ 22.05 and 22.15, including the name, address, and telephone number of the Respondent and the Respondent's counsel. All other pleadings must be similarly signed and filed.

#### V. Notice of Opportunity to Request a Hearing

26. The Respondent may request a hearing to contest any material allegation contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). The procedures for hearings are set out at 40 C.F.R. Part 22, with supplemental rules at 40 C.F.R. § 22.38.



27. Any request for hearing should be included in the Respondent's Answer to this Complaint; however, as discussed above, the Respondent must file an Answer meeting the requirements of 40 C.F.R. § 22.15 in order to preserve the right to a hearing or to pursue other relief.

28. Should a hearing be requested, members of the public who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to present evidence at such hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

#### VI. Settlement

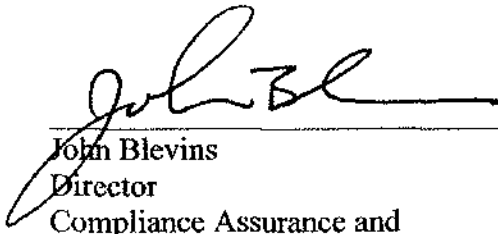
29. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, the Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. The Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Mr. Anthony Loston at (214) 665-3109 or Ms. Sonia Hall at (214) 665-7490.

30. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive the Respondent’s right to a hearing on any matter stipulated therein or

alleged in the Complaint. Any person who commented on this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and to hold a hearing on the issues raised in the Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the petitioner's comment was material and was not considered by EPA in the issuance of the CAFO.

31. Neither assessment nor payment of a penalty in resolution of this action will affect the Respondent's continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), including one relating to the violations alleged herein.

10.19.11  
Date

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

CERTIFICATE OF SERVICE

I certify that the foregoing Class I Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

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

Copy by certified mail,  
return receipt requested: Mr. Elouterio Trujillo, President  
Mora Mutual Water and Sewer Works Association  
P.O. Box 304  
Mora, NM 87732

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

Copy hand-delivered: Mr. Scott McDonald (6RC-EW)  
U.S. EPA, Region 6  
1445 Ross Ave., Suite 1200  
Dallas, TX 75202-2733

Dated: October 25, 2011 Seri Jackson



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
 Region 6 • 1445 Ross Avenue, Suite 1200 • Dallas, TX 75202-2733  
**FINDINGS OF VIOLATIONS and ORDER FOR COMPLIANCE**  
 Docket Number: CWA-06-2011-1905, NPDES Permit Number: NM0024996

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Statutory Authority

The following findings are made, and Order issued, under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), by Section 309(a) of the Clean Water Act ("the Act"), 33 U.S.C. § 1319(a). The Administrator of EPA has delegated the authority to issue this Order to the Regional Administrator of EPA Region 6, who further delegated this authority to the Director of the Compliance Assurance and Enforcement Division.

Findings

1. Mora Mutual Water and Sewer Works Association ("Respondent") is a statutory utility district created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, which is a "municipality" as that term is defined in Section 502(4) of the Act, and as such, is a "person," as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
2. At all times relevant to this Order ("all relevant times"), the Respondent owned or operated the Village of Mora wastewater treatment plant, located approximately 1 mile east of the Village of Mora, in Mora County, New Mexico ("facility"), and was, therefore, an "owner or operator" within the meaning of 40 C.F.R. § 122.2. The mailing address for the Respondent is P.O. Box 304, Mora, NM 87732.
3. At all relevant times, the facility was a "point source" of a "discharge" of "pollutants" with its municipal wastewater to the receiving waters of the Mora River in Segment 20.6.4.307 of the Canadian River Basin, which is considered a "water 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.
4. Because the Respondent owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States, the Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System ("NPDES") program.
5. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

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6. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.
7. The Respondent applied for and was issued NPDES Permit No. NM0024996 ("permit") under Section 402 of the Act, 33 U.S.C. § 1342, which became effective on November 1, 2008. At all relevant times, the Respondent was authorized to discharge pollutants from the facility to waters of the United States only in compliance with the specific terms and conditions of the permit.
8. Parts III.C and III.D of the permit require the Respondent to sample and test its effluent and monitor its compliance with permit conditions according to specific procedures, in order to determine the facility's compliance or noncompliance with the permit and applicable regulations. They also require the Respondent to file with EPA certified Discharge Monitoring Reports ("DMRs") of the results of monitoring, and Noncompliance Reports when appropriate.
9. Part I.A of the permit places certain limitations on the quality and quantity of effluent discharged by the Respondent. The relevant discharge limitations are listed in Attachment A.
10. Certified DMRs filed by the Respondent with the EPA in compliance with the permit show discharges of pollutants from the facility that exceed the permitted effluent limitations established in Part I.A of the permit, as specified in Attachment B.
11. On March 30, 2011, the facility was inspected by the New Mexico Environment Department. As a result, unsatisfactory findings were specified in the inspection report; violations and/or deficiencies for the evaluated areas include the following: Records/Reports, Facility Site Review, Flow Measurement, Compliance Schedules, and Operations and Maintenance. The entire report of the March 30, 2011, inspection is hereby incorporated into this Order by reference.

12. Pursuant to Part I.C of the permit, Respondent shall submit quarterly progress reports for attainment of state water quality standards-based final effluent limitations for Total Nitrogen and Total Phosphorus for four years from the permit effective date. Part I.C of the permit was violated in that the Respondent has not submitted any quarterly progress reports.

13. Pursuant to Part III.B.3 of the permit, Respondent shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by Respondent as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants and will achieve final compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by the Respondent only when the operation is necessary to achieve compliance with the conditions of this permit. Part III.B.3 of the permit was violated in that the lagoons and the dike between the ponds were heavily overgrown with weeds. There was evidence of weakening in the integrity of the dike. The lagoon liners were torn and there was strong evidence that the lagoons do not fully contain the wastewater. The aerators in the lagoon were not working and the facility should have had standby power or a generator for use onsite. The facility design flow is 0.052 million gallons per day ("MGD") and the reported flow through the facility was 0.54 MGD, which is ten (10) times greater than the design flow.

14. Each instance in which the Respondent discharged pollutants to waters of the United States in amounts exceeding the effluent limitations contained in the permit was a violation of the permit and Section 301 of the Act, 33 U.S.C. § 1311. Each violation of the conditions of the permit or regulations described above is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

#### ORDER

Based on the foregoing Findings and pursuant to the authority of Section 309 of the Act, EPA hereby orders the Respondent to take the following actions:

A. Within thirty (30) days of the effective date of this Order, the Respondent shall certify compliance with permit effluent limitations for Biochemical Oxygen Demand ("BOD") (30 Day and 7 Day Averages) and Total Suspended Solids ("TSS") (30 Day Average).

B. Within thirty (30) days of the effective date of this Order, the Respondent shall also provide the EPA with a list of all mechanical and operational deficiencies and a narrative describing the specific actions taken to correct the violations for BOD (30 Day and 7 Day Averages) and TSS (30 Day Average).

C. In the event it will take the Respondent longer than thirty (30) days to provide an explanation as to why compliance is not possible, a listing of all non-compliance-related deficiencies and a schedule for repair/correction for each deficiency shall be submitted to the EPA for review and approval.

D. Any approved compliance schedule will be incorporated and reissued in a future administrative order.

E. Within ninety (90) days of the effective date of this Order, the Respondent shall remove overgrown weeds from the lagoons and dike, check lagoon capacity requirements to determine compliance, confirm there are no tears or holes in the lagoon liners, repair the aerators, and provide adequate back up power to the facility.

F. Within thirty (30) days of the effective date of this Order, the Respondent shall begin submitting quarterly progress reports describing what actions are being taken to achieve compliance with final effluent limitations for Total Phosphorus and Total Nitrogen, as required by the permit.

G. To ask questions or comment on this matter, please contact Ms. Sonia Hall at (214) 665-7490 or Mr. Anthony Loston at (214) 665-3109.

H. Any information or correspondence submitted by the Respondent to EPA under this Order shall be addressed to the following:

Ms. Sonia Hall  
Water Enforcement Branch (6EN-WC)  
EPA, Region 6  
1445 Ross Ave., Suite 1200  
Dallas, TX 75202-2733

#### GENERAL PROVISIONS

Issuance of this Order shall not be deemed an election by EPA to forego any administrative or judicial, civil or criminal action to seek penalties, fines, or any other relief appropriate under the Act for the violations cited herein, or other violations that become known. EPA reserves the right to seek any remedy available under the law that it deems appropriate.

Failure to comply with this Order or the Act can result in further administrative action, or a civil judicial action initiated by the United States Department of Justice.

This Order does not constitute a waiver or modification of the terms or conditions of the Respondent's NPDES permit, which remain in full force and effect. Compliance with the terms and conditions of this Order does not relieve the Respondent of its obligation to comply with any applicable federal, state, or local law or regulation.

10.19.11

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Date



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John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

Attachment A  
 Relevant Discharge Limitations NM0024996

**Final Effluent Limits – 0.052 MGD design flow**

Effluent Characteristics	Discharge Limitations for Outfall 001A				
	Loading		Concentration		
	30 Day Avg.	7 Day Avg.	30 Day Avg.	7 Day Avg.	Daily Max.
Biochemical Oxygen Demand (BOD)	13.0 lbs./day	19.5 lbs./day	30 mg/L	45 mg/L	****
Total Suspended Solids (TSS)	39.0 lbs./day	58.5 lbs./day	90 mg/L	135 mg/L	****

Attachment B  
Permit Effluent Violations NM0024996

Date	Outfall	Parameter	Violation	Permit Limit
November 2008	001A	BOD, 30 Day Average	19.28 lbs./day	13 lbs./day
December 2008	001A	BOD, 30 Day Average	20.81 lbs./day	13 lbs./day
February 2009	001A	BOD, 30 Day Average	16.26 lbs./day	13 lbs./day
March 2009	001A	BOD, 30 Day Average	16.3 lbs./day	13 lbs./day
March 2009	001A	TSS, 30 Day Average	75.17 lbs./day	39 lbs./day
May 2009	001A	BOD, 30 Day Average	23.82 lbs./day	13 lbs./day
September 2009	001A	BOD, 30 Day Average	17.11 lbs./day	13 lbs./day
January 2010	001A	BOD, 30 Day Average	32.7 lbs./day	13 lbs./day
January 2010	001A	BOD, 7 Day Average	32.7 lbs./day	19.5 lbs./day
February 2010	001A	BOD, 30 Day Average	13.87 lbs./day	13 lbs./day
May 2010	001A	BOD, 30 Day Average	14.01 lbs./day	13 lbs./day
October 2010	001A	BOD, 30 Day Average	14.14 lbs./day	13 lbs./day
January 2011	001A	BOD, 30 Day Average	24.86 lbs./day	13 lbs./day
January 2011	001A	BOD, 7 Day Average	24.86 lbs./day	19.5 lbs./day
March 2011	001A	BOD, 30 Day Average	19.46 lbs./day	13 lbs./day