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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of

Docket No. CWA-06-2023-1727

Albuquerque-Bernalillo County Water Utility
Authority, A New Mexico Political Subdivision

Proceeding to assess a Class II Civil Penalty
under Section 309(g) of the Clean Water Act

Respondent,
NPDES Permit NO. NM0022250

WATER AUTHORITY'S ANSWER
to the ADMINISTRATIVE COMPLAINT

Respondent in this matter, the Albuquerque Bernalillo County Water Utility Authority (the "Respondent") states the following for its Answer to the Administrative Complaint (the "Complaint") in the above captioned matter:

I. Statutory Authority

1. The introductory section of the Complaint titled "Statutory Authority" consists of statements and/or conclusions about a) the statutory and regulatory authorities to issue this Complaint, b) the delegations of this authority to the Complainant, and c) alleged violations of that Act that do not require a response or are otherwise denied.

II. Findings of Fact and Conclusions of Law

1. Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10,11, and 12 are statements and/or conclusions of law that do not require a response, but Respondent does not wish to contest these statements or conclusions and they are therefore admitted.

2. Paragraph 13 is denied to the extent that Attachment 'A' includes errors or omissions, or otherwise inaccurately reflects the actual discharges or limits. In addition, Respondent specifically

denies that the entry for May, 22 reporting a pH value of 6.59 represents an exceedance of the effluent limitations established in the permit.

3. The factual allegations within paragraph 14 are denied to the extent inconsistent with the following explanation: A 48-inch sewer interceptor line collapsed within 64th Street NW between Hanover Road NW and Interstate 40 in Albuquerque (the "Collapse") which resulted in a Sanitary Sewer Overflow (an "SSO") that was first reported at 5:54 PM on Sunday July 10, 2022, in the form of an overflowing manhole at 6100 Iliff Road NW. The Collapse resulted in overflows at various other manholes serving parts of the system feeding into the collapsed interceptor which resulted in a combined estimated discharge of 6.7 million gallons, 3.7 million gallons of which reached the Rio Grande. The remaining 3 million gallons were successfully detained within a flood control facility known as the West Bluff Pond in coordination with the regional flood control agency – the Albuquerque Metropolitan Arroyo Flood Control Authority ("AMAFCA") – from where it was pumped back into the collection system.

4. The factual allegations within the first three sentences of paragraph 15 are denied to the extent inconsistent with the following explanation: Prior to the Collapse, the Water Authority initiated the rehabilitation of the immediately downstream portion of the same 48-inch sewer interceptor. The Collapse occurred in carrying out this rehabilitation project. Specifically, bypass pumping commenced on July 7, 2022, in support of this system upgrade. The bypass pumping is believed to have caused surcharging of the upstream interceptor resulting in its collapse. Respondent had instituted by-pass provisions to prevent surcharging within still unlined interceptor segments, and such segments were known to exist less than 1,000 feet north of the Collapse. However, the collapsed segment of the interceptor was not included in these provisions based on an error in Respondent's GIS data indicating that the segment had been previously rehabilitated. The collapsed segment had also been excluded from the rehabilitation project based on this misunderstanding. Respondent denies the conclusion of

the fourth sentence of paragraph 15 that the SSO caused by the Collapse was the result of Respondent's failure to minimize/prevent discharges and properly operate and maintain its facility.

5. The factual allegations within the first sentence of paragraph 16 are admitted. The factual allegation in the second sentence as to the total spill amount is denied. Respondent states instead that total amount spilled as a result of February 28, 2023, SSO at 3912 Isleta Boulevard SW was approximately 540,000 gallons, not 800,000 gallons as initially estimated in Respondent's SSO Notification form. Respondent denies the conclusion of the third sentence of paragraph 16 that the SSO caused by the forced main break was the result of Respondent's failure to minimize/prevent discharges and properly operate and maintain its facility.

6. Paragraphs 17, 18, 19, and 20 present statements and/or conclusions of law that do not require a response or are otherwise denied.

7. Respondent is without knowledge or information sufficient to admit Paragraphs 21 and 22, however Respondent does not wish to contest these paragraphs and they are therefore admitted.

III. Proposed Penalty

1. Paragraphs 23 and 24 present statements and/or conclusions of law that do not require a response or are otherwise denied, and Respondent disputes the penalty as proposed.

DEFENSES

1. Respondent disputes that the July 10, 2022, and February 28, 2023, SSOs were the result of Respondent's failure to minimize/prevent discharges and properly operate and maintain its facility for reasons that include but are not limited to:

a. The Collapse that resulted in the July 10, 2022, SSO was occasioned by and during direct and reasonable efforts to upgrade and maintain its facilities that will have the effect of minimizing/preventing discharges; and

b. Upon identifying a gap in Respondent's GIS data as contributing cause of the Collapse, Respondent commenced an expedited CCTV audit within its sanitary sewer system to verify its GIS data as necessary. This project was completed in January of 2023.

c. Respondent has engaged in years-long, priority-based assessment and rehabilitation projects of its force mains, sewer interceptors, and small diameter sewer lines that will have the effect of minimizing/preventing discharges such as the one that occurred on February 28, 2023.

2. Respondent disputes that the proposed monetary penalty is warranted based on the factors to be taken into account pursuant to 33 U.S.C. § 1319(g)(3).

REQUEST FOR HEARING

Respondent requests a full evidentiary hearing.

Respectfully submitted this 28th day of June, 2023 by:



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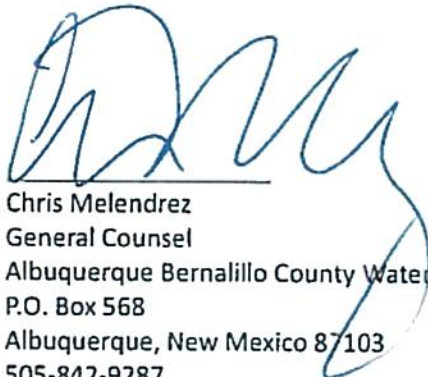
CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Answer was sent to the following persons in the manner specified, on June 28, 2023:

Certified Mail, Return Receipt Requested: Regional Hearing Clerk (ORCD)
U.S. EPA, Region 6
1201 Elm Street, Ste. 500
Dallas TX 75270-2102
Via email: Vaughn.Lorena@epa.gov

Via email: Ms. Ellen Chang (ORCEW)
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