



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1201 Elm Street, Ste. 500
Dallas, TX 75270-2102

June 16, 2020

CERTIFIED MAIL - RETURN RECEIPT REQUESTED:

The Honorable Richard R. Velarde, III
Mayor, Village of Cuba
16B East Cordova Ave
Cuba, NM 87013

Re: Notice of Proposed Assessment of Class I Civil Penalty
Docket Number: CWA-06-2020-1745
NPDES Permit: NM0024848

Dear Mayor Velarde,

Enclosed is an Administrative Complaint (Complaint) issued to the Village of Cuba for violations of Section 301(a) of the Clean Water Act (33 U.S.C. § 1251 et seq.). The violations alleged were identified during a file review. The violations alleged are for failure to provide required sampling results and for unauthorized discharges.

You, as the representative of the Village of Cuba, have the right to request a hearing regarding the violations alleged in the Complaint and the proposed administrative civil penalty. Please refer to the enclosed Part 22, "Consolidated Rules of Practice," for information regarding hearing and settlement procedures. Also note that should you fail to request a hearing within thirty (30) days of your receipt of the Complaint, you will waive your right to such a hearing, and the proposed civil penalty of \$10,000 may be assessed against you without further proceedings.

Whether or not you request a hearing, we invite you to confer informally with the Environmental Protection Agency (EPA). You may represent the Village of Cuba, or be represented by an attorney at any conference, whether in person or by telephone. The EPA encourages all parties against whom it files a Complaint proposing assessment of a penalty to pursue the possibility of settlement as a result of an informal conference. The EPA is committed to ensuring compliance with the requirements of the NPDES Program, and my staff will assist you in any way possible.

The EPA acknowledges that the COVID-19 pandemic may impact your community. If that is the case, please contact us regarding any specific issues you need to discuss. If you have

Re: Administrative Complaint
Village of Cuba

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any questions or wish to discuss the possibility of a settlement of this matter, please contact Anthony Loston, of my staff, at (214) 665-3109.

Sincerely,



Digitally signed by CHERYL SEAGER
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Protection Agency, cn=CHERYL SEAGER,
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Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

Enclosure(s)

cc: Regional Hearing Clerk (ORCD)
U.S. EPA Region 6
1201 Elm Street, Ste. 500
Dallas, TX 75270-2102

Ms. Shelly Lemon
Bureau Chief
Surface Water Quality Bureau
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of	§ Docket No. CWA-06-2020-1745
	§
Village of Cuba	§
	§ Proceeding to Assess a Class I
A New Mexico municipality,	§ Civil Penalty under Section 309(g)
	§ of the Clean Water Act
Permittee	§
	§ ADMINISTRATIVE COMPLAINT
Permit No. NM0024848	§

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 ("Act"), 33 U.S.C. § 1319(g). The Administrator of EPA has delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who has further delegated this authority to the Director of the Enforcement and Compliance Assurance 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 Permittee 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. The Village of Cuba ("Permittee") is a municipality chartered under the laws of the State of New Mexico, and as such, the Permittee 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 Permittee owned or operated a municipal wastewater treatment facility located 1.3 miles south of state Highway 197, Cuba, 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 treatment system to the receiving waters named the Rio Puerco in Segment 20.6.4.131 of the Rio Grande 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 Permittee owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States, the Permittee 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 Permittee applied for and was issued NPDES Permit No. NM0024848 ("permit") under Section 402 of the Act, 33 U.S.C. § 1342, which became effective on November 1, 2015. At all relevant times, the Permittee is authorized to discharge pollutants from the facility to waters of the United States from November 1 through March 31 each year only in compliance with the specific terms and conditions of the permit. During the months when the Permittee is authorized to discharge, the Permittee is required to monitor parameters. The Permittee is prohibited by the permit to discharge from April 1 through October 31 of each year.

8. Parts III.C and III.D of the permit require the Permittee 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 Permittee to file with EPA certified Discharge Monitoring Reports ("DMRs") of the results of monitoring, and Non-Compliance Reports when appropriate.

9. The Permittee discharged pollutants from the facility during the months of April through October in calendar years 2016, 2017, and 2018, which is prohibited by Part I of the permit and therefore is in violation of the permit conditions for the unauthorized discharges specified in Attachment A, which is incorporated herein by reference. Each unauthorized discharge is a violation of the permit.

10. Part I of the permit concerning ("Monitoring and Reporting Requirements") requires the Permittee to sample and test its effluent and monitor its compliance with permit conditions according to specific procedures, to determine the facility's compliance or noncompliance with

the permit and applicable regulations. The permit also requires the Permittee to file with EPA and the New Mexico Environment Department (“NMED”) on a quarterly basis certified Discharge Monitoring Reports (“DMR”) of the results of monthly monitoring, and Noncompliance Reports when appropriate.

11. Pursuant to Part I of the permit, during the 4th and 1st quarter of the year (November-March), the Permittee is required to monitor several parameters, such as Dissolved Oxygen, flow rate, E.coli, Nitrogen, Phosphorus, Bod5, and is required to report to EPA the monthly sampling results in the quarterly DMRs.

12. The Permittee violated Part I of the permit by failing to provide the required sampling results specified in Attachment B, which is incorporated herein by reference. Each instance of failure to provide the required sampling information in the DMR is a violation of the permit.

13. Each instance in which the Permittee violated a permit condition is a violation of the permit and of Section 301 of the Act, 33 U.S.C. § 1311.

14. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), the Permittee is liable for a civil penalty in an amount not to exceed \$22,300 per day for each day during which a violation continues, up to a maximum of \$55,800.

15. 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 Permittee as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

16. 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

17. 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 Permittee a civil penalty of ten thousand dollars (\$10,000).

18. The proposed penalty amount will be 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.

IV. Failure to File an Answer

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

20. 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).

21. If the permittee 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 permittee 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 Permittee without further proceedings thirty (30) days after a Final Default Order is issued.

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

Regional Hearing Clerk (ORCD)
U.S. EPA Region 6
1201 Elm Street, Ste. 500
Dallas, TX 75270-2102

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

Mr. Efren Ordóñez
U.S. EPA, Region 6
1201 Elm Street, Ste. 500
Mail Code (ORCEW)
Dallas, TX 75270-2102

23. The Answer must be signed by the Permittee, the Permittee's counsel, or other representative on behalf of the Permittee 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 Permittee and the Permittee's counsel. All other pleadings must be similarly signed and filed.

V. Notice of Opportunity to Request a Hearing

24. The Permittee 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, including 40 C.F.R. § 22.50 through § 22.52.

25. Any request for hearing should be included in the Permittee's Answer to this Complaint; however, as discussed above, the Permittee 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.

26. 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

27. 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 Permittee may confer informally with EPA about the alleged violations or the amount of the proposed penalty. The Permittee 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 Anthony Loston at (214) 665-3109.

28. 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 pursuant to 40 C.F.R. § 22.18(b). The issuance of a Consent Agreement and Final Order would waive the Permittee'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 Consent Agreement and Final Order 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 Consent Agreement and Final Order.

29. Neither assessment nor payment of a penalty in resolution of this action will affect the Permittee'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.

June 16, 2020
Date


Cheryl T. Seager
Director
Enforcement and Compliance Assurance Division

Digitally signed by CHERYL SEAGER
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Protection Agency, cn=CHERYL SEAGER,
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Date: 2020.06.16 12:34:56 -05'00'

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 (ORCD)
U.S. EPA Region 6
1201 Elm Street, Ste. 500
Dallas, TX 75270-2102

Copy by certified mail,
return receipt requested: The Honorable Richard R. Velarde, III
Mayor, Village of Cuba
16B East Cordova Ave
Cuba, NM 87013

Copy: Ms. Shelly Lemon
Bureau Chief
Surface Water Quality Bureau
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502

Copy hand-delivered: Mr. Efren Ordóñez (ORC-EW)
U.S. EPA, Region 6
120 Elm St., Suite 500
Dallas, TX 75270-2102

Dated: JUNE 19, 2020 Scott P. McDonald

Attachment A**Permit Number: NM0024848****Outfall 001A****Unauthorized Discharges****(For Unauthorized Discharges, Unpermitted from April 1 through October 31)**

ID	Year	Month
1	2016	April
2		May
3		July
4		August
5		September
6		October
7	2017	April
8		May
9		June
10		October
11	2018	April
12		May
13		June
14		July
15		August
16		September

Attachment B

Permit Number: NM0024848

Outfall 001A

Unsubmitted Sampling Results in DMRs

(For Permitted Discharges from November 1 through March 31)

Year	Quarter	Unsubmitted Parameters
2015	4 th	<ul style="list-style-type: none"> • BOD, 5-day, percent removal • BOD5 • Dissolved Oxygen
2016	1 st	<ul style="list-style-type: none"> • BOD5 • Dissolved Oxygen
2017	4 th	<ul style="list-style-type: none"> • Flowrate • E. coli • Nitrogen • Ammonia • Phosphorus • BOD5 • Dissolved Oxygen
2018	1 st	<ul style="list-style-type: none"> • E. coli • Dissolved Oxygen
2018	4 th	<ul style="list-style-type: none"> • E. coli
2019	1 st	<ul style="list-style-type: none"> • E. coli • Dissolved Oxygen