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December 6, 2012

Mr. John Blevins
Director, Compliance Assurance and Enforcement Div.
U.S. EPA Region 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202-2733

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2012 DEC 13 PM 3:25
REGIONAL HEARING CLERK
EPA REGION VI

**RE: Answer to Complaint and Request for Hearing - Administrative Order CWA-06-2011-1866; Civil Penalty Docket Number CWA-06-2012-1855
NPDES Permit No: NM0028762**

Dear Mr. Blevins,

In response to Administrative Complaint CWA-06-2012-1855, superseding Administrative Complaint Docket Number CWA-06-2011-1867, the City of Aztec (City) is hereby requesting a hearing pursuant to Section 309(g) of the Clean Water Act (Act), U.S.C. §1319(g). The City is requesting a hearing to contest the appropriateness of the proposed penalty, based upon the following responses to the Findings of Fact:

Findings 1 through 9: Accepted as presented.

Finding 10: Denied in part. The Complaint alleges that the City exceeded the instantaneous maximum for Total Residual Chlorine (TRC) for the months of March 2007, April 2007, July 2007, August 2007, October 2007, November 2007, December 2007, January 2008, February 2008, March 2008, April 2008, May 2008, June 2008, July 2008, October 2008, November 2008 and December 2008. As stated in the 2006 permit, "If any individual analytical test result is less than the minimum quantification level (MQL) listed at Part II.A of this permit, a value of zero (0) may be used for that individual result for the Discharge Monitoring Report (DMR) calculations and reporting requirements." The permits state that the MQL for TRC is 33 ug/L. Until recently, the water plant operators (Operators) did not understand that a value of zero should be used for reporting a value under the MQL. Since the MQL is the lowest value non-zero point of the calibration curve used for the test method, any value less than the MQL is unreliable and should be set as zero per U.S. EPA guidance. If this methodology is applied to the data for the months of the alleged violations, it would eliminate violations for exceeding the

201 West Chaco + Aztec, New Mexico 87410 + (505) 334-7600 + Fax: (505)
334-7609

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permitted limit for TRC for the months of March 2007, April 2007, July 2007, August 2007, October 2007, and November 2007, May 2008, July 2008 and November 2008.

Finding 11: Denied. The Finding states that, "...DMRs subsequently submitted by the Permittee indicate that the parameters specified in attachment F are not being monitored as required by the permit." The City disagrees with this statement. The City believes it is currently sampling and submitting all parameters required by the permit on the schedule required by the permit.

Finding 12: Denied in part.

Finding 13: The validity of this finding is unknown to the City.

Finding 14: The validity of this finding is unknown to the City.

Finding 15: The validity of this finding is unknown to the City.

In response to Administrative Order (AO) CWA-06-2001-1866, the City offers the following:

Finding 8: The AO alleges that the City failed to submit DMRs for September 2007 (quarterly reporting), July 2009 (monthly reporting), August 2009 (monthly reporting), September 2009 (monthly reporting), and September 2009 (quarterly reporting). Attachment A of the City's response to CWA-06-2011-1867 included copies of DMRs that were submitted via certified mail with return receipt for the 2009 DMRs in question. These DMRs were submitted to both the U.S. EPA and the New Mexico Environment Department Surface Water Quality Bureau; therefore, a violation was not incurred for failure to submit the DMRs in question. In addition, per the U.S. EPA request, these DMRs were again submitted on August 19, 2011 (per Action Item E of the AO). In 2007, 2008, and 2009, the Operators were not submitting DMRs via certified mail, so proof of receipt cannot be provided for the alleged missing September 2007 DMR. However, the Operators are willing to provide an affidavit that the DMR was submitted in a timely fashion for that time period. Therefore, the City is contesting Finding 8 (eight) of the AO. The City did not violate Part III.D of the permit as alleged for failure to submit DMRs.

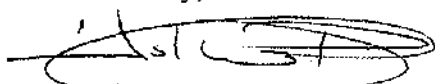
For December 2009 and March 2010, the City submitted quarterly reports for Total Dissolved Solids (TDS). Both the permit issued in 2006 and the permit issued in 2009 required 1 (one) grab sample per quarter. The permits list a requirement to report TDS loading as a monthly average and a daily maximum. Per guidance from the permit writer, the City has reported TDS on a quarterly basis, since there is no way to accurately calculate a monthly average for a value that is collected only once per quarter. The City of Aztec is of the opinion that the City has acted in good faith, and has been sampling and reporting at the intended frequency. Therefore, the City did not violate Part II.D of the permit as alleged for failure to submit parameters specified in Attachment E.

Order, Action Item A.: Item A of the AO requires that the City, "Within thirty (30) days of the effective date of the Order, the Respondent shall certify compliance with permit effluent limitations for Total Aluminum (Monthly Average) and Total Residual Chlorine (Instantaneous Maximum)." It is important to note that the existing NPDES Permit NM0028762, effective October 1, 2009, does not have an effluent limitation (or reporting requirement) for Total Aluminum. Instead, the permit requires monitoring and reporting, with no specified effluent limitation, for Dissolved Aluminum. Therefore, the City is not currently out of compliance with limitations for Aluminum, as there are no limits specified within the current permit, and it is not possible to certify compliance for a parameter limit for which there is no permit requirement.

Order, Action Items B and C.: An examination of the current operational and mechanical functions of the water treatment plant indicates that changes in operations have aided in meeting the Instantaneous Maximum for TRC. The City has been in compliance with the Instantaneous Maximum for TRC since August 2011. In addition, the City is planning a project to render this facility a zero discharge facility.

The City of Aztec would like to pursue a settlement and an issuance of a Consent Agreement and Final Order through informal meetings with the U.S. EPA regarding the alleged violations and the amount of the proposed penalty prior to a formal hearing and issuance of an opinion by the Presiding Officer. Unfortunately, due to the timing of the holiday weekend and phone and email problems at Region Six offices, we were unable to discuss pursuing a settlement prior to a response being required. The City is hopeful that U.S. EPA will still be able to meet and work with the City to enter into a mutually agreeable settlement. Any technical assistance the U.S. EPA can provide to address compliance issues related to this NPDES permit would be greatly appreciated.

Sincerely,



Joshua W. Ray
City Manager
201 West Chaco St.
Aztec, NM 87410
(505) 334-7661

cc:

Larry T. Thrower, Respondent's Counsel
411 North Auburn
Farmington, NM 87401
(505) 325-6810

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

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

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

Mr. Earle A. "Rusty" Herbert (6RC-EW)
U.S. EPA Houston Lab
10625 Fallstone Road
Houston, TX 77099

Mike Huber, P.E.
Public Works Director
City of Aztec