UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of	§	Docket No. CWA-06-2019-1809
	§	
City of Gallup	§	Proceeding to Assess a Class II
A New Mexico municipality,	§	Civil Penalty under Section 309(g)
	§	of the Clean Water Act
Permittee	§	
	§	ADMINISTRATIVE COMPLAINT
Permit No. NM0020672	§	

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 II 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 City of Gallup ("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 at 800 Sweetwater Place, McKinley 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 treatment system to the receiving waters named the Puerco River Segment 20.6.4.99 thence to the Lower Colorado River of the Lower Colorado 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 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. NM0020672 ("permit") under Section 402 of the Act, 33 U.S.C. § 1342, which became effective on November 1, 2017. At all relevant times, the Permittee 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 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. Part I.A of the permit places certain limitations on the quality and quantity of effluent discharged by the Permittee.

10. On November 28, 2018, EPA issued to the Permittee Administrative Order (AO) Docket Number CWA-06-2019-1743, under the authority of § 309(a) of the Act, 33 U.S.C. §

1319(a) citing the violations including discharges which exceeded the effluent limitation that are listed in Attachment A.

11. The AO also stated that Sanitary Sewer Overflow (SSO) bypass reports filed by the Respondent with EPA show unauthorized discharges. These discharges are specified in Attachment B.

12. The AO required the Respondent to: A) Take measures as are necessary to comply with all permit conditions, including effluent limitations and monitoring and reporting requirements no later than (30) days from the effective date of that Order; B) Submit a written report detailing specific actions taken to correct the violations cited; C) Provide written certification to EPA Region 6 that the violations cited have been corrected and the facility is in compliance with the requirements of the permit.

13. Each instance in which the Permittee discharged pollutants to waters of the United States was a violation of the permit and of Section 301 of the Act, 33 U.S.C. § 1311.

14. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), the Permittee is liable for a civil penalty in an amount not to exceed $21,933 per day for each day during which a violation continues, up to a maximum of $274,159 .

15. EPA has notified 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)(B) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(B), EPA Region 6 hereby proposes to assess against the Permittee a civil penalty of one hundred thousand dollars ($100,000).

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.

19. 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 request a hearing in accordance with 5 U.S.C. § 554.

IV. Failure to File an Answer

20. 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.

21. 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).

22. 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.

23. The Permittee 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
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:

Ms. Ellen Chang-Vaughan
U.S. EPA, Region 6
1201 Elm Street, Ste. 500
Mail Code (ORCEW)
Dallas, TX 75270-2102

24. 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

25. 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.

26. 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.

27. 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

28. 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.

29. 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.

30. 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.

10/22/19
Date

Cheryl T. Seager
Director
Enforcement and Compliance Assurance Division

CERTIFICATE OF SERVICE

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

Original hand-delivered:
Regional Hearing Clerk (ORC-D)
U.S. EPA Region 6
1201 Elm Street, Ste. 500
Dallas, TX 75270-2102

Copy by certified mail, return receipt requested:
The Honorable Jackie McKinney
Mayor, City of Gallup
110 West Aztec Avenue
Gallup, New Mexico 87301

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:
Ms. Ellen Chang-Vaughan (6ORCEW)
U.S. EPA, Region 6
120 Elm St., Suite 500
Dallas, TX 75270-2102

Dated: OCT 23 2019 Jackie Allen