



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 Elm Street, Ste. 500
Dallas, TX 75270-2102

May 26, 2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED:

Mark S. Sanchez
Executive Director
Albuquerque-Bernalillo County Water Utility Authority
4201 2nd Street SW
Albuquerque, NM 87105
msanchez@abcwua.org

Re: Notice of Proposed Assessment of Class II Civil Penalty
Docket Number: CWA-06-2023-1727
NPDES Permit: NM0022250

Dear Mr. Sanchez,

Enclosed is an Administrative Complaint (Complaint) issued to the Albuquerque-Bernalillo County Water Utility Authority (ABCWUA) 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 and inspections. The violations alleged are for sanitary sewer overflows and NPDES Permit effluent violations.

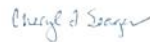
You, as the representative of ABCWUA, have the right to request a hearing regarding the violations alleged in the Complaint and the proposed administrative civil penalty. Please refer to the enclosed Part 22, "Consolidated Rules of Practice," for information regarding hearing and settlement procedures. 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 \$281,357 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 ABCWUA, 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.

Re: Administrative Complaint 2
Albuquerque-Bernalillo County Water Utility Authority

The EPA is committed to ensuring compliance with the requirements of the NPDES Program, and my staff will assist you in any way possible. If you have any questions or wish to discuss the possibility of a settlement of this matter, please contact Anthony M. Loston, of my staff, at (214) 665- 3109.

Sincerely,



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Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

Enclosure(s)

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

ec: Ms. Shelly Lemon
Bureau Chief
Surface Water Quality Bureau
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502
shelly.lemon@env.nm.gov

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

23 MAY 30 PM 2: 29

REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of	§	Docket No. CWA-06-2023-1727
	§	
Albuquerque Bernalillo County Water Utility Authority	§	
	§	
A political subdivision,	§	Proceeding to Assess a Class II
	§	Civil Penalty under Section 309(g)
Respondent	§	of the Clean Water Act
	§	
NPDES Permit No. NM0022250	§	ADMINISTRATIVE COMPLAINT

I. Statutory Authority

This Administrative Complaint (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 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.”

Based on the following findings, Complainant finds that the City of Albuquerque Bernalillo County Water Utility Authority 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 Albuquerque Bernalillo County Water Utility Authority (Respondent) is a political subdivision of the State of New Mexico, and as such, Respondent 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 action (all relevant times), Respondent owned or operated at the Southside Reclamation Plant (facility) located at 4201 Second Street in the City of Albuquerque, Bernalillo County, New Mexico 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 "publicly owned treatment works" (POTW) within the meaning of Section 212(2) of the Act, 33 U.S.C. § 1292(2) and 40 C.F.R. § 403.3.
4. At all relevant times, the facility acted as a "point source" of a "discharge" of "pollutants" with its wastewater discharging into the receiving waters of the Rio Grande in Segment 20.6.4.105 of the Middle Rio Grande Basin, which is 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.
5. Because Respondent owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States, Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (NPDES) program.
6. 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.

7. 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.

8. Respondent applied for and was issued NPDES Permit No. NM0022250 (permit) under Section 402 of the Act, 33 U.S.C. § 1342, which became effective on December 1, 2019, and expires on November 30, 2024. At all relevant times, 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.

9. Part I.A of the permit (Limitations and Monitoring Requirements) requires 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. Parts I.C and I.D of the permit also require Respondent to file with EPA certified Discharge Monitoring Reports (DMRs) of the results of monitoring, and Overflow Reports when appropriate.

10. Part III.B.2 of the permit requires the Respondent to take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the permit which has a reasonable likelihood of adversely affecting human health and the environment.

11. Part III.B.3 of the permit requires Respondent to 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 compliance with the conditions of the permit.

12. Part III.A.2 of the permit states that Respondent has a duty to comply with all conditions of the permit, and that any permit noncompliance constitutes a violation of the Act.

13. Certified DMRs filed by Respondent with EPA in compliance with the permit show discharges of pollutants from the facility that exceed the permitted effluent limitations established in the permit, as specified in Attachment A, which is incorporated herein by reference, in violation of Part I.A of the permit and Section 301 of the Act, 33 U.S.C. § 1311.

14. On July 10, 2022, a 48-inch sewer line collapsed at 6100 Hiff Road NW, Albuquerque, New Mexico which resulted in the discharge of approximately 6.7 million gallons of untreated wastewater. Three million gallons of the spill were routed to the West Bluff Pond while 3.7 million gallons reached the Rio Grande.

15. On July 13, 2022, EPA inspectors conducted a Sanitary Sewer Overflow (SSO) inspection at the facility as a result of the July 10, 2022 discharge. During the inspection, Respondent's records indicated that the 48-inch sewer line that collapsed on July 10, 2022, had been previously upgraded with a fiberglass reinforced liner. However, field observations revealed that the collapsed sewer line did not have a fiberglass reinforced liner. The SSOs were the result of blockages, structural defects, line breaks and other deficiencies in Respondent's facility arising from Respondent's failure to minimize/prevent discharges and properly operate and maintain its facility in violation of Parts III.B.2 and III.B.3 of the permit.

16. On March 3, 2023, Respondent submitted a condition report notifying EPA of a SSO that occurred on February 28, 2023, at 3912 Isleta Road, SW, Albuquerque, New Mexico. This SSO was caused by a 30-inch force main break which resulted in the discharge of 800,000 gallons of untreated wastewater which impacted a baseball field. The SSO was the result of blockages, structural defects, line breaks and other deficiencies in Respondent's facility arising from

Respondent's failure to minimize/prevent discharges and properly operate and maintain its facility in violation of Parts III.B.2 and III.B.3 of the permit.

17. Each instance in which Respondent discharged pollutants to waters of the United States in amounts exceeding the effluent limitations contained in the permit was a violation of Part I.A of the permit.

18. Each day of each discharge caused by Respondent's failure to minimize or prevent any discharge it is a separate violation of the permit of Part III.B.2 of the permit.

19. Each day of each SSO caused by Respondent's failure to properly operate and maintain its facility constitutes a separate violation of Part III.B.3 of the permit.

20. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), as modified by 40 C.F.R. Part 19, Respondent is liable for a civil penalty in an amount not to exceed \$25,847 per day for each day during which a violation continues, up to a maximum of \$323,081.

21. EPA has notified New Mexico Environment Department (NMED) of the issuance of this Complaint and has afforded NMED an opportunity to consult with EPA regarding the assessment of an administrative penalty against Respondent, as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

22. 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

23. Based on the foregoing Findings, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(B) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(B), EPA hereby proposes to assess

against Respondent a penalty of two hundred eighty-one thousand, three hundred and fifty-seven dollars (\$281,357).

24. The proposed penalty amount was 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.

Complainant has specified that the administrative procedures specified in 40 C.F.R. Part 22 shall apply to this matter.

IV. Failure to File an Answer

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

26. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15. 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).

27. If 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 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 Respondent without further proceedings thirty (30) days after a final Default Order is issued.

28. Respondent 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

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

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

30. The Answer must be signed by Respondent, Respondent's counsel, or other Representative on behalf of Respondent and must contain all information required by 40 C.F.R. §§ 22.5 and 22.15, including the name, address, and telephone number of Respondent and Respondent's counsel. All other pleadings must be similarly signed and filed.

V. Notice of Opportunity to Request a Hearing

31. 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.

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

33. 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

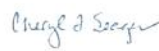
34. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. 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, of my staff, at (214) 665-3109 or loston.anthony@epa.gov.

35. 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 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 petitioner's comment was material and was not considered by EPA in the issuance of the CAFO.

36. Neither assessment nor payment of a penalty in resolution of this action will affect 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.

May 26, 2023

Date



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

Copy by certified mail,
return receipt requested: Mark S. Sanchez
Executive Director
Albuquerque-Bernalillo County Water Utility Authority
4201 2nd Street SW
Albuquerque, NM 87105

Copy by email: Ms. Shelly Lemon
Bureau Chief
Surface Water Quality Bureau
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502
shelly.lemon@env.nm.gov

Copy by email: Ms. Ellen Chang
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102
chang.ellen@epa.gov

Dated: 5/30/23



Attachment A

Date	Parameter	DMR Value	Limit	Base	Unit
July-22	Mercury, total [as Hg]	0.0136	0.012	DAILY MX	Micrograms per Liter
June-22	E. coli	178.5	88	DAILY MX	Colony Forming Units per 100ml
May-22	pH	6.59	6.6	MINIMU M	Standard Units
April-22	E. coli	2419.6	88	DAILY MX	Colony Forming Units per 100ml
January-22	E. coli	686.7	88	DAILY MX	Colony Forming Units per 100ml
December-21	E. coli	113.7	88	DAILY MX	Colony Forming Units per 100ml
October-21	Mercury, total [as Hg]	0.00809	0.008	30DA AVG	Micrograms per Liter
October-21	Mercury, total [as Hg]	0.0185	0.012	DAILY MX	Micrograms per Liter
October-21	E. coli	114.5	88	DAILY MX	Colony Forming Units per 100ml
September-21	Mercury, total [as Hg]	0.0157	0.012	DAILY MX	Micrograms per Liter
June-21	E. coli	488	88	DAILY MX	Colony Forming Units per 100ml
February-21	E. coli	140	88	DAILY MX	Colony Forming Units per 100ml
January-21	Mercury, total [as Hg]	0.0162	0.012	DAILY MX	Micrograms per Liter
October-20	E. coli	579.4	88	DAILY MX	Colony Forming Units per 100ml
September-20	Mercury, total [as Hg]	0.0141	0.012	DAILY MX	Micrograms per Liter
August-20	Chlorine, total residual	40	11	INST MAX	Micrograms per Liter
August-20	Mercury, total [as Hg]	0.0148	0.012	DAILY MX	Micrograms per Liter
June-20	Mercury, total [as Hg]	0.0146	0.012	DAILY MX	Micrograms per Liter
May-20	Mercury, total [as Hg]	0.0147	0.008	30DA AVG	Micrograms per Liter
May-20	Mercury, total [as Hg]	0.0257	0.012	DAILY MX	Micrograms per Liter
May-20	Mercury, total [as Hg]	0.005658	0.005	30DA AVG	Pounds per Day

May-20	Mercury, total [as Hg]	0.009827	0.008	DAILY MX	Pounds per Day
April-20	E. coli	686.7	88	DAILY MX	Colony Forming Units per 100ml
April-20	Mercury, total [as Hg]	0.01359	0.008	30DA AVG	Micrograms per Liter
April-20	Mercury, total [as Hg]	0.0275	0.012	DAILY MX	Micrograms per Liter
April-20	Mercury, total [as Hg]	0.010286	0.008	DAILY MX	Pounds per Day
March-20	Mercury, total [as Hg]	0.013	0.012	DAILY MX	Micrograms per Liter
November-19	E. coli	2419.6	88	DAILY MX	Colony Forming Units per 100ml