

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

FILED

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REGIONAL HEARING CLERK  
EPA REGION VI

In the Matter of

Docket No. CWA-06-2015-1777

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 No. NM0022250

**WATER AUTHORITY'S ANSWER**  
**to the ADMINISTRATIVE COMPLAINT**

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

1. In response to the introductory section of the Administrative Complaint identified as "Statutory Authority", the Water Authority is without knowledge or information sufficient to admit that the delegation of authorities was proper under the Act or that the Administrative Complaint was properly issued in accordance with the Act, and therefore denies the allegations of the first paragraph. Pleading further, the Water Authority denies the conclusory statement that it should be ordered to pay a civil penalty because it has violated the Act and the regulations promulgated thereunder.
2. As to the allegations contained in Paragraphs 1, 2, 3, 4, 7, and 8 of the Administrative Complaint, Respondent admits the same.
3. Paragraphs 5 and 6 of the Administrative Complaint appear to be statements of law or procedure which require no response. To the extent these Paragraphs are intended to state

allegations, Respondent denies the same.

4. As to the allegations contained in Paragraph 9 of the Administrative Complaint, Respondent denies the same as Attachment A does not correctly state the standards in the Water Authority's currently applicable October 1, 2012 NPDES Permit No. NM0022250 as identified in Paragraph 7 of the Complaint.
5. As to the allegations contained in Paragraph 10 of the Administrative Complaint, Respondent denies the same to the extent Attachment B contains errors and omissions as to the applicable standards in the permit.
6. As to the allegations contained in Paragraph 11 of the Administrative Complaint, Respondent denies the same to the extent Attachment C contains errors and omissions as to the applicable permit.
7. As to the allegations contained in Paragraph 12 of the Administrative Complaint, Respondent denies the same. Pleading further, the Water Authority states that: (A) there cannot be continuing violations as alleged because the Water Authority has not used sulfur dioxide in its waste water process since 2011 and (B) the allegations concerning the subject fish kill incident should be considered moot and/or time-barred as the incident occurred under a previous permit and was the subject of a previously withdrawn Administrative Complaint.
8. As to the allegations contained in Paragraph 13 of the Administrative Complaint, Respondent denies the same. Pleading further, the Water Authority timely responded to the referenced Administrative Order by correcting the reporting errors upon which the Administrative Order was based.
9. As to the allegations contained in Paragraph 14 of the Administrative Complaint,

Respondent denies the same to the extent that the Water Authority did take corrective action to prevent recurrence of permit violations in response to the referenced Administrative Order and no mercury or ammonia violations have occurred since that Administrative Order.

10. As to the allegations contained in Paragraphs 15 and 16 of the Administrative Complaint, Respondent admits the same.

11. Paragraphs 17 and 18 of the Administrative Complaints state legal conclusions which do not require a response from the Water Authority and to the extent a response is required, the Water Authority denies the allegations contained therein.

12. As to the allegations contained in Paragraphs 19 and 20 of the Administrative Complaint, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs and therefore, denies them.

13. As to the allegations contained in Paragraphs 21 and 22 of the Administrative Complaint, Respondent denies the same.

14. In response to Paragraph 23 of the Administrative Complaint, Respondent elects to request a hearing using the administrative procedures specified in 40 CFR Part 22, Subpart I.

15. In response to Paragraphs 24, 25, 26, 27 and 28 of the Administrative Complaint, Respondent states that this Answer containing Respondent's reply to the allegations listed in the Findings and otherwise compliant with the applicable procedural rules was timely filed within thirty (30) days after receipt of the Complaint in this matter. Respondent denies that it has admitted by default any fact or allegation of the Complaint. To the extent any fact or allegation contained in the Complaint is not addressed fully within the other paragraphs of this Answer, that fact or allegation is hereby specifically denied. Pleading further, Respondent does not waive any of its procedural rights and hereby requests a full evidentiary

hearing concerning the allegations in the Complaint.

16. In response to Paragraphs 29, 30 and 31 of the Administrative Complaint, Respondent states that by its Answer, it has properly contested material facts and the appropriateness of the penalty and is entitled to a full evidentiary hearing concerning the allegations in the Complaint.

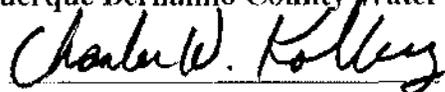
17. Paragraphs 32, 33 and 34 of the Administrative Complaint appear to be statements of law or procedure which require no response. To the extent these Paragraphs are intended to state allegations, Respondent denies the same.

#### **AFFIRMATIVE DEFENSES**

1. Complainant should be estopped from alleging violations in the Complaint which were previously addressed, resolved and/or withdrawn.
2. Some, if not all, of the allegations in the Complaint have been fully addressed in accord with, and in satisfaction of, prior Administrative Orders.
3. Some of the allegations are moot because they occurred under the prior NPDES permit and were the subject of a previous Administrative Complaint which was withdrawn.

**WHEREFORE**, Respondent seeks a full evidentiary hearing resulting in an Order assessing no fines or penalties and dismissing the Complaint in its entirety and for such other and further relief as is just and proper in the circumstances.

Respectfully submitted:  
Albuquerque Bernalillo County Water Utility Authority



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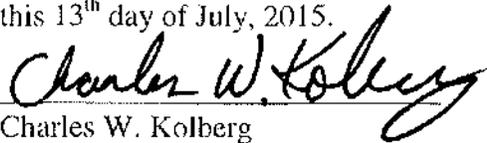
I hereby certify that a true copy of this Answer was mailed to:

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

and

Ellen Chang-Vaughn (6RC-EW)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

this 13<sup>th</sup> day of July, 2015.



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