



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: (7005 1820 0003 7453 9110)

Mr. Juan Lopez, President
Village of Abiquiu
P.O. Box 133
Abiquiu, NM 87510

Re: Notice of Proposed Assessment of Class I Civil Penalty
Docket Number: CWA-06-2011-1853
NPDES Permit Number: NM0024830

Dear Mr. Lopez:

The Environmental Protection Agency (EPA) is re-issuing the Administrative Complaint (Complaint) referenced above in order to provide proper public notice as required under Section 309(g)(4)(A) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(4)(A). This Complaint supersedes the Complaint issued on August 4th 2011. The Complaint is issued to the Village of Abiquiu for violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a). Violations were identified based on our review of the permit file and an inspection of your Abiquiu wastewater treatment facility, conducted by the New Mexico Environmental Department on April 28, 2011. The results were discussed with your representative at the time of the inspection. The violations alleged include, but are not limited to, the following:

1. Failure to meet effluent limitations for E. Coli (30 Day Average), Total Residual Chlorine (Instant Maximum), and Total Suspended Solids (30 Day and 7 Day Averages);
2. failure to submit Discharge Monitoring Reports from January 2007 to January 2008; and
3. failure to properly operate and maintain the facility and the sludge handling/disposal system.

The Complaint assesses a monetary penalty for the violations. If it can be demonstrated that the violations cited in the previously issued Administrative Order have been corrected in a timely manner, EPA has the right to negotiate the penalty amount down or perhaps mitigate the penalty amount partially by way of a Supplemental Environmental Project (SEP). The SEP must benefit the environment in the watershed where the violations occurred and must not be required by the permit or other laws.

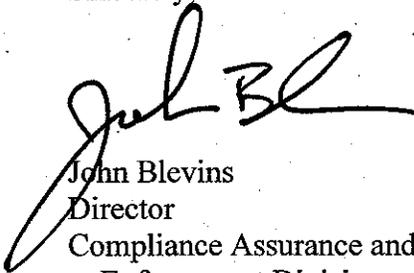
Re: Administrative Complaint
Village of Abiquiu

2

You, as the representative of the Village of Abiquiu, 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. 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 \$3,600.00 may be assessed against you without further proceedings. Whether or not you request a hearing, we invite you to confer informally with the EPA.

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 Ms. Sonia Hall at (214) 665-7490 or Mr. Anthony Loston at (214) 665-3109.

Sincerely,



John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

cc: w/Complaint Regional Hearing Clerk (6RC-D)

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

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of	§ Docket No. CWA-06-2011-1853
	§
Village of Abiquiu, New Mexico	§ Proceeding to Assess a Class I
	§ Civil Penalty under Section 309(g)
	§ of the Clean Water Act
Respondent	§
	§ ADMINISTRATIVE COMPLAINT
NPDES No. NM0024830	§

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 (“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 Compliance Assurance and Enforcement 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 Respondent 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. Respondent is a municipality chartered under the laws of the State of New Mexico, and as such, the 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 relevant times, the Respondent owned or operated the Abiquiu wastewater treatment plant located approximately 1 mile east of the Village of Abiquiu, in Rio Arriba 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 to the receiving waters of the Rio Chama in Segment 20.6.4.116 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 Respondent owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States, the Respondent 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 Respondent applied for and was issued NPDES Permit No. NM0024830 ("permit") under Section 402 of the Act, 33 U.S.C. § 1342, which became effective on January 1, 2006, and expires December 31, 2011. At all relevant times, the 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.

8. Parts III.C and III.D of the permit require the 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 non-compliance with the permit and applicable regulations. They also require the Respondent to file with EPA certified Discharge Monitoring Reports ("DMRs") of the results of monitoring, and Non-Compliance Reports when appropriate. Part III.D of the permit was violated in that the Respondent failed to submit DMRs from January 2007 to January 2008.

9. Part I.A of the permit places certain limitations on the quality and quantity of effluent discharged by the Respondent.

10. Certified DMRs filed by the Respondent with EPA in compliance with the permit show discharges of pollutants from the facility that exceed the permitted effluent limitations established in Part I.A of the permit.

11. On April 28, 2011, the facility was inspected by the New Mexico Environmental Department. As a result, unsatisfactory findings were specified in the inspection report; violations and/or deficiencies for the evaluated areas include the following: Operations and Maintenance; and Sludge Handling/Disposal. The entire report of the April 28, 2011, inspection is hereby incorporated into this Order by reference.

12. Pursuant to Part III.B.3.a of the permit, the Respondent shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the 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 this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by the Respondent only when the operation is necessary to achieve compliance with the conditions of this permit.

13. Part III.B.3.a of the permit was violated in that the Respondent has no power backup in case of an emergency or an alarm system for notification of power failures or other problems at the facility.

14. Pursuant to Part III.B.3.b of the permit, the Respondent shall provide an adequate operating staff which is duly qualified to carry out operation, maintenance and testing functions required to insure compliance with the conditions of this permit.

15. Part III.B.3.b of the permit was violated in that the Respondent is operating the facility without a state certified operator.

16. Pursuant to Part IV, Element 1, Section 1.A.1 of the permit, the Respondent shall handle and dispose of sewage sludge in accordance with Section 405 of the Act, 33 U.S.C. § 1345, and all other applicable Federal Regulations to protect public health and the environment from any reasonably anticipated effects due to any toxic pollutants which may be present in the sludge.

17. Part IV, Element 1, Section 1.A.1 of the permit was violated in that the two sludge beds on-site are full and there is a large pile of sludge sitting on an unlined, uncontained area of the facility.

18. Each violation of the conditions of the permit or regulations described above is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

19. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), the Respondent is liable for a civil penalty in an amount not to exceed \$16,000 per day for each day during which a violation continues, up to a maximum of \$37,500.

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

21. 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

22. 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 Respondent a civil penalty of three thousand six hundred dollars (\$3,600.00).

23. 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.

24. 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 requests a hearing in accordance with 5 U.S.C. § 554.

IV. Failure to File an Answer

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

26. 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).

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

28. The Respondent 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
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

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

Mr. Russell Murdock (6RC-EW)
Water Enforcement Legal Branch
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

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

V. Notice of Opportunity to Request a Hearing

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

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

32. 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

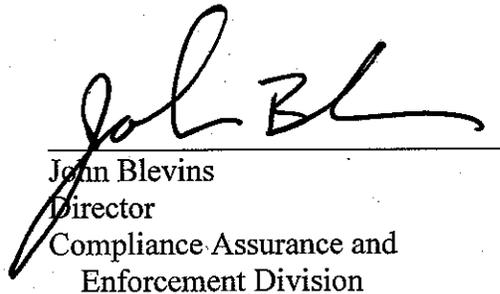
33. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, the Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. The 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 Ms. Sonia Hall at (214) 665-7490 or Mr. Anthony Loston at (214) 665-3109.

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

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

12.2.11
Date


John Blevins
Director
Compliance Assurance and
Enforcement Division

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

Copy by certified mail,
return receipt requested: Mr. Juan Lopez, President
Village of Abiquiu
P.O. Box 133
Abiquiu, NM 87510

Copy: Mr. James Bearzi
Bureau Chief
Surface Water Quality Bureau
New Mexico Environmental Department
P.O. Box 5469
Santa Fe, NM 87502-5469

Copy hand-delivered: Mr. Russell Murdock (6RC-EW)
Water Legal Branch
U.S. EPA, Region 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202-2733

Dated: _____