

**STATE OF NEW MEXICO
BEFORE THE WATER QUALITY CONTROL COMMISSION**

**NEW MEXICO ENVIRONMENT DEPARTMENT
WATER PROTECTION DIVISION,
GROUND WATER QUALITY BUREAU,**

Complainant,

v.

No. WQCC 23-__ (CO)

KARLEE, LLC,

Respondent.

**ADMINISTRATIVE COMPLIANCE ORDER
REQUIRING COMPLIANCE AND ASSESSING A CIVIL PENALTY**

Pursuant to the New Mexico Water Quality Act (“Act”), NMSA 1978, Sections 74-6-1 to -17, and the New Mexico Water Quality Control Commission Regulations (“Regulations”), 20.6.2 NMAC, the Director of the Water Protection Division of the New Mexico Environment Department (“NMED”) issues this Administrative Compliance Order (“Order”) on behalf of NMED’s Ground Water Quality Bureau (“Bureau”) to Karlee, LLC (“Respondent”). The purpose of this Order is to attain compliance with, and assess civil penalties for violations of, the Act and Regulations.

I. FINDINGS OF FACT

1. Pursuant to NMSA 1978, Section 9-7A-4, NMED is an executive agency within the New Mexico state government. Pursuant to Section NMSA 1978, Section 74-6-2(K)(1), NMED is a constituent agency of the New Mexico Water Quality Control Commission (“WQCC” or “Commission”).

2. Pursuant to Section 74-6-4(E) of the Act, the Commission shall adopt, promulgate

and publish regulations to prevent or abate water pollution in the state.

3. Pursuant to Section 74-6-4(F) of the Act, the Commission shall assign responsibility for administering its regulations to constituent agencies and shall give priority to the primary interests of the constituent agencies.

4. Section 74-6-10 of the Act authorizes the constituent agency to issue a compliance order requiring compliance immediately or within a specified time period or issue a compliance order assessing a civil penalty, or both.

5. The Bureau is an organizational unit of NMED within its Water Protection Division. The Bureau was created pursuant to authority granted under the Department of Environment Act at NMSA 1978, Section 9-7A-6(B)(3).

6. Pursuant to NMSA 1978, Section 74-6-10(A)(1), when NMED determines that a person violated or is violating a requirement or regulation adopted pursuant to the Act, NMED may issue a compliance order to require corrective actions and assess a civil penalty.

7. Pursuant to a delegation of authority from the Secretary of NMED, the Director of the Water Protection Division of NMED has authority to issue Administrative Compliance Orders on behalf of the Bureau. NMSA 1978, § 9-7A-6(B)(2).

8. Respondent Karlee, LLC is a New Mexico limited liability company with its principal place of business at 160 N. Garden Ave., Roswell, New Mexico, 88201.

9. Respondent is the owner of the facility at 807 West Main Street, Artesia, New Mexico, 88210 (Site).

10. Respondent is a “person” within the meaning of NMSA 1978, Section 74-6-2(I) of the Act.

11. In January 2019, the NMED Petroleum Storage Tank Bureau notified the NMED

Ground Water Quality Bureau of the discovery of chlorinated solvents, specifically tetrachloroethene (PCE) and trichloroethene (TCE), in 4 groundwater monitoring wells located at the former Fina #164 commercial gas service station, located at 911 West Main Street, Artesia, New Mexico, which is approximately 400 feet west and downgradient of the Karlee Site.

12. Fina #164 is a registered leaking underground storage tank (LUST) site (Facility ID: 1244; Release ID: 4607) for which the NMED PSTB is overseeing abatement of petroleum contamination through the New Mexico Corrective Action Fund.

13. Bell Gas Inc., the registered owner/operator of the former Final #164, discovered the presence of chlorinated solvents in Site groundwater in August 2018 during implementation of a minimum site assessment (MSA). Bell Gas initiated the MSA as part of NMED PSTB-directed corrective action for petroleum pollution. As part the MSA, a contractor installed and sampled a total of four groundwater monitoring wells. The resulting data indicate Site groundwater occurs at approximately 45 feet below ground surface and generally flows to the west.

14. The NMED PSTB regulates petroleum or hazardous compounds stored in Underground Storage Tanks. Facility ID: 1244 was for the storage of petroleum products only; therefore, PSTB does not regulate chlorinated solvents at this site.

15. The Ground Water Quality Bureau regulates the discharge of chlorinated solvents in groundwater and the vadose zone, pursuant to the Act and corresponding regulations.

16. Both PCE and TCE are defined toxic pollutants under 20.6.2.7(T)(2) NMAC.

17. On July 2, 2020, the Bureau sent a Notice of Liability to the Respondent, requiring the Respondent to request an extension or submit one of the following: A Corrective Action Work Plan pursuant to 20.6.2.1203(A) NMAC; a Voluntary Stage 1 Abatement Plan (S1AP) proposal pursuant to 20.6.2.4106(B) NMAC; or an application for a voluntary remediation agreement

(VRA) in accordance with 20.6.3.200(B) NMAC.

18. On August 27, 2020, Respondent requested a 60-day extension to respond to the Bureau's July 2, 2020 Notice of Liability.

19. On August 28, 2020, the Bureau approved Respondent's extension request and provided a new submittal date of October 30, 2020.

20. On October 30, 2020, Respondent provided a notice of intent to the Bureau to conduct a Vapor Intrusion assessment of the Site building, but did not provide a plan.

21. On March 2, 2021, the Bureau again notified the Respondent of its liability to address contamination at the Site, and again requested that the Respondent conduct an environmental assessment at the Site and submit a work plan for NMED review and approval, including either a Corrective Action Work Plan pursuant to 20.6.2.1203(A) NMAC; a Voluntary Stage 1 Abatement Plan (S1AP) proposal pursuant to 20.6.2.4106(B) NMAC; or an application for a voluntary remediation agreement (VRA) in accordance with 20.6.3.200(B) NMAC.

22. On April 30, 2021, Respondent provided the Bureau with a Corrective Action Work Plan (CAWP), pursuant to 20.6.2.1203 NMAC, for a limited vapor intrusion assessment of the Site building.

23. On May 28, 2021, the Bureau sent the Respondent a Notice of Deficiency regarding the April 30, 2021, CAWP, and requested the Respondent submit a revised CAWP within 30 days of the date of that letter.

24. On June 28, 2021, Respondent submitted a revised CAWP to NMED for vapor intrusion assessment of the Site.

25. On October 8, 2021, the Bureau approved the June 28, 2021 CAWP.

26. In December 2021, Respondent implemented the approved CAWP.

27. In March 2022, the Bureau received a Phase II Environmental Site Assessment Report from the City of Artesia that documented results of a Targeted Brownfields Assessment. The Results confirmed PCE impacts in both groundwater and soil vapor that increased with proximity to the Site. TCE, methylene chloride, and 1,2-dichloroethane were also found present in groundwater and soil vapor in excess of standards or guidance.

28. On March 25, 2022, the Bureau received the Corrective Action Report (CAR) that documented the results of the June 28, 2021, CAWP. The results confirmed PCE impacts to soil vapor at the Site in excess of NMED for industrial properties. PCE was also present in indoor air but below the NMED guidance for industrial properties.

29. On April 12, 2022, the Bureau notified the Respondent that the results of both the Targeted Brownfields Assessment and the CAWP indicate that the Site is a source of the contamination. The Bureau notified the Respondent that, because these impacts will not be abated within 180 days, continued assessment and abatement under 20.6.2.1203 NMAC is inappropriate. The Bureau notified the Respondent that it must submit either a Stage 1 Abatement Plan (S1AP) or a VRP Application for further assessment of the Site contamination within 60 days.

30. On May 18, 2022, the Respondent submitted to NMED a revised CAWP to include additional soil vapor and groundwater assessment at the Site and requested to be allowed to complete these additional proposed activities under 20.6.2.1203 NMAC.

31. On May 27, 2022, the Bureau conditionally approved the May 18, 2022, CAWP and request, with the condition being that all future Site efforts must be completed in accordance with abatement regulations at 20.6.2.400-4115 NMAC or under the Voluntary Remediation Program regulations at 20.6.2.3 NMAC.

32. From June to July 2022 the Respondent implemented the approved CAWP.

33. On October 27, 2022, the Respondent submitted a revised CAR that documented the results of the May 18, 2022, CAWP. The results confirmed PCE impacts to Site groundwater in excess of NMED standards and the greatest magnitude of PCE impacts observed in both soil vapor and groundwater occur at the Site.

34. On November 21, 2022, the Bureau notified the Respondent that, because the reported concentrations of pollutants in Site groundwater and vadose zone exceed one or more standards established in 20.6.2.3103 NMAC or requirements set forth in 20.6.2.4103 NMAC, additional assessment and abatement of the Site is required. The Bureau requested that the Respondent submit a S1AP, pursuant to 20.6.2.4106(B) NMAC, or a VRP application, pursuant to 20.6.3.200(B) NMAC, by January 6, 2023.

35. On February 6, 2023, the Bureau notified the Respondent that it is required to submit a S1AP pursuant to 20.6.2.4104 NMAC within 60 days of the date of that letter.

36. To date, the Respondent has not submitted a S1AP.

37. Respondent did not file a petition requesting a review of the abatement requirement before the Water Quality Control Commission within 30 days of receiving the abatement requirement, and therefore the requirement is final. 20.5.2.4114 NMAC.

II. VIOLATIONS

38. The Respondent violated the Water Quality Act by failing to submit a Stage 1 Abatement Plan pursuant to 20.6.2.4104 and 20.6.2.4106(A) NMAC.

III. COMPLIANCE ORDER

39. Based on the foregoing findings and conclusions, Respondent is hereby ordered to immediately, but no later than 30 calendar days after the date of service of this Order, provide to NMED a proposed abatement plan pursuant to the requirements outlined at 20.6.2.4106(C)

NMAC.

IV. CIVIL PENALTY

40. Sections 74-6-10(C)(2) and 74-6-10.1(B) of the Act authorize civil penalties up to the amount of ten thousand dollars (\$10,000) per day for each violation of a regulation, water quality standard, or compliance order adopted pursuant to the Act.

41. NMED hereby assesses a civil penalty of \$349,414.00 for the violation set forth in Paragraph 38 of this Order. The penalty is based upon the penalty calculation narrative attached to this Order. *See Attachment 1.*

42. Payment of the civil penalties is due no later than 30 calendar days after this Order becomes final. The Respondent may make the payment by certified or cashier's check payable to the State of New Mexico and mailed (certified) or by pre-arranged hand delivery to the Bureau at the following address:

Justin D. Ball, Chief
Ground Water Quality Bureau
New Mexico Environment Department
1190 St. Francis Drive, Suite N-2250
Santa Fe, NM 87505
Telephone: (505) 231-3773

Payment may also be made by wire transfer (ACH deposit). Please contact Howard Gurule at (505) 490-2352 or howard.gurule@env.nm.gov to make arrangements for a wire transfer payment at least three business days prior to making the payment.

Written notification of the payment shall also be provided to:

Christal Weatherly, Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Ste. 1000
Albuquerque, New Mexico 87102
Telephone: (505) 469-4171
Email: christal.weatherly@env.nm.gov

43. Failure to comply with this Order may subject Respondent to additional civil penalties. Section 74-6-10(F) of the Act authorizes an additional civil penalty assessment of up to \$25,000 for each day of continued noncompliance with the actions required in this Order.

V. NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

44. Pursuant to Section 74-6-10(G) of the Act, Respondent has the right to answer this Order and to request a public hearing.

45. If Respondent: (a) contests any material or legal matter upon which the Order is based; (b) contends that the amount of the penalties proposed in the Order is inappropriate; (c) contends that Respondent is entitled to prevail as a matter of law; or (d) otherwise contests the appropriateness of the Order, Respondent may mail, email, or deliver a written Request for Hearing and Answer to the Order to the New Mexico Water Quality Control Commission, at the following address:

Commission Administrator
Water Quality Control Commission
P.O. Box 5469
Santa Fe, NM 87502
Telephone: (505)-660-4305
Pamela.Jones@env.nm.gov

46. Respondent must file the Request for Hearing and Answer to the Order within 30 days after Respondent's receipt of this Order.

47. Respondent must attach a copy of this Order to its Request for Hearing and Answer to the Order.

48. A copy of the Answer and Request for Hearing must also be served on counsel for NMED at the following address:

Christal Weatherly
Assistant General Counsel
New Mexico Environment Department

121 Tijeras Avenue NE, Suite 1000
Albuquerque, New Mexico 87102
Christal.Weatherly@env.nm.gov

49. Respondent's Answer shall clearly and directly admit or deny each of the factual assertions contained in this Order, but where Respondent has no knowledge of a particular factual assertion and so states, the assertion may be denied on that basis. Any allegation of the Order not specifically denied shall be deemed admitted. Respondent's Answer shall also include any affirmative defenses upon which Respondent intends to rely. Any affirmative defense not asserted in the Answer, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived.

50. New Mexico Water Quality Control Commission's Adjudicatory Procedures, 20.1.3 NMAC, shall govern the hearing if Respondent submits a written request for a hearing to the Commission.

VI. FINALITY OF ORDER

51. This Order shall become final unless Respondent files a Request for Hearing and Answer to the Order with the Commission within 30 days of receipt of this Order.

52. The failure to file an Answer constitutes an admission of all facts alleged in the Order and a waiver of the right to a hearing under Section 74-6-10(G) of the Act concerning this Order.

53. Unless Respondent requests a hearing and files an Answer, the penalty proposed in this Order shall become due and payable without further proceedings within 30 days after receipt of this Order.

VII. SETTLEMENT

54. Whether or not Respondent requests a hearing and files an Answer, Respondent

may confer with NMED concerning settlement. NMED encourages settlement consistent with the provisions and objectives of the Act and Regulations. To explore the possibility of settlement in this matter, Respondent may contact the attorney assigned to this case at the following address:

Christal Weatherly
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Suite 1000
Albuquerque, New Mexico 87102
Christal.Weatherly@env.nm.gov

55. Settlement discussions do not extend the 30-day deadline for filing of Respondent's Request for Hearing and Answer to the Order, nor alter the deadlines for compliance with this Order. Settlement discussions may be pursued as an alternative to and simultaneously with the hearing proceedings.

56. Respondent may appear at the settlement conference alone or represented by legal counsel.

57. Any settlement reached by the parties shall be finalized by written settlement agreement and a stipulated final order. A settlement agreement and stipulated final order must resolve all issues raised in the Order, must be final and binding on all parties to the Order, and may not be appealed.

VIII. COMPLIANCE WITH OTHER LAWS AND WAIVER

58. Compliance with the requirements of this Order does not relieve Respondent of the obligation to comply with all other applicable laws and regulations.

IX. DISCLOSURE TO SUCCESSORS IN INTEREST

59. Respondent shall disclose this Order to any and all successors in interest. The requirements and penalties of this Order shall be binding on any and all successors in interest, either owners or operators, of the Facility.

X. TERMINATION

60. This Order shall terminate when Respondent certifies that all requirements of this Order have been met, and NMED has approved such certification, or when the Director of the Division approves a stipulated final order.

John Rhoderick John Rhoderick

John Rhoderick, Director
Water Protection Division,
New Mexico Environment Department

 Digitally signed by John Rhoderick
Date: 2023.08.04 16:18:40 -06'00'

Date

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2023, a true and accurate copy of the Administrative Compliance Order Requiring Compliance and Assessing a Civil Penalty was served by certified mail and electronic mail on Respondent at the following addresses:

Thomas M. Hnasko
Hinkle Shanor, LLP
218 Montezuma Avenue
Santa Fe, NM 87504
(505)'982-4554
thnasko@hinklelawfirm.com

Lee Adams
President, Karlee LLC
PO Box 99
Roswell, New Mexico 88201
lee@allamericancleaners.net

Christal Weatherly
Christal Weatherly
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Suite 1000
Albuquerque, New Mexico 87102

PENALTY COMPUTATION WORKSHEET

Facility Name: All-American Cleaners
 Discharge Permit: NA
 Address: 807 West Main Street, Artesia, New Mexico 88210

Violation Violation 1: Failure to submit an abatement plan per 20.6.2.4104 NMAC
 Dates of Violation (Day 1) April 7, 2023 to current day

Penalty Amount for Compliance Order

1.	Gravity-based penalty from matrix:	\$10,000
	a. Potential for harm. <u>Major</u>	
	b. Extent of deviation. <u>Major</u>	
2.	Multiple/Multi-Day:	
	a. If multiple, number of separate violations.	NA
	b. If multi-day, select amount from multi-day matrix.	\$5,000
	c. Multiply line 2.b by number of days of violation minus 1 day.	\$295,000
3.	If multiple, multiply line 1 by line 2a. If multi-day, add line 1 and line 2c.	\$0 \$305,000
4.	Adjustment Factors:	
	a. Percent increase (+%) / decrease (-%) for good faith.	<u>-10%</u>
	b. Percent increase (+%) for willfulness/negligence.	<u>+25%</u>
	c. Percent increase (+%) for history of noncompliance.	<u>NA</u>
	d. Percent increase (+%) / decrease (-%) for other unique factors.	<u>NA</u>
	e. Add lines 4 a, b, c, and 4 d.	<u>+15%</u>
5.	Multiply line 3 by line 4e.	\$44,250
6.	Calculate economic benefit (attach calculations).	\$164
7.	Add lines 3, 5 and 6 for penalty amount to be inserted in the compliance order.	\$349,414

NARRATIVE EXPLANATION

VIOLATION #1: Failure to submit an abatement plan per for assessment and abatement of groundwater and soil vapor pollution resulting from the unauthorized discharge(s) of one or more water contaminants related to operation of a dry-cleaning facility including but not limited to tetrachloroethylene (PCE) and its associated degradation products.

1. Gravity-Based Penalty

- (a) Potential for Harm:
The potential for harm is major

Risk to public health, welfare, environment or property. Soil vapor and groundwater data collected at the Property and in the near vicinity of the property confirm the presence of one or more pollutants of concern in excess of applicable groundwater standards and vapor intrusion screening levels established for the protection of human health. Assessment of the Site proper indicate vapor intrusion is likely not occurring in the immediate property structure. However, soil vapor concentrations increase south of the property towards residential areas. Current data is insufficient to conclude whether vapor intrusion is occurring at these surrounding properties. This scenario therefore poses substantial harm to public health, welfare, environment, or property.

Harm to integrity of water quality protection program. WPD's fundamental mechanism under the WQA to remediate groundwater and soil vapor contamination is via a submittal of an abatement plan pursuant to Sections 4000 through 4115 of 20.6.2 NMAC. Failure to comply with the basic requirement of the WQA poses substantial harm to the program.

- (b) Extent of Deviation
The extent of deviation is major.

The Respondent has willfully disregarded the Bureau's repeated requests to submit an abatement plan or voluntary remediation application to characterize and remediate the soil vapor and groundwater contamination resulting from previous dry-cleaning operations conducted at their property.

- (c) Multiple/Multi-Day
This violation has occurred for multiple days.
The abatement required letter dated February 6, 2023, provided the Respondent 60 days to submit an abatement plan that conforms to the requirements of 20.6.2.4106.C NMAC. To date, no submittal has been provided. A multi-day penalty has been assessed for days 2-60 ONLY of the violation.

2. Adjustment Factors

- (a) Good Faith: The Respondent has performed limited assessment to address vapor intrusion concerns for the subject property only. Therefore, a minimal adjustment of -10% is recommended for good faith.
- (b) Willfulness/Negligence: A maximum adjustment of +25% is recommended for

willfulness/negligence. This is in response to 1) the Respondents documented refusal to perform any additional action to address or abate the noted pollution resulting from their property. 2) the Respondents negligence to assess the presence or absence of vapor intrusion concerns at surrounding residential properties.

- (c) History of Compliance: The Respondent has performed limited assessment of the degree and extent of pollution impacts under 20.6.2.1203A NMAC. No adjustment is recommended at this time.
- (d) Ability to Pay: The Respondent's ability to pay has not been determined. No adjustment is recommended at this time.
- (e) Other Unique Factors: None identified.

3. Economic Benefit

The economic benefit for non-compliance was derived using the US Environmental Protection Agency's BEN Model.

This violation constitutes an avoided cost. The avoided cost associated with this violation is estimated at \$164. This amount reflects the total estimated one-time cost of \$5,000 to draft and submit a Stage 1 Abatement Plan in accordance with 20.6.2.4106 NMAC.