



NOTICE OF VIOLATION

Certified Mail - Return Receipt Requested

February 16, 2024

The Honorable Nathan Dial, Mayor
Town of Estancia
P.O. Box 166
Estancia, New Mexico 87016

RE: Notice of Violation, Town of Estancia Wastewater Treatment Plant, DP-975

Dear Mayor Nathan Dial:

On November 1, 2021, the New Mexico Environment Department (NMED) issued a Discharge Permit Renewal, DP-975, (Discharge Permit; copy enclosed) to the Town of Estancia pursuant to Section 20.6.2.3109 NMAC of the Water Quality Control Commission (WQCC) Ground and Surface Water Protection Regulations (20.6.2 NMAC). Section 20.6.2.3104 NMAC requires the permittee to comply with the terms and conditions of this Discharge Permit.

NMED has determined that the above referenced facility is operating in violation of the conditions of the Discharge Permit, the WQCC Regulations and the Water Quality Act (WQA). Please be advised that NMED requires prompt action as described herein. The facility is located approximately 0.7 miles east of Estancia on County Road A047, in Section 12, Township 06N, Range 09E, Torrance County.

A summary of the events resulting in the determination of violations at this facility follows.

On February 10, 2022, NMED issued a Notice of Non-Compliance (NONC; copy enclosed) to the Permittee identifying four conditions in the Discharge Permit with which the Permittee was not operating in compliance. In a second attempt to gain voluntary compliance, NMED reissued a NONC (copy enclosed) on February 23, 2023, identifying three conditions in the Discharge Permit with which the Permittee was not operating in compliance at the time.

In an attempt to gain voluntary compliance, NMED representatives from the Ground Water Quality Bureau and Drinking Water Bureau met with you and Public Utilities Director, Edwin Bencomo, at the Estancia Town Hall on September 26, 2023, to discuss the importance of complying with the groundwater Discharge Permit and drinking water requirements. NMED presented the Town of Estancia with a copy of the groundwater Discharge Permit and identified each Condition in the Discharge Permit that the Town of Estancia was not in compliance with, including a review of Condition 5, Condition 18,

Condition 21 and Condition 23 including a verbal summary of the due dates for monitoring reports as well as what to submit to come into compliance. During the meeting, you and Mr. Bencomo committed to submit the necessary documents to come into compliance and committed to complying with both the GWQB permit conditions and regulations into the future. NMED has not received any correspondence related to your or Mr. Bencomo's commitments to date.

The requirements of the Discharge Permit, violations, and associated actions necessary to correct the violations are identified below.

1. Condition 5 (in part) of the Discharge Permit requires the Permittee to measure the thickness of the settled solids in all impoundments and report the results of the solids thickness measurements to NMED in the next periodic monitoring report after issuance of the Discharge Permit.

The Permittee has violated Condition 5 because, to date, NMED has not received the required report indicating that measurement of the thickness of the settled solids in all impoundments has been completed.

In order to correct this violation, **submit the report indicating that the settled solids thickness has been measured within 30 days of the date of this letter (March 18, 2024).**

2. Condition 18 (in part) of the Discharge Permit requires the Permittee to utilize operators, certified by the State of New Mexico at the appropriate level pursuant to 20.7.4 NMAC, to operate the wastewater collection, treatment, and disposal systems.

This condition has been violated because, to date, the Facility is operating without an operator that is certified by the State of New Mexico at the appropriate level. NMED contacted the operator of record for the Facility, Mike Butler (Certified Level IV Wastewater Operator) of Rocky Mountain Water and Wastewater and confirmed that the Town of Estancia did not renew his contract on October 1, 2023.

In order to correct this violation, **submit proof of a contract with an operator that is certified by the State of New Mexico at the appropriate level to NMED within 30 days of the date of this letter (March 18, 2024).**

3. Condition 21 of the Discharge Permit requires the submission of quarterly monitoring reports to NMED.

The Permittee has violated Condition 21 because, to date, NMED has not received monitoring reports due since NMED issued the Discharge Permit on November 1, 2021, including reports that were due on the following dates:

- May 1, 2022

- August 1, 2022
- November 1, 2022
- February 1, 2023
- May 1, 2023
- August 1, 2023
- November 1, 2023, and
- February 1, 2024

In order to correct this violation, **submit the past due monitoring reports to NMED in their entirety within 30 days of the date of this letter (March 18, 2024)**. In the event that the data necessary to complete the report(s) was not collected, submit a statement indicating why the requirement(s) has not been fulfilled and how this will be corrected in the future. Thereafter, submit complete monitoring reports to NMED in accordance with the Discharge Permit.

4. Condition 23 of the Discharge Permit requires the Permittee to install four new monitoring wells (MW-10, MW-11, MW-12, and MW-13).

The Permittee has violated Condition 23 because, to date, the Permittee has not installed the four new monitoring wells.

In order to correct this violation, **in accordance with the steps identified in Discharge Permit conditions 22-25 install the four new monitoring wells within 180 days of the date of this letter (August 14, 2024)**. Please note that monitoring well locations must be approved by NMED, in writing, prior to installation.

Pursuant to WQA § 74-6-5, NMED has authority to terminate or modify the Discharge Permit prior to its date of expiration for any of the following causes:

1. violation of any condition of the permit;
2. obtaining the permit by misrepresentation or failure to disclose fully all relevant facts;
3. violation of any provisions of the WQA, or any applicable regulations, standard of performance or water quality standards;
4. violation of any applicable state or federal effluent regulations or limitations; or
5. change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

Failure to comply with this Notice of Violation may result in NMED's issuance of a compliance order that assesses a civil penalty pursuant to WQA, Section 74-6-10. NMED may also assess civil penalties up to \$15,000 per day for each violation of the WQA, Section 74-6-5, any regulation promulgated pursuant to that section, or any permit issued pursuant to that section. NMED may assess civil penalties up to

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\$10,000 per day for each violation of any other provision of the WQA, or any regulation, standard, or order adopted pursuant to such other provision.

As an alternative to the remedies described above, NMED may commence an action in district court for appropriate relief, including injunctive relief.

Nothing in this letter shall be construed as relieving the permittee of the obligation to comply with all requirements of the Discharge Permit, the WQCC Regulations, the WQA, and other applicable federal, state, and local laws, regulations, permits or orders. This letter is intended to obtain voluntary compliance in addressing violations of certain requirements of the Discharge Permit and may not address all violations. It is the responsibility of the permittee to be familiar with and comply with the Discharge Permit.

Please note that your facility will appear on the NMED's Enforcement Watch as a result of this NOV (see: <https://www.env.nm.gov/enforcement-watch/>). Further, NMED will issue a press release to local media highlighting your facility as appearing on this webpage. Your facility will remain on the Enforcement Watch website as an active matter until this matter is fully resolved.

Pursuant to the NMED Delegation Order dated March 24, 2023, the Cabinet Secretary has delegated the authority to sign a Notice of Violation under the New Mexico Water Quality Act to the Chief of the Ground Water Quality Bureau. If you have any questions regarding this matter, please contact Jason Herman, Program Manager of the Ground Water Pollution Prevention Section, at (575) 649-3871 or Andrew Romero at (505) 660-8624 or andrewc.romero@env.nm.gov or submit an email to pps.general@env.nm.gov.

Sincerely,

Justin D. Ball, Chief
Ground Water Quality Bureau

JB:AR

Encl: Discharge Permit Renewal, DP-975, dated November 1, 2021

cc: John Rhoderick, Director, Water Protection Division
Jason Herman, PPS Program Manager
Levi Cole, District Manager, NMED District I
Michelle Jones, Clerk/Treasurer, mjones@townofestancia.com
Edwin Bencomo, edwinbencomo1015@icloud.com
Bret Sellers, NM Rural Water Association, bret@nmrwa.org