

**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 22 - __ (CO)

**Frank Gallegos, The Jones Family Trust, and Mesa
Grande Development, LLC**

Respondents.

**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 Frank Gallegos, The Jones Family Trust, and Mesa Grande Development, LLC (“Respondents”). The purpose of this Order is to assess civil penalties for the Respondent’s 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 NMSA 1978 Section 74-6-2(K)(1), NMED is a constituent agency of the New Mexico Water Quality Control Commission.

2. The Bureau is an organizational unit of NMED within its Water Protection Division. The Bureau was created pursuant to authority granted under NMSA 1978, Section 9-

7A-6(B)(3).

3. Pursuant to NMSA 1978 Section 74-6-10(A)(1), when NMED determines that a person violated or is violating a regulation or permit created pursuant to the Act, NMED may issue a compliance order assessing a civil penalty.

4. 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).

5. Respondents own or operate or have owned or operated a company doing business by the name of Mesa Grande Development, LLC, which operates the Country Acres Subdivision Mobile Home Park in Las Vegas, New Mexico San Miguel County. At all times relevant to this Order, Respondents have not conclusively indicated which entities have or do not have responsibility for the location in question.

6. Respondents are “persons” as defined in Section 74-6-2(I) of the Act and 20.6.2.7(P)(2) NMAC.

7. Respondents discharge up to 45,150 gallons per day (“gpd”) of domestic wastewater to a two-celled unlined impoundment system for disposal by evaporation. The discharge contains water contaminants such as nitrate, chloride, total Kjeldahl nitrogen, and total dissolved solids that may exceed the standards of 20.6.2.3103 NMAC.

8. The discharge site is located on N. 8th Street extension, approximately four miles northwest of Las Vegas, New Mexico, San Miguel County (“Facility”).

9. NMED issued Discharge Permit Renewal Number 1190 (“DP-1190”) to Respondents for the Country Acres Subdivision Mobile Home Park on September 7, 2012.

10. On September 7, 2017, Respondent’s Discharge Permit, DP-1190, expired.

11. NMED Ground Water Quality Bureau (GWQB) representative (Andrew Romero) contacted Respondents twice to schedule an in-person inspection of the facility and offer to deliver a blank copy of the application for renewal. Respondents individually committed to be present for the inspections with NMED representatives on November 14, 2017, and September 30, 2019. Respondents failed to arrive at the Facility for the inspections on either date.

12. NMED issued a Renewal Reminder letter to the Respondents on February 1, 2021. The letter included a 30-day deadline to submit an application, to which NMED did not receive an application for renewal.

13. On April 29, 2021, NMED issued a Notice of Non-Compliance (NONC) for failure to submit an application for renewal. Respondents did not respond nor submit an application for renewal.

14. On June 1, 2021, NMED issued a Notice of Violation (NOV) for failure to submit an application for renewal. Despite NMED's documented phone call (June 24, 2021), Respondents did not submit an application for a renewal of DP-1190 by the June 30, 2021 deadline.

15. On May 16, 2022, the NMED Onsite Wastewater Bureau (OWB) Las Vegas Field Office received a phone call complaint and a representative (Steven Pedro) followed up with a site visit to confirm surfacing sewage from the Facility with additional sewage flowing from a corroded pipe into a natural watercourse (intake canal that could potentially flow into Storrie Lake).

16. On May 17, 2022, GWQB representative (Jason Herman) and OWB representatives (Candelaria Gallegos and Steven Pedro) conducted an emergency site visit and met with Respondents regarding the unauthorized and uncontrolled discharge of domestic

wastewater from multiple locations at the Facility. NMED representative observed that the Respondents had diverted the wastewater coming from the mobile homes into a stormwater basin that is adjacent to the Facility. NMED representatives immediately informed the Respondents that the stormwater basin is not an authorized discharge location in the expired DP-1190.

17. On May 18, 2022, SWQB representative (Jason Martinez) conducted a site visit and met with Respondents to discuss and evaluate the status of the unpermitted discharge. There was a corroded pipe, south-east from the initial sewage overflow, that had a minimal leak running onto the ground leading into the intake canal (which could potentially flow into Storrie Lake). SWQB representative observed that the majority of the flow had been diverted to a stormwater retention pond adjacent the initial sewage overflow.

18. NMED issued a second NOV to Respondents on May 20, 2022, notifying Respondents of the violations of the New Mexico Ground and Surface Water Protection Regulations, Standards for Interstate and Intrastate Surface Waters, and WQA regulations. The second NOV required the submittal of a written notification of the unauthorized discharge as well as a Corrective Action Plan within 15 days of the letter (June 4, 2022), and the submission of a completed application for a Discharge Permit within 30 days (June 19, 2022).

19. After several documented calls (June 2, 2022, June 6, 2022, June 8, 2022, June 9, 2022) and emails (June 6, 2022, and June 9, 2022) from NMED to Respondents, NMED received written notification of the unauthorized discharge and an insufficient Corrective Action Plan on June 13, 2022. The Corrective Action Plan failed to properly address the impacts of the discharge on the environment, including mitigation and removal, and did not include appropriate actions for mitigation of the potential for future failures of the system.

20. As of the date of the issuance of this Administrative Compliance Order,

Respondents have not submitted a Discharge Permit application nor a sufficient Corrective Action Plan to NMED.

II. VIOLATIONS

21. **Violation 1:** Respondents violated 20.6.2.3104 NMAC by discharging effluent or leachate from a sewerage so that it may move directly or indirectly into groundwater without a Discharge Permit approved by the Bureau.

22. **Violation 2:** Respondents violated 20.6.2.1203.A(1), 20.6.2.1203.A(3), 20.6.2.1203.A(5) and 20.6.2.1203.A(6) NMAC by failing to orally notify the Bureau of the uncontrolled discharges of sewage and water contaminants no later than 24 hours after the discharge event; failing to send written notification to the Bureau within one week verifying prior oral notification; failing to take corrective action to contain and remove or mitigate the damage caused by the discharge as soon as possible after learning of the discharge; failing to provide the Bureau with sufficient proposed corrective actions or actions already taken relative to the discharge. NMED concludes that Respondents have repeatedly refused to comply with the Act and Regulations over a period of nearly five years, a degree of willfulness and negligence.

23. **Violation 3:** Respondents violated 20.6.2.3104 and 20.6.2.3106.C NMAC by failing to discharge consistently with the terms and conditions of the Discharge Permit and failing to submit a discharge plan modification prior to discharging into unauthorized locations.

III. COMPLIANCE ORDER

24. Based upon the foregoing findings and conclusions, Respondents are hereby ordered to complete the following actions.

25. No later than fifteen (15) calendar days after this Order becomes final, the

Respondents shall submit a Corrective Action Plan to the Bureau including: a) actions proposed for complete cleanup of the stormwater impoundment used as temporary discharge location and areas affected by the leaking pipe. Proposed actions must include removal of any contaminated soil below the piping leak area and in the stormwater impoundment. The Respondents shall ensure that disposal of all contaminated materials occurs in accordance with all local, state, and federal regulations; b) actions proposed to prevent future unauthorized discharges of this nature including complete replacement of the leaking pipe; and c) a schedule for implementation of proposed actions.

26. NMED may require additional corrective actions if NMED finds that previous corrective actions are insufficient as specified in WQCC Regulation 20.6.2.1203 NMAC.

27. No later than thirty (30) calendar days after this Order becomes final, Respondents shall submit for Bureau approval an Application for Discharge Permit as specified in 20.6.2.3106 NMAC. Respondents must include with the application the appropriate fees found in 20.6.2.3114 NMAC, and must include the following items: a) an assessment of the existing wastewater system by a National Association of Wastewater Transporter (NAWT) certified inspector or a New Mexico licensed professional engineer identifying the existing components intended for replacement and proposed components; or b) construction plans and specifications, and supporting design calculations, certified by a licensed New Mexico professional engineer, for the replacement of all of the major components of the wastewater treatment and disposal system.

28. All applications, corrective action, work plans, progress reports, other reports, or other documents or information to be submitted to the Bureau under the terms of this Order shall be sent to:

Andrew Romero
Ground Water Quality Bureau
New Mexico Environment Department
P.O. Box 5469
Santa Fe, New Mexico 87502
(505) 660-8624

29. Failure to comply may subject Respondents to additional civil penalties. Section 74-6-10(F) of the Act authorizes the additional assessment of \$25,000 for each day of continued noncompliance if Respondents fails to submit the plan or evidence of hardship as required by this Order.

IV. CIVIL PENALTY

30. Section 74-6-10(C)(1) of the Act authorizes a civil penalty of up to \$15,000.00 per day for each violation of a provision of the Act based in Section 74-6-5 including a regulation adopted or a permit issued pursuant to that section.

31. NMED hereby assesses a civil penalty in the amount of \$443,025.00 for the violations set forth in Paragraphs 21 through 23. The penalties are based upon the penalty calculation narrative attached to this Order. *See Attachment 1.*

32. Payment of the civil penalties is due no later than 30 calendar days after this Order becomes final. The Respondents shall 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 Dr., Suite N-2250
Santa Fe, NM 87505
Telephone: 505-231-3773

Written notification of the payment shall also be provided to the following address:

Christopher Atencio, Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Ste. 1000
Albuquerque, New Mexico 87102
Telephone: (505) 469-4171
Email: christopher.atencio@state.nm.us

V. NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

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

34. If Respondents: (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 Respondents are entitled to prevail as a matter of law; or (d) otherwise contests the appropriateness of the Order, Respondents may mail or deliver a written Request for Hearing and Answer to the Order to the WQCC, at the following address:

Commission Administrator
Water Quality Control Commission
P.O. Box 5469
Santa Fe, NM 87502
Telephone: (505) 827-2425

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

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

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

Christopher Atencio
Assistant General Counsel
New Mexico Environment Department

121 Tijeras Avenue NE, Suite 1000
Albuquerque, New Mexico 87102
Email: christopher.atencio@state.nm.us

38. Respondent's Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Order of which Respondents have any knowledge. Where Respondents have no knowledge of a particular factual allegation, Respondents should so state, and Respondents may deny the allegation 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 Respondents intend to rely. Any affirmative defense not asserted in the Answer, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived.

39. The Water Quality Control Commission's Adjudicatory Procedures, 20.1.3 NMAC, shall govern the hearing if Respondents request a hearing.

VI. FINALITY OF ORDER

40. This Order shall become final unless Respondents file a Request for Hearing and Answer to the Order with the WQCC within 30 days of receipt of this Order.

41. 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.

42. Unless Respondents request a hearing and file 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

43. Whether or not Respondents request a hearing and file an Answer, Respondents

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, Respondents may contact the attorney assigned to this case at the following address:

Christopher Atencio
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Ste. 1000
Albuquerque, New Mexico 87102
Phone: (505) 469-4171
Email: christopher.atencio@state.nm.us

44. 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.

45. Respondents may appear at the settlement conference alone or represented by legal counsel.

46. 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 all parties to the Order, and may not be appealed.

VIII. COMPLIANCE WITH OTHER LAWS AND WAIVER

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

IX. DISCLOSURE TO SUCCESSORS IN INTEREST

48. Respondents 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

49. This Order shall terminate when Respondents certify that all requirements of this Order have been met, and NMED has approved such certification, or when the Secretary approves a stipulated final order.

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

Date

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2022, a true and accurate copy of the Administrative Compliance Order Requiring Compliance and Assessing a Civil Penalty was served by certified mail and email on Respondent at the following address:

Frank Gallegos
16 B Via de Estrellas
Santa Fe, NM 87506
infinityfg21@aol.com

The Jones Family Trust
David Jones
57 Willow Lane
Las Vegas, NM 87701

The Jones Family Trust
c/o Jason M. Wexler, Esq.
Aldridge, Hammar & Wexler, P.A.
1212 Pennsylvania NE
Albuquerque, NM 87110
jwexler@abqlawnm.com

Mesa Grande Development, LLC
PO Box 28012
Santa Fe, New Mexico 87592

Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Ste. 1000
Albuquerque, New Mexico 87102