



Michelle Lujan Grisham
Governor

Howie C. Morales
Lieutenant Governor

**NEW MEXICO
ENVIRONMENT DEPARTMENT**

Ground Water Quality Bureau

1190 St. Francis Drive / PO Box 5469
Santa Fe, NM 87502-5469
Phone (505) 827-2900 Fax (505) 827-2965
www.env.nm.gov



James C. Kenney
Cabinet Secretary

Jennifer J. Pruett
Deputy Secretary

NOTICE OF VIOLATION

March 5, 2021

Mr. John Abrams, Mayor Pro Tem
Town of Edgewood
171-A State Road 344
Edgewood, NM 87015

RE: Notice of Violation, Town of Edgewood, DP-1654

Dear Mr. Abrams:

On September 15, 2015, the New Mexico Environment Department (NMED) issued a Discharge Permit Renewal, DP-1654, (Discharge Permit; copy enclosed) to the Town of Edgewood (Permittee) pursuant to 20.6.2.3109 NMAC of the Water Quality Control Commission (WQCC) Ground and Surface Water Protection Regulations (20.6.2 NMAC). 20.6.2.3104 NMAC requires the permittee to comply with the terms and conditions of this Discharge Permit. The Discharge Permit expired on September 3, 2020 and was administratively continued in accordance with 20.6.2.3106(G) NMAC.

The Town of Edgewood Wastewater Treatment Facility (WWTF) is located at the intersection of Church Street and Williams Ranch Road, approximately one-mile east of Edgewood in Section 30, Township 10 N, Range 08E, Santa Fe County. NMED recently determined that the WWTF is operating in violation of the conditions of the Discharge Permit, the WQCC Regulations, and the New Mexico Water Quality Act, NMSA 1978, §§ 74-6-1 to -17 (WQA). Please be advised that NMED requires prompt action as described herein.

A summary of the events resulting in the determination of violations is as follows.

On February 20, 2021, a concerned citizen provided NMED with photographic documentation that the wastewater storage impoundment at the WWTF was nearly exceeding or already exceeding the two-foot freeboard requirement in the Discharge Permit.

NMED contacted the Permittee and requested that the Permittee measure the freeboard between the liquid level in the impoundment and the elevation of the top of the impoundment liner.

The Permittee responded on February 25, 2021, via email, with photographs of the measuring device. The photographs show the freeboard level in the impoundment is currently approximately 20", rather than the 24" requirement. The Permittee stated that the liquid level in the impoundment exceeded the required two-foot freeboard limitation and began to implement the contingency plan in the Discharge Permit.

Identified below are the relevant requirements of the Discharge Permit, violation, and associated actions necessary to correct the violation.

1. **Condition #17** of the Discharge Permit requires the Permittee to preserve a minimum of two feet of freeboard between the liquid level in the impoundment and the elevation of the top of the impoundment liner.

The Permittee has violated this condition because the liquid level in the impoundment exceeds the two-foot freeboard required by **Condition #17**.

In order to correct this violation, the Permittee shall **restore the required two feet of freeboard no later than March 17, 2021, by utilizing the alternative disposal area (identified by Condition #3 of the 2015 Discharge Permit) or another method approved by NMED. Once the Permittee restores the freeboard in the impoundment, no later than March 18, 2021, the Permittee shall submit photographic documentation proving the Permittee successfully restored the required freeboard. Photographic documentation must include a digital date and time stamp.**

2. **Condition #40** requires, when the two-foot freeboard has not been maintained, the Permittee to take actions authorized by the Discharge Permit and all applicable local, state, and federal regulations to restore the required freeboard. Further, if freeboard cannot be restored within 72 hours following discovery, the Permittee shall submit a short-term corrective action plan (CAP) to NMED for approval. Examples of short-term corrective actions include, removing excess wastewater from the impoundment through pumping and hauling and reducing volume of the wastewater discharged to the impoundment. The Plan shall include a schedule for completion of corrective actions and shall be submitted within 15 days following the date when the permittee initially discovered less than two feet of freeboard. The Permittee shall implement the plan following approval by NMED.

If the short-term CAP fails to restore two feet of freeboard, the Permittee shall propose permanent corrective actions in a long-term CAP submitted to NMED within 90 days following

failure of the short-term CAP. The plan shall include a schedule for completion of corrective actions and implementation of the plan shall be initiated after approval by NMED.

In this case, the Permittee discovered the lack of adequate freeboard on February 25 or sooner. The Permittee submitted a CAP on March 3, 2021. The CAP includes a proposal to continue the same disposal method, which to date has not restored the freeboard in the impoundment

The Permittee shall **submit a revised CAP to NMED for approval no later than March 11, 2021, which is 15 days after February 25.** The revised CAP shall include an alternative method for disposal of excess wastewater in the impoundment and a proposed operational change to prevent future freeboard exceedances. Examples of operational changes that would prevent future freeboard exceedances include, scheduling frequent wastewater level inspections and measurements of the freeboard in the impoundment, or logging impoundment levels frequently to ensure the contingency condition in the permit is not required.

Pursuant to WQA Section 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.

Additionally, 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 assess civil penalties of up to \$15,000 per day for each violation of 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 of up to \$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.

NMED is taking all necessary precautions to reduce the spread of COVID-19. Given the current public health emergency, NMED must conduct all field activities in accordance with the Governor's current Executive Orders and Public Health Orders. Please help to keep New Mexicans safe by visiting the New Mexico Department of Health's website to learn how you can play a role

Town of Edgewood

March 5, 2021

Page 4 of 4

in stopping the spread of COVID-19. That website is cv.nmhealth.org. If you believe the current COVID-19 restrictions impact your ability to safely complete one or more required tasks in accordance with your field schedule, please include this information with your submittal of the updated schedule.

The Permittee shall not construe anything in this letter as relieving them 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.

Pursuant to the NMED Delegation Order dated September 14, 2020, the Cabinet Secretary has delegated the authority to sign a Notice of Violation issued pursuant to the New Mexico Water Quality Act to the Chief of the NMED Ground Water Quality Bureau. If you have any questions regarding this matter, please contact Jason Herman, Domestic Team Lead of the Ground Water Pollution Prevention Section at 575-649-3871, or Sandra Gabaldón at 505-660-8164.

Sincerely,

Michelle Hunter, Chief
Ground Water Quality Bureau

MH:SG

Encl: Discharge Permit Renewal, DP-1654, dated September 4, 2015

cc: Rebecca Roose, Director, Water Protection Division
Steve Pullen, PPS Program Manager
Robert Italiano, District Manager, NMED District II