

# County of Lincoln

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February 12, 2015

Office of New Mexico Attorney General  
Hector Balderas, Attorney General  
P.O. Drawer 1508  
Santa Fe, New Mexico 87504-1508

**RE: Request for Review of Greentree Solid Waste Authority's July 1, 2013 Illegal Meeting Resulting in Unlawful Rate Increase to Lincoln County Residents**

Dear Mr. Balderas:

I am writing on behalf of the Board of County Commissioners of Lincoln County ("Commission") to request you review an ongoing matter originating from a complaint made by the County of Lincoln to the Office of the Attorney General ("OAG") on July 25, 2013. This complaint was regarding a rate increase imposed on Lincoln County residents by Greentree Solid Waste Authority ("GSWA") for solid waste collection services. The County notified Attorney General King that on July 1, 2013, GSWA increased rates to Lincoln County residents located outside municipalities at a meeting which was not lawfully noticed as required under Section 10-15-1, NMSA 1978. **See Attachment 1.** 1

After significant correspondence between the County and the OAG, Assistant AG Mark Reynolds issued his initial opinion on March 20, 2014, which states on Page 3:

"In our opinion, the above agenda item does not provide reasonably specific notice of a vote to increase rates. The description of 'customer billing' is simply too obscure and vague for a reasonable person to know that a rate increase could occur at the meeting. We believe that specificity is especially important with a matter as significant as a rate increase and should be listed in a way that clearly informs the public that a rate increase is to be considered at the meeting. **For this reason, we believe any vote by the GSWA to increase rates at the July 1, 2013 meeting was improper and not legally valid** (emphasis added). Under OMA, "No... ordinance or action of any ... policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of NMSA 1978, Section 10-15-1." Section 10-15-3(A).

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<sup>1</sup> The unlawful rate increases imposed by GSWA in violation of the Open Meetings Act is a separate and distinct issue from GSWA's increase of rates in violation of Lincoln County Ordinance No. 2008-07 which requires Lincoln County Commission approval of any rate increase.

...Please provide me notice of whether and when the GSWA intends to address this matter and the outcome. If the GSWA properly addresses this matter, this office will not take further action.” **See Attachment 2.**

While the County does not have a copy of GSWA’s correspondence back to the OAG, a responsive second, follow-up opinion was provided to GSWA by Mr. Reynolds on July 28, 2014. **See Attachment 3.** In this follow-up response, the finding was similar to the first:

“I have reviewed Greentree’s response and understand its position that the rate increase in question was actually approved at an OMA compliant May 30, 2013 meeting. The vote at the July 1, 2013 meeting merely implemented what had already been approved, only that the rate increase was much less than what had been approved at the May 30, 2013 meeting.

...However, the fact that the May 30, 2013 vote may have been proper under OMA does not change the fact that the July 1, 2013 vote was improper because the agenda for the July 1, 2013 did not list any type of rate change discussion or action. Even if Greentree was merely “implementing” the approval that occurred on May 30, 2013, the agenda of the July 1, 2013 meeting must still list such an item with reasonable specificity.

We therefore still believe that Greentree should, at a properly noticed meeting, address the violation that occurred at the July 1, 2013 meeting. As I stated in my earlier letter, Greentree should, at a properly noticed meeting, clearly list the item on the agenda, summarize the July 1, 2013 discussion of the issue, and vote again.

...I also still believe that this office need not take any additional action if Greentree addresses this matter as described above...”

Although the Office of the Attorney General has twice specifically informed GSWA to address this matter, GSWA has failed to comply with the legal requirements as outlined in the OAG letters. The County agrees with the opinion of the OAG, and believes the law is clear. “No... ordinance or action of any ... policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of NMSA 1978, Section 10-15-1. Section 10-15-3(A).” Any vote taken by GSWA to increase rates was improper and not legally valid and, as such the resulting rate increase is improper and not legally valid. Lincoln County residents are due a refund from GSWA for amounts overpaid since July 1, 2013. In addition, since the July 1, 2013 rate increase, GSWA has imposed two additional rate increases on County residents outside municipalities, the most recent of which occurred on January 1, 2015. There was no public notice, nor mention of the 2 additional rate increases on GSWA’s Agendas, nor mention in any minutes of GSWA meetings of the July 15, 2014 or January 1, 2015 rate increases.

Because of this series of illegal rate increases, the County has since taken over the billing for solid waste collection services to ensure that its residents are being billed legal rates. GSWA’s billing of County residents, including the three unlawful rate increases, has literally left thousands of County residents questioning whether to pay the invoices with the unlawful rate increases or risk the

possibility of liens being placed on their property or suits for collection being instituted.

The Board of County Commissioners of Lincoln County respectfully requests you to further investigate this matter and take steps that require GSWA to comply with the law.

Sincerely,

A handwritten signature in black ink, appearing to read "Nita Taylor". The signature is fluid and cursive, with a large initial "N" and a long, sweeping tail.

**Nita Taylor**  
**Lincoln County Manager**  
**575.808.1379**  
ntaylor@lincolncountynm.gov



## Attorney General Of New Mexico

HECTOR H. BALDERAS  
Attorney General

ELIZABETH A. GLENN  
Chief Deputy Attorney General

March 1, 2016

Nita Taylor, Lincoln County Manager  
Lincoln County Commission  
P.O. Box 711  
Carrizozo, New Mexico, 88301

**Re: Open Meetings Act Complaint Determination**

Dear Ms. Taylor:

We have completed our review of your complaint alleging that the Greentree Solid Waste Authority ("GSWA") violated the Open Meetings Act, NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013) ("OMA"). The Attorney General is charged with enforcement under the OMA, pursuant to Section 10-15-3(B), and as such, this determination addresses only your allegations that GSWA violated the OMA. We have reviewed your OMA complaint and attachments, the original determinations issued by this Office, GSWA's responses and their attachments, and the OMA. As discussed below, the information available to us at this time leads us to conclude that GSWA substantially complied with the OMA.

**1. The July 1, 2013 meeting agenda item, "Residential Billing"**

The OMA, Section 10-15-1(F), requires that notice for meetings "shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting." That is, the agenda item "would have given the public a reasonably clear idea about the actions the board intended to take at the meeting." Open Meetings Act Compliance Guide at 17.

In our original determination, our Office issued a letter stating that the "customer billing" was insufficient to give notice that a rate increase could happen at that meeting. However, upon further review we must clarify the inconsistencies in our previous determination. We found that while the May 30, 2013 meeting was fully compliant with the OMA, the July 1, 2013 meeting was not. Upon further review of the information provided by GSWA, it is apparent that the

action taken at the July 1, 2013 meeting was not in fact a rate increase, as was presumed in our original determination. The May 30, 2013 meeting, which we still contend was compliant with the OMA, authorized a \$7.26 rate increase. At the July 1, 2013 meeting, GSWA applied part of that rate increase to customer billing. The minutes from that item state that the motion was “to increase \$2.64 of the County’s approved rate through the process of a, [sic] Public Hearing and the budget approval at the May 30, 2013 GSWA meeting . . . .” Greentree Solid Waste Authority Special Meeting Minutes (Jul. 1, 2013). GSWA’s response states that “[i]f the item had not been placed on the July 1, 2013 agenda, the full approved rate increase would have been implemented on the next billing cycle following the May 30, 2013 meeting. . . . [GSWA] placed the residential billing item on the agenda in July to allow the board of directors to direct staff to reduce and mitigate the previously approved increase by implementing it in phases.”

As such, we have determined that “residential customer billing” was reasonably specific enough to encompass the action taken at the July 1, 2013 meeting. The rate increase had already been voted on at a properly noticed and OMA compliant meeting on May 30, 2013. On July 1, 2013, GSWA met and took action to include part of that increase in billing. Because it does not appear that GSWA actually increased the rate, but rather dealt with the issue of *how to bill* that increase, the agenda item “residential customer billing” was specific enough to give the public a reasonably clear idea about the actions the board intended to take at the meeting. Thus, we conclude that the July 1, 2013 agenda was reasonably specific enough to encompass the action taken, thereby complying with the OMA.

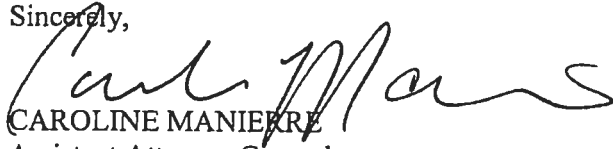
## **2. The February 12, 2015 Complaint**

On February 12, 2015, you made additional allegations that GSWA violated the OMA by imposing two additional rate increases while not mentioning these increases on the July 15, 2014 or January 1, 2015 meeting agendas. However, the information provided by GSWA leads us to conclude that there was no such closed meeting and that all action was taken in open during a properly notice meeting. GSWA has provided minutes and agendas to our Office regarding the rate increase voted on in May 2013, as well as the minutes from the May 2014 meeting authorizing implementation of \$1.40 based on Resolution 2013-05. Under the OMA, “[e]very resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be presumed to have been taken or made at a meeting held in accordance with the requirements of NMSA 1978, Section 10-15-1.” NMSA 1978, § 10-15-3(A). GSWA has stated to our office that though GSWA voted to approve \$1.40 per month, “staff mistakenly implemented only \$0.47 of the \$1.40 that the Board instructed them to implement at the May 22, 2014 meeting.” As such, the full \$1.40 per month was not included in the July 2014 billing—the first set of customer billing after the May 2014 meeting. The “staff realized its mistake and included the remaining \$0.93 of the \$1.40 implementation . . . . That correction was reflected on the next bill that went out in January of 2015.” Based on the foregoing, our Office has determined that the evidence presented to our Office indicates that GSWA did not violate the OMA by including a previously voted upon rate increase in the billing of July 2014 and January 2015.

Ms. Nita Taylor  
March 1, 2016  
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We do not intend to take further action regarding your complaint at this time, but will maintain it in our files in the event additional complaints suggest a pattern and practice of violations. Thank you for your cooperation in resolving this matter. Should you have any questions concerning this determination, please let me know.

Sincerely,

  
CAROLINE MANIERRE  
Assistant Attorney General

cc: Mr. Zach Cook, Esq.