



BILL RICHARDSON  
Governor

State of New Mexico  
**ENVIRONMENT DEPARTMENT**  
Water & Wastewater Infrastructure  
Development Division  
DRINKING WATER BUREAU  
525 Camino de Los Marquez, Suite 4  
Santa Fe, New Mexico 87505  
Telephone (505)476-8620  
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[www.nmenv.state.nm.us/dwb/dwbtop.html](http://www.nmenv.state.nm.us/dwb/dwbtop.html)



RON CURRY  
Secretary

JON GOLDSTEIN  
Deputy Secretary

KAREN E. GALLEGOS  
Director

**CERTIFIED RETURN RECEIPT REQUESTED**  
**# 7005 1820 0001 5707 7556**

October 29, 2009

Mr. Patrick Banegas  
Anthony W&SD  
P. O. Box 1751  
Anthony, NM 88021

**RE: ADMINISTRATIVE COMPLIANCE ORDER, NO. 2009-CO-026, ANTHONY WATER & SANITATION DISTRICT, PWS# NM3511207**

Dear Mr. Banegas:

Please find attached Administrative Compliance Order No. 2009-CO-026 issued to Anthony Water & Sanitation District, PWS# NM3511207, under the Environmental Improvement Act, NMSA 1978, § 74-1-10 and the Drinking Water Regulations, 20.7.10 NMAC. Please review the Administrative Compliance Order (Order) carefully to understand what actions must be taken to comply with the requirements of the Order. Anthony Water & Sanitation District has a right to answer the allegations in the Order and request a hearing, pursuant to NMSA 1978, 74-1-10.E and 20.1.5 NMAC (available at [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us)).

If you have any questions, please call Danny Valenzuela, Enforcement Coordinator of the Drinking Water Bureau, at 1-877-654-8720 or 505-476-8649 or Andy Edmondson, Technical Services Manager, at 505-476-8631.

Sincerely,

Karen E. Gallegos, Director  
Water & Wastewater Infrastructure  
Development Division

- cc. Ernest Valenzuela, Water System Specialist, District IV
- Danny Valenzuela, Enforcement Coordinator
- Chelo Hall, Region 6, EPA (electronic)
- Central File

**STATE OF NEW MEXICO  
SECRETARY OF ENVIRONMENT**

**NEW MEXICO ENVIRONMENT DEPARTMENT  
WATER & WASTEWATER INFRASTRUCTURE  
DEVELOPMENT DIVISION  
DRINKING WATER BUREAU**

**Complainant,**

**No. 2009-CO-026**

v.

**ANTHONY WATER & SANITATION DISTRICT,  
PWS # NM3511207**

**Respondent.**

**ADMINISTRATIVE COMPLIANCE ORDER**

Pursuant to the Environmental Improvement Act ("EIA"), NMSA 1978, § 74-1-10, the Drinking Water Regulations ("DW Regulations"), 20.7.10 NMAC, the Secretary of the New Mexico Environment Department ("NMED"), acting through the Director of the Water & Wastewater Infrastructure Development Division of NMED, issues this Administrative Compliance Order ("Order") to Anthony Water & Sanitation District ("Respondent") to enforce the EIA and the DW Regulations.

**FINDINGS OF FACT**

1. NMED is an executive agency within the government of the State of New Mexico and is charged with administration and enforcement of the EIA and the DW Regulations.
2. Respondent operates a public water system with a mailing address of P.O. Box 1751, Anthony, NM 88021.

3. Respondent owns and operates a drinking water system (System) located in Dona Ana County, New Mexico.

4. The System is a Community water system that regularly provides piped drinking water to approximately seven thousand nine hundred and four (7,904) year-round residents and has approximately three thousand twenty-four (3,024) service connections to serve these residents.

5. Respondent Anthony Water & Sanitation District is a “person[s]” as defined by the EIA, NMSA 1978, § 74-1-3; *and see* 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.2.

6. Arsenic samples were collected from respondent’s Well #3A on November 29, 2007, February 13, 2008, April 24, 2008, July 17, 2008, November 6, 2008, February 18, 2009, April 29, 2009 and July 14, 2009. Analysis of the samples resulted in Arsenic concentrations of 0.015 milligrams per liter (mg/L), 0.013 mg/L, 0.012 mg/L, 0.011 mg/L, 0.011 mg/L, 0.014 mg/L, 0.010 mg/L and 0.011 mg/L respectively.

7. Arsenic samples were collected from respondent’s Well #6A on December 5, 2007, February 13, 2008, April 24, 2008, July 17, 2008, November 6, 2008, February 18, 2009, April 29, 2009 and July 14, 2009. Analysis of the samples resulted in Arsenic concentrations of 0.021 mg/L, 0.019 mg/L, 0.017 mg/L, 0.019 mg/L, 0.017 mg/L, 0.022 mg/L, 0.015 mg/L and 0.016 mg/L respectively.

8. Compliance with the Maximum Contaminant Levels (MCL) for Arsenic is determined by a Running Annual Average (RAA) as required by Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.23(i)(1), which states, *if the average at any sampling point is greater than the MCL, then the system is out of compliance. If any one sample would cause the annual average to be exceeded, then the system is out of compliance immediately.*

**VIOLATION ONE (1)**  
**Drinking Water Regulations**

9. Respondent is in violation of Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b), *Maximum Contaminant Levels (MCL) for inorganic contaminants*, which requires a public water system to not exceed the Arsenic MCL of 0.010 mg/L. Respondent exceeded the MCL in Well #3A for Arsenic during the third quarter of 2008 with an average concentration of 0.013 mg/L, fourth quarter of 2008 with an average concentration of 0.012 mg/L, first quarter of 2009 with an average concentration of 0.012 mg/L, second quarter of 2009 with an average concentration of 0.012 mg/L and the third quarter of 2009 with an average concentration of 0.012 mg/L.

**VIOLATION TWO (2)**  
**Drinking Water Regulations**

10. Respondent is in violation of Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b), *Maximum Contaminant Levels (MCL) for inorganic contaminants*, which requires a public water system to not exceed the Arsenic MCL of 0.010 mg/L. Respondent exceeded the MCL in Well #6A for Arsenic during the second quarter of 2008 with an average concentration of 0.014 mg/L, third quarter of 2008 with an average concentration of 0.019 mg/L, fourth quarter of 2008 with an average concentration of 0.018 mg/L, first quarter of 2009 with an average concentration of 0.019 mg/L, second quarter of 2009 with an average concentration of 0.018 mg/L and the third quarter of 2009 with an average concentration of 0.018 mg/L.

**RETURN TO COMPLIANCE**  
**Drinking Water Regulations**

Based upon the foregoing findings, Respondent is hereby ordered to comply with the following:

11. By January 29, 2010, submit a proposed corrective action plan to NMED identifying the steps that will be taken to bring the water system into full compliance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b), *MCL for inorganic contaminants*, Arsenic. The corrective action plan must include a date for completion of an engineering study to determine the best available option to enable long-term compliance with the provisions of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b), *MCL for inorganic contaminants*, Arsenic and a completion date for implementing the best available option.

12. By January 28, 2013, be in compliance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b), and provide drinking water with a concentration of Arsenic below the MCL of 0.010 mg/L.

13. No later than January 28, 2014, have a RAA concentration for Arsenic below 0.010 mg/L and be in compliance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.23(i)(1).

14. Each submittal made pursuant to this Order shall be sent by standard U.S. Mail or certified mail with return receipt requested to the following address:

**Andy Edmondson, Technical Services Manager  
New Mexico Environment Department  
Drinking Water Bureau  
525 Camino de los Marquez, Suite 4  
Santa Fe, NM 87505  
(505) 476-8631**

**IF RESPONDENT FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS ORDER, THE SECRETARY MAY ASSESS CIVIL PENALTIES NOT TO EXCEED ONE THOUSAND DOLLARS (\$1,000) FOR EACH INSTANCE OF NONCOMPLIANCE WITH THIS ORDER**

## **RIGHT TO ANSWER AND REQUEST A HEARING**

Pursuant to NMSA 1978, § 74-1-10.E and 20.1.5 NMAC (available at [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us)), Respondent has the right to request a hearing. If Respondent (a) contests any material or legal matter upon which this Order is based; (b) contends that Respondent is entitled to prevail as a matter of law; or (c) otherwise contests the appropriateness of this Order, Respondent may mail or deliver within thirty (30) days of receipt of this Order a written Request for Hearing to the following address:

**Hearing Clerk  
New Mexico Environment Department  
P.O. Box 5469  
Santa Fe, New Mexico 87502**

Respondent must attach a copy of this Order to the Request for Hearing. 20.1.5.200.A(2)(d) NMAC.

The Request for Hearing shall include an Answer. Respondent's Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in this Order with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, Respondent should so state, and the Respondent may deny the allegation on that basis. Any allegation of this Order not specifically denied shall be deemed admitted. 20.1.5.200.A(2)(a) NMAC.

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. 20.1.5.200.A(2)(b) NMAC.

Lastly, Respondent's Answer shall be signed under oath or affirmation that the information contained therein is to the best of the signer's knowledge believed to be true and correct. 20.1.5.200.A(2)(c) NMAC.

### **FINALITY OF ORDER**

Pursuant to NMSA 1978, § 74-1-10.E, this Order shall become final unless the Respondent files a Request for Hearing with the Hearing Clerk within thirty (30) days of receipt of this Order.

### **SETTLEMENT CONFERENCE**

Whether or not a Request for Hearing has been filed, Respondent may confer with the NMED concerning settlement of this Order. The NMED encourages settlement consistent with the provisions and objectives of the EIA and the DW Regulations. Settlement discussions neither extend the thirty (30) day deadline for filing a request for hearing and answer nor alter the deadlines imposed for compliance with the mandates of this Order. Settlement discussions may be pursued as an alternative to, and simultaneously with, the hearing proceedings. Respondent may appear at the settlement conference alone or accompanied or represented by legal counsel.

A Stipulated Order shall finalize any settlement reached by the parties. The Stipulated Order must resolve all issues raised in this Order, shall be final and binding on all parties, and may not be appealed.

To explore the possibility of settlement in this matter, contact Danny Valenzuela, Enforcement Coordinator, Drinking Water Bureau, New Mexico Environment Department, 525 Camino de los Marquez, Santa Fe, N.M. 87505, (505) 476-8649.

## COMPLIANCE WITH OTHER LAWS

Compliance with the requirements of this Order does not relieve Respondent of the obligation to comply with all other applicable laws and regulations. This Order does not constitute a waiver, suspension, or modification of the requirements of 20.7.10 NMAC or 20.7.4 NMAC which remain in full force and effect. Issuance of this Order is not an election by the NMED to forgo any civil or criminal action otherwise authorized under the EIA.

## TERMINATION

This Order shall terminate when Respondent certifies that all requirements of this Order have been met and NMED has approved such certification in writing. NMED shall not approve such certification until Respondent has maintained a RAA for Arsenic at or below the MCL for five consecutive quarters in accordance with Section 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.62(b), or when the Secretary approves a Final Stipulated Order.

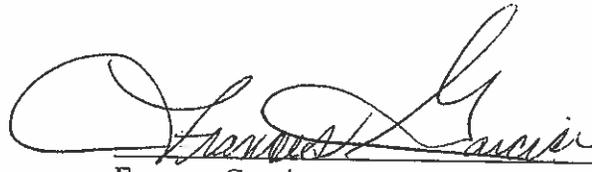
Oct 29, 2009  
Date

Karen E. Gallegos  
Karen E. Gallegos, Director  
Water & Wastewater Infrastructure  
Development Division  
525 Camino de los Marquez, Suite 4  
Santa Fe, New Mexico 87505  
(505) 476-8611

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Administrative Compliance Order was sent via certified return receipt requested on the following party of record on October 29<sup>th</sup>, 2009.

Mr. Patrick Banegas  
Anthony W&SD  
P. O. Box 1751  
Anthony, NM 88021

  
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Frances Garcia