



**MICHELLE LUJAN GRISHAM**  
Governor

**HOWIE MORALES**  
Lt. Governor

**NEW MEXICO  
ENVIRONMENT DEPARTMENT  
Drinking Water Bureau**

1190 St. Francis Dr.  
Santa Fe, NM, 87505  
Phone (505) 476-8620 Fax (505) 476-8656  
[www.env.nm.gov/drinking\\_water/](http://www.env.nm.gov/drinking_water/)

**CERTIFIED RETURN RECEIPT REQUESTED  
7016 2070 0000 6771 7104**



**JAMES C. KENNEY**  
Cabinet Secretary

**JENNIFER J. PRUETT**  
Deputy Secretary

February 12, 2020

Robert Barrera  
Lordsburg Water Supply System  
409 W Waback Ave  
Lordsburg, NM 88045

**RE: Administrative Compliance Order, No. 2020-ACO-03 Lordsburg Water Supply System,  
PWS# NM3522812**

Mr. Barrera,

Please find attached Administrative Compliance Order No. 2020-ACO-03 issued to Lordsburg (City of), for Lordsburg Water Supply System, PWS# NM3522812, 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 action must be taken to comply with the requirements of the Order. Lordsburg (City of) has a right to answer the allegations in the Order and request a hearing, NMSA 1978, §§ 61-33-120.E and 74-1-10.E and 20.1.5 NMAC (available at [www.env.nm.gov](http://www.env.nm.gov)).

If you have any questions or need assistance with meeting the requirements of this Order, please contact Maria J. Medina, Enforcement Coordinator, at 505-476-8629 or via email at [maria.medina@state.nm.us](mailto:maria.medina@state.nm.us).

Sincerely,

Rebecca Roose  
Division Director  
Water Protection Division

cc. Compliance Officer (Electronic)  
Region 6, EPA (Electronic)  
ELECTRONIC CENTRAL FILE BY WATER SYSTEM

**STATE OF NEW MEXICO**  
**SECRETARY OF ENVIRONMENT**

NEW MEXICO ENVIRONMENT DEPARTMENT  
WATER PROTECTION DIVISION,

Complainant,

No. 2020-ACO-03

v.

LORDSBURG (CITY OF),  
Respondent.

**ADMINISTRATIVE COMPLIANCE ORDER**

Pursuant to the Environmental Improvement Act (“EIA”), NMSA 1978, § 74-1-10, and 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 Protection Division of the NMED, issues this Administrative Compliance Order (“Order”) to Lordsburg (City of) (“Respondent”) to enforce the EIA and DW Regulations.

**FINDINGS**

1. The 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 DW Regulations.

2. Respondent owns and operates a public drinking water system (“System”) Lordsburg Water Supply System, PWS# NM3522812, located in Hidalgo County, New Mexico.

3. The System is a Community water system, as defined by Section 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.2], that regularly provides piped drinking water to approximately three thousand twenty-eight (3028) residents and has approximately one thousand two hundred twenty-six (1226) service connections to serve these residents.

4. Respondent, Lordsburg (City of), is a “person” as defined by the EIA, NMSA 1978, § 74-1-3 and 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.2].

5. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.62(b)(1) and 141.23(i)(1)], requires a Community water system to not exceed the Fluoride Maximum Contaminant Level (MCL) of 4.0 mg/L and establishes compliance with the MCL for Fluoride is determined by a Running Annual Average (RAA).

6. On February 14, 2019, a Notice of Violation (NOV) was issued to Respondent by NMED for exceeding the Fluoride MCL at Entry Point #1 during the first (1<sup>st</sup>) quarter of 2019. The NOV notified Respondent that it was required to provide public notice of the violation.

7. On May 28, 2019, an NOV was issued to Respondent by NMED for exceeding the Fluoride MCL at Entry Point #1 during the second (2<sup>nd</sup>) quarter of 2019. The NOV notified Respondent that it was required to provide public notice of the violation.

8. On September 13, 2019, an NOV was issued to Respondent by NMED for exceeding the Fluoride MCL at Entry Point #1 during the third (3<sup>rd</sup>) quarter of 2019. The NOV notified Respondent that it was required to provide public notice of the violation.

9. On November 13, 2019, an NOV was issued to Respondent by NMED for exceeding the Fluoride MCL at Entry Point #1 during the fourth (4<sup>th</sup>) quarter of 2019. The NOV notified Respondent that it was required to provide public notice of the violation.

10. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(4)], requires a ground water system to consult with the State regarding the appropriate corrective action within thirty (30) days of receiving written notice of significant deficiency.

11. On May 3, 2019, an NOV was issued to Respondent by NMED for failure to submit a corrective action plan to the State regarding appropriate corrective actions within thirty (30) days of receiving written notice of the significant deficiency. The NOV notified Respondent that it was required to provide public notice of the violation.

12. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(5)], requires a ground water system to either correct significant deficiencies or be in compliance with a State approved corrective action plan within 120 days of receiving written notice by the State of significant deficiency.

13. On May 2, 2019, an NOV was issued to Respondent by NMED for failure to correct significant deficiencies identified during the November 15, 2018 sanitary survey within 120 days

of receiving written notice of deficiencies. The NOV notified Respondent that it was required to provide public notice of the violation.

14. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.203(b)(1), § 141.203(b)(2), and § 141.31(d)], requires water systems to notify customers of the Maximum Contaminant Level (MCL) exceedances. This notification is required to be completed within thirty (30) days of receiving the written notice of the violation and must be issued every three (3) months as long as the exceedances persists. The water system must certify that the notice was published as well as the method of publication by submitting a completed Public Notification Certification Form to NMED within ten (10) days of completing the public notification requirements. A copy of the public notice must be included.

15. On February 14, 2019, a Notice was issued to Respondent by NMED to notify customers of the Fluoride MCL exceedances at Entry Point #1 during the first (1<sup>st</sup>) quarter of 2019.

16. On May 28, 2019, a Notice was issued to Respondent by NMED to notify customers of the Fluoride MCL exceedances at Entry Point #1 during the second (2<sup>nd</sup>) quarter of 2019.

17. On November 13, 2019, a Notice was issued to Respondent by NMED to notify customers of the Fluoride MCL exceedances at Entry Point #1 during the fourth (4<sup>th</sup>) quarter of 2019.

18. 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.203(b)(i), § 141.403(a)(7)(i) and § 141.31(d)], requires a Community water system to notify customers of a failure to correct the significant deficiencies identified during a sanitary survey. This notification is required to be completed within thirty (30) days of receiving the written notice of the violation and must continue to inform the public until the significant deficiency is corrected. The Community water system must certify that the notice was published and the method of publication by submitting a completed Public Notification Certification Form to NMED within ten (10) days of completing the public notification requirements. A copy of the public notice must be included.

19. On May 2, 2019, a Notice was issued to Respondent by NMED to notify customers of failure to correct the significant deficiencies identified during the November 15, 2018, sanitary

survey. This notification was required to be completed within thirty (30) days of receiving written notice of the violation.

### **VIOLATION 1**

20. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.62(b)(1) and 141.23(i)(1)], which requires a Community water system to not exceed the Fluoride MCL of 4.0 mg/L and establishes compliance with the Maximum Contaminant Level (MCL) for Fluoride is determined by a Running Annual Average (RAA). Respondent exceeded the MCL for Fluoride at entry point #1 during the first (1<sup>st</sup>), second (2<sup>nd</sup>), third (3<sup>rd</sup>) and fourth (4<sup>th</sup>) quarters of 2019 with a RAA concentration of 4.2 mg/L, 4.5 mg/L, 5.0 mg/L, and 5.2 mg/L respectively.

### **VIOLATION 2**

21. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(4)], which requires a ground water system to consult with the State regarding the appropriate corrective action within thirty (30) days of receiving written notice of significant deficiency. Respondent failed to submit a corrective action plan within thirty (30) days of receiving notice by the State.

### **VIOLATION 3**

22. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(5)], which requires a ground water system to either correct significant deficiencies or be in compliance with a State approved corrective action plan within 120 days of receiving written notice by the State of significant deficiency. Respondent failed to correct significant deficiencies identified during the November 15, 2018, sanitary survey within 120 days of receiving written notice by the State.

#### **VIOLATION 4**

23. Respondent is in violation of 20.7.10.100 NMAC, incorporating 40 C.F.R. § 141.203(b)(1), § 141.203(b)(2), and § 141.31(d)], which requires water systems to notify customers of the Maximum Contaminant Level (MCL) exceedances. This notification is required to be completed within thirty (30) days of receiving the written notice of the violation and must be issued every three (3) months as long as the exceedances persists. The water system must certify that the notice was published as well as the method of publication by submitting a completed Public Notification Certification Form to NMED within ten (10) days of completing the public notification requirements. A copy of the public notice must be included. Respondent failed to notify customers of Fluoride MCL exceedances at Entry Point #1 during the first (1st), second (2nd), third (3<sup>rd</sup>), and fourth (4<sup>th</sup>) quarters of 2019.

#### **VIOLATION 5**

24. Respondent is in violation of 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.203(b)(i), § 141.403(a)(7)(i) and § 141.31(d)], which requires a Community water system to notify customers of a failure to correct the significant deficiencies identified during a sanitary survey and must continue to inform the public until the significant deficiency is corrected. The Community water system must certify that the notice was published and the method of publication by submitting a completed Public Notification Certification Form to NMED within ten (10) days of completing the public notification requirements. A copy of the public notice must be included. Respondent failed to submit a copy of the public notice notifying customers of failure to correct the significant deficiencies identified during the November 15, 2018, sanitary survey and a completed Public Notice Certification Form

#### **RETURN TO COMPLIANCE**

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

25. By July 31, 2020, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.62(b)(1)], and provide drinking water with concentrations of Fluoride below the MCL of 4.0 mg/L.

26. By July 31, 2021, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.23(i)(1)], and have a RAA for Fluoride below the MCL of 4.0 mg/L.

27. By March 31, 2020, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.403(a)(5)], and correct significant deficiencies identified during the November 15, 2018, sanitary survey (attached).

28. By March 1, 2020, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.203(b)(1), § 141.203(b)(2), and § 141.31(d)], and submit a copy of the public notice notifying customers of Fluoride MCL exceedances during the first (1<sup>st</sup>), second (2<sup>nd</sup>), and fourth (4<sup>th</sup>) quarters of 2019 and submit a Public Notification Certification Form.

29. By March 1, 2020, comply with 20.7.10.100 NMAC, [incorporating 40 C.F.R. § 141.203(b)(i), § 141.403(a)(7)(i) and § 141.31(d)], and submit a copy of the public notice notifying customers of failure to correct the significant deficiencies identified during the November 15, 2018, sanitary survey and a completed Public Notification Certification Form.

30. Submittals made pursuant to paragraphs 25 through 29 of this Order shall be sent by certified mail with return receipt requested to the following:

Maria J. Medina, Enforcement Coordinator  
New Mexico Environment Department  
Drinking Water Bureau  
P.O. Box 5469  
Santa Fe, NM 87502-5469

Or

Email: [maria.medina@state.nm.us](mailto:maria.medina@state.nm.us)

**If respondent fails to comply with the requirements of paragraphs 25 through 30 of this order, the Secretary of NMED may assess additional 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, §§ 61-33-120.E and 74-1-10.E and 20.1.5 NMAC (available at [www.env.nm.gov](http://www.env.nm.gov)), Respondent has the right to request a hearing. If Respondent (a) contests any material or legal matters 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 at 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 in 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.

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, §§ 61-33-10.E and § 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 deadline imposed for compliance with the mandate of this Order. Settlement discussion 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 Final Order shall finalize any settlement reached by the parties. The Stipulated Final 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 Maria J. Medina, Drinking Water Bureau, New Mexico Environment Department, P.O. Box 5469, Santa Fe, New Mexico 87502-5469, (505) 476-8629.

## **COMPLIANCE WITH OTHER LAWS**

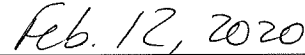
Compliance with the requirements of this Order does not relieve Respondent of the obligation to comply with all other applicable laws and regulations. This Order does not constitute a waiver, suspension, or modification of the requirements of 20.7.10 NMAC and 20.7.4 NMAC which remain in full force and 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 all requirements of this Order have been met and the NMED provides notification of termination in writing, or when the Secretary approves a Stipulated Final Order.



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Rebecca Roose  
Division Director  
Water Protection Division  
P.O Box 5469  
Santa Fe, New Mexico 87502-5469

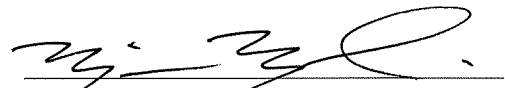


\_\_\_\_\_  
Date

## Certificate of Service

I hereby certify that a copy of the foregoing Administrative Compliance Order was sent on 2/13, 2020 via certified return receipt requested to the following:

Robert Barrera  
Lordsburg Water Supply System  
409 W Waback Ave  
Lordsburg, NM 88045



Maria J. Medina