

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

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REGIONAL HEARING CLERK
EPA REGION VI

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| In the Matter of | § | Docket No. CWA-06-2012-EP-768 |
| | § | |
| San Juan County, a New Mexico political sub-division, | § | |
| | § | |
| and | § | Proceeding to Assess a Class I |
| | § | Civil Penalty under Section 309(g) |
| The City of Aztec, a New Mexico municipality, | § | of the Clean Water Act |
| | § | |
| Respondents | § | |
| | § | |
| NPDES Permit No. NMR04F002 | § | |
| NPDES Permit No. NMR04F003 | § | ADMINISTRATIVE COMPLAINT |

I. Statutory Authority

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (“Act”), 33 U.S.C. § 1319(g). The Administrator of EPA delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who further delegated this authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 (“Complainant”). This Class I Administrative Complaint is issued in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. §§ 22.1–22.52, including rules related to administrative proceedings not governed by Section 554 of the Administrative Procedure Act, 40 C.F.R. §§ 22.50–22.52.

Based on the following Findings of Fact and Conclusions of Law, Complainant finds that San Juan County and the City of Aztec (“Respondents”) violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

II. Findings of Fact and Conclusions of Law

1. San Juan County is a political sub-division of the State of New Mexico, and the City of Aztec is a municipality chartered in the State of New Mexico, and as such, each Respondent is a “person” as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. At all times relevant to this action (“all relevant times”), Respondents owned or operated a Municipal Separate Storm Sewer System (“MS4”) comprised of a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) (“facility”) located within San Juan County, New Mexico.

3. At all relevant times, the MS4 was a “point source” of a “discharge” of “pollutants” with its storm water to receiving waters including, but not limited to, the Animas River and the San Juan River, which are considered ‘waters of United States’ within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

4. Because Respondents owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States, Respondents were subject to the Act and the National Pollutant Discharge Elimination System (“NPDES”) program.

5. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

6. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

7. On February 7, 2000, EPA promulgated Phase II of the Storm Water program requiring NPDES permit coverage for small MS4s (“sMS4s”) located in “urbanized areas” as determined by the latest census. Operators of regulated sMS4s were to apply for permit coverage by March 10, 2003.

8. Under the Phase II Rule, EPA issued NPDES General Permit for Discharges from sMS4s, Permit Number NMR040000 (“General Permit”), which became effective on July 1, 2007. The General Permit required operators of regulated sMS4s to develop a Storm Water Management Program (“SWMP”) specific to the General Permit and submit a Notice of Intent (“NOI”) for coverage under the General Permit by October 1, 2007.

9. Respondents’ MS4 is a sMS4 within the meaning of 40 C.F.R. § 122.26(b)(16) and is located in an urbanized area; therefore, Respondents were required to seek NPDES permit coverage under the Phase II Rule.

10. On August 2, 2007, Respondents submitted a joint NOI and SWMP for both San Juan County and the City of Aztec. The SWMP was missing specific areas that should have been addressed or expanded.

11. After reviewing Respondents' NOI and SWMP, EPA issued Respondents a letter of deficiency dated March 21, 2008. The letter noted that EPA deemed the SWMP incomplete and cited several deficiencies or non-submittals.

12. On May 5, 2008, Respondents submitted a letter to EPA stating they had contracted Animas Environmental Services, LLC ("AES") to complete the Notice of Intent.

13. On June 29, 2010, Respondents submitted a letter to EPA stating that they had contracted with AES and other contractors to address various deficiencies in the SWMP.

14. On February 16, 2011, Respondents submitted a Biological Assessment and storm water sampling results to EPA and designated a SWMP implementation coordinator.

15. On June 27, 2011, EPA sent an email to Respondents indicating that the SWMP remained incomplete and noted deficiencies or non-submittals that were not yet addressed.

16. To date, Respondents have failed to submit a complete SWMP.

17. Each day that Respondents discharged storm water from the facility without NPDES permit coverage was a violation of Section 301 of the Act, 33 U.S.C. § 1311.

18. From August 2, 2007 to January 1, 2012, there were one or more rainfall events of greater than one-half ($\frac{1}{2}$) inch at the facility.

19. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Respondents are liable for a civil penalty in an amount not to exceed \$16,000 per day for each day during which a violation continues, up to a maximum of \$37,500.

20. EPA has notified the New Mexico Environment Department of the issuance of this Complaint and has afforded the State an opportunity to consult with EPA regarding the

assessment of an administrative penalty against Respondents as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

21. EPA has notified the public of the filing of this Complaint and has afforded the public thirty (30) days in which to comment on the Complaint and on the proposed penalty as required by Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A). At the expiration of the notice period, EPA will consider any comments filed by the public.

III. Proposed Penalty

22. Based on the foregoing Findings, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(A) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(A), EPA Region 6 hereby proposes to assess against Respondents a penalty of five thousand dollars (\$5,000.00).

23. The proposed penalty amount was determined based on the statutory factors specified in Section 309(g)(3), 33 U.S.C. § 1319(g)(3), which includes such factors as the nature, circumstances, extent and gravity of the violation(s), economic benefits, if any, prior history of such violations, if any, degree of culpability, and such matters as justice may require.

IV. Failure to File an Answer

24. If Respondents wish to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, Respondents must file an Answer to this complaint within thirty (30) days after service of this Complaint whether or not Respondents request a hearing as discussed below.

25. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15. Failure to file an Answer to this Complaint within thirty (30) days of service of the Complaint shall

constitute an admission of all facts alleged in the Complaint and a waiver of the right to hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

26. If Respondents do not file an Answer to this Complaint within thirty (30) days after service of this Complaint, a Default Order may be issued against Respondents pursuant to 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability, and could make the full amount of the penalty proposed in this Complaint due and payable by Respondents without further proceedings thirty (30) days after a Final Default Order is issued.

27. Respondents must send their Answer to this Complaint, including any request for hearing, and all other pleadings to:

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondents shall also send a copy of the Answer to this Complaint to the following EPA attorney assigned to this case:

Mr. Tucker Henson (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

28. The Answer must be signed by Respondents, Respondents' counsel, or other representative on behalf of Respondents and must contain all information required by 40 C.F.R. §§ 22.05 and 22.15, including the name, address, and telephone number of Respondents and Respondents' counsel. All other pleadings must be similarly signed and filed.

V. Notice of Opportunity to Request a Hearing

29. Respondents may request a hearing to contest any material allegation contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). The procedures for hearings are set out at 40 C.F.R. Part 22, with supplemental rules at 40 C.F.R. § 22.38.

30. Any request for hearing should be included in Respondents' Answer to this Complaint; however, as discussed above, Respondents must file an Answer meeting the requirements of 40 C.F.R. § 22.15 in order to preserve the right to a hearing or to pursue other relief.

31. Should a hearing be requested, members of the public who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to present evidence at such hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

VI. Settlement

32. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondents may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondents may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Ms. Diana McDonald, of my staff, at (214) 665-7495.

33. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive Respondents’ right to a hearing on any matter stipulated to therein or alleged in the Complaint. Any person who commented on this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and to hold a hearing on the issues raised in the Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the petitioner's comment was material and was not considered by EPA in the issuance of the CAFO.

34. Neither assessment nor payment of a penalty in resolution of this action will affect Respondents’ continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), including one relating to the violations alleged herein.

Date _____

MAY 14 2012



John Blevins
Director
Compliance Assurance and
Enforcement Division

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