

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED
2016 OCT 31 AM 10:45
REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of	§	Docket No. CWA 06-2016-2724
	§	
City of Rio Rancho, a New Mexico municipality	§	Proceeding Under § 309(a) of the Clean Water Act
	§	
Respondent	§	

ADMINISTRATIVE ORDER ON CONSENT

I. AUTHORITY

1. The following findings of violations are made and Order issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 309(a) of the Clean Water Act (“the Act”), 33 U.S.C. § 1319(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region 6 who has further delegated such authority to the Director of the Water Quality Protection Division, EPA Region 6.

II. FINDINGS OF VIOLATIONS

2. EPA makes the following findings of violations in support of its authority to issue this Order on Consent.

3. The City of Rio Rancho (“Respondent”) is a municipality chartered under the laws of the State of New Mexico, and as such, Respondent is a “person” as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

4. At all times relevant to the violations alleged herein (“relevant time period”), Respondent owned or controlled real property, a tract which includes the Guadalajara Arroyo stormwater basin at Monterrey Street, located between Kim Road NE and Obregon Road NE, in Rio Rancho, Sandoval County, New Mexico (“subject property”).

5. On multiple dates between approximately March 31, 2016 and April 20, 2016, Respondent discharged, directed the discharge, and/or agreed with other persons or business entities to discharge “dredged material” and/or “fill material,” as defined by Section 502 of the Act, 33 U.S.C. § 1362, and 40 C. F. R. § 232.2, from point sources, including heavy equipment, in, on and into approximately 700 linear feet of the Guadalajara Arroyo within the subject property. From the point of the discharges, the Guadalajara Arroyo flows approximately 5,080 feet downstream to Arroyo de La Baranca, then approximately 550 feet downstream to the Rio Grande, a traditionally navigable water of the United States.

6. During a site visit on April 22, 2016, a U.S. Army Corps of Engineers (“COE”) representative witnessed evidence of the unauthorized discharge of fill material into the arroyo by Respondent in the subject property.

7. Each piece of heavy equipment used during the excavation or construction activities which resulted in a discharge acted as a “point source” as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

8. The dredged and fill material referred to in paragraph 5 was a “pollutant” as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

9. During the relevant time period, the arroyo referred to in paragraph 5 was hydrologically connected to, or had a significant nexus to “navigable waters” as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 232.2, and as such, the arroyo is a “water of the United States” as defined by 40 C.F.R. § 232.2.

10. Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides that it is unlawful for any person to discharge a pollutant from a point source to waters of the United States, except with the

authorization of and in compliance with a permit issued under the Act.

11. Section 404 of the Act, 33 U.S.C. § 1344, authorizes the COE to issue permits for the discharge of dredged or fill material to waters of the United States.

12. At no time during the relevant time period did Respondent have a permit issued by the COE which authorized the discharges alleged in paragraph 5.

13. On May 17, 2016, the COE issued a Cease and Desist Order to Respondent for the unauthorized discharge of fill material at the subject property.

14. Each day of unauthorized discharge was a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

III. CONSENT AGREEMENT

15. EPA and Respondent agree that settlement of this matter will save time and resources and is in the public interest and that issuance of this Order on Consent is the most appropriate means of resolving this matter with respect to Respondent's restoration of the arroyo as described below. Respondent concurs in the issuance of this Order on Consent and agrees to comply with the Order. Respondent neither admits nor denies the findings of violations set forth above.

IV. COMPLIANCE ORDER

16. Based on the foregoing Findings of Violations and pursuant to the authority of Section 309(a) of the Act, 33 U.S.C. § 1319(a), EPA ORDERS and Respondent agrees to the following:

- a. Respondent shall immediately cease any discharge of dredged and/or fill material to waters of the United States on the subject property.

- b. Within 90 days of the effective date of this Order on Consent, Respondent shall install an appropriately-sized culvert under Monterrey Street to reconnect the hydrology of the Guadalajara Arroyo system with the downstream channel. Respondent shall contact Ms. Shelly Barnes of the Albuquerque District, U.S. Army Corps of Engineers at (505) 342-3111 and inform her when the work is to be performed. The culvert may be placed at an elevation that meets the design criteria of the detention pond system.

V. GENERAL PROVISIONS

17. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue or fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review of this Order on Consent under Sections 701 through 706 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

18. Respondent acknowledges the jurisdiction of EPA to issue the Section 309(a)(3) Order on Consent.

19. Issuance of this Order on Consent shall not be deemed an election by EPA to forego any administrative or judicial, civil or criminal action to seek penalties, fines or any other relief appropriate under the Act for the violations cited herein or other violations that become known to EPA.

20. If EPA issues an administrative complaint or a civil judicial action is initiated by the U.S. Department of Justice, Respondent may be subject to a monetary penalty. The failure to comply with this Order or the Act can result in civil penalties of up to \$51,570 per day of

violation. If a criminal action is initiated by the U.S. Department of Justice, Respondent may be subject to a fine and/or imprisonment and may also become ineligible for certain government contracts, grants or loans under Section 508 of the Act, 33 U.S.C. § 1368.

21. Compliance with the terms and conditions of this Order on Consent does not relieve Respondent of the obligation to comply with any applicable federal, state or local law or regulation.

22. The effective date of this Order is the date it is signed and returned by Respondent.

23. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.

In recognition and acceptance of the foregoing:


Mr. Jason Gallegos
Division Manager
Public Works Department
City of Rio Rancho

9-19-16.
Date


William K. Honker, P.E.
Director, Water Division
U.S. EPA Region 6

9-22-16
Date

CERTIFICATE OF SERVICE

I hereby certify that on the 10/31 day of October, 2016, the original of the foregoing Administrative Order on Consent was hand delivered to the Regional Hearing Clerk, U.S. EPA, Region 6 (6RC-D), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy was placed in the United States Mail, by certified mail, return receipt requested, addressed to the following:

Mr. Jason Gallegos
Division Manager
Public Works Department
City of Rio Rancho
3200 Civic Center Circle NE #200
Rio Rancho, NM 87144

Copy hand-delivered:

Ms. Kristine Talbot
Office of Regional Counsel (6RC-EW)
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Certified by

