



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

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REGIONAL HEARING CLERK
EPA REGION VI

AUG 28 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED (7010 2780 0002 4356 5167)

Sarah S. Works
Office of General Counsel
New Mexico Department of Transportation
1120 Cerrillos Road
Santa Fe, New Mexico 87504-1149

Re: Administrative Complaint: EPA Docket Number CWA-06-2012-2723

Dear Ms. Works:

Enclosed is an Administrative Complaint (Complaint) issued by the Environmental Protection Agency, Region 6 (EPA) to the New Mexico Department of Transportation (Respondent) citing violations of the Clean Water Act (the Act), 33 U.S.C. § 1311(a), which prohibits the unauthorized discharge of pollutants, in this case the discharge of fill material involving Rio Vallecitos and adjacent wetlands located near New Mexico State Road 290 at bridge 5962, Jemez Pueblo, Sandoval County, New Mexico. The Complaint proposes a penalty of \$11,000.

You have the right to request a hearing regarding the violations alleged in the Complaint and the proposed administrative civil penalty. Please refer to 40 C.F.R. Part 22, "Consolidated Rules of Practice," for information regarding hearing and settlement procedures.

If you wish to contest the allegations in the Complaint, you must file an Answer within thirty (30) days of receipt of the enclosed Complaint by mailing your Answer to EPA's Regional Hearing Clerk at the following address:

Regional Hearing Clerk (6RC-D)
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

If you do not file an Answer by the applicable deadline, a default order may be issued. If that occurs, each allegation in the Complaint will be deemed to be admitted as true by you, and you will have waived your right to a hearing on said allegations. The proposed penalty may then be assessed and become due and payable, without further proceedings, thirty (30) days after an Order is issued upon default. Whether or not you request a hearing, we invite you to confer informally with EPA. You have the right to be represented by an attorney, at any stage of the proceedings, including any informal discussions with EPA.

If you have any questions, please contact Mr. Russell Murdock of our Office of Regional Counsel at (214) 665-3189.

Sincerely yours,

A handwritten signature in black ink, appearing to read "WK Honker". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

William K. Honker, P.E.
Acting Director
Water Quality Protection Division

Enclosures

cc: Regional Hearing Clerk
Albuquerque District, Corps of Engineers
New Mexico Environment Department
Jemez Pueblo

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of:	§	Docket No. CWA-06-2012-2723
	§	
New Mexico Department of Transportation	§	Proceeding to Assess a
	§	Civil Penalty Under Section 309(g)
	§	of the Clean Water Act
	§	
Respondent.	§	Administrative Complaint

I. STATUTORY AUTHORITY

1. This Administrative Complaint (“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 (“the Act”), 33 U.S.C. § 1319(g). The Administrator has delegated the authority to issue this Complaint to the Regional Administrator, EPA Region 6, who has further delegated this authority to the Director of the Water Quality Protection Division, EPA Region 6. This Complaint is issued in accordance with the Consolidated Rules of Practice, published at 40 C.F.R. Part 22.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

2. The New Mexico Department of Transportation (“Respondent”) is a political subdivision of the State of New Mexico and therefore considered a “person” as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

3. Under Section 301(a) of the Act, 33 U.S.C. § 1311(a), 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.

4. Section 309(g)(1)(A) of the Act, 33 U.S.C. § 1319(g)(1)(A), provides that whenever, on the basis of any available information, the Administrator finds that a person has violated Section 301 of the Act, 33 U.S.C. § 1311, EPA is authorized to assess a civil penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g).

5. Section 404 of the Act, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers for the U.S. Army Corps of Engineers, to issue permits for the discharge of dredged or fill material into waters of the United States.

6. On an unspecified date between September 3, 2008 and September 22, 2008, Respondent, and/or other persons acting at Respondent's direction and/or on its behalf, discharged pollutants from a point source into waters of the United States without a permit issued under the Act in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). More specifically, Respondent, and/or other persons or entities discharged "dredged material" and "fill material," as defined by 40 C.F.R. § 232.2, by means of equipment (e.g., earth-moving equipment) into the channel of the Rio Vallecitos located upstream from bridge number 5962 on New Mexico State Road 290 on Jemez Pueblo land in Sandoval County, New Mexico. Rio Vallecitos is a tributary to the Rio Guadalupe, then the Jemez River, and then the Rio Grande, a navigable-in-fact body of water.

7. The discharged dredged material and fill material are considered "pollutants," as that term is defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

8. Each piece of equipment used to carry out the discharge acted as a "point source," as

that term is defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

9. The channel of the Rio Vallecitos identified in paragraph 6 above is a “water of the United States,” as that term is defined by 40 C.F.R. § 232.2.

10. At no time during the period identified in paragraph 6 did Respondent have a permit issued by the U.S. Army Corps of Engineers which authorized the alleged discharge.

11. 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 a civil penalty against Respondent.

12. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), EPA has notified the public of the filing of this Complaint and afforded the public reasonable opportunity to comment on the proposed penalty. At the expiration of the notice period, EPA will consider any comments filed by the public.

13. Based on these Findings of Fact and Conclusions of Law, EPA finds that Respondent committed the violations alleged herein and is liable for a civil penalty.

III. PROPOSED PENALTY

14. Based on the foregoing Findings of Fact and Conclusions of Law, and pursuant to 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 finds that Respondent committed the violations alleged above and proposes to assess a Class I civil penalty of eleven thousand dollars (\$11,000.00).

15. In determining the amount of the civil penalty, EPA will consider the factors set forth in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), namely, the nature, circumstances, extent and gravity of the violation(s), and, with respect to Respondent’s ability to pay a civil

penalty, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation(s), and such other factors as justice may require.

IV. FAILURE TO FILE AN ANSWER

16. If Respondent wishes to admit, deny, or explain any material allegation set forth in the above Findings of Fact and Conclusions of Law or contest the amount of the civil penalty proposed, Respondent must file an Answer to this Complaint within thirty (30) days after Respondent's receipt of the Complaint, regardless of whether Respondent requests a hearing on the allegations of the Complaint.

17. The requirements for an Answer are set forth at 40 C.F.R. § 22.15. Respondent's failure to file an Answer setting forth any such admission, denial, or explanation shall constitute an admission of all facts alleged, and waive Respondent's right to a hearing, pursuant to 40 C.F.R. § 22.15(d).

18. If Respondent fails to file an Answer within thirty days of service of the Complaint, Respondent may be found in default whereby a default order may be issued pursuant to 40 C.F.R. § 22.17. Any default shall constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such allegations.

19. Respondent must send its Answer, including any request for a hearing, and all other pleadings to be filed with the Regional Hearing Clerk to:

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

Respondent shall also send a copy of its Answer to this Complaint to the following EPA attorney

assigned to this case:

Russell Murdock (6RC-EW)
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

20. The Answer must be signed by Respondent's corporate representative or its attorney or other representative, if any, authorized to sign on behalf of Respondent, and include the information required by 40 C.F.R. §§ 22.5 and 22.15. All other pleadings must be similarly signed and filed with the Regional Hearing Clerk.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

21. Respondent may request a hearing to contest any material allegation set forth in this Complaint or to contest the appropriateness of the amount of the proposed penalty, pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2). The hearing procedures are set forth at 40 C.F.R. §§ 22.21-26.

22. If a hearing is requested, any person 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 the hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

VI. SETTLEMENT

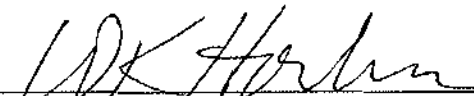
23. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, a Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondent may 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 Mr. Tom Nystrom at

(214) 665-8331.

24. 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 a Respondent's right to a hearing on any matter stipulated 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 request a hearing on the issues raised in the Complaint. Such petition would be granted and hearing held only if the evidence presented by the petitioner's comments was material and not considered by EPA in the issuance of the CAFO.

25. Neither the assessment nor the payment of a penalty in resolution of this action will affect Respondent's continuing obligation to comply with all requirements of the Act, applicable regulations and permits, and any compliance order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), including an order relating to the violations alleged herein.

8/17/12
Date



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