



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

November 26, 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7010 1060 0002 1872 0658

Mr. James N. Blea, President  
Lone Mountain Contracting, Inc.  
125 Bosque Farms Boulevard  
Bosque Farms, NM 87068

Re: Notice of Proposed Assessment of Class I Civil Penalty  
Docket Number: CWA-06-2010-1907  
NPDES Permit Number: NMU001668

Dear Mr. Blea:

Enclosed is an Administrative Complaint (Complaint) issued to Lone Mountain Contracting, Inc. for violation of the Clean Water Act (33 U.S.C. § 1251 et seq.), and applicable regulations and requirements set forth in the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges from Construction Sites. The violations alleged in the Complaint were identified during an inspection of your Town of Taos Alexander Gusdorf Eco-Park construction site, conducted by the New Mexico Environment Department on July 13, 2010.

You have the right to request a hearing regarding the violations alleged in the Complaint and the proposed penalty. Please refer to the enclosed Part 22, "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," for information regarding hearing and settlement procedures. Note that should you fail to request a hearing within thirty (30) days of receipt of the Complaint, you will waive your right to such a hearing, and the proposed civil penalty of \$6,500.00 may be assessed against you without further proceedings.

Whether or not you request a hearing, we invite you to confer informally with the Environmental Protection Agency (EPA) concerning the alleged violations and the amount of the proposed penalty. You may represent Lone Mountain Contracting, Inc., or be represented by an attorney at any conference, whether in person or by telephone. The EPA encourages all parties against whom it files a Complaint proposing assessment of a penalty to pursue the possibility of settlement as a result of an informal conference.

Please also find enclosed an "Information Sheet" relating to the Small Business Regulatory Enforcement Fairness Act and a "Notice of Registrant's Duty to Disclose" relating to the disclosure of environmental legal proceedings to the Securities and Exchange Commission.

Re: Administrative Complaint  
Lone Mountain Contracting, Inc.

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The EPA is committed to ensuring compliance with the requirements of the NPDES program, and my staff will assist you in any way possible. If you have any questions, or wish to discuss settlement of this matter, please contact Ms. Diana McDonald, of my staff, at (214) 665-7495.

Sincerely,

John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

Enclosure(s)

cc: w/complaint-Regional Hearing Clerk

Mr. Glenn Saums  
Acting Bureau Chief  
Surface Water Quality Bureau  
New Mexico Environment Department  
P.O. Box 5469  
Santa Fe, NM 87502-5469

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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

In the Matter of	§ Docket No. CWA-06-2010-1907
	§
Lone Mountain Contracting, Inc.,	§
a Nevada corporation,	§ Proceeding to Assess a Class I
	§ Civil Penalty under Section 309(g)
	§ of the Clean Water Act
Respondent	§
	§ ADMINISTRATIVE COMPLAINT
NPDES No. NMU001668	§

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 has 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," 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, Complainant finds that Respondent has 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. Lone Mountain Contracting, Inc. ("Respondent") is a corporation incorporated under the laws of the State of Nevada and doing business in the State of New Mexico, and as such, 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, Respondent owned or operated an approximately 23.25 acre residential construction site known as the Town of Taos Alexander Gusdorf Eco-Park located at the northwest corner of the intersection of St. Francis and Salazar Road, in Taos, New Mexico ("facility"), and was therefore an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

3. At all times relevant to this action ("all relevant times"), the facility was a "point source" of a "discharge" of "pollutants" with its storm water to the receiving waters of an unclassified stream, thence to the Rio Pueblo de Taos (Segment 20.6.4.123 NMAC), thence to the Rio Grande in the Upper Rio Grande Basin, which is considered a "water of the 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 Respondent owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States, Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System ("NPDES") program.

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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. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26 provide that storm water discharges associated with industrial activity are point sources subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).

8. Pursuant to 40 C.F.R. § 122.26(b)(14)(x), construction activity, including clearing, grading, and excavation, is among those categories of facilities considered to be engaging in "industrial activity" for purposes of Section 402(p) of the Act and 40 C.F.R. §§ 122.1 and 122.26.

9. Pursuant to Section 402(a) of the Act, EPA issued the Final NPDES General Permit for Storm Water Discharges from Construction Sites ("permit"), which became effective on July 1, 2008 [68 Fed. Reg. 39087], and covered discharges where EPA is the permitting authority in New Mexico for all times relevant to this action.

10. At all relevant times, Respondent was an "owner" or "operator" of a facility engaged in industrial activity that was a point source subject to discharges of pollutants to waters of the United States, within the meaning of 40 C.F.R. Part 122 and the permit, and Respondent was, therefore, required to obtain NPDES permit coverage at the effective date of the applicable permit and regulations, or upon commencing the subject activities thereafter.

11. The facility began the relevant operations on or about May 24, 2010, which continued throughout the time period relevant to this action.

12. According to the EPA database that records all applications for storm water general permit coverage, Respondent did not make timely application for permit coverage for its activities at the facility, and was not covered by a NPDES permit at the relevant times for the relevant activities.

13. On June 13, 2010, the facility was inspected by the New Mexico Environment Department. As a result, the findings specified in the following paragraphs were made:

- a) Section 301 of the Act, 33 U.S.C. § 1311, was violated in that the Respondent had not submitted a Notice of Intent for application under the Construction General Permit.
- b) Respondent's activities potentially caused or resulted in the unauthorized discharge of pollutants carried by storm water during the 2.29 inch rainfall event that occurred during the month of June 2010.
- c) Best Management Practices (BMPs) were not installed in accordance with the Storm-water Pollution Prevention Plan (SWPPP) developed for the site.

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~~14. Each day that Respondent conducted the relevant activities and operated the facility~~  
without NPDES permit coverage was a violation of Section 301 of the Act, 33 U.S.C. § 1311.

15. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Respondent is 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 \$177,500.

16. EPA has notified New Mexico Environment Department of the issuance of this Complaint and has afforded the State an opportunity to consult with EPA regarding the proposed assessment of an administrative penalty against Respondent, as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

17. 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

18. Based on the foregoing Findings, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(B) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(B), EPA Region 6 hereby proposes to assess against Respondent a penalty of six thousand five hundred dollars (\$6,500.00).

19. 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

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

21. 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 after 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).

22. If Respondent does not file an Answer to this Complaint within thirty (30) days after service of this Complaint, a Default Order may be issued against Respondent 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 Respondent without further proceedings sixty (60) days after a Final Default Order is issued.

23. Respondent must send its 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



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

Rusty Herbert (6RC-EW)  
U.S. EPA  
10625 Fallstone Road  
Houston, TX 77099

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

V. Notice of Opportunity to Request a Hearing

25. Respondent 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.

26. Any request for hearing should be included in Respondent's Answer to this Complaint; however, as discussed above, Respondent 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.

27. 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

28. 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, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondent 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.

29. 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 Respondent's 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.

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30. Neither assessment nor payment of a penalty in resolution of this action will affect Respondent's 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

\_\_\_\_\_  
John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

CERTIFICATE OF SERVICE

I certify that the foregoing Class I Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

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

Copy by certified mail,  
return receipt requested:                   Mr. James N. Blea, President  
  Lone Mountain Contracting, Inc.  
  125 Bosque Farms Boulevard  
  Bosque Farms, NM 87068

Carbon copy hand-delivered:               Rusty Herbert (6RC-EW)  
  U.S. EPA  
  10625 Fallstone Road  
  Houston, TX 77099

Dated: \_\_\_\_\_

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