



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270-2102

July 7, 2022

CERTIFIED MAIL - RETURN RECEIPT REQUESTED:

Double M Properties
Bob Prewitt, Vice President
4400 Alameda Blvd. NE Suite E
Albuquerque, NM 87113
prewitt@swcp.com

Kerwin Hollowwa
Registered Agent
Spann Hollowwa & Artley
1304 Central Ave. SW
Albuquerque, NM 87102
shollowwa@shha.net

Re: Notice of Proposed Assessment of a Class II Civil Penalty
Docket Number: CWA-06-2022-1772
NPDES Facility Number: NMR1002AG

Dear Mr. Prewitt:

Enclosed is an Administrative Complaint (Complaint) issued to Double M Properties, Legacy at Sierra Vista development construction site (Sierra Vista), for violations of Section 301(a) of the Clean Water Act (33 U.S.C. § 1251 *et seq.*). The violations alleged are for unauthorized discharge of pollutants from Sierra Vista.

You have the right to request a hearing regarding the violations alleged in the Complaint and the proposed administrative civil penalty. Please refer to the enclosed Part 22, "Consolidated Rules of Practice," for information regarding hearing and settlement procedures. Should you fail to request a hearing within thirty days of receipt of the Complaint, you will waive your right to such a hearing, and the proposed civil penalty of \$115,530 may be assessed against you without further proceedings.

Whether or not you request a hearing, we invite you to confer informally with EPA. You may represent yourself, or be represented by an attorney at any conference, whether in person or by telephone. 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.

EPA is committed to ensuring compliance with the requirements of the National Pollutant Discharge Elimination System (NPDES) program. My staff will assist you in any way possible.

Re: Administrative Penalty Order
Double M Properties – Legacy at Sierra Vista

If you have any questions or wish to discuss the possibility of a settlement of this matter, please contact Ms. Carol Johnson, of my staff, at johnson.carol@epa.gov.

Sincerely,



Digitally signed by CHERYL
SEAGER
Date: 2022.07.07 16:01:10 -05'00'

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

Enclosures

cc: w/complaint - Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

Ms. Shelly Lemon
Bureau Chief
Surface Water Quality Bureau
New Mexico Environment Department
shelly.lemon@state.nm.us

FILED

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGIONAL HEARING CLERK
REGION 6 EPA REGION VI

In the Matter of	§	DOCKET NO. CWA-06-2022-1772
	§	
Double M Properties	§	Proceeding to Assess a Class II
	§	Civil Penalty under Section 309(g)
	§	of the Clean Water Act
Respondent	§	
	§	
NPDES ID. No. NMR1002AG	§	ADMINISTRATIVE COMPLAINT

I. Statutory Authority

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 of EPA delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who delegated this authority to the Director of the Enforcement and Compliance Assurance Division of EPA Region 6 (Complainant). This Class II Administrative Complaint is issued in accordance with, and this action will be conducted under, 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.

Based on the following findings, Complainant finds that Double M Properties, 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

I. Double M Properties (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), Respondent owned or operated Legacy at Sierra Vista development, a 200-acre construction site, located at 0.43 miles West of Jubilee Blvd. on NM -6, Los Lunas, Valencia County, 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, the facility acted as a "point source" of a "discharge" of "pollutant[s]" as defined by Section 502(12) & (14) of the Act, 33 U.S.C. §1362(12) & (14), to the receiving waters of an unnamed ephemeral stream, thence to an unnamed stream river, thence to the Hubbell Channel, thence to the Rio Grande, which is a "water of the United States," as defined by 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.

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), requires that any discharge of storm water associated with an industrial activity must comply with the requirements of an NPDES permit.

8. Each person that meets the definition of "operator," and engages in construction defined as industrial activity by 40 C.F.R. § 122.26(b)(14)(x), must apply for and obtain NPDES permit

coverage before and during conducting activities that are subject to storm water discharges that carry pollutants to waters of the United States.

9. The facility is considered an industry under 40 C.F.R. § 122.26(b)(14)(x), and as such, is subject to the General Permit for Storm Water Discharges Associated with Construction Activity issued by EPA on May 14, 2019.

10. Respondent applied for and was issued coverage under the EPA Construction General Permit and was assigned NPDES Permit No. NMR1002AG by the EPA electronic Notice of Intent (NOI) Center on August 1, 2019, for 57 acres at Legacy at Sierra Vista (herein after referred to as “permit”) under Section 402 of the Act, 33 U.S.C. § 1342.

11. Beginning April 3, 2020, Respondent cleared and graded 200 acres even though Respondent’s permit only encompassed and authorized 57 acres. Therefore, Respondent was not authorized by permit regarding the extra 143 acres cleared and graded by Respondent.

12. On December 24, 2020, Respondent obtained permit coverage for the entire 200 acres. Therefore, Respondent did not have permit coverage for 143 acres from April 3, 2020, to December 23, 2020, and Respondent was not authorized to discharge pollutants from the facility to waters of the United States during this period.

13. Because Respondent did not have authorization to discharge pollutants from the facility from April 3, 2020, to December 23, 2020, from the 143 acres not covered by the permit, each storm water discharge from the facility during these time periods is a violation of Section 301 of the Act, 33 U.S.C. § 1311. Rain events for the area indicate unauthorized discharges from the facility on at least five (5) occasions between April 3, 2020, to December 23, 2020.

14. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), as modified by 40 C.F.R. Part 19, Respondent is liable for a civil penalty in an amount not to exceed \$23,989 per day for each day during which a violation continues, up to a maximum of \$299,857.

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

16. 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

17. 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 hereby proposes to assess against Respondent a penalty of One hundred and fifteen thousand, five hundred and thirty dollars (\$115,530.00).

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

Complainant has specified that the administrative procedures specified in 40 C.F.R. Part 22, Subpart I, shall apply to this matter, and the administrative proceedings shall not be governed by Section 554 of the Administrative Procedure Act.

IV. Failure to File an Answer

19. 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.

20. 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).

21. 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 thirty (30) days after a final Default Order is issued.

22. 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
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

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

Mr. Efren Ordóñez (6RC-EW)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

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. §§ 22.5 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 the Respondent's Answer to this Complaint; however, as discussed above, Respondent must file an Answer to this Complaint meeting the requirements of 40 C.F.R. § 22.15 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. Carol Johnson, of my staff, at johnson.carol@epa.gov.


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 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 petitioner's comment was material and was not considered by EPA in the issuance of the CAFO.

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.

July 7, 2022

Date



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Date: 2022.07.07 15:57:21 -05'00'

Chery T. Seager, Director
Enforcement and
Compliance Assurance Division

CERTIFICATE OF SERVICE

I certify that the foregoing Class II 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
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

Copy by certified mail,
Return receipt requested: Double M Properties
Bob Prewitt, Vice President
4400 Alameda Blvd. NE Suite E
Albuquerque, NM 87113
prewitt@swcp.com

Kerwin Hollowwa
Registered Agent
Spann Hollowwa & Artley
1304 Central Ave. SW
Albuquerque, NM 87102
shollowwa@shha.net

Copy by email: Ms. Shelly Lemon
Bureau Chief
Surface Water Quality Bureau
New Mexico Environment Department
shelly.lemon@state.nm.us

Copy by email: Mr. Efren Ordóñez
U.S. EPA, Region 6
Ordonez.efren@epa.gov

Dated: 7-7-2022

