UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

APR 09 2012

CERTIFIED MAIL–RETURN RECEIPT REQUESTED: 7005 1820 0003 7453 8441

The Honorable Martin Resendez
Mayor, City of Sunland Park
1000 McNutt Road, Suite A
Sunland Park, NM 88063-9200

Re: Notice of Proposed Assessment of Class I Civil Penalty
Docket Number: CWA-06-2012-1766
NPDES Permit Number: NMR04E003

Dear Mayor Resendez:

Enclosed is an Administrative Complaint (Complaint) issued to the City of Sunland Park, New Mexico, for violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1251–1387. The violation was identified through our review of the Sunland Park Storm Water Management Program. The violation alleged is for failure to provide a complete and adequate Storm Water Management Plan.

You, as the representative of Sunland Park, New Mexico, have the right to request a hearing regarding the violation alleged in the Complaint and the proposed administrative civil penalty. Please refer to the enclosed 40 C.F.R. 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 your receipt of the Complaint, you will waive your right to such a hearing, and the proposed civil penalty of five thousand dollars ($5,000.00) may be assessed against you without further proceedings. Sunland Park has the right to be represented by an attorney at any stage of these 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 Sunland Park 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.

Also enclosed for your review and signature is the Consent Agreement and Final Order (CAFO) that specifies a proposed settlement agreement between EPA and Sunland Park resolving the violations alleged in the Complaint. If you wish to enter into this settlement agreement, please sign, date, and return the CAFO to Mr. Tucker Henson at the address above.

If you agree to settle this matter by signing and returning the CAFO, EPA will solicit public comments, which may impact the settlement. After consideration of public comments, EPA will sign and issue the CAFO which is effective thirty (30) days after the issuance date. Please do not send payment of the penalty until you receive the CAFO signed by EPA. By signing the CAFO and agreeing to settle the case, you waive your right to a hearing on, and to a judicial appeal of, the agreed civil penalty specified in the CAFO.

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

Sincerely,

for John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosures

cc: w/Complaint–Regional Hearing Clerk

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

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of	§ Docket No. CWA-06-2012-1766
	§
The City of Sunland Park,	§ Proceeding to Assess a Class I
a New Mexico municipality,	§ Civil Penalty under Section 309(g)
	§ of the Clean Water Act
Respondent	§
	§
NPDES Permit No. NMR04E003	§ 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, 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," 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 the City of Sunland Park ("Respondent") 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. Respondent is a municipality chartered under the laws of 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 ("all relevant times"), Respondent 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 Doña Ana 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 Rio Grande, 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 Respondent owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States, Respondent was 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 the 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. Respondent's MS4 is a sMS4 within the meaning of 40 C.F.R. § 122.26(b)(16) and is located in an urbanized area; therefore, Respondent was required to seek NPDES permit coverage under the Phase II Rule.

10. On August 26, 2009, EPA issued an Administrative Order, Docket Number CWA-06-2009-1885, to Respondent. The Order required Respondent to 1) submit an NOI within thirty (30) days of the effective date of the Order; 2) submit an SWMP within thirty (30) days of the effective date of the Order; and 3) submit a written certification that the cited violations had been corrected and the facility is in compliance.

11. Respondent contracted with Engineers, Inc. to prepare an NOI and SWMP on its behalf. Due to funding delays, Respondent was granted an extension to April 9, 2010, to submit the NOI and SWMP.

12. Respondent submitted an NOI and SWMP on April 9, 2010. The SWMP was missing specific areas that should have been addressed or expanded.

13. After reviewing Respondent's NOI and SWMP, EPA issued Respondent a letter of deficiency dated September 10, 2010. The letter noted that EPA deemed the SWMP incomplete and requested a complete SWMP be submitted to EPA.

14. Respondent submitted a revised SWMP and NOI on June 3, 2011; however, the SWMP remained incomplete, and neither the NOI nor the SWMP certification was signed.

15. On June 27, 2011, EPA responded to Respondent via email and listed the outstanding deficiencies found in the revised SWMP.

16. To date, a complete SWMP and signed NOI have not been submitted to EPA.

17. The terms of the Administrative Order were violated in that a complete and adequate SWMP was not submitted by September 26, 2009.

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

19. From August 26, 2009 to January 1, 2012, there were one or more rainfall events of greater than one-half (½) inch at the facility.

20. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), 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 $37,500.

21. 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 Respondent as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

22. 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

23. 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 Respondent a penalty of five thousand dollars ($5,000.00).

24. 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 violations, 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

25. 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.

26. 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).

27. 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.

28. 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:

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

29. 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

30. 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.

31. 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.

32. 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

33. 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.

34. 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.

35. 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.

4/9/12
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:

The Honorable Martin Resendez
Mayor, City of Sunland Park
1000 McNutt Road, Suite A
Sunland Park, NM 88063

With a copy, first class postage prepaid, to:

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

Copy hand-delivered:

Tucker Henson (6RC-EW)

Dated: _____ _____

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

CERTIFIED MAIL–RETURN RECEIPT REQUESTED: 7005 1820 0003 7453 8410

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

Re: Notice of Proposed Administrative Penalty Assessment
Docket Number: CWA-06-2012-1766
NPDES Permit Number: NMR04E003

Dear Mr. Bearzi:

Enclosed is a copy of the Administrative Complaint (Complaint) which the Environmental Protection Agency (EPA) is issuing to Sunland Park, New Mexico (Respondent), pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g). EPA is issuing the complaint to administratively assess a Class I civil penalty of five thousand dollars ($5,000.00) against the Respondent for violation of the CWA. Because the violation has occurred in the State of New Mexico, I am offering you an opportunity to confer with us regarding the proposed penalty assessment.

You may request a conference within two weeks of receipt of this letter. The conference may be in person or by telephone and may cover any matters relevant to the proposed penalty assessment. If you wish to request a conference or if you have any comments or questions regarding the matter, please contact Ms. Diana McDonald, of my staff, at (214) 665-7495.

Sincerely,

for John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

CAFO CONCURRENCE

Respondent: Sunland Park, NM
Docket Number: CWA-06-2012-1766
Permit Number: NMR04E003

John Blevins

4/9/12
Date