



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 8465

Mr. Bob Horacek, City Manager
City of Grants
P.O. Box 879
Grants, NM 87020

Re: Administrative Order, Docket Number: CWA-06-2012-1782
Notice of Proposed Assessment of Class I Civil Penalty
Docket Number: CWA-06-2012-1783
NPDES Facility Number: NMU001762

Dear Mr. Horacek:

Enclosed are an Administrative Order (AO) and an Administrative Complaint (Complaint) issued to City of Grants, New Mexico, for violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The violation was identified during a storm water inspection of your Wastewater Treatment Plant, conducted by the New Mexico Environment Department on August 15, 2011. The results were discussed with your representative at the time of the inspection. The violation alleged is for unpermitted storm water discharges of pollutants from the facility and into waters of the United States.

The AO requires compliance with applicable federal regulations within thirty (30) days of its receipt. The Complaint assesses a monetary penalty for the violation.

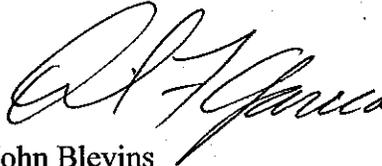
You, as the representative of the City of Grants, have the right to request a hearing regarding the violation alleged in the Complaint and the proposed administrative civil penalty. Please refer to the enclosed Part 22, "Consolidated Rules of Practice," for information regarding hearing and settlement 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 \$12,600.00 may be assessed against the City of Grants without further proceedings. Whether or not you request a hearing, we invite you to confer informally with the EPA.

Re: City of Grants
Administrative Order

2

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 this matter, please contact Mrs. Linda Smith, of my staff, at (214) 665-6641.

Sincerely,



JB
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

1445 Ross Avenue, Suite 1200, Dallas, TX 75202

FINDINGS OF VIOLATION AND COMPLIANCE ORDER

Docket Number: CWA-06-2012-1782, NPDES Facility Number: NMU001762

STATUTORY AUTHORITY

The following findings 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 ("Act"), 33 U.S.C. § 1319(a). The Administrator of EPA delegated the authority to issue this Order to the Regional Administrator of EPA Region 6, who further delegated this authority to the Director of the Compliance Assurance and Enforcement Division.

FINDINGS

1. City of Grants ("Respondent") is a "person," as defined by 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 Order, Respondent owned or operated a wastewater treatment plant ("WWTP"), located at George Hanosh Boulevard, in Grants, Cibola 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 to this Order, the facility acted as a "point source" of a "discharge" of "pollutant[s]" into the receiving waters of the Rio Grande, which is a "water of the United States" as defined by Section 502 of the Act, 33 U.S.C. § 1362 and 40 C.F.R. § 122.2. As a result, Respondent and facility were subject to the Act and the National Pollutant Discharge Elimination System ("NPDES") program.

4. Since 2000, and through the time period relevant to this Order, the facility conducted activities that would deem it an industry as identified under 40 C.F.R. § 122.26(b)(14)(iii). The facility operates in Sector T under Standard Industrial Classification (SIC) Code 4952. The facility has a WWTP permit, number NM0020737; however, this permit does not include coverage under the Storm Water Multi-Sector General Permit ("SWMSGP"). Respondent is required to have storm water coverage under the EPA SWMSGP issued on September 29, 2008.

5. On August 15, 2011, the New Mexico Environment Department conducted an inspection of the facility. As a result of this inspection, the facility was found to be in violation of Section 301 of the Act, 33 U.S.C. § 1311 for the discharge of pollutants into an unnamed arroyo, thence to the Rio San Jose, thence to the Rio Grande without the authorization of a SWMSGP.

6. According to the EPA database that records all applications for storm water general permit coverage, Respondent did not submit a Notice of Intent ("NOI") for permit coverage for its activities at the facility, and was not covered by a SWMSGP at the relevant times for the relevant activities. During the time period from September 2010 to September 2011, there were five (5) rain events of one-half (½) inch or greater that resulted in unauthorized discharges from the facility.

7. Each discharge without SWMSGP coverage was a violation of 301 of the Act, 33 U.S.C. § 1311.

ORDER

Based on these findings and pursuant to the authority of Section 309(a) of the Act, 33 U.S.C. § 1319(a), EPA hereby orders Respondent to take the following actions:

A. Effective immediately, the Respondent shall cease all unauthorized discharges of pollutants to the Rio Grande.

B. Within thirty (30) days of the effective date of this Order, Respondent shall submit an NOI to the EPA NOI processing center to obtain coverage for the facility under the SWMSGP. The NOI should be submitted by one of the following methods:

- 1) By regular mail to:
Storm Water Notice Processing Center
U.S. EPA, MC 4203M
1200 Pennsylvania Avenue, NW
Washington, DC 20460
- 2) By overnight/express mail to:
Storm Water Notice Processing Center
U.S. EPA, Room 7420
1201 Constitution Ave., NW
Washington, DC 20004
- 3) Via the internet at:
<http://cfpub.epa.gov/npdes/stormwater/enoi.cfm>

For a status update on your NOI, call the NOI Center at (866) 352-7755.

C. Within thirty (30) days of the effective date of this Order, Respondent shall submit to EPA Region 6, a certified copy of the NOI for coverage under the SWMSGP submitted to the EPA NOI Processing Center.

D. Within thirty (30) days of the effective date of this Order, Respondent shall develop and implement a Storm Water Pollution Prevention Plan ("SWPPP") tailored specifically for the facility. The SWPPP should detail best management practices, inspections, benchmark sampling and analysis, and other measures taken to reduce or eliminate the discharge of pollutants to the Rio Grande. Respondent shall also submit a copy of the SWPPP to EPA for review. Guidance in developing the SWPPP maybe found via the internet: www.epa.gov/npdes/stormwater/swppp.

E. Within thirty (30) days of the effective date of this Order, the Respondent shall submit a written certification of compliance with this Order to EPA Region 6. All correspondence should be addressed to:

Mrs. Linda Smith
Water Enforcement Branch (6EN-WM)
EPA, Region 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202-2733

GENERAL PROVISIONS

Issuance of this Order shall not be deemed an election by EPA to waive any administrative or judicial, civil or criminal action to seek penalties, fines, or other relief under the Act for the violations cited herein, or other violations that become known to EPA. EPA reserves the right to seek any remedy available under the law that it deems appropriate.

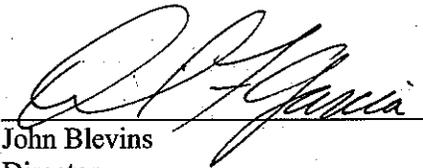
Failure to comply with this Order or the Act can result in further administrative action, or a civil judicial action initiated by the United States Department of Justice.

Compliance with the terms and conditions of this Order does not relieve the Respondent of its obligation to comply with all applicable federal, state, or local laws or regulations.

The effective date of this Order is the date it is received by the Respondent.

Date

4/9/12


John Blevins

Director

Compliance Assurance and
Enforcement Division

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of

City of Grants,
a New Mexico Municipality,

Respondent

NPDES Facility No. NMU001762

§ Docket No. CWA-06-2012-1783
§
§
§ Proceeding to Assess a
§ Civil Penalty under Section 309(g)
§ of the Clean Water Act
§
§ 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," including rules related to administrative proceedings not governed by Section 554 of the Administrative Procedures Act, 40 C.F.R. §§ 22.50 through 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. The City of Grants (“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 wastewater treatment plant (“WWTP”) treating domestic sewage, located at George Hanosh Boulevard, in Grants, Cibola County, New Mexico (“facility”), and was therefore an “owner or operator” within the meaning of 40 C.F.R. § 122.2.
3. At all relevant times, the facility was a “point source” of a “discharge” of “pollutants” with its storm water associated with industrial activities to the receiving waters of the Rio Grande, which is 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.
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. Respondent applied for and was issued NPDES Permit No. NM0020737 ("NPDES Permit") under Section 402 of the Act, 33 U.S.C. § 1342, which became effective on August 30, 1988. At all relevant times, Respondent was authorized to discharge treated waste water from the WWTP but only in compliance with the terms of the NPDES Permit. The NPDES Permit did not cover storm water discharges from the WWTP.

8. 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.

9. As directed by Section 402(p) of the Act, 33 U.S.C. § 1342(p), EPA has issued regulations that further define requirements for NPDES permits for storm water discharges. The regulations include those codified at 40 C.F.R. §§ 122.21 and 122.26.

10. As specified in 40 C.F.R. § 122.26(b)(14)(ix), industrial activities include treatment works treating domestic sewage.

11. Pursuant to Section 402(a) of the Act, EPA issued the Storm Water General Permit for Industrial Activities (65 Fed. Reg. No. 210, 64746-64880, September 16, 2008)

("SWMSGP"). The SWMSGP authorized "storm water discharges associated with industrial activity" to "waters of the United States" (including discharges to or through municipal separate storm sewer systems), but only in accordance with the conditions of the permit.

12. Respondent conducted treatment activities at the facility at all times relevant to this action.

13. A review of EPA's permit applications database established that Respondent had not applied for, or obtained, NPDES permit coverage by filing a Notice of Intent to be covered by a SWMSGP for discharges from the facility.

14. Because Respondent did not have authorization to discharge pollutants in its storm water from September 2010 to September 2011, 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 September 1, 2010 and September 1, 2011.

15. 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.

16. EPA has notified the NMED 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).

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 comment 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)(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 twelve thousand six hundred dollars (\$12,600.00).

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 included 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 the 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 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).

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 thirty (30) 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:

Mr. Efen Ordoñez (6RC-EW)
Water Legal Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

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

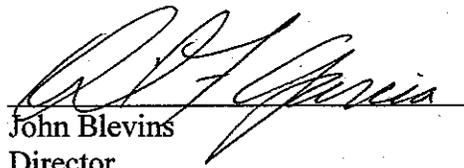
28. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed 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 Mrs. Linda Smith, of my staff, at (214) 665-6641.

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.

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

4/9/12


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. Bob Horacek, City Manager
City of Grants
P.O. Box 879
Grants, NM 87020

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

Copy hand-delivered: Mr. Efren Ordoñez (6RC-EW)
Water Legal Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

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 8472

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 Administrative Penalty Assessment
Docket Number: CWA-06-2012-1783
NPDES Facility Number: NMU001762

Dear Mr. Bearzi:

Enclosed is a copy of the Administrative Complaint (Complaint) which the Environmental Protection Agency (EPA) is issuing to City of Grants (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 \$12,600.00 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 EPA 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 Mrs. Linda Smith, of my staff, at (214) 665-6641.

Sincerely,

A handwritten signature in black ink, appearing to read "John Blevins".

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure