



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

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

OCT 24 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7011 0110 0001 3590 6414

Mr. Tod W. Stevenson  
Director of Administration  
New Mexico Department of Game & Fish  
P.O. Box 25112  
Santa Fe, NM 87504

Re: Notice of Proposed Assessment of Class I Civil Penalty  
Docket Number: CWA-06-2011-1900  
NPDES Permit Number: NM0030121

Dear Mr. Stevenson:

Enclosed is an Administrative Complaint (Complaint) issued to the New Mexico Department of Game and Fish for violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Violations at the Lisboa Springs State Trout Hatchery were identified through various communications from the hatchery. The violations alleged include, but are not limited to, the following:

- 1) Failure to notify the Environmental Protection Agency (EPA) of chlorine usage within required time period;
- 2) failure to report Total Residual Chlorine exceedance within required time period; and
- 3) effluent limit exceedance that resulted in a fish kill.

You, as the representative of the New Mexico Department of Game and Fish, 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 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 \$10,000.00 may be assessed against you without further proceedings.

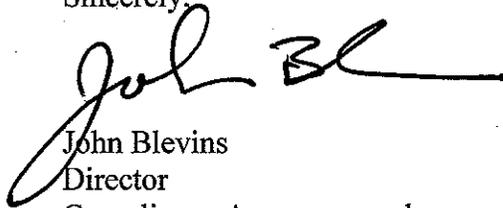
Whether or not you request a hearing, we invite you to confer informally with the EPA concerning the alleged violation and the amount of the proposed penalty. You may represent the New Mexico Department of Game and Fish or be represented by an attorney at any conference, whether in person or by telephone. 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.

Re: Administrative Complaint  
New Mexico Department of Game and Fish

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The EPA is committed to ensuring compliance with the requirements of the National Pollutant Discharge Elimination System (NPDES) program, 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 Mr. Anthony Loston, of my staff, at (214) 665-3109.

Sincerely,



John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

Enclosures

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

Mr. Michael Sloane  
Chief, Fisheries  
Lisboa Springs State Fish Hatchery  
P.O. Box 25112  
Santa Fe, NM 87504

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

OCT 24 2011

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-06-2011-1900  
NPDES Permit Number: NM0030121

Dear Mr. Bearzi:

Enclosed is a copy of the Administrative Complaint (Complaint) which the Environmental Protection Agency (EPA) is issuing to the State of New Mexico Department of Game and Fish (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 \$10,000.00 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 Mr. Anthony Loston, of my staff, at (214) 665-3109.

Sincerely,

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

John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

Enclosure

## FACT SHEET – CONCLUDED ENFORCEMENT ACTION

<b>DATE SUBMITTED FOR SIGNATURE:</b>	8/2/2011		
<b>FINAL ORDER/CD DATE:</b>			
<b>FACILITY NAME:</b>	New Mexico Department of Game and Fish-Lisboa Springs		
<b>FACILITY LOCATION:</b>	Town of Pecos, NM		
<b>TYPE OF ACTION:</b>	Administrative Penalty Order		
<b>DOCKET NUMBER:</b>	CWA-06-2011-1900		
<b>FACILITY ID NUMBER:</b>	NM0030121		
<b>DOCUMENTS TO SIGN:</b>	APO, cover letter, state letter		
<b>BACKGROUND:</b>	<p>On June 3, 2011, EPA received a phone call from the Hatchery Biologist about a TRC exceedance on May 26, 2011. The TRC exceedance was 953% of the permit limitation. Additionally, on June 3, 2011, the Biologist followed up the non-compliance report with an e-mail. During this time, there was no indication or notification that a fish kill had occurred. It was not until June 6, 2011, that EPA received a written notification that a fish kill occurred; approximately 30 to 40 dead trout were removed from the Pecos River. Per the permit, the facility must notify EPA of usage of chlorine five business days before use. The facility failed to notify EPA of the chlorine usage, the effluent violations, and the fish kill.</p>		
<b>PROPOSED PENALTY/ ENVIRONMENTAL IMPACT:</b>	Penalty assessed at \$10,000.00		
<b>CHALLENGES:</b>	None.		
<b>RECOMMENDATION:</b>	Sign and issue order		
<b>LATTITUDE:</b>		<b>LONGITUDE:</b>	
<b>CASE SUMMARY:</b> DO NOT include any <b>ENFORCEMENT SENSITIVE INFORMATION</b> in the summary	On <Enter Date>, EPA Region 6 issued an Administrative Penalty Order (APO) under its authority pursuant to Clean Water Act (CWA) to the New Mexico Department of Game and Fish-Lisboa Springs State Trout Hatchery located near the Town of Pecos, New Mexico. The APO was issued in response to violations for failure to notify the EPA in advance for usage of chlorine; exceedance of Total Residual Chlorine; failure to notify the EPA within the required time period for effluent violations; and failure to report a fish kill. The APO issued to the New Mexico Department of Game and Fish assesses a penalty of \$10,000.00. The New Mexico Department of Game and Fish must respond to EPA Region 6 within (30) days of the issuance of the order. For more information, see documents below.		
<b>PROGRAM CONTACT:</b>	Sonia Hall	<b>PHONE:</b>	214.665.7490
<b>PROGRAM SUPERVISOR:</b>	Paulette Johnsey, 214.665.7521		
<b>LEGAL CONTACT:</b>	Christina Kracher, 214.665.8054		
<b>OTHER CONTACTS:</b>	Anthony Loston, 214.665.3109		
<b>ADDITIONAL INFORMATION:</b>			

❖ Cell highlighted in **YELLOW** will be published on the Internet, along with a copy of the enforcement document (order, consent decree, etc) – therefore DO NOT include any **ENFORCEMENT SENSITIVE INFORMATION** in these cells.

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

In the Matter of	§ Docket No. CWA-06-2011-1900
	§
	§
New Mexico Department of Game & Fish, State of New Mexico	§ Proceeding to Assess a Class I § Civil Penalty under Section 309(g) § of the Clean Water Act
Respondent	§
	§ ADMINISTRATIVE COMPLAINT
NPDES Number: NM0030121	§

I. Statutory Authority

This Complaint is issued under the authority vested in the Administrator of the U.S. 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 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 the 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 Respondent is a political subdivision of the State of New Mexico, and as such, the 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 Order ("all relevant times"), the Respondent owned or operated the Lisboa Springs State Trout Hatchery, located off State Highway 63, approximately 2 miles north of the Town of Pecos, in San Miguel 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;" specifically, produced wastewater to the receiving waters of the Pecos River in Segment No. 20.6.4.217 of the Pecos River 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 the Respondent owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States, the 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. The Respondent applied for and was issued NPDES Permit No. NM0030121 ("permit") under Section 402 of the Act, 33 U.S.C. § 1342, which became effective on October 1, 2006. At all relevant times, the Respondent was authorized to discharge pollutants from the facility to waters of the United States only in compliance with the specific terms and conditions of the permit.

8. Parts III.C and III.D of the permit require the Respondent to sample and test its effluent and monitor its compliance with permit conditions according to specific procedures in order to determine the facility's compliance or non-compliance with the permit and applicable regulations. They also require the Respondent to file with EPA certified Discharge Monitoring Reports ("DMRs") of the results of monitoring and Non-Compliance Reports when appropriate.

9. Part I.A of the permit places certain limitations on the quality and quantity of effluent discharged by the Respondent. The relevant discharge limitations are specified below at Outfall 002:

Effluent Characteristics	Discharge Limitations		
	(lbs./day) Daily Avg.	(mg/L) Daily Avg.	Daily Max.
Total Residual Chlorine (TRC)	N/A	N/A	19 µg/L

10. On June 3, 2011, EPA received a verbal non-compliance notification for Total Residual Chlorine ("TRC") exceedance of 200 µg/L that occurred on May 26, 2011. On June 8, 2011, the EPA received a written non-compliance notification regarding the TRC exceedance. The chlorinated water released on May 26, 2011, into the Pecos River resulted in a fish kill, as observed and reported by Respondent in its written non-compliance notification.

11. Pursuant to Part II.E of the permit, the Respondent must notify the EPA in writing during times when chlorine is used in the treatment process for cleaning of the aquatic production system and/or to eliminate parasites. The notification of chlorine use must be submitted to the EPA within five (5) business days of the decision of usage. The notification must give the expected date and duration of usage. Part II.E of the permit was violated in that Respondent failed to notify the EPA of its decision of usage of chlorine in the treatment process.

12. Pursuant to Part II.A of the permit, violations of daily maximum limitations for TRC shall be reported orally to EPA within 24-hours from the time the respondent becomes aware of the violation followed by a written report to EPA within five (5) days. Part II.A of the permit was violated in that the Respondent failed to report the TRC exceedance within the required time period.

13. Each instance in which Respondent discharged pollutants to waters of the United States in amounts exceeding the effluent limitations contained in the permit was a violation of the permit and of Section 301 of the Act, 33 U.S.C. § 1311.

14. 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.

15. 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 the 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 Section 309(g)(1) and Section(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 the Respondent a civil penalty of ten thousand dollars (\$10,000.00).

18. The proposed penalty amount has been 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 violation(s), economic benefits, if any, prior history of such violations, if any, degree of culpability, and such matters as justice may require.

19. Payment shall be made by one of the following methods within thirty (30) days of the effective date of this document to one of the following addresses:

- a. By mailing a bank check, cashier's check, or certified check payable to "Treasurer, United States":

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

- b. By wire transfer to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

- c. By overnight mail (Express, FedEx, DHL, etc.) to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

d. By credit card payments to:

<https://www.pay.gov/paygov/>  
(enter sfo 1.1 in the search field)

“In the Matter of the State of New Mexico Department of Game & Fish, Docket No. CWA-06-2011-1900” should be clearly marked on the check or other remittance to ensure proper credit is given when payment is received.

20. Respondent shall send simultaneous notices of such payments, including copies of the check or instrument of payment, to the following:

- a. Water Resources Section (6EN-WR)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733
- b. Chief, Water Enforcement Branch (6RC-EW)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733
- c. Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

21. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, the EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this Complaint will begin to accrue thirty (30) days after the effective date of the Complaint and will be recovered by the EPA on any amount of the civil

penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue.

22. The EPA will also assess a fifteen dollar (\$15.00) administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional fifteen dollars (\$15.00) for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. Other penalties for failure to make a payment may also apply.

23. Failure by Respondent to pay the penalty assessed according to the terms of this Complaint in full, by its due date, may subject Respondent to a civil action to collect the assessed penalty and any accrued interest or penalties. In the event a collection action is necessary, Respondent shall pay, in addition to any applicable penalties, fees, and interest described herein, all reasonable costs and expenses, including legal expenses and court costs, incurred by the United States for enforcement and collection proceedings for non-payment of the amounts agreed hereunder. In any such collection action, the validity, amount, and appropriateness of the penalty, and the terms of this Complaint, shall not be subject to review.

24. Complainant has specified that the administrative procedures specified in 40 C.F.R. Part 22, Subpart I, shall apply to this case, and the administrative proceedings shall not be governed by Section 554 of the Administrative Practice Act. However, pursuant to 40 C.F.R. § 22.42(b), Respondent has a right to elect a hearing on the record in accordance with 5 U.S.C. § 554, and Respondent waives this right unless Respondent in its Answer requests a hearing in accordance with 5 U.S.C. § 554.

#### IV. Failure to File an Answer

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

26. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15 (copy enclosed). 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 the 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 the 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 the Respondent without further proceedings thirty (30) days after a Final Default Order is issued.

28. The 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

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

Ms. Christina Kracher (6RC-EW)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

29. The Answer must be signed by the Respondent, the Respondent's counsel, or other representative on behalf of the 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 the Respondent and the Respondent's counsel. All other pleadings must be similarly signed and filed.

#### V. Notice of Opportunity to Request a Hearing

30. The 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 the Respondent's Answer to this Complaint; however, as discussed above, the 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).

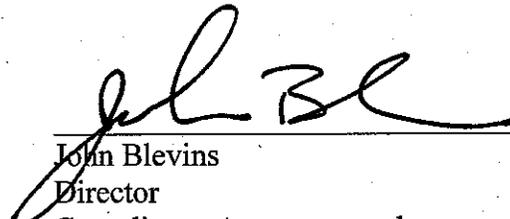
#### VI. Settlement

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, the Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. The 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 Mr. Anthony Loston at (214) 665-3109 or Ms. Sonia Hall at (214) 665-7490.

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 the 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 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 the 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.

10.24.11  
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 Ave., Suite 1200  
Dallas, TX 75202-2733

Copy by certified mail,  
return receipt requested: Mr. Tod W. Stevenson  
State of New Mexico  
Department of Game & Fish  
P.O. Box 25112  
Santa Fe, NM 87504

Mr. Michael Sloane  
Chief, Fisheries  
Lisboa Springs State Fish Hatchery  
P.O. Box 25112  
Santa Fe, NM 87504

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: Ms. Christina Kracher (6RC-EW)  
U.S. EPA, Region 6  
1445 Ross Ave., Suite 1200  
Dallas, TX 75202-2733

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