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

OCT 25 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7011 0110 0001 3590 6186

The Honorable Richard J. Berry
Mayor, City of Albuquerque
P.O. Box 1293
Albuquerque, NM 87103

Re: Administrative Order, Docket Number: CWA-06-2011-1901
NPDES MS4 Permit Number: NMS000101

Dear Mayor Berry:

Enclosed is an Administrative Order (AO) issued to the City of Albuquerque for violation of the Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.). Violations were identified during our September 22, 2009, Municipal Separate Storm Sewer System (MS4) audit. The violations were discussed with your manager, Mr. Roland Pentilla, during the audit. The violations found include, but are not limited to, the following:

a) Failure to develop and implement an effective Storm Water Management Program (SWMP);

b) failure to develop and implement Measurable Goals to assess the effectiveness and performance of the Best Management Practices implemented for each element of the SWMP to reduce pollutants in storm water that may discharge into the MS4; and

c) failure to update SWMPs to reflect the current operation and status of each implemented SWMP.

The AO does not assess a monetary penalty; however, it does require compliance with applicable federal regulations. The first compliance deadline is within ninety (90) days of the issuance date of the AO. The Environmental Protection Agency 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. Please reference AO Docket Number CWA-06-2011-1901 and NPDES Permit Number NMS000101 on your response.

If you have any questions, please contact Ms. Diana McDonald, of my staff, at (214) 665-7495.

Sincerely,

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

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

Mr. Roland Pentilla, Manager
Storm Drainage Division
Department of Municipal Development
City of Albuquerque
P.O. Box 1293
Albuquerque, NM 87103

U.S. ENVIRONMENTAL PROTECTION AGENCY-REGION 6
FINDINGS OF VIOLATION AND COMPLIANCE ORDER
In the Matter of City of Albuquerque, Respondent
Docket No. CWA-06-2011-1901, NPDES Permit No. NMS000101

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

FINDINGS

1. The City of Albuquerque ("Respondent") is a municipality chartered under the laws of the State of New Mexico, and as such, Respondent is a "person," within the meaning of 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 Municipal Separate Storm Sewer System ("MS4") 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 MS4 acted as a "point source" of a "discharge" of "pollutants" to "waters 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. As a municipality that discharges its storm water to the MS4 it owns or operates, thence to "waters of the United States," Respondent and the MS4 are subject to the regulations promulgated by EPA pursuant to 40 C.F.R. § 122.26(d)(2)(iv), 40 C.F.R. § 122.26(d)(2)(v), and 40 C.F.R. § 122.42(c) and the Act.

4. 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, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

5. 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.

6. On November 16, 1990, EPA published regulations, (the "Phase I Rule"), requiring NPDES permit coverage for certain industrial, construction and municipal sources of storm water runoff, thereby changing the way that storm water is regulated at the state and federal levels. Under the Phase I Rule, EPA issued MS4 Permit Number NMS000101 ("permit") to the City of Albuquerque on October 31, 2003, which became effective on December 1, 2003, and which, among other things, authorized Respondent to discharge pollutants through the MS4 to waters of the United States only in compliance with the specific terms of the permit. This permit required the Respondent to implement a comprehensive Storm Water Management Program ("SWMP") specific to the permit. The permit expired on November 30, 2008, and was administratively extended until the issuance of a new permit. The City of Albuquerque is a co-permittee under this permit, along with the New Mexico Department of Transportation, the Albuquerque Metropolitan Arroyo Flood Control Authority, and the University of New Mexico.

7. During September 22 through 24, 2009, EPA conducted an audit of the Respondent's SWMP to evaluate its compliance with the permit. As a result of the audit, the violations and concerns listed in paragraphs 8-15 below were found.

8. Part II of the permit requires the development, revision and implementation of a comprehensive SWMP, including pollution prevention measures, treatment or removal techniques, storm water monitoring, use of legal authority, and other appropriate means to control the quality of storm water discharged from the MS4. Although Respondent created a comprehensive SWMP, Respondent failed to develop, revise and implement it to determine its effectiveness and performance in reducing pollutants discharged in storm water. The comprehensive SWMP must address: 1) Structural Controls and Storm Water Collection System Operations; 2) Areas of New Development and Significant Re-Development; 3) Roadways, Flood Control Projects; 4) Pesticide, Herbicide, and Fertilizer Applications; 5) Illicit Discharges and Improper Disposal; 6) Spill Prevention and Response; 7) Industrial and High Risk Runoff; 8) Construction Site Runoff; 9) Public Education and Public Involvement; 10) Monitoring; 11) Post Construction Runoff Control and Pollution Prevention; and 12) Good Housekeeping for Municipal Operations.

9. Part II of the permit requires that each permittee shall update as necessary, or as required, the SWMP to ensure compliance with the statutory requirements of Section 402(p)(3)(B) of the Act. The SWMP had not been revised to include the activities of the Water Utility Authority, which handles issues with sanitary systems within the MS4.

10. Part II.A.2 of the permit requires a comprehensive master planning process (or its equivalent) to develop, implement, and enforce controls to minimize the discharge of pollutants from areas of new development and significant re-development after construction is completed. Although Respondent stated the program had minimized the amount of dirt and contaminants attached to dirt, there was no effective

mechanism to measure this claim. Respondent failed to 1) conduct storm water inspections; 2) establish an enforcement process to enforce against non-compliant operators; and 3) establish a method to quantify effectiveness of structural controls. Respondent indicated that it does not have enough staff to effectively administer a comprehensive SWMP.

11. Part II.A.3 of the permit requires that public streets, roads, and highways shall be operated and maintained in a manner to minimize the discharge of pollutants. Due to a lack of cooperation and communication between the various city departments, there has been little success in measuring and characterizing the makeup of pollutants on public streets, roads, and highways.

12. Part II.A.4 of the permit requires that impacts on receiving water quality shall be assessed for all flood management projects; however, no effective method had been established to evaluate these SWMP requirements.

13. Part II.A.5 of the permit requires that each permittee shall implement controls to reduce the discharge of pollutants related to the storage and application of pesticides, herbicides, and fertilizers ("PHFs") applied by the permittee's employees or contractors to public right of ways, parks, and other municipal property. Due to lack of cooperation and communication between the various city departments that utilize PHFs, there is no effective method established by Respondent to evaluate the Best Management Practices ("BMPs") implemented for PHFs.

14. Part II.A.8.a of the permit requires that priorities and procedures for inspections, monitoring and establishing and implementing control measures for discharges from Industrial & High Risk Runoff be established. Respondent owns or operates an airport, two transportation yards, one maintenance facility, and one solid waste facility. There are currently no mechanisms in place to determine if those facilities are in compliance with the Act and permit.

15. Part II.A.9.b of the permit requires the development of a program to reduce the discharge of pollutants from construction sites. The program should include scheduled inspections of construction sites and the enforcement of control measure violations. Respondent has no dedicated storm water inspectors to conduct inspections and has not designed a formal enforcement escalation procedure for the storm water program.

16. In accordance with 40 C.F.R. § 122.26(d)(2)(v), there should be an assessment of program controls expected as the result of the SWMP requirements. Respondent has no mechanisms to effectively evaluate controls used to reduce pollutants from discharges of the municipal storm sewer constituents from the MS4.

17. Pursuant to this Order, Respondent is required to comply with the Act and the permit, along with those requirements as set forth in 40 C.F.R. § 122.26(d)(2)(iv) and 40 C.F.R. § 122.42(c)

18. Pursuant to the violations set forth in this Order, Respondent has failed to comply with requirements set forth in the Act, the permit, and applicable EPA regulations.

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 that Respondent take the following actions within ninety (90) days of receipt of this Order:

A. Describe, develop and implement Measurable Goals for evaluating the effectiveness and performance of BMPs developed and implemented for each SWMP to reduce pollutants in storm water that may discharge into the MS4.

B. Develop and implement enforcement strategies to address industrial violations of the permit within five (5) days of the occurrence of a violation(s).

C. Update, as necessary, changes to the components of the SWMP to reflect current implementation and/or maintenance of BMPs and any changes in procedures for each component of the SWMP.

D. Revise the SWMP to include all city sections, departments, and divisions involved in implementation of the SWMP. These sections, departments, and divisions shall provide data to be included in the Annual Report as required by the Act, applicable EPA regulations, and the permit.

E. Part II.G.3 of the permit authorizes the EPA to require changes to the comprehensive SWMP, as needed, to include other conditions deemed necessary to comply with the goals and requirements of the Act. Respondent is also ordered to develop and implement a database related to the implementation of the comprehensive SWMP for documenting information such as 1) scheduled inspections, 2) spill responses, 3) public education events and posted event responses; 4) measurable goal accomplishments, and 5) training for employees and the regulated community.

F. Respondent shall comply with the EPA requirements and standards set forth in the permit, Act, and applicable EPA regulations.

G. Within ninety (90) days of receipt of this Order, Respondent shall provide written certification to EPA, Region 6, that all BMPs, designed to correct deficiencies and prevent future occurrences of the violations cited herein, have been implemented, and that any and all other violations, contained in

this Order have been rectified and compliance obtained. All correspondence should be addressed to:

Ms. Darlene Whitten-Hill
Water Enforcement Branch (6EN-WC)
EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

H. To arrange a meeting, or comment on this matter, please contact Ms. Diana McDonald, of my staff, at (214) 665-7495.

GENERAL PROVISIONS

This Order is effective upon receipt by an authorized representative of the Respondent.

Issuance of this Order shall not be deemed an election by EPA to forego any administrative or judicial, civil or criminal action to seek penalties, fines, or any other relief appropriate under the Act for the violations cited herein or other violations that become known. 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 actions or a civil judicial action initiated by the United States Department of Justice. This Order does not constitute a waiver, suspension, or modification of the terms or conditions of the Respondent's NPDES permit, which remain in full force and effect.

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

This Order shall be binding on the Respondent cited herein and all its heirs, successors, and assignees. No change in ownership of the MS4 shall alter the responsibility of the Respondent under this Order.

10·25·11
Date

John Blevins
Director
Compliance Assurance and
Enforcement Division