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

APR 05 2012

CERTIFIED MAIL–RETURN RECEIPT REQUESTED: 7005 1820 0003 7453 8458

Mr. Robert Perry
Chief Administrative Officer
City of Albuquerque
P.O. Box 1293
Albuquerque, NM 87103

Re: Cease and Desist Administrative Order
Docket Number: CWA-06-2012-1776
NPDES Permit Number: NMS000101

Dear Mr. Perry:

Enclosed is an Administrative Order (AO) issued to the City of Albuquerque (the City) for violation of the Clean Water Act, 33 U.S.C. § 1311. Violations were identified during an inspection of EXPO New Mexico/The Downs site conducted by the New Mexico Environment Department. The violations alleged include, but are not limited to, the following:

1) Failure to adequately implement the *Illicit Discharges and Improper Disposal* program contained in Part II.A.6 of the Municipal Separate Storm Sewer System (MS4) permit; and

2) acceptance of unpermitted discharges from the EXPO New Mexico/The Downs site.

Documents submitted to EPA in response to a Section 308 Request for Information indicate that the City owns and maintains all the storm water drainage infrastructure in and adjacent to the EXPO New Mexico/The Downs site. Enclosed is an easement agreement that clearly states that the City was granted a perpetual easement over a portion of Expo New Mexico's property for the purpose of permitting the construction and maintenance of a storm water detention facility, including inflow lines and an outflow pipe. A briefing document, also obtained through the Section 308 Request for Information, states that storm water drainage from the City's streets combines with runoff from animal waste areas onsite to increase the E Coli loads in the MS4 discharges to the Rio Grande.

Effective upon receipt of this AO, you shall immediately cease and desist the acceptance of all unpermitted discharges of pollutants from the EXPO New Mexico/The Downs site, and comply with all other provisions of this AO. 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, please contact Ms. Diana McDonald, of my staff, at (214) 665-7495.

Sincerely,

John Blevins
Director
Compliance and 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. Michael J. Riordan, P.E.
Department of Municipal Development
City of Albuquerque
P.O. Box 1293
Albuquerque, NM 87103

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
1445 Ross Avenue, Suite 1200, Dallas, TX 75202
FINDINGS OF VIOLATION AND COMPLIANCE ORDER
Docket Number: CWA-06-2012-1776, NPDES Permit Number: 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 ("Act"), 33 U.S.C. § 1319(a). The Administrator of EPA has delegated the authority to issue this Order to the Regional Administrator of EPA Region 6, who has further delegated this 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, is a "person," as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

2. At all times relevant to this Order, the 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, manmade channels, or storm drains ("facility") and was therefore an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

3. At all times relevant to the violations alleged herein, the facility acted as a "point source" for the unpermitted "discharge" of "pollutant[s]" received from the EXPO New Mexico/The Downs site and discharged via the City of Albuquerque's MS4 to the receiving waters of the Rio Grande, which is considered a "water of the United States" as defined by 40 C.F.R. § 122.2. As a result, the Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System ("NPDES") program.

4. On December 1, 2003, EPA issued NPDES permit number NMS000101 ("the permit") to the Respondent, along with its co-permittees, the Albuquerque Metropolitan Arroyo Flood Control Authority; the New Mexico Department of Transportation, District III; and the University of New Mexico, which are located in "urbanized areas" as determined by the latest census.

5. Beginning on December 1, 2003, Respondent was authorized to discharge pollutants to waters of the United States, but only in compliance with the specific terms and conditions of the permit.

6. On November 15, 2011, an inspection was conducted at the EXPO New Mexico/The Downs at Albuquerque site by the New Mexico Environment Department. During the course of the inspection, it was determined that EXPO New Mexico/The Downs site had unpermitted discharges of pollutants with its storm water to the Respondent's MS4, and that the Respondent had failed to implement the *Illicit discharges and Improper Disposal* program requirement pursuant to Part II.A.6 of the Permit. Part II.A.6.a(2) of the Permit states that "non-storm water discharges exempted from the prohibition on non-storm water must not be reasonably expected (based on information available to the permittees) to be significant sources of pollutants to the MS4 because of the nature of the discharges."

7. Respondent violated Part II.A.6.a(2) of the Permit by accepting runoff from approximately 2.6 square miles of neighborhood immediately bordering EXPO/New Mexico to the East and storm water with its pollutants from the racetrack, stable area, numerous wash racks, and the manure storage areas and discharging it to the MS4.

8. Each violation of the conditions of the permit described above is a violation of Section 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 orders that Respondent take the following action upon receipt of this Order:

A. Immediately cease and desist all non-storm water discharges of pollutants to the MS4 facility.

B. Within ninety (90) days of the effective date of this Order, the Respondent shall submit a written schedule of compliance for the elimination of non-storm water discharges to the MS4 from the EXPO New Mexico/ The Downs site.

C. Within ninety (90) days of the effective date of this Order, the Respondent shall submit a Plan of Action to eliminate all unpermitted discharges to the MS4.

D. Within ninety (90) days of the effective date of this Order, the Respondent shall submit a list of funding sources for implementing the *Illicit discharges and Improper Disposal* program, which involves the construction and maintenance of a storm water detention facility, including inflow lines and an outflow pipe, at the EXPO New Mexico/The Downs site.

E. Within one-hundred and twenty (120) days of the effective date of this Order, the Respondent shall conduct a comprehensive study of all other similar activities within the MS4 to ascertain if there are any other unpermitted discharges to the MS4, and submit the results of that study to the EPA.

F. Within one hour after a rain event, the Respondent shall sample storm water discharges that drain from the approximately 2.6 square miles of adjacent neighborhoods that directly border EXPO New Mexico/The Downs site to the East. The Respondent should also sample storm water discharges that drain from the EXPO New Mexico/ The Downs at the drop inlets located throughout the stable area. Sampling results of the two samples, and a comparison of both, should be reported to the Region within thirty (30) days after the results are known. Parameters should be tested for Nitrogen (both nitrate and ammonium), Phosphorus (both total and dissolved), Fecal Coliform, E-Coli, and Biochemical Oxygen Demand. The sampling should be performed pursuant to 40 C.F.R. § 136.

G. Within one-hundred and twenty (120) days of the effective date of this Order, the Respondent shall submit a written certification of compliance to the EPA, Region 6. All correspondence should be addressed to:

Ms. Diana McDonald
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.

4.5.12
Date

John Blevins
Director
Compliance Assurance and
Enforcement Division