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RON CURRY  
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Deputy Secretary

**Certified Mail - Return Receipt Requested**

November 29, 2010

Murray Brott, President  
The Brott Corporation  
5 Altazano Drive  
Santa Fe, New Mexico 87505

**RE: NPDES Construction Storm Water, SIC 1542, NPDES Compliance Evaluation Inspection,  
The Brott Corporation / A-1 Self Storage, Rio Rancho, NMU001693, November 12, 2010**

Dear Mr. Brott:

Enclosed, please find a copy of the report for the referenced inspection that the New Mexico Environment Department (NMED) conducted at a construction site for which you may be an "operator" (see 2008 Construction General Permit (CGP), Definitions, Appendix A). The NMED conducted this inspection on behalf of the U.S. Environmental Protection Agency (USEPA). This inspection report will be sent to the USEPA in Dallas for their review. These inspections are used by USEPA to determine compliance with the National Pollutant Discharge Elimination System (NPDES) permitting program in accordance with requirements of the federal Clean Water Act.

Problems noted during this inspection are discussed in the attached further explanations. You are encouraged to review the inspection report; and required to correct any problems noted during the inspection and to modify your operational and/or administrative procedures, as appropriate. Further, you are encouraged to notify in writing, both USEPA (Diana McDonald, USEPA 6EN-WM, 1445 Ross Avenue, Dallas, Texas 75202-2733) and NMED Surface Water Quality Bureau Program Manager (address above) regarding modifications and compliance schedules.

I appreciate the cooperation of Mr. Mike Mason in providing me your contact information and Mr. David K. Montoya, DKM Construction, Inc. during the inspection. If you have any questions about this inspection report, please contact me at (505) 827-0418.

Sincerely,

*/s/Erin S. Trujillo*

Erin S. Trujillo  
Surface Water Quality Bureau

cc: Marcia Gail Adams, EPA (6EN-AS) by e-mail  
Samuel Tate, EPA (6EN-AS) by e-mail  
Carol Peters-Wagnon, EPA (6EN-WM) by e-mail  
Diana McDonald, USEPA (6EN-WM) by e-mail  
Jennifer Ickes, NMED District I Manager by e-mail



**NPDES Construction Storm Water Compliance Evaluation Inspection**  
**A-1 Self Storage Expansion, Rio Rancho**  
**The Brott Corporation (NMU001693) and DKM Construction, Inc. (NMU001694)**  
**November 12, 2010**

**Further Explanations**

**Introduction**

On November 12, 2010, a Compliance Evaluation Inspection (CEI) was conducted by Erin S. Trujillo of the NMED SWQB at an approximately 2-acre disturbed commercial construction site at the northeast corner of NM 528 (Rio Rancho Boulevard SE) Frontage Road and Industrial Park Place intersection in Rio Rancho, New Mexico following receipt of a citizen complaint concerning permit coverage. Stormwater discharges to Southern Sandoval County Arroyo Flood Control Authority (SSCAFCA) Municipal Separate Storm Sewer System (MS4) and Arroyo de los Montoyas, thence to Rio Grande (Segment 20.6.4.106 NMAC). The purpose of this inspection was to document the facility's status regarding the NPDES storm water permit program and storm water regulations at 40 Code of Federal Regulations Part 122.26.

Upon arrival at approximately 1045 hours on the day of the inspection, the inspector contacted Mr. Mason, the owner's existing storage facility property manager to confirm ownership of the adjacent construction site. The inspector then contacted Mr. Montoya and left a telephone message with Mr. Brott. The inspector took photographs of the site from public right of way until Mr. Montoya's arrival at approximately 1125 hours. Upon Mr. Montoya's arrival, the inspector made introductions, presented credentials and explained the purpose of the inspection. The inspector toured the site and conducted a preliminary exit interview with Mr. Montoya and Mr. Tim Slatunas, Superior Stormwater Services LLC by telephone on site. The inspector left the site at approximately 1220 hours. In a later telephone conversation, the inspector briefly explained permitting requirements, purpose of the inspection and provided preliminary findings to Mr. Brott. For more information, the inspector sent an e-mail on November 12, 2010 to Mr. Brott with website links for USEPA's Construction General Permit (CGP).

This report is based on a review of the EPA online notice of intent (eNOI) database, review of files maintained by NMED, readily available on-line aerial photographs, on-site observation by NMED personnel, and verbal information provided by the owner and operator representatives.

**Clean Water Act and Permit Requirements**

Section 301 (a) of the Federal Water Pollution Control Act states that *"Except as in compliance with this section and sections 302, 306, 307, 318, 402 and 404 of this Act, the discharge of any pollutant by any person shall be unlawful."*

Per 40 CFR Part 122.26, storm water discharges associated with construction activity are required to obtain coverage under an NPDES permit. Large construction activity is defined in 40 CFR Part 122.26(b)(14)(x), as follows: *"Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more."* Beginning on March 10, 2003, storm water discharges associated with small construction activity became regulated according to 40 CFR Part 122.26(b)(15)(i) for *"[c]onstruction activities including clearing, grading and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre and less than five acres."*

Permit coverage is required from the "commencement of construction activities" until "final stabilization" as defined in Appendix A of the USEPA's 2008 Construction General Permit (CGP). Among other things, the CGP requires that a Storm Water Pollution Prevention Plan (SWPPP) be prepared for the site

and that appropriate Best Management Practices (BMPs) be installed and maintained both during construction and after construction to prevent, to the extent practicable, pollutants (primarily sediment, oil & grease and construction materials from the construction site) in storm water runoff from entering waters of the U.S. This permit also requires that permanent stabilization measures (revegetation, paving, etc.) and permanent storm water management measures (storm water detention/retention structures, velocity dissipation devices, etc.) be implemented post construction to minimize, in the long term, pollutants in storm water runoff from entering these waters.

The 2008 CGP, Definitions, Appendix A, states, “operator for the purpose of this permit and in the context of stormwater associated with construction activity, means any party associated with a construction project that meets either of the following two criteria: 1. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or 2. The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a SWPPP for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions).”

## **Findings**

Although some disturbance and un-stabilized areas at the site may be attributed to activities by the previous owner(s), greater than one (1) acre of the site appears to have been disturbed or re-disturbed by recent construction and support activity to expand a self storage facility. On-site construction and support activity included additional clearing and grubbing (vegetation removal between August 10-15, 2010 and concrete pad removal starting September 27, 2010), stockpiling of excavated material, perimeter wall construction, equipment staging and material storage. On-site construction activities were halted on November 10, 2010 when the City of Rio Rancho Planning Department pulled the building permit(s) for the site. In addition to completing the wall, the project is to include additional grading and drainage improvements and sediment ponds, covered parking structures, and stabilized (paved or gravel) parking areas.

Neither The Brott Corporation (owner/developer for the site having operational control over construction plans and specifications) nor DKM Construction, Inc. (operator/general contractor with day to day operational control) hired by The Brott Corporation prepared a SWPPP, or applied for or obtained permit coverage under the 2008 CGP prior to the start of clearing activities between August 10 to August 15, 2010 or by the day of this inspection. Owner and operator representatives stated that they were unaware of the need for obtaining permit coverage prior to starting clearing and wall construction activities. DKM Construction, Inc. had become aware of the need to obtain permit coverage about the time the City halted construction according to the on-site representative. DKM Construction, Inc. had contacted a consultant to prepare a SWPPP for the site and to assist with obtaining permit coverage, but these activities were not complete on the day of the inspection.

Construction materials stored in an on-site metal building were protected from rain and precipitation. But, some windblown construction trash and debris was at the fence in the northeast corner of the construction site. Some accumulated sediment from vehicle tracking was also observed off-site. There were also no erosion or sediment control, or stabilization measures for stockpiles. There were no erosion or sediment control measures along the eastern property boundary where discharges would be off-site toward a tributary and a sediment retention pond on the owner’s adjacent storage facility property, thence to Arroyo de los Montoyas. Silt fence along the west site boundary was not trenched and contained gaps; therefore, this measure would not provide erosion or sediment control for the construction site. It is possible that the silt fence along the western boundary was intended to serve other purposes (e.g., wind block, additional site access control), but there was no SWPPP to document the selection, design, installation, and implementation of control measures. If not properly managed or minimized in accordance with the USEPA’s NPDES CGP, pollutants in stormwater and allowable non-stormwater discharges from this construction activity, would be a potential threat to water quality.

| <b>NMED/SWQB</b><br><b>Official Photograph Log</b><br><b>Photo # 1</b>   |                  |                   |
|--|------------------|-------------------|
| Photographer: Erin Trujillo  | Date: 11/12/2010 | Time: 1116 hours  |
| City/County: Rio Rancho / Sandoval County  |                  | State: New Mexico |
| Location: A-1 Self Storage Expansion, Industrial Park Place, Rio Rancho  |                  |                   |
| Subject: Off-site accumulated sediment and gravel in off-site cul-de-sac near construction entrance. Discharge from cul-de-sac is towards a stormwater drain inlet not shown in photo. |                  |                   |



| <b>NMED/SWQB</b><br><b>Official Photograph Log</b><br><b>Photo # 2</b>   |                  |                   |
|--|------------------|-------------------|
| Photographer: Erin Trujillo  | Date: 11/12/2010 | Time: 1118 hours  |
| City/County: Rio Rancho / Sandoval County  |                  | State: New Mexico |
| Location: A-1 Self Storage Expansion, Industrial Park Place, Rio Rancho  |                  |                   |
| Subject: Arrow points to stockpile in northeast corner of construction site. Operator on-site representative stated that initial clearing and preliminary grading occurred along this eastern boundary. Site entrance did not have track out control measures. |                  |                   |



| <b>NMED/SWQB<br/>         Official Photograph Log<br/>         Photo # 3</b>  |                  |                   |
|---|------------------|-------------------|
| Photographer: Erin Trujillo   | Date: 11/12/2010 | Time: 1118 hours  |
| City/County: Rio Rancho / Sandoval County   |                  | State: New Mexico |
| Location: A-1 Self Storage Expansion, Industrial Park Place, Rio Rancho   |                  |                   |
| Subject: Off-site accumulated sediment from vehicle tracking at construction site entrance shown in previous photo. |                  |                   |



| <b>NMED/SWQB<br/>         Official Photograph Log<br/>         Photo # 4</b>  |                  |                   |
|---|------------------|-------------------|
| Photographer: Erin Trujillo   | Date: 11/12/2010 | Time: 1119 hours  |
| City/County: Rio Rancho / Sandoval County   |                  | State: New Mexico |
| Location: A-1 Self Storage Expansion, Industrial Park Place, Rio Rancho   |                  |                   |
| Subject: Soil disturbance south of wall. Arrow points to soil stockpile that appears to be from trenching activities. |                  |                   |



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|--|------------------|-------------------|
| <b>NMED/SWQB<br/>Official Photograph Log<br/>Photo # 5</b>   |                  |                   |
| Photographer: Erin Trujillo  | Date: 11/12/2010 | Time: 1122 hours  |
| City/County: Rio Rancho / Sandoval County  |                  | State: New Mexico |
| Location: A-1 Self Storage Expansion, Industrial Park Place, Rio Rancho  |                  |                   |
| Subject: Silt fence along western property boundary that is not trenched. There is also a gap at white electrical box (right side of photo). |                  |                   |



|  |                  |                   |
|--|------------------|-------------------|
| <b>NMED/SWQB<br/>Official Photograph Log<br/>Photo # 6</b>   |                  |                   |
| Photographer: Erin Trujillo  | Date: 11/12/2010 | Time: 1124 hours  |
| City/County: Rio Rancho / Sandoval County  |                  | State: New Mexico |
| Location: A-1 Self Storage Expansion, Industrial Park Place, Rio Rancho  |                  |                   |
| Subject: Overall photo showing unfinished wall along northern property boundary, on-site stockpiles and soil disturbance visible from northwest corner of construction site. |                  |                   |



| <b>NMED/SWQB</b><br><b>Official Photograph Log</b><br><b>Photo # 7</b>  |                  |                   |
|---|------------------|-------------------|
| Photographer: Erin Trujillo   | Date: 11/12/2010 | Time: 1135 hours  |
| City/County: Rio Rancho / Sandoval County   |                  | State: New Mexico |
| Location: A-1 Self Storage Expansion, Industrial Park Place, Rio Rancho   |                  |                   |
| Subject: Accumulated trash (paint can, water bottle, cardboard boxes and bags) in northeast corner of site. Most site drainage appears toward this corner, thence off-site toward tributary along northern property boundary and sedimentation pond in owner's adjacent property, thence to Arroyo de los Montoyas. |                  |                   |



| <b>NMED/SWQB</b><br><b>Official Photograph Log</b><br><b>Photo # 8</b>   |                  |                   |
|--|------------------|-------------------|
| Photographer: Erin Trujillo  | Date: 11/12/2010 | Time: 1144 hours  |
| City/County: Rio Rancho / Sandoval County  |                  | State: New Mexico |
| Location: A-1 Self Storage Expansion, Industrial Park Place, Rio Rancho  |                  |                   |
| Subject: Overall photo showing wall, equipment staging/storage, and soil disturbance visible from southwest corner of construction site. |                  |                   |

