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ENVIRONMENT DEPARTMENT

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DAVE MAKIIN
Secretary

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Deputy Secretary

JAMES H. DAVIS, Ph.D.
Director
Resource Protection Division

Certified Mail - Return Receipt Requested

April 4, 2012

Mr. Smitty Humphrey
742 Curry Rd. 10
Clovis, NM 88101

RE: Construction Stormwater, SIC 5154, NPDES Compliance Evaluation Inspection, Calvin Pareo Sale Barn, NPDES Permit NMU001788, Portales, New Mexico, March 16, 2012

Dear Mr. Humphrey:

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 Appendix A in permit). 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 checklist section of the inspection report. You are encouraged to review the inspection report, 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-WT), 1445 Ross Ave, Dallas, Texas, 75202), NMED (at above address) regarding modifications and compliance schedules.

If you have any questions, please feel free to contact me at the above address or by telephone at (505) 222-9587.

Sincerely,

/s/ Sarah Holcomb

Sarah Holcomb
Surface Water Quality Bureau

Cc: Marcia Gail Adams, USEPA (6EN-AS) (by e-mail)
Samuel Tates, USEPA (6EN-AS) (by e-mail)
Carol Peters-Wagnon, USEPA (6EN-AS) (by e-mail)
Diana McDonald, USEPA (6EN-AS) (by e-mail)
Darlene Whitten-Hill, USEPA (6EN-AS) (by e-mail)
Bill Chavez, NMED District 1 Acting Manager (by e-mail)



NPDES Compliance Inspection Report

Section A: National Data System Coding

Transaction Code	NPDES	yr/mo/day	Inspec. Type	Inspector	Fac Type
1 N 2 5 3 N M U 0 0 1 7 8 8 11 12 1 2 0 3 1 6 17 18 } 19 S 20 2					
Remarks					
C O N S T R U C T I O N ≥ 5 A C R E S					
Inspection Work Days	Facility Evaluation Rating	BI	QA	-----Reserved-----	
67 69	70 2	71 N	72 N	73	74 75 80

Section B: Facility Data

Name and Location of Facility Inspected (For industrial users discharging to POTW, also include POTW name and NPDES permit number) CALVIN PAREO SALE BARN, PORTALES, NM, ROOSEVELT COUNTY: FROM NM 70, HEAD NORTH OF TOWN TO NM 202 AND HEAD EAST. SALE BARN CONSTRUCTION SITE IS ABOUT A MILE DOWN 202.	Entry Time /Date 0915 hours / 3-16-2012	Permit Effective Date 2-16-2012
	Exit Time/Date 1100 hours / 3-16-2012	Permit Expiration Date 2-16-2017
Name(s) of On-Site Representative(s)/Title(s)/Phone and Fax Number(s) MR. SMITTY HUMPHREY, HUMPHREY BROTHERS (575) 769-9650 MR. MIKE FLEN, DAIRY PRODUCERS LIVESTOCK (575) 356-4740	Other Facility Data SIC 5154	
Name, Address of Responsible Official/Title/Phone and Fax Number MR. SMITTY HUMPHREY (575) 769-9650 742 CURRY ROAD 10, CLOVIS, NM 88101	Contacted Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	GPS: N. 34° 14.645" W. -103° 11.688"

Section C: Areas Evaluated During Inspection

(S = Satisfactory, M = Marginal, U = Unsatisfactory, N = Not Evaluated)

U	Permit	N	Flow Measurement	M	Operations & Maintenance	N	CSO/SSO
U	Records/Reports	N	Self-Monitoring Program	N	Sludge Handling/Disposal	N	Pollution Prevention
M	Facility Site Review	N	Compliance Schedules	N	Pretreatment	N	Multimedia
N	Effluent/Receiving Waters	N	Laboratory	U	Storm Water	N	Other:

Section D: Summary of Findings/Comments (Attach additional sheets if necessary)

- INSPECTOR ARRIVED ON SITE AND CONDUCTED AN ENTRANCE INTERVIEW WITH MR. SMITTY HUMPHREY, OF HUMPHREY BROTHERS, THE DIRT WORK CONTRACTOR. THE INSPECTOR MADE INTRODUCTIONS, PRESENTED CREDENTIALS AND EXPLAINED THE PURPOSE OF THE INSPECTION. MR. HUMPHREY GAVE THE INSPECTOR A NUMBER TO REACH MR. CALVIN PAREO, OWNER.
- INSPECTOR THEN CONTACTED MRS. DARCY PAREO, WHO GOT HER IN TOUCH WITH MR. MIKE FLEN, CO-OWNER OF DAIRY PRODUCERS LIVESTOCK.
- INSPECTOR CONDUCTED AN EXIT INTERVIEW WITH MR. FLEN, IN CLOVIS AT APPROXIMATELY 1045 HOURS ON 3-16-2012.

Name(s) and Signature(s) of Inspector(s) Sarah Holcomb /s/ Sarah Holcomb	Agency/Office/Telephone/Fax NMED/SWQB 505-222-9587	Date 4-4-2012
Signature of Management QA Reviewer Richard Powell /s/ Richard Powell	Agency/Office/Phone and Fax Numbers NMED/SWQB 505-827-2798	Date 4-4-2012

Introduction

On March 16, 2012, a Compliance Evaluation Inspection was conducted at a ≥ 5 acre construction site located in Portales, New Mexico. The inspection was conducted by Sarah Holcomb of the NMED/SWQB. The current construction project consists of the clearing of approximately 20 acres in preparation for the building of a sale barn. 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**.

This report is based on review of files maintained by NMED, on-site observation by NMED personnel, and verbal information provided by the facility's representatives, Mr. Smitty Humphrey and Mr. Michael Flen. This site is located near Salt Lake. Storm water runoff from this site discharges to the Yellow House Draw (intermittent HUC12050001), thence to Brazos Headwaters sub-Basin and thence to the Texas-Gulf Basin (20.6.4.113 NMAC).

The inspector arrived at the site at 0915 hours on March 16, 2012. The inspector conducted an entrance interview with Mr. Smitty Humphrey of Humphrey Brothers (the dirt work contractor), where she made introductions, explained the purpose of the inspection, and presented credentials. Mr. Humphreys directed the inspector to contact Mr. and Mrs. Calvin and Darcy Pareo. Mr. Pareo was unavailable on the day of the inspection, so Mrs. Pareo arranged for Mr. Michael Flen to meet her. A formal exit interview to discuss the preliminary findings of the inspection was conducted on site with Mr. Flen at approximately 1045 hours on 3-16-2012. A follow up email was sent to Mr. Flen with more information on permit coverage and requirements on 3-19-2011.

Findings

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."

In addition, 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."

40 Code of Federal Regulations Part 122.21(a) Duty to apply (1) states "Any person who discharges or proposes to discharge pollutants ...must submit a complete application to the Director in accordance with this section and part 124 of this chapter."

According to the facility's representative, and based on a review of the EPA storm water permit database, it has been determined that this owner did not have NPDES construction general storm water permit coverage on the date of this inspection. Calvin Pareo is the owner/developer who has operational control over project specifications, and Humphrey Brothers is the general contractor who has day-to-day operational control of those activities at the construction project. Humphrey Brothers would be responsible for site maintenance which is necessary to ensure compliance with the storm water pollution prevention plan (SWPPP) (if one had been prepared) and other permit conditions.

There was not a pollution prevention plan prepared in written form available at the site for the inspection and adequate stabilization measures were not being implemented at the site. A SWPPP should include the following:

- Site Description
- Description of interim and permanent stabilization practices (e.g., seeding, mulching, etc.)
- Structural Practices (e.g., silt fences, check dams, sediment traps, earth dikes, subsurface drains, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins, etc.)
- Storm Water Management Controls (e.g., detention or retention structures, vegetated swales, etc.) to be installed during the construction process to reduce pollutants in storm water discharged from the site after construction has been completed
- Description of other controls (e.g., waste disposal, procedures to minimize off-site vehicle tracking, dust control, etc.)
- Maintenance and inspection procedures
- Appropriate certifications
- Address New Mexico condition on sediment yield/flow velocity in Part 9.4.1.1 of the CGP

If not properly managed or treated in accordance with an NPDES permit, the construction activities at this site represent a potential threat to water quality through storm water discharges.

Upon completion of construction, this facility will become a sale barn. Pursuant to that fact, requirements of the NPDES CAFO permit were also discussed with Mr. Flen during the exit interview. Mr. Flen indicated that there would be no more than 200-300 head of cattle at the sale barn at one time. However, it is noted that 20 acres is more than enough room to accommodate much larger numbers of cattle. According to 40 CFR 122.23, facilities that house 1,000 head of cattle or more at once for 45 days or more during the year are required to comply with these CAFO regulations. Mr. Flen indicated during the exit interview that there were no plans to build a retention pond at this facility. It is emphasized here that if at any time the threshold requirements noted above in 40 CFR 122.23 are exceeded, modifications (such as a properly sized retention pond and other controls) will need to be made to prevent a discharge of wastewater from the site and comply with the federal regulations at 40 CFR Part 122.23.

The facility's representative was informed of the requirements under the NPDES storm water program regarding permitting requirements, preparation of a SWPPP, and installation of appropriate storm water runoff control practices (per the SWPPP) during the exit interview conducted with Mr. Flen on 3-16-2012. Preliminary findings of the inspection were also discussed during the exit interview.