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## NEW MEXICO ENVIRONMENT DEPARTMENT

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BUTCH TONGATE  
Cabinet Secretary  
J. C. BORREGO  
Acting Deputy Secretary

### **Certified Mail – Return Receipt Requested**

October 19, 2016

Chad Merchant  
13105 CR 1820  
Lubbock, TX 79424

**Re: Family Dollar, Angel Fire; Unpermitted Construction Stormwater; SIC 1542; NPDES Compliance Evaluation Inspection; NPDES Tracking No. NMU001924; September 22, 2016**

Dear Mr. Merchant:

Enclosed please find a copy of the report and check list for the referenced inspection that the New Mexico Environment Department (NMED) conducted at your facility 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.

Introduction, treatment scheme, and problems noted during this inspection are discussed in the “Further Explanations” section of the inspection report.

You are encouraged to review the inspection report, required to correct any problems noted during the inspection, and advised to modify your operational and/or administrative procedures, as appropriate. If you have comments on or concerns with the basis for the findings in the NMED inspection report, please contact us (see the address below) in writing within 30 days from the date of this letter. Further, you are encouraged to notify in writing both the USEPA and NMED regarding modifications and compliance schedules at the addresses below:

Racquel Douglas  
US Environmental Protection Agency, Region VI  
Enforcement Branch (6EN-WM)  
Fountain Place  
1445 Ross Avenue  
Dallas, Texas 75202-2733

Program Manager  
New Mexico Environment Department  
Surface Water Quality Bureau  
Point Source Regulation Section  
P.O. Box 5469  
Santa Fe, New Mexico 87502

If you have any questions about this inspection report, please contact Erin Trujillo at 505-827-0418 or at [erin.trujillo@state.nm.us](mailto:erin.trujillo@state.nm.us).

**Mr. Merchant, Family Dollar, Angel Fire, NMU001924**

**October 19, 2016**

**Page 2 of 2**

Sincerely,

*/s/Sarah Holcomb*

Sarah Holcomb  
Acting Program Manager  
Point Source Regulation Section  
Surface Water Quality Bureau

cc: Carol Peters-Wagnon, USEPA (6EN-WM) by e-mail  
Racquel Douglas, USEPA (6EN-WM) by e-mail  
Darlene Whittten-Hill, USEPA (6EN) by e-mail  
Robert Italiano, NMED District II by e-mail



Form Approved  
OMB No. 2040-0003  
Approval Expires 7-31-85

### 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   9   2   4   11   12   1   6   0   9   2   2   17   18   }   19   S   20   2					
Remarks					
C   O   N   S   T   R   U   C   T   I   O   N   -   C   O   M   M   E   R   C   I   A   L   >   1   a   c					
Inspection Work Days	Facility Evaluation Rating	BI	QA	Reserved	
67         69	70   1	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) Family Dollar Construction Site, Highway 434 & Sage Lane, Angel Fire, New Mexico. Colfax County.	Entry Time /Date ~1050 hours / 09/22/2016	Permit Effective Date Unpermitted 2012 CGP effective February 16, 2012
	Exit Time/Date ~1110 hours / 09/22/2016	Permit Expiration Date Unpermitted 2012 CGP expires February 16, 2017
Name(s) of On-Site Representative(s)/Title(s)/Phone and Fax Number(s)	Other Facility Data <u>Approximate Entrance</u> Latitude 36.397671° Longitude -105.287480°	
Name, Address of Responsible Official/Title/Phone and Fax Number Chad Merchant, 13105 CR 1820, Lubbock, TX 79424 / 806-368-7843	Contacted Yes <input type="checkbox"/> * No <input type="checkbox"/>	SIC 1542

#### Section C: Areas Evaluated During Inspection (S = Satisfactory, M = Marginal, U = Unsatisfactory, N = Not Evaluated)

U	Permit	N	Flow Measurement	N	Operations & Maintenance	N	CSO/SSO
N	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)

- See attached further explanations and photo log.
- A separate EPA Form 3560 and report will be completed for the operator (general contractor) defined by the 2012 USEPA Construction General Permit (CGP) of the construction activity (7B Building & Development, LLC, NPDES Tracking No. NMU001925).

Name(s) and Signature(s) of Inspector(s) <b>Erin S. Trujillo</b> /s/Erin S. Trujillo	Agency/Office/Telephone/Fax <b>NMED/SWQB/505-827-0418</b>	Date <b>10/19/2016</b>
Signature of Management QA Reviewer <b>Sarah Holcomb</b> /s/Sarah Holcomb	Agency/Office/Telephone/Fax <b>NMED/SWQB/505-827-2798</b>	Date <b>10/19/2016</b>

**Family Dollar, Highway 434 & Sage Lane, Angel Fire, New Mexico**

**Chad Merchant (NPDES Tracking No. NMU001924)  
7B Building & Development, LLC (NPDES Tracking No. NMU001925)**

**Compliance Evaluation Inspection  
September 22, 2016**

**Further Explanations**

**Introduction**

On September 22, 2016, Erin Trujillo, accompanied by Daniel Valenta, both of the New Mexico Environment Department (NMED) Surface Water Quality Bureau (SWQB) conducted a Compliance Evaluation Inspection (CEI) of an on-going construction activity for a commercial building at an approximate 1.15 acre lot located west of New Mexico Highway 434 in Angel Fire, New Mexico in Colfax County (see Figure 1). This inspection followed an inquiry as to the construction site's compliance industrial stormwater regulations received by NMED SWQB on August 26, 2016.

The purpose of this inspection was to document the site or facility's status regarding the National Pollutant Discharge Elimination System (NPDES) stormwater permit program and regulations found at 40 Code of Federal Regulations (CFR) Section (§) 122.26. Stormwater discharges from construction activities (such as clearing, grading, excavating, and stockpiling) that disturb one or more acres, or smaller sites that are part of a larger common plan of development or sale, are regulated under USEPA's NPDES stormwater program. Prior to stormwater discharge, construction operators must obtain coverage under an NPDES permit (e.g., USEPA Construction General Permit (CGP)) per 40 CFR § 122.26.

Stormwater discharges would be north to an area shown as a freshwater emergent wetland on National Wetland Inventory Map (see Figure 2), thence to Cieneguilla Creek, thence to Eagle Nest Lake, thence to Cimarron River in classified Segment 20.6.3.309 NMAC in the Canadian watershed. Designated uses of the segment are water supply, irrigation, high quality coldwater aquatic life, livestock, watering, wildlife habitat, and primary contact. Cieneguilla Creek from Eagle Nest Lake to headwaters, Assessment Unit NM-2306.A\_065, is impaired with listed causes nutrient/eutrophication, sedimentation/siltation, temperature, turbidity and e. coli (see Figure 3).

Ms. Trujillo and Mr. Valenta arrived at the site at approximately 1050 hours on September 22, 2016. An owner/operator representative was not on site. There was no sign observed that indicated the owner/operators of the construction activity had permit coverage under the USEPA 2012 CGP. Photos of the site were obtained from public right of way and adjacent parking lot. After obtaining information and contacts for the site from an area resident, Ms. Trujillo left messages for Mr. Chad Merchant and 7B Building & Development, LLC, Lubbock, Texas. Ms. Trujillo made introductions, described the purpose of the CEI and provided preliminary findings of the CEI to Mr. Merchant by telephone on September 23, 2016. According to Mr. Merchant, he is developing the site and an owner under a real estate contract. Family Dollar is not currently an owner/operator of the site. 7B Building & Development, LLC, registered with the State of New Mexico Secretary of State as a limited liability corporation on October 1, 2015, is the general contractor. Mr. Merchant is also a managing member of 7B Building & Development, LLC.

This report is based on available on-line information; USEPA 2012 CGP Notice of Intent (NOI) on-line search database; files maintained by NMED; on-site observation by NMED personnel; and verbal information provided by the owner/operator representative. Corporation information was obtained from the on-line Office of the Secretary of the State, Business Services Division web site at <https://portal.sos.state.nm.us/Corps/>. Readily available precipitation data was obtained from Weather Underground at <http://www.wunderground.com>.

## **Federal Clean Water Act and NPDES Requirements**

Section 301 (a) of the Federal Water Pollution Control Act states *“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.”*

40 CFR § 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.”*

Large construction activity is defined in 40 CFR Part 122.26(b)(14)(x) as *“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 a 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, 40 CFR § 122.26 (b)(15) states *“Storm water discharge associated with small construction activity means the discharge of storm water from: (i) Construction 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 and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.”*

## **USEPA Construction General Permit**

USEPA Construction General Permit (CGP) was re-issued effective February 16, 2012 (Federal Register/Vol. 77, No. 40/Wednesday, February 29, 2012, pg. 12286) replacing the 2008 CGP which expired on February 15, 2012 which replaced the 2003 CGP. Construction operators intending to seek coverage under USEPA CGP must submit a Notice of Intent (NOI) certifying that they have met the permit’s eligibility conditions and that they will comply with the permit’s effluent limits and other requirements. Permit coverage is required from the “commencement of earth-disturbing activities” until “final stabilization” (see Appendix A Definitions and Part 2.2 of the 2012 CGP). Part 1.4 of the 2012 CGP states, *“...if you have not previously obtained coverage under an NPDES permit, you must submit your NOI immediately.”*

A site-specific stormwater pollution prevention plan (SWPPP) is required to be completed prior to submitting a NOI. Among other things, the 2012 CGP requires compliance with effluent limits and other permit requirements, such as the development of a SWPPP, inspection, maintenance, and corrective action. Part 2 of the 2012 CGP (effluent limitations applicable to all discharges from construction sites and/or from construction support activities) includes the following types of requirements: erosion and sediment control requirements (Part 2.1), stabilization requirements (Part 2.2), and pollution prevention requirements (Part 2.3).

Appendix A (Definitions) of the 2012 CGP states:

*“Earth-Disturbing Activity” or “Land-Disturbing Activity” – actions taken to alter the existing vegetation and/or underlying soil of a site, such as clearing, grading, site preparation (e.g., excavating, cutting, and filling), soil compaction, and movement and stockpiling of top soils.*

*“Final Stabilization” – on areas not covered by permanent structures, either (1) vegetation has been established, or for arid or semi-arid areas, will be established that provides a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent of the natural background vegetative cover, or (2) non-vegetative stabilization methods have been implemented to provide effective cover for exposed portions of the site.*

*“Operator” – for the purpose of this permit and in the context of stormwater discharges associated with construction activity, 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 that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit). This definition is provided to inform permittees of EPA’s interpretation of how the regulatory definitions of “owner or operator” and “facility or activity” are applied to discharges of stormwater associated with construction activity.

“Site” – for construction activities, the land or water area where earth-disturbing activities take place, including construction support activities.

### **USEPA Guidance**

More information on USEPA’s 2012 CGP; electronic NOI system; and tools and resources; including SWPPP guidance, is available at <https://www.epa.gov/npdes/stormwater-discharges-construction-activities#overview>. Answers to Frequently Asked Questions are available at <https://www.epa.gov/npdes/stormwater-discharges-construction-activities#faq>.

### **Start of Disturbance and Available Precipitation Information**

According to Mr. Merchant, the start of disturbance (clearing and grubbing) was after July 7, 2016. Below is the recorded precipitation, 0.25 inches or more, after July 7, 2016 to the day of this CEI at Angel Fire, NM Airport weather station KAXX (Elevation 8379 feet, Latitude 36.42 °N, Longitude -105.29 °W):

Date	Precipitation (Inches)	Type
2016-8-4	0.29	Rain
2016-8-5	0.42	Fog-Rain
2016-9-22	0.44	Fog-Rain

### **Site Observations (see Photo Log)**

Vegetation and underlying soil was disturbed (cleared), including north of a constructed wall. The constructed wall may provide some erosion or sediment control. But, there were no on-site temporary erosion control measures observed downgradient from disturbed areas, including disturbed areas north of the constructed wall. There were no observed entrance track out structural control measures. A portable toilet was on-site. The site did have a container that may provide on-site storage of materials protected from runoff; however, no other pollutant control or trash control measures were observed from public right of way or adjacent parking lots.

### **Findings**

Mr. Merchant (operator/developer) may meet the definitions of “operator” for construction activity (earth-disturbing or land-disturbing activity) of the above-described active construction activity with disturbance of 1 or more acres in Angel Fire, New Mexico. 7B Building & Development, LLC (operator/general contractor) may meet the definitions of “operator” for construction activity (earth-disturbing or land-disturbing activity) of the above-described active construction activity with disturbance of 1 or more acres in Angel Fire, New Mexico.

EPA’s 2012 CGP requires compliance with effluent limits (erosion and sediment control, pollution prevention, and site stabilization requirements) including the development of a SWPPP. Neither Mr. Merchant nor 7B Building & Development, LLC had prepared or completed a SWPPP in written form. Neither operator had submitted a NOI to obtain permit coverage for stormwater discharges under the USEPA 2012 CGP prior to disturbance, after disturbance on July 7, 2016, or by the day of this CEI.

Stormwater discharges from construction activities on site may impact water quality. Stormwater flowing over the construction site may pick up pollutants (e.g., trash, construction materials, sediment, debris, and chemicals) and transport them nearby wetlands and downstream surface waters. Permanent erosion and sediment control measures may also need to be considered/designed/constructed.

Inspector Comment: Given the proximity of wetlands shown on readily available on-line NWI map (northwest corner of the site), the operators may contact Regulatory Program, U.S. Army Corps of Engineers, Albuquerque District, 4101 Jefferson Plaza NE, Albuquerque, NM 87109 (see <http://www.spa.usace.army.mil/Missions/RegulatoryProgramandPermits.aspx>) for more information on regulatory requirements for current or any future disturbance and fill activities under Section 404 of the federal Clean Water Act.

**Figure 1: Site Map/Imagery (Source: Google Earth Imagery Date 5/23/2016)**

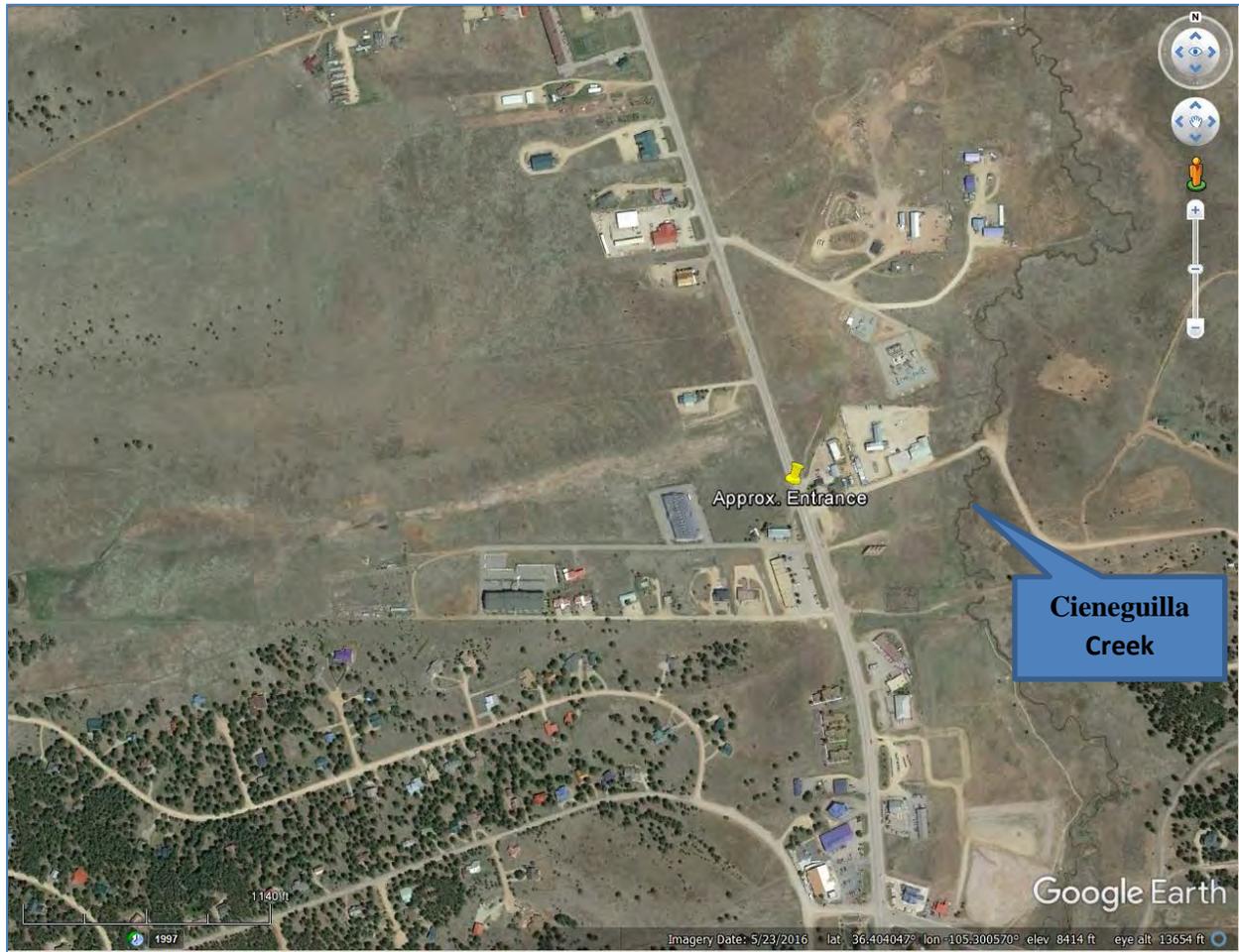
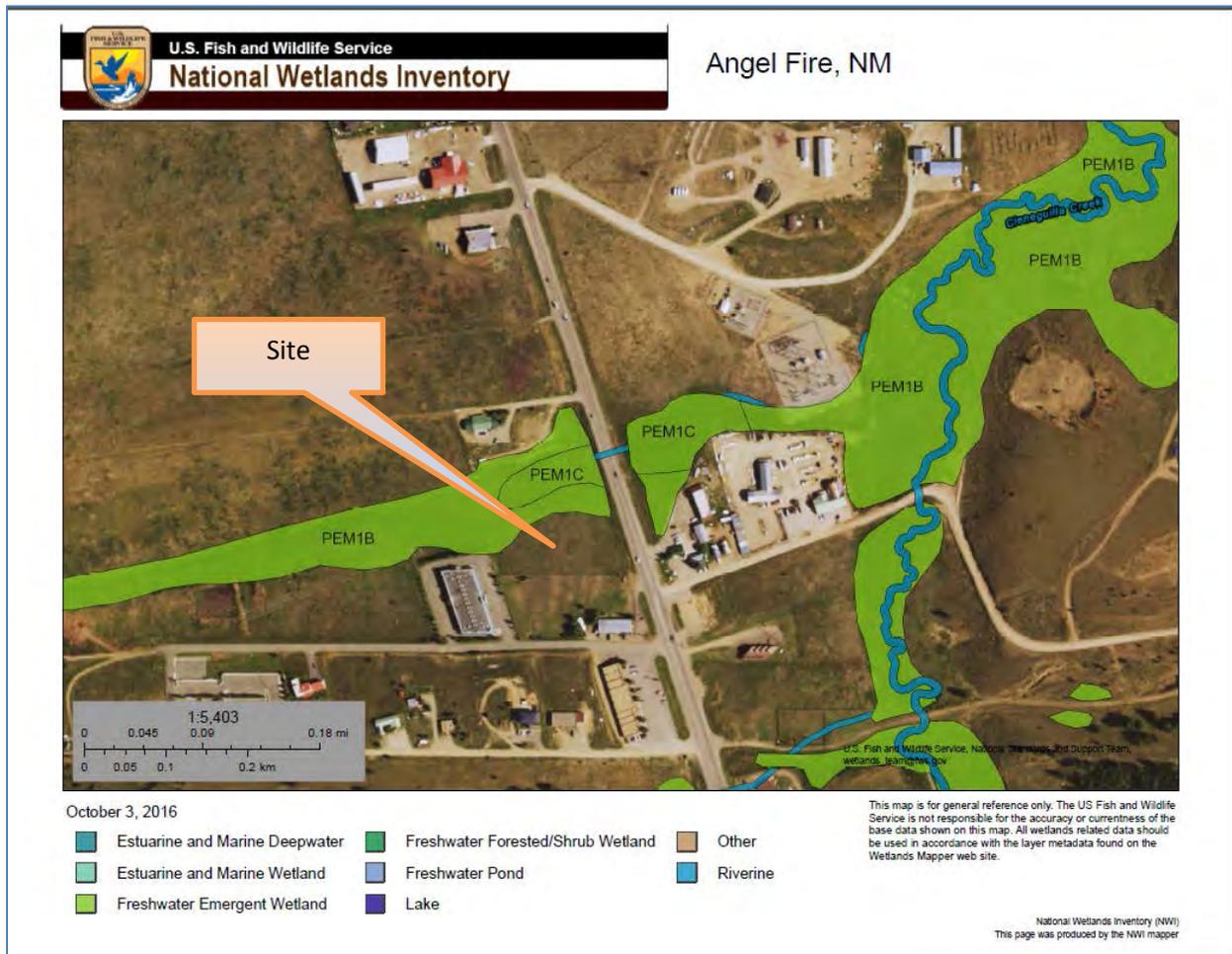


Figure 2: National Wetlands Inventory Map (Source: USFW at <https://www.fws.gov/wetlands/data/mapper.HTML>)



**Figure 3: List of Impairments (Source: NMED at <https://www.env.nm.gov/swqb/303d-305b/2016-2018/documents/EPA-APPROVED2016APPA--IntegratedList.pdf>)**

2016 - 2018 State of New Mexico Clean Water Act §303(d)/§305(b) Integrated List.					
Cieneguilla Creek (Eagle Nest Lake to headwaters)			IR CATEGORY	LOCATION DESCRIPTION	
			4A	11080002 - Cimarron	
AU ID	WQS REF	WATER TYPE	SIZE	ASSESSED	MONITORING SCHEDULE
NM-2306.A_065	20.6.4.309	PERENNIAL STREAM	14.71 MILES	2008	2015
USE	ATTAINMENT	CAUSE(S)	FIRST LISTED	TMDL DATE	PROBABLE SOURCE(S)
DWS	Fully Supporting				<ul style="list-style-type: none"> <li>• Municipal Point Source Discharges</li> <li>• Recreational Pollution Sources</li> <li>• Loss of Riparian Habitat</li> <li>• Rangeland Grazing</li> <li>• Streambank Modifications/destabilization</li> </ul>
HQColdWAL	Not Supporting	Nutrient/Eutrophication	2008	9/3/2010	
		Sedimentation/Siltation	1998	9/30/1999	
		Temperature	2008	9/3/2010	
		Turbidity	1998	9/30/1999	
IRR	Fully Supporting				
LW	Fully Supporting				
PC	Not Supporting	E. coli	2008	9/3/2010	
WH	Fully Supporting				
<p><b>AU Comment:</b> TMDL for turbidity, SBD (sedimentation/siltation), fecal coliform, and AI chronic (all but SBD TMDL revised in 2004 due to need to develop WLAs for Angel Fire WWTP); de-list letter for temperature and total phosphorus.</p> <p>De-listed for aluminum and fecal coliform, and re-listed for temperature in 2008. TMDLs were prepared for nutrients, e. coli, and temperature in 2010.</p>					

NMED/SWQB  
Official Photograph Log  
Photo # 1

Photographer: Erin S. Trujillo

Date: 09/22/2016

Time: 1054 hours

City/County: Angel Fire / Colfax County

State: New Mexico

Location: Family Dollar Construction Site, NM 434, Angel Fire, NM

Subject: From NM 434, looking west, construction materials and what appeared to be trash were observed piled on-site, and materials and trash (e.g., pastic, cardboard) existed north of constructed wall. Building concrete slab foundation had been constructed/poured. Site appears to have concrete solids near foundation work.



NMED/SWQB  
Official Photograph Log  
Photo # 2

Photographer: Erin S. Trujillo

Date: 09/22/2016

Time: 1054 hours

City/County: Angel Fire / Colfax County

State: New Mexico

Location: Family Dollar Construction Site, NM 434, Angel Fire, NM

Subject: From NM 434 looking west, heavy equipment was on site. More construction material and what appeared to be trash (e.g., cardboard, plastic) was observed on-site. From right of way, it was not determined if portable toilet was staked or otherwise had measures to minimize potential for or prevent tipping. Toilet was in area with parked vehicles and did not appear to be protected from vehicle traffic.



NMED/SWQB  
Official Photograph Log  
Photo # 3

Photographer: Erin S. Trujillo

Date: 09/22/2016

Time: 1155 hours

City/County: Angel Fire / Colfax County

State: New Mexico

Location: Family Dollar Construction Site, NM 434, Angel Fire, NM

Subject: From NM 434 looking west, disturbed areas and un-stabilized areas existed along southern boundary of site.



NMED/SWQB  
Official Photograph Log  
Photo # 4

Photographer: Erin S. Trujillo

Date: 09/22/2016

Time: 1109 hours

City/County: Angel Fire / Colfax County

State: New Mexico

Location: Family Dollar Construction Site, NM 434, Angel Fire, NM

Subject: Looking east, excavated area existed in southwest corner of site. Arrow points to pipe at bottom of excavation. Observed silt fence appeared to be in upgradient area of site and may provide some protection from stormwater runoff to the site. See next photo.



NMED/SWQB  
Official Photograph Log  
Photo # 5

Photographer: Erin S. Trujillo

Date: 09/22/2016

Time: 1109 hours

City/County: Angel Fire / Colfax County

State: New Mexico

Location: Family Dollar Construction Site, NM 434, Angel Fire, NM

Subject: Looking east, excavated area continues along property boundary.



NMED/SWQB  
Official Photograph Log  
Photo # 6

Photographer: Erin S. Trujillo

Date: 09/22/2016

Time: 1109 hours

City/County: Angel Fire / Colfax County

State: New Mexico

Location: Family Dollar Construction Site, NM 434, Angel Fire, NM

Subject: Looking north, disturbed area and stockpile existed north of the constructed wall. Any stormwater flow from the excavated area would appear to be toward the northwest corner of the site.



NMED/SWQB  
Official Photograph Log  
Photo # 7

Photographer: Erin S. Trujillo

Date: 09/22/2016

Time: 11:09 hours

City/County: Angel Fire / Colfax County

State: New Mexico

Location: Family Dollar Construction Site, NM 434, Angel Fire, NM

Subject: From adjacent parking lot near northwest corner of site, arrow points to culvert crossing at NM 434. Disturbance along NM 434 in background of photo is from recent utility work along highway.

