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ENVIRONMENT DEPARTMENT
Surface Water Quality Bureau

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RON CURRY
Secretary
SARAH COTTRELL
Deputy Secretary

Certified Mail - Return Receipt Requested

August 23, 2010

Mr. Pat Dee, President
First Community Bank
P.O. Box 3686
Albuquerque, NM 87190

RE: Construction Storm Water, SIC 1521, NPDES Compliance Evaluation Inspection, First Community Bank, Dos Lados Estates Subdivision, NMU001666, Las Cruces, New Mexico, July 8, 2010

Dear Mr. Dee:

Enclosed, please find a copy of the report for the referenced inspection that the New Mexico Environment Department (NMED) Surface Water Quality Bureau conducted at a construction site for which you were an "operator" (see 2003 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 worksheet inspection report. 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 Altum and Mr. John L. Vasquez 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 Bohling, 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
Frank Fiore, NMED District III by e-mail
Mike Altum, First Community Bank by e-mail (maltum@fcbnm.com)

Compliance Evaluation Inspection
Dos Lados Estates Subdivision, Las Cruces, New Mexico,
NPDES Tracking No. NMU001666
July 8, 2010

Further Explanations

Introduction

A Compliance Evaluation Inspection (CEI) was conducted by Erin S. Trujillo, accompanied by Sandra Gabaldón, both of the NMED SWQB at the above-referenced 40+ acre disturbed Dos Lados Estates proposed 215+ residential lot subdivision in Las Cruces, New Mexico on July 8, 2010.

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

A preliminary reconnaissance of the site from public right of way was conducted on May 12, 2010 by the inspector following a citizen complaint. Construction activities at the site had ceased. Since there was no posted Notice of Intent (NOI) or contact information observed on-site, the inspector returned to the office to obtain additional information on property ownership and operators.

An appointment was made with Mr. Greg Aguirre, President, Smith and Aguirre Construction Company, Inc. to review a Storm Water Pollution Plan (SWPPP) for the construction activity. Upon arrival at Smith and Aguirre Construction Company, Inc. offices at approximately 0800 hours on July 8, 2010, the inspector made introductions, presented credentials and explained the purpose of the inspection to Mr. Aguirre. Following a preliminary exit interview with Mr. Aguirre, the inspectors left the Smith and Aguirre Construction Company, Inc. offices at approximately 0945 hours on the day of the inspection. Following review of the SWPPP, the inspector contacted and explained the purpose of the inspection by telephone to Mr. Kyle H Moberly, Attorney for Mr. Philippou T. Philippou and associated companies referred to as the "The Philippou Group," and Mr. Chad Sells, P.E., Logos Development, Inc. Mr. Moberly is listed as a corporate officer for some corporations known as "The Philippou Group," and is listed as the Vice President of Logos Development, Inc. The inspectors then met with Mr. John L. Vasquez, Vice President, Commercial Banking at the First Community Bank in Las Cruces, New Mexico and contacted Mr. Pat Dee, Senior Vice President, Special Assets, First Community Bank, Albuquerque, New Mexico by telephone. The inspector made introductions, explained the purpose of the inspection to Mr. Vasquez and Mr. Dee and presented credentials to Mr. Vasquez. The inspectors and Mr. Vasquez travelled to and toured the site from approximately 1130 to 1220 hours on the day of the inspection. Permission for Mr. Sells to accompany the tour was provided by Mr. Vasquez and Mr. Dee. A preliminary exit interview was conducted on site with Mr. Vasquez and Mr. Sells following the tour. The inspectors and Mr. Sells traveled to the "The Phillipou Group" offices for more information. The inspectors left the "The Phillipou Group" offices at approximately 1300 hours on the day of the investigation. Preliminary findings were also discussed by telephone with Mr. Moberly and Mr. Altum on July 9, 2010.

Additional Background

Several corporations of the "The Philippou Group" were associated with the Dos Lados Estates subdivision. Katerina, Inc. was the developer that submitted the subdivision plat to the City of Las Cruces. Ownership of the property (two separate parcels) was transferred to K3, LLC on November 21, 2005. Although listed as the developer on City of Las Cruces planning schedules, Greco Enterprises, Inc. did not have operational control of construction activities according Mr. Moberly. Logos Development, Inc. contracted with Smith and Aguirre Construction Company, Inc. for dirt work and infrastructure and another contractor to build walls. Dirt work and approximately 80% of the utilities were complete when construction ceased.

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 Code of Federal Regulations (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.”*

40 CFR 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.”* The 2003 and 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).”*

Part 3.1.D of the 2003 CGP and Part 3 of the 2008 CGP state, *“You must implement the SWPPP as written from commencement of construction activity until final stabilization is complete.”* Final stabilization is defined in Appendix A of the CGPs. State specific conditions for stabilization are in Part 9 and Part 10 of the 2003 and 2008 CGP, respectively.

Part 3.11.A (Maintaining an Updated Plan) of the 2003 CGP states, *“The SWPPP, including the site map, must be amended whenever there is a change in design, construction, operation, or maintenance at the construction site that has or could have a significant effect on the discharge of pollutants to the waters of the United States that has not been previously addressed in the SWPPP.”* Part 5.10.A of the 2008 CGP states, *“The SWPPP must be modified...To reflect modifications to stormwater control measures made in response to a change in design, construction, operation, or maintenance at the construction site....”*

Part 3.13 Management Practices of the 2008 CGP states, *“A. All control measures must be properly selected, installed, and maintained in accordance with any relevant manufacturer specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the operator must replace or modify the control for site situations as soon as practicable. B. If sediment escapes the construction site, off-site accumulations of sediment must be removed at a frequency sufficient to minimize off-site impacts. C. Litter, construction debris, and construction chemicals that could be exposed to storm water must be prevented from becoming a pollutant source in storm water discharges. D. Except as provided below, stabilization measures must be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased.”*

Appendix G.11.C (Standard Permit Conditions) of the 2003 and 2008 CGPs state, *“If an authorization...is no longer accurate because a different operator has responsibility for the overall operation of the construction site, a new NOI...must be submitted to EPA....”*

Findings

Smith and Aguirre Construction Company, Inc. filed a notice of intent on June 26, 2007 to obtain permit coverage under the 2003 CGP for construction and support activities. Smith and Aguirre Construction Company, Inc. completed and implemented a SWPPP (initially prepared by Logos Development, Inc.) and conducted inspections. Mr. Aguirre stated that he considered the contract with Logos Development, Inc. cancelled due to non payment. Smith and Aguirre Construction Company, Inc. filed a Notice of Termination (NOT) on March 3, 2009 stating *“Another operator has assumed control, according to Appendix G, Section 11.C of the CGP, over all areas of the site that have not been finally stabilized.”*

Logos Development, Inc. did not sign/certify a SWPPP or obtain permit coverage under the 2003 or 2008 CGP. Logos Development, Inc. was the owner/operator (both developer and general contractor) of the construction activity having both operational control over plans and specifications during construction and day to day operational control of the construction activities which are necessary to ensure compliance with a SWPPP. Logos Development, Inc. did not develop or maintain an updated SWPPP indicating a change in construction, operation, or maintenance due to the cessation of construction activities and did not complete final stabilization.

First Community Bank having acquired the property deeds (deed in lieu of foreclosure) on June 25, 2010 is the owner of a temporarily ceased construction activity. First Community Bank, Albuquerque, New Mexico did not complete a SWPPP including measures used to control the quality of stormwater from a temporarily ceased construction activity and to complete final stabilization. First Community Bank did not obtain permit coverage for the disturbed site under the 2008 CGP.

**NMED/SWQB
Official Photograph Log
Photo # 1**

Photographer: Erin S. Trujillo	Date: 07/08/2010	Time: 1144 hours
City/County: Las Cruces / Doña Ana County		State: New Mexico
Location: Dos Lados Estates Subdivision		
Subject: Overview of site from western property boundary. Since access to site is not secured, it is unknown if concrete and concrete washout in center of photo is from previous construction activities of this site or unauthorized dumping.		



**NMED/SWQB
Official Photograph Log
Photo # 2**

Photographer: Erin S. Trujillo	Date: 07/08/2010	Time: 1145 hours
City/County: Las Cruces / Doña Ana County		State: New Mexico
Location: Dos Lados Estates Subdivision		
Subject: Overview of site from northwestern property corner. A few erosion rills had formed toward the unpaved Settlers Pass Road (left side of photo).		



**NMED/SWQB
Official Photograph Log
Photo # 3**

Photographer: Erin S. Trujillo	Date: 07/08/2010	Time: 1154 hours
City/County: Las Cruces / Doña Ana County	State: New Mexico	
Location: Dos Lados Estates Subdivision		
Subject: Arrows point to remnants of unmaintained silt fence along eastern property boundary and sediment that has accumulated in the off-site drainage outlet to leading to Galina Drive.		



**NMED/SWQB
Official Photograph Log
Photo # 4**

Photographer: Erin S. Trujillo	Date: 07/08/2010	Time: 1158 hours
City/County: Las Cruces / Doña Ana County	State: New Mexico	
Location: Dos Lados Estates Subdivision		
Subject: Example of unmaintained silt fence and accumulated sediment along eastern property boundary.		



**NMED/SWQB
Official Photograph Log
Photo # 5**

Photographer: Erin S. Trujillo	Date: 07/08/2010	Time: 1201 hours
City/County: Las Cruces / Doña Ana County		State: New Mexico
Location: Dos Lados Estates Subdivision		
Subject: Arrow points to unstabilized earth berm in southeast corner of the site. Drainage in this area is to the southeast-south towards Sand Hill Arroyo		

Approximate off-site location
of Sand Hill Arroyo



**NMED/SWQB
Official Photograph Log
Photo # 6**

Photographer: Erin S. Trujillo	Date: 07/08/2010	Time: 1202 hours
City/County: Las Cruces / Doña Ana County		State: New Mexico
Location: Dos Lados Estates Subdivision		
Subject: Accumulated sediment offsite on associated sidewalks and paved Arena Drive. Arrow points to remnant of silt fence along eastern property boundary of the site.		



**NMED/SWQB
Official Photograph Log
Photo # 7**

Photographer: Erin S. Trujillo	Date: 07/08/2010	Time: 1209 hours
City/County: Las Cruces / Doña Ana County		State: New Mexico

Location: Dos Lados Estates Subdivision

Subject: Example of boards and rocks placed in erosion gullies on-site. This measure was not installed by staff of the "The Phillipou Group" according the on-site operator representative. These boards/rocks, likely placed by adjacent property owner(s), can cause additional erosion of the gully sides during a rain event.



**NMED/SWQB
Official Photograph Log
Photo # 8**

Photographer: Erin S. Trujillo	Date: 07/08/2010	Time: 1212 hours
City/County: Las Cruces / Doña Ana County		State: New Mexico

Location: Dos Lados Estates Subdivision

Subject: Southwest corner of site at Settlers Pass Road. No erosion control measures were placed in this corner of the site and accumulated sediment was observed the paved street.



**NMED/SWQB
Official Photograph Log
Photo # 9**

Photographer: Erin S. Trujillo

Date: 07/08/2010

Time: 1213 hours

City/County: Las Cruces / Doña Ana County

State: New Mexico

Location: Dos Lados Estates Subdivision

Subject: Settlers Pass Road. Vehicle track out had been moved from site's southeast corner to this location according to the site map. The vehicle track out appears to have reduced the amount of accumulated sediment from the unpaved road and subdivision. But, the pad has accumulated sediment and needs maintenance.

