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DAVE MARTIN  
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RAJ SOLOMON, P.E.  
Deputy Secretary

**Certified Mail - Return Receipt Requested**

February 25, 2011

Sherman Scott, President  
Ojo Caliente Holdings, Inc.  
50 Los Baños Drive  
Ojo Caliente, New Mexico 87549

**RE: NPDES Construction Storm Water, SIC 1629, Compliance Evaluation Inspection, Ojo Caliente Holdings, Inc. / Ojo Caliente Mineral Springs Resort & Spa, Taos County, NMU001715, February 17, 2011**

Dear Mr. Scott:

Enclosed, please find a copy of the report for the referenced inspection that the New Mexico Environment Department (NMED) Surface Water Quality Bureau (SWQB) 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 (Marcia Adams, 6EN-AS, USEPA, 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. Andy Scott 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-Wagon, EPA (6EN-WM) by e-mail  
Diana McDonald, USEPA (6EN-WM) by e-mail  
Robert Italiano NMED District II Manager by e-mail  
Andy Scott, Secretary (On-Site Manager), Ojo Caliente Holdings, Inc. by e-mail



**Ojo Caliente Holdings, Inc. / Ojo Caliente Mineral Springs Resort & Spa**  
**NPDES Tracking No. NMU001715**  
**Compliance Evaluation Inspection - Construction Storm Water**  
**February 17, 2011**

**Further Explanations**

**Introduction**

On February 17, 2011, a Compliance Evaluation Inspection (CEI) was conducted by Erin S. Trujillo of the NMED SWQB at the Ojo Caliente Mineral Springs Resort & Spa approximately 1.4+ acre disturbed construction site for a pond and path/road along the bank and in the floodplain of the Rio Ojo Caliente in Taos County, New Mexico. 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.

Stormwater discharges to the classified Rio Ojo Caliente (*Segment 20.6.4.116 of the State of New Mexico Standards for Interstate and Intrastate Surface Waters, 20.6.4 New Mexico Administrative Code (NMAC)*) thence to the Rio Chama, thence to the Rio Grande. This segment includes the designated uses of coldwater aquatic life, irrigation, livestock watering, secondary contact, warmwater aquatic life, and wildlife habitat.

The inspector arrived at the facility's security guard building at approximately 1213 hours on February 17, 2011 and the on-site manager was contacted. Upon Mr. Andy Scott, Secretary and Manager, Ojo Caliente Holdings, Inc. arrival, the inspector made introductions, presented credentials and explained the purpose of the inspection. The inspector toured the disturbed areas associated with the pond and path/road construction with Mr. Scott and discussed preliminary findings during the inspection. The inspector left the site at approximately 1428 hours on the day of the inspection. For more information, the inspector sent an e-mail to Mr. Scott with a website link for USEPA's Construction General Permit (CGP) on February 17, 2011.

This report is based on a review of the USEPA online notice of intent (eNOI) database; review of files maintained by NMED; verbal information from Mr. Buck Wells, New Mexico Office of the State Engineer on February 21, 2011; readily available on-line aerial photographs; on-site observation by NMED personnel; and verbal and map information provided by the on-site operator representative. Additional information was provided by Mr. Scott in an e-mail received February 22, 2011.

**Clean Water Act (CWA) 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."*

Based on USEPA's letter interpreting NPDES applicability dated February 5, 1998 at <http://www.epa.gov/npdes/pubs/owm0140.pdf>, construction and operation for agricultural activities are considered two distinct activities. Nonpoint-source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands does not require NPDES permits per 40 CFR 122.3(e). Stormwater discharges associated with construction activities including soil disturbing activities such as clearing, grading, excavating, stockpiling, etc. equal or greater than one acre would need an NPDES permit per 40 CFR Part 122.26.

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.”

Operators require permit coverage from the “commencement of construction activities” until “final stabilization” as defined in Appendix A of the 2008 CGP available at USEPA’s web site at <http://cfpub.epa.gov/npdes/stormwater/cgp.cfm#final2008cgp>. 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).”

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.

Allowable stormwater discharges from support activities (e.g., equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) are also authorized by the 2008 CGP provided “a. The support activity is directly related to the construction site required to have NPDES permit coverage for discharges of stormwater associated with construction activity; b. The support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the completion of the construction activity at the last construction project it supports; and c. Pollutant discharges from support activity areas are minimized” in compliance with the 2008 CGP.

### **On-Site Construction and Support Activity Description**

The purpose of the 1.07-acre pond was for livestock, wildlife and recreation. The purpose of the improved-widened path/road along the bank and in the floodplain of the Rio Ojo Caliente was for the enjoyment of resort and spa guests and to provide access to irrigated pasture for livestock according to the on-site owner/operator representative.

Construction activity by Ojo Caliente Holdings, Inc. started approximately three to four months prior to this inspection (October or November of 2010). No plans for construction were provided by the on-site owner/operator representative. Flagging tape along the widened path/road had been installed to mark the limits of clearing and grubbing according to the on-site owner/operator representative. Construction was not complete on the day of this inspection. The timeframe for the completion of the construction activity was unknown because Ojo Caliente Holdings, Inc. resort and spa staff work on the construction as other duties allow. On-site activities included excavation of a pond; clearing, grubbing and construction of a path/road; and storage of construction material (corrugated metal culvert pipe). Also, sand, gravel and cobble removed from the excavation of the pond (borrow area) was sorted on-site for path/road fill material and bank stabilization. Three drainage culverts crossing under the path/road had been installed with outfalls along the bank of Rio Ojo Caliente. Additional drainage culverts were proposed in the floodplain at locations indicated by the on-site owner/operator representative.

The total area of disturbance was approximately 1.4+ acres on the day of this inspection. The area of disturbance for the pond was over one acre and included a dewatering trench. The total length of soil disturbance and/or widening for the path/road was approximately 1,900 feet. Of this total length, approximately 1,400 feet of the path/road was along the bank and meandered through the floodplain of the Rio Ojo Caliente. The width of disturbance and clearing and grubbing for the path/road varied, but was generally 8 to 10 feet. There were also two pull out areas which had been disturbed by clearing and grubbing and/or access by construction vehicles and heavy equipment.

The improved path/road was planned to be extended into and through Tract 3 identified by the on-site owner/operator on "*Property of the Ojo Caliente Mineral Springs Co within the Ojo Caliente Grant, Taos County, NM*" survey plat dated December 1953. The exact location and length had not been determined or flagged on the day of this inspection.

## **Findings**

Ojo Caliente Holdings, Inc. having operational control of a construction activity with disturbance over one acre 1) did not prepare a SWPPP and 2) did not apply for or obtain permit coverage under the 2008 CGP prior to the start of clearing activities in October or November 2010 or by the day of this inspection. The on-site owner/operator representative stated he was unaware of the need for obtaining permit coverage for this construction activity.

There were no observed erosion or sediment controls for construction and support activities on site, including the disturbed areas immediately adjacent to the Rio Ojo Caliente or disturbed areas near tributaries with culvert outfalls to the Rio Ojo Caliente. There was no SWPPP to document the selection, design, installation, and implementation of control measures, including final stabilization of disturbed areas or managerial controls for pollutants. Examples of non-structural controls include employee training, sanitation, practices for equipment or vehicle fueling, preventative maintenance, spill prevention and response, etc.

If not properly managed or minimized in accordance with the USEPA's NPDES CGP, pollutants in stormwater and any allowable non-stormwater discharges from this construction and support activities are a potential threat to water quality.

Coarser-grained material from the pond excavation was used for bank stabilization along the Rio Ojo Caliente and additional culverts were planned in the floodplain of Rio Ojo Caliente. Under the 2008 CGP, permittees must "*prevent the discharge of solid materials, including building materials, to waters of the United States, except as authorized by a permit issued under section 404 of the CWA.*" The on-site owner/operator representative was advised to contact the United States Army Corp of Engineers (USACE) to confirm compliance with Section 404 of the CWA.

<b>NMED/SWQB</b> <b>Official Photograph Log</b> <b>Photo # 1</b>		
Photographer: Erin Trujillo	Date: 02/17/2011	Time: 1237 hours
City/County: North of Ojo Caliente / Ojo Caliente		State: New Mexico
Location: Ojo Caliente Mineral Springs Resort & Spa		
Subject: Southern limits of disturbance associated with pond and dewatering trench excavation. Except for ATV cart, various heavy construction equipment, including "Grizzle" and another sand and gravel sorter, was stored at the approximately one acre pond location. Arrow points to example of excavated material stockpiles along dewatering trench shown in next photo. Spills or leaks from heavy equipment were not observed, but can be a source of pollutants.		



<b>NMED/SWQB Official Photograph Log Photo # 2</b>		
Photographer: Erin Trujillo	Date: 02/17/2011	Time: 1238 hours
City/County: North of Ojo Caliente / Ojo Caliente		State: New Mexico
Location: Ojo Caliente Mineral Springs Resort & Spa		
Subject: Disturbance and excavated material stockpiles along banks of dewatering trench. The dewatering trench continues south-southwest from the pond, but does not enter the Rio Ojo Caliente. This area has no erosion or sediment controls for disturbance or stockpiles.		



<b>NMED/SWQB Official Photograph Log Photo # 3</b>		
Photographer: Erin Trujillo	Date: 02/17/2011	Time: 1239 hours
City/County: North of Ojo Caliente / Ojo Caliente		State: New Mexico
Location: Ojo Caliente Mineral Springs Resort & Spa		
Subject: Disturbed areas associated with path/road (foreground) and excavation for pond. As previously discussed, spills or leaks from heavy equipment can be a source of pollutants.		



<b>NMED/SWQB</b> <b>Official Photograph Log</b> <b>Photo # 4</b>		
Photographer: Erin Trujillo	Date: 02/17/2011	Time: 1243 hours
City/County: North of Ojo Caliente / Ojo Caliente		State: New Mexico
Location: Ojo Caliente Mineral Springs Resort & Spa		
Subject: Example of disturbed areas and fill material used for path/road construction. Arrow points to partially buried inlet at a culvert crossing installed for the path/road. The outlet of culvert (not shown) is directly above the Rio Ojo Caliente. The fill materials in and disturbed soils along this vegetative drainage channel are sources of sediment pollution until stabilized.		

Fill material for path/road construction along east bank of Rio Ojo Caliente



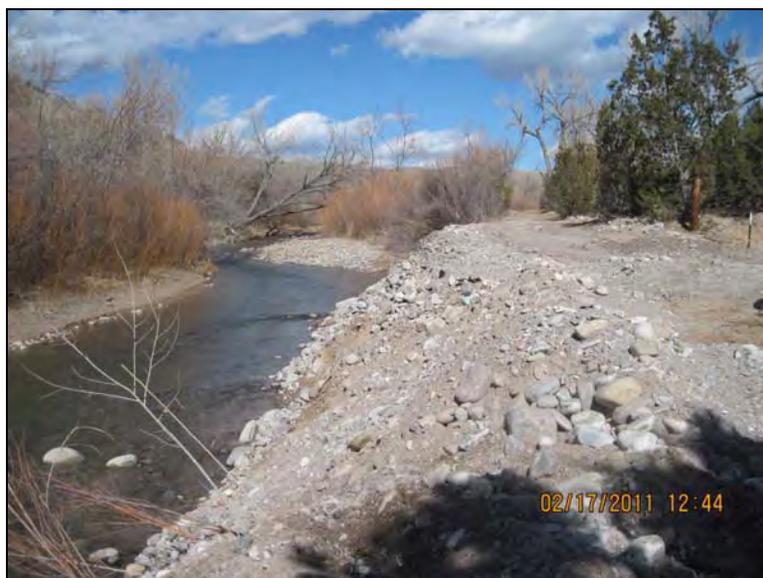
Location of Rio Ojo Caliente

Vegetated drainage channel (easement) from US 285 to Rio Ojo Caliente

<b>NMED/SWQB Official Photograph Log Photo # 5</b>		
Photographer: Erin Trujillo	Date: 02/17/2011	Time: 1244 hours
City/County: North of Ojo Caliente / Ojo Caliente		State: New Mexico
Location: Ojo Caliente Mineral Springs Resort & Spa		
Subject: Looking downstream, arrow points to fill material used for bank stabilization on east bank of Rio Ojo Caliente near location shown in Photo #4.		



<b>NMED/SWQB Official Photograph Log Photo # 6</b>		
Photographer: Erin Trujillo	Date: 02/17/2011	Time: 1244 hours
City/County: North of Ojo Caliente / Ojo Caliente		State: New Mexico
Location: Ojo Caliente Mineral Springs Resort & Spa		
Subject: Looking upstream, fill material used for bank stabilization and path/road construction on east bank of Rio Ojo Caliente near location shown in Photo #4.		



<b>NMED/SWQB</b> <b>Official Photograph Log</b> <b>Photo # 7</b>		
Photographer: Erin Trujillo	Date: 02/17/2011	Time: 1246 hours
City/County: North of Ojo Caliente / Ojo Caliente		State: New Mexico
Location: Ojo Caliente Mineral Springs Resort & Spa		
Subject: Further upstream of previous photo, fill material used for bank stabilization and path/road on east bank of Rio Ojo Caliente.		



<b>NMED/SWQB</b> <b>Official Photograph Log</b> <b>Photo #8 and #9</b>		
Photographer: Erin Trujillo	Date: 02/17/2011	Time: 1249 hours
City/County: North of Ojo Caliente / Ojo Caliente		State: New Mexico
Location: Ojo Caliente Mineral Springs Resort & Spa		
Subject: Disturbed area, fill material and culvert pipe for path/road on east bank of Rio Ojo Caliente shown in previous photo. Culvert pipe is shown in Photo #9 (bottom photo).		



#8



#9

<b>NMED/SWQB          Official Photograph Log          Photo # 10</b>		
Photographer: Erin Trujillo	Date: 02/17/2011	Time: 1250 hours
City/County: North of Ojo Caliente / Ojo Caliente		State: New Mexico
Location: Ojo Caliente Mineral Springs Resort & Spa		
Subject: Arrow points to location of outlet above Rio Ojo Caliente of culvert inlet shown in previous photo. No additional outfall protection provided along bank for outfall.		



<b>NMED/SWQB          Official Photograph Log          Photo # 11</b>		
Photographer: Erin Trujillo	Date: 02/17/2011	Time: 1256 hours
City/County: North of Ojo Caliente / Ojo Caliente		State: New Mexico
Location: Ojo Caliente Mineral Springs Resort & Spa		
Subject: Further upstream of previous photo, disturbed area from clearing and grubbing and vehicle access associated with path/road pull out immediately adjacent to Rio Ojo Caliente. No erosion or sediment controls provided. Also, construction material (culvert) stored in this area is shown in Photo #12.		



Rio Ojo Caliente

<b>NMED/SWQB Official Photograph Log Photo # 12</b>		
Photographer: Erin Trujillo	Date: 02/17/2011	Time: 1257 hours
City/County: North of Ojo Caliente / Ojo Caliente		State: New Mexico
Location: Ojo Caliente Mineral Springs Resort & Spa		
Subject: Immediately north of previous photo and pullout, example of disturbance and fill material for path/road at proposed culvert location.		



<b>NMED/SWQB Official Photograph Log Photo # 13</b>		
Photographer: Erin Trujillo	Date: 02/17/2011	Time: 1258 hours
City/County: North of Ojo Caliente / Ojo Caliente		State: New Mexico
Location: Ojo Caliente Mineral Springs Resort & Spa		
Subject: Further north of previous photo, example of disturbance from heavy equipment access and clearing and grubbing for the path/road. A culvert is proposed in this area.		



<b>NMED/SWQB Official Photograph Log Photo # 14</b>		
Photographer: Erin Trujillo	Date: 02/17/2011	Time: 1303 hours
City/County: North of Ojo Caliente / Ojo Caliente		State: New Mexico
Location: Ojo Caliente Mineral Springs Resort & Spa		
Subject: Further north of previous photo, example of clearing and grubbing for and adjacent to path/road.		



<b>NMED/SWQB Official Photograph Log Photo # 15</b>		
Photographer: Erin Trujillo	Date: 02/17/2011	Time: 1308 hours
City/County: North of Ojo Caliente / Ojo Caliente		State: New Mexico
Location: Ojo Caliente Mineral Springs Resort & Spa		
Subject: Further north of previous photo, example of clearing and grubbing at channel downstream of beaver dam. A culvert is proposed in this area near the southwest corner of Tract 3.		



NMED/SWQB Aerial Map		
Created by: Erin Trujillo		
City/County: North of Ojo Caliente / Ojo Caliente		State: New Mexico
Location: Ojo Caliente Mineral Springs Resort & Spa		
Subject: Approximate location of pond and selected photos (see map legend below). Rio Ojo Caliente meanders west of the construction activity.		



**Map Legend**

- A = Approximate location of Photo #2**
- B = Approximate location of Photos #5 and 6**
- C = Approximate location of Photo #7**
- D = Approximate location of Photo #15**