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JAMES H. DAVIS, Ph.D.  
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**Certified Mail - Return Receipt Requested**

May 17, 2012

Mr. William Pauley, Vice President Western Region  
Team Fishel  
1819 South 27<sup>th</sup> Ave  
Phoenix, Az 85009

**RE: Construction Storm Water; SIC 1611; NPDES Compliance Evaluation Inspection; Team Fishel; NMU001795; May 14, 2012**

Dear Mr. Pauley:

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 finding 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), and 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) 8027-2575.

Sincerely,

*/s/Daniel Valenta*

Daniel Valenta  
Surface Water Quality Bureau

CC: Marcia Gail Adams, EPA, Enforcement Section by e-mail  
Carol Peters-Wagnon, EPA by e-mail  
Diana McDonald, EPA by e-mail  
Samual Tates, EPA, by e-mail  
Darlene Whitten-Hill, EPA, by e-mail  
NMED District II 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   9   5   11   12   1   2   0   5   1   4   17   18   }   19   S   20   2 |       |  |  |                            |  |  |  |        |        |                                     |           |  |  |  |              |           |          |
| Remarks   |       |  |  |                            |  |  |  |        |        |                                     |           |  |  |  |              |           |          |
| C O N S T R U C T I O N > 1 A C R E   |       |  |  |                            |  |  |  |        |        |                                     |           |  |  |  |              |           |          |
| 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)<br><br><b>The ENMR-Plateau Broadband Project, Round 2 entails 194 miles of trenching, cable bore, or directional bore to install an underground broadband cable. A site was visited near the intersection of 285 Hwy/Bobcat Road/Old Vegas Hwy, see GPS reading.</b><br><br><b>Santa Fe County</b> | Entry Time /Date<br><b>1025 hours/5-14-2012</b>  | Permit Effective Date<br><b>2-16-2012</b>  |
|   | Exit Time/Date<br><b>1145 hours/5-14-2012</b>  | Permit Expiration Date<br><b>2-16-2017</b> |
| Name(s) of On-Site Representative(s)/Title(s)/Phone and Fax Number(s)<br><b>Mr. Juan Baez/ Forman/602-206-5929/602-233-0658</b><br><b>Mr. Brett Berry/Forman/</b>   | Other Facility Data<br><b>GPS:<br/>N. 35° 34' 38.83"<br/>W. -105° 53' 36.82"</b><br><b>SIC: 1611</b> |  |
| Name, Address of Responsible Official/Title/Phone and Fax Number<br><b>Mr. William Pauley, 1819 South 27<sup>th</sup> Ave, Phoenix, Arizona 85009/ Team Fishel Vice President Western Region/602-233-0658/ fax 602-233-2930</b>   | Contacted<br>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>                     |  |

#### 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              |
| 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              | M | Storm Water              | N | Other:               |

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

- This report is based on review of files maintained by the permittee and NMED, on site observation by NMED personal and verbal information provided by the facility's representative.

|   |  |                          |
|---|--|--------------------------|
| Name(s) and Signature(s) of Inspector(s)<br><b>Daniel Valenta /s/Daniel Valenta</b> | Agency/Office/Telephone/Fax<br><b>NMED/SWQB 505-827-2575</b>         | Date<br><b>5/21/2012</b> |
| Signature of Management QA Reviewer<br><b>Richard Powell /s/Richard Powell</b>      | Agency/Office/Phone and Fax Numbers<br><b>NMED/SWQB 505-827-2798</b> | Date<br><b>5/17/2012</b> |

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**Further Explanations**

**Introduction**

On May 14, 2012, a Compliance Evaluation Inspection (CEI) was conducted by Daniel Valenta of the NMED SWQB at a construction site along Hwy 285/Bobcat Road/Old Vegas Hwy, see GPS reading on Form 3560. The goal of the ENMR-Plateau Broadband Project, Round 2, is to provide high-speed broadband service to rural communities in east-central New Mexico. The project entails 194 miles of trenching, cable bore, or directional bore to install a broadband cable. This inspection was triggered following a citizen complaint concerning lack of BMP's (Best Management Practices) at the construction site.

A Columbus, OH-based organization Team Fishel specializes in utility construction and network installation services for gas, electric, telephone, broadband cable TV, municipalities, and commercial end users, with 1,300 Teammates and 25 offices in 15 states.

An entrance interview was conducted at the site with Mr. Brett Berry, Forman, at approximately 1025 hours on May 14, 2012. The inspector made introductions, presented his credentials and discussed the purpose of the inspection. Mr. Berry contacted Mr. Juan Baez, Forman, who arrived shortly. The inspector again made introductions, presented his credentials and discussed the purpose of the inspection. Mr. Baez directed the Inspector to contact Mr. Ken Litton of N-Com Inc. who directed the Inspector to Ms. Teresa Hurt from Parametrix Inc. who completed the Environmental Assessment for the project and permits. Phone calls placed on the 15th were not returned.

A brief exit interview to discuss the preliminary findings of this inspection was conducted by phone with Mr. Adam Jacobs on the 15<sup>th</sup>. 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.

Discharge from this site may flow into the Canada de los Alamos and thence to Galisteo Creek, (20.6.4.121 NMAC). The designated uses for this segment are domestic water supply, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact; and public water supply on Little Tesuque creek, the Rio en Medio, the Santa Fe River and Cerrillos reservoir

**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*

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*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 2012 Construction General Permit (CGP). Among other things, the CGP requires that a Storm Water Pollution Prevention Plan (SWPPP) be prepared for the site 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 2012 CGP, Definitions, Appendix A, states, “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.*

## **Findings**

**Team Fishel does not have coverage under the Construction General Permit and has not prepared the required documents to file for and receive a permit.**

USEPA’s CGP was re-issued effective February 16, 2012 (Federal Register/Vol. 77, No. 40/Wednesday, February 29, 2012, pg. 12286) and replaced the 2008 CGP which expired on February 15, 2012. Common requirements for coverage under a construction stormwater permit include development of a written stormwater pollution prevention plan (SWPPP), implementation of control measures, and submittal of a request for permit coverage, usually referred to as the Notice of Intent or NOI.

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The SWPPP is a written assessment of potential sources of pollutants in stormwater runoff and control measures that will be implemented at your site to minimize the discharge of these pollutants in runoff from the site.

These control measures include site-specific best management practices (BMPs), maintenance plans, inspections, employee training, and reporting. The procedures detailed in the SWPPP must be implemented by the site and updated as necessary, with a copy of the SWPPP kept on-site. These control measures include site-specific best management practices (BMPs), maintenance plans, inspections, employee training, and reporting. The procedures detailed in the SWPPP must be implemented by the site and updated as necessary.

A SWPPP should include the following information:

- A description of potential pollutant sources – includes a site map, an identification of the types of pollutants that are likely to be present in stormwater discharges, an inventory of the types of materials handled at the site that potentially may be exposed to precipitation, a list of significant spills and leaks of toxic or hazardous pollutants, sampling data, a narrative description of the potential pollutant sources from specific activities at the facility, and identification of specific potential pollutants; and
- A description of appropriate measures and controls – includes the type and location of existing and proposed non-structural and structural best management practices (BMPs) selected for each of the areas where industrial materials or activities are exposed to stormwater. Non-structural and structural BMPs to be described and implemented include such things as good housekeeping, preventive maintenance, spill prevention and response procedures, periodic inspections, employee training, record keeping, non-storm water evaluations and certifications, sediment and erosion control, as well as implementation/maintenance of traditional stormwater management practices, where appropriate.

**NMED/SWQB  
Official Photograph Log**

Photo # 1

|   |                 |             |
|---|-----------------|-------------|
| Photographer: Daniel Valenta  | Date: 5/14/2012 | 10:45 hours |
| City/County: East of Santa Fe on Old Vegas Hwy, west of Glorieta, NM/ Santa Fe County         |                 |             |
| Location: Near the intersection of Hwy 285/Bobcat Road/Old Vegas Hwy, facing east.            |                 |             |
| Subject: Directional bore used at this site, surface trenching used when the ground is rocky. |                 |             |



**NMED/SWQB  
Official Photograph Log**

Photo # 2

|   |                 |             |
|---|-----------------|-------------|
| Photographer: Daniel Valenta  | Date: 5/14/2012 | 10:45 hours |
| City/County: East of Santa Fe on Old Vegas Hwy, west of Glorieta, NM/ Santa Fe County   |                 |             |
| Location: Near the intersection of Hwy 285/Bobcat Road/Old Vegas Hwy, facing southeast. |                 |             |
| Subject: Disturbance footprint at this site.  |                 |             |



**NMED/SWQB  
Official Photograph Log**

Photo # 3

|   |                 |             |
|---|-----------------|-------------|
| Photographer: Daniel Valenta  | Date: 5/14/2012 | 11:48 hours |
| City/County: East of Santa Fe on Old Vegas Hwy, west of Glorieta, NM/ Santa Fe County   |                 |             |
| Location: Near the intersection of Hwy 285/Bobcat Road/Old Vegas Hwy, facing northwest. |                 |             |
| Subject: Unknown liquid discharge.  |                 |             |

