



NEW MEXICO
 ENVIRONMENT DEPARTMENT
Surface Water Quality Bureau



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BUTCH TONGATE
 Deputy Secretary

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

August 22, 2012

William Pauley, Vice President Western Region
 The Fishel Company dba Team Fishel
 1819 South 27th Ave
 Phoenix, Arizona 85009

RE: Construction Storm Water, SIC 1623, NPDES Compliance Evaluation Inspection, The Fishel Company / Telecommunications Round II Broadband Project Support Activity, NMU001795, August 7, 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 support activity site for which you may be an "operator" (see 2012 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 Further Explanations of the 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 regarding modifications and compliance schedules both the USEPA (Diana McDonald, USEPA (6EN-WM), 1445 Ross Avenue, Dallas, Texas 75202-2733) and the NMED Surface Water Quality Bureau Program Manager (at the address above).

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: Rashida Bowlin, USEPA (6EN) by e-mail
 Hannah Branning, USEPA (6EN-WC) by e-mail
 Darlene Whitten-Hill, USEPA (6EN-WC) by e-mail
 Carol Peters-Wagnon, USEPA (6EN-WM) by e-mail
 Diana McDonald, USEPA (6EN-WM) by e-mail
 Robert Italiano, NMED District II - Santa Fe by e-mail
 Vic McKinney, Sr. Estimator/Project Manager, The Fishel Company 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 0 0 0 1 7 9 5 11 12	1 2 0 8 0 7 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) Construction support activity site (bentonite drilling mud pit) in the northwest corner of 4519 Agua Fria Street, Santa Fe, New Mexico related to the Telecommunications Round II Broadband Project. Santa Fe County	Entry Time /Date 0948 hours / 08/07/2012	Permit Effective Date February 16, 2012
	Exit Time/Date 1119 hours / 08/07/2012	Permit Expiration Date February 16, 2017
Name(s) of On-Site Representative(s)/Title(s)/Phone and Fax Number(s) -Jason Esparza, Office Assistant, A. Moñtano & Associates, Inc. -Erika Montano, Office Assistant, A. Montano & Associates, Inc. -Albert Montano, President, A. Montano & Associates, Inc. / 505-989-7921 and fax 505-989-8452	Other Facility Data Construction Support Activity Site Latitude 35.653600° Longitude -106.030900° SIC 1623	
Name, Address of Responsible Official/Title/Phone and Fax Number William Pauley, Vice President Western Region / The Fishel Company dba Team Fishel, 1819 South 27th Ave, Phoenix, Arizona 85009 / 602-233-0658 and fax 602-233-2930.	Contacted 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
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)

1) Owner/Developer - ENMR Telephone Cooperative, Inc. (NPDES Tracking No. NMU001794); and General Contractor - The Fischel Company (NPDES Tracking No. NMU001795). 2) An NPDES Compliance Evaluation Inspection (CEI) was conducted at the above-referenced construction support activity site on August 7, 2012 following a citizen complaint. A materials storage area (bentonite drilling mud pit) related to the ENMR-Plateau Telecommunications Round II Broadband Project was located in a portion of the above-referenced site. Erosion was observed on the berm of the pit and embankment side slopes above the Santa Fe River. 3) On the day of this inspection, The Fishel Company had not completed a Stormwater Pollution Prevention Plan and had not submitted a Notice of Intent to obtain permit coverage for stormwater discharges under the USEPA 2012 Construction General Permit (CGP) for the Telecommunications Round II Broadband Project large construction activity (this is a **Repeat Finding**) and this construction support activity site. 4) A separate USEPA 3560 form will be sent to each operator for this inspection. 5) See attached further explanations and photo log.

Name(s) and Signature(s) of Inspector(s) Erin S. Trujillo /s/Erin S. Trujillo	Agency/Office/Telephone/Fax Numbers NMED/SWQB/505-827-0418/505-827-0160	Date August 22, 2012
Signature of Management QA Reviewer Richard E. Powell /s/Richard E. Powell	Agency/Office/Telephone/Fax Numbers NMED/SWQB/505-827-2798/505-827-0160	Date August 22, 2012

NPDES Construction Storm Water Compliance Evaluation Inspection
The Fishel Company
Telecommunications Round II Broadband Project
Construction Support Activity at 4519 Agua Fria Street, Santa Fe, New Mexico
NMU001795
August 7, 2012

Further Explanations

Introduction

On August 7, 2012, a Compliance Evaluation Inspection (CEI) was conducted by Erin Trujillo, accompanied by Barbara Cooney, both of the New Mexico Environment Department (NMED) Surface Water Quality Bureau (SWQB), at a construction support activity site, in this case a materials storage area (drilling mud pit), in the northwest portion of 4519 Agua Fria Street, Santa Fe, New Mexico. Super Gel-X bentonite drilling mud at the site was from the ENMR-Plateau Telecommunications Round II Broadband Project construction activity. This inspection followed a citizen complaint to NMED concerning dumping in the Santa Fe River from activities at the site. The purpose of this inspection was to document the facility's status regarding the National Pollutant Discharge Elimination System (NPDES) permit program, including storm water regulations at 40 Code of Federal Regulations Part 122.26.

Stormwater discharges are to the Santa Fe River, Santa Fe waste water treatment plant (WWTP) to Nicholas Reservoir, an unclassified intermittent surface water in Segment 20.6.4.98 *State of New Mexico Standards for Interstate and Intrastate Surface Waters, 20.6.4 New Mexico Administrative Code (NMAC)* in the Rio Grande Basin. This segment includes the designated uses of livestock watering, marginal warmwater aquatic life, primary contact, and wildlife habitat. This assessment unit of the Santa Fe River is impaired and listed as not supporting marginal warmwater aquatic life, primary contact and wildlife habitat. Listed probable sources of impairment include atmospheric deposition-toxics, contaminated sediments, inappropriate waste disposal, urban runoff/storm sewers and source unknown. Listed probable causes of impairment include Aluminum, E. coli bacteria and polychlorinated biphenyls (PCBs).

Upon arrival at approximately 0948 hours on August 7, 2012 at A. Montañó Associates, Inc. dba Albert Montañó Sand & Gravel and Septic Tanks, 4519 Agua Fria St, Santa Fe, New Mexico, the inspectors made introductions and explained the purpose of the inspection to office assistants, Jason Esparza, Office Assistant and Erika Montañó. The inspector Erin Trujillo contacted Albert Montañó, President, A. Montañó & Associates, Inc., made introductions and explained the purpose of the inspection by telephone. Albert Montañó provided verbal authorization for site entrance and Erin Trujillo presented credentials to the owner's on-site representative Mr. Esparza. The inspectors and Mr. Esparza toured the portion of the property where an excavated pit was located. Albert Montañó joined the tour upon his arrival on site. A brief exit interview to discuss the preliminary findings of this inspection was provided to Albert Montañó on site. The inspectors left the site at approximately 1119 hours on the day of this inspection.

This report is based on a review of the USEPA online notice of intent (eNOI) query; review of files maintained by NMED; on-site observation by NMED personnel; and verbal information provided by the property owner on-site representatives, and later telephone calls to the construction support activity site operators and sub-contractor representatives. Following the inspection, additional information was obtained by telephone from Juan Baez, Project Forman, The Fishel Company dba Team Fishel (602-206-5929) and Rodger Barton, SWPPP Compliance Inc., Albuquerque, New Mexico (505-818-7450) on August 8 and 9, 2012. Additional information and preliminary findings were discussed by telephone with Regan Williams, Engineering/Project Manager, ENMR Telephone Cooperative, Inc. (Office 575-398-5100) on August 10, 2012 and Vic McKinney, Sr. Estimator / Project Manager, The Fishel Company (Office 602-361-1200) on August 13, 2012. Additional information was obtained from representatives J.R. and Jo Dee Fanelli of Atlas Pumping Co., Inc., Albuquerque, New Mexico by telephone on August 15, 2012.

According to the on-site representatives and construction activity operators, it does not appear that the property owner Albert Montañó or A. Montañó & Associates, Inc. were operators for this construction support activity site. Excavation, installation of control measures, transporting to and pumping drilling materials at the site, and contracting a septage hauler to remove drilling muds was conducted by The Fishel Company (general contractor) for the ENMR-Plateau Telecommunications Round II Broadband Project. According to property owner and operator representatives, including Mr. Fanelli, no septage was hauled to or from the site.

May 14, 2012 CEI for Telecommunications Round II Broadband Project

On May 14, 2012, Daniel Valenta of the NMED SWQB conducted a CEI at a construction site close to U.S. Hwy 285, Bobcat Road, and Old Las Vegas Highway in Santa Fe County, New Mexico. A separate CEI report dated May 17, 2012 was sent to each operator of the construction activity, in this case the owner/developer or ENMR Telephone Cooperative, Inc. dba ENMR-Plateau (NPDES Tracking No. NMU001794) and the general contractor or The Fischel Company dba Team Fischel (NPDES Tracking No. NMU001795).

As discussed in the previous CEI report, ENMR Telephone Cooperative Inc. provides local phone service to rural areas in Eastern New Mexico, and operates in 25 counties in New Mexico and Western Texas covering 25,000 square miles. ENMR-Plateau provides local telephone service to approximately 10,000 residential customers and has more than 2,000 miles of fiber optic cable buried to transport high capacity services for the company and other carriers in the area. The ENMR-Plateau Round II Broadband Project is to provide high-speed broadband service to rural communities in east-central New Mexico. The project includes 194 miles of trenching, cable bore, or directional bore to install a broadband cable.

Clean Water Act and Construction General 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 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 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.”*

2012 Construction General Permit (CGP)

USEPA Construction General Permit (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. Appendix A (Definitions) of the 2012 CGP 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).

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 and Part 2.2 of the 2012 CGP). The CGP requires compliance with effluent limits and other permit requirements, such as the development of a stormwater pollution prevention plan (SWPPP), inspection, maintenance, and corrective action. A site's SWPPP is required to be developed prior to submitting a NOI. Information on the 2012 CGP, and the USEPA electronic NOI system is available from:

<http://cfpub.epa.gov/npdes/stormwater/cgp.cfm#final2008cgp>.

Construction Support Activities

Other definitions in Appendix A of the 2012 CGP include:

"Construction Site" – the land or water area where construction activities will occur and where stormwater controls will be installed and maintained. The construction site includes construction support activities, which may be located at a different part of the property from where the primary construction activity will take place, or on a different piece of property altogether. The construction site is often a smaller subset of the lot or parcel within which the project is taking place.

"Construction Support Activities" – a construction-related activity that specifically supports the construction activity and involves earth disturbance or pollutant-generating activities of its own, and can include activities associated with concrete or asphalt batch plants, equipment staging yards, materials storage areas, excavated material disposal areas, and borrow areas.

Per Part 1.3.c of the 2012 CGP (Types of Discharges Authorized Under the CGP), discharges allowed under the permit provided that appropriate stormwater controls are designed, installed, and maintained include:

Stormwater discharges from construction support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided: i. The support activity is directly related to the construction site required to have permit coverage for stormwater discharges; ii. The support activity is not a commercial operation, nor does it serve multiple unrelated construction projects; iii. The support activity does not continue to operate beyond the completion of the construction activity at the project it supports; and iv. Stormwater controls are implemented in accordance with Part 2 and, if applicable, Part 3, for discharges from the support activity areas.

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). Part 3 of the 2012 CGP includes water quality-based effluent limitations for impaired waters.

Findings

Earth disturbance (re-disturbance) for a materials storage area, in this case excavation of a drilling mud (bentonite) pit and earth berm, related to the Telecommunications Round II Broadband Project construction project was conducted at the site in April of 2012 according to the operator representatives which is after February 16, 2012 the effective date of the 2012 CGP.

In addition to disturbance, the drilling muds would be a potential source of pollutants (e.g., solids). The support activity appears to have been directly related to the construction site required to have permit coverage for stormwater discharges. The support activity site is on a portion of a property that has other commercial and/or industrial activities. But, the storage of materials, by its self, does not appear to be a commercial or industrial operation. The drilling mud pit did not serve multiple unrelated construction projects according to on-site and operator representatives. The support activity is not to continue to operate beyond the completion of the Telecommunications Round II Broadband Project construction activity according to on-site and operator representatives.

On the day of this inspection, neither ENMR Telephone Cooperative, Inc. (owner/developer) nor The Fischel Company (general contractor) had completed a Stormwater Pollution Prevention Plan and submitted a NOI to obtain permit coverage under either the USEPA 2008 or 2012 CGP for the Telecommunications Round II Broadband Project large construction activity. This is a **Repeat Finding**. 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.” According to operator representatives, a SWPPP was under development and review. It was not determined as part of this inspection in the SWPPP under development included construction support activities.

Structural control measures (berm, silt fence and straw wattle) were observed at the site, but were damaged and not maintained. The placement of some of the silt fence and wattle did not appear to provide sediment or erosion control of the disturbed areas of the berm. An erosion rill and gully continued from the berm, down the side slope of the embankment, and to the first terrace above the Santa Fe River. There was no barrier to stop stormwater discharge over the edge of the terrace at this location.

If not properly managed or treated in accordance with an NPDES permit, the construction support activities at this site represent a potential threat to water quality through storm water discharges. According to Mr. Williams, ENMR Telephone Cooperative, Inc. decided to request a plan from the design engineer/consultant and/or general contractor to “close” (stop using and remove the bentonite slurry from the broadband construction project) from this Agua Fria site due to its proximity to the Santa Fe River.

NMED/SWQB
Official Photograph Log
Photo # 1

Photographer: Erin S. Trujillo

Date: 08/07/2012

Time: 1005 hours

City/County: Santa Fe / Santa Fe

State: New Mexico

Location: Northwest corner of 4519 Agua Fria Street, Santa Fe, New Mexico

Subject: Looking north at drilling mud pit and earth berm. Arrows point to silt fence and straw wattle on the inside of the pit that would not provide sediment and erosion control on the outside slope of the berm.



NMED/SWQB
Official Photograph Log
Photo # 2

Photographer: Erin S. Trujillo

Date: 08/07/2012

Time: 1006 hours

City/County: Santa Fe / Santa Fe

State: New Mexico

Location: Northwest corner of 4519 Agua Fria Street, Santa Fe, New Mexico

Subject: A portion of the earth berm on west side of the drilling mud pit shown in previous photo was lower (missing). Level of drilling muds is near the top of the berm in this location. Arrow points to gray solids, which appeared to be drilling mud fluids, outside the pit. Photo also shows damaged silt fence.



NMED/SWQB
Official Photograph Log
Photo # 3

Photographer: Erin S. Trujillo

Date: 08/07/2012

Time: 1006 hours

City/County: Santa Fe / Santa Fe

State: New Mexico

Location: Northwest corner of 4519 Agua Fria Street, Santa Fe, New Mexico

Subject: Lower (missing) berm shown in previous photo. Arrow in this photo again points to gray solids, which appeared to be drilling mud fluids, outside the pit.



NMED/SWQB
Official Photograph Log
Photo # 4

Photographer: Erin S. Trujillo

Date: 08/07/2012

Time: 1017 hours

City/County: Santa Fe / Santa Fe

State: New Mexico

Location: Northwest corner of 4519 Agua Fria Street, Santa Fe, New Mexico

Subject: Arrows point to an erosion gully that continued from the top of berm, down the side slope of the embankment to the first terrace above the Santa Fe River. It is unknown if this gully existed prior to the excavation of the berm, but the gully would convey storm water from the berm.



NMED/SWQB
Official Photograph Log
Photo # 5

Photographer: Erin S. Trujillo

Date: 08/07/2012

Time: 1023 hours

City/County: Santa Fe / Santa Fe

State: New Mexico

Location: Northwest corner of 4519 Agua Fria Street, Santa Fe, New Mexico

Subject: Photo taken from the first terrace above the Santa Fe River. Stormwater from the berm appeared to collect in this area. There was no barrier to stop stormwater discharge over the edge of the terrace at this location.

