



SUSANA MARTINEZ  
Governor

JOHN A. SANCHEZ  
Lieutenant Governor

**NEW MEXICO  
ENVIRONMENT DEPARTMENT**

***Surface Water Quality Bureau***

**Harold Runnels Building, N2050  
1190 South St. Francis Drive (87505)  
P.O. Box 5469, Santa Fe, NM 87502-5469  
Phone (505) 827-0187 Fax (505) 827-0160  
[www.nmenv.state.nm.us](http://www.nmenv.state.nm.us)**



DAVE MARTIN  
Secretary

BUTCH TONGATE  
Deputy Secretary

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

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**Certified Mail – Return Receipt Requested**

June 7, 2012

Mr. James Arias, President  
Charter Building and Development Corporation  
730 Rankin Rd., NE, Suite 700  
Albuquerque, NM 87107

Re: Construction Storm Water, SIC 1521, NPDES Compliance Evaluation Inspection, Desert Sky at Huning Ranch  
Subdivision, NPDES Permit NMU001797, Los Lunas, NM, May 24, 2012

Dear Mr. Arias,

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 are 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 the requirements of the federal Clean Water Act.

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 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, TX 75202) and NMED (at the above address) regarding modifications and compliance schedules.

If you have any questions, please feel free to contact me at the above address, by telephone at (505) 222-9587, or by email at [sarah.holcomb@state.nm.us](mailto:sarah.holcomb@state.nm.us).

Sincerely,  
*/s/ Sarah Holcomb*  
Sarah Holcomb  
Surface Water Quality Bureau

Cc: Samuel Tates, USEPA (6EN-AS) by email  
Carol Peters-Wagnon, USEPA (6EN-AS) by email  
Diana McDonald, USEPA (6EN-WT) by email  
Darlene Whitten-Hill, USEPA (6EN-WT) by email  
William Chavez, Acting NMED District 1 Manager, by email  
Steve Hernandez, Development Managing Consultants, by email



## **Introduction**

On May 24, 2012, a Compliance Evaluation Inspection was conducted at two  $\geq 5$  acre construction sites located in Los Lunas, NM. The inspection was conducted by Sarah Holcomb of the NMED SWQB. The current construction project consists of one approximately 36.5 acre residential subdivision (Desert Sky) and an adjacent residential subdivision of approximately 16.8 acres, which both contain finished infrastructure (water, wastewater, roads, etc.) Desert Sky was minimally built out prior to the recession, while Wildflower is approximately halfway built out. 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.

This report is based on review of files maintained by NMED, on-site observation by NMED personnel, and verbal information and documentation provided by facility representatives. Storm water runoff discharges from this site to the Los Lunas MS4, thence to the Rio Grande in 20.6.4.105 NMAC.

The inspector arrived at the site at 1220 hours on May 24, 2012. The inspector could not make contact with anyone while she was onsite, but left phone messages for Mr. Bo Johnson with Curb South, LLC (a previous developer of this project) and for Mr. James Arias of Charter Homes. No phone calls were returned while the inspector was onsite, and the inspector conducted a visual inspection of both the Desert Sky and Wildflower subdivisions from publicly accessible roads. The inspector left the site at 1330 hours on May 24. Upon return to the office, the inspector did make contact with Mr. Johnson, but was unable to get a hold of Mr. Arias until June 2, 2012. At that time, arrangements were made to review the SWPPPs for the subdivisions, however, the inspector indicated that because the SWPPPs were not made available in a timely manner, not much weight could be given to the documents. The inspector did meet with Mr. Steve Hernandez (a representative for Mr. Arias) on June 7 and reviewed the SWPPPs as a courtesy.

## **Findings**

*Section 301 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 common plan of development or sale if the larger common plan will ultimately disturb five acres or more."*

*In addition, 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 disturbances 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."*

*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."*

The site was referred to the Surface Water Quality Bureau through a complaint. The complaint regarded soil and sediment accumulation in the street, trash and tumbleweed accumulation and blowing dust within the unbuilt sections of the Desert Sky and Wildflower subdivisions. The inspector informed the complainant of Charter's requirements to obtain an NPDES storm water permit, and of the requirements (including stabilization) under that permit.

It has been determined that this owner did not have NPDES construction general permit coverage on the date of this inspection. Charter Building and Development Corporation is the owner/developer who has operational control over project specifications, and is the general contractor who has day-to-day operational control of those activities at the construction project. Charter Building and Development Corporation is responsible for site maintenance which is necessary to ensure compliance with the storm water pollution prevention plan (SWPPP) if one had been prepared, and other permit conditions. Based on a review of the storm water permit database, Charter originally had coverage under an old CGP under tracking

numbers NMR15F233 (for Desert Sky) and NMR15ER08 (for Wildflower). It did not appear that Charter had submitted a new NOI for coverage for either subdivision under the new 2012 CGP issued on February 15, 2012. The submittal deadline was May 16, 2012, after which all coverage under the 2008 permit automatically expired.

Curb South, LLC was the original developer for these two subdivisions, but submitted a Notice of Termination in 2007 when the land was sold to Charter Building and Development Corporation.

According to the complaint, when the economy slowed down, building within the subdivision stopped and the land was left as is. On the day of the inspection, the inspector observed accumulated trash piles, large amounts of silt/sediment in storm drains and in the streets, no storm drain inlet protection, and weeds that had established themselves on the vacant lots. Please see the accompanying pictures at the end of this inspection report.

If not properly managed or treated in accordance with an NPDES permit, the construction activities at this site represent a potential threat to water quality through storm water discharges.

Mr. Arias provided the SWPPPs for both subdivisions via Mr. Steve Hernandez on June 7, 2012. Construction ceased within the Desert Sky subdivision in March 2010. Inspections were also stopped around that time (the last inspection listed in the SWPPPs reviewed on June 7 were dated 3-3-2010.) Although there was no documentation to confirm this in either SWPPP, according to Mr. Hernandez, when construction ceased, seed was planted and tackifier was applied to the disturbed lots. Wildflower seems to back up this assertion (although the inspector wasn't sure the 70% requirement had been reached), but Desert Sky had not reached the 70% stabilization requirement. Please see attached photographs.

There was a potential sale of the remaining land within both subdivisions to Mr. Stan Strickman of Curb, Inc. in December 2011. According to the permittee's representative, there were issues with the sale and the land is now in the process of being relinquished back to New Mexico Bank and Trust. The Bank will then be required to file a Notice of Intent for coverage under this permit until the land has become stabilized as required in the permit.

The facility's representative was informed of the requirements under the NPDES storm water program regarding permitting requirements, preparation of a SWPPP, and installation of appropriate storm water runoff control practices (per the SWPPP) in an email to Mr. James Arias on June 1, 2012, and in the meeting with Mr. Hernandez on June 7. Preliminary findings of the inspection were also discussed in the email and the meeting.

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

<b>Photographer:</b> Sarah Holcomb	<b>Date:</b> 5-24-2012	<b>Time:</b> 1309 hours *
<b>City/County:</b> Los Lunas/Valencia		
<b>Location:</b> Desert Sky Subdivision within Huning Ranch		
<b>Subject:</b> View of the remaining lots within the Desert Sky subdivision.		



\* Time on camera was not adjusted for daylight savings time.

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

<b>Photographer:</b> Sarah Holcomb	<b>Date:</b> 5-24-2012	<b>Time:</b> 1311 hours *
<b>City/County:</b> Los Lunas/Valencia		
<b>Location:</b> Desert Sky Subdivision within Huning Ranch		
<b>Subject:</b> Sediment is present in the streets and there is no protection for downstream storm drains.		



\* Camera was not adjusted for daylight savings time.

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

<b>Photographer:</b> Sarah Holcomb	<b>Date:</b> 5-24-2012	<b>Time:</b> 1314 hours
<b>City/County:</b> Los Lunas/Valencia		
<b>Location:</b> Wildflower Subdivision within Huning Ranch		
<b>Subject:</b> View of unbuilt lots within Wildflower.		

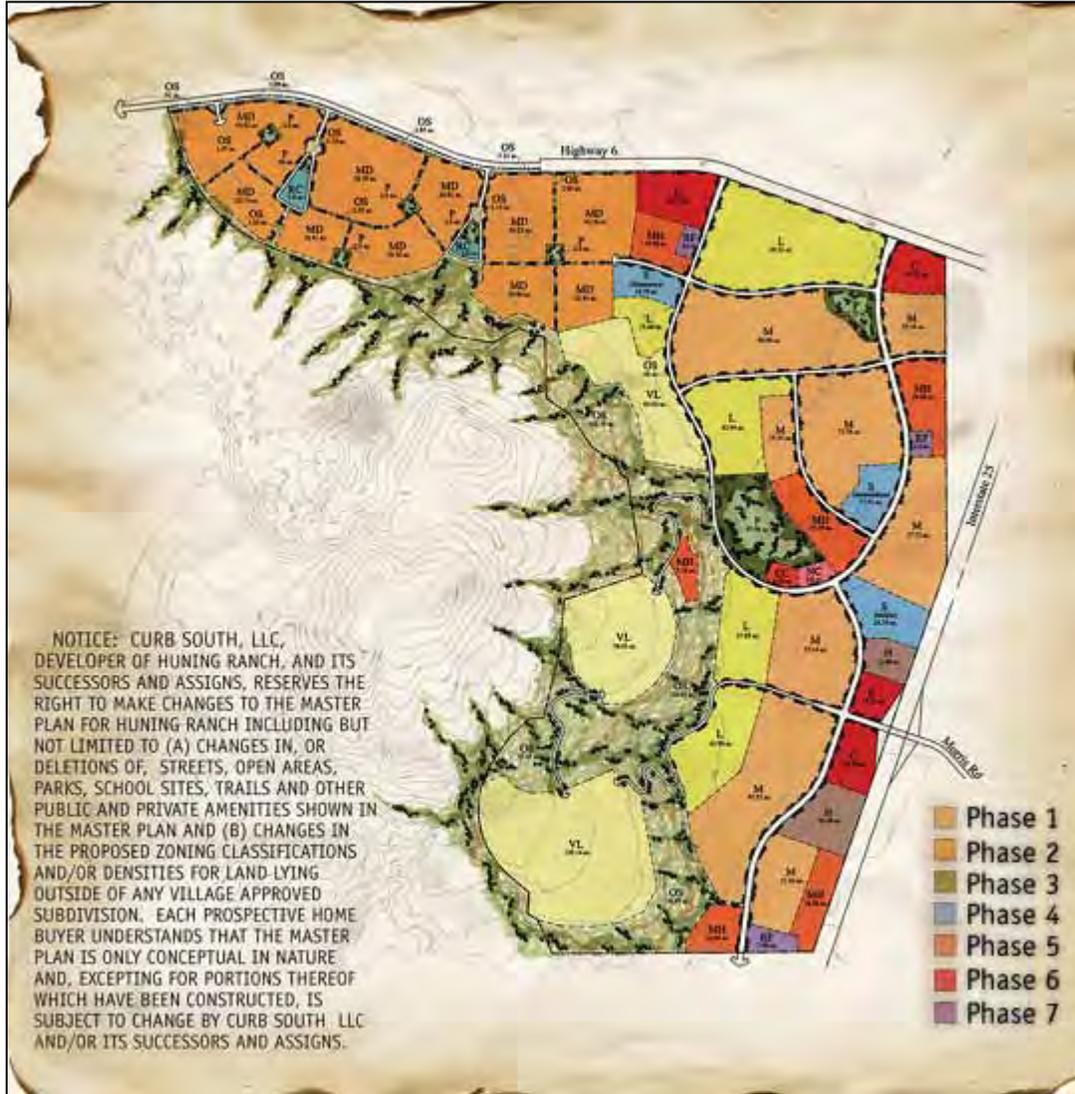


**NMED/SWQB  
Official Photograph Log  
Photo #4**

<b>Photographer:</b> Sarah Holcomb	<b>Date:</b> 5-24-2012	<b>Time:</b> 1315 hours
<b>City/County:</b> Los Lunas/Valencia		
<b>Location:</b> Wildflower Subdivision within Huning Ranch		
<b>Subject:</b> Old concrete washout		



Appendix A:  
Huning Ranch Master Plan



Appendix B on the next page shows the Deed in Lieu of Foreclosure, showing that the land is in the process of being relinquished to New Mexico Bank and Trust.

**DEED IN LIEU OF FORECLOSURE**

CHARTER BUILDING & DEVELOPMENT CORP., a New Mexico corporation, whose address is 730 Rankin Road NE, Suite 700, Albuquerque, NM, 87107, (herein "Grantor") for consideration paid, grants to New Mexico Bank & Trust, whose address is 320 Gold Avenue, SW, Albuquerque, New Mexico 87102 (herein "Grantee"), the following described real property (herein "Subject Real Property") located in Valencia County, New Mexico described as follows:

LOTS NUMBERED ONE (1), SIX (6) THROUGH FIFTY-TWO (52) INCLUSIVE, FIFTY-FIVE (55) THROUGH SIXTY-NINE (69) INCLUSIVE, SEVENTY-ONE (71) THROUGH SEVENTY-SIX (76) INCLUSIVE AND SEVENTY-EIGHT (78) THROUGH ONE HUNDRED TWENTY-SIX (126) INCLUSIVE OF DESERT SKY, BEING A REPLAT OF TRACT 1-G, LANDS OF HUNING LIMITED PARTNERSHIP, A SUBDIVISION IN VALENCIA COUNTY, NEW MEXICO, AS THE SAME ARE SHOWN AND DESIGNATED ON SAID PLAT FILED IN THE OFFICE OF THE VALENCIA COUNTY CLERK ON NOVEMBER 1, 2006, IN PLAT CABINET "J", FOLIO 735.

AND

LOT NUMBERED FIFTY-THREE-A (53-A) OF DESERT SKY SUBDIVISION BEING A REPLAT OF LOT 53 OF DESERT SKY SUBDIVISION, A SUBDIVISION IN VALENCIA COUNTY, NEW MEXICO, AS THE SAME ARE SHOWN AND DESIGNATED ON SAID PLAT FILED IN THE OFFICE OF THE VALENCIA COUNTY CLERK ON JANUARY 9, 2007 IN PLAT CABINET "J", FOLIO 749.

Subject to property taxes for the year 2010, and subsequent years.

Subject Real Property is vacant real property located in Valencia County, New Mexico.

This Deed is given as an absolute conveyance of the Title in consideration of the cancellation of the mortgage as to the Subject Real Property with such mortgage being recorded on August 19, 2010 in Book 364, Page 10048, Document Number 201010048, Records of Valencia County, New Mexico. This Deed is not intended to be additional security.

Grantor declares that this conveyance is freely and fairly made, and that there are no agreements, oral or written, other than this Deed and the **AGREEMENT FOR DEED IN LIEU OF FORECLOSURE AND ESTOPPEL AND AFFIDAVIT** that accompanies this Deed between Grantor and Grantee with respect to Subject Real Property;

with warranty covenants.

