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ENVIRONMENT DEPARTMENT

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DAVE MARKLIN
Secretary

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Deputy Secretary

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

Certified Mail - Return Receipt Requested

August 8, 2012

Mr. John McCatharn, Owner
Para Sol Subdivision / Dairy
Post Office Box 19306
Albuquerque, NM 87105

RE: Construction Storm Water; SIC 1611; NPDES Compliance Evaluation Inspection; Para Sol Subdivision / Dairy; NMU001799; July 26, 2012

Dear Mr. McCatharn:

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) 827-1041.

Sincerely,

Sandra Gabaldón
Surface Water Quality Bureau

CC: Rashida Bowlin, EPA, EPA by e-mail
Carol Peters-Wagnon, EPA by e-mail
Diana McDonald, EPA by e-mail
Darlene Whitten-Hill, EPA, by e-mail
NMED District III by e-mail

**National Pollutant Discharge Elimination System (NPDES)
Construction General Permit (CGP)
Compliance Evaluation Inspection (CEI)
Parasol Subdivision / Dairy
July 26, 2012**

Further Explanations

Introduction

On July 26, 2012, a Compliance Evaluation Inspection (CEI) was conducted by Sandra Gabaldón of the New Mexico Environment Department (NMED), Surface Water Quality Bureau (SWQB) at a construction site in Arrey, NM, GPS: 32.89316 N, -107.34048 W. Para Sol Subdivision / Dairy has been a long-standing project for the owner, Mr. John McCatharn. He previously applied for and received permit coverage for a dairy. However, because of the state of the economy, Mr. McCatharn is unsure at this time if he will proceed with a dairy or subdivide the property for individual homes. The site is approximately 1,000 acres in size. This inspection was triggered following a citizen complaint concerning lack of BMP's (Best Management Practices) at a construction site.

An entrance interview was conducted with Mr. Peter McCatharn, Manager, at the site. Mr. McCatharn is living on site in a mobile home to oversee construction. Entrance interview took place at approximately 1200 hours on July 26, 2012. The inspector made introductions, presented her credentials and discussed the purpose of the inspection. Mr. McCatharn suggested that the site did in fact have permit coverage; however, all paperwork pertaining to this particular site was in Albuquerque where John McCatharn, owner, resided. Mr. Peter McCatharn contacted Mr. John McCatharn by telephone to verify that indeed they did have permit coverage. Mr. John McCatharn stated that he had talked with the State of New Mexico Environment Department and they had told him that no further permit coverage was necessary. I explained to the owner that the NPDES Construction General Permit is a federally issued permit and that permit coverage was required for any site greater than one acre where earth disturbance was occurring. The owner suggested he would have to contact his attorney to verify what needed to be done.

A brief exit interview to discuss the preliminary findings of this inspection and the requirements of the permit was conducted on site with the manager. 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 Percha Creek thence to the Rio Grande, (20.6.4.102 NMAC). The designated uses for this segment are irrigation, livestock watering wildlife habitat, primary contact and warmwater aquatic life.

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 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

Para Sol Subdivision / Dairy 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.

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: Sandra Gabaldón	Date: 5/14/2012	Time: 1154 hours
City/County: Arrey / Sierra County		
Location: Para Sol Subdivision / Dairy		
Subject: Entrance to Property with signage indicating "subdivision"		



**NMED/SWQB
Official Photograph Log**

Photo # 2

Photographer: Sandra Gabaldón	Date: 5/14/2012	Time: 1156 hours
City/County: Arrey / Sierra County		
Location: Para Sol Subdivision / Dairy		
Subject: On site rental equipment.		



**NMED/SWQB
Official Photograph Log**

Photo # 3

Photographer: Sandra Gabaldón	Date: 5/14/2012	Time: 1155
City/County: Arrey / Sierra County		
Location: Para Sol Subdivision / Dairy		
Subject: Facing East, property disturbance. Owner stated they are leveling the land		

