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**NEW MEXICO
ENVIRONMENT DEPARTMENT**

Surface Water Quality Bureau

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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

December 5, 2012

Mr. Jeffrey Posa, Owner
El Merendero (Posa's) Inc.
1514 Rodeo Rd.
Santa Fe, NM 87505

RE: Industrial Storm Water; SIC 2099; NPDES Compliance Evaluation Inspection; El Merendero (Posa's) Inc.; NPDES Permit NMU001825; November 21, 2012

Dear Mr. Posa:

Enclosed please find a copy of the report for the referenced inspection that the New Mexico Environment Department (NMED) conducted at your facility 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 section of the inspection 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, both USEPA (Diana McDonald, USEPA (6EN-WM), 1445 Ross Ave., Dallas, Texas 75202) and NMED (at above address) regarding modifications and compliance schedules.

The NPDES Storm Water Multi-Sector General Permit for Industrial Activities (MSGP-2008) was reissued on September 29, 2008. The MSGP, fact sheet and other information on the industrial storm water program can be downloaded at <http://cfpub2.epa.gov/npdes/stormwater/msgp.cfm>.

If you have any questions about this inspection report, please contact me at (505) 827-2575.

Sincerely,

/s/Daniel Valenta

Daniel Valenta
Surface Water Quality Bureau

Cc: Carol Peters-Wagnon, EPA by e-mail
Diana McDonald, EPA by e-mail
Hannah Branning, EPA by e-mail
Rashida Bowlin, EPA by e-mail
Darlene Whitten-Hill, EPA, by e-mail
NMED District II by e-mail

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Further Explanation

Introduction

On November 21, 2012, a Compliance Evaluation Inspection (CEI) was conducted at the El Merendero (Posa's) facility at 1514 Rodeo Rd., Santa Fe, New Mexico by Daniel Valenta and Sandra Gabaldon of the New Mexico Environment Department (NMED) Surface Water Quality Bureau (SWQB). The purpose of this inspection was to document the operator's status regarding the National Pollutant Discharge Elimination System (NPDES) permit requirements for stormwater discharges associated with industrial activity under 40 Code of Federal Regulations (CFR) 122.26 and the industrial stormwater Multi-Sector General Permit (MSGP). El Merendero (Posa's) Inc. is a miscellaneous Food Preparations and Kindred products facility (see Standard Industrial Classification (SIC) code 2099) that meets the description in Category 40 CFR 122.26(b)(14)(vi), and Sector U, of the MSGP.

Storm water may discharge to the Santa Fe MS4 thence to the Santa Fe River in Segment 20.6.4.98, a non-perennial unclassified water of the state per State of New Mexico Standards for Interstate and Intrastate Surface Waters, New Mexico Administrative Code (NMAC).

El Merendero (Posa's) is a family run business in operation since 1979. The Posa family also runs two restaurants in Santa Fe. The facility produces a variety of tamales that can be ordered via the internet, purchased at local food stores, or ordered in the facility. The facility is small, less than a quarter acre, (see overview).

By the nature of the business, and the required sanitary conditions, require that raw materials through final product be protected from stormwater. As such, the contamination of stormwater from these activities is primarily from the loading and unloading of products and raw materials; spillage and leaks from tanks and containers stored outdoors; waste management practices; and pest control. For example, flour/oil particulate emissions from vents (e.g., from baking operations) may be a significant source of pollutants at some facilities, while material storage may be a primary source at others. At the El Merendero (Posa's) facility no raw materials or waste is exposed to stormwater. Grease is stored in a metal tank that has a lid; no other material is sorted or stored outdoors

Clean Water Act (CWA) and Industrial Stormwater 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."* Federal regulations in 40 CFR 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."*

USEPA's MSGP was re-issued effective September 29, 2008 (Federal Register/Vol. 73, No. 189/Monday, September 29, 2008 pg. 56572) and replaced the 2000 MSGP which expired on October 30, 2005.

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Activities, such as material handling and storage, equipment maintenance and cleaning, industrial processing or other operations that occur at industrial facilities are often exposed to stormwater. The runoff from these areas may discharge pollutants directly into nearby waterbodies or indirectly via storm sewer systems, thereby degrading water quality.

Common requirements for coverage under an industrial 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 facility 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 facility 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 facility and updated as necessary, with a copy of the SWPPP kept on-site.

The industrial stormwater permit also requires collection of visual, analytical, and/or compliance monitoring data to determine the effectiveness of implemented BMPs. For more information on EPA's industrial stormwater permit go to www.epa.gov/npdes/stormwater and click on "Industrial Activity."

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.

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An industrial stormwater fact sheet for Sector U: Food and Kindred Products including a summary of typical pollutants associated with activities and types of stormwater control measures (BMPs) used to minimize the discharge of those pollutants is available at USEPA's website:

http://www.epa.gov/npdes/pubs/sector_u_food.pdf

Findings

El Merendero (Posa's) Inc. does not have permit coverage for the industrial activities associated with a Food and Kindred Produces facility. Mr. Posa was informed of the No Exposure Certification for the exclusion from NPDES stormwater permitting.

The facility may qualify for a No Exposure Certification. Submission of a No Exposure Certification constitutes notice that the facility does not require permit authorization for its stormwater discharges associated with industrial activity under EPA's Stormwater Multi Sector General Permit due to the existence of a condition of no exposure.

A condition of no exposure exists at an industrial facility when all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

A No Exposure Certification must be provided for each facility qualifying for the no exposure exclusion. In addition, the exclusion from NPDES permitting is available on a facility-wide basis only, not for individual outfalls. If any industrial activities or materials are or will be exposed to precipitation, the facility is not eligible for the No Exposure exclusion. By signing and submitting a No Exposure Certification form, the facility is certifying that a condition of no exposure exists at its facility or site, and is obligated to comply with the terms and conditions of 40 CFR 122.26(g).

**NMED/SWQB
Site Overview**

City/County:	Santa Fe/Santa Fe	
Location:	1515 Rodeo Rd.	
Subject:	El Merendero (Posa's) Inc. Tamale production facility.	

