



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

John

CC → ~~Nick Persampieri~~
~~Jerry Bober, SWB~~
~~Benito Garcia, HRM~~
~~Ralph Ford-Schmid, DE~~

Dir. Richard

AUG 17 1998



REPLY TO: 6EN-WT

CERTIFIED MAIL: RETURN RECEIPT REQUESTED (P 004 768 865)

Mr. Joe King, Administrator
Los Alamos County
P.O. Box 30
Los Alamos, NM 87544

Re: Administrative Order Docket No. VI-98-1385
NPDES Permit No. NMR05A306

Dear Mr. King:

Violation of an National Pollutant Discharge Elimination System (NPDES) permit requires the Environmental Protection Agency (EPA) to take appropriate enforcement action to assure compliance. Pursuant to the Clean Water Act (33 U.S.C. § 1251 et seq.), the enclosed Administrative Order (AO) is hereby served on you and Los Alamos County for the violations described therein.

Compliance with the provisions of this Order is expected within the maximum time periods established by each part of the Order. Your cooperation and prompt attention will be appreciated. The violations cited in the referenced Order could result in the issuance of an EPA administrative penalty order or referral to the United States Department of Justice for judicial action with monetary fines. In response hereto, please reference AO Docket No. VI-98-1385 and your NPDES permit number, and send correspondence to the attention of Mr. Greg Chomycia, 6EN-WT.



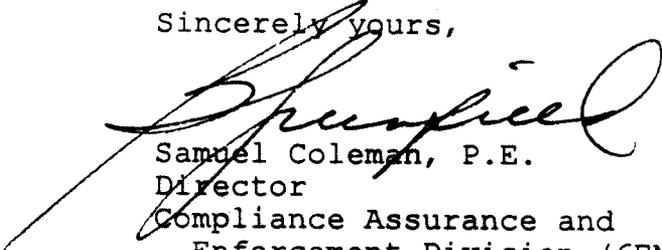
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Generator

TK

It is the policy of EPA to achieve full compliance with the NPDES permit program as rapidly as possible. If you have any questions, please contact Mr. Chomycia, EPA, Dallas, Texas at (214) 665-7595.

Sincerely yours,



Samuel Coleman, P.E.
Director
Compliance Assurance and
Enforcement Division (6EN)

Enclosure

cc: Dr. Jim Davis, Bureau Chief
Surface Water Quality Bureau
New Mexico Environment Department

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of	§	CWA Docket No. VI-98-1385
	§	
COUNTY OF LOS ALAMOS,	§	
a New Mexico Municipality	§	
	§	FINDINGS OF VIOLATION
Respondent	§	AND
	§	ORDER FOR COMPLIANCE
NPDES Permit No. NMR05A306	§	

STATUTORY AUTHORITY

The following FINDINGS are made and ORDER issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by § 309(a) of the Clean Water Act (herein "the Act"), 33 U.S.C. § 1319(a). The Administrator of EPA has delegated the authority to issue this Order to the Regional Administrator of EPA Region 6, who has further delegated this authority to the Director of the Compliance Assurance and Enforcement Division.

FINDINGS

1. County of Los Alamos (herein "Respondent") is a municipality chartered under the laws of the State of New Mexico, and as such, Respondent is a "person," within the meaning of § 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. At all times relevant to this Order, the Respondent owned or operated the Los Alamos County Municipal Solid Waste Landfill located on East Jemez Road, Los Alamos, Los Alamos County, New Mexico (herein "the facility"), the mailing address for which is P.O. Box 30, Los Alamos, New Mexico 87544.

3. At all times relevant to this Order, the facility was a "point source" of a "discharge" of "pollutants" in and with its storm water discharges to the receiving waters of Sandia Canyon and then to the Rio Grande Basin, which are "waters of the United States" within the meaning of § 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2. As a result, the Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (NPDES) program.

4. Under § 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States except with the authorization of, and in compliance with, a NPDES permit issued pursuant to § 402 of the Act, 33 U.S.C. § 1342.

5. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26 provide that storm water discharges associated with industrial activity are point sources subject to NPDES permitting requirements under § 402(a) of the Act,

33 U.S.C. § 1342(a). Section 402(a) provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to such specific terms and conditions as are prescribed in the applicable permit.

6. Under 40 C.F.R. § 122.26(b)(14), the following categories of facilities are among those considered to be engaging in "industrial activity" for purposes of § 402(p) of the Act and 40 C.F.R. §§ 122.1 and 122.26:

category (v) Landfills

Landfills, land application sites, and open dumps that receive or have received any industrial waste (waste that is received from any of the facilities described under categories (i) - (xi)) including those that are subject to regulations under Subtitle D of RCRA.

7. At all times relevant to this Order, Respondent owned or operated a landfill that accepts solid waste from facilities that are defined at 40 C.F.R. § 122.26(b)(14)(i)-(xi), which is industrial activity within the meaning of § 402(p) of the Act, and 40 C.F.R. §§ 122.1 and 122.26(b)(14).

8. Pursuant to Section 402(a) of the Act, EPA issued the NPDES General Permit for Storm Water Discharges Associated with Industrial Activity (herein "the Baseline Permit") (57 Fed. Reg.

41297, September 9, 1992). This permit authorizes discharges associated with industrial activity from point sources (including discharges to or through a municipal separate storm sewer systems) to waters of the United States in accordance with the conditions of the permit. Respondent applied for and was granted permit NPDES permit coverage under the Baseline Industrial Permit effective October 9, 1994. Beginning on the effective date, Respondent was authorized to discharge pollutants to waters of the United States, but only in compliance with the specific terms and conditions of the Baseline Permit.

9. Pursuant to Section 402(a) of the Act, EPA issued the NPDES Storm Water Multi-Sector General Permit for Industrial Activities (60 Fed. Reg. 50804, September 29, 1995), (herein "the Multi-Sector Permit"). The Multi-Sector Permit authorizes discharges associated with industrial activity from point sources (including discharges to or through a municipal separate storm sewer systems) to waters of the United States in accordance with the conditions of the permit.

10. Respondent applied for and was issued Multi-Sector Permit coverage under the permit described above and was assigned NPDES Permit No. TXR05A306, effective on December 7, 1997. Beginning on the effective date, Respondent was authorized to discharge pollutants to waters of the United States, but only in

compliance with the specific terms and conditions of the Multi-Sector Permit.

11. The operations at the facility are industrial activity subject to permitting, and Respondent was required to make application for and obtain NPDES permit coverage for its activities at the facility.

12. At all times relevant to this action, Respondent was an "owner" or "operator" within the meaning of 40 C.F.R. § 122.2 and the permit, and was therefore required to obtain NPDES permit coverage for its industrial activities at the facility.

13. The facility is located on land that is owned by the U.S. Department of Energy (DOE) and is operated by the County of Los Alamos under a Special Use permit issued by DOE. This landfill has in the past, and currently receives construction debris and perhaps other industrial wastes of unknown origin from Los Alamos National Laboratory (LANL) and possibly other industrial waste generators. LANL conducts a number of industrial activities, as that term is defined at 40 CFR 122.26, onsite. Management personnel do not know the extent or characteristics of industrial waste disposed of at this site since 1974 by LANL. The New Mexico Hazardous and Radioactive Materials Bureau is currently investigating the site concerning some materials disposed of at this site by LANL. The Los Alamos

County Landfill is an "uncontrolled sanitary landfill" as defined subtitled D of the Solid Waste Disposal Act.

14. On March 11, 1998, the facility was inspected by New Mexico Environment Department (NMED). As a result of this inspection, the facility was found to be in violation of its NPDES permit.

15. Part VI.B.2.c. of the Baseline Permit states "facilities with storm water discharges associated with industrial activities from any active or inactive landfill ... without a stabilized cover that has received any industrial wastes (other than wastes from a construction site) ... are required to monitor such storm water that is discharged from the facility ... semi-annually". Part VI.D.1.c. of the Baseline Permit requires that the results of these samples to be reported to EPA.

16. The facility should have conducted monitoring and reporting of its storm water discharges for the periods October - March and April - September of 1992, 1993, 1994, 1995, 1996 and 1997. This monitoring was not conducted as required by the Baseline Permit.

17. Part XI.L.3.a.(3) of the Multi-Sector Permit states "[e]ach facility covered by this permit shall develop a

description of storm water management controls appropriate for the facility and implement such controls."

18. The Storm Water Pollution Prevention Plan (SWPPP) required by the Multi-Sector Permit describes Best Management Practices (BMPs) such as; good housekeeping practices, preventive maintenance, regular inspections and employee training as required by the permit. Many of these BMPs such as, employee training, preventive maintenance and regular inspections, are not being implemented at the facility. Facility records do include notations that "maintenance" is done as an employee assignment on a periodic basis. Several ^{documents entitled} "silt fence inspection" are recorded in facility records sporadically in 1997 and 1998. Some employee training at the facility is covered in weekly tailgate meetings, however facility records do not include who was at these trainings or what issues were discussed. Several other BMPs have not been implemented such as, drainage improvements in the waste staging area, installation of rip-rap, grooving along the access road, the drainage outlet slope and stabilization for areas highly susceptible to erosion.

19. Part XI.L.3.a.(4) of the Multi-Sector Permit states "Qualified personnel shall conduct comprehensive site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year."

20. Annual site compliance evaluations have not been conducted at this facility as required by the Multi-Sector Permit.

21. Each violation of the conditions of the permit or regulations described above is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

ORDER

Based on these Findings and pursuant to the authority of §§ 308(a) and 309(a) of the Act, 33 U.S.C. §§ 1318(a) and 1319(a), EPA HEREBY ORDERS the Respondent to take the following action:

A. Within thirty (30) days of the effective date of this Order, the Respondent shall take whatever corrective action is necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of the permit.

B. Within thirty (30) days of the effective date of this Order, the Respondent shall submit a written report detailing the specific actions taken to correct the violations cited herein and explaining why such actions are anticipated to be sufficient to prevent recurrence of these or similar violations.

C. In the event that the Respondent believes complete correction of the violations cited herein is not possible within thirty (30) days of the effective date of this Order, the Respondent shall, within those thirty (30) days, submit a comprehensive written plan for the elimination of the cited violations within the shortest possible time. Such plan shall describe in detail the specific corrective actions to be taken and why such actions are sufficient to correct the violations. The plan shall include a detailed schedule for the elimination of the violations within the shortest possible time, as well as measures to prevent these or similar violations from recurring.

D. In order to Show Cause why Respondent has not complied with the Act and its regulations, and why EPA should not take further enforcement action against Respondent for the violations cited, Respondent should arrange a meeting with EPA within forty-five (45) days of the effective date of this Order, to be held at the Region 6 offices, 1445 Ross Ave., 7th Floor, Dallas, Texas. Respondent shall submit to EPA all information or materials it considers relevant to the meeting at least fifteen (15) days prior to the meeting.

E. To arrange a Show Cause meeting, or to ask questions or comment on this matter, please contact Mr. Greg Chomycia of our office at (214) 665-7595.

F. Any information or correspondence submitted by the Respondent to EPA under this Order shall be addressed to the following:

Mr. Greg Chomycia
Water Enforcement Branch (6EN-WT)
EPA Region 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202

GENERAL PROVISIONS

Issuance of this Order shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other relief appropriate under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited.

If EPA issues an administrative complaint, or a civil judicial action is initiated by the U.S. Department of Justice, the Respondent will be subject to a monetary penalty. If a criminal judicial action is initiated by the U.S. Department of Justice, ~~the~~ Respondent will be subject to a monetary fine and/or imprisonment.

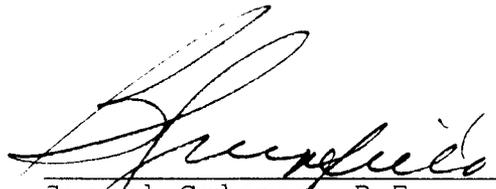
Failure to comply with this Order or the Act can result in civil penalties of up to \$27,500 per day of violation, suspension of the permit or, if the Respondent is convicted of a criminal

offense under § 309(c) of the Act, 33 U.S.C. § 309(c), the Respondent's ineligibility for certain contracts, grants, or loans under § 508 of the Act.

This Order does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.

The effective date of this Order is the date it is received by the Respondent.

AUG 17 1998
Date



Samuel Coleman, P.E.
Director
Compliance Assurance and
Enforcement Division