



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

MAY - 7 2018

CERTIFIED MAIL-RETURN RECEIPT REQUESTED: 7005 1820 0003 7458 3571

Mr. Esmail Panahi, President
Banes General Contractors, Inc.
6001 Doniphan
El Paso, TX 79932

Re: Administrative Order; Docket Number: CWA-06-2018-1759
NPDES Facility Number: NMU001957

Dear Mr. Panahi:

Enclosed is an Administrative Order (AO) issued to Banes General Contractors, Inc. for violation of the Clean Water Act (CWA) 33 U.S.C. §§ 1251-1387. The violation was identified during a January 3, 2018 inspection of your facility located in Santa Fe, New Mexico. The inspection was conducted by the New Mexico Environment Department on behalf of the Environmental Protection Agency, Region 6 (EPA). The violation stems from two rain events of one-quarter inch or greater at the site, which resulted in a discharge of pollutants from the site into waters of the United States in violation of Section 301 of the CWA.

This AO does not assess a monetary penalty; however, it does require compliance with applicable federal regulations. The first compliance deadline is within thirty days of receipt of this AO. The AO also contains other compliance deadlines and certain information. EPA is committed to ensuring compliance with the requirements of the National Pollutant Discharge Elimination System (NPDES) program and my staff will assist you in any way possible. Please reference AO Docket Number CWA-06-2018-1759 and NPDES Facility Number NMU001957 on your response.

If you have any questions, please contact Mrs. Linda Smith, of my staff, at (214) 665-6641.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cheryl T. Seager", is written over a horizontal line.

Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

1445 Ross Avenue, Suite 1200, Dallas, TX 75202

Docket Number: CWA-06-2018-1759, NPDES Permit Number: NMU001957

FINDINGS OF VIOLATION AND COMPLIANCE ORDER

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 Section 309(a) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(a). The Administrator of EPA delegated the authority to issue this Order to the Regional Administrator of EPA Region 6, who delegated this authority to the Director of the Compliance Assurance and Enforcement Division.

FINDINGS

1. Banes General Contractors, Inc. ("Respondent") is a "person," as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

2. At all times relevant to the violations alleged herein, Respondent owned or operated a construction site of five acres, located at 6820 Cerrillos Road, Santa Fe, Santa Fe County, New Mexico ("facility") and was, therefore, an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

3. At all times relevant to this Order, the facility acted as a "point source" of a "discharge" of "pollutant[s]" as defined by Section 502(12) & (14), 33 U.S.C. § 1362(12) & (14), to the receiving waters of the City of Santa Fe Municipal Separate Storm Sewer ("MS4") storm water drain on the west side of the project or from the east side and thence to Arroyo Chamisos, thence to Arroyo Cienega and thence to the Santa Fe River in the Rio Grande Basin (20.6.4.113 NMAC), which is considered a "water of the United States," as defined by 40 C.F.R. § 122.2. As a result, Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System ("NPDES") program.

4. The facility is an industry identified under 40 C.F.R. § 122.26(b)(14)(x), and as such, is subject to the General Permit for Storm Water Discharges Associated with Construction Activity issued by the EPA on February 16, 2017.

5. On January 3, 2018, the facility was inspected by the New Mexico Environment Department ("NMED") on behalf of EPA. As a result of this inspection, the facility was found to be in violation of Section 301 of the Act, 33, U.S.C. § 1311.

6. According to the EPA eNOI database that records all applications for storm water general permit coverage, Respondent did not submit a Notice of Intent ("NOI") for permit coverage for its activities at the facility, and was not covered by an NPDES permit at the relevant times for the relevant activities.

7. During the time period of October 2, 2017 to January 3, 2018, there were two rainfall events of one-quarter inch or greater at the facility resulting in unauthorized discharges of pollutants from the facility. Unauthorized discharges from the facility are a violation of Section 301 of the Act, 33 U.S.C. § 1311.

SECTION 309(a)(3) COMPLIANCE ORDER

Based on these findings and pursuant to the authority of Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), EPA hereby orders Respondent to take the following actions:

A. Within thirty (30) days of the effective date of this Order, Respondent shall develop and implement a site specific Storm Water Pollution Prevention Plan and apply for NPDES permit coverage, either by filing an individual permit application or an NOI to be covered by an applicable NPDES general permit for discharges from the facility, or shall cease and prevent all unpermitted discharges from the facility. The NOI should be submitted by one of the following methods:

- 1) By regular mail to:
Storm Water Notice Processing Center
U.S. EPA, MC 4203M
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
- 2) By overnight/express mail to:
Storm Water Notice Processing Center
U.S. EPA, Room 7420
1201 Constitution Ave., NW
Washington, D.C. 20004
- 3) Via the internet at:
<https://www.epa.gov/npdes/electronic-notice-intent-enoi>

For a status update on your NOI, call the NOI Center at (866) 352-7755.

B. A certified copy of any permit application shall be simultaneously forwarded to EPA at the following address:

Mrs. Linda Smith
Water Enforcement Branch (6EN-WS)
EPA, Region 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202-2733

C. Any other information or correspondence submitted by Respondent to EPA under this Order shall also be forwarded to the above address.

D. Within thirty (30) days of the effective date of this Order, Respondent shall submit a written certification of compliance with this Order to EPA, Region 6.

GENERAL PROVISIONS

Respondent may seek federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

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

Failure to comply with this Order or the Act may result in further administrative action, or a civil judicial action initiated by the U.S. Department of Justice.

Compliance with the terms and conditions of this Order does not relieve Respondent of its obligation to comply with all applicable federal, state, or local laws or regulations.

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

5/7/18
Date

d
Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division