



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270-2102

July 14, 2023

TRANSMITTED VIA EMAIL

Mr. Kirk Patten
Chief of Fisheries Management
State of NM Department of Game & Fish
One Wildlife Way
Santa Fe, NM 87507
kirk.patten@state.nm.us

Re: Administrative Order; Docket Number: CWA-06-2023-1778
NPDES Permit Number: NM0030163

Dear Mr. Patten:

Enclosed is an Administrative Order (AO) issued to the NM Department of Game & Fish regarding the Glenwood State Fish Hatchery for violations of the Clean Water Act (CWA), (33 U.S.C. §§ 1251–1387). Violations of permit effluent limits were identified from discharge monitoring reports (DMRs) submitted to the Environmental Protection Agency, Region 6 (EPA) for Glenwood State Fish Hatchery.

This AO does not assess a monetary penalty; however, it does require compliance with applicable federal regulations. The first compliance deadline is thirty days from the effective date of this letter. 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-06-2023-1778 and NPDES Permit Number NM0030163 on your response.

If you have any questions, please contact Ms. Rachel Matthews, of my staff, at (214) 665-8589 or at matthews.rachel@epa.gov.

Sincerely,

A handwritten signature in blue ink that reads "Cheryl T. Seager".

Digitally signed by CHERYL
SEAGER
Date: 2023.07.14 11:37:12 -05'00'

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

Enclosure

e.c. Ms. Shelly Lemon
NMED Water Bureau Chief
shelly.lemon@env.nm.gov

Ms. Susan LucasKamat
NMED Surface Water Quality Bureau
susan.lucaskamat@env.nm.gov



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 6 • 1201 Elm St. Suite 500 • Dallas, TX 75270-2102
FINDINGS OF VIOLATION AND COMPLIANCE ORDER
Docket Number: CWA-06-2023-1778; Permit Number: NM0030163

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 (herein “the 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 further delegated this authority to the Director of the Enforcement and Compliance Assurance Division.

FINDINGS

1. State of New Mexico Department of Game & Fish (Respondent) is a “person,” as that term is defined at Section 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 (all relevant times), Respondent was authorized to discharge from a fish hatchery located at Catwalk Road, approximately 1 mile northeast of Glenwood in Catron County, New Mexico (facility), and was, therefore, an “owner or operator” within the meaning of 40 C.F.R. § 122.2.

3. At all relevant times, the facility acted as a “point source” of a “discharge” of “pollutants” with its wastewater to the San Francisco River in Segment No. 20.6.4.603 in San Francisco River Basin, which is a “water of the United States” within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

4. Because Respondent owned or operated a facility that is a point source of discharges of pollutants to waters of the U.S., Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (NPDES) program.

5. Under Section 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, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

6. Section 402(a) of the Act, 33 U.S.C. § 1342(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 the specific terms and conditions prescribed in the applicable permit.

7. Respondent applied for and was issued NPDES Permit No. NM0030163 (permit) under Section 402 of the Act, 33 U.S.C. § 1342, which became effective September 1, 2018. At all relevant times, Respondent was authorized to discharge pollutants from the facility to waters of the United States only in compliance with the specific terms and conditions of the permit.

8. Part I.A. of the permit places certain limitations on the quality and quantity of effluent discharged by Respondent. The relevant discharge limitations are specified in Attachment A, which is incorporated herein by reference.

9. The permit also includes “Monitoring and Reporting Requirements” that require Respondent to sample and test its effluent and monitor compliance with permit conditions according to specific procedures, in order to determine the facility’s compliance or noncompliance with the permit and applicable regulations.

10. The permit requires Respondent to file certified Discharge Monitoring Reports (DMRs) of the results of monitoring. DMRs filed by Respondent showed discharges of pollutants that exceed the effluent limitations for monitoring periods dated October 2022 through March 2023, as specified in Attachment B, which is incorporated herein by reference.

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

SECTION 309(a)(3) COMPLIANCE ORDER

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

A. Immediately take such measures as necessary to comply with all permit conditions no later than (30) days from the effective date of this Order.

B. Within thirty (30) days of the effective date of this Order, Respondent shall submit a written report detailing

the specific actions taken to correct the violations cited herein and an explanation as to why such actions are anticipated to be sufficient to prevent recurrence of these or similar violations.

C. In the event that Respondent believes complete correction of the violations cited herein is not possible within thirty (30) days of the effective date of this Order, Respondent shall, within thirty (30) days of the effective date of this Order, 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. Any approved compliance schedule will be incorporated into a future administrative order.

E. If Respondent would like to arrange a meeting with EPA to discuss the allegations in Section 309 (a)(3) Compliance Order, Respondent should contact EPA within thirty (30) days of the effective date of this Order. The meeting will be held at the Region 6 offices, 1201 Elm St., Dallas, Texas, or through a virtual platform, as appropriate, and Respondent can provide any information it believes is relevant to this Order. Respondent shall submit to EPA all information or materials it considers relevant to EPA at least ten (10) days prior to the meeting.

F. To arrange a meeting, or to ask questions or comment on this matter, contact Rachel Matthews at (214) 665-8589.

G. All information, and/or correspondence, shall be electronically submitted to:

Ms. Nancy Williams
williams.nancy@epa.gov

and

Ms. Rachel Matthews
matthew.rachel@epa.gov

GENERAL PROVISIONS

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

Issuance of this Section 309(a)(3) Compliance 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.

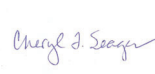
Failure to comply with this Section 309(a)(3) Compliance Order or the Act may result in further administrative action, or a civil judicial action initiated by the United States Department of Justice.

This Order does not constitute a waiver or modification of the terms or conditions of Respondent's NPDES permit, which remain in full force and effect. Compliance with the terms and conditions of this Order does not relieve Respondent of its obligation 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.

July 14, 2023

Date

 Digitally signed by CHERYL SEAGER
Date: 2023.07.14 11:35:28 -05'00'

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

PART I – REQUIREMENTS FOR NPDES PERMITS

A. LIMITATIONS AND MONITORING REQUIREMENTS

1. FINAL Effluent Limits – Outfall 001 – 1.8789 MGD Flow

During the period beginning the effective date of the permit and lasting through the expiration date of the permit (unless otherwise noted), the permittee is authorized to discharge hatchery wastewater from Glenwood Pond on hatchery property to privately owned irrigation system that includes Los Olmos Pond; thence to Whitewater Creek thence to San Francisco River in San Francisco River Basin from Outfall 001. Such discharges shall be limited and monitored by the permittee as specified below.

POLLUTANT	MINIMUM (MIN)	MAXIMUM (MAX)	FREQUENCY	TYPE				
PH	6.6 s.u.	8.8 s.u.	2/Month	Grab				
POLLUTANT	DAILY AVG	DAILY MAX	DAILY AVG	DAILY MAX	FREQUENCY	TYPE		
Flow	Report MGD	Report MGD	***	***	Daily	Weir *1		
Total Suspended Solids	157 lbs./day	235 lbs./day	10 mg/L	15 mg/L	2/Month *2	Grab		
Settle-able Solids	N/A	N/A	0.1 ml/L	0.5 ml/L	2/Month *2	Grab		
Total Residual Chlorine	N/A	N/A	N/A	11 ug/L	Daily *3	Grab		
Aldrin	NA	NA	NA	Report	1/Quarter *2, 4, 5	Grab		
WHOLE EFFLUENT TOXICITY TESTING (7-Day Static Renewal) (See Part II)				30-DAY AVG MIN	7-DAY MIN	FREQUENCY	TYPE	
Ceriodaphnia dubia					Report	Report	Once per term *6	Grab
Pimephales promelas					Report	Report	Once per term *6	Grab

Footnotes:

- *1. Flow will be monitored by measurement of head over the weir.
- *2. The first sample event of any reporting period shall be at least 10-days from the first sample event of the previous reporting period.
- *3. The effluent limitation for TRC is the instantaneous maximum and cannot be averaged for reporting purposes. TRC sampling is required during the period when the FDA approved drug Chloramine-T is used as a treatment for the Bacterial Gill disease.
- *4. See **Appendix A of Part II** of the permit for minimum quantification limits.
- *5. When conducting influent testing for Aldrin per Part I.B of this permit, effluent testing shall be conducted at the same time. Effluent testing more frequently than once/quarter is to be reported per Part III.D.5 of this Permit. Should Aldrin not be detected in influent or effluent testing for four consecutive quarters, testing for Aldrin can be reduced to once every six months.
- *6. Once per term. Sampling for the whole effluent toxicity test shall occur between April 1 and June 30 during raceway cleaning. See Part II.

2. FINAL Effluent Limits – Outfall 002

During the period beginning the effective date of the permit and lasting through the expiration date of the permit (unless otherwise noted), the permittee is authorized to discharge hatchery wastewater from Outfall 002 to Los Olmos Pond, thence to Whitewater Creek; thence to the San Francisco River. Such discharges shall be limited and monitored by the permittee as specified below. If during the entire permit term, there is a discharge from Outfall 002 and not from Outfall 001, the following monitoring limitations and other monitoring requirements shall apply to Outfall 002 and shall be reported on the Outfall 001 DMR. The DMR will state in the remarks section that the discharge is from Outfall 002.

POLLUTANT	MINIMUM (MIN)		MAXIMUM (MAX)		FREQUENCY		TYPE
PH	6.6 s.u.		8.8 s.u.		2/Month		Grab
POLLUTANT	DAILY AVG	DAILY MAX	DAILY AVG	DAILY MAX	FREQUENCY	TYPE	
Flow	Report MGD	Report MGD	***	***	Daily	Weir/Estimated or Other device *1	
Total Suspended Solids	157 lbs./day	235 lbs./day	10 mg/L	15 mg/L	2/Month *2	Grab	
Settle-able Solids	N/A	N/A	0.1 ml/L	0.5 ml/L	2/Month *2	Grab	
Total Residual Chlorine	N/A	N/A	N/A	11 ug/L	Daily *3	Grab	
Aldrin	NA	NA	NA	Report	1/Quarter *2, 4, 5	Grab	
WHOLE EFFLUENT TOXICITY TESTING (7-Day Static Renewal) (See Part II)							
	30-DAY AVG MIN			7-DAY MIN		FREQUENCY	TYPE
Ceriodaphnia dubia	Report			Report		Once per term *6	Grab
Pimephales promelas	Report			Report		Once per term *6	Grab

Footnotes:

- *1. When flowing, the total daily flow may be estimated using best engineering judgment. If estimated, flow measurements shall not be subject to the accuracy provisions established at Part III.C.6.
- *2. The first sample event of any reporting period shall be at least 10-days from the first sample event of the previous reporting period.
- *3. The effluent limitation for TRC is the instantaneous maximum grab sample taken during periods of chlorine use and cannot be averaged for reporting purposes. Instantaneous maximum is defined in 40 CFR Part 136 as being measured within 15-minutes of sampling.” TRC sampling is required during the period when the FDA approved drug Chloramine-T is used as a treatment for the Bacterial Gill disease.
- *4. See Appendix A of Part II of the permit for minimum quantification limits.
- *5. When conducting influent testing for Aldrin per Part I.B of this permit, effluent testing shall be conducted at the same time. Effluent testing more frequently than once/quarter is to be reported per Part III.D.5 of this Permit. Should Aldrin not detected in influent or effluent testing for four consecutive quarters, testing for Aldrin can be reduced to once every six months.
- *6. Once per term. Sampling for the whole effluent-toxicity test shall occur between April 1 and June 30 during raceway cleaning. See Part II.

3. FINAL Effluent Limits – Outfall 01B – Special Testing - Non FDA Approved Drugs, Medications and/or Chemicals

During the period beginning the effective date of the permit and lasting through the expiration date of the permit (unless otherwise noted), the permittee is authorized to discharge wastewater containing either non-approved Food and Drug Administration drugs, medications or chemicals (DMC), or DMC used in a manner not consistent with FDA approval to the Whitewater Creek, in Segment Number 20.6.4.603, from Outfalls 001 and 002 (See Part II). Such discharges shall be limited and monitored by the permittee and reported as Outfall 01B, as specified below:

POLLUTANT	DAILY AVG	DAILY MAX	DAILY AVG	DAILY MAX	FREQUENCY	TYPE
Flow	Report MGD	Report MGD	***	***	Daily	Weir #1

WHOLE EFFLUENT TOXICITY TESTING (48-Hour Static Renewal) (See Part II)					
	30-DAY AVG	48-HOUR MIN	FREQUENCY	TYPE	
<i>Ceriodaphnia dubia</i>	Report	Report	Once/Use #2, 3	Grab #4	
<i>Pimephales promelas</i>	Report	Report	Once/Use #2, 3	Grab #4	

Footnotes:

- *1. The flow shall be from only the outfall associated with the DMC use. Flow is NOT to be composited with the other outfalls.
- *2. Once per use is defined as one WET test for each continuous use of the DMC. For long-term use of these DMC, only one WET test shall be required on the maximum dose of the treatment, unless that maximum dose is later increased by 20 percent. At that point, and any later increases above 20 percent, then additional WET tests will be required.
- *3. Once per use. This permit does not establish requirements to automatically increase the WET testing frequency after a test failure, or to begin a toxicity reduction evaluation (TRE) in the event of multiple test failures. However, upon failure of any WET test, the permittee must report the test results to EPA and NMED, Surface Water Quality Bureau, in writing, within 5 business days of notification the test failure. EPA and NMED will review the test results and determine the appropriate action necessary, if any. See Part II.
- *4. Grab sample shall be taken approximately 30-minutes after the expected time of arrival of the treated water has passed through the outfall. The expected time of arrival can be determined by direct observation by the use of floatable markers such as wooden blocks.

State of NM Department of Game & Fish						
Glenwood State Fish Hatchery - NM0030163						
<u>Monitoring Period End Date</u>	<u>Parameter</u>	<u>DMR Value Qualifier</u>	<u>DMR Value</u>	<u>Limit Value</u>	<u>Statistical Base</u>	<u>Limit Unit</u>
3/31/2023	Solids, total suspended	<	242.1	235	DAILY MX	Pounds per Day
3/31/2023	Solids, total suspended	<	210.2	157	DAILY AV	Pounds per Day
2/28/2023	Solids, total suspended	<	163.3	157	DAILY AV	Pounds per Day
1/31/2023	Solids, total suspended	<	163.3	157	DAILY AV	Pounds per Day
12/31/2022	Solids, total suspended	=	283.9	157	DAILY AV	Pounds per Day
12/31/2022	Solids, total suspended	=	450.9	235	DAILY MX	Pounds per Day
11/30/2022	Solids, total suspended	<	163.3	157	DAILY AV	Pounds per Day
10/31/2022	Solids, total suspended	<	362	235	DAILY MX	Pounds per Day
10/31/2022	Solids, total suspended	<	272.6	157	DAILY AV	Pounds per Day