



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

MAY 01 2013

CERTIFIED MAIL-RETURN RECEIPT REQUESTED: 7011 3500 0000 0359 9342

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

Re: Administrative Order, Docket Number: CWA-06-2013-1739
NPDES Facility Number: NMU001825

Dear Mr. Posa:

Enclosed is an Administrative Order (AO) issued to El Merendero (Posa's), Inc. for violation of the Clean Water Act (CWA) (33 U.S.C. § 1251 *et seq.*). The violation was identified during our review of a November 21, 2012, inspection of your food preparations and kindred products facility, conducted by the New Mexico Environment Department. The violation was discussed with you at the time of the inspection. The violation alleged is for failure to apply for permit coverage under the Multi-Sector General Permit.

This AO does not assess a monetary penalty; however, it does require compliance with applicable federal regulations. The first compliance deadline is within thirty (30) days of its receipt. The Environmental Protection Agency 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-06-2013-1739 and NPDES Facility Number NMU001825 on your response.

Also enclosed is an "Information Sheet" related to the Small Business Regulatory Enforcement Fairness Act and a "Notice of Registrant's Duty to Disclose" relating to the disclosure of environmental legal proceedings to the Securities and Exchange Commission, that you may find useful.

If you have any questions, please contact Ms. Diana McDonald, of my staff, at (214) 665-7495.

Sincerely,

A handwritten signature in black ink, appearing to read "John Blevins", is written over the typed name and title.

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosures

Re: Administrative Order
El Merendero (Posa's), Inc.

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cc: Mr. James Hogan, Acting Chief
Surface Water Quality Bureau
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502-5469

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

1445 Ross Avenue, Suite 1200, Dallas, TX 75202

Docket Number: CWA-06-2013-1739, NPDES Facility Number: NMU001825

**FINDINGS OF VIOLATION AND COMPLIANCE ORDER AND
INFORMATION DEMAND**

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 Sections 308 and 309(a) of the Clean Water Act ("the Act"), 33 U.S.C. §§ 1318 and 1319(a). The Administrator has 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 Compliance Assurance and Enforcement Division.

FINDINGS

1. El Merendero (Posa's), 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 violation alleged herein, Respondent owned or operated a miscellaneous Food Preparations and Kindred products facility, located at 1514 Rodeo Road, Santa Fe, Santa Fe County, New Mexico ("facility") and was, therefore, an "owner or operator."

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) into the receiving waters of the Santa Fe Municipal Separate Storm Sewer System ("MS4"), then to the Santa Fe River in Segment 20.6.4.98, which are considered "waters of the United States," as defined by 40 C.F.R. § 122.2. As a result, Respondent and 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)(xi) operating in Sector U under Standard Industrial Classification (SIC) Code 2009, and is subject to the General Permit for Storm Water Discharges Associated with Industrial Activity issued by EPA on September 28, 2009.

5. On November 21, 2012, the facility was inspected by the New Mexico Environment Department. 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. The facility began operations defined as industrial activity in 1979, which continued throughout the time period relevant to this action.

7. According to the EPA 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. During the time period November 1, 2011 through February 28, 2013, there were at least three rainfall events of one-half (½) inch or greater at the facility. Each day of operation without NPDES permit coverage was 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 the Respondent to take the following actions:

A. Within thirty (30) days of the effective date of this Order, Respondent shall 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 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, DC 20460
- 2) By overnight/express mail to:
Storm Water Notice Processing Center
U.S. EPA, Room 7420
1201 Constitution Ave., NW
Washington, DC 20004
- 3) Via the internet at:
<http://cfpub.epa.gov/npdes/stormwater/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:

Ms. Darlene Whitten-Hill
Water Enforcement Branch (6EN-WC)
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 develop and implement a Storm Water Pollution Prevention Plan tailored specifically for the site located at 1514 Rodeo Road, Santa Fe, New Mexico.

SECTION 308 INFORMATION DEMAND

Based on the foregoing Findings and pursuant to the authority of Section 308 of the Act, 33 U.S.C. § 1318, Respondent is required to do the following:

A. Within thirty (30) days of the effective date of this Order, the Respondent shall submit a written certification of compliance with this Order to the EPA, Region 6. All correspondence should be addressed to:

Ms. Diana McDonald
Water Enforcement Branch (6EN-WM)
EPA, Region 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202-2733

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. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, states the scope of such review.

Issuance of this Section 309(a)(3) Compliance Order and the Section 308 Information Demand shall not be deemed an election by EPA to waive any administrative or 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 Section 308 Information Demand, or the Act

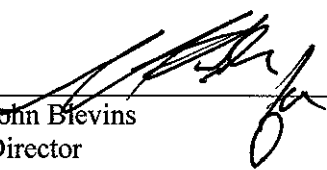
can result in further administrative action, or a civil judicial action initiated by the U.S. Department of Justice.

Compliance with the terms and conditions of this Order does not relieve the 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 the Respondent.

MAY 01 2013

Date


John Blevins
Director
Compliance Assurance and
Enforcement Division