



REGION 6

DALLAS, TX 75270

October 16, 2024

TRANSMITTED VIA E-MAIL

Mr. David Pope
Vice President
AG Services Construction, Inc.
1905 Old Dexter Hwy
Roswell, NM 88203
office@agservicesnm.com

Re: Administrative Order, Docket Number: CWA-06-2024-1809
Facility Permit Number: NMR053283

Dear Mr. Pope:

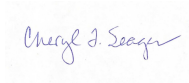
Enclosed is an Administrative Order (Order) issued by the United States Environmental Protection Agency, Region 6 (EPA) concerning AG Services Construction, Inc.'s facility - Pope Quarry. The Order requires AG Services Construction, Inc. (Respondent) to comply with the provisions set forth in the attached Order. The EPA requests that the Respondent immediately confirm receipt of this Order by a response email to crayton.sharron@epa.gov.

This Order is being issued to the Respondent for violations of the Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.). The EPA finds that the Respondent owns or operates an industrial facility and violated its National Pollutant Discharge Elimination System (NPDES) permit by failing to submit Discharge Monitoring Reports (DMRs) from April 1, 2021 – March 31, 2024. On September 6, 2024, the EPA notified AG Services Construction, Inc. of the violations specified in the Order via telephone call.

The Order 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 receipt of this Order. The Order also contains other compliance deadlines and specified information. The EPA is committed to ensuring compliance with the requirements of the NPDES program and my staff will assist you in any way possible. Please reference Administrative Order Docket Number CWA-06-2024-1809 and NPDES Permit Number NMR053283 in your response.

If you need assistance, or have questions regarding this Order, please contact Ms. Sharron A. Crayton, of my staff, at crayton.sharron@epa.gov.

Sincerely,



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Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

Enclosure

ECC: Shelly Lemon
Bureau Chief
Surface Water Quality Bureau
New Mexico Environment Department
shelly.lemon@state.nm.us

Susan LucasKamat
Program Manager
Point Source Regulation Section
Surface Water Quality Bureau
New Mexico Environment Department
susan.lucaskamat@state.nm.us



REGION 6

DALLAS, TX 75270

In the Matter of AG Services Construction, Inc. (Respondent)

FINDINGS OF VIOLATION AND COMPLIANCE ORDER

Docket Number: CWA-06-2024-1809; Facility Permit Number: NMR053283

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

FINDINGS

1. AG Services Construction, Inc. (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 owned or operated Pope Quarry (facility) located at 4200 S. Sunset, Roswell, NM 88203, 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" as defined by Section 502(12), and (14), 33 U.S.C. § 1362(12), and (14), into the receiving waters of Berrendo Creek, thence to the Rio Hondo, which is a "water of the United States," as defined by 40 C.F.R. § 122.2.
4. Because Respondent owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States, 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 the 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. Pursuant to Section 402(a) of the Act, 33 U.S.C. § 1342(a), the EPA issued the first Stormwater Multi-Sector General Permit (MSGP) for Industrial Activities which became effective in 1995. The MSGP authorized "stormwater discharges associated with industrial activity" to "waters of the United States" (including discharges to or through MS4s), but only in accordance with the conditions of the permit. The current MSGP became effective on March 1, 2021, and a minor modification to the 2021 MSGP became effective on September 29, 2021.

8. At all relevant times, Respondent owned or operated a facility classified in the MSGP under Sector J of Industrial Activities (Non-Metallic Mineral Mining and Dressing). Therefore, the relevant activity at the facility is an industrial activity as defined in 40 C.F.R. § 122.26(b)(14), and as such, Respondent is subject to the MSGP.

9. Respondent applied for and was issued coverage under the MSGP and was assigned NPDES Permit Number NMR053283 by the EPA e-NOI Center. Respondent was authorized to discharge pollutants to waters of the United States, but only in compliance with the specific terms and conditions of the MSGP.

10. Monitoring requirements of the MSGP require Respondent to sample its discharges and monitor its compliance with permit conditions according to specific procedures in order to determine the facility's compliance or noncompliance with the permit and applicable regulations.

11. Reporting and Recordkeeping requirements of the MSGP require Respondent to submit to the EPA certified Discharge Monitoring Reports (DMRs) of the results of monitoring, and Exceedance Reports when appropriate.

12. A DMR file review was conducted by the EPA for the monitoring period of April 1, 2021 – March 31, 2024. According to the EPA database, Respondent did not submit DMRs from April 1, 2021 – March 31, 2024, in violation of the MSGP.

13. Each violation of the conditions of the MSGP was a violation of Section 301 of the Act, 33 U.S.C. § 1311.

SECTION 309(a)(3) COMPLIANCE ORDER

14. Based on the foregoing Findings and pursuant to the authority of Section 309(a)(3) of the Act, the EPA hereby orders Respondent to take the following action:

A. Within thirty (30) days of the effective date of this Order, Respondent shall take such steps as necessary to comply with all MSGP conditions, including monitoring and reporting requirements.

B. Within thirty (30) days of the effective date of this Order, Respondent shall submit a written certification of compliance with this Order to crayton.sharron@epa.gov, describing all actions taken to correct the violations specified herein (i.e. failure to submit DMRs) and explaining why such actions are anticipated to be enough to prevent recurrence of these or similar violations.

C. To ask questions on this matter, please contact Ms. Sharron A. Crayton, of my staff, at crayton.sharron@epa.gov.

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

Ms. Sharron A. Crayton
U.S. Environmental Protection Agency, Region 6
Water Enforcement Branch (ECDWE)
1201 Elm Street, Suite 500
Dallas, TX 75270
crayton.sharron@epa.gov

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 Section 309(a)(3) Compliance Order shall not be deemed an election by the 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 the EPA. The 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.

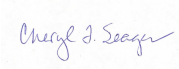
For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of Paragraph 14 is restitution, remediation, or required to come into compliance with the law.

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 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 Respondent.

October 16, 2024

Date



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Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division