

# STATE OF COLORADO

Bill Ritter, Jr., Governor  
James B. Martin, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department  
of Public Health  
and Environment

December 1, 2008

Mary Hill  
Cedar Park Road Maintenance Corporation  
P.O. Box 344  
Drake, CO 80515

Rich Miller  
Cedar Springs Improvement Association  
PO Box 8  
Drake, CO 80515

Shannon White  
White Trucking and Construction LLC  
8220 N. County Road 27  
Loveland, CO 80538

**RE: Compliance Order on Consent, Number: IC-081201-1**

Dear Ms. Hill, Mr. Miller and Ms. White:

Enclosed for Cedar Park Road Maintenance Corporation, Cedar Springs Improvement Association and White Trucking and Construction LLC records you will find your copy, with original signatures, of the recently executed Compliance Order on Consent.

Please remember that this agreement is subject to a thirty-day public comment period (paragraph 21). Upon initiation, if the Division receives any comments during this period we will contact your office to discuss. Also, please be advised that the first page of the Order was changed in order to place the assigned Order Number on the final document.

If you have any questions, please don't hesitate to contact Kelly Morgan at (303) 692-3634 or by electronic mail at [kelly.morgan@state.co.us](mailto:kelly.morgan@state.co.us).

Sincerely,

Kristi-Raye Beaudin, Legal Assistant  
Water Quality Protection Section  
WATER QUALITY CONTROL DIVISION

cc: Larimer County Department of Health and Environment  
MS-3 File

cc: Aaron Urdiales, EPA Region VIII  
David Kurz, Engineering Section, CDPHE  
Dick Parachini, Watershed Program, CDPHE  
Gary Beers, Permits Unit, CDPHE  
Carolyn Schachterle, OPA

*Enclosure(s)*



**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT  
WATER QUALITY CONTROL DIVISION**

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**COMPLIANCE ORDER ON CONSENT**

**NUMBER: IC-081201-1**

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**IN THE MATTER OF: CEDAR PARK ROAD MAINTENANCE CORPORATION  
CEDAR SPRINGS IMPROVEMENT ASSOCIATION  
WHITE TRUCKING AND CONSTRUCTION LLC  
LARIMER COUNTY, COLORADO**

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The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under §25-8-605 C.R.S. of the Colorado Water Quality Control Act ("the Act") §§ 25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of Cedar Park Road Maintenance Corporation ("CPRMC"), Cedar Springs Improvement Association ("CSIA"), and White Trucking and Construction LLC ("White"). The Division and CPRMC, CSIA, and White may be referred to collectively as "the Parties."

**STATEMENT OF PURPOSE**

1. The mutual objectives of the Parties in entering into this Consent Order are to resolve, without litigation, the civil penalties associated with the alleged violations identified in the Notice of Violation / Cease and Desist Order (Number: IO-070226-1) that the Division issued to CPRMC, CSIA, and White on February 26, 2007.

**DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS**

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §25-8-602 and 605, C.R.S., the Division has made the following determinations regarding CPRMC, CSIA, White and their compliance with the Act and its implementing permit regulations.
3. At all times relevant to the violations cited herein, CPRMC and CSIA were each a Nonprofit Corporation in good standing and registered to conduct business in the State of Colorado. White is a Limited Liability Company in good standing and registered to conduct business in the State of Colorado.

4. At all times relevant to the violations cited herein, White was a Limited Liability Company in good standing and registered to conduct business in the State of Colorado.
5. CPRMC, CSIA, and White are each a “person” as defined by §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
6. In calendar years 2003 and 2004, the Division received complaints regarding dust suppressant application methods employed by CPRMC, CSIA and its contractors to roads within the developments. In response to the complaints, the Division met with representatives of the Larimer County Department of Health and Environment (LCDHE), CPRMC, CSIA, and White on January 20, 2004 and agreed upon improvements to the best management practices utilized in maintaining LCR41H to prevent offsite discharges.
7. Subsequent to the January 20, 2004 meeting, the Division and LCDHE received multiple complaints of inappropriate application of dust suppressants on LCR41H, including a complaint regarding a September 12, 2006 application of dust suppressants.
8. In response to the September 12, 2006 complaint, a representative from the LCDHE conducted an onsite inspection of LCR41H on September 13, 2006.
9. During the September 13, 2006 inspection, the LCDHE inspector observed that brown residual dust suppressant liquids (ET820) had run off LCR41H in several places and flowed into an unnamed creek that is a tributary to the North Fork of the Big Thompson River.
10. The magnesium chloride and lignosulfonate based dust suppressant (ET820) is a “pollutant” as defined by §25-8-103(15) C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(76).
11. The unnamed creek is a “state water” as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(101).
12. The truck that applied the dust suppressant is a “point source” as defined by §25-8-103(14) and its implementing permit regulation, 5 CCR 1002-61, §61.2(75).
13. CPRMC’s, CSIA’s, and White’s discharge of dust suppressants (ET820) into the unnamed creek constitutes a “discharge of pollutants” as defined by §25-8-103(3) C.R.S.
14. Division records establish that CPRMC, CSIA, and White do not have any permits authorizing the discharge of pollutants into state waters as described in paragraphs 8-12 above. CPRMC’s, CSIA’s, and White’s discharge of pollutants from the application of dust suppressants (ET820) onto LCR41H to state waters without a permit constitutes a violation of §25-8-501(1) C.R.S and 5 CCR 1002-61, §61.3(1)(a).
15. The Division acknowledges that CPRMC, CSIA, and White satisfactorily performed all of the obligations and actions required under the February 26, 2007, Notice of Violation / Cease and Desist Order.

## ORDER AND AGREEMENT

16. Based on the foregoing factual and legal determinations, pursuant to its authority under §25-8-602 and 605 C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein and in the Notice of Violation / Cease and Desist Order (Number: IO-070226-1) the Division orders CPRMC, CSIA, and White to comply with all provisions of this Consent Order.
17. CPRMC, CSIA, and White agree to the terms and conditions of this Consent Order. CPRMC, CSIA, and White agree that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§ 25-8-602 and 605 C.R.S., and is an enforceable requirement of the Act. CPRMC, CSIA, and White also agree not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by CPRMC, CSIA, and White against the Division:
  - a. The issuance of this Consent Order;
  - b. The factual and legal determinations made by the Division herein; and
  - c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.
18. Notwithstanding the above, CPRMC, CSIA, and White do not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by CPRMC, CSIA, and White pursuant to this Consent Order shall not constitute evidence of fault by CPRMC, CSIA, and White with respect to the conditions of the Facility.

## CIVIL PENALTY

19. Based upon the application of the Division's Civil Penalty Policy (May 1, 1993), and consistent with Departmental policies for violations of the Act, CPRMC, CSIA and White shall pay a total of Two Thousand Six Hundred Dollars (\$2,600.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the Two Thousand Six Hundred Dollar (\$2,600.00) civil penalty for the above violation(s) and CPRMC and CSIA agrees to make the payment within thirty (30) calendar days of the issuance of a Penalty Order by the Executive Director or his designee. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

Kelly Morgan  
Colorado Department of Public Health and Environment  
Water Quality Control Division  
Mail Code: WQCD-CADM-B2  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

## **SCOPE AND EFFECT OF CONSENT ORDER**

20. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations alleged herein and in the February 26, 2007 Notice of Violation / Cease and Desist Order (Number: IO-070226-1).
21. This Consent Order is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and CPRMC, CSIA, and White each reserve the right to withdraw consent to this Consent Order if comments received during the thirty-day period result in any proposed modification to the Consent Order.
22. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or his designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by CPRMC, CSIA, and White including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.
23. Notwithstanding paragraph 21 above, the violations described in this Consent Order will constitute part of CPRMC's, CSIA's, and White's compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against CPRMC, CSIA, and White. CPRMC, CSIA, and White agree not to challenge the use of the cited violations for any such purpose.

## **LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY**

24. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to civil penalties for the specific instances of violations cited herein and in the February 26, 2007 Notice of Violation / Cease and Desist Order (Number: IO-070226-1).
25. The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof.
26. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
27. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.
28. Upon the effective date of this Consent Order, CPRMC, CSIA, and White releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act specifically addressed herein.

29. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

### **NOTICES**

30. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Colorado Department of Public Health and Environment  
Water Quality Control Division / WQCD-CADM-B2  
Attention: Kelly Morgan  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530  
Telephone: 303.692.3634  
E-mail: kelly.morgan@state.co.us

For Cedar Park Road Maintenance Corporation:

Mary Hill  
P.O. Box 344  
Drake, CO 80515

For Cedar Springs Improvement Association:

Rich Miller  
PO Box 8  
Drake, CO 80515

For White Trucking and Construction LLC:

Shannon White  
8220 N County Road 27  
Loveland, CO 80538

### **MODIFICATIONS**

31. This Consent Order may be modified only upon mutual written agreement of the Parties.

### **NOTICE OF EFFECTIVE DATE**

32. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or his designee imposes the civil penalty. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

33. This Consent Order is binding upon CPRMC, CSIA, and White and their officers, directors, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. CPRMC, CSIA, and White agree to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

**FOR CEDAR PARK ROAD MAINTENANCE CORPORATION:**

Mary Hill Date: 11-12-08  
Mary Hill, CPRMC Liaison

**FOR CEDAR SPRINGS IMPROVEMENT ASSOCIATION:**

Rich Miller Date: Nov-13-08  
Rick Miller, CSIA Road Director

**FOR WHITE TRUCKING AND CONSTRUCTION, LLC:**

Shannon White - Manager Date: 11-10-08  
Shannon White, Owner

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, WATER QUALITY CONTROL DIVISION:**

Lori M. Gerzina Date: 11/26/08  
Lori M. Gerzina, Section Manager  
Compliance Assurance and Data Management Section  
WATER QUALITY CONTROL DIVISION