

STATE OF COLORADO

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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

November 10, 2008

Nancy Bentson Essex, Registered Agent
LKA International, Inc.
427 Belleview Ave., Suite 104
Crested Butte, CO 81224

Certified Mail Number: 7007 0220 0001 0156 8618

RE: Service of Notice of Violation/Cease and Desist Order, Number: IO-081110-2

Dear Nancy:

LKA International, Inc. is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). This NOV/CDO is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §§25-8-602 and 25-8-605, C.R.S. of the *Colorado Water Quality Control Act*, (the "Act"). The Division bases this NOV/CDO upon findings that LKA International, Inc. has violated the Act, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., LKA International, Inc. is required, within thirty (30) calendar days of issuance of this NOV/CDO, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

This action could result in the imposition of civil penalties. The Division is authorized pursuant to §25-8-608, C.R.S. to impose a penalty of \$10,000 per day for each day during which such violation occurs.

Please be advised that the Division is continuing its investigation into this matter and the Division may identify supplementary violations that warrant amendments to this NOV/CDO or the issuance of additional enforcement actions.

Should you or representatives of LKA International, Inc. desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO, please do not hesitate to contact Kelly Morgan of this office by phone at (303) 692-3634 or by electronic mail at kelly.morgan@state.co.us.

Sincerely,



Kristi-Raye Beaudin, Legal Assistant
Compliance Assurance and Data Management Section
WATER QUALITY CONTROL DIVISION

cc: Hindsdale County Environmental Health Department

cc: Aaron Urdiales, EPA Region VIII
Jocelyn Mullen, Engineering Section, CDPHE
Greg Brand, Engineering Section, CDPHE
Tim Vrudny, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Gary Beers, Permits Unit, CDPHE
Carolyn Schachterle, OPA

MS-3 File

Enclosure(s)



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

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: IO-081110-2

IN THE MATTER OF: LKA INTERNATIONAL, INC.
GOLDEN WONDER MINE
HINSDALE COUNTY, COLORADO

Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority has been delegated to the Department's Water Quality Control Division (the "Division"), and pursuant to §§25-8-602 and 25-8-605, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the alleged violations identified herein, LKA International, Inc. ("LKA") was a foreign (Nevada) corporation in good standing and registered to conduct business in the State of Colorado.
2. LKA is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
3. LKA through its predecessor (LKA Holdings, Inc.) acquired the Golden Wonder Mine in 1982. The Golden Wonder Mine is an active hard rock mine located approximately 2.5 miles southeast of Lake City, Hinsdale County, Colorado in the NE ¼ of Section 10 and the NE ¼ of Section 11, Township 43N, Range 4W (the "Facility").

Discharging Without a Permit

4. Pursuant to §25-8-501(1), C.R.S., and its implementing permit regulation, 5 CCR 1002-61, §61.3(1)(a), no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge.

5. Discharges from the Facility are in the form of three separate seeps: the "North Seep" at approximately 107° 16' 59.99" W 38° 0' 12.71" N ; the "South Seep" at approximately 107° 16' 59.85" W 38° 0' 12.61" N; and the "Middle Seep" at approximately 107° 17' 0.06" W 38° 0' 12.42" N (collectively "The Seeps"). The three seeps daylight at the toe of the waste rock pile at the Level 6 Pad and discharge from the Facility into Deadman Gulch, a tributary of the Gunnison River.
6. Deadman Gulch and the Gunnison River are both "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (102).
7. On June 8, 2007, a Division inspector (the "Inspector") inspected the Facility and identified two (2) seeps that daylighted at the toe of the waste rock pile, identified as the North Seep and the South Seep. These seeps subsequently flowed into Deadman Gulch.
8. Field analyses performed during the June 8, 2007 inspection established that the pH of the discharge at the North Seep was 5.3 s.u. and the pH of the discharge at the South Seep was 3.4 s.u. Additionally, water quality assessment performed by the Colorado Division of Reclamation, Mining and Safety (the "DRMS") on June 8, 2007 of the discharges from the North and South Seeps established the presence of total aluminum, total arsenic, total cadmium, total copper, total lead, total iron, total manganese, total mercury, total molybdenum, total nickel, total silver, and total zinc as listed in the following table:

Golden Wonder Mine / June 8, 2007 Sample Results		
Analyte	North Seep Analysis Result	South Seep Analysis Result
Total Aluminum	3.4 mg/l	8.6 mg/l
Total Arsenic	0.002 mg/l	0.005 mg/l
Total Cadmium	0.0010 mg/l	0.0045 mg/l
Total Copper	0.070 mg/l	0.41 mg/l
Total Lead	0.003 mg/l	0.002 mg/l
Total Iron	3.1 mg/l	12 mg/l
Total Manganese	0.12 mg/l	0.58 mg/l
Total Mercury	<0.0001 mg/l	<0.0001 mg/l
Totally Molybdenum	<0.25 mg/l	<0.25 mg/l
Total Nickel	<0.15 mg/l	<0.15 mg/l
Total Silver	0.0014 mg/l	0.0039 mg/l
Total Zinc	0.16 mg/l	0.87 mg/l

9. In response to the findings of the June 8, 2007 inspection, the Division sent LKA a Compliance Advisory on August 3, 2007 advising LKA that it must submit an application for Colorado Discharge Permit System ("CDPS") permit coverage for the discharges from the Seeps.

10. On August 14, 2007, Gault Group, Inc., on behalf of LKA, submitted a response to the Division's August 3, 2007 Compliance Advisory, claiming that there is no need for the site to have CDPS permit coverage at the Facility. Gault Group, Inc. advised the Division that Au Mining (on behalf of LKA) was constructing a lined channel to route flows from Deadman Gulch around the waste rock pile, in attempt to prevent water in Deadman Gulch from coming into contact with the waste rock pile, potentially eliminating the Seeps. LKA did not submit a permit application in response to the August 3, 2007 Compliance Advisory.
11. On October 6, 2007, the Division was notified by a representative of the Environmental Protection Agency (the "EPA") that during a September 6, 2007 site visit the Seeps were still discharging, and that the diversion channel was not effective in preventing the Seeps from discharging.
12. In response to the September 6, 2007 EPA site visit findings, the Division sent a December 20, 2007 letter to Gault Group, Inc. requiring LKA to submit an application for CDPS permit coverage under an Individual Industrial Wastewater (Process Water) Discharges for Metal Mining no later than thirty (30) calendar days from the date of the letter.
13. On February 20, 2008, thirty three (33) days past the required deadline, LKA submitted a discharge permit application that did not include an active treatment plan to reduce metals or raise the pH of the Seeps.
14. On May 6, 2008, DRMS conducted an inspection of the Facility and performed water quality assessment of the discharges from the Seeps. At the time of the May 6, 2008 inspection, all three seeps were discharging. Field analyses performed during the May 6, 2008 inspection established that the pH of the discharge at the North Seep was 4.2 s.u., the pH of the discharge at the Middle Seep was 3.6 s.u., and the pH of the South Seep was 3.8 s.u. Additionally, water quality assessment performed by DRMS on May 6, 2008 of the discharges from the Seeps established the presence of total aluminum, total arsenic, total copper, total lead, total iron, total manganese, total mercury, total molybdenum, total nickel, and total zinc as listed in the following table:

Gault Group, Inc./Au Mining 2008 Sample Results			
Analyte	North Seep Analysis Result	Middle Seep Analysis Result	South Seep Analysis Result
Total Aluminum	3.4 mg/l	5.5 mg/l	4.8 mg/l
Total Arsenic	0.002 mg/l	0.011 mg/l	0.003 mg/l
Total Copper	0.11 mg/l	0.29 mg/l	0.15 mg/l
Total Lead	0.002 mg/l	0.002 mg/l	0.002 mg/l
Total Iron	4.3 mg/l	8.8 mg/l	5.9 mg/l
Total Manganese	0.19 mg/l	0.34 mg/l	0.25 mg/l
Total Mercury	<0.0001 mg/l	<0.0001 mg/l	<0.0001 mg/l
Totally Molybdenum	<0.05 mg/l	<0.05 mg/l	<0.05 mg/l
Total Nickel	<0.03 mg/l	<0.03 mg/l	<0.03 mg/l
Total Zinc	0.43 mg/l	0.64 mg/l	0.63 mg/l

15. On June 10, 2008, the Division formally denied LKA's discharge permit application because without an active treatment plan to reduce metals or raise pH, LKA would not be able to comply with any effluent limits set in the permit.
16. Total aluminum, total arsenic, total cadmium, total copper, total lead, total iron, total manganese, total mercury, total molybdenum, total nickel, total silver, total zinc, and acidic pH are "pollutants" as defined by §25-8-103(15), C.R.S.
17. The Seeps are each a "point source" as defined by §25-8-103(14), C.R.S.
18. Division records establish that LKA does not have any permits authorizing the discharge of pollutants from the Facility, through the Seeps, into Deadman Gulch and the Gunnison River.
19. LKA's discharge of acidic water containing metals from the Facility, through the Seeps, into Deadman Gulch and the Gunnison River constitutes a "discharge of pollutants" as defined by section 25-8-103(3), C.R.S.
20. LKA's discharge of acidic water containing metals into Deadman Gulch and the Gunnison River constitutes an unauthorized discharge of pollutants from a point source into state waters in violation of §25-8-501(1), C.R.S.

NOTICE OF VIOLATION

21. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that LKA has violated the following sections of the Colorado Water Quality Control Act's implementing permit regulations.

Section 25-8-501(1), C.R.S., which states "No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article..."

REQUIRED CORRECTIVE ACTION

Based upon the foregoing factual and legal determinations and pursuant to §25-8-602 and §25-8-605, C.R.S., LKA is hereby ordered to:

22. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 through 25-8-703, C.R.S., its implementing regulations promulgated thereto.

Furthermore, the Division hereby orders LKA to comply with the following specific terms and conditions of this Order:

23. LKA shall immediately initiate measures to permanently cease all unauthorized discharges of pollutants to state waters from the Facility.
24. Within thirty (30) calendar days of receipt of this Order, if LKA believes that it has permanently ceased the unauthorized discharges from the Facility, LKA shall provide a detailed engineering report to the Division that describes in detail how the unauthorized discharges from the Facility have been permanently terminated. The engineering report, at a minimum, should include a historical physical/chemical description of the seep discharges, information outlining/describing the hydrologic conditions at the Facility, information outlining/describing the hydrologic connection of the Seeps to the Golden Wonder Mine and associated waste rock pile and the specific activities undertaken by LKA or its representatives to permanently terminate the seep discharge.
25. If LKA has not permanently ceased the unauthorized discharge of pollutants from its operations into Deadman Gulch and the Gunnison River, LKA shall monitor the effluent discharged from each seep at the Facility. This monitoring shall begin no later than December 1, 2008, and shall continue until such time as the discharge can be ceased or until LKA receives permit authorization for such discharge. The discharge shall be monitored once each calendar month for the following parameters: flow, total suspended solids, total dissolved solids, aluminum, arsenic, cadmium, copper, lead, iron, manganese, mercury, molybdenum, nickel, selenium, silver, zinc, and pH. Monitoring samples shall be collected from each seep at an appropriate location that is most representative of the discharge to Deadman Gulch, prior to the effluent mixing with the water contained in Deadman Gulch. Sample collection and laboratory analysis shall be conducted using U.S. Environmental Protection Agency approved methods, and the analytical method selected for analysis of each parameter shall be the one that can measure the lowest detected limit for that parameter. LKA shall provide the Division with the results of each monthly monitoring event within fourteen (14) calendar days of receipt of the results from the laboratory or LKA shall provide the Division with a monthly notification that no discharge has occurred from the Facility.
26. If LKA is unable to permanently cease the unauthorized discharge of pollutants from its operations into Deadman Gulch, LKA shall immediately initiate design and planning of permit and treatment alternatives for the Seep discharges. This activity shall be completed in accordance with the following schedule:
 - a. Within fifteen (15) calendar days of receipt of this Order, LKA shall retain the services of a qualified individual or entity, specifically experienced in mine-related wastewater treatment, to evaluate siting, feasibility and technology options available to design and construct treatment works for the Seep discharges and obtain Colorado Discharge Permit System permit coverage.
 - b. Within thirty (30) calendar days of receipt of this Order, LKA shall provide documentation to the Division that it has retained the services of the qualified individual or entity identified in paragraph 26(a). This documentation shall include at a minimum, a copy of the individual or entity's qualifications and a copy of the written contract or agreement for such services, including a copy of the scope of services to be provided.

- c. Within ninety (90) calendar days of receipt of this Order, LKA shall submit a finalized Engineering Report to the Division summarizing the evaluation identified in paragraph 26(a) and describing in detail the proposed remedy, along with a time schedule for its implementation, that permanently addresses the unauthorized discharges associated with the Facility. The implementation schedule shall include an implementation completion and termination of unauthorized discharge date of no later than May 30, 2009. The remedy and time schedule submitted shall become a condition of this Order, and LKA shall comply with the remedy and time schedule as submitted unless notified by the Division, in writing, that an alternate remedy and/or time schedule is appropriate. If the Division imposes an alternate remedy and/or time schedule, it shall also become a condition of this Order.
- d. Within ninety (90) calendar days of receipt of this Order, LKA shall prepare and submit a complete application for coverage under a Colorado Discharge Permit System, Individual Industrial Wastewater (Process Water) Discharges for Metal Mining permit if an ongoing discharge from the Facility is anticipated. *(Application and permit reference materials are available at the following internet location: <http://www.cdphe.state.co.us/wq/PermitsUnit/Industrial/index.html>).*
- e. Beginning sixty (60) calendar days from receipt of this Order, and every sixty (60) calendar days thereafter, until such time as this Order is closed or the Division decrees so in writing, LKA shall submit written progress reports to the Division. At a minimum, each report shall describe the activities undertaken in the previous sixty (60) calendar days and shall specify what activities will be undertaken within the next sixty (60) calendar days.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, LKA shall submit an original and an electronic copy to the Division at the following address:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-B2
Compliance Assurance and Data Management Section
Attention: Kelly Morgan
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
kelly.morgan@state.co.us

For any person submitting documents, plans, records and reports pursuant to this Notice of Violation / Cease and Desist Order, that person shall make the following certification with each submittal:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

OBLIGATION TO ANSWER AND REQUEST FOR HEARING

Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11(A) you are required to submit to the Division an answer affirming or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

Section 25-8-603, C.R.S. and 5 CCR 1002, §21.11 also provide that the recipient of a Notice of Violation may request the Division to conduct a public hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002, §21.4(B)(2). Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent Department proceeding.

Both the answer and the request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

FALSIFICATION AND TAMPERING

Be advised, in accord with §25-8-610, C.R.S., that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Colorado Water Quality Control Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

POTENTIAL CIVIL AND CRIMINAL PENALTIES

You are also advised that any person who violates any provision of the Colorado Water Quality Control Act (the "Act"), §§25-8-101 to 703, C.R.S., or of any permit issued under the Act, or any control regulation promulgated pursuant to the Act, or any final cease and desist order or clean-up order issued by the Division shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution if such discharge is made without a permit, if a permit is required by the Act for such discharge, or if such discharge is made in violation of any permit issued under the Act or in violation of any Cease and Desist Order or Clean-up Order issued by the Division. By virtue of issuing this Notice of Violation / Cease and Desist Order, the State has not waived its right to bring an action for penalties under §§25-8-608 and 609, C.R.S., and may bring such action in the future.

RELEASE OR DISCHARGE NOTIFICATION

Pursuant to §25-8-601, C.R.S., you are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

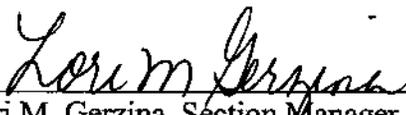
EFFECT OF ORDER

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters. Nothing herein contained shall be construed to preclude other individuals, cities, towns, counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances or to preclude any other lawful actions by such entities or the State.

For further clarification of your rights and obligations under this Notice of Violation / Cease and Desist Order you are advised to consult the Colorado Water Quality Control Act, §§25-8-101 to 703, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 10th day of November, 2008.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Lori M. Gerzina, Section Manager
Compliance Assurance and Data Management Section
WATER QUALITY CONTROL DIVISION