



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

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**NOTICE OF VIOLATION / CEASE AND DESIST ORDER**

**NUMBER: SO-080108-1**

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**IN THE MATTER OF: SUMO DEVELOPMENT COMPANY, INC.**  
**d/b/a: SUMO ENTERPRISES, INC.**  
**CDPS PERMIT NO. COR-030000**  
**CERTIFICATION NO. COR-03B265**  
**FREMONT COUNTY, COLORADO**

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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, Sumo Development Company, Inc. ("Sumo") was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
2. Sumo is a "person" as defined by the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).

**Operating Without a Stormwater Permit**

3. Pursuant to §25-8-501(1), C.R.S. and its implementing permit regulation, 5CCR 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.
4. Pursuant to 5 CCR 1002-61, §61.3(2)(e), stormwater discharges associated with industrial activity are point sources requiring Colorado Discharge Permit System ("CDPS") permit coverage.
5. Pursuant to 5 CCR 1002-61, §61.3(2)(e)(iii)(J), construction activity, including clearing, grading and excavation, that results in the disturbance of five or more acres of total land area, or will ultimately result in the disturbance of five or more acres of total land area, is considered to be "industrial activity."

6. On or about April 19, 2002, Sumo initiated construction activities to build a residential subdivision on forty five (45) acres of property located at or near State Highway 67 and Bear Paw Drive in or near the City of Florence, Fremont County, Colorado (the "Project").
7. On November 8, 2006, a representative from PG Environmental, LLC (the "Inspector") conducted an on-site inspection of the Project on behalf of the Division, pursuant to the Division's authority under §25-8-306, C.R.S., to determine Sumo's compliance with the Water Quality Control Act. During the inspection, the Inspector interviewed Project representatives, conducted a review of the Project's stormwater management system records, and performed a physical inspection of the Project.
8. During the November 8, 2006 inspection, the Inspector determined that the Project was not covered under a CDPS permit authorizing discharges of stormwater from the Project.
9. On January 5, 2007, Sumo, doing business as Sumo Enterprises, Inc., applied for Project coverage under the CDPS General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit") in response to the November 8, 2006 inspection.
10. On January 9, 2007, the Division provided Sumo Certification Number COR-03B265, authorizing Sumo to discharge stormwater from the construction activities associated with the Project to the Arkansas River under the terms and conditions of the Permit. Certification Number COR-03B265 became effective January 9, 2007 and remains in effect until June 30, 2012 or until Sumo inactivates Permit coverage.
11. The Arkansas River is "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(101).
12. The Division records establish that Sumo did not have any permits authorizing discharges of stormwater from the Project prior to January 9, 2007.
13. Sumo's failure to obtain CDPS permit coverage for the Project, prior to January 9, 2007, constitutes violation(s) of §25-8-501(1) C.R.S., 5 CCR 1002-61, §61.3(1)(a), and 5 CCR 1002-61, §61.3(2)

**Deficient and/or Incomplete Stormwater Management Plan**

14. Pursuant to 5 CCR 1002-61, §61.8, a permittee must comply with all the terms and conditions of a permit and violators of the terms and conditions specified in a permit may be subject to civil and criminal liability pursuant to sections 25-8-601 through 612, C.R.S.
15. Pursuant to Part I. B. of the Permit, Sumo is required to prepare a Stormwater Management Plan ("SWMP") that identifies Best Management Practices ("BMPs") that, when implemented, will meet the terms and conditions of the Permit. The SWMP is required to identify potential sources of pollution, which may be reasonably expected to affect the quality of stormwater discharges associated with construction activity from the Project. In addition, the plan is required to describe and ensure the implementation of BMPs, which will be used to reduce the pollutants in stormwater discharges associated with construction activity.

16. Pursuant to Part I. B. of the Permit, the Project's SWMP shall include, at a minimum, the following items:

- a. Site Description - Each plan shall provide a description of the following:
  - i. A description of the construction activity.
  - ii. The proposed sequence for major activities.
  - iii. Estimates of the total area of the site, and the area of the site that is expected to undergo clearing, excavation or grading.
  - iv. An estimate of the runoff coefficient of the site before and after construction activities are completed and any existing data describing the soil, soil erosion potential or the quality of any discharge from the site.
  - v. A description of the existing vegetation at the site and an estimate of the percent vegetative ground cover.
  - vi. The location and description of any other potential pollution sources, such as vehicle fueling, storage of fertilizers or chemicals, etc.
  - vii. The location and description of any anticipated non-stormwater components of the discharge, such as springs and landscape irrigation return flow.
  - viii. The name of the receiving water(s) and the size, type and location of any outfall or, if the discharge is to a municipal separate storm sewer, the name of that system, the location of the storm sewer discharge, and the ultimate receiving water(s).
- b. Site Map - Each plan shall provide a generalized site map or maps which indicate:
  - i. Construction site boundaries.
  - ii. All areas of soil disturbance.
  - iii. Areas of cut and fill.
  - iv. Areas used for storage of building materials, soils or wastes.
  - v. Location of any dedicated asphalt or concrete batch plants.
  - vi. Location of major erosion control facilities or structures.
  - vii. Springs, streams, wetlands and other surface waters.
  - viii. Boundaries of 100-year flood plains, if determined.
- c. BMPs for Stormwater Pollution Prevention - The plan shall include a narrative description of appropriate controls and measures that will be implemented before and during construction activities at the facility.
  - i. Erosion and Sediment Controls - A description of structural site management controls (Structural Practices) which will minimize erosion and sediment transport and a description of interim and permanent stabilization practices (Non-Structural Practices), including the site-specific scheduling of the implementation of the practices.
  - ii. Material Handling and Spill Prevention - The SWMP shall identify any procedures or significant materials handled at the site that could contribute pollutants to runoff.
- d. Final Stabilization and Long-Term Stormwater Management - Description of the measures used to achieve final stabilization and measures to control pollutants in stormwater discharges that will occur after construction operations have been completed.

- e. Other Controls - Description of other measures to control pollutants in stormwater discharges, including plans for waste disposal and limiting off-site soil tracking.
  - f. Inspection and Maintenance - Description of procedures to inspect and maintain in good and effective operating condition the vegetation, erosion and sediment control measures and other protective measures identified in the SWMP.
17. In response to the November 8, 2006 inspection, Sumo submitted a copy of the Project's SWMP to the Division on January 31, 2007.
18. The Division has determined that Sumo failed to prepare and maintain a complete and accurate SWMP for the Project as described in paragraphs 18(a-f) below:
- a. Upon receipt of the January 31, 2007 submittal, the Division reviewed the Project's SWMP and identified that the SWMP did not include an estimate of the runoff coefficient of the site before and after construction activities are completed.
  - b. Upon receipt of the January 31, 2007 submittal, the Division reviewed the Project's SWMP and identified that the SWMP did not include an estimate of the percent vegetative ground cover.
  - c. Upon receipt of the January 31, 2007 submittal, the Division reviewed the Project's SWMP and identified that the SWMP did not include the locations of potential pollution sources.
  - d. Upon receipt of the January 31, 2007 submittal, the Division reviewed the Project's SWMP and identified that the SWMP did not include a site map.
  - e. Upon receipt of the January 31, 2007 submittal, the Division reviewed the Project's SWMP and identified that the SWMP did not clearly describe the relationship between the phases of construction and the implementation and maintenance of controls and measures.
  - f. Upon receipt of the January 31, 2007 submittal, the Division reviewed the Project's SWMP and identified that the SWMP did not include the site specific scheduling of the implementation of non-structural practices.
19. Sumo's failure to prepare and maintain a complete and accurate SWMP for the Project constitutes violation(s) of Part I. B. of the Permit.

### **NOTICE OF VIOLATION**

Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that Sumo has violated the following sections Colorado Water Quality Control Act, its implementing permit regulations, and the Permit:

**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.”

**5 CCR 1002-61, §61.3(1)(a)**, which states in part, “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 CCR 1002-61, §61.3(2)**, which states in part, “...discharges of stormwater as set forth in 61.3(2) and 61.4(3) are point sources requiring a permit,” and “The following discharges composed entirely of stormwater are required to obtain a permit. (ii) A stormwater discharge associated with industrial activity.”

**Part I. B. of the Permit**, which states in part, “The SWMP shall be prepared in accordance with good engineering, hydrologic and pollution control practices. The main objective of the plan shall be to identify Best Management Practices (BMPs) which when implemented will meet the terms and conditions of this permit. The plan shall identify potential sources of pollution (including sediment) which may be reasonably expected to affect the quality of stormwater discharges associated with construction activity from the facility. In addition, the plan shall describe and ensure the implementation of BMPs which will be used to reduce the pollutants in stormwater discharges associated with construction activity.”

### **CEASE AND DESIST ORDER**

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

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

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

21. Sumo shall comply with the terms and conditions of the Permit and the associated certification, COR-03B265, which was issued to Sumo on January 9, 2007.
22. Sumo shall immediately evaluate the Project’s SWMP and implement necessary measures to ensure that the SWMP contains all of the elements required by the Permit and is effective in managing stormwater and pollutant discharges from the Project. Within thirty (30) calendar days of receipt of this Order, Sumo shall submit to the Division a written certification stating that a complete, effective and up-to-date SWMP has been fully developed and implemented at the Project.
23. Sumo shall immediately implement measures to ensure that functional BMPs are in place to control stormwater and pollutant discharges from the Project. Within thirty (30) calendar days of receipt of this Order, Sumo shall evaluate and modify all existing BMPs at the Project to ensure the BMPs meet the design requirements specified in the Project’s complete and up-to-date SWMP. Within forty-five (45) calendar days of receipt of this Order, Sumo shall submit photographs to the Division documenting the current conditions and the associated BMPs implemented at the Project.

24. Within thirty (30) calendar days of receipt of this Order, Sumo shall submit to the Division a detailed written statement outlining the standard procedures Sumo will undertake to ensure that coverage under all applicable CDPS permits is obtained and adequate stormwater management systems are fully implemented at its Colorado construction sites

### **NOTICES AND SUBMITTALS**

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, Sumo 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 / Enforcement Program  
Attention: Michael Harris  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530  
michael.harris@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 of Colorado has not waived its right to bring an action for penalties under §§25-8-608 and 25-8-609, 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 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 8<sup>th</sup> day of January, 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