

# 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 3, 2008

The Corporation Company  
Petroleum Development Corporation  
1675 Broadway Ste 1200  
Denver, CO 80202

Certified Mail Number: 7005 1820 0000 3209 5675

**RE: Service of Notice of Violation/Cease and Desist Order, Number: S0-081203-1**

Dear Sir or Madam:

Petroleum Development Corporation 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 Petroleum Development Corporation has violated the Act, and/or [COR-03000] regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., Petroleum Development Corporation 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 Petroleum Development Corporation 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 Michael Harris of this office by phone at (303) 692-3598 or by electronic mail at michael.harris@state.co.us.

Sincerely,



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

cc: Consumer Protection Division, CDPHE  
MS-3 File

ec: Aaron Urdiales, EPA Region VIII  
Mark Kadnuck, Engineering Section, CDPHE  
Dick Parachini, Watershed Program, CDPHE  
Gary Beers, Permits Unit, CDPHE  
Carolyn Schachterle, OPA  
David Neslin, COGCC

*Enclosure(s)*



**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-081203-1**

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**IN THE MATTER OF:      PETROLEUM DEVELOPMENT CORPORATION**  
**CDPS PERMIT NO. COR-030000**  
**CERTIFICATION NO. COR-038259**  
**GARFIELD 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, Petroleum Development Corporation ("PDC") was a Nevada corporation in good standing and registered to conduct business in the State of Colorado.
2. PDC 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. In or about December 2005, PDC initiated construction of an access road for oil and gas exploration and production on fifty six (56) acres of land located near County Road 215, approximately ten miles north of the Town of Parachute, in Garfield County, Colorado (the "Project").
4. On May 23, 2005, the Division received an application from PDC for Project coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit"). During the times relevant to the alleged violations identified herein, two versions of the Permit were in effect. The version issued and signed on May 21, 2002 was effective from July 1, 2002 through June 30, 2007 (the "2002 Permit"), and the current version, issued and signed on May 31, 2007, became effective on July 1, 2007 and remains in effect until June 30, 2012 (the "2007 Permit").

5. On May 26, 2005, the Division provided PDC Certification Number COR-038259 authorizing PDC to discharge stormwater from the construction activities associated with the Project to Garden Gulch and the Colorado River under the terms and conditions of the Permit. Certification Number COR-038259 became effective May 24, 2005 and remains in effect until June 30, 2012 or until PDC inactivates permit coverage.
6. Garden Gulch and the Colorado River are “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. 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 §§25-8-601 through 612, C.R.S.
8. On April 17, 2008, 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 PDC’s compliance with the Water Quality Control Act and the Permit. During the inspection, the Inspector interviewed Project representatives, reviewed the Project’s stormwater management system records, and performed a physical inspection of the Project.

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

9. Pursuant to Part I. B. of the 2002 and 2007 Permits, PDC is required to prepare and maintain 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.
10. Pursuant to Part I. C. of the 2007 Permit, the Project’s SWMP shall include, at a minimum, the following items:
  - a. Site Description – The SWMP shall clearly describe the construction activity, including:
    - i. The nature 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. A summary of any existing data used in the development of the construction plans or SWMP that describe the soil or existing potential for soil erosion.
    - 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 all potential pollution sources, including ground surface disturbance, vehicle fueling, storage of fertilizers or chemicals, etc.
    - vii. The location and description of any allowable sources of non-stormwater discharge, such as springs, landscape irrigation return flow, construction dewatering and concrete washout.
    - 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 – The SWMP shall include a legible site map(s), showing the entire site, identifying:
  - i. Construction site boundaries.
  - ii. All areas of ground surface disturbance.
  - iii. Areas of cut and fill.
  - iv. Areas used for storage of building materials, equipment, soils or wastes.
  - v. Locations of dedicated asphalt or concrete batch plants.
  - vi. Locations of all structural BMPs
  - vii. Locations of all non-structural BMPs.
  - viii. Locations of springs, streams, wetlands and other surface waters.
  
- c. Stormwater Management Controls - The SWMP must include a description of all stormwater management controls that will be implemented as part of the construction activity to control pollutants in stormwater discharges, including:
  - i. SWMP Administrator – The SWMP shall identify a specific individual(s), position or title that is responsible for developing, implementing, maintaining and revising the SWMP.
  - ii. Identification of Potential Pollutant Sources – The SWMP shall identify and describe those sources determined to have the potential to contribute pollutants to stormwater discharges.
  - iii. Best Management Practices (BMPs) for Stormwater Pollution Prevention – The SWMP shall identify and describe appropriate BMPs that will be implemented at the facility to reduce the potential of pollution sources to contribute pollutants to stormwater discharges. The SWMP shall clearly describe the installation and implementation specifications for each BMP identified in the SWMP.
    - (1) Structural Practices for Erosion and Sediment Control – The SWMP shall clearly describe and locate all structural practices implemented at the site to minimize erosion and sediment transport. Practices may include, but are not limited to: straw bales, wattles/sediment control logs, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, pipe slope drains, inlet protection, outlet protection, gabions, and temporary or permanent sediment basins.
    - (2) Non-Structural Practices for Erosion and Sediment Control – The SWMP shall clearly describe and locate all non-structural practices implemented at the site to minimize erosion and sediment transport. Description must include interim and permanent stabilization practices, and site-specific scheduling for implementation of the practices. Non-structural practices may include, but are not limited to: temporary vegetation, permanent vegetation, mulching, geotextiles, sod stabilization, slope roughening, vegetative buffer strips, protection of trees, and preservation of mature vegetation.
    - (3) Phased BMP Implementation – The SWMP shall clearly describe the relationship between the phases of construction and the implementation and maintenance of BMPs. The SWMP must identify the stormwater management controls to be implemented during the project phases, which can include, but are not limited to, clearing and grubbing, road construction, utility and infrastructure installation, vertical construction, final grading and final stabilization.
    - (4) Materials Handling and Spill Prevention – The SWMP shall clearly describe and locate all practices implemented at the site to minimize impacts from procedures or significant materials that could contribute pollutants to runoff.

- (5) Dedicated Concrete or Asphalt Batch Plants – The SWMP shall clearly describe and locate BMPs to control stormwater pollution from dedicated concrete batch plants or dedicated asphalt batch plants.
  - (6) Vehicle Tracking Control – The SWMP shall clearly describe and locate all practices implemented at the site to control potential sediment discharges from vehicle tracking.
  - (7) Waste Management and Disposal, Including Concrete Washout – The SWMP shall clearly describe and locate the practices implemented at the site to control stormwater pollution from all construction site wastes, including concrete washout activities.
  - (8) Groundwater and Stormwater Dewatering – The SWMP shall clearly describe and locate the practices implemented at the site to control stormwater pollution from the dewatering of groundwater or stormwater from excavations, wells, etc.
- d. Final Stabilization and Long-Term Stormwater Management – The SWMP shall clearly describe the practices used to achieve final stabilization of all disturbed areas at the site, and any planned practices to control pollutants in stormwater discharges that will occur after construction operations have been completed at the site.
  - e. Inspection and Maintenance – The SWMP shall clearly describe the inspection and maintenance procedures implemented at the site to maintain all erosion and sediment control practices and other protective practices in good and effective operating condition.
11. During the April 17, 2008 inspection, the Inspector reviewed the Project’s SWMP and identified the following deficiencies, as described in paragraphs 11(a-j) below:
- a. The SWMP did not include estimates of the total area of the site nor the area and location expected to be disturbed by clearing, excavation, grading or other construction activities.
  - b. The SWMP did not include a summary of existing data used in the development of the construction plans or SWMP that describe the soil or existing potential for soil erosion.
  - c. The site map included with the SWMP did not clearly identify the construction site boundaries at the site. The map included with the SWMP only depicted the general area of the Project and was not site-specific.
  - d. The site map included with the SWMP did not include all areas of ground surface disturbance at the Project. The map included with the SWMP only depicted the general area of the Project and did not include the cut or fill slopes observed at the site.
  - e. The site map included with the SWMP did not include all areas used for storage of buildings materials, equipment, soil or waste. Specifically, the location where road graders were parked and maintained was not depicted on the site map.
  - f. The site map included with the SWMP did not identify the location of all structural BMPs implemented at the Project. Specifically, check dams, sediment traps, earthen berms, and straw bales were all observed at the site but were not depicted on the site map.

- g. The site map included with the SWMP did not identify the location of nearby springs, streams, wetlands or other surface waters. Specifically, the inspector observed that Garden Gulch crosses the road in various locations at the site, but was not depicted on the site map.
  - h. The SWMP did not include installation and implementation specifications for each BMP. Specifically, the SWMP states that check dams, culvert protection, diversion ditches, slope drains, rock lined ditches, mulches and geotextiles may be used onsite, but specific design details for those BMPS were not included in the SWMP.
  - i. The SWMP did not describe the relationship between the phases of construction and the implementation and maintenance of both structural and non-structural stormwater management controls.
  - j. The SWMP did not include a description of the specific practices used to achieve final stabilization of all disturbed areas at the site or planned practices to control pollutants in stormwater discharges that will occur after construction operations have been completed. The SWMP stated that seeding would occur, but did not provide seed mixtures or implementation and maintenance details.
12. In response to the April 17, 2008 inspection, PDC submitted a letter to the Division on May 30, 2008, stating that the SWMP provided to the Inspector on April 17, 2008 was the "Field-Wide Stormwater Management Plan for Construction Activities" and was not specific to the area of the Project that was evaluated by the Inspector during the April 17, 2008 inspection. As such, PDC submitted its "Garden Gulch SWMP," dated June 7, 2006, as the plan that should have been provided to the Inspector during the April 17, 2008 inspection.
13. The Division performed an in-office review of the Project's "Garden Gulch SWMP" and identified the following deficiencies, as described in paragraphs 13 (a-o) below:
- a. The SWMP did not specifically describe the proposed sequence of major activities at the Project, such as blasting, clearing and grubbing, etc.
  - b. The site description in the SWMP did not include the location of potential pollutant sources.
  - c. The site map included with the SWMP did not include the areas used for the storage of building materials, equipment, soil or waste.
  - d. The site map included with the SWMP did not include the location of dedicated asphalt or concrete batch plants.
  - e. The site map included with the SWMP did not identify the location of nearby springs, streams, wetland or other surface waters.
  - f. The SWMP did not include a SWMP Administrator.
  - g. The SWMP did not describe and locate the structural practices that would be implemented at the Project. No specific direction was provided on how, when, and where BMPs would be implemented at the Project.

- h. The SWMP did not describe and locate the non-structural practices that would be implemented at the Project. No specific direction was provided on how, when, and where BMPs would be implemented at the Project.
  - i. The SWMP did not describe the relationship between the phases of construction and the implementation and maintenance of both structural and non-structural stormwater management controls.
  - j. The SWMP did not include specific practices and procedures for spill clean-up. The SWMP referenced an SPCC plan, but it was not included with the SWMP, as required by the 2007 Permit.
  - k. The section covering Stormwater Management Controls in the SWMP did not address concrete or asphalt batch plants.
  - l. The section covering Stormwater Management Controls in the SWMP did not address vehicle tracking control.
  - m. The section covering Stormwater Management Controls in the SWMP did not address groundwater and stormwater dewatering.
  - n. The SWMP did not include installation and implementation specifications for BMPs.
  - o. The SWMP did not include a description of the specific practices used to achieve final stabilization of all disturbed area at the site or planned practices to control pollutants in stormwater discharges that will occur after construction operations have been completed. The SWMP stated that seeding would occur, but did not provide seed mixtures or implementation and maintenance details.
14. The Division has determined that PDC failed to prepare and maintain a complete and accurate SWMP for the Project.
15. PDC's failure to prepare and maintain a complete and accurate SWMP for the Project constitutes violations of Part I. B. of the 2002 Permit and Part I. B. and Part I. C. of the 2007 Permit.

**Failure to Implement and/or Maintain  
Best Management Practices to Protect Stormwater Runoff**

16. Pursuant to Part I. C. 3. c. of the 2007 Permit, PDC is required to implement BMPs to minimize erosion and sediment transport from the Project. The Permit specifies that structural site management practices may include, but are not limited to: straw bales, wattles/sediment control logs, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, pipe slope drains, inlet protection, outlet protection, gabions, and temporary or permanent sediment basins. The Permit specifies that non-structural site management practices may include, but are not limited to: temporary vegetation, permanent vegetation, mulching, geotextiles, sod stabilization, slope roughening, vegetative buffer strips, protection of trees and preservation of mature vegetation.

17. Pursuant to Part I. D. 2. of the 2007 Permit, PDC is required to select, design, install, implement and maintain appropriate BMPs for all potential pollutant sources at the Project, following good engineering, hydrologic and pollution control practices.
18. Pursuant to Part I. B. 3. of the 2007 Permit, PDC is required to implement the provisions of the Project's SWMP, as written and updated, from the commencement of construction activity until final stabilization is complete.
19. The Division has determined that PDC failed to implement and/or maintain functional BMPs at the Project as described in paragraphs 15(a-f) below:
  - a. During the April 17, 2008 inspection, the Inspector observed several culvert inlets and outlets located along the Project with no structural or non-structural BMPs in place to stabilize the disturbed soils or to prevent sediment from discharging from the disturbed areas. Specifically, culvert inlets and outlets with no BMPs were observed at the following geographical locations, as determined by a Global Positioning System ("GPS") receiver: 39°31'54.4"N 108°09'12.2"W, 39°32'07.8"N 108°09'33.7"W, 39°32'16.5"N 108°08'55"W, and 39°31'48.9"N 108°07'29.3"W. Consequently, significant erosion of the disturbed soils surrounding the inlets and outlets was observed.
  - b. During the April 17, 2008 inspection, the Inspector observed disturbed slopes at the water filling area located at 39°31'57"N 108°07'31.8"W at the Project. A straw wattle was observed in place, however, the straw wattle was deteriorated and did not extend across the entire disturbed slope. No other structural or non-structural BMPs were observed in place to stabilize the disturbed slopes or to prevent sediment from discharging directly to Parachute Creek.
  - c. During the April 17, 2008 inspection, the Inspector observed numerous disturbed cut slopes located along the Project, including at 39°31'34.3"N 108°09'26.6"W, 39°31'54.4"N 108°09'12.2"W, 39°31'49.6"N 108°09'49.5"W, and 39°32'07.8"N 108°09'33.7"W. No structural or non-structural BMPs were observed in place to stabilize the disturbed slopes, to prevent stormwater run on to the disturbed slopes, or to prevent sediment from discharging from the slopes during storm events.
  - d. During the April 17, 2008 inspection, the Inspector observed stormwater flow lines that existed along the toe of the Project's numerous disturbed cut slopes. In some cases, such as at 39°31'34.3"N 108°09'26.6"W, PDC failed to implement road-side drainage ditches, as prescribed by the Project's SWMP. In areas where road-side drainage ditches were present, such as at 39°31'49.6"N 108°09'49.5"W and 39°32'07.8"N 108°09'33.7"W, PDC failed to implement structural or non-structural BMPs, as prescribed in the Project's SWMP, to stabilize the disturbed ditches or to prevent sediment from discharging from the ditches.
  - e. During the April 17, 2008 inspection, the Inspector observed numerous disturbed fill slopes located along the Project, including at 39°31'34.5"N 108°08'55.2"W, 39°31'54.4"N 108°09'12.2"W, 39°32'04.3"N 108°09'22.7"W, 39°32'07.8"N 108°09'33.7"W, and 39°32'22.1"N 108°08'31.9"W. No structural or non-structural BMPs were observed in place to stabilize the disturbed slopes or to prevent sediment from discharging from the slopes and into state waters. Consequently, significant erosion of several disturbed fill slopes was observed.

f. During the April 17, 2008 inspection, the Inspector observed a sediment trap located at 39°32'07.8"N 108°09'33.7"W at the Project. However, the sediment trap had not been designed and installed in accordance with the Project's SWMP, was not being used in concert with upstream erosion and sediment controls and, therefore, was not acting as a functional BMP for sediment removal.

20. PDC's failure to implement and maintain functional BMPs to protect stormwater quality during construction activities at the Project constitutes violations of Part I. C. 3. c., Part I. D. 2., and Part I. B. 3. of the 2007 Permit.

**Failure to Conduct Inspections of Stormwater Management System**

21. Pursuant to Part I. C. 5. a. of the 2002 Permit and Part I. D. 6. a. of the 2007 Permit, for active sites where construction has not been completed, PDC is required to make a thorough inspection of the Project's stormwater management system at least every 14 days and after any precipitation or snowmelt event that causes surface erosion.

22. Pursuant to Part I. D. 6. b. 2) of the 2007 Permit, PDC is required to keep a record of inspections that describes any corrective actions taken, including the dates the corrective actions were taken, and any measures taken to prevent future violations. After corrective action has been taken, or where a report does not identify any incidents requiring corrective action, the inspection report shall contain a signed statement indicating the site is in compliance with the 2007 Permit.

23. During the April 17, 2008 inspection, the Inspector reviewed the Project's stormwater management system records and identified that no inspection records were available covering the period from June 2005 until October 30, 2007.

24. In response to the April 17, 2008 inspection, PDC submitted its stormwater management system inspection records to the Division on May 30, 2008. The Division performed an in-office review of the Project's stormwater management system inspection records and identified that PDC failed to inspect the Project at the required 14-day frequency, as follows:

Date of Inspection	Date of Next Inspection	Duration between inspections
3/7/06	3/23/06	16 days
3/23/06	4/14/06	22 days
5/31/06	6/15/06	15 days
7/13/06	8/3/06	21 days
9/7/06	10/2/06	25 days
10/2/06	10/18/06	16 days
4/27/07	5/30/07	33 days
5/30/07	6/14/07	15 days
8/8/07	8/23/07	15 days
8/23/07	9/7/07	15 days
9/27/07	10/30/07	33 days

25. During the April 17, 2008 inspection, the Inspector identified that the Project's stormwater management system inspection records did include a signed statement indicating the site is in compliance, as required by the 2007 Permit.
26. PDC's failure to conduct inspections of the Project's stormwater management system in accordance with the provisions of the 2002 and 2007 Permits constitutes violations of Part I. C. 5. a. of the 2002 Permit and Part I. D. 6. a. and Part I. D. 6. b. 2) of the 2007 Permit.

### **NOTICE OF VIOLATION**

Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined PDC has violated the following sections of the Permit:

**Part I. B. of the 2002 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. Construction operations must implement the provisions of the SWMP required under this part as a condition of this permit."

**Part I. B. of the 2007 Permit**, which states in part, "The SWMP shall be prepared in accordance with good engineering, hydrologic and pollution control practices. The SWMP shall a) Identify all potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharges associated with construction activity from the facility; b) Describe the practices to be used to reduce the pollutants in stormwater discharges associated with construction activity at the facility; and ensure the practices are selected and described in accordance with good engineering practices, including the installation, implementation and maintenance requirements; and c) Be properly prepared and updated in accordance with Part I.D.5.c., to ensure compliance with the terms and conditions of this permit. Facilities must implement the provision of the SWMP as written and updated, from commencement of construction activity until final stabilization is complete, as a condition of this permit."

**Part I. C. of the 2007 Permit**, which states in part, "The SWMP shall include the following items, at a minimum."

**Part I. C. 3. c. of the 2007 Permit**, which outlines in part that BMPs for Stormwater Pollution Prevention shall address erosion and sediment control, including "structural practices implemented at the site to minimize erosion and sediment transport" and "non-structural practices implemented at the site to minimize erosion and sediment transport," phased BMP implementation, materials handling and spill prevention, dedicated concrete or asphalt batch plants, vehicle tracking control, waste management and disposal including concrete washout, and groundwater and stormwater dewatering.

**Part I. D. 2. of the 2007 Permit**, which states, “Facilities must select, install, implement, and maintain appropriate BMPs, following good engineering, hydrologic and pollution control practices. BMPs implemented at the site must be adequately designed to provide control for all potential pollutant sources associated with construction activity to prevent pollution or degradation of State waters.”

**Part I. B. 3. of the 2007 Permit**, which states in part, “Facilities must implement the provisions of the SWMP as written and updated, from commencement of construction activity until final stabilization is complete, as a condition of this permit.”

**Part I. C. 5. a. of the 2002 Permit**, which states in part, “For active sites where construction has not been completed, the permittee shall make a thorough inspection of their stormwater management system at least every 14 days and after any precipitation or snowmelt event that causes surface erosion.”

**Part I. D. 6. a. of the 2002 Permit**, which states in part, “The permittee shall, at a minimum, make a thorough inspection, in accordance with the requirements in I. D. 6. b below, at least once every 14 calendar days.”

**Part I. D. 6. b. 2) of the 2007 Permit**, which states in part, “The permittee shall keep a record of inspections. Inspection reports must identify any incidents of non-compliance with the terms and conditions of this permit. ... At a minimum, the inspection report must include: ... viii) After adequate corrective action(s) has been taken, or where a report does not identify any incidents requiring corrective action, the report shall contain a signed statement indicating the site is in compliance with the permit to the best of the signer’s knowledge and belief.”

### **REQUIRED CORRECTIVE ACTION**

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

27. 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 and the Permit.

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

28. PDC shall immediately evaluate the Project’s SWMP and implement necessary measures to ensure that the SWMP contains all of the elements required by the 2007 Permit and is effective in managing stormwater and pollutant discharges from the Project. Within thirty (30) calendar days of receipt of this Order, PDC shall submit a written certification to the Division stating that a complete, effective and up-to-date SWMP has been fully developed and implemented at the Project.

29. PDC shall immediately implement necessary measures to ensure that adequate BMPs are in place to control stormwater and pollutant discharges from the Project. This includes ensuring that all disturbed areas, including, but not limited to, slopes, ditch lines, swales, inlets and outlets of culverts, etc., are stabilized and that all BMPs at the site are selected, installed, implemented, and maintained following good engineering, hydrologic and pollution control practices. Within thirty (30) calendar days of receipt of this Order, PDC shall evaluate and modify all existing BMPs at the Project to ensure the BMPs meet the design requirements specified in each project's complete and up-to-date SWMP. Within forty-five (45) calendar days of receipt of this Order, PDC shall submit photographs to the Division documenting the current conditions and the associated BMPs implemented at the Project.
30. Within sixty (60) calendar days of receipt of this Order, PDC shall submit to the Division a detailed written plan outlining the standard procedures PDC will undertake to ensure that functional and effective stormwater management systems are fully implemented at its Colorado construction sites. The plan shall include a detailed description of how PDC will ensure that each of its stormwater management systems, at each of its Colorado construction sites, are adequately staffed, trained, implemented and supervised. The plan shall specifically discuss PDC's commitment to the resources needed to adequately implement the provisions of the 2007 Permit, including a commitment to providing elevated staff and supervisor training in erosion control, BMP implementation, and overall stormwater management.

### **NOTICES AND SUBMITTALS**

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation / Cease and Desist Order, PDC 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: 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 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. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

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. 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.

## **RELEASE OR DISCHARGE NOTIFICATION**

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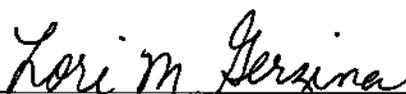
## **EFFECT OF ORDER**

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 3<sup>rd</sup> day of December, 2008.

## **FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

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