



**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-080225-1**

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**IN THE MATTER OF:      BIOENERGY OF AMERICA, INC.**  
**CDPS PERMIT NO. COR-020000**  
**CERTIFICATION NO. COR-020481**  
**DENVER 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, BioEnergy of America, Inc. ("BioEnergy") was a Delaware corporation in good standing and registered to conduct business in the State of Colorado.
2. BioEnergy 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).

**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)(B), facilities classified as Standard Industrial Classification 28 (except 283 and 285) are considered to be engaging in "industrial activity."

6. BioEnergy operates an industrial facility involved in the production of bio diesel fuel, located at 4875 National Western Drive, in the City and County of Denver, Colorado (the "Facility"). The Facility is classified within the Standard Industrial Classification codes 2869 and 2899.
7. On April 5, 2006, the Denver Fire Department responded to a reported explosion at the Facility and identified that BioEnergy was actively involved in the production of bio diesel fuel.
8. On January 30, 2007, a representative from the Denver Department of Environmental Health (the "Inspector") conducted an onsite inspection of the Facility on behalf of the Division, pursuant to the Division's authority under §25-8-306, C.R.S., to determine BioEnergy's compliance with the Water Quality Control Act. During the inspection, the Inspector identified that the Facility was not covered under a CDPS permit for stormwater discharges.
9. In response to the inspection, on February 28, 2007, the Division received an application from BioEnergy, using the name "BioEnergy of America 2, LLC," for Facility coverage under the CDPS General Permit, Number COR-020000, for Stormwater Discharges Associated with Heavy Industrial Activity (the "Permit").
10. On February 28, 2007, the Division provided BioEnergy Certification Number COR-020481 authorizing BioEnergy to discharge stormwater from the industrial activities associated with the Facility to the South Platte River under the terms and conditions of the Permit. Certification Number COR-020481 became effective February 28, 2007 and remains in effect until December 31, 2011 or until BioEnergy inactivates Permit coverage.
11. The Division records establish that BioEnergy did not have any permits authorizing discharges of stormwater from the Facility prior to February 28, 2007.
12. BioEnergy's failure to obtain CDPS permit coverage for the Facility, prior to February 28, 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)

### **NOTICE OF VIOLATION**

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

**Section 25-8-501(1), C.R.S.**, 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, 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.”

### **REQUIRED CORRECTIVE ACTION**

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

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

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

14. BioEnergy shall comply with the terms and conditions of the Permit and the associated certification, COR-020481, that was issued to BioEnergy on February 28, 2007.

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

16. Within sixty (60) calendar days of receipt of this Order, BioEnergy shall submit photographs to the Division documenting the current site conditions and associated BMPs implemented at the Facility.

### **NOTICES AND SUBMITTALS**

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, BioEnergy 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(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 25<sup>th</sup> day of February, 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