



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

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: SO-080226-1

IN THE MATTER OF: PETER COULTER and
ADAMS IMPORT AUTO WRECKING, LLC
ARAPAHOE 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, Peter Coulter was an individual conducting business in the State of Colorado as a sole proprietorship.
2. Peter Coulter 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. At all times relevant to the alleged violations identified herein, Adams Import Auto Wrecking, LLC ("Adams Import") was a Colorado limited liability company registered to conduct business in the State of Colorado.
4. Adams Import 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

5. 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.
6. 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.

7. Pursuant to 5 CCR 1002-61, §61.3(2)(e)(iii)(F), facilities involved in the recycling of materials, including scrap yards, battery reclaimers, salvage yards, and automobile junkyards, that are classified as Standard Industrial Classification 5015 or 5093 are considered to be engaging in “industrial activity.”
8. Peter Coulter and Adams Import operate an industrial facility involved in automobile dismantling, located at 2060 W. Radcliff Avenue, in the City of Sheridan, Arapahoe County, Colorado (the “Facility”). The Facility is classified within the Standard Industrial Classification code 5015.
9. On September 6, 2005, the Division received an application from Peter Coulter and Adams Import for Facility coverage under the CDPS General Permit, Number COR-060000, for Stormwater Discharges Associated with the Recycling Industry.
10. On September 7, 2005, the Division provided Peter Coulter and Adams Import Certification Number COR-060161 authorizing Adams Import 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-060161 became effective September 6, 2005 and remained in effect until it expired on December 31, 2006.
11. On January 4, 2007, a representative from the Division (the “Inspector”) conducted an onsite inspection of the Facility, pursuant to the Division’s authority under §25-8-306, C.R.S., to determine Peter Coulter’s and Adams Import’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. Additionally, the Inspector identified that the auto dismantling area located north of the office at the Facility slopes toward W. Radcliff Avenue, therefore providing the potential for the Facility to discharge stormwater from the industrial activities at the site.
12. The Division records establish that Peter Coulter and Adams Import do not have any permits authorizing discharges of stormwater from the Facility.
13. Peter Coulter’s and Adams Imports’s failure to obtain CDPS permit coverage for the Facility 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 Peter Coulter and Adams Import have 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., Peter Coulter and Adams Import are hereby ordered to:

14. 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 Peter Coulter and Adams Import to comply with the following specific terms and conditions of this Order:

15. Within thirty (30) calendar days of receipt of this Order, Peter Coulter and/or Adams Import shall prepare and submit to the Division an application for Facility coverage under the Permit. *(Note: Application materials are enclosed for your reference. As stated in the application and Permit, a Stormwater Management Plan for the Facility must be developed and submitted with the completed application form.)*

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

17. Within sixty (60) calendar days of receipt of this Order, Peter Coulter and Adams Import 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, Peter Coulter and Adams Import 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 26th 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