



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

NOTICE OF VIOLATION / CEASE AND DESIST / CLEAN-UP ORDER

NUMBER: SO-080314-1

IN THE MATTER OF: AMERICAN CIVIL CONSTRUCTORS, INC.
CDPS PERMIT NO. COR-030000
CERTIFICATION NO. COR-036202
CLEAR CREEK 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, 25-8-605 and 25-8-606, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order / Clean-up Order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the alleged violations identified herein, American Civil Constructors, Inc. ("ACC") was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
2. ACC 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. On or about June 11, 2004, ACC initiated construction activities of the Colorado Forest Highway Project on and along Guanella Pass Road in Clear Creek County, Colorado (the "Project").
4. On March 19, 2004, the Division received an application from ACC for Project coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activities (the "Permit"). During the times relevant to the alleged violations identified herein, two versions of the Permit were in effect: the Permit issued and signed on May 21, 2002 was effective from July 1, 2002 through June 30, 2007 (the "2002 Permit") and the current Permit 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 April 6, 2004, the Division provided ACC Certification Number COR-036202 authorizing ACC to discharge stormwater from the construction activities associated with the Project to Clear Creek under the terms and conditions of the Permit. Certification Number COR-036202 became effective March 23, 2004, was re-issued effective on July 1, 2007, and remains in effect until June 30, 2012 or until ACC inactivates Permit coverage.
6. Clear Creek 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).
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 November 2, 2006 and September 5, 2007, 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 ACC’s compliance with the Water Quality Control Act and the Permit. During the inspections, the Inspector interviewed Project representatives, reviewed the Project’s stormwater management system records, and performed physical inspections of the Project.

Deficient and/or Incomplete Stormwater Management Plan

9. Pursuant to Part I. B. of the 2002 and 2007 Permits, ACC 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. B. of the 2002 Permit and Part I. C. of the 2007 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 (2002 Permit) 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 (2002 Permit) or allowable sources of non-stormwater discharge at the site, e.g., uncontaminated springs, landscape irrigation return flow, construction dewatering, and concrete washout (2007 Permit).
 - 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. (2002 Permit)
 - vii. Locations of all structural BMPs. (2007 Permit)
 - viii. Locations of all non-structural BMPs. (2007 Permit)
 - ix. Springs, streams, wetlands and other surface waters.
 - x. Boundaries of 100-year flood plains, if determined. (2002 Permit)
- 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, including:
- 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. Phased BMP Implementation – The SWMP shall clearly describe the relationship between the phases of construction and the implementation and maintenance of BMPs
 - iii. Materials Handling and Spill Prevention - The SWMP shall identify any procedures or significant materials handled at the site that could contribute pollutants to runoff.
 - iv. 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.
 - v. Vehicle Tracking Control (2007 Permit) – The SWMP shall clearly describe and locate BMPs to control potential sediment discharges from vehicle tracking.
 - vi. Waste Management and Disposal, Including Concrete Washout (2007 Permit) – The SWMP shall clearly describe and locate BMPs to control stormwater pollution from all construction site wastes, including concrete washout activities.
 - vii. Groundwater and Stormwater Dewatering (2007 Permit) – The SWMP shall clearly describe and locate BMPS to control stormwater pollution from the dewatering of groundwater or stormwater from excavations, wells, etc.
- 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 (2002 Permit) - 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.

11. The Division has determined that ACC failed to prepare and maintain a complete and accurate SWMP for the Project as described in paragraphs 11(a-t) below:

- a. During the November 2, 2006 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not include an estimate of the percent vegetative ground cover, as required by the Permit.
- b. During the November 2, 2006 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not include the location of all pollution sources at the Project, including solvents, sealants, waste storage and the vehicle fueling and washing area at the Project.
- c. During the November 2, 2006 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not include the name of all receiving waters for the Project, including South Clear Creek, Lower Cabin Creek Reservoir, Duck Lake, Duck Creek, Geneva Creek, and the North Fork of the South Platte River.
- d. During the November 2, 2006 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not identify all areas used for storage of building materials, including the staging area and its associated activities located at the Geneva Basin Ski Area.
- e. During the November 2, 2006 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not identify the location of the asphalt batch plant located at the Geneva Basin staging area.
- f. During the November 2, 2006 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not describe the relationship between the phases of construction and the implementation and maintenance of controls and measures, as required by the Permit.
- g. During the November 2, 2006 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not include a description of interim and permanent stabilization practices, as required by the Permit.
- h. During the November 2, 2006 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not identify procedures or significant materials handled at the site that contribute pollutants to runoff, including the diesel fuel tank and asphalt/soil waste piles that were observed at the Project during the inspection.

- i. During the September 5, 2007 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not include the location expected to be disturbed by clearing, excavation, grading or other construction activity. The SWMP referenced "Sheet B11 Clearing, Grubbing, and Roadway Excavation" as the location for the information, however, this document was not included with the SWMP or available at the time of the inspection.
- j. During the September 5, 2007 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not include a summary of any existing data used in the development of the site construction plans or SWMP that describe the soil or existing potential for soil erosion. The SWMP referenced a "Geotechnical Report," however, this document was not included with the SWMP or available at the time of the inspection.
- k. During the September 5, 2007 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not identify all areas of ground disturbance at the Project, including the land disturbance that was observed at Station 24+900 of the Project during the inspection.
- l. During the September 5, 2007 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not identify all areas of cut and fill at the Project, including the existing and proposed contours of the site.
- m. During the September 5, 2007 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not identify the locations of all structural BMPs at the Project, including the straw wattles observed at Station 28+100 of the Project during the inspection.
- n. During the September 5, 2007 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not identify the locations of all non-structural BMPs at the Project, including the hydromulch observed at Duck Lake Pit at the Project during the inspection.
- o. During the September 5, 2007 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not identify all potential pollutant sources at the site, including the mobile fueling truck and paint products that were observed at the Geneva Basin Ski Area at the Project during the inspection.
- p. During the September 5, 2007 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not describe the relationship between the phases of construction and the implementation and maintenance of BMPs.
- q. During the September 5, 2007 inspection, the Inspector reviewed the SWMP and identified the SWMP did not identify all procedures or significant materials handled at the site that could contribute pollutants to runoff, including the mobile fueling operations observed during the inspection.
- r. During the September 5, 2007 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not include a description of the specific practices that would be used to achieve final stabilization of all disturbed areas at the Project.

- s. During the September 5, 2007 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not include a description of procedures to inspect and maintain BMPs at the Project.
 - t. During the September 5, 2007 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not prescribe BMPs for all potential pollutant sources at the Project, including concrete wastes that were observed at Station 18+800 and the Geneva Basin staging area at the Project.
12. ACC'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 I. C. of the 2007 Permit.

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

13. Pursuant to Part I. B. 3. a. (1) of the 2002 Permit and Part I. C. 3. c. (1) of the 2007 Permit, ACC is required 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, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, inlet protection, outlet protection, gabions, and temporary or permanent sediment basins.
14. Pursuant to Part I. B. 3. a. (2) of the 2002 Permit and Part I. C. 3. c. (2) of the 2007 Permit, ACC is required to implement interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. The Permit specifies that site plans should ensure existing vegetation is preserved where possible and that disturbed areas are stabilized. The Permit specifies that non-structural practices may include, but are not limited to: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees and preservation of mature vegetation.
15. Pursuant to Part I. D. 2. of the 2007 Permit, ACC is required to select, install, implement, and maintain appropriate BMPs at the Project following good engineering, hydrologic and pollution control practices. Additionally, all BMPs implemented at the site must be designed to provide control for all potential pollutant sources at the site to prevent pollution or degradation of state waters.
16. The Division has determined that ACC failed to implement and/or maintain functional BMPs at the Project as described in paragraphs 16(a-s) below:
- a. During the November 2, 2006 inspection, the Inspector observed a road base stockpile located at a switchback on Guanella Pass Road, approximately one half mile north of mile marker 14 at the Project. No BMPs were observed in place to prevent the road base from discharging from the area during rain or snowmelt events.

- b. During the November 2, 2006 inspection, the Inspector observed a soil stockpile located along the east side of Guanella Pass Road near Duck Lake at the Project. A silt fence was observed down gradient from the stockpile, however, the silt fence did not extend across the stormwater flow line from this area and, thus, was not acting as a functional BMP to prevent pollutant discharges from the stockpile. No other BMPs were observed in place to prevent sediment and soil from discharging from the area during rain or snowmelt events.
- c. During the November 2, 2006 inspection, the Inspector observed silt fencing in place along the east side of Guanella Pass Road near Duck Lake at the Project. The silt fencing was not being maintained to act as a functional BMP however, as several sections of silt fencing had collapsed or were subjected to soil and sediment accumulation of at least half the exposed fabric height.
- d. During the November 2, 2006 inspection, the Inspector observed a soil stockpile located near the intersection of Guanella Pass Road and the entrance to Duck Lake Gravel Pit at the Project. No BMPs were observed in place to prevent pollutants from discharging from the area during rain or snowmelt events.
- e. During the November 2, 2006 inspection, the Inspector observed a portable toilet located near the intersection of Guanella Pass Road and the entrance to Duck Lake Gravel Pit at the Project. No BMPs had been implemented to secure the toilet and prevent it from being knocked or blown over.
- f. During the November 2, 2006 inspection, the Inspector observed disturbed slopes located at the west end of Duck Lake Gravel Pit at the Project. No BMPs were observed in place to stabilize the disturbed slopes and associated flow line or to prevent sediment from discharging from the area during rain or snowmelt events. Consequently, sediment discharge was observed down gradient of the disturbed area at the culvert outlet west of Guanella Pass Road.
- g. During the November 2, 2006 inspection, the Inspector observed a silt fence in place at the southern perimeter of the Geneva Basin staging area at the Project. The silt fence was not being maintained to act as a functional BMP however, as the silt fence had collapsed.
- h. During the November 2, 2006 inspection, the Inspector observed a silt fence in place at the western perimeter of the Geneva Basin staging area at the Project. The silt fence was not being maintained to act as a functional BMP however, as the silt fence had collapsed.
- i. During the September 5, 2007 inspection, the Inspector observed petroleum based roadway emulsion, washed rock roadway material, sediment and debris from the Guanella Pass roadway near Station 28+835 at the Project with no BMPs in place to prevent the various pollutants from discharging from the area during rain or snowmelt events. Consequently, roadway emulsion, washed rock roadway material, sediment and debris discharge was observed in a drainage ditch and culvert pipe to the west of Guanella Pass Road and directly in South Clear Creek at this location of the Project.

- j. During the September 5, 2007 inspection, the Inspector observed a silt fence in place near Station 28+100 at the Project, near a bridge crossing over South Clear Creek. The silt fence was not being maintained to act as a functional BMP however, as several sections of the silt fence had collapsed.
- k. During the September 5, 2007 inspection, the Inspector observed washed rock roadway material, sediment and debris from the Guanella Pass roadway near Station 26+950 at the Project with no BMPs in place to prevent the various pollutants from discharging from the area during rain or snowmelt events. Consequently, a significant accumulation of washed rock roadway material, sediment and debris discharge was observed in the culvert inlet and beyond the culvert outlet at this location of the Project.
- l. During the September 5, 2007 inspection, the Inspector observed petroleum based roadway emulsion, washed rock roadway material, sediment and debris from the Guanella Pass roadway near Station 28+835 at the Project with no BMPs in place to prevent the various pollutants from discharging from the area during rain or snowmelt events. Consequently, roadway emulsion, washed rock roadway material, sediment and debris discharge was observed in the culvert inlet and beyond the culvert outlet at this location of the Project.
- m. During the September 5, 2007 inspection, the Inspector observed washed rock roadway material, sediment and debris from the Guanella Pass roadway near Station 20+050 at the Project with no BMPs in place to prevent the various pollutants from discharging from the area during rain or snowmelt events. Consequently, a significant accumulation of washed rock roadway material, sediment and debris discharge was observed extending approximately 20 yards west of the roadway in this location of the Project.
- n. During the September 5, 2007 inspection, the Inspector observed sediment and debris from the Guanella Pass roadway and disturbed slopes near Station 18+800 at the Project, adjacent to the Duck Lake Pit, with no BMPs in place to stabilize the disturbed areas or to prevent sediment and debris from discharging from the area during rain or snowmelt events. Consequently, erosion of the disturbed slopes was observed. Additionally, sediment and debris discharge was observed within and beyond a nearby culvert outlet located west of Guanella Pass Road – the same culvert outlet described in paragraph 16f above.
- o. During the September 5, 2007 inspection, the Inspector observed concrete waste near Station 18+800 and at the Geneva Basin staging area at the Project with no BMPs in place to prevent discharges of the concrete waste material during rain or snowmelt events.
- p. During the September 5, 2007 inspection, the Inspector observed diesel fuel that had leaked onto the ground and was actively leaking from a mobile fueling and lubricants truck at the Geneva Basin staging area at the Project. No BMPs were in place or were being utilized to prevent or contain the leak, clean up to the spilled pollutants, or prevent the diesel fuel from discharging to Duck Creek, which was located approximately 60 yards west and down gradient from the spill.
- q. During the September 5, 2007 inspection, the Inspector observed paint products and grout mix that were being stored outside, uncovered, with no BMPs in place to prevent stormwater from intermingling with the pollutants prior to discharging from the area.

- r. During the September 5, 2007 inspection, the Inspector observed soil and material stockpiles located at the Geneva Basin staging area. A silt fence was in place around the perimeter of the stockpiles, however, the silt fence was being maintained to act as a functional BMP, as a section of the silt fence had collapsed. No other BMPs were in place to prevent pollutants from discharging to Duck Creek, which was located approximately 15 yards west and down gradient from the stockpiles.
 - s. During the September 5, 2007 inspection, the Inspector observed washed rock roadway material that had been placed along the entire length of Guanella Pass Road near Station 28+835 at the Project. No BMPs were observed in place to prevent the washed rock roadway material from discharging to South Clear Creek, which is located approximately 10 feet from Guanella Pass Road in this area of the Project. Consequently, the deposition of washed rock roadway material was observed immediately adjacent to South Clear Creek.
17. ACC's failure to implement and maintain functional BMPs to protect stormwater quality during construction activities at the Project constitutes violations of Part I. B. 3. a. of the 2002 Permit and Part I. C. 3. c. and Part I. D. 2. of the 2007 Permit.

Failure to Conduct Inspections of Stormwater Management System

18. Pursuant to Part I. C. 5. a. of the 2002 Permit, for active sites where construction has not been completed, ACC 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.
19. During the September 5, 2007 inspection, the Inspector reviewed the Project's stormwater management system records and identified that ACC failed to inspect the Project from October 6, 2006 through June 7, 2007.
20. ACC's failure to conduct inspections of the Project's stormwater management system in accordance with the provisions of the Permit constitutes violations of Part I. C. 5. a. of the Permit

Discharge Without a Permit

21. 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, 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.
22. Pursuant to 5 CCR 1002-65, §65.2(1), no person shall discharge any pollutant, except for pollutants in naturally-occurring stormwater, from a point source that flows to a storm sewer without first having obtained a permit for such discharge from the Division.

23. During the September 5, 2007 inspection, the Inspector observed active pressure washing activities at Station 24+900 at the Project. A citrus based cleaner was being used to remove petroleum based roadway emulsion from the newly installed curb line. Wastewater from the pressure washing activities was observed flowing down the curb line and discharging to a storm drain inlet that is directly connected to South Clear Creek.
24. Citrus based cleaner and petroleum based roadway emulsion are “pollutants” as defined by §25-8-103(15) and its implementing permit regulation, 5 CCR 1002-61, §61.2(76).
25. South Clear Creek 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).
26. ACC’s pressuring washing operation, consisting of a truck mounted pressure washer, hose, and high pressure sprayer, is a “point source” as defined by §25-8-103(14) and its implementing permit regulation, 5 CCR 1002-61, §61.2(75).
27. ACCs discharge of pressure washing wastewater into South Clear Creek constitutes a “discharge of pollutants” as defined by §25-8-103(3) C.R.S.
28. Division records establish that ACC does not have any permits authorizing the discharge of pollutants described in paragraphs 23-27 above.
29. ACCs discharge of pollutants from the pressure washing activities at the Project to state waters without a permit constitutes violation(s) of §25-8-501(1) C.R.S., 5 CCR 1002-61, §61.3(1)(a) and 5 CCR 1002-65, §65.2(1).

NOTICE OF VIOLATION

Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that ACC has violated the following sections of the Colorado Water Quality Control Act, the Colorado Discharge Permit System Regulations and 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, “A SWMP shall be developed for each facility covered by this permit. 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 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. of the 2007 Permit, which states in part, “The SWMP shall include the following items, at a minimum.”

Part I. B. 3. a. of the 2002 Permit, which outlines in part that BMPs for Stormwater Pollution Prevention shall address erosion and sediment controls, including “structural site management practices which will minimize erosion and sediment transport,” and “interim and permanent stabilization practices, including site specific scheduling of the implementation of the practices. Site plans should ensure that existing vegetation is preserved where possible and that disturbed areas are stabilized.”

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. 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.”

§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 1002-65, §65.2(1), which states, “No person shall discharge any pollutant, except for pollutants in naturally-occurring stormwater, from a point source that flows to a storm sewer without first having obtained a permit for such discharge from the Division pursuant to section 25-8-501, C.R.S.”

REQUIRED CORRECTIVE ACTION

Based upon the foregoing factual and legal determinations and pursuant to §25-8-602, §25-8-605 and 25-8-606, C.R.S., ACC is hereby ordered to:

30. 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 2007 Permit.

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

31. ACC 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, ACC 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.
32. ACC shall immediately implement measures to ensure that adequate BMPs are in place to control stormwater and pollutant discharges from the Project. Within thirty (30) calendar days of receipt of this Order, ACC 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, ACC shall submit photographs to the Division documenting the current conditions and the associated BMPs implemented at the Project.
33. ACC shall immediately begin conducting inspections of the Project’s stormwater management system in accordance with the provisions outlined in the 2007 Permit. Within thirty (30) calendar days of receipt of this Order, ACC shall submit to the Division a written certification stating that all such inspections are being conducted in compliance with the terms and conditions of the 2007 Permit.
34. Within thirty (30) calendar days of receipt of this Order, ACC shall submit complete information regarding the nature of the power washing activities at the Project including the dates, range of dates, and/or number of instances in which power washing activities have resulted in the discharge of wastewater from the Project to storm drains and/or state waters.

35. Within thirty (30) calendar days of receipt of this Order, ACC shall submit to the Division a detailed written statement outlining the standard procedures ACC 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.
36. Within thirty (30) calendar days of receipt of this Order, ACC shall retain the services of a qualified entity and complete an evaluation of all stormwater drainage ways associated with the Project for the buildup of sediment and other pollutants. Within thirty (30) calendar days of completing the evaluation, ACC shall submit to the Division: a) a report outlining the findings from the evaluation; b) a plan for remediating identified areas of sediment accumulation and pollutant discharges originating from the Project, if necessary; and c) a time schedule for completing all remedial activities at the Project. The submitted plan and time schedule shall become a condition of this Order and ACC shall comply with the plan and time schedule as submitted unless notified by the Division, in writing, that an alternate plan or schedule is appropriate. If the Division imposes an alternate plan or schedule, it shall also become a condition of this Order. Within fifteen (15) calendar days of completing the remediation activities, ACC shall submit a final report to the Division outlining ACC's remedial actions.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, ACC 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.

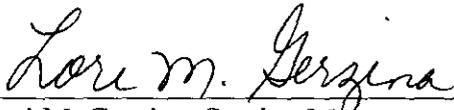
EFFECT OF ORDER

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 14th day of March, 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