



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

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: SO-080331-1

IN THE MATTER OF: RENFROE-BRUNNER DEVELOPMENT, LLC
CDPS PERMIT NO. COR-030000
CERTIFICATION NO. COR-03A244
WELD 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, Renfroe-Brunner Development, LLC ("Renfroe-Brunner") was a Colorado limited liability company in good standing and registered to conduct business in the State of Colorado.
2. Renfroe-Brunner 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 August 15, 2006, Renfroe-Brunner initiated construction activities to build a commercial development on property located at or near Colorado Parkway and U.S. Highway 85 in or near the Town of Eaton, Weld County, Colorado (the "Project").
4. On June 9, 2006, the Division received an application from Renfroe-Brunner 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, a version of the Permit was in place that was effective from July 1, 2002 through June 30, 2007 (the "2002 Permit"). The current version of the Permit, which was signed on May 31, 2007, became effective on July 1, 2007 and remains in effect until June 30, 2012 (the "2007 Permit").

5. On June 13, 2006, the Division provided Renfroe-Brunner Certification Number COR-03A244 authorizing Renfroe-Brunner to discharge stormwater from the construction activities associated with the Project to Crow Creek and the South Platte River under the terms and conditions of the Permit. Certification Number COR-03A244 became effective June 13, 2006 and remains in effect until June 30, 2012 or until Renfroe-Brunner inactivates Permit coverage.
6. Crow Creek and the South Platte 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 (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 September 27, 2006, a representative from the Weld County Department of Public Health & Environment (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 Renfroe-Brunner’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.

Failure to Prepare Stormwater Management Plan

9. Pursuant to Part I. B. of the 2002 and 2007 Permits, Renfroe-Brunner 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. 4. a. of the 2002 Permit and Part I. D. 5. b. of the 2007 Permit, Renfroe-Brunner is required to retain the Project’s SWMP onsite.
11. During the September 27, 2006 inspection, the Inspector requested to review the Project’s SWMP, however, no SWMP was available.
12. Renfroe-Brunner’s failure to prepare and maintain a SWMP for the Project constitutes violations of Part I. B. and Part I. C. 4. a. of the 2002 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, Renfroe-Brunner 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, Renfroe-Brunner 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. The Division has determined that Renfroe-Brunner failed to implement and/or maintain functional BMPs at the Project as described in paragraphs 15(a-d) below:
 - a. During the September 27, 2006 inspection, the Inspector observed disturbed lots located all along the paved interior road through the Project, near the intersection with Colorado Parkway. No BMPs were observed in place to stabilize the disturbed areas or to prevent sediment from discharging from these disturbed areas during storm events. Consequently, sediment discharge was observed in the street and gutter lines in this area of the Project.
 - b. During the September 27, 2006 inspection, the Inspector observed storm sewer inlets located along the paved interior road through the Project. No BMPs were observed in place to prevent sediment from the disturbed areas described in paragraph 15a above from discharging to the storm sewer during storm events.
 - c. On November 6, 2006, the Division received photographs from Renfroe-Brunner in response to the September 27, 2006 inspection, which documented the corrective actions implemented at the Project by Renfroe-Brunner. Inlet protection devices are visible in the photographs, however, no BMPs are evident to stabilize the various disturbed areas in the photographs or to prevent sediment from discharging from the disturbed areas during storm events. Therefore, the photographs revealed ongoing deficiencies in the implementation of BMPs at the Project and Renfroe-Brunner's understanding of effective stormwater management, which is achieved through a system of controls and not solely with the implementation of BMPs at the point of discharge.
 - d. On April 30, 2007, the Inspector performed a visual evaluation of the Project from the public right-of-way. The Inspector observed disturbed areas located throughout the Project with no BMPs in place to stabilize the disturbed areas or to prevent sediment from discharging from these areas during storm events. Consequently, significant quantities of sediment and soil were observed in the streets.
16. Renfroe Brunner'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.

Failure to Conduct Inspections of Stormwater Management System

17. Pursuant to Part I. C. 5. a. of the 2002 Permit and Part I. D. 6. a. of the 2007 Permit, Renfroe-Brunner 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.

18. During the September 27, 2006 inspection, the Inspector reviewed the Project's stormwater management system records and identified that Renfroe-Brunner failed to perform inspections at the Project.
19. Renfroe-Brunner's failure to conduct inspections of the Project's stormwater management system constitutes violations of Part I. C. 5. a. of the 2002 Permit.

NOTICE OF VIOLATION

Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that Renfroe-Brunner 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. C. 4. a. of the 2002 Permit, which states, "The plan shall be signed in accordance with Part I. E. 1., with one retained on site.

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. 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."

REQUIRED CORRECTIVE ACTION

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

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

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

21. Renfroe-Brunner shall immediately implement necessary measures to ensure that a SWMP is developed and implemented at the Project. Renfroe-Brunner shall 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, Renfroe-Brunner shall submit a copy of the Project's SWMP to the Division.
22. Renfroe-Brunner shall immediately implement necessary 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, Renfroe-Brunner 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, Renfroe-Brunner shall submit photographs to the Division documenting the current conditions and the associated BMPs implemented at the Project.
23. Renfroe Brunner 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, Renfroe-Brunner 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.
24. Within thirty (30) calendar days of receipt of this Order, Renfroe-Brunner shall submit to the Division a detailed written statement outlining the standard procedures Renfroe-Brunner will undertake to ensure that functional stormwater management systems are fully implemented at its Colorado construction sites.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, Renfroe-Brunner 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 31st 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