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-080513-1**

IN THE MATTER OF: **CLAREMONT DEVELOPMENT, INC.**
CDPS PERMIT NO. COR-030000
CERTIFICATION NO. COR-038148
EL PASO 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, Claremont Development, Inc. ("Claremont") was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.

2. Claremont 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 May 12, 2005, Claremont initiated construction activities to build a commercial development on property located at or near State Highway 24 and Marksheffel Road in or near the City of Colorado Springs, El Paso County, Colorado (the "Project").

4. On May 2, 2005, the Division received an application from Claremont 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 May 3, 2005, the Division provided Claremont Certification Number COR-038148 authorizing Claremont to discharge stormwater from the construction activities associated with the Project to East Fork Sand Creek and the Arkansas River under the terms and conditions of the Permit. Certification Number COR-038148 became effective May 3, 2005 and remains in effect until June 30, 2012 or until Claremont inactivates Permit coverage.

6. East Fork Sand Creek and the Arkansas 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 November 16, 2006, 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 Claremont'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, Claremont 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 <u>and</u> 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. During the November 16, 2006 inspection, the Inspector reviewed the Project's SWMP and identified that the SWMP did not describe all the potential pollution sources that were onsite, including the vehicle fueling and washing station and the areas used to store solvents, sealants, and wastes.

12. During the November 16, 2006 inspection, the Inspector reviewed the Project's SWMP and identified that the site map did not include all areas used for storage of building materials, soils and wastes, including the jobsite trailer and material storage area located near the southwest corner of Woolsey Heights at the Project.

13. The Division has determined that Claremont failed to prepare and maintain a complete and accurate SWMP for the Project.

14. Claremont's failure to prepare and maintain a complete and accurate SWMP for the Project constitutes violations of Part I. B. of the 2002 Permit.

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

15. Pursuant to Part I. B. 3. a. (1) of the 2002 Permit and Part I. C. 3. c. (1) of the 2007 Permit, Claremont 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.

16. Pursuant to Part I. B. 3. a. (2) of the 2002 Permit and Part I. C. 3. c. (2) of the 2007 Permit, Claremont 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.

17. The Division has determined that Claremont failed to implement and/or maintain functional BMPs at the Project as described in paragraphs 17(a–g) below:

a. During the November 16, 2006 inspection, the Inspector observed disturbed areas located adjacent to East Fork Sand Creek near the western corner of the proposed Cole View roadway at the Project. No BMPs were observed in place to stabilize the disturbed areas or to prevent sediment from discharging to East Fork Sand Creek during storm events. Consequently, erosion of the disturbed areas was observed leading down into East Fork Sand Creek.

b. During the November 16, 2006 inspection, the Inspector observed multiple soil stockpiles located along the length of the proposed Selix Grove roadway. No BMPs were observed in place to prevent soil and sediment from discharging from the stockpiles during storm events.

c. During the November 16, 2006 inspection, the Inspector observed disturbed areas all along the access road located at the northwest perimeter of the Project. Silt fencing was observed in place near this location, however, the silt fencing was not acting as a functional BMP, as the silt fencing had collapsed. Consequently, erosion of the disturbed areas was observed leading toward East Fork Sand Creek.

d. During the November 16, 2006 inspection, the Inspector observed a large disturbed area located adjacent to East Fork Sand Creek, along the northwest corner of Marksheffel Road and Meadowbrook Parkway at the Project. No BMPs were observed in place to stabilize the vast disturbed area or to prevent sediment from discharging to East Fork Sand Creek during a storm event. Consequently, erosion of the disturbed area was observed leading down into East Fork Sand Creek.

e. During the November 16, 2006 inspection, the Inspector observed a disturbed area located up gradient from the intersection of Meadowbrook Parkway and the Woolsey Heights roadway at the Project. A silt fence was observed in place, however, the silt fence was not acting as a functional BMP, as the silt fence was falling down and had been bypassed by a previous storm event. No other BMPs were observed in place to stabilize the disturbed area or to prevent sediment from discharging to an adjacent storm sewer inlet, which was directly connected to East Fork Sand Creek.

f. During the November 16, 2006 inspection, the Inspector observed a disturbed area located along the southeast side of Meadowbrook Parkway at the Project. A silt fence was observed in place, however, the silt fence was not acting as a functional BMP, as the silt fence had collapsed and had been bypassed by a previous storm event. No other BMPs were observed in place to stabilize the disturbed areas or to prevent sediment from discharging from the area during storm events.

g. During the November 16, 2006 inspection, the Inspector observed a disturbed area located adjacent to the Woolsey Heights roadway, northeast of the jobsite trailer at the Project. No BMPs were observed in place to stabilize the disturbed area or to prevent sediment from discharging from the area during storm events. Consequently, sediment and debris was observed in the Woolsey Heights roadway.

18. Claremont'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.

NOTICE OF VIOLATION

Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that Claremont 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. 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."

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., Claremont is hereby ordered to:

19. 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 Claremont to comply with the following specific terms and conditions of this Order:

20. Claremont 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, Claremont 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.

21. Claremont 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, Claremont 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, Claremont shall submit photographs to the Division documenting the current conditions and the associated BMPs implemented at the Project.

22. Within thirty (30) calendar days of receipt of this Order, Claremont shall submit to the Division a detailed written statement outlining the standard procedures Claremont will undertake to ensure that functional stormwater management systems are fully implemented at its Colorado construction sites.

23. Within thirty (30) calendar days of receipt of this Order, Claremont 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, Claremont 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 Claremont 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, Claremont shall submit a final report to the Division outlining Claremont'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, Claremont 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

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 May, 2008.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Lori M Gerzina

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