



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

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**NOTICE OF VIOLATION / CEASE AND DESIST ORDER**

**NUMBER: SO-080513-2**

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**IN THE MATTER OF: SEMA CONSTRUCTION, INC.**  
**CDPS PERMIT NO. COR-030000**  
**CERTIFICATION NO. COR-03A102**  
**MESA COUNTY, COLORADO**

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Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority has been delegated to the Department's Water Quality Control Division (the "Division"), and pursuant to §§25-8-602, and 25-8-605, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. At all times relevant to the alleged violations identified herein, SEMA Construction, Inc. ("SEMA") was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
2. SEMA 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 July 25, 2006, SEMA began construction activities on a highway/road development project located at or near Riverside Parkway and 24 Road in or near the Town of Grand Junction, Mesa County, Colorado (the "Project").
4. On June 19, 2006, the Division received a received a Notice of Transfer and Acceptance of Terms of a Stormwater Discharge General Permit Certification ("Notice of Transfer") from SEMA. The Notice of Transfer requested that coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit") be transferred from the original permittee, The City of Grand Junction, to SEMA.
5. 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").

6. On June 21, 2006, the Division transferred coverage under the Permit, including Certification Number COR-03A102, to SEMA, authorizing SEMA to discharge stormwater from the construction activities associated with the Project to Leach Creek and the Colorado River under the terms and conditions of the Permit. Certification Number COR-05A102 remains in effect until June 30, 2012 or until SEMA inactivates Permit coverage.
7. Leach Creek and the Colorado 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).
8. 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.
9. On December 18, 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 SEMA’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**

10. Pursuant to Part I. B. of the 2002 and 2007 Permits, SEMA 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.
11. 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.

12. The Division has determined that SEMA failed to prepare and maintain a complete and accurate SWMP for the Project as described in paragraphs 12(a-g) below:

- a. During the December 18, 2006 inspection, the Inspector reviewed the Project's SWMP and identified that the site map did not identify the southern boundary of the construction site along the backwaters of the Colorado River.
- b. During the December 18, 2006 inspection, the Inspector reviewed the Project's SWMP and identified that the site map did not include all areas of soil disturbance at the Project, including the areas along Riverside Parkway.
- c. During the December 18, 2005 inspection, the Inspector reviewed the Project's SWMP and identified that the site map did not include all areas of cut and fill at the Project, including the terraced area near the 25 Road Bridge.
- d. During the December 18, 2006 inspection, the Inspector reviewed the Project's SWMP and identified that the site map did not include all areas used for the storage of building materials, soils or wastes, including the area of miscellaneous building materials and supplies located near the intersection of Riverside parkway and 25 Road or the stockpiles located on the east end of Riverside Parkway near the intersection of U.S. Highway 50.
- e. During the December 18, 2006 inspection, the Inspector reviewed the Project's SWMP and identified that the site map did not include the location of the concrete washout located on the south side of Riverside Parkway.
- f. During the December 18, 2006 inspection, the Inspector reviewed the Project's SWMP and identified that the site map did not include the locations of Leach Creek, the Colorado River, or the wetland located near the intersection of Riverside Parkway and 25 Road.
- g. During the December 18, 2006 inspection, the Inspector reviewed the Project's SWMP and identified that the SWMP did not contain a section on materials handling and spill prevention, as required in the Permit.

13. 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**

14. Pursuant to Part I. B. 3. a. (1) of the 2002 Permit and Part I. C. 3. c. (1) of the 2007 Permit, SEMA 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.
15. Pursuant to Part I. B. 3. a. (2) of the 2002 Permit and Part I. C. 3. c. (2) of the 2007 Permit, SEMA 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.
16. The Division has determined that SEMA failed to implement and/or maintain functional BMPs at the Project as described in paragraphs 16(a-f) below:
  - a. During the December 18, 2006 inspection, the Inspector observed a disturbed slope leading down to Leach Creek, located just north of where Leach Creek intersects Riverside Parkway at the Project. A silt fence was observed in place, however, the silt fence was being maintained to act as a functional BMP as the silt fence was not entrenched in the ground. No other BMPs were observed in place to stabilize the disturbed slope or to prevent sediment from discharging to Leach Creek during storm events.
  - b. During the December 18, 2006 inspection, the Inspector observed a silt fence in place on the south side of Riverside Parkway, located adjacent to the backwaters of the Colorado River. The silt fence was not being maintained to act as a functional BMP, however, as the silt fence had collapsed and gaps were observed underneath the silt fence fabric. No other BMPs were observed in place to prevent sediment from discharging to the backwaters of the Colorado River.
  - c. During the December 18, 2006 inspection, the Inspector observed disturbed slopes on the southeast end of Riverside Parkway near U.S. Highway 50. A silt fence was in place across the slope, however, the silt fence was not being maintained to act as a functional BMP as the silt fence was not entrenched in the ground. Consequently, a previous storm event had undercut the silt fence and significant erosion of the slope was observed. No other BMPs were observed in place to stabilize the disturbed slope or to prevent sediment from discharging to the storm drain system located to the south.
  - d. During the December 18, 2006 inspection, the Inspector observed disturbed slopes leading to a detention pond located on the south side of Riverside Parkway near the 25 Road bridge. The outfall of the detention pond was directly connected to a wetland located to the south. No BMPs were observed in place to stabilize the disturbed slopes or to prevent sediment from discharging from the slopes to the detention pond during storm events. Additionally, no BMPs were observed in place to maintain the optimal holding capacity of the detention pond or to prevent the pond from discharging to the wetland during storm events.

- e. During the December 18, 2006 inspection, the Inspector observed disturbed areas along the north and south sides of Riverside Parkway at the Project, including a soil stockpile located just west of Leach Creek. No BMPs were observed in place to stabilize the disturbed areas or to prevent sediment and soil from discharging from these areas during storm events. Consequently, sediment was observed in the roadway.
  - f. During the December 18, 2006 inspection, the Inspector observed a silt fence in place along the south side of Riverside Parkway at the Project, just north of the ice arena. The silt fence was not being maintained to act as a functional BMP however, as the silt fence was subjected to soil and sediment accumulation of at least half the exposed fabric height.
17. SEMA'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 SEMA 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 and §25-8-605, C.R.S., SEMA is hereby ordered to:

18. 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 SEMA to comply with the following specific terms and conditions of this Order:

19. SEMA 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, SEMA 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.
20. SEMA 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, SEMA 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, SEMA shall submit photographs to the Division documenting the current conditions and the associated BMPs implemented at the Project.
21. Within thirty (30) calendar days of receipt of this Order, SEMA shall submit to the Division a detailed written statement outlining the standard procedures SEMA 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, SEMA 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.

**RELEASE OR DISCHARGE NOTIFICATION**

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**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 14<sup>th</sup> day of May, 2008.

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

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