

# STATE OF COLORADO

Bill Ritter, Jr., Governor  
James B. Martin, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department  
of Public Health  
and Environment

September 17, 2008

Kummer Development Corporation  
d/b/a Adam's Rib  
Adam's Rib Recreational Area 215 Broadway  
Eagle, CO 81631

**Certified Mail Number: 7007 0220 0001 0159 9100**

**RE: Service of Notice of Violation/Cease and Desist Order, Number: SO-080917-1**

Dear Sir or Madam:

Kummer Development Corporation d/b/a Adam's Rib is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). This NOV/CDO is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §§25-8-602 and 25-8-605, C.R.S. of the *Colorado Water Quality Control Act*, (the "Act"). The Division bases this NOV/CDO upon findings that Kummer Development Corporation d/b/a Adam's Rib has violated the Act, and/or permit regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., Kummer Development Corporation d/b/a Adam's Rib is required, within thirty (30) calendar days of issuance of this NOV/CDO, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

This action could result in the imposition of civil penalties. The Division is authorized pursuant to §25-8-608, C.R.S. to impose a penalty of \$10,000 per day for each day during which such violation occurs.

Please be advised that the Division is continuing its investigation into this matter and the Division may identify supplementary violations that warrant amendments to this NOV/CDO or the issuance of additional enforcement actions.

Should you or representatives of Kummer Development Corporation d/b/a Adam's Rib desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO, please do not hesitate to contact Michael Harris of this office by phone at (303) 692-3598 or by electronic mail at michael.harris@state.co.us.

Sincerely,



Kristi-Raye Beaudin, Legal Assistant  
Compliance Assurance and Data Management Section  
WATER QUALITY CONTROL DIVISION

cc: Eagle County Environmental Health Department  
MS-3 File

ec: Aaron Urdiales, EPA Region VIII  
Andy Poirot, Engineering Section, CDPHE  
Mark Kadnuck, Engineering Section, CDPHE  
Dick Parachini, Watershed Program, CDPHE  
Kathy Dolan, Permits Section, CDPHE  
Carolyn Schachterle, OPA

Enclosure(s)



**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-080917-1**

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**IN THE MATTER OF: KUMMER DEVELOPMENT CORPORATION**  
**d/b/a ADAM'S RIB**  
**CDPS PERMIT NO. COR-030000**  
**CERTIFICATION NO. COR-038057**  
**EAGLE 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, Kummer Development Corporation ("Kummer") was a Delaware corporation in good standing and registered to conduct business in the State of Colorado.
2. Kummer 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 April 16, 1984, Kummer registered the trade name "Adam's Rib" with the Colorado Secretary of State.
4. In May 2005, Kummer initiated construction activities of a commercial development on 350 acres of property located at or near Brush Creek Road and Eaton Lane, in or near the Town of Eagle, Eagle County, Colorado (the "Project").
5. On April 13, 2005, the Division received an application from Adam's Rib for Project coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit").
6. On April 20, 2005, the Division provided Adam's Rib Certification Number COR-038057 authorizing Kummer to discharge stormwater from the construction activities associated with the Project to Brush Creek and the Colorado River under the terms and conditions of the Permit. Certification Number COR-

038057 became effective April 19, 2005 and remains in effect until June 30, 2012 or until Kummer inactivates permit coverage.

7. Brush 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 (102).
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 May 19, 2007, William T. Carlson (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 Kummer’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 Implement and/or Maintain  
Best Management Practices to Protect Stormwater Runoff**

10. Pursuant to Part I. B. 3. a. (1) of the Permit, Kummer 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.
11. Pursuant to Part I. B. 3. a. (2) of the Permit, Kummer 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.
12. Pursuant to Part I. B. of the Permit, Kummer is required to implement the provisions of the Project’s Stormwater Management Plan (“SWMP”) as a condition of the Permit.
13. The Division has determined that Kummer failed to implement and/or maintain functional BMPs at the Project as described in paragraphs 13(a–e) below:
  - a. During the May 19, 2007 inspection, the Inspector observed a disturbed area located directly adjacent to Brush Creek at the Project. A silt fence was in place, however, the silt fence had not been installed and/or maintained to act as a functional BMP, as the silt fence was not trenched and was falling over.
  - b. During the May 19, 2007 inspection, the Inspector observed bulk fuel storage tanks at the Project. The Project’s SWMP stated that a secondary containment berm would be constructed for the tanks. However, a functional secondary containment BMP was not in place.
  - c. During the May 19, 2007 inspection, the Inspector observed a disturbed road side ditch located at the intersection of Red Bluffs Land and Frost Creek Drive at the Project. No BMPs were observed

in place to stabilize the disturbed area or to prevent erosion and sediment discharge from this area of the Project. Consequently, erosion of the ditch line and surrounding disturbed areas was observed.

- d. During the May 19, 2007 inspection, the Inspector observed disturbed slopes leading down to a disturbed drainage ditch located along Frost Creek Drive at the Project. No BMPs were observed in place to stabilize the disturbed slopes or to prevent sediment from discharging to the drainage ditch. Hay bales were in place within the ditch, however, the hay bales had not been installed and/or maintained in accordance with good engineering practices, as the hay bale check dams did not have a center weir section and did not extend completely across the ditch channel. Consequently, erosion and sediment discharge was observed within the drainage ditch.
  - e. During the May 19, 2007 inspection, the Inspector observed a disturbed drainage spillway leading from sediment basin #16 at the Project. No BMPs were observed in place to stabilize the disturbed spillway or to prevent erosion and sediment discharge towards Brush Creek.
14. Kummer's failure to implement and maintain functional BMPs to protect stormwater quality during construction activities at the Project constitutes violations of Part I. B. and Part I. B. 3. a. of the Permit.

#### **Failure to Conduct Inspections of Stormwater Management System**

15. Pursuant to Part I. C. 5. a. of the Permit, for active sites where construction has not been completed, Kummer 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.
16. Pursuant to Part I. C. 5. a. 3. of the Permit, Kummer is required to keep a record of inspections.
17. During the May 19, 2007 inspection, the Inspector reviewed the Project's stormwater management system inspection records and identified that Kummer failed to perform inspections at the Project from January 1, 2007 until May 18, 2007.
18. Kummer's failure to conduct inspections of the Project's stormwater management system constitutes violations of Part I. C. 5. a. of the 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 Kummer has violated the following sections of the Permit:

**Part I. B. 3. a. of the 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. B. of the 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. 5. a. of the 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., Kummer 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 Kummer to comply with the following specific terms and conditions of this Order:

20. Kummer 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, Kummer 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, Kummer shall submit photographs to the Division documenting the current conditions and the associated BMPs implemented at the Project.
21. Kummer shall immediately begin conducting of the Project’s stormwater management system in accordance with the provisions outlined in the current version of the Permit. Within thirty (30) calendar days of receipt of this Order, Kummer shall submit to the Division a certification stating that all such inspections are being conducted, pursuant to the terms and conditions of the current Permit
22. Within thirty (30) calendar days of receipt of this Order, Kummer shall submit to the Division a detailed written statement outlining the standard procedures Kummer 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, Kummer 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 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. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

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. 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.

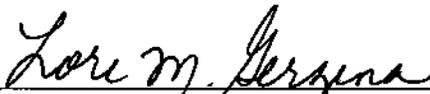
## **EFFECT OF ORDER**

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 17<sup>th</sup> day of September, 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