

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

4300 Cherry Creek Dr. S. Laboratory Services Division
Denver, Colorado 80246-1530 8100 Lowry Blvd.
Phone (303) 692-2000 Denver, Colorado 80230-6928
TDD Line (303) 691-7700 (303) 692-3090
Located in Glendale, Colorado

<http://www.cdphe.state.co.us>



Colorado Department
of Public Health
and Environment

September 16, 2008

Bioenergy of Colorado, LLC
Corporation Service Company, Registered Agent
1560 Broadway, Suite 2090
Denver, CO 80202

Certified Mail Number: 7007 0220 0001 0159 9063

RE: Order for Civil Penalty, Number: [SP-080916-1]

Dear Sir or Madam:

Bioenergy of Colorado, LLC, is hereby served with the enclosed Order for Civil Penalty ("Penalty Order"). This Penalty Order 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 §25-8-608(2) of the *Colorado Revised Statutes*. Payment of the imposed civil penalty should be made in accordance with the methods referenced in the Penalty Order and Notice of Violation/Cease and Desist Order: SO-060331-1.

If you have any questions regarding the Penalty Order or the payment method, please do not hesitate to contact Michael Harris of this office 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: Tri-County Health Department
MS-3 File

ec: Aaron Urdiales, EPA Region VIII
Paul Kim, Engineering Section, CDPHE
Brian Macke, COGCC
Dick Parachini, Watershed Program, CDPHE
Carolyn Schachterle, OPA

Enclosures



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

ORDER FOR CIVIL PENALTY

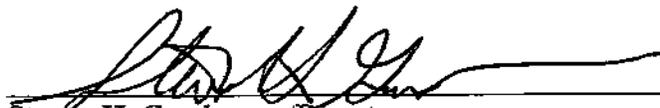
NUMBER: SP-080916-1

IN THE MATTER OF: BIO ENERGY OF COLORADO, LLC
CDPS PERMIT NO. COR-010000
CERTIFICATION NO. COR-011016
ADAMS COUNTY, COLORADO

This matter having come to my attention as the Designee of the Executive Director of the Colorado Department of Public Health and Environment, upon petition for imposition of a civil penalty by the Water Quality Control Division's Compliance Assurance and Data Management Section, I hereby impose a civil penalty in the amount of \$37,796.00 against Bio Energy of Colorado, LLC for the violations cited in the Notice of Violation / Cease and Desist Order that the Water Quality Control Division issued to Bio Energy of Colorado, LLC on March 31, 2006 (the "NOV"). A copy of the NOV is attached hereto as Exhibit A and is incorporated herein by reference. The civil penalty was determined in accordance with the procedures outlined in the Division's Stormwater Civil Penalty Policy (January 25, 2007). A copy of the civil penalty calculation is attached hereto as Exhibit B and is incorporated herein by reference. The civil penalty shall be paid within thirty (30) calendar days of the date of this Order for Civil Penalty. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

Michael Harris
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CADM-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Dated this 10th day of September, 2008.



Steven H. Gunderson, Director
Water Quality Control Division
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Exhibit A



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-060331-1

IN THE MATTER OF: BIO ENERGY OF COLORADO, LLC
CDPS PERMIT NO. COR-010000
CERTIFICATION NO. COR-011016
ADAMS 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 / Clean-up Order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the alleged violations identified herein, Bio Energy of Colorado, LLC ("Bio Energy") was a Colorado limited liability company registered to conduct business in the State of Colorado.
2. Bio Energy is a "person" as defined by 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. Bio Energy operates an industrial plant involved in the production of soy methyl ester biodiesel fuel, located at 821 West 56th Avenue, in or near the City of Denver, Adams County, Colorado (the "Facility").
4. On November 2, 2005, the Division received a Notice of Transfer and Acceptance of Terms of a Stormwater Discharge General Permit Certification form ("Notice of Transfer Form") from Bio Energy. The Notice of Transfer Form requested that coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-010000, for Stormwater Discharges Associated with Light Industrial Activity (the "Permit") be transferred from the original permittee, Hebert Environmental, to Bio Energy.
5. On December 13, 2005, the Division transferred coverage under the Permit, including Certification Number COR-011016, to Bio Energy, authorizing Bio Energy to discharge stormwater from tank car cleaning operations associated with the Facility to Clear Creek under the terms and conditions of the Permit. Certification Number COR-011016 remains in effect until June 30, 2006 or until Bio Energy 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 December 22, 2005, a representative from the Tri-County Health Department (the "Inspector") conducted an onsite inspection of the Facility, on behalf of the Division and pursuant to the Division's authority under §25-8-306, C.R.S., to determine Bio Energy's compliance with the Water Quality Control Act and the Permit. During the inspection, the Inspector interviewed Facility representatives, conducted a review of the Facility's stormwater management records, and conducted a physical inspection of the site.

Failure to Notify Division of Change in Discharge

9. Pursuant to Part II. A. 1. of the Permit, Bio Energy is required to inform the Division of any intent to construct, install, or alter any process, facility, or activity that is likely to result in a new or altered discharge at the Facility, and Bio Energy is required to submit the plans and specifications for the Facility alterations to the Division for review.
10. During the December 22, 2005 inspection, the Inspector determined that Bio Energy was utilizing the Facility for the production of biodiesel fuel.
11. Division records establish that Bio Energy failed to inform the Division that the Facility, and its associated processes and activities, had been altered for the production of biodiesel fuel. Additionally, Bio Energy failed to submit plans and specifications for the Facility alterations to the Division.
12. Bio Energy's failure to notify the Division of alterations to the Facility, which resulted in a new and/or altered discharge, constitutes violation(s) of Part II. A. 1. of the Permit.

Deficient and/or Incomplete Stormwater Management Plan

13. Pursuant to Part I. B. of the Permit, Bio Energy is required to prepare a Stormwater Management Plan ("SWMP") for the Facility 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 industrial activity from the Facility. 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 industrial activity.
14. Pursuant to Part I. B. of the Permit, the SWMP shall include, at a minimum, the following items:
 - a. **Industrial Activity Description** – Each plan shall include a narrative description of the industrial activity taking place at the site.

- b. **Site Map** – Each plan shall include a site map indicating an outline of the drainage area of each stormwater outfall, each existing structural control measure to reduce pollutants in stormwater runoff, and surface water bodies.
- c. **Stormwater Management Controls** – Each plan shall include a description of stormwater management controls and shall address the following minimum components:
 - i. **SWMP Administrator** – Each SWMP shall identify a specific individual(s) who is responsible for developing the SWMP and assisting the plant manager in its implementation, maintenance, and revision.
 - ii. **Identification of Potential Pollutant Sources and Best Management Practices** – Each SWMP shall identify potential sources of pollutants and describe BMPs to reduce the potential of these sources to contribute pollutants to stormwater discharges. Each description of BMPs shall include stormwater diversions, materials handling and spill prevention, sediment and erosion prevention, and other pollution prevention measures.
 - iii. **Sampling Information** – Each plan shall include a summary of any existing discharge sampling data describing pollutants in stormwater discharges and a description of each proposed sampling point, should monitoring be required.
 - iv. **Preventive Maintenance** – Each plan shall include a preventive maintenance program that involves inspection and maintenance of stormwater management devices, as well as inspecting and testing plant equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.
 - v. **Good Housekeeping** – Each plan shall address cleaning and maintenance schedules, trash disposal and collection practices, grounds maintenance, etc.
 - vi. **Spill Prevention and Response Procedures** – Each plan shall identify areas where potential spills can occur, with their accompanying drainage points. Procedures for cleaning up spills shall be identified.
 - vii. **Employee Training** – Each plan shall include procedures for conducting employee training that addresses topics such as spill response, good housekeeping, material management practices, and plant operation and design features. Each plan shall identify periodic dates for such training.
 - viii. **Identification of Discharges other than Stormwater** – The plan shall include a description of the results of an evaluation for the presence of discharges other than stormwater, including the method used, the date of evaluation, and the onsite drainage points that were observed.
- d. **Comprehensive Inspections** – Each SWMP shall identify qualified personnel that will inspect designated equipment and plant areas. Each SWMP shall specify the procedures and intervals of the comprehensive inspections.

- e. Consistency with Other Plans – SWMPs may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under section 311 of the Clean Water Act, or BMP Programs otherwise required by a CDPS permit.
15. Pursuant to Part I. C. 2. c. of the Permit, Bio Energy is required to amend the SWMP whenever there is a change in design, construction, operation, or maintenance which has a significant effect on the potential for the discharge of pollutants, or if the SWMP proves to be ineffective in controlling pollutants in stormwater discharges associated with industrial activity.
 16. Pursuant to Part II. A. 1. of the Permit, Bio Energy is required to update the SWMP within 30 days of altering any process, facility, or activity that is likely to result in a new or altered discharge at the Facility.
 17. During the December 22, 2005 inspection, the Inspector reviewed the Facility's SWMP and determined that the SWMP had not been amended to reflect the onsite alterations in design, operation, and activity at the Facility. The SWMP described the BMPs and potential sources of pollution from past tank car cleaning operations at the Facility, but not from the current activities associated with the production of biodiesel fuel.
 18. Bio Energy's failure to maintain a complete and accurate SWMP for the Facility, constitutes violation(s) of Part I. B., Part I. C. 2. c., and Part II. A. 1. of the Permit.

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

19. Pursuant to Part I. B. 3. b. of the Permit, Bio Energy is required to identify potential sources of pollutants at the Facility and implement BMPs to reduce the potential of these sources to contribute pollutants to stormwater discharges. The Permit specifies that where stormwater pollution potential exists, appropriate preventative measures must be taken and documented.
20. Pursuant to Part I. C. 1. b. of the Permit, Bio Energy is required to have adequate protections in place to contain potential spills from bulk storage structures for petroleum products and other chemicals.
21. The Division has determined that Bio Energy failed to implement and/or maintain adequate BMPs at the Facility as described below in paragraphs 21(a-f):
 - a. During the December 22, 2005 inspection of the Facility, the Inspector observed pollutant-stained soils adjacent to the storm drain inlet on the north end of the Facility. No BMPs were observed in place to prevent pollutants from discharging from the site and no BMPs were being utilized to clean-up the contaminated area. Consequently, an oily sheen was observed on the water in the drainage ditch on the east side of the property, which drains stormwater from the storm inlet at the Facility.

- b. During the December 22, 2005 inspection of the Facility, the Inspector observed pollutant-stained soils surrounding the dumpster area and the rail offloading area at the Facility. No BMPs were observed in place to prevent pollutants from discharging from the sites and no BMPs were being utilized to clean-up the contaminated areas.
 - c. During the December 22, 2005 inspection of the Facility, the Inspector observed drums of caustic soda and phosphoric acid that were being stored on pallets adjacent to the dumpster area. The drums were not located under cover, no secondary containment BMPs were in place, and no other BMPs were observed in place to prevent the caustic soda and phosphoric acid from discharging from the area in the event of a spill.
 - d. During the December 22, 2005 inspection of the Facility, the Inspector observed pollutant-stained soils surrounding the containment area for the vegetable oil tanks on the southern end of the property. No BMPs were observed in place to prevent the spilled or leaking pollutants from discharging from the area and no BMPs were being utilized to clean-up the contaminated site.
 - e. During the December 22, 2005 inspection of the Facility, the Inspector observed spilled sodium hydroxide on the ground next to a drum of sodium hydroxide that was being stored near the water tanks at the Facility. The drum was not located under cover, no secondary containment BMPs were in place, no other BMPs were observed in place to prevent the spilled sodium hydroxide from discharging from the area, and no BMPs were being utilized to clean-up the contaminated site.
 - f. During the December 22, 2005 inspection of the Facility, the Inspector observed pollutant-stained soils and spilled product in the ditch area outside the east property fence at the Facility. No BMPs were being utilized to clean-up the contaminated area.
22. Bio Energy's failure to implement and maintain BMPs to protect stormwater quality at the Facility, constitutes violations of Part I. B. 3. b. and Part I. C. 1. b. of the Permit.

Discharge Without a Permit

23. 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.
24. During the December 22, 2005 inspection, Facility representatives informed the Inspector that the concrete pad/parking area at the Facility is routinely power washed to remove any leaking vehicle fluids or spilled industrial process materials that have accumulated. Process wastewater generated from the power washing activities at the Facility discharges to the nearby storm sewer inlet, which ultimately discharges to Clear Creek.
25. Vehicle fluids and industrial process material are "pollutants" as defined by §25-8-103(15) and its implementing permit regulation, 5 CCR 1002-61, §61.2(76)

26. The Facility's concrete pad/parking area is a "point source" as defined by §25-8-103(14) and its implementing permit regulation, 5 CCR 1002-61, §61.2(75).
27. Bio Energy's discharge of process wastewater into the storm sewer, and ultimately into Clear Creek, constitutes a "discharge of pollutants" as defined by §25-8-103(3) C.R.S.
28. Division records establish that Bio Energy does not have any permits authorizing the discharge of pollutants described in paragraphs 24-27 above.
29. Bio Energy's discharge of pollutants from power washing activities at the Facility to state waters without a permit constitutes violation(s) of §25-8-501(1) C.R.S and 5 CCR 1002-61, §61.3(1)(a).

NOTICE OF VIOLATION

Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined Bio Energy has violated the following sections of the Water Quality Control Act, the Colorado Discharge Permit System Regulations, and the Permit:

Part II. A. 1. of the Permit, which states in part, "The permittee shall inform the Division (Permits Unit) in writing of any intent to construct, install, or alter an process, facility, or activity that is likely to result in a new or altered discharge, and shall furnish the Division such plans and specifications which the Division deems reasonably necessary to evaluate the effect on the discharge and receiving stream. The SWMP shall be updated within 30 days of the changes."

Part I. B. of the Permit, which states in part, "A Stormwater Management Plan (SWMP) shall be developed for each facility covered by this permit. SWMPs shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in stormwater discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit."

Part I. C. 2. c. of the Permit, which states in part, "The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance which has a significant effect on the potential for the discharge of pollutants to the waters of the State, or if the SWMP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with industrial activity."

Part I. B. 3. b. of the Permit, which outlines that a permittee shall identify potential sources of pollutants at the site and assess the potential of these sources to contribute pollutants to stormwater discharges, and states, "In each case where stormwater pollution potential exists, appropriate preventive measures must be taken and documented."

Part I. C. 1. b. of the Permit, which states, "Bulk storage structures for petroleum products and other chemicals shall have adequate protection so as to contain all spills and prevent any spilled material from entering State waters."

§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..."

CEASE AND DESIST / CLEAN-UP ORDER

Based upon the foregoing factual and legal determinations and pursuant to §§25-8-605 and 25-8-606, C.R.S., Bio Energy 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., the permit regulations promulgated thereto and the Permit.

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

31. Bio Energy shall immediately cease all unauthorized process wastewater discharges to storm drains and/or state waters from cleaning activities or other activities at the Facility.
32. Bio Energy shall immediately implement measures to ensure that adequate BMPs are in place to control stormwater and pollutant discharges originating from the Facility. Bio Energy shall ensure that all BMPs meet the design requirements specified in the Facility's most up-to-date SWMP.
33. Within thirty (30) calendar days of receipt of this Order, Bio Energy shall submit to the Division a revised and up-to-date copy of the Facility's SWMP, which addresses all outstanding deficiencies identified in this Order. Additionally, Bio Energy shall submit to the Division a certification stating that the Facility's complete and up-to-date SWMP, including all modifications to existing BMPs, has been fully implemented at the site.
34. Within thirty (30) calendar days of receipt of this Order, Bio Energy shall submit to the Division a detailed written statement outlining the standard procedures Bio Energy will implement to ensure the proper treatment and/or disposal of process wastewater generated at the Facility.
35. Within thirty (30) calendar days of receipt of this Order, Bio Energy shall submit complete information regarding the dates, range of dates, and/or number of instances in which Facility cleaning activities have resulted in the discharge of wastewater to Facility storm drains and/or state waters.

36. Within thirty (30) calendar days of receipt of this Order, Bio Energy shall take necessary measures to clean-up identified areas of pollutant contamination at the Facility, including all areas of soil contamination and any areas where leaks and spills have occurred. Such clean-up measures shall utilize best management practices to prevent environmental impacts from the remediation activities, including the disposal of all excavated soils and clean-up materials at a licensed disposal facility. Within forty-five (45) calendar days of receipt of this Order, Bio Energy shall submit a report to the Division outlining Bio Energy's remedial activities.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, Bio Energy shall submit an original and one copy to the Division at the following address:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-B2
Compliance Assurance / Enforcement Program
Attention: Michael Harris
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

For any person submitting documents, plans, records and reports pursuant to this Notice of Violation/Cease and Desist Order/Clean-up 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., you are required to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

Section 25-8-603, C.R.S. also provides 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. Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent 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 Order. 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 of Colorado has not waived its right to bring an action for penalties under §§25-8-608 and 25-8-609, 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.

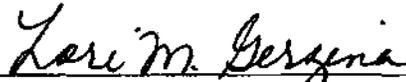
EFFECT OF ORDER

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 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, 2006.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Lori M. Gerzina, Section Manager
Compliance Assurance and Data Management Section
Water Quality Control Division

Exhibit B

PENALTY COMPUTATION SUMMARY

System Name: BioEnergy of Colorado, LLC	Permit Number(s): COR-011016 & COR-020474
---	---

Beneficial Use Classification: Clear Creek Segment IS - Ag/Life Warm/L Recreation/La Water Supply, Agriculture	Date of NOV/CDQ: 3/31/06 Number: SO-060331-1
--	---

Type of Facility: Heavy Industry	Disturbed Acres: N/A Number of Employees: 6-20 (estimate)
----------------------------------	--

	Stormwater	Wastewater	Total
Base Penalty Total	\$36,168.00	\$2,670	\$38,838.00
Mitigated Amount	\$9,042.00	\$0	\$9,042.00
Economic Benefit	\$7,500	\$500	\$8,000.00
Total Civil Penalty	\$34,626	\$3,170	\$37,796.00

FINAL ADJUSTED SETTLEMENT PENALTY: \$37,796.00

STORMWATER PENALTY COMPUTATION WORKSHEET

System Name: BioEnergy of Colorado, LLC	Permit Number: COR-01016 & CGE-020474
---	---------------------------------------

Beneficial Use Classification: Clear Creek Stream 15 - Ag Life Warmth Recreation Water Supply, Agriculture	Date of NOV/CHO: 3/31/06 Number: SO-069384-15
--	--

Type of Facility: Heavy Industry	Disturbed Acres: N/A Number of Employees: 6-20 (estimate)
----------------------------------	--

Part I – Base Penalty Calculation

A. Potential Damage Component

	Violation Type	Adjustment	Amount in Dollars
Line 1	Conducting Covered Activity Without A Stormwater Permit		N/A
	<i>Adjustment Justification:</i>		
Line 2	Failure to Prepare Stormwater Management Plan (SWMP)		N/A
	<i>Adjustment Justification:</i>		
Line 3	Deficient Stormwater Management Plan (SWMP)	Moderate/Major = +60% of \$300	\$480.00
	<i>Adjustment Justification:</i> Tri-County Health reviewed the SWMP and identified that the plan had not been altered to reflect changes in design, operation, and activity at the facility. BioEnergy was utilizing the old SWMP from past operator's tank car cleaning operation at the facility and BioEnergy had not developed a site specific SWMP for the production of biodiesel fuel. BioEnergy's failure to develop and maintain a complete and site-specific SWMP directly contributed to subsequent failures to implement BMPs on site. Therefore, the Division conservatively assigns a moderate/major potential harm to health/environment.		
Line 4	Failure to Install, Maintain or Properly Select Best Management Practices	Moderate = +35% of \$1000	\$1,350.00
	<i>Adjustment Justification:</i> Tri-County Health conducted a formal inspection and noted deficiencies in the implementation and maintenance of BMPs at the facility, including failures to clean up identified areas of pollutant contamination. BioEnergy claims that the pollution was from past activities that were conducted at the facility. However, BioEnergy accepted liability of the facility's conditions when it applied for the transfer of the permit. Additionally, the inspector observed numerous inadequacies in BioEnergy's pollutant storage and housekeeping throughout the facility. Therefore, the Division conservatively assigns a moderate potential harm to health/environment.		
Line 5	Failure to Perform Inspections of Stormwater Management System		N/A

	Violation Type	Adjustment	Amount in Dollars
	<i>Adjustment Justification:</i>		
Line 6	Failure to Submit Required/Requested Reports (Annual Reports, Permit Compliance Schedule Items, ...Etc.)		N/A
	<i>Adjustment Justification:</i>		
Line 7	Failure to Maintain Required Records		N/A
	<i>Adjustment Justification:</i>		
Line 8	Pollution, Contamination or Degradation of State Waters		N/A
	<i>Adjustment Justification:</i>		
Line 9	Other Administrative Violations	Moderate = +35% of \$600	\$810.00
	<i>Adjustment Justification:</i> BioEnergy failed to notify the Division of changes in design, operation, and discharge from the facility at the time that BioEnergy requested a transfer of the permit. The Division believes that this failure directly contributed to the inadequate stormwater management system observed at the facility. Therefore, the Division conservatively assigns a moderate potential harm to health/environment.		
Line 10	Potential Damage Total (Sum of Lines 1 through 9)	<i>(Not to exceed \$6000/day)</i>	\$2,640.00

B. Fault Component

		Amount in Dollars
Line 11	Fault: Category 2	<i>(Not to exceed \$3000/day)</i>
	<i>Justification:</i> BioEnergy applied for and obtained a stormwater permit. BioEnergy should have been aware its obligations under the permit and of the circumstances that led to the violations. Therefore, the Division has assigned a category-2 fault. The Division has chosen the midpoint of the category two range, as the Division has no additional information to support adjustments from this value.	
		\$600.00

C. History Component

		Amount in Dollars
Line 12	History: N/A	<i>(Not to exceed \$1000/day)</i>
	<i>Justification:</i> BioEnergy has no prior violation history with the Division.	
		\$0.00

Part II – Determination of Days of Violation

		Days of Violation
Line 13	Total Days of Violation	82
	<p><i>Justification:</i></p> <p>Deficient Stormwater Management Plan: Tri-County conducted an inspection of the facility on December 22, 2005 and determined that the SWMP had not been updated to reflect the current conditions and circumstances at the facility. BioEnergy applied for transfer of the permit on November 2, 2005 and certified that a complete and accurate SWMP had been developed for the facility. On January 23, 2006, BioEnergy submitted an updated SWMP to the Division. The Division believes the SWMP was deficient from November 2, 2005 until January 23, 2006. Therefore, 82-Days of violation occurred.</p> <p>Failure to Install, Maintain or Properly Select Best Management Practices: Tri-County Health conducted an inspection of the facility on December 22, 2005 and identified BMP deficiencies. Therefore, the Division conservatively utilizes 1-Day of violation for this calculation.</p> <p>Other Administrative Violations: Tri-County Health conducted an inspection of the facility and determined that BioEnergy was involved in the production of biodiesel fuel. BioEnergy did not notify the Division, when applying for transfer of the permit, that the design, operation, and activities at the facility would be altered. Violations in this category are generally not subject to multi-day calculations. Therefore, the Division conservatively utilizes 1-Day of violation for this calculation.</p> <p><i>{Note: The BMP violations and Administrative violations coincided with the SWMP violations. Therefore, 82-Days of violation are utilized for this calculation.}</i></p>	

Part III – Determination of Multi-Day Penalty Amount

		Amount in Dollars
Line 14	Multi-Day Penalty Amount	\$36,168.00
	<p><i>Calculations:</i></p> <p>See Attachment A</p>	

Part IV – Base Penalty Total

		Amount in Dollars
Line 15	Base Penalty = Potential Damage + Fault + History (Sum of Line 11 + Line 12 + Line 10 or Line14)	\$36,168.00

Part V – Application of Aggravating or Mitigating Factors

	Aggravating/Mitigating Factors	% Base Penalty Increase or Decrease	Amount in Dollars
Line 16	Factor A: Voluntary and Complete Disclosure of Violations	0%	\$0.00
	<i>Justification:</i>		
Line 17	Factor B: Full and Prompt Cooperation	– 25%	– \$9,042.00
	<i>Justification:</i> BioEnergy undertook considerable efforts to address the deficiencies outlined in the NOV/CDO. BioEnergy met all of the Division's compliance requirements within an acceptable time period and rectified its permitting issues. Therefore, the Division has reduced the base penalty by 25% for BioEnergy's full and prompt cooperation.		
Line 18	Factor C: Environmental Compliance Program	0%	\$0.00
	<i>Justification:</i>		
Line 19	Factor D: Other Aggravating or Mitigating Circumstances	0%	\$0.00
	<i>Justification:</i>		
Line 20	Factor E: Other Aggravating or Mitigating Circumstances	0%	\$0.00
	<i>Justification:</i>		
Line 21	Sum of Lines 16 through Line 19	– 25%	– \$9,042.00
Line 22	Adjusted Base Penalty (Sum of Line 15 + Line 21)		\$27,126.00

Part VI– Economic Benefit Consideration

		Amount in Dollars
Line 23	Economic Benefit	\$7,500.00
	<i>Justification:</i>	
	<p>Deficient Stormwater Management Plan: BioEnergy delayed the cost of updating the SWMP from November 2, 2005 until January 23, 2006. The time value of money for the time period in question was determined to be insignificant. Therefore, the Division has conservatively determined the economic benefit of this delayed cost to be \$0.</p> <p>Failure to Install, Maintain or Properly Select Best Management Practices: BioEnergy avoided the cost of implementing and/or maintaining BMPs at the facility. The Division estimates the cost of</p>	

implementing a BMP to be \$1000 and the cost of maintaining a BMP or cleaning up spills to be \$500. Thus, BioEnergy realized an economic benefit for failures to install and maintain BMPs as follows:

DATE	# of Installation Deficiencies (\$1000ea.)	# of Maintenance Deficiencies (\$500ea.)	Total Economic Benefit
12/22/05	5	5	\$7,500

Therefore, the Division has conservatively determined that BioEnergy realized an economic benefit of **\$7,500.00** from the avoided costs of not implementing and/or maintaining BMPs at the facility.

Other Administrative Violations: BioEnergy delayed the cost of notifying the Division that the design, operation, and activities at the facility had changed. The time value of money for the time period in question was determined to be insignificant. Therefore, the Division has conservatively determined the economic benefit of this delayed cost to be **\$0**.

{Note: Time value of money for time periods in question was predicted to be insignificant and thus BEN runs were not performed}

Part VII – Violation Penalty Total

		Amount in Dollars
Line 24	Civil Penalty: (Sum Line 22 + Line 23)	\$34,626.00

Part VIII – Ability to Pay Adjustment

		Amount in Dollars
Line 25	Ability to Pay Reduction:	\$0.00
	Justification:	

Part IX – Final Adjusted Penalty

		Amount in Dollars
Line 26	Total Civil Penalty: (Sum Line 24 + Line 25)	\$34,626.00

WASTEWATER PENALTY COMPUTATION WORKSHEET

System Name: BioEnergy of Colorado, LLC	Permit Number: COR001016& COR020474
---	-------------------------------------

Beneficial Use Classification: Clear Creek Segment 15 - Ag-Life Warm 1, Recreation, La Water Supply: Agriculture	Date of NOV/CDO: 3/31/06 Number: SO-060331-I
--	---

Type of Facility: Heavy Industry	Disturbed Acres: N/A Number of Employees: 6-20 (estimate)
----------------------------------	--

Part I – Effluent Violations Penalty Determination

A. Potential Damage Component

	Violation Type	Adjustment	Amount in Dollars
Line 1	Discharge Without Permit	+ 50% of \$780	\$1170.00
	<p><i>Calculation:</i> Tri-County conducted an inspection of the facility and determined BioEnergy was discharging wastewater from facility power-washing activities without a permit. Non-toxics limits are based on state effluent standards that are technology-based, therefore, the parameter point value pre-established by the technology use table is applied. A point value of 3 is assigned from the technology-based limits table in the Wastewater Civil Penalty Policy. Actual flow was determined to be 0-0.05 MGD, with a pollutant exceedance of >200%, which yields a percent exceedance multiplier of 1.30:</p> <p style="text-align: center;">Point Total = (Percent Exceedance x Point Value) = (1.3 x 3) = 3.9 Potential Damage Value = (Point Total x \$200) = (3.9 x \$200) = \$780</p> <p><i>Adjustment Justification:</i> BioEnergy did not have a permit. Since the discharge was not authorized, the potential damage is increased by 50%.</p>		
Line 2			N/A
	<i>Calculation:</i>		
Line 3			N/A
	<i>Calculation:</i>		
Line 4			N/A
	<i>Calculation:</i>		
Line 5	Potential Damage Total (Sum of Lines 1 through 4)	<i>(Not to exceed \$6000/day)</i>	\$1,170.00

B. Fault Component

			Amount in Dollars
Line 6	Fault: Category 2	<i>(Not to exceed \$3000/day)</i>	\$1,500.00
	<i>Justification:</i> BioEnergy obtained a stormwater permit that explicitly states that discharges of material other than stormwater must be addressed in a separate CDPS permit issued for that discharge. BioEnergy should have been aware of its obligation to obtain authorization to discharge wastewater from the facility. Therefore, the Division has assigned a category-2 fault. The Division has chosen the midpoint of the category two range, as the Division has no additional information to support adjustments from this value.		

C. History Component

			Amount in Dollars
Line 7	History: N/A	<i>(Not to exceed \$1000/day)</i>	\$0.00
	<i>Justification:</i> BioEnergy has no prior violation history with the Division.		

Part II – Administrative Violations Penalty Determination

	Violation Type	Adjustment	Amount in Dollars
Line 8			N/A
	<i>Calculation:</i>		
Line 9			N/A
	<i>Calculation:</i>		
Line 10			N/A
	<i>Calculation:</i>		
Line 11			N/A
	<i>Calculation:</i>		
Line 12	Administrative Violation Total (Sum of Lines 8 through 11)		\$0.00

Part III – Determination of Days of Violation

			Days of Violation
Line 13	Total Days of Violation		1
	<i>Justification:</i> Discharge Without Permit: A BioEnergy representative informed Tri-County Health that the facility is routinely power-washed to remove any accumulated pollutants. However, the inspector did not observe any wastewater discharges at the time of the inspection. BioEnergy, in its answer to the NOV/CDO, stated that the facility is occasionally rinsed, but only after pollutants are removed with absorbent rags. Therefore, 1-Day of violation is conservatively utilized for this settlement calculation.		

Part IV – Determination of Multi-Day Penalty Amount

			Amount in Dollars
Line 14	Multi-Day Penalty Amount		\$2,670.00
	<i>Calculations:</i> $(\$2,670) \times (1 \text{ day}) = \$2,670$		

Part V – Base Penalty Total

			Amount in Dollars
Line 15	Base Penalty Total = Potential Damage + Fault + History + Administrative Total (Sum of Line 5 + Line 6 + Line 7 + Line 12 OR Line 14)		\$2,670.00

Part VIII – Application of Mitigating Circumstances

	Mitigating Circumstances	% Decrease	Amount in Dollars
Line 16	Factor A: Adhering to a Compliance Schedule	0%	\$0.00
	<i>Justification:</i>		
Line 17	Factor B: Steps Taken Beyond Required Actions	0%	\$0.00
	<i>Justification:</i>		
Line 18	Factor C: Environmental Compliance Project	0%	\$0.00
	<i>Justification:</i>		
Line 19	Factor D: Other Mitigating Circumstances	0%	\$0.00
	<i>Justification:</i>		
Line 20	Sum of Lines 18 through Line 21		\$0.00
Line 21	Adjusted Initial Penalty Total (Sum of Line 15 + Line 20)		\$2,670.00

Part VI – Economic Benefit Consideration

		Amount in Dollars
Line 22	Economic Benefit	\$500.00
<i>Justification:</i> Discharge Without Permit: BioEnergy avoided the cost of collecting and treating or disposing of the wastewater. The Division estimates the cost of implementing BMPs to capture the wastewater to be \$500. Therefore, BioEnergy realized an economic benefit of \$500.00 from the avoided cost of not preventing a discharge of wastewater from the facility. <i>{Note: Time value of money for time period in question was predicted to be insignificant and thus BEN runs were not performed}</i>		

Part VII – Violation Penalty Total

		Amount in Dollars
Line 23	Civil Penalty: (Sum Line 21 + Line 22)	\$3,170.00

Part IX – Ability to Pay Adjustment

		Amount in Dollars
Line 24	Ability to Pay Reduction: N/A	\$0.00
<i>Justification:</i>		

Part X – Final Adjusted Penalty

		Amount in Dollars
Line 25	Total Civil Penalty: (Sum Line 23 + Line 24)	\$3,170.00

Attachment A

Multi-day Calculations
(02/25/2008)

Date	Day of Violation	Deficient Stormwater Management Plan (SWMP)	Failure to Install, Maintain or Property Status Best Management Practices	Other Administrative Violations	Potential Damages Sum (Not to Exceed \$5000)	Fault - (Not to Exceed \$5000)	History - (Not to Exceed \$1000)	Potential Damages, Fault & History Sum	Escorted Benefit
11/22/2008	1	\$450.00		\$510.00	\$1,260.00	\$900.00		\$1,860.00	
	2	\$240.00			\$240.00	\$300.00		\$540.00	
	3	\$240.00			\$240.00	\$300.00		\$540.00	
	4	\$240.00			\$240.00	\$300.00		\$540.00	
	5	\$240.00			\$240.00	\$300.00		\$540.00	
	6	\$240.00			\$240.00	\$300.00		\$540.00	
	7	\$240.00			\$240.00	\$300.00		\$540.00	
	8	\$240.00			\$240.00	\$300.00		\$540.00	
	9	\$240.00			\$240.00	\$300.00		\$540.00	
	10	\$240.00			\$240.00	\$300.00		\$540.00	
	11	\$192.00			\$192.00	\$240.00		\$432.00	
	12	\$192.00			\$192.00	\$240.00		\$432.00	
	13	\$192.00			\$192.00	\$240.00		\$432.00	
	14	\$192.00			\$192.00	\$240.00		\$432.00	
	15	\$192.00			\$192.00	\$240.00		\$432.00	
	16	\$192.00			\$192.00	\$240.00		\$432.00	
	17	\$192.00			\$192.00	\$240.00		\$432.00	
	18	\$192.00			\$192.00	\$240.00		\$432.00	
	19	\$192.00			\$192.00	\$240.00		\$432.00	
	20	\$192.00			\$192.00	\$240.00		\$432.00	
	21	\$192.00			\$192.00	\$240.00		\$432.00	
	22	\$192.00			\$192.00	\$240.00		\$432.00	
	23	\$192.00			\$192.00	\$240.00		\$432.00	
	24	\$192.00			\$192.00	\$240.00		\$432.00	
	25	\$192.00			\$192.00	\$240.00		\$432.00	
	26	\$192.00			\$192.00	\$240.00		\$432.00	
	27	\$192.00			\$192.00	\$240.00		\$432.00	
	28	\$192.00			\$192.00	\$240.00		\$432.00	
	29	\$192.00			\$192.00	\$240.00		\$432.00	
	30	\$192.00			\$192.00	\$240.00		\$432.00	
	31	\$192.00			\$192.00	\$240.00		\$432.00	
	32	\$192.00			\$192.00	\$240.00		\$432.00	
	33	\$192.00			\$192.00	\$240.00		\$432.00	
	34	\$192.00			\$192.00	\$240.00		\$432.00	
	35	\$192.00			\$192.00	\$240.00		\$432.00	
	36	\$192.00			\$192.00	\$240.00		\$432.00	
	37	\$192.00			\$192.00	\$240.00		\$432.00	
	38	\$192.00			\$192.00	\$240.00		\$432.00	
	39	\$192.00			\$192.00	\$240.00		\$432.00	
	40	\$192.00			\$192.00	\$240.00		\$432.00	
	41	\$192.00			\$192.00	\$240.00		\$432.00	
	42	\$192.00			\$192.00	\$240.00		\$432.00	
	43	\$192.00			\$192.00	\$240.00		\$432.00	
	44	\$192.00			\$192.00	\$240.00		\$432.00	
	45	\$192.00			\$192.00	\$240.00		\$432.00	
	46	\$192.00			\$192.00	\$240.00		\$432.00	
	47	\$192.00			\$192.00	\$240.00		\$432.00	
	48	\$192.00			\$192.00	\$240.00		\$432.00	
	49	\$192.00			\$192.00	\$240.00		\$432.00	
	50	\$192.00			\$192.00	\$240.00		\$432.00	
12/22/2005	51	\$144.00	\$1,360.00		\$1,494.00	\$600.00		\$2,094.00	\$7,500.00
	52	\$144.00			\$144.00	\$180.00		\$324.00	
	53	\$144.00			\$144.00	\$180.00		\$324.00	
	54	\$144.00			\$144.00	\$180.00		\$324.00	
	55	\$144.00			\$144.00	\$180.00		\$324.00	
	56	\$144.00			\$144.00	\$180.00		\$324.00	
	57	\$144.00			\$144.00	\$180.00		\$324.00	
	58	\$144.00			\$144.00	\$180.00		\$324.00	
	59	\$144.00			\$144.00	\$180.00		\$324.00	
	60	\$144.00			\$144.00	\$180.00		\$324.00	
	61	\$144.00			\$144.00	\$180.00		\$324.00	
	62	\$144.00			\$144.00	\$180.00		\$324.00	
	63	\$144.00			\$144.00	\$180.00		\$324.00	
	64	\$144.00			\$144.00	\$180.00		\$324.00	
	65	\$144.00			\$144.00	\$180.00		\$324.00	
	66	\$144.00			\$144.00	\$180.00		\$324.00	
	67	\$144.00			\$144.00	\$180.00		\$324.00	
	68	\$144.00			\$144.00	\$180.00		\$324.00	
	69	\$144.00			\$144.00	\$180.00		\$324.00	
	70	\$144.00			\$144.00	\$180.00		\$324.00	

Attachment A

Multi-Day Calculations
(02/23/2009)

Date	Day of Violation	Defendant Stoppage Management Plan (SWMP)	Failure to Install, Maintain or Operate Storm Water Management Practices	Other Administrative Violations	Potential Damages from (Not to Exceed \$5000)	Fault (Not to Exceed \$5000)	History (Not to Exceed \$1000)	Potential Damages from History \$1000	Economic Benefit
	71	\$144.00			\$144.00	\$180.00		\$324.00	
	72	\$144.00			\$144.00	\$180.00		\$324.00	
	73	\$144.00			\$144.00	\$180.00		\$324.00	
	74	\$144.00			\$144.00	\$180.00		\$324.00	
	75	\$144.00			\$144.00	\$180.00		\$324.00	
	76	\$144.00			\$144.00	\$180.00		\$324.00	
	77	\$144.00			\$144.00	\$180.00		\$324.00	
	78	\$144.00			\$144.00	\$180.00		\$324.00	
	79	\$144.00			\$144.00	\$180.00		\$324.00	
	80	\$144.00			\$144.00	\$180.00		\$324.00	
	81	\$144.00			\$144.00	\$180.00		\$324.00	
	82	\$144.00			\$144.00	\$180.00		\$324.00	
Column Sums:		\$14,825.00	\$1,350.00	\$910.00	\$17,288.00	\$18,080.00	\$8.00	\$38,188.00	\$7,500.00

Total Penalty Amount: \$43,688.00