

# 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

May 5, 2009

Ellen Robley, District Administrator  
Paint Brush Hills Metropolitan District  
9548 Waterbury Drive  
Falcon, CO 80831

Certified Mail Number: 7099 3220 0003 0276 6327

**RE: Service of Notice of Violation/Cease and Desist Order, Number: MO-090505-1**

Dear Ms. Robley:

The Paint Brush Hills Metropolitan District 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 Paint Brush Hills Metropolitan District 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., the Paint Brush Hills Metropolitan District 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.

Ellen Robley, District Administrator  
Paint Brush Hills Metropolitan District  
Notice of Violation / Cease and Desist Order  
Page 2 of 2

Should you or representatives of the Paint Brush Hills Metropolitan District 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 [ginny.torrez@state.co.us](mailto:ginny.torrez@state.co.us) of this office by phone at (303) 692-3612 or by electronic mail at [ginny.torrez@state.co.us](mailto:ginny.torrez@state.co.us).

Sincerely,



Ginny Torrez  
Compliance Assurance Section  
Enforcement Unit  
WATER QUALITY CONTROL DIVISION

cc: El Paso County Health Department  
MS-3 File; CO-0047091

ec: Aaron Urdiales, EPA Region VIII  
David Knope, Engineering Section, CDPHE  
Dick Parachini, Watershed Program, CDPHE  
Holly Brown, Permit Section, CDPHE  
Carolyn Schachterle, OPA  
Barry Cress, DOLA

*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: MO-090905-1**

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**IN THE MATTER OF:     PAINT BRUSH HILLS METROPOLITAN DISTRICT**  
**WASTEWATER TREATMENT FACILITY**  
**CDPS PERMIT NO. CO-0047091**  
**EL PASO 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 violations cited herein, the Paint Brush Hills Metropolitan District ("the District") was a "Special District" formed in El Paso County, Colorado pursuant to the Special District Act, §§32-1-101 through 32-1-1702 C.R.S.
2. The District 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. The District owns, jointly with another party, a wastewater treatment plant located in the Southeast ¼ of the Southwest ¼ of Section 30, and in the Southwest ¼ of the Southeast 1/4 of Section 30, Township 12 South, Range 64 West, (the "Facility").
4. The Facility is the subject of Colorado Discharge Permit System Permit, Permit No. CO-00470914 (the "Permit"). The Permit was issued to the District on April 20, 2006 and is due to expire May 31, 2011. Modification No. 1 to the Permit was issued and effective May 8, 2006. Amendment No. 1 to the Permit was issued June 27, 2006 and became effective August 1, 2006. Amendment No. 2 to the Permit was issued June 30, 2008 and became effective August 1, 2008.
5. The Permit specifies that the District is authorized to discharge effluent wastewater from the Facility through Outfall 001A into an unnamed tributary to Black Squirrel Creek. The discharge is subject to the specific effluent limitations and other conditions of the Permit.

6. The unnamed tributary to Black Squirrel 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. Section 61.8, 5 CCR 1002-61, states in part that “A permittee must comply with all the terms and conditions of the permit.”

Quality of the Discharge

8. Pursuant to Part I.A.5 and Part I.A.6 of the Permit, the District’s discharge at outfall 001A shall not exceed, among others not subject of this action, the effluent limitations specified below:

| EFFLUENT PARAMETER   | DISCHARGE LIMITATION |               |                       |                       |
|--|----------------------|---------------|-----------------------|-----------------------|
|  | 30-Day Average       | 7-Day Average | Instantaneous Minimum | Instantaneous Maximum |
| 5-Day Biochemical Oxygen Demand (“BOD <sub>5</sub> ”) (mg/l) | 30                   | 45            | -                     | -                     |
| BOD <sub>5</sub> Removal (%)                                 | 85                   | -             | -                     | -                     |
| pH (s.u.)  | -                    | -             | 6.5                   | -                     |
| Total Residual Chlorine (mg/l)                               | -                    | -             | -                     | 0.5                   |

9. Pursuant to the requirements of Part I.B.2 of the Permit, to provide an indication of the quality of the wastewater discharged into the unnamed tributary to Black Squirrel Creek, the District collects specific samples of the effluent.
10. The analytical results of the samples collected at Outfall 001A are summarized and reported to the Division via monthly DMRs which include a certification by the District that the information provided therein is true, accurate and complete, to the knowledge and belief of the District.
11. The DMRs for the months of January 2008 through February 2009 include, in addition to other data not subject of this action, the following effluent concentration data for BOD<sub>5</sub> and Total Residual Chlorine. BOD<sub>5</sub> removal and pH data are also included.

| DMR Reporting Period and Parameter | 30-Day Average         | 7-Day Average          | Instantaneous Minimum | Instantaneous Maximum |
|------------------------------------|------------------------|------------------------|-----------------------|-----------------------|
| <b>BOD<sub>5</sub> (in mg/l)</b>   | <b>Limit = 30 mg/l</b> | <b>Limit = 45 mg/l</b> | N/A                   | N/A                   |
| January 1-January 31, 2008         | 42.5                   | 50                     | -                     | -                     |
| February 1-February 29, 2008       | 45                     | 53                     | -                     | -                     |
| March 1-March 31, 2008             | 41.625                 | 47                     | -                     | -                     |

| <b>BOD<sub>5</sub> (in mg/l) [continued]</b> | <b>Limit = 30<br/>mg/l</b>     | <b>Limit = 45<br/>mg/l</b> | <b>N/A</b>                    | <b>N/A</b>                    |
|--|--------------------------------|----------------------------|-------------------------------|-------------------------------|
| June 1-June 30, 2008                         | 40.1                           | 47.3                       | -                             | -                             |
| August 1-August 31, 2008                     | 39.1                           | 48.4                       | -                             | -                             |
| October 1-October 31, 2008                   | 33                             | -                          | -                             | -                             |
| February 1-February 28, 2009                 | 38.5                           | 48.8                       | -                             | -                             |
| <b>BOD<sub>5</sub> Removal (in %)</b>        | <b>Limit = 85<br/>% (min.)</b> | <b>N/A</b>                 | <b>N/A</b>                    | <b>N/A</b>                    |
| January 1-January 31, 2008                   | 83                             | -                          | -                             | -                             |
| August 1-August 31, 2008                     | 83                             | -                          | -                             | -                             |
| <b>pH (in s.u.)</b>                          | <b>N/A</b>                     | <b>N/A</b>                 | <b>Limit = 6.5<br/>(s.u.)</b> | <b>Limit = 9.0<br/>(s.u.)</b> |
| August 1-August 31, 2008                     | -                              | -                          | 5.67                          | -                             |
| <b>Total Residual Chlorine (in<br/>mg/l)</b> | <b>N/A</b>                     | <b>N/A</b>                 | <b>N/A</b>                    | <b>Limit = 0.5<br/>(mg/l)</b> |
| January 1-January 31, 2009                   | -                              | -                          | -                             | 0.60                          |

12. BOD<sub>5</sub>, Total Residual Chlorine, pH and BOD<sub>5</sub> Removal are “pollutants” as defined by §25-8-103(15), C.R.S., or indicators thereof.
13. The District’s failure to comply with the effluent limitations set forth above constitutes violations of Part I.A.5 and Part I.A.6 of the Permit.

Expansion Requirements

14. Part I, Section A.3 of the Permit specifies an organic design capacity of 3,470 lbs. BOD<sub>5</sub>/day (30-day average) for the Facility.
15. The Permit, in Part I, Section A.3, requires that whenever eighty (80) percent of the 30-day average design capacity is met, the permittee shall initiate engineering and financial planning for expansion of the domestic wastewater treatment works.
16. Part I.A.3 further requires that if, during the previous calendar year, the monthly organic loading to the facility exceeded 80% of the organic capacity, the permittee shall submit a report by March 31 of the following year including a schedule for planning for expansion, or, an analysis indicating that the exceedance was an anomaly and is not expected to occur during the current calendar year.
17. Pursuant to the requirements of the Part I.B.1 of the Permit, the District collects certain samples at the influent to the Facility. The analytical results of the influent samples are summarized and reported to the Division via the monthly DMRs. The analytical results of the influent BOD monitoring reflect, among other data, the following data as summarized on the DMRs:

| REPORTING PERIOD               | 30-DAY AVERAGE<br>LOADING<br>(in lbs./day) |
|--------------------------------|--|
| September 1-September 30, 2008 | 2,784.13                                   |
| December 1-December 31, 2008   | 3,164.81                                   |

18. The results listed in paragraph 17 above demonstrate that the District has exceeded eighty (80) percent of the 30-day average organic design capacity of the Facility.
19. The District has not demonstrated that it has initiated engineering and financial planning for expansion.
20. The District has not submitted the report due March 31, 2009 including a schedule for planning for expansion or an analysis indicating that organic loading values in excess of eighty (80) percent of the organic capacity were an anomaly.
21. The District's failure to initiate engineering and financial planning is a violation of Part A.3 of the Permit.
22. The Districts failure to submit the analysis due March 31, 2009, is a violation of Part A.3 of the Permit.

#### Compliance Schedule

23. The Permit, in Part I.A.7.a, items 1-11, contains a compliance schedule for meeting more restrictive Total Residual Chlorine and *Escherichia coli* limits that will become effective January 1, 2011. Among other deadlines and requirements of the compliance schedule, the District was to submit to the Division, by December 1, 2007, complete plans and specifications for facilities or activities necessary to meet final limitations. The District was further required to submit a site location approval application and to advertise for bids and award a construction contract by December 31, 2007 and October 1, 2007, respectively.
24. Division records establish that the District has not submitted plans and specifications or site location approval application to the Division nor has the District advertised for bids or awarded a construction contract for the facilities necessary to meet the upcoming Total Residual Chlorine limit and *Escherichia coli* limits.
25. The Permit, in Part I.A.7.a, also required that the District submit progress reports detailing completed and future activities relative to the compliance schedule. The first progress report was to be submitted by June 1, 2008.
26. Division records establish that the District has not submitted any progress reports required by the compliance schedule, including the progress report due June 1, 2008.

## NOTICE OF VIOLATION

Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that the District has violated the following sections of the Permit.

**Part I.A.5 of Permit No. CO-0047091** which states in part: “In accordance with the Water Quality Control Commission Regulations for Effluent Limitations, Section 62.4, and the Colorado Discharge Permit System Regulations, Section 61.8(2), the permitted discharge shall comply with the following limitations.”

**Part I.A.6 of Permit No. CO-0047091** which states in part: “In addition to the concentration limitations on BOD<sub>5</sub> and TSS indicated above, the arithmetic mean of the BOD<sub>5</sub> and TSS concentrations for effluent samples collected during the calendar month shall demonstrate a minimum of eighty-five percent (85%) removal as measured...”

**Part I, Section A.3 of Permit No. CO-0047091** which states in part: “Pursuant to Colorado Law, C.R.S. 25-8-501 (5 d & e), the permittee is required to initiate engineering and financial planning for expansion of the domestic wastewater treatment works whenever throughput and treatment reaches eighty (80) percent of the design capacity.”

**Part I, Section A.3 of Permit No. CO-0047091** which states in part: “If during the previous calendar year, the monthly organic loading (lbs. BOD<sub>5</sub>/day) to the facility in the maximum month exceeded either 80% or 95% of the organic capacity identified in Part I.A.2. of this permit, the permittee shall submit a report by March 31 the following year.....”

**Part I, Section A.7 of Permit No. CO-0047091** which states in pertinent parts:

- “a. Activities To Meet *E. Coli* and TRC Final Limits – A compliance schedule will be required for construction or other activity, needed to meet the final TRC and *E. Coli* limitations, The following submittals and/or actions will be required.”
- “4. Complete plans and specifications for construction of facilities or activities determined to be necessary to meet the final limitations and submit them to the Division by 12/1/2007.
- 5. Submit Site Application to the Division by 12/31/2007.
- 6. Advertise for bids, and award contract for construction of facilities or other action by 10/1/2008.
- 7. Submit progress report #1, detailing completed activities, and remaining activities, including a time line of events by 6/1/2008.”

## REQUIRED CORRECTIVE ACTION

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

27. 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 the District to comply with the following specific terms and conditions of this Order:

28. Comply with the following schedule for ensuring that the Total Residual Chlorine and *Escherichia coli* limits becoming effective January 1, 2011 will be met:
  - a. By June 1, 2009, submit to the Division a progress report chronologically detailing activities completed since June 1, 2006, specifically targeted at complying with the Total Residual Chlorine and *Escherichia coli* limits that will become effective January 1, 2011. The report shall identify remaining activities, including a timeline for future events.
  - b. By August 1, 2009, submit to the Division a complete site location approval request for construction of necessary treatment mechanisms.
  - c. By December 1, 2009, submit final plans and specifications to the Division;
  - d. By March 1, 2010, award a contract and commence construction and submit written notification to the Division confirming that this deadline has been satisfied.
  - e. By June 1, 2010, submit to the Division a progress report detailing activities completed since June 1, 2009 and remaining activities, including a timeline of events aimed specifically at complying with the Total Residual Chlorine and *Escherichia coli* limits that will become effective January 1, 2011.
  - f. By December 31, 2010, complete construction and submit written notification to the Division confirming that this deadline has been satisfied.
  - g. By January 1, 2011, comply with final limits.
29. By June 15, 2009, submit to the Division one of the following: 1) evidence that the District has initiated engineering and financial planning; or, 2) a analysis prepared by a professional engineer registered in the State of Colorado retained by the District demonstrating that the organic loading reported in September and December 2008 were anomalies and that the organic loading is and can be maintained below eighty (80) percent for a minimum of three years given current and reasonably anticipated growth over this period of time.
30. By June 15, 2009, retain a qualified, licensed professional engineer to perform a Comprehensive Performance Evaluation ("CPE") of the Facility and develop a Composite Correction Program ("CCP"). The Division's CCP expectations are specifically identified below in paragraph 32. The CPE shall identify and document any and all performance limiting factors affecting the Facility's ability to consistently comply with the Permit in the short- and long term. The CPE shall include, but not be limited to, analysis/evaluation of the following:
  - system design capacity
  - influent hydraulic and organic loading

- individual unit processes
- adequacy of aeration/back-up equipment
- biosolids buildup
- process reliability
- chemical feed system reliability
- operations and maintenance staffing
- operator expertise needs
- process control systems adequacy and functionality
- managerial and financial systems

Further, the District shall provide the Division with a copy of the executed contract retaining a licensed professional engineer to perform the activities specified above by no later than June 15, 2009.

31. By July 15, 2009, submit the CPE report referenced in paragraph 30 of this Order to the Division.
32. By August 15, 2009, submit a completed CCP report to the Division. The CCP report shall, at a minimum, include the following:
  - A plan for systematically addressing the facility-specific areas for improvement, repair and/or maintenance as identified in the CPE.
  - A plan for systematically obtaining any necessary training.
  - Recommendations for other measures to optimize treatment or for addressing other deficiencies.
  - A time schedule for addressing, implementing, or completing correction of, each performance limiting factor or other recommendation identified in the CPE. This time schedule shall be based on a noncompliance risk based priority system.
33. In addition to the CCP, by August 15, 2009, the District shall submit to the Division a written commitment to a specific corrective action plan, including but not limited to CPE/CCP identified actions, outlining all actions necessary to ensure that consistent and year-round compliance with current permit effluent limits is expeditiously achieved and maintained by the District for the long-term. The plan shall include a time schedule for initiation and completion of each identified action and shall include an estimate of time required for the action to result in improved effluent quality.
34. If any of the corrective measures require the Division site location and design approval, the District shall file a site location and/or design approval request, including associated (if applicable) in accordance with "Site Location and Design Approval Regulations for Domestic Wastewater Treatment Works, Regulation #22 (5 CCR 1002-22)". The District shall not initiate construction until such time as it has obtained the necessary site location and design approval as required by Section 25-8-702, C.R.S.
35. The submitted CCP and corrective action plan, specifically including the activities and identified completion schedules, shall become a condition of this Order and the District shall comply with the plan and the completion dates unless notified by the Division, in writing, that alternate activities and/or time schedule(s) are appropriate. If the Division imposes alternate activities and/or time schedule(s), they shall also become a condition of this Order.

36. The District shall submit monthly progress reports to the Division outlining efforts taken to achieve and maintain compliance with this Order and the Permit. The first report shall be submitted to the Division on or before June 1, 2009. At a minimum, each report shall outline activities completed in the previous thirty (30) days and planned activities for the next thirty (30) days to remain in compliance with this Order. The monthly progress reports shall be required until the issuance of written notice from the Division indicating that the reports are no longer necessary.
37. If the District becomes aware of any situation or circumstances that cause the District to become unable to comply with any condition or time schedules set forth by this Order, the District shall provide written notice to the Division within five (5) calendar days of the District becoming aware of such circumstances. The District's notice shall describe what, if any, impacts will occur on the District's ability to comply with the Colorado Water Quality Control Act, the effluent limitations of the Permit and Certification, and any impacts on the remaining conditions and/or time schedules specified by this Order, and what steps are being taken to mitigate the impacts.
38. All documents submitted under this Order shall be submitted under District signature and shall use the same titles as stated in this Order, and shall reference both the number of this Order and the number of the paragraph pursuant to which the document is required. Within thirty (30) calendar days of receiving Division comments on submitted documents, the District shall revise the submitted document(s) to properly address the Division's comments and resubmit the document(s) for Division review.

### **NOTICES AND SUBMITTALS**

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, the District 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 Section  
Attention: Ginny Torrez  
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, that person shall make the following certification with each submittal:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

### **OBLIGATION TO ANSWER AND REQUEST FOR HEARING**

Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11(A) you are required to submit to the Division an answer affirming or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

Section 25-8-603, C.R.S. and 5 CCR 1002, §21.11 also provide that the recipient of a Notice of Violation may request the Division to conduct a public hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002, §21.4(B)(2). Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent Department proceeding.

Both the answer and the request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

### **FALSIFICATION AND TAMPERING**

Be advised, in accord with §25-8-610, C.R.S., that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Colorado Water Quality Control Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

### **POTENTIAL CIVIL AND CRIMINAL PENALTIES**

You are also advised that any person who violates any provision of the Colorado Water Quality Control Act (the "Act"), §§25-8-101 to 703, C.R.S., or of any permit issued under the Act, or any control regulation promulgated pursuant to the Act, or any final cease and desist order or clean-up order issued by the Division shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution if such discharge is made without a permit, if a permit is required by the Act for such discharge, or if such discharge is made in violation of any permit issued under the Act or in violation of any Cease and Desist Order or Clean-up Order issued by the Division. By virtue of issuing this Notice of Violation / Cease and Desist Order, the State has not waived its right to bring an action for penalties under §§25-8-608 and 609, C.R.S., and may bring such action in the future.

### **RELEASE OR DISCHARGE NOTIFICATION**

Pursuant to §25-8-601, C.R.S., you are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

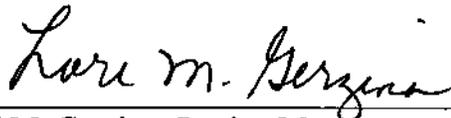
**EFFECT OF ORDER**

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters. Nothing herein contained shall be construed to preclude other individuals, cities, towns, counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances or to preclude any other lawful actions by such entities or the State.

For further clarification of your rights and obligations under this Notice of Violation / Cease and Desist Order you are advised to consult the Colorado Water Quality Control Act, §§25-8-101 to 703, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 5<sup>th</sup> day of May, 2009.

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



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