

# 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

June 22, 2009

Theodore W. Brin, Registered Agent  
Blue River Construction Management LLC  
1601 Blake Street, Suite 305  
Denver, CO 80202

Certified Mail Number: 7005 1820 0000 3212 8229

**RE: Service of Notice of Violation/Cease and Desist Order, Number: IO-090622-1**

Dear Mr. Brin:

Blue River Construction Management LLC 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 Blue River Construction Management LLC has violated the Act, and/or Permit regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

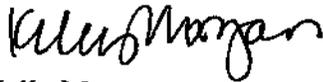
Pursuant to §25-8-603, C.R.S., Blue River Construction Management LLC is required, within thirty (30) calendar days of issuance of this NOV/CDO, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

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 Blue River Construction Management LLC 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 Kelly Morgan of this office by phone at (303) 692-3634 or by electronic mail at [kelly.morgan@state.co.us](mailto:kelly.morgan@state.co.us).

Sincerely,



Kelly Morgan  
Compliance Assurance Section  
Enforcement Unit  
WATER QUALITY CONTROL DIVISION

cc: San Miguel County Health Department  
MS-3 File

cc: Aaron Urdiales, EPA Region VIII  
Jocelyn Mullen, Engineering Section, CDPHE  
Dick Parachini, Watershed Program, CDPHE  
Gary Beers, Permits Unit, 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: IO-090622-1**

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**IN THE MATTER OF: BLUE RIVER CONSTRUCTION MANAGEMENT LLC**  
**CDPS PERMIT NO. COG-070000**  
**FACILITY CERTIFICATION NO. COG-072761**  
**SAN MIGUEL 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, Blue River Construction LLC ("Blue River Construction") was a Colorado limited liability company in good standing.
2. Blue River Construction 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. Pursuant to 25-8-501(1), C.R.S., 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.
4. Beginning on or about November 14, 2008, Blue River Construction initiated construction activities associated with the construction of a new single-family residence located at 168 Hemlock Street, Telluride, San Miguel County, Colorado (the "Facility").
5. The construction activities performed at the Facility included foundation excavation that necessitated the dewatering of infiltrating groundwater. Therefore, Blue River Construction applied for and obtained coverage under the Colorado Discharge Permit System General Permit, No. COG-070000, for Construction Dewatering Operations (the "Permit"). Blue River Construction was assigned Facility Certification No. COG-072761 (the "Facility Certification") and certification under the Permit became effective on May 22, 2008.

6. The original Facility Certification authorized Blue River Construction to discharge treated wastewater at an average rate of 10 gallons per minute from the Facility through Outfall 001A, which was physically located at approximately Latitude: 37.936<sup>0</sup> N, Longitude: -107.805<sup>0</sup> W, to an unnamed channel on the east part of the property that flows into the San Miguel River.
7. The San Miguel River is “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, Blue River Construction must comply with all the terms and conditions of the Permit, and violations of such terms and conditions as specified in the Permit may be subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.

### **Unauthorized Discharge**

9. On November 25, 2008, in response to discolored (muddy) water entering the San Miguel River, a representative from the Town of Telluride visited the Facility to observe and photograph the discharge from the site to the San Miguel River. The town representative observed that Blue River Construction had constructed a pipe to convey and discharge construction related groundwater from the Facility southeast down and across Hemlock Street, northwest through an alley way towards N. Maple Street, southeast down N. Maple Street to the intersection of N. Maple Street and E. Colorado Avenue. The town representative further observed that very dark and muddy water (loaded with sediment) was discharging at a rate of approximately 800 to 1,000 gallons per minute from the end of the pipe and flowing into the culvert constructed under E. Colorado Avenue and directly into the San Miguel River.
10. On November 25, 2008, a representative from the Town of Telluride advised the Division of the discharge. The Division established that the discharge was unauthorized as it was not in conformance with the discharge authorized by the Facility Certification.
11. On November 25, 2008, at approximately 2:00 pm, the Town of Telluride issued a Stop Work Order to Blue River Construction as a result of Blue River Construction’s noncompliance with the Facility Certification.
12. On November 26, 2008, at approximately 4:00 pm, a Division representative contacted Blue River Construction’s superintendent and advised the superintendent of the Division’s expectations of Blue River Construction to comply with the terms and conditions of the Facility Certification or cease its discharge.
13. Pursuant to Part II.A.6 of the Permit, any discharge to state waters from a point source other than the specifically authorized discharge at Outfall 001A is prohibited.
14. Sediment is a “pollutant” as defined by §25-8-103(15), C.R.S.
15. Blue River Construction’s constructed pipe, as described in paragraph 9 above, is a “point source” as defined by §25-8-103(14), C.R.S.

16. Division records establish that Blue River Construction does not have any permits authorizing the discharge of pollutants, as described in paragraph 9 above, into the San Miguel River.
17. Blue River Construction's discharge of sediment, as described in paragraph 9 above, into the San Miguel River constitutes a "discharge of pollutants" as defined by §25-8-103(3), C.R.S.
18. Blue River Construction's discharge of sediment, as described in paragraph 9 above, into the San Miguel River constitutes an unauthorized discharge of pollutants from a point source into state waters in violation of §25-8-501(1), C.R.S.

**Failure to Comply with Permit Effluent Limits**

19. Pursuant to Part I.B.1 of the Permit, and as represented in the Facility Certification (including minor amendment No. 1), Blue River Construction's permitted discharge shall not exceed the effluent limitations specified below:

<u>Effluent Parameter</u>	<u>Discharge Limitations</u>		
	<u>30-Day Average</u>	<u>7-Day Average</u>	<u>Daily Maximum</u>
Total Suspended Solids, mg/l	30	45	N/A
pH, s.u. (minimum-maximum)	N/A	N/A	6.5-9.0
Oil and Grease, mg/l	N/A	N/A	10, No Visual Sheen
Flow, MGD	N/A	N/A	Report

20. Pursuant to Part I.F.2 of the Permit, Blue River Construction is required to summarize and report the analytical results of its effluent monitoring to the Division via monthly discharge monitoring reports ("DMRs"). Each discharge monitoring report is to include a certification by Blue River Construction that the information provided therein is true, accurate and complete to the knowledge and belief of Blue River Construction.
21. Blue River Construction's DMRs submitted to the Division include, among other information and data, the following effluent concentration summary data for Total Suspended Solids which exceed the effluent limitations imposed by the Permit.

<b>Blue River Construction's EFFLUENT SELF-MONITORING DATA</b>			
<b>DISCHARGE MONITORING REPORTING PERIOD</b>	<b>OUTFALL NUMBER</b>	<b>SAMPLE MEASUREMENT</b>	<b>SAMPLE MEASUREMENT</b>
<b>TOTAL SUSPENDEED SOLIDS</b>		<b>7-DAY AVG. LIMIT = 45 mg/l</b>	<b>30-DAY AVG. LIMIT = 30 mg/l</b>
December 1-31, 2008	001A	53 mg/l	--
January 1-31, 2008	001A	46 mg/l	--

22. Total suspended solids are “pollutants” as defined by §25-8-103(15), C.R.S.
23. Blue River Construction’s failure to comply with the effluent limitations set forth above constitutes violations of Part I.B.1 of the Permit.

**NOTICE OF VIOLATION**

24. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that the Blue River Construction has violated the following sections of the Colorado Water Quality Control Act and the Permit.

**Section 25-8-501(1), C.R.S.**, which states “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...”

**Part I.B.1 of CDPS permit number COG-070000** sets in part: “Effluent limitations” for Construction Dewatering Activities shall not contain effluent parameter concentrations which exceed the 7-day average of 45 mg/l for Total Suspended Solids.

**REQUIRED CORRECTIVE ACTION**

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

25. 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 Blue River Construction to comply with the following specific terms and conditions of this Order:

26. Within thirty (30) calendar days of receipt of this Order, Blue River Construction shall submit to the Division a detailed written statement outlining the standard procedures Blue River Construction will undertake to ensure that adequate construction dewatering treatment and management systems are fully implemented at its Colorado construction sites and appropriate staff is trained accordingly. The statement should also specifically include certification that Blue River Construction has reviewed and understands the Reduction, Loss, or Failure of Treatment Facility provision of section Part II.A.3 of the Permit.

## **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 Blue River Construction 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: Kelly Morgan  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530  
Email: kelly.morgan@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.

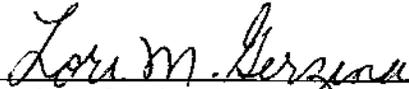
### **EFFECT OF ORDER**

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 22 day of June, 2009.

**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