

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

July 16, 2009

The Corporation Company, Registered Agent
Twentymile Coal Company
1675 Broadway, Suite 1200
Denver, CO 80202

Certified Mail Number: 7005 1820 0000 3212 8267

RE: Service of Notice of Violation/Cease and Desist Order, Number: IO-090715-2

Dear Registered Agent:

Twentymile Coal Company 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 Twentymile Coal Company has violated the Act, and/or Permit regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

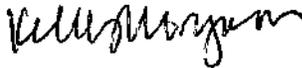
Pursuant to §25-8-603, C.R.S., Twentymile Coal Company is required, within thirty (30) calendar days of issuance of this NOV/CDO, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

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 Twentymile Coal Company 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.

Sincerely,



Kelly Morgan
Enforcement Unit
WATER QUALITY CONTROL DIVISION

cc: Routt County Health Department
MS-3 File

ec: Aaron Urdiales, EPA Region VIII
Andy Poirot, 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

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: IO-090715-2

IN THE MATTER OF: TWENTYMILE COAL COMPANY
PERMIT NUMBER CO-0027154
ROUTT 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 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 time relevant to the violations cited herein Twentymile Coal Company ("Twentymile Coal") was a Delaware corporation in good standing and registered to conduct business in the state of Colorado.
2. Twentymile Coal 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. Twentymile Coal owns and/or operates the Mines 1 & 2 and Eckman Park Mine. Mine 1 is an underground active coal mine and active coal preparation plant facility while Mine 2 and the Eckman Park Mine are post mining areas (all of which constitute the "Facility"), located approximately five (5) miles north west of the Town of Oak Creek, Routt County, Colorado.
4. The Facility treats wastewater which includes surface runoff, both from active mining areas and post mining areas. Spoils spring water is also a source of wastewater. The coal preparation plant wastewater is collected, treated and is also injected back into the underground mine and therefore is not considered a source of wastewater to surface waters. Wastewater treatment is accomplished in sedimentation ponds.
5. The Facility is the subject of the Colorado Discharge Permit System, Permit No. CO-0027154 (the "Permit"). The current Permit became effective on September 1, 2007 and is due to expire August 31, 2012.

6. The Permit authorizes Twentymile Coal to discharge treated wastewater from the Facility through Outfalls 002A, 003A, 004A, 005A, 006A, 007A and 008A after the respective sedimentation ponds and prior to entering into Foidel Creek. Outfalls MON3 and MON7 are at the same location as Outfalls 003A and 007A, respectively, and Twentymile Coal conducts monitoring at these sample locations to support a Reasonable Potential analysis and subsequent decisions for a numeric limit. Outfalls 002A, 004A, 005A, 006A, and 008A treat surface runoff. Outfalls 003A and 007A treat surface runoff and spoils spring water. Outfalls 002A, 003A, 004A, 005A, 006A, 007A and 008A are physically located at the following locations owned by Twentymile Coal:

TWENTYMILE COAL OUTFALL LOCATIONS		
OUTFALL	LATITUDE	LONGITUDE
002A	40 ⁰ , 20', 23"	107 ⁰ , 04', 00"
003A and MON3	40 ⁰ , 21', 48"	107 ⁰ , 04', 38"
004A	40 ⁰ , 20', 41"	107 ⁰ , 04', 28"
005A	40 ⁰ , 20', 45"	107 ⁰ , 03', 54"
006A	40 ⁰ , 20', 50"	107 ⁰ , 03', 51"
007A and MON7	40 ⁰ , 21', 09"	107 ⁰ , 03', 21"
008A	40 ⁰ , 21', 20"	107 ⁰ , 03', 01"

7. Foidel 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 (102).

Failure to Submit Complete DMRs

8. Pursuant to Part I.E.1. of the Permit, Twentymile Coal 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 Twentymile Coal that the information provided therein is true, accurate and complete to the knowledge and belief of Twentymile Coal.
9. Division records, as provided by Twentymile Coal and supplemented by the DMRs, establish that Twentymile Coal failed to submit complete DMR data for the following monitoring periods and parameters:

TWENTYMILE COAL EFFLUENT SELF MONITORING DATA		
OUTFALL	PARAMETER	DISCHARGE MONITORING REPORT DATE
002A	Settleable Solids (30 day average)	4/30/08
002A	Settleable Solids (30 day average)	5/31/08
002A	Settleable Solids (30 day average)	4/30/09
003A	Settleable Solids (30 day average)	4/30/08
003A	Settleable Solids (30 day average)	5/31/08
003A	Flow (30 day average)	6/30/08
003A	Flow (daily max)	6/30/08
003A	Settleable Solids (30 day average)	11/30/08
003A	Settleable Solids (30 day average)	4/30/09
004A	Total Suspended Solids (30 day avg)	6/30/08
004A	Total Suspended Solids (daily max)	6/30/08

004A	Iron, Total (30 day average)	6/30/08
004A	Iron, Total (daily max)	6/30/08
004A	Settleable Solids (30 day average)	6/30/08
004A	Settleable Solids (daily max)	6/30/08
004A	Conductivity (Quarterly average)	6/30/08
004A	Conductivity (Quarterly Max)	6/30/08
004A	Total Dissolved Solids (Quarterly average)	6/30/08
004A	Total Dissolved Solids (Quarterly Max)	6/30/08
004A	Oil and Grease (Inst. Max)	6/30/08
004A	Oil and Grease (Visual)	6/30/08
004A	pH (Maximum)	6/30/08
004A	Flow (30 day average)	6/30/08
004A	Flow (daily max)	6/30/08
005A	Iron, Total Recoverable (30 day average)	4/30/08
005A	Iron, Total Recoverable (Daily max)	4/30/08
005A	Settleable Solids (30 day average)	4/30/08
005A	Iron, Total Recoverable (30 day average)	5/31/08
005A	Iron, Total Recoverable (daily max)	5/31/08
005A	Settleable Solids (30 day average)	5/31/08
005A	Settleable Solids (30 day average)	8/31/08
005A	Iron, Total Recoverable (daily max)	8/31/08
005A	Iron, Total Recoverable (30 day average)	9/30/08
005A	Copper, Potentially Dissolved (30 day average)	9/30/08
005A	Copper, Potentially Dissolved (Daily max)	9/30/08
005A	Iron, Total Recoverable (daily max)	9/30/08
005A	Iron, Total Recoverable (30 day average)	9/30/08
005A	Settleable Solids (30 day average)	10/31/08
005A	Iron, Total Recoverable (daily max)	10/31/08
005A	Iron, Total Recoverable (30 day average)	10/31/08
005A	Total Suspended Solids (30 day avg)	11/30/08
005A	Settleable Solids (30 day average)	11/30/08
005A	Iron, Total Recoverable (daily max)	11/30/08
005A	Iron, Total Recoverable (30 day average)	11/30/08
005A	Iron, Total Recoverable (30 day average)	12/31/08
005A	Copper, Potentially Dissolved (30 day average)	12/31/08
005A	Copper, Potentially Dissolved (Daily max)	12/31/08
005A	Iron, Total Recoverable (daily max)	12/31/08
005A	Iron, Total Recoverable (daily max)	1/31/09
005A	Iron, Total Recoverable (30 day average)	1/31/09
005A	Iron, Total (30 day average)	2/28/09
005A	Iron, Total (Daily max)	2/28/09
005A	Settleable Solids (30 day average)	2/28/09
005A	Flow (30 day average)	2/28/09
005A	Flow (daily max)	2/28/09
005A	Oil and Grease (Visual)	2/28/09
005A	Iron, Total Recoverable (daily max)	4/30/09
005A	Iron, Total Recoverable (30 day average)	4/30/09
005A	Settleable Solids (30 day average)	4/30/09
006A	Settleable Solids (30 day average)	4/30/08
006A	Settleable Solids (30 day average)	3/31/09
006A	Settleable Solids (30 day average)	4/30/09
008A	Settleable Solids (30 day average)	4/30/08

008A	Total Suspended Solids (30 day average)	2/28/09
008A	Iron, Total (30 day average)	2/28/09
008A	Iron, Total (Daily max)	2/28/09
008A	Settleable Solids (30 day average)	2/28/09
008A	Settleable Solids (Daily max)	2/28/09
008A	Total Suspended Solids (Daily max)	2/28/09
008A	Oil and Grease (Inst. Max)	2/28/09
008A	Oil and Grease (Visual)	2/28/09
008A	pH (Maximum)	2/28/09
008A	Flow (30 day average)	2/28/09
008A	Flow (daily max)	2/28/09
008A	Settleable Solids (30 day average)	3/31/09
008A	Settleable Solids (30 day average)	4/30/09
MON5	Chromium, trivalent, Potentially Dissolved (Daily max)	4/30/08
MON5	Mercury, Total (30 day average)	9/30/08
MON5	Mercury, Total (Daily max)	9/30/08
MON7	Chromium, trivalent, Potentially Dissolved (Daily max)	4/30/08
MON7	Chromium, trivalent, Potentially Dissolved (30 day avg)	4/30/08
MON7	Arsenic, Total (30 day average)	6/30/08
MON7	Arsenic, Total (Daily Max)	6/30/08
MON7	Chromium, trivalent, Potentially Dissolved (30 day avg)	6/30/08
MON7	Chromium, trivalent, Potentially Dissolved (Daily max)	6/30/08
MON7	Lead, Potentially Dissolved (30 Day average)	6/30/08
MON7	Mercury, Total (30 day average)	6/30/08
MON7	Mercury, Total (Daily max)	6/30/08
MON7	Nickel, Potentially Dissolved (30 Day Average)	6/30/08
MON7	Nickel, Potentially Dissolved (Daily max)	6/30/08
MON7	Selenium, Potentially Dissolved (30 Day Average)	6/30/08
MON7	Selenium, Potentially Dissolved (Daily Max)	6/30/08
MON7	Zinc, Potentially Dissolved (30 Day Average)	6/30/08
MON7	Zinc, Potentially Dissolved (Daily Max)	6/30/08
MON7	Lead, Potentially Dissolved (Daily Max)	6/30/08

10. Twentymile Coal's failure to report all monthly monitoring results on the DMRs, as identified above in paragraph 9, constitutes violations of Part I.E.1. of the Permit.

NOTICE OF VIOLATION

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

Part I.E.1 of CDPS permit number CO-0027154 sets in part "Routine Reporting of Data:" Reporting of the data gathered in compliance with Part I.B.1 shall be on a monthly basis. Reporting of all data gathered shall comply with the requirements of Part I.E. (General Requirements). Monitoring results shall be summarized for each calendar month and reported on Division approved discharge monitoring report.... The Discharge Monitoring Report forms shall be filled out accurately and completely in accordance with requirements of this permit and the instructions on the forms. Each discharge monitoring report is to include a certification by Twentymile Coal that the information provided therein is true, accurate and complete to the knowledge and belief of Twentymile Coal.

REQUIRED CORRECTIVE ACTION

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

12. 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 Twentymile Coal to comply with the following specific terms and conditions of this Order:

13. Within thirty (30) calendar days of receipt of this Order, Twentymile Coal shall submit to the Division all supplemental Discharge Monitoring Report data that has not yet been received according to paragraph 9 above. If the supplemental data is not available, Twentymile Coal shall submit an explanation as to why the data is not available.
14. Within thirty (30) calendar days of receipt of this Order, Twentymile Coal shall submit to the Division a detailed written statement outlining the standard procedures that Twentymile Coal will undertake to ensure that the discharge monitoring reports will be submitted properly, complete, and on time. The statement should also specifically include a written certification that Twentymile Coal and its responsible individuals have reviewed, understand and are properly implementing the Monitoring and Reporting requirements of Part I.A.1, Part I.B.1, and Part I.E.1 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 Twentymile Coal Company 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
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.

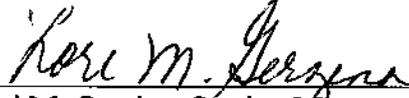
EFFECT OF ORDER

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 15th day of July, 2009.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



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