

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

March 19, 2009

Jack Renfroe
Renfroe-Brunner Development, LLC
6180 W. 10th Street
Greeley, CO 80634

RE: Compliance Order on Consent, Number: SC-090319-1

Dear Mr. Renfroe:

Enclosed for Renfroe-Brunner Development, LLC records you will find your copy, with original signatures, of the recently executed Compliance Order on Consent.

Please remember that this agreement is subject to a thirty-day public comment period (paragraph 27). Upon initiation, if the Division receives any comments during this period we will contact your office to discuss. Also, please be advised that the first page of the Order was changed in order to place the assigned Order Number on the final document.

If you have any questions, please don't hesitate to contact Michael Harris at (303) 692-3598 or by electronic mail at michael.harris@state.co.us.

Sincerely,

Kristi-Raye Beaudin, Legal Assistant
Water Quality Protection Section
WATER QUALITY CONTROL DIVISION

cc: Weld County Department of Public Health and Environment
MS-3 File

ec: Aaron Urdiales, EPA Region VIII
Doug Camrud, 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
WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT

NUMBER: SC-090319-1

IN THE MATTER OF: RENFROE-BRUNNER DEVELOPMENT, LLC
CDPS PERMIT NO. COR-030000
CERTIFICATION NO. COR-03A244
WELD COUNTY, COLORADO

The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under §25-8-605, C.R.S. of the Colorado Water Quality Control Act ("the Act") §§ 25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of Renfroe-Brunner Development, LLC ("Renfroe-Brunner"). The Division and Renfroe-Brunner may be referred to collectively as "the Parties."

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order are to resolve, without litigation, the alleged violations cited herein and in the Notice of Violation / Cease and Desist Order (Number: SO-08331-1) that the Division issued to Renfroe-Brunner on March 31, 2008, and the associated civil penalties.

DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602 and 605, C.R.S., the Division has made the following determinations regarding Renfroe-Brunner and Renfroe-Brunner's compliance with the Act, its implementing permit regulations, and Renfroe-Brunner's stormwater permit certification.
3. At all times relevant to the alleged violations identified herein, Renfroe-Brunner was a Colorado limited liability company in good standing and registered to conduct business in the State of Colorado.
4. Renfroe-Brunner 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).

5. On or about August 15, 2006, Renfroe-Brunner initiated construction activities to build a commercial development on property located at or near Colorado Parkway and U.S. Highway 85 in or near the Town of Eaton, Weld County, Colorado (the "Project").
6. On June 9, 2006, the Division received an application from Renfroe-Brunner for Project coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit"). During the times relevant to the alleged violations identified herein, a version of the Permit was in place that was effective from July 1, 2002 through June 30, 2007 (the "2002 Permit"). The current version of the Permit, which was signed on May 31, 2007, became effective on July 1, 2007 and remains in effect until June 30, 2012 (the "2007 Permit").
7. On June 13, 2006, the Division provided Renfroe-Brunner Certification Number COR-03A244 authorizing Renfroe-Brunner to discharge stormwater from the construction activities associated with the Project to Crow Creek and the South Platte River under the terms and conditions of the Permit. Certification Number COR-03A244 became effective June 13, 2006 and remains in effect until June 30, 2012 or until Renfroe-Brunner inactivates Permit coverage.
8. Crow Creek and the South Platte River are "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (101).
9. 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.
10. On September 27, 2006, a representative from the Weld County Department of Public Health & Environment (the "Inspector") conducted an on-site inspection of the Project on behalf of the Division, pursuant to the Division's authority under §25-8-306, C.R.S., to determine Renfroe-Brunner's compliance with the Water Quality Control Act and the Permit. During the inspection, the Inspector interviewed Project representatives, reviewed the Project's stormwater management system records, and performed a physical inspection of the Project.

Failure to Prepare Stormwater Management Plan

11. Pursuant to Part I. B. of the 2002 and 2007 Permits, Renfroe-Brunner is required to prepare and maintain a Stormwater Management Plan ("SWMP") 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 construction activity from the Project. 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 construction activity.
12. Pursuant to Part I. C. 4. a. of the 2002 Permit and Part I. D. 5. b. of the 2007 Permit, Renfroe-Brunner is required to retain the Project's SWMP onsite.

13. During the September 27, 2006 inspection, the Inspector requested to review the Project's SWMP, however, no SWMP was available.
14. Renfroe-Brunner's failure to prepare and maintain a SWMP for the Project constitutes violations of Part I. B. and Part I. C. 4. a. of the 2002 Permit.

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

15. Pursuant to Part I. B. 3. a. (1) of the 2002 Permit and Part I. C. 3. c. (1) of the 2007 Permit, Renfroe-Brunner is required to minimize erosion and sediment transport from the Project. The Permit specifies that structural site management practices may include, but are not limited to: straw bales, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, inlet protection, outlet protection, gabions, and temporary or permanent sediment basins.
16. Pursuant to Part I. B. 3. a. (2) of the 2002 Permit and Part I. C. 3. c. (2) of the 2007 Permit, Renfroe-Brunner is required to implement interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. The Permit specifies that site plans should ensure existing vegetation is preserved where possible and that disturbed areas are stabilized. The Permit specifies that non-structural practices may include, but are not limited to: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees and preservation of mature vegetation.
17. The Division has determined that Renfroe-Brunner failed to implement and/or maintain functional BMPs at the Project as described in paragraphs 15(a-d) below:
 - a. During the September 27, 2006 inspection, the Inspector observed disturbed lots located all along the paved interior road through the Project, near the intersection with Colorado Parkway. No BMPs were observed in place to stabilize the disturbed areas or to prevent sediment from discharging from these disturbed areas during storm events. Consequently, sediment discharge was observed in the street and gutter lines in this area of the Project.
 - b. During the September 27, 2006 inspection, the Inspector observed storm sewer inlets located along the paved interior road through the Project. No BMPs were observed in place to prevent sediment from the disturbed areas described in paragraph 15a above from discharging to the storm sewer during storm events.
 - c. On November 6, 2006, the Division received photographs from Renfroe-Brunner in response to the September 27, 2006 inspection, which documented the corrective actions implemented at the Project by Renfroe-Brunner. Inlet protection devices are visible in the photographs, however, no BMPs are evident to stabilize the various disturbed areas in the photographs or to prevent sediment from discharging from the disturbed areas during storm events. Therefore, the photographs revealed ongoing deficiencies in the implementation of BMPs at the Project and Renfroe-Brunner's understanding of effective stormwater management, which is achieved through a system of controls and not solely with the implementation of BMPs at the point of discharge.

- d. On April 30, 2007, the Inspector performed a visual evaluation of the Project from the public right-of-way. The Inspector observed disturbed areas located throughout the Project with no BMPs in place to stabilize the disturbed areas or to prevent sediment from discharging from these areas during storm events. Consequently, significant quantities of sediment and soil were observed in the streets.
18. Renfroe Brunner's failure to implement and maintain functional BMPs to protect stormwater quality during construction activities at the Project constitutes violations of Part I. B. 3. a. of the 2002 Permit.

Failure to Conduct Inspections of Stormwater Management System

19. Pursuant to Part I. C. 5. a. of the 2002 Permit and Part I. D. 6. a. of the 2007 Permit, Renfroe-Brunner is required to make a thorough inspection of the Project's stormwater management system at least every 14 days and after any precipitation or snowmelt event that causes surface erosion.
20. During the September 27, 2006 inspection, the Inspector reviewed the Project's stormwater management system records and identified that Renfroe-Brunner failed to perform inspections at the Project.
21. Renfroe-Brunner's failure to conduct inspections of the Project's stormwater management system constitutes violations of Part I. C. 5. a. of the 2002 Permit.

ORDER AND AGREEMENT

22. Based on the foregoing factual and legal determinations, pursuant to its authority under §25-8-602 and 605, C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein and in the Notice of Violation / Cease and Desist Order (Number: SO-080331-1), the Division orders Renfroe-Brunner to comply with all provisions of this Consent Order, including all requirements set forth below.
23. Renfroe-Brunner agrees to the terms and conditions of this Consent Order. Renfroe-Brunner agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§ 25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. Renfroe-Brunner also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Renfroe-Brunner against the Division:
 - a. The issuance of this Consent Order;
 - b. The factual and legal determinations made by the Division herein; and
 - c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.
24. Notwithstanding the above, Renfroe-Brunner does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Renfroe-Brunner pursuant to this Consent Order shall not constitute evidence of fault by Renfroe-Brunner with respect to the conditions of the Project.

CIVIL PENALTY

25. Based upon the application of the Division's Stormwater Civil Penalty Policy (January 25, 2007), and consistent with Departmental policies for violations of the Act, Renfroe-Brunner shall pay Fifty Thousand Dollars (\$50,000.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the Fifty Thousand Dollar (\$50,000.00) civil penalty for the above violation(s) and Renfroe-Brunner agrees to make the payment through three installment payments as described in the table below:

Payment	Amount	Due Date
1	\$17,000.00	Within thirty (30) calendar days of issuance of a Penalty Order by the Executive Director or his designee
2	\$16,500.00	April 1, 2010
3	\$16,500.00	April 1, 2011

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

SCOPE AND EFFECT OF CONSENT ORDER

26. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations alleged herein and in the March 31, 2008 Notice of Violation / Cease and Desist Order (Number: SO-080331-1).
27. This Consent Order is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and Renfroe-Brunner each reserve the right to withdraw consent to this Consent Order if comments received during the thirty-day period result in any proposed modification to the Consent Order.
28. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or his designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by Renfroe-Brunner, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.

29. Notwithstanding paragraph 24 above, the violations described in this Consent Order will constitute part of Renfroe-Brunner's compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against Renfroe-Brunner. Renfroe-Brunner agrees not to challenge the use of the cited violations for any such purpose.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

30. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to civil penalties for the specific instances of violations cited herein and in the March 31, 2008 Notice of Violation / Cease and Desist Order (Number: SO-080331-1). The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.
31. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
32. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.
33. Upon the effective date of this Consent Order, Renfroe-Brunner releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act specifically addressed herein.
34. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

NOTICES

35. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-CADM-B2
Attention: Michael Harris
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303.692.3598
E-mail: michael.harris@state.co.us

For Renfroe-Brunner:

Jack Renfroe
Renfroe-Brunner Development, LLC
6180 W. 10th Street
Greeley, CO 80634
Telephone: 970.352.0876

MODIFICATIONS

36. This Consent Order may be modified only upon mutual written agreement of the Parties.

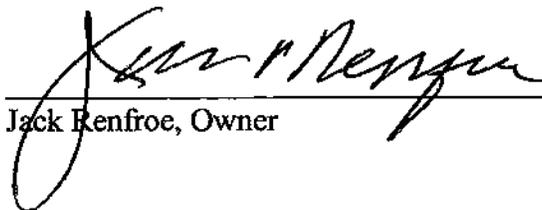
NOTICE OF EFFECTIVE DATE

37. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or his designee imposes the civil penalty. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

BINDING EFFECT AND AUTHORIZATION TO SIGN

38. This Consent Order is binding upon Renfroe-Brunner and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. Renfroe-Brunner agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

FOR RENFROE-BRUNNER DEVELOPMENT, LLC:



Jack Renfroe, Owner

Date: 3-9-09

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:



Date:

3/13/09

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

