



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

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**AMENDED NOTICE OF VIOLATION / CEASE AND DESIST ORDER      NUMBER: SO-060919-2**

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**IN THE MATTER OF:      VILLAGE HOMES OF COLORADO, INC.**  
**CDPS PERMIT NO. COR-030000**  
**CERTIFICATION NO. COR-035753**  
**EAGLE 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 alleged violations identified herein, Village Homes of Colorado, Inc. ("Village Homes") was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
2. Village Homes 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).

**Operating Without a Stormwater Permit**

3. Pursuant to §25-8-501(1), C.R.S. and its implementing permit regulation, 5CCR 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.
4. Pursuant to 5 CCR 1002-61, §61.3(2), stormwater discharges associated with industrial activity are point sources requiring Colorado Discharge Permit System ("CDPS") permit coverage.
5. Pursuant to 5 CCR 1002-61, §61.3(2)(e)(iii)(J), construction activity, including clearing, grading and excavation, that results in the disturbance of five or more acres of total land area is considered to be "industrial activity."

6. Pursuant to 5 CCR 1002-61, §61.4(3)(a)(i), facilities proposing a new discharge of stormwater associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of stormwater associated with that industrial activity. Persons engaged in construction activity shall submit applications at least 90 days before the date on which construction is to commence.
7. In or about January 2001, Village Homes initiated construction activities to build residential homes and townhouses on 61.9 acres of land within the Eagle Ranch Development, in or near the Town of Eagle, Eagle County, Colorado (the "Project").
8. Village Homes' construction activity constituted industrial activity that is subject to stormwater permitting requirements.
9. On September 29, 2003, Village Homes applied for Project coverage under the Colorado Discharge Permit System General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit").
10. On October 2, 2003, the Division provided Village Homes Certification Number COR-035753 authorizing Village Homes to discharge stormwater from the construction activities associated with the Project to Brush Creek, a tributary of the Eagle River, under the terms and conditions of the Permit. Certification Number COR-035753 became effective October 1, 2003 and remains in effect until June 30, 2007 or until Village Homes inactivates Permit coverage.
11. Brush Creek and the Eagle 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).
12. The Division records establish that Village Homes did not have any permits authorizing discharges of stormwater from the Project for the period of January 2001 through September 2003.
13. Village Homes' failure to obtain CDPS permit coverage for the Project, for the period of January 2001 through September 2003, constitutes violation(s) of §25-8-501(1) C.R.S., 5CCR 1002-61, §§61.3(1)(a), 61.3(2) and 61.4(3)(a)(i).

### **Failure to Implement and/or Maintain**

#### **Best Management Practices to Protect Stormwater Runoff**

14. 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.
15. Pursuant to Part I. B. 3. a. (1) of the Permit, Village Homes 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 Permit, Village Homes 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. Pursuant to Part I. B. of the Permit, Village Homes is required to implement the provisions of the Project's Stormwater Management Plan ("SWMP") as a condition of the Permit.
18. Pursuant to Part II. A. 10. of the Permit, Village Homes is required to properly maintain all systems of treatment and control which are installed or used to achieve compliance with the conditions of the Permit.
19. On April 14, 2006, a representative from Kleinfelder, Inc. (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 Village Homes' compliance with the Water Quality Control Act and the Permit. During the inspection, the Inspector interviewed Project representatives, conducted a review of the Project's stormwater management records, and performed a physical inspection of the Project.
20. The Division has determined that Village Homes failed to implement and/or maintain adequate Best Management Practices ("BMPs") at the Project as described in paragraphs 18(a-g) below:
  - a. During the April 14, 2006 inspection, the Inspector observed a disturbed area between Hockett Street and Ewing Street at the Project. Vehicles had tracked sediment from the disturbed area onto the paved road adjacent to the construction disturbance. No BMPs were observed in place to prevent sediment from discharging from the disturbed area to the impervious road and traveling toward the storm sewer. Additionally, the Project's SWMP states, "Vehicle tracking pads shall be installed where vehicles transition between the pavement and the soil." However, no vehicle tracking pad was observed in place.
  - b. During the April 14, 2006 inspection, the Inspector observed a storm drain inlet located at or near the intersection of Greenhorn Avenue and Short Street at the Project. The Project's SWMP states, "All storm drains shall be equipped with inlet protection." However, no inlet protection device was observed in place.
  - c. During the April 14, 2006 inspection, the Inspector observed straw wattles in place along Longview Street. The straw wattles were not being properly installed/maintained as gaps were observed under and between the wattles. Thus, the straw wattles were not acting as functional BMPs to control sediment.
  - d. During the April 14, 2006 inspection, the Inspector observed silt fence in place west of Greenhorn Avenue at the Project. The silt fence had not been properly installed as gaps were observed under the fence. Thus, the silt fence was not acting as a functional BMP to control sediment.
  - e. During the April 14, 2006 inspection, the Inspector observed silt fence in place west of the intersection of Greenhorn Avenue and Longview Street at the Project. The silt fence was not being properly maintained as the fence had broken stakes and was falling over. Thus, the silt fence was not acting as a functional BMP to control sediment.
  - f. During the April 14, 2006 inspection, the Inspector observed silt fence in place near the intersection of Ewing Street and Founders Avenue at the Project. The silt fence had not been properly installed/maintained as gaps were observed under the fence. Thus, the silt fence was not acting as a functional BMP to control sediment.
  - g. During the April 14, 2006 inspection, the Inspector observed a storm drain inlet on the corner of Hockett Street and Sylvan Lake Road at the Project. The inlet was being protected by a rock sock, however no other BMPs were observed in place to prevent erosion of the disturbed soil surrounding the inlet, nor to prevent sediment from traveling toward the storm sewer inlet. Consequently, the inlet protection in place would be easily overwhelmed during storm events.

21. Village Homes' failure to implement and maintain functional BMPs to protect stormwater quality during construction activities at the Project constitutes violations of Part I. B., Part I. B. 3. a., and Part II. A. 10. of the Permit.

### **NOTICE OF VIOLATION**

Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that Village Homes has violated the following sections of the Colorado Water Quality Control Act, its implementing permit regulations, 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."

**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..."

**5 CCR 1002-61, §61.3(2)**, which states in part, "...discharges of stormwater as set forth in 61.3(2) and 61.4(3) are point sources requiring a permit," and "The following discharges composed entirely of stormwater are required to obtain a permit. (ii) A stormwater discharge associated with industrial activity."

**5 CCR 1002-61, §61.4(3)(a)(i)**, which states in part, "Facilities proposing a new discharge of stormwater associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of stormwater associated with that industrial activity. Facilities described under sections 61.3(2)(e)(iii)(J) and 61.3(2)(f)(ii)(A) shall submit applications at least 90 days before the date on which construction is to commence."

**Part I. B. of the Permit**, which states in part, "Construction operations must implement the provisions of the SWMP required under this part as a condition of this permit."

**Part I. B. 3. a. of the Permit**, which outlines in part, that BMPs for Stormwater Pollution Prevention shall address erosion and sediment controls, including, "structural site management practices which will minimize erosion and sediment transport," and "interim and permanent stabilization practices, including site specific scheduling of the implementation of the practices. Site plans should ensure that existing vegetation is preserved where possible and that disturbed areas are stabilized."

**Part II. A. 10. of the Permit**, which states in part, "The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit."

### **CEASE AND DESIST ORDER**

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

22. 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 Village Homes to comply with the following specific terms and conditions of this Order:

23. Village Homes shall immediately implement measures to ensure that adequate BMPs are in place to control stormwater discharges from the Project.
24. Within thirty (30) calendar days of receipt of this Order, Village Homes shall submit a written certification to the Division stating that the Project's SWMP is fully implemented and that adequate BMPs are in place throughout the Project.
25. Within thirty (30) calendar days of receipt of this Order, Village Homes shall submit to the Division a detailed written statement outlining the standard procedures Village Homes will undertake to ensure that applicable CDPS permits are obtained and adequate stormwater management systems are fully implemented at its Colorado construction sites.

### **NOTICES AND SUBMITTALS**

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, Village Homes 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 and Data Management Section  
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, 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.

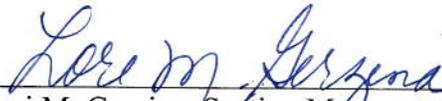
### **EFFECT OF ORDER**

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 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 12<sup>th</sup> day of February 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