

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

4300 Cherry Creek Dr. S. Laboratory Services Division
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Located in Glendale, Colorado
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Colorado Department
of Public Health
and Environment

March 31, 2009

Mr. Peter Coulter and
Adams Import Auto Wrecking, LLC
2060 W. Radcliff Avenue
Sheridan, CO 80110

Certified Mail Number: 7007 0220 0001 0160 7331

RE: Order for Civil Penalty, Number: SP-090324-1

Dear Mr. Peter Coulter:

Peter Coulter and Adams Import Auto Wrecking, LLC is hereby served with the enclosed Order for Civil Penalty ("Penalty Order"). This Penalty Order 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 §25-8-608(2) of the *Colorado Revised Statutes*. Payment of the imposed civil penalty should be made in accordance with the methods referenced in the Penalty Order and [*Notice of Violation/ Cease and Desist Order Number: SO-080226-1*].

If you have any questions regarding the Penalty Order or the payment method, please do not hesitate to contact Michael Harris of this office at (303) 692-3598 or by electronic mail at michael.harris@state.co.us.

Sincerely,

Kristi-Ray Beaudin, Legal Assistant
Compliance Assurance and Data Management Section
WATER QUALITY CONTROL DIVISION

cc: Tri-County Health Department
MS-3 File

ec: Aaron Urdiales, EPA Region VIII
Paul Kim, Engineering Section, CDPHE
Gary Beers, Permits Unit, CDPHE
Dick Parachini, Watershed Program, CDPHE
Carolyn Schachterle, OPA

Enclosure(s)



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

ORDER FOR CIVIL PENALTY

NUMBER: SP-090324-1

IN THE MATTER OF: **PETER COULTER and**
 ADAMS IMPORT AUTO WRECKING, LLC
 ARAPAHOE COUNTY, COLORADO

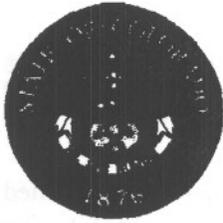
This matter having come to my attention as the Designee of the Executive Director of the Colorado Department of Public Health and Environment, upon petition for imposition of a civil penalty by the Water Quality Control Division's Compliance Assurance and Data Management Section and pursuant to §25-8-608 C.R.S., I hereby impose a civil penalty in the amount of Ninety Six Thousand Nine Hundred Seventy One Dollars (\$96,971.00) against Peter Coulter and Adams Import Auto Wrecking, LLC for the violations cited in the Notice of Violation / Cease and Desist Order, Number SO-080226-1 (the "NOV/CDO"), that the Water Quality Control Division jointly issued to Peter Coulter and Adams Import Auto Wrecking, LLC on February 26, 2008. A copy of the NOV/CDO is attached hereto as Exhibit A and is incorporated herein by reference. The civil penalty was determined in accordance with the procedures outlined in the Division's Stormwater Civil Penalty Policy (January 25, 2007). A copy of the civil penalty calculation is attached hereto as Exhibit B and is incorporated herein by reference. The civil penalty shall be paid within thirty (30) calendar days of the date of this Order for Civil Penalty. 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

Dated this 31st day of March, 2009.

Steven H. Gunderson, Director
Water Quality Control Division
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Exhibit A



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

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: SO-080226-1

IN THE MATTER OF: PETER COULTER and
ADAMS IMPORT AUTO WRECKING, LLC
ARAPAHOE 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 times relevant to the alleged violations identified herein, Peter Coulter was an individual conducting business in the State of Colorado as a sole proprietorship.
2. Peter Coulter 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. At all times relevant to the alleged violations identified herein, Adams Import Auto Wrecking, LLC ("Adams Import") was a Colorado limited liability company registered to conduct business in the State of Colorado.
4. Adams Import 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

5. 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.
6. Pursuant to 5 CCR 1002-61, §61.3(2)(e), stormwater discharges associated with industrial activity are point sources requiring Colorado Discharge Permit System ("CDPS") permit coverage.

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."

REQUIRED CORRECTIVE ACTION

Based upon the foregoing factual and legal determinations and pursuant to §25-8-602 and §25-8-605, C.R.S., Peter Coulter and Adams Import are hereby ordered to:

14. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 through 25-8-703, C.R.S. and the implementing regulations promulgated thereto.

Furthermore, the Division hereby orders Peter Coulter and Adams Import to comply with the following specific terms and conditions of this Order:

15. Within thirty (30) calendar days of receipt of this Order, Peter Coulter and/or Adams Import shall prepare and submit to the Division an application for Facility coverage under the Permit. *(Note: Application materials are enclosed for your reference. As stated in the application and Permit, a Stormwater Management Plan for the Facility must be developed and submitted with the completed application form.)*

16. Within thirty (30) calendar days of receipt of this Order, Peter Coulter and Adams Import shall submit to the Division a detailed written statement outlining the standard procedures Peter Coulter and Adams Import will undertake to ensure that coverage under all applicable CDPS permits are obtained and adequate stormwater management systems are fully implemented at his and its Colorado industrial sites.

17. Within sixty (60) calendar days of receipt of this Order, Peter Coulter and Adams Import shall submit photographs to the Division documenting the current site conditions and associated BMPs implemented at the Facility.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, Peter Coulter and Adams Import 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: Michael Harris
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
michael.harris@state.co.us

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.

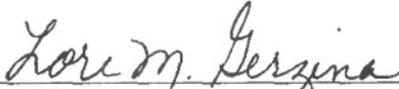
EFFECT OF ORDER

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 26th day of February, 2008.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



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

Exhibit B

STORMWATER PENALTY COMPUTATION WORKSHEET

System Name: Peter Coulter & Adams Import Auto Wrecking, LLC	Permit Number: COR-060184
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Beneficial Use Classification: Upper South Platte River Segment 14 – <i>Aq Life Warm 1</i> , Recreation 1a, Water Supply, Agriculture	Date of NOV/CDO: February 26, 2008 Number: SO-080226-1
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Type of Facility: Recycling	Disturbed Acres: N/A Number of Employees: 0-5
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Part I – Base Penalty Calculation

A. Potential Damage Component

	Violation Type	Adjustment	Amount in Dollars
Line 1	Conducting Covered Activity Without A Stormwater Permit	Moderate = +75% of \$500	\$875.00
	<i>Adjustment Justification:</i> The Division conducted an inspection of the site and identified that the facility was not covered under a stormwater permit. The facility is located approximately 1/4 of a mile from the South Platte River and the inspector identified a near complete lack of stormwater management controls at the site. Therefore, the Division conservatively assigns a moderate potential harm to health/environment for the purpose of this penalty calculation.		
Line 2	Failure to Prepare Stormwater Management Plan (SWMP)		\$0.00
	<i>Adjustment Justification:</i>		
Line 3	Deficient Stormwater Management Plan (SWMP)		\$0.00
	<i>Adjustment Justification:</i>		
Line 4	Failure to Install, Maintain or Properly Select Best Management Practices		\$0.00
	<i>Adjustment Justification:</i>		
Line 5	Failure to Perform Inspections of Stormwater Management System		\$0.00
	<i>Adjustment Justification:</i>		
Line 6	Failure to Submit Required/ Requested Reports (Annual Reports, Permit Compliance Schedule Items, Etc.)		\$0.00
	<i>Adjustment Justification:</i>		
Line 7	Failure to Maintain Required Records		\$0.00
	<i>Adjustment Justification:</i>		

	Violation Type	Adjustment	Amount in Dollars
Line 8	Pollution, Contamination or Degradation of State Waters <i>Adjustment Justification:</i>		\$0.00
Line 9	Other Administrative Violations <i>Adjustment Justification:</i>		\$0.00
Line 10	Potential Damage Total (Sum of Lines 1 through 9)	<i>(Not to exceed \$6000/day)</i>	\$875.00

B. Fault Component

		Amount in Dollars
Line 11	Fault: Category 3 <i>Justification:</i> Peter Coulter/Adams Import was first notified by the Division on June 23, 2005 that the facility required stormwater permit coverage. As a result, Adams Import applied for and obtained stormwater permit coverage for the facility. On August 14, 2006, Mr. Coulter and Adams Import were notified by letter that the permit would expire on December 31, 2006, and that the facility would need to reapply for permit coverage. On October 19, 2006, Mr. Coulter and Adams Import were notified again by letter that the permit would expire and that he must take action to reapply. On January 4, 2007, the Division visited the site at Mr. Coulter's request, reconfirmed that the facility was required to be covered under the stormwater permit, and explained the reasons to Mr. Coulter. On January 11, 2007, the Division sent Mr. Coulter and Adams Import a compliance advisory outlining Mr. Coulter's and Adams Import's obligation to obtain and maintain stormwater permit coverage for the facility, including the reasons why the permit was required. On January 25, 2007 and February 20, 2007 the Division spoke with Mr. Coulter by telephone about his and Adams Import's obligation to obtain stormwater permit coverage for the facility. Therefore, Peter Coulter and Adams Import were aware of his/its obligations under the Water Quality Control Act and the circumstances that led to the violation, yet failed to take the necessary steps to prevent it. Therefore, the Division has assigned a category-3 fault. The Division has conservatively chosen the midpoint of the category three range, as the Division has no additional information to support adjustments from this value.	<i>(Not to exceed \$3000/day)</i> \$500.00

C. History Component

		Amount in Dollars
Line 12	History: Category 5 <i>Justification:</i> Peter Coulter/Adams Import were issued a compliance advisory in June 2005 for operating without a stormwater permit and another compliance advisory in December 2006 for a failure to submit a 2006 annual report. Therefore, the Division has assigned a category-5 history.	<i>(Not to exceed \$1000/day)</i> \$40.00

Part II – Determination of Days of Violation

		Days of Violation
Line 13	Total Days of Violation	532
	<p><i>Justification:</i></p> <p>Conducting Covered Activity Without A Stormwater Permit: Peter Coulter's/Adams Import's permit coverage for the facility expired on December 31, 2006. Although the Division sent two notification letters prior to permit expiration, performed a compliance assistance visit four days after permit expiration, sent a compliance advisory letter, spoke with Mr. Coulter at least two times by telephone, offered Adam's Import an expedited settlement on November 8, 2007 contingent on permit coverage being obtained for facility, and issued Peter Coulter/Adam's Import a Notice of Violation/Cease and Desist Order on February 27, 2008, Peter Coulter/Adam's Import did not obtain permit coverage for the facility until June 17, 2008. Therefore, 532 days of violation occurred.</p>	

Part III – Determination of Multi-Day Penalty Amount

		Amount in Dollars																												
Line 14	Multi-Day Penalty Amount	\$126,925.50																												
	<p><i>Calculations:</i></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Day 1</td> <td style="width: 30%;">(\$1,415.00)</td> <td style="width: 10%; text-align: center;">=</td> <td style="width: 30%;">\$ 1,415.00</td> </tr> <tr> <td>+ Days 2-10</td> <td>(\$1,415.00) X (9 days) X (50%)</td> <td style="text-align: center;">=</td> <td>\$ 6,367.50</td> </tr> <tr> <td>+ Days 11-50</td> <td>(\$1,415.00) X (40 days) X (40%)</td> <td style="text-align: center;">=</td> <td>\$ 22,640.00</td> </tr> <tr> <td>+ Days 51-100</td> <td>(\$1,415.00) X (50 days) X (30%)</td> <td style="text-align: center;">=</td> <td>\$ 21,225.00</td> </tr> <tr> <td>+ Days 101-200</td> <td>(\$1,415.00) X (100 days) X (20%)</td> <td style="text-align: center;">=</td> <td>\$ 28,300.00</td> </tr> <tr> <td>+ Days 201-532</td> <td>(\$1,415.00) X (332 days) X (10%)</td> <td style="text-align: center;">=</td> <td>\$ 46,978.00</td> </tr> <tr> <td></td> <td style="text-align: right;"><u>Multi-Day Base Gravity Penalty</u></td> <td style="text-align: center;">=</td> <td style="text-align: right;"><u>\$126,925.50</u></td> </tr> </table>		Day 1	(\$1,415.00)	=	\$ 1,415.00	+ Days 2-10	(\$1,415.00) X (9 days) X (50%)	=	\$ 6,367.50	+ Days 11-50	(\$1,415.00) X (40 days) X (40%)	=	\$ 22,640.00	+ Days 51-100	(\$1,415.00) X (50 days) X (30%)	=	\$ 21,225.00	+ Days 101-200	(\$1,415.00) X (100 days) X (20%)	=	\$ 28,300.00	+ Days 201-532	(\$1,415.00) X (332 days) X (10%)	=	\$ 46,978.00		<u>Multi-Day Base Gravity Penalty</u>	=	<u>\$126,925.50</u>
Day 1	(\$1,415.00)	=	\$ 1,415.00																											
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	<u>Multi-Day Base Gravity Penalty</u>	=	<u>\$126,925.50</u>																											

Part IV – Base Penalty Total

		Amount in Dollars
Line 15	Base Penalty = Potential Damage + Fault + History (Sum of Line 10 + Line 11 + Line 12, OR Line 14)	\$126,925.50

Part V – Application of Aggravating or Mitigating Factors

	Aggravating / Mitigating Factors	% Base Penalty Increase or Decrease	Amount in Dollars
Line 16	Factor A: Voluntary and Complete Disclosure of Violations <i>Justification:</i>	0%	\$0.00
Line 17	Factor B: Full and Prompt Cooperation <i>Justification:</i>	0%	\$0.00
Line 18	Factor C: Environmental Compliance Program <i>Justification:</i>	0%	\$0.00
Line 19	Factor D: Intentional, Reckless or Negligent Violations <i>Justification:</i>	0%	\$0.00
Line 20	Factor E: Other Aggravating or Mitigating Circumstances <i>Justification:</i> Although Peter Coulter/Adams Import violated the Water Quality Control Act for a very significant period of time, the Division did not identify any pollutant discharges that had left the site. Therefore, the Division has conservatively chosen to reduce the base penalty by 25% due to a lack of pollutant discharges identified offsite.	– 25%	– \$31,731.50
Line 21	Sum of Line 16 through Line 20	– 25%	– \$31,731.50
Line 22	Adjusted Base Penalty (Sum of Line 15 + Line 21)		\$95,194.00

Part VI– Economic Benefit Consideration

		Amount in Dollars
Line 23	Economic Benefit	\$1,777.00
	<i>Justification:</i>	
	<p>Peter Coulter/Adams Import avoided the cost of obtaining stormwater permit coverage for the facility. The yearly fee for an industrial stormwater permit during the time period in question was \$185. Therefore, Peter Coulter/Adams Import realized an economic benefit of \$277.00 from the avoided costs of not obtaining permit coverage.</p> <p>By virtue of not obtaining coverage under the stormwater permit, Peter Coulter/Adams Import avoided the costs of revising and updating the facility's Stormwater Management Plan (SWMP) to meet the requirements of the 2007 general permit for recycling. The Division conservatively estimates the cost of revising a SWMP for a facility of this type, including consulting and reprinting fees, to be \$1,000. Therefore, Peter Coulter/Adams Import realized an economic benefit of \$1000.00 from the avoided costs of not revising and updating the facility's SWMP.</p>	

By virtue of not obtaining coverage under the stormwater permit, Peter Coulter/Adams Import avoided the costs associated with monitoring the discharge from the facility (including sampling and laboratory analysis) and the costs associated with the preparation and submittal of the permit-required annual report. The Division conservatively estimates the costs associated with sampling, laboratory analysis and the development and submittal of an annual report to be \$500. Therefore, Peter Coulter/Adams Import realized an economic benefit of **\$500.00** from the avoided costs of not monitoring the discharge and preparing an annual report.

(Note: Time value of money for time periods in question was predicted to be insignificant and thus BEN runs were not performed)

Part VII – Violation Penalty Total

		Amount in Dollars
Line 24	Civil Penalty: (Sum Line 22 + Line 23)	\$96,971.00

Part VIII – Ability to Pay Adjustment

		Amount in Dollars
Line 25	Ability to Pay Reduction: <i>Justification:</i>	\$0.00

Part IX – Final Adjusted Penalty

		Amount in Dollars
Line 26	Total Civil Penalty: (Sum Line 24 + Line 25)	\$96,971.00