

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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Located in Glendale, Colorado

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Colorado Department
of Public Health
and Environment

July 20, 2009

Thomas M. Collins, Registered Agent
T & S Development, LLC
7179 S. Heritage North
Centennial, CO 80111

Certified Mail Number: 7005 1820 0000 3208 0879

RE: Order for Civil Penalty, Number: SP-090720-3

Dear Mr. Collins:

T & S Development, 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.

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

Sincerely,

Michael Harris
Enforcement Unit
WATER QUALITY CONTROL DIVISION

cc: Tri County Health Department

ec: Aaron Urdiales, EPA Region VIII
Kelsey Baertschi, Engineering Section, CDPHE
Gary Beers, Permits Section, CDPHE
Nathan Moore, Permits Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Carolyn Schachterle, OPA, CDPHE

Enclosure(s)



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

ORDER FOR CIVIL PENALTY

NUMBER: SP-090720-3

IN THE MATTER OF: T & S DEVELOPMENT, LLC
CDPS PERMIT NO. COR-030000
CERTIFICATION NO. COR-039342
ADAMS COUNTY, COLORADO

Pursuant to the authority vested in the Colorado Department of Public Health & Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority is implemented through the Department's Water Quality Control Division (the "Division"), the Division hereby makes the following findings and issues the following Order for Civil Penalty in accordance with §25-8-608, C.R.S. and 5 CCR 1002-21, §21.12. The Department's Executive Director has delegated the authority to determine civil penalties in this matter to the Director of the Water Quality Control Division.

GENERAL FINDINGS

1. Pursuant to §25-8-608(1), C.R.S., any person who violates the Colorado Water Quality Control Act (the "Act"), or any permit issued under the Act, shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs.
2. On July 17, 2008, the Division issued T & S Development, LLC ("T & S") a Notice of Violation/Cease and Desist Order (the "NOV/CDO"), which included findings that T & S violated the Colorado Discharge Permit System General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity. A copy of the NOV/CDO is attached hereto as Exhibit A and is incorporated herein by reference.
3. Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11, T & S was required to submit an answer to each alleged violation contained in the NOV/CDO and was allowed thirty (30) calendar days to file a request for a public hearing to determine the validity of the NOV/CDO. As further outlined in the NOV/CDO, absent a request for a hearing, the validity of the factual allegations and the NOV/CDO shall be deemed established in any subsequent Department proceeding.
4. The Division did not receive a request for a hearing from T & S nor the required answer to the NOV/CDO.

5. T & S's forfeiture of a hearing request constitutes a waiver of its right to a hearing, including a waiver of its right to contest the findings and conclusions set forth in the NOV/CDO. Since T & S has so waived its right to contest those findings and conclusions, the Director hereby accepts those findings and conclusions as true and enters the following order.

ORDER FOR CIVIL PENALTY

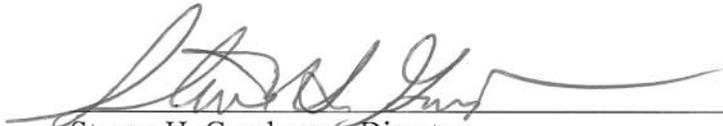
6. Based upon the facts described in the NOV/CDO, the Division has determined that a civil penalty is appropriate and warranted in this matter. Therefore, the Division hereby imposes a civil penalty in the amount of Thirty Eight Thousand Eight Hundred Fifty Seven Dollars (\$38,857.00) against T & S for the violations cited in the NOV/CDO. 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

REQUEST FOR APPEAL

7. You may appeal this Order for Civil Penalty pursuant to 5 CCR 1002, §21.12.

Issued at Denver, Colorado, this 20th day of July 2009.



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



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

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: SO-080717-1

**IN THE MATTER OF: T & S DEVELOPMENT, LLC
 CDPS PERMIT NO. COR-030000
 CERTIFICATION NO. COR-039342
 ADAMS 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, T & S Development, LLC ("T & S") was a Colorado limited liability company in good standing and registered to conduct business in the State of Colorado.
2. T & S 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. On or about March 22, 2006, T & S initiated construction activities to build a residential development on 6.5 acres of property located at or near 1701 W. 84th Avenue, in the City of Federal Heights, Adams County, Colorado (the "Project").
4. On December 27, 2005, the Division received an application from T & S for Project coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit").
5. On January 3, 2006, the Division provided T & S Certification Number COR-039342 authorizing T & S to discharge stormwater from the construction activities associated with the Project to the South Platte River under the terms and conditions of the Permit. Certification Number COR-039342 became effective January 3, 2006, was renewed on July 1, 2007, and remains in effect until June 30, 2012 or until T & S inactivates Permit coverage.

Exhibit A

6. The South Platte 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).
7. 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.
8. On November 2, 2006, a representative from PG Environmental, LLC (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 T & S'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.

Deficient and/or Incomplete Stormwater Management Plan

9. Pursuant to Part I. B. of the Permit, T & S 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.
10. Pursuant to Part I. B. of the Permit, the Project's SWMP shall include, at a minimum, the following items:
 - a. Site Description - Each plan shall provide a description of the following:
 - i. A description of the construction activity.
 - ii. The proposed sequence for major activities.
 - iii. Estimates of the total area of the site and the area of the site that is expected to undergo clearing, excavation or grading.
 - iv. An estimate of the runoff coefficient of the site before and after construction activities are completed (2002 Permit) and any existing data describing the soil, soil erosion potential or the quality of any discharge from the site.
 - v. A description of the existing vegetation at the site and an estimate of the percent vegetative ground cover.
 - vi. The location and description of any other potential pollution sources, such as vehicle fueling, storage of fertilizers or chemicals, etc.
 - vii. The location and description of any anticipated non-stormwater components of the discharge, such as springs and landscape irrigation return flow (2002 Permit) or allowable sources of non-stormwater discharge at the site, e.g., uncontaminated springs, landscape irrigation return flow, construction dewatering, and concrete washout (2007 Permit).
 - viii. The name of the receiving water(s) and the size, type and location of any outfall or, if the discharge is to a municipal separate storm sewer, the name of that system, the location of the storm sewer discharge, and the ultimate receiving water(s).

Exhibit A

- b. Site Map - Each plan shall provide a generalized site map or maps which indicate:
 - i. Construction site boundaries.
 - ii. All areas of soil disturbance.
 - iii. Areas of cut and fill.
 - iv. Areas used for storage of building materials, soils or wastes.
 - v. Location of any dedicated asphalt or concrete batch plants.
 - vi. Location of major erosion control facilities or structures.
 - vii. Springs, streams, wetlands and other surface waters.
 - viii. Boundaries of 100-year flood plains, if determined.
 - c. BMPs for Stormwater Pollution Prevention - The plan shall include a narrative description of appropriate controls and measures that will be implemented before and during construction activities at the facility, including:
 - i. Erosion and Sediment Controls – A description of structural site management controls (Structural Practices) which will minimize erosion and sediment transport and a description of interim and permanent stabilization practices (Non-Structural Practices), including the site-specific scheduling of the implementation of the practices.
 - ii. Phased BMP Implementation – The SWMP shall clearly describe the relationship between the phases of construction and the implementation and maintenance of BMPs
 - iii. Materials Handling and Spill Prevention - The SWMP shall identify any procedures or significant materials handled at the site that could contribute pollutants to runoff.
 - iv. Dedicated Concrete or Asphalt Batch Plants – The SWMP shall clearly describe and locate BMPs to control stormwater pollution from dedicated concrete batch plants or dedicated asphalt batch plants.
 - d. Final Stabilization and Long-Term Stormwater Management - Description of the measures used to achieve final stabilization and measures to control pollutants in stormwater discharges that will occur after construction operations have been completed.
 - e. Other Controls - Description of other measures to control pollutants in stormwater discharges, including plans for waste disposal and limiting off-site soil tracking.
 - f. Inspection and Maintenance - Description of procedures to inspect and maintain in good and effective operating condition the vegetation, erosion and sediment control measures and other protective measures identified in the SWMP.
11. The Division has determined that T & S failed to prepare and maintain a complete and accurate SWMP for the Project as described in paragraphs 11(a-c) below:
- a. During the November 2, 2006 inspection, the Inspector reviewed the Project's SWMP and identified that the SWMP did not include the location of all potential pollutant sources, including the waste disposal hopper and the chemical storage area near the trailer at the Project.
 - b. During the November 2, 2006 inspection, the Inspector reviewed the Project's SWMP and identified that the SWMP did not include the name of receiving waters and the size, type and location of any outfalls.

Exhibit A

- c. During the November 2, 2006 inspection, the Inspector reviewed the Project's SWMP and identified that the site map did not include all areas of soil disturbance at the Project.
12. T & S's failure to prepare and maintain a complete and accurate SWMP for the Project constitutes violations of Part I. B. of the Permit.

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

13. Pursuant to Part I. B. 3. a. (1) of the Permit, T & S 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.
14. Pursuant to Part I. B. 3. a. (2) of the Permit, T & S 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.
15. The Division has determined that T & S failed to implement and/or maintain functional BMPs at the Project as described in paragraphs 15(a-e) below:
 - a. During the November 2, 2006 inspection, the Inspector observed a flood control pond near the northeast perimeter of the Project. The SWMP stated that an outlet control structure would be installed to modify the pond for use as a construction BMP. However, no outlet control structure was installed. Therefore, the pond was not being operated to function as a BMP.
 - b. During the November 2, 2006 inspection, the Inspector observed soil stockpiles located near the northeast perimeter of the Project. No BMPs were in place to stabilize the disturbed soil or to prevent discharges of sediment from the stockpiles.
 - c. During the November 2, 2006 inspection, the Inspector observed soil stockpiles located in the southwest portion of the Project. No BMPs were in place to stabilize the disturbed soil or to prevent discharges of sediment from the stockpiles.
 - d. During the November 2, 2006 inspection, the Inspector observed disturbed areas spanning the entire Project. No erosion control BMPs had been implemented on any of the disturbed areas at the Project. Consequently, sediment accumulation was observed within the down gradient culverts at the Project and sediment deposition was observed beyond the culvert outlet for the flood control pond.

- e. During the November 2, 2006 inspection, the Inspector observed silt fence in place surrounding some drainage culverts at the Project. However, silt fence is not designed to be utilized in areas of concentrated flow, such as culvert inlets and outlets. Therefore, the silt fence was not acting as a functional BMP to prevent sediment discharges.
16. T & S'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 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 T & S has violated the following sections of the Permit:

Part I. B. of the Permit, which states in part, "The SWMP shall be prepared in accordance with good engineering, hydrologic and pollution control practices. The main objective of the plan shall be to identify Best Management Practices (BMPs) which when implemented will meet the terms and conditions of this permit. The plan shall identify potential sources of pollution (including sediment) which may be reasonably expected to affect the quality of stormwater discharges associated with construction activity from the facility. In addition, the plan shall describe and ensure the implementation of BMPs which will be used to reduce the pollutants in stormwater discharges associated with construction activity. 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."

REQUIRED CORRECTIVE ACTION

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

17. 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 T & S to comply with the following specific terms and conditions of this Order:

18. T & S shall immediately evaluate the Project's SWMP and implement necessary measures to ensure that the SWMP contains all of the elements required by the current version of the permit and is effective in managing stormwater and pollutant discharges from the Project. Within thirty (30) calendar days of receipt of this Order, T & S shall submit to the Division a written certification stating that a complete, effective and up-to-date SWMP has been fully developed and implemented at the Project.

Exhibit A

19. T & S shall immediately implement necessary measures to ensure that adequate BMPs are in place to control stormwater and pollutant discharges from the Project. Within thirty (30) calendar days of receipt of this Order, T & S shall evaluate and modify all existing BMPs at the Project to ensure the BMPs meet the design requirements specified in the Project's complete and up-to-date SWMP. Within forty-five (45) calendar days of receipt of this Order, T & S shall submit photographs to the Division documenting the current conditions and the associated BMPs implemented at the Project.
20. Within thirty (30) calendar days of receipt of this Order, T & S shall submit to the Division a detailed written statement outlining the standard procedures T & S will undertake to ensure that functional 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, T & S 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

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.

Exhibit A

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.

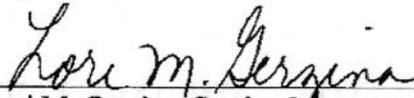
EFFECT OF ORDER

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 17th day of July, 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

STORMWATER PENALTY COMPUTATION WORKSHEET

System Name: T & S Development, LLC	Permit Number: COR-039342
Beneficial Use Classification: Upper South Platte River Segment 16c – <i>Aq Life Warm 2</i> , Recreation 1a, Agriculture	Date of NOV/CDO: July 17, 2008 Number: SO-080717-1
Type of Facility: Construction	Disturbed Acres: 6.5 Number of Employees: N/A

Part I – Base Penalty Calculation

A. Potential Damage Component

	Violation Type	Adjustment	Amount in Dollars
Line 1	Conducting Covered Activity Without A Stormwater Permit		\$0.00
	<i>Adjustment Justification:</i>		
Line 2	Failure to Prepare Stormwater Management Plan (SWMP)		\$0.00
	<i>Adjustment Justification:</i>		
Line 3	Deficient Stormwater Management Plan (SWMP)	Moderate = +25% of \$100	\$125.00
	<i>Adjustment Justification:</i> The Division reviewed the SWMP and identified deficiencies in the development of the plan, including a failure to identify all areas of soil disturbance, all areas of potential pollutants, and the locations of outfalls that lead to receiving waters. The identification and location of pollution sources and conveyances to state waters are critical components to a functional SWMP. It is extremely difficult, if not impossible, to protect water quality without a full understanding of all pollutants on site and the direction and flow pattern of stormwater from the site. The number of counts of violation was relatively average. The Division believes the SWMP violations directly contributed to the BMP violations observed onsite. Additionally, the site is located in close proximity to state waters and to storm drains that gravity feed directly into state waters. However, the Division conservatively assigns a moderate potential harm to health/environment.		
Line 4	Failure to Install, Maintain or Properly Select Best Management Practices	Moderate = +25% of \$500	\$625.00
	<i>Adjustment Justification:</i> The Division conducted an inspection of the project and identified a failure to implement and maintain BMPs at the site, including a complete lack of stabilization BMPs implemented anywhere at the project. In relation to the overall size of the project, the number of counts of violation was relatively many. Additionally, the site is located in close proximity to state waters and to storm drains that gravity feed directly into state waters. However, the Division conservatively assigns a moderate potential harm to health/environment.		
Line 5	Failure to Perform Inspections of Stormwater Management System		\$0.00
	<i>Adjustment Justification:</i>		

Exhibit B

	Violation Type	Adjustment	Amount in Dollars
Line 6	Failure to Submit Required/ Requested Reports (Annual Reports, Permit Compliance Schedule Items, Etc.) <i>Adjustment Justification:</i>		\$0.00
Line 7	Failure to Maintain Required Records <i>Adjustment Justification:</i>		\$0.00
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>	\$750.00

B. Fault Component

		Amount in Dollars
Line 11	Fault: Category 2 <i>Justification:</i> T & S applied for and obtained a stormwater permit and, at the very least, should have been aware of its obligations under the permit and the circumstances that lead to the violations. Therefore, the Division conservatively assigns a category-2 fault. The Division has chosen the midpoint of the category two range, as the Division has no additional information to support adjustments from this value.	<i>(Not to exceed \$3000/day)</i> \$300.00

C. History Component

		Amount in Dollars
Line 12	History: None <i>Justification:</i> T & S has no prior violation history with the Division.	<i>(Not to exceed \$1000/day)</i> \$0.00

Part II – Determination of Days of Violation

		Days of Violation
Line 13	Total Days of Violation	304
<p><i>Justification:</i></p> <p>Deficient Stormwater Management Plan (SWMP): T & S obtained permit coverage on January 3, 2006, at which time it had certified that a complete and accurate SWMP had been developed for the project. The Division reviewed the SWMP on November 2, 2006 and identified that it was deficient. The Division believes the SWMP was deficient from January 3, 2006 through at least November 2, 2006, or at least 304 days of violation. Therefore, 304 days of violation were utilized for this penalty calculation.</p> <p>Failure to Install, Maintain or Properly Select Best Management Practices: The Division inspected the project on November 2, 2006 and identified a failure to implement BMPs. Due to the state of the project and scope of the project-wide deficiencies, the Division believes the BMP violations had persisted for quite some time, likely the life of the project. However, the Division chose to conservatively utilize 1 day of violation for this penalty calculation.</p> <p><i>(Note: The one day of BMP violation coincided with (occurred on the same day as) the final day of SWMP violation. Therefore, a total of 304 days of violation were utilized for this penalty calculation.)</i></p>		

Part III – Determination of Multi-Day Penalty Amount

		Amount in Dollars																																
Line 14	Multi-Day Penalty Amount	\$29,357.00																																
<p><i>Calculations:</i></p> <p><i>(Note: Days 1-303 account for penalties associated only with SWMP violations. Day 304 accounts for the final day of SWMP violation and one day of BMP violation. The percentage multiplier for each duration interval below is derived from the Multi-Day Violation Matrix outlined on Page 6 of the Stormwater Civil Penalty Policy, and applies only to the SWMP violations in this case.)</i></p> <p>(Potential Damage + Fault + History) x days of violation</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Day 1</td> <td style="width: 45%;">(\$125.00 + \$300.00 + \$0.00) × 1 day</td> <td style="width: 10%; text-align: right;">=</td> <td style="width: 30%; text-align: right;">\$ 425.00</td> </tr> <tr> <td>+ Days 2-10</td> <td>\$425.00 × 9 days × 50%</td> <td style="text-align: right;">=</td> <td style="text-align: right;">\$ 1,912.50</td> </tr> <tr> <td>+ Days 11-50</td> <td>\$425.00 × 40 days × 40%</td> <td style="text-align: right;">=</td> <td style="text-align: right;">\$ 6,800.00</td> </tr> <tr> <td>+ Days 51-100</td> <td>\$425.00 × 50 days × 30%</td> <td style="text-align: right;">=</td> <td style="text-align: right;">\$ 6,375.00</td> </tr> <tr> <td>+ Days 101-200</td> <td>\$425.00 × 100 days × 20%</td> <td style="text-align: right;">=</td> <td style="text-align: right;">\$ 8,500.00</td> </tr> <tr> <td>+ Days 201-303</td> <td>\$425.00 × 103 days × 10%</td> <td style="text-align: right;">=</td> <td style="text-align: right;">\$ 4,377.50</td> </tr> <tr> <td>+ Day 304</td> <td>(\$425.00 × 10%) + \$925.00</td> <td style="text-align: right;">=</td> <td style="text-align: right;">\$ 967.50</td> </tr> <tr> <td></td> <td style="border-top: 1px solid black;">Multi-Day Base Gravity Penalty</td> <td style="text-align: right;">=</td> <td style="text-align: right; border-top: 1px solid black;">\$29,357.50</td> </tr> </table>			Day 1	(\$125.00 + \$300.00 + \$0.00) × 1 day	=	\$ 425.00	+ Days 2-10	\$425.00 × 9 days × 50%	=	\$ 1,912.50	+ Days 11-50	\$425.00 × 40 days × 40%	=	\$ 6,800.00	+ Days 51-100	\$425.00 × 50 days × 30%	=	\$ 6,375.00	+ Days 101-200	\$425.00 × 100 days × 20%	=	\$ 8,500.00	+ Days 201-303	\$425.00 × 103 days × 10%	=	\$ 4,377.50	+ Day 304	(\$425.00 × 10%) + \$925.00	=	\$ 967.50		Multi-Day Base Gravity Penalty	=	\$29,357.50
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+ Day 304	(\$425.00 × 10%) + \$925.00	=	\$ 967.50																															
	Multi-Day Base Gravity Penalty	=	\$29,357.50																															

Exhibit B

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)	\$29,357.00

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> The Division identified the violations through a regulatory inspection. T & S did not disclose the violations. Therefore, no penalty mitigation was applied.	0%	\$0.00
Line 17	Factor B: Full and Prompt Cooperation <i>Justification:</i> T & S failed to respond to the NOV/CDO and did not submit any documentation demonstrating that it had resolved its non-compliance. However, the Division conservatively chose not to apply any penalty aggravation.	0%	\$0.00
Line 18	Factor C: Environmental Compliance Program <i>Justification:</i> T & S did not implement a regularized and comprehensive environmental compliance/audit program. Therefore, no penalty mitigation was applied.	0%	\$0.00
Line 19	Factor D: Intentional, Reckless or Negligent Violations <i>Justification:</i> Since T & S is a professional development/construction entity who obtained a stormwater permit, it should have been well aware of the requirements of the permit and of the stormwater regulations, which went into effect in 1992 for construction operations larger than 5 acres. At the very least, the Division believes T & S's violations involved negligence. However, the Division conservatively chose not to apply any penalty aggravation.	0%	\$0.00
Line 20	Factor E: Other Aggravating or Mitigating Circumstances <i>Justification:</i> None identified	0%	\$0.00
Line 21	Sum of Line 16 through Line 20	0%	\$0.00
Line 22	Adjusted Base Penalty (Sum of Line 15 + Line 21)		\$29,357.00

Part VI – Economic Benefit Consideration

		Amount in Dollars
Line 23	Economic Benefit	\$9,500.00
<p><i>Justification:</i></p> <p>T & S delayed the cost of developing a complete SWMP and avoided the cost of revising and updating its SWMP over a period of at least 304 days. The Division conservatively estimates the cost of periodically revising and updating a SWMP for a project of this size, including consulting and reprinting fees, to be \$500. Due to the often changing conditions at construction sites, frequent evaluation a project's SWMP is necessary. As a result, the Division estimates that a SWMP for construction will need significant revisions and updates at least every 6 months. Due to the nature of the deficiencies identified in T & S's SWMP, the Division believes T & S's evaluations, if conducted, should have resulted in at least one significant update/revision. Therefore, the Division has conservatively determined that T & S realized an economic benefit of \$500.00 from the avoided costs of not revising and updating the project's SWMP.</p> <p>T & S avoided the cost of implementing and/or maintaining BMPs at the project. The Division conservatively estimates the cost of implementing a typical BMP to be \$1000. As documented in the NOV/CDO, T & S failed to implement functional BMPs for the flood control pond outlet (1 BMP), soil stockpiles located near the northeast perimeter (1), soil stockpiles located near the southwest portion of the project (1), erosion control for disturbed areas located throughout the project (4 - <i>the Division conservatively divides the project into four quadrants for this penalty calculation</i>), and the drainage culverts observed at the project (2 - <i>the Division conservatively assumes at least two culverts were observed</i>). Therefore, the Division has conservatively determined that T & S realized an economic benefit of \$9,000.00 from the avoided costs of not implementing at least 9 BMPs at the site.</p> <p><i>(Note: Time value of money for time periods in question was predicted to be insignificant and thus BEN runs were not performed)</i></p>		

Part VII – Violation Penalty Total

		Amount in Dollars
Line 24	Civil Penalty: (Sum Line 22 + Line 23)	\$38,857.00

Part VIII – Ability to Pay Adjustment

		Amount in Dollars
Line 25	Ability to Pay Reduction:	\$0.00
<p><i>Justification:</i> T & S has not submitted any information documenting ability to pay issues. Therefore, the Division was unable to perform any ability to pay assessment.</p>		

Part IX – Final Adjusted Penalty

		Amount in Dollars
Line 26	Total Civil Penalty: (Sum Line 24 + Line 25)	\$38,857.00