

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

September 17, 2009

Darwin Derr
Dust & Dirt Excavating, LLC
699 N. 1st Avenue
Greeley, CO 80631

Certified Mail Number: 7005 1820 0000 3208 0893

RE: Order for Civil Penalty, Number: SP-090917-1

Dear Mr. Derr:

Dust & Dirt Excavating 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 Compliance Order on Consent, Number: SC-090702-1.

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

ec: Aaron Urdiales, EPA Region VIII
Tom Roan, Colorado Attorney General's Office
Gary Beers, Permits Section, CDPHE
Nathan Moore, Permits Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Carolyn Schachterle, OPA, CDPHE
Doug Camrud, Engineering Section, CDPHE

Enclosure(s)



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

ORDER FOR CIVIL PENALTY

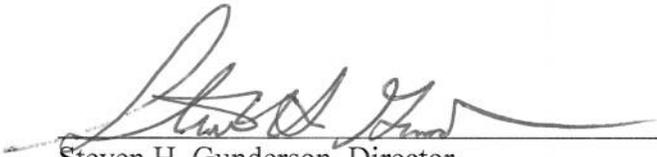
NUMBER: SP-090917-1

IN THE MATTER OF: **DUST & DIRT EXCAVATING LLC**
 WELD 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 Section, and pursuant to §25-8-608 C.R.S., I hereby impose a civil penalty in the amount of One Hundred Seven Thousand Dollars (\$107,000.00) against Dust & Dirt Excavating LLC for the violations cited in the Compliance Order on Consent between the Division and Dust & Dirt Excavating LLC, executed on July 2, 2009 (the "Consent Order"). A copy of the Consent Order is attached hereto as Exhibit A and is incorporated herein by reference. The civil penalty shall be paid in accordance with the terms set forth in the First Amended Plan of Reorganization dated March 16, 2009, Case No. 0813883MER, in the United States Bankruptcy Court for the District of Colorado, and as set forth in the Consent Order. 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 17th day of September, 2009.



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

EXHIBIT A



COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT

NUMBER: SC-090702-1

IN THE MATTER OF: **DUST & DIRT EXCAVATING LLC**
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 Dust & Dirt Excavating LLC ("Dust & Dirt"). The Division and Dust & Dirt 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 civil penalties associated with the alleged violations cited herein and in the Notice of Violation / Cease and Desist Order (Number: SO-060818-2) that the Division issued to Dust & Dirt on August 18, 2006.

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 Dust & Dirt and Dust & Dirt's compliance with the Act and its implementing permit regulations.
3. At all times relevant to the alleged violations identified herein, Dust & Dirt was a Colorado limited liability company in good standing and registered to conduct business in the State of Colorado.
4. Dust & Dirt 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. Pursuant to §25-8-501(1), C.R.S., and its implementing permit regulation, 5 CCR 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.

EXHIBIT A

6. 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."
7. 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.
8. On May 2, 2002, Dust & Dirt initiated ground disturbing construction activities, on behalf of Appel Farms Group, LLC ("Appel Farms"), to build a residential housing development on eighty (80) acres of land located at or near 13756 State Highway 52 in the City of Fort Lupton, Weld County, Colorado (the "Project").
9. On April 14, 2005, a representative from the Weld County Department of Public Health & Environment (the "Inspector") conducted an onsite inspection of the Facility on behalf of the Division, pursuant to the Division's authority under §25-8-306, C.R.S., to determine the Project's compliance with the Water Quality Control Act. During the inspection, the Inspector interviewed a Dust & Dirt representative, conducted a review of the Project's stormwater management records, and conducted a physical inspection of the Project.
10. During the April 14, 2005 inspection, the Inspector determined that the Project was not covered under a CDPS permit authorizing discharges of stormwater from the Project.
11. On April 15, 2005, the Weld County Department of Public Health & Environment sent a letter and Stormwater Inspection Report to Dust & Dirt, informing Dust & Dirt that a CDPS permit for stormwater discharges must be obtained for the Project.
12. On February 15, 2006, the Division sent letters to Dust & Dirt and Appel Farms requesting information regarding the nature of the construction activities at the Project.
13. In response to the Division's February 15, 2006 letter, on March 10, 2006, Appel Farms applied for Project coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit").
14. On March 14, 2006, the Division issued Appel Farms Certification Number COR-039688 authorizing Appel Farms to discharge stormwater from the construction activities associated with the Project to Shortline Ditch, a tributary of the South Platte River, under the terms and conditions of the Permit. Certification Number COR-039688 became effective March 14, 2006 and remains in effect until June 30, 2012 or until Appel Farms inactivates Permit coverage.
15. Shortline Ditch 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).
16. The Division records establish that neither Appel Farms nor Dust & Dirt had any permits authorizing discharges of stormwater from the Project prior to March 14, 2006.
17. Dust & Dirt's failure to obtain CDPS permit coverage for the Project constitutes violation(s) of §25-8-501(1) C.R.S., 5 CCR 1002-61, §61.3(1)(a), and 5 CCR 1002-61, §61.3(2).

EXHIBIT A

ORDER AND AGREEMENT

18. 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-060818-2), the Division orders Dust & Dirt to comply with all provisions of this Consent Order, including all requirements set forth below.
19. Dust & Dirt agrees to the terms and conditions of this Consent Order. Dust & Dirt 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. Dust & Dirt also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Dust & Dirt 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.
20. Notwithstanding the above, Dust & Dirt does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Dust & Dirt pursuant to this Consent Order shall not constitute evidence of fault by Dust & Dirt with respect to the conditions of the Project.

CIVIL PENALTY

21. 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, Dust & Dirt shall pay One Hundred Seven Thousand Dollars (\$107,000.00) plus interest in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the One Hundred Seven Thousand Dollar (\$107,000.00) civil penalty for the above violation(s) and Dust & Dirt agrees to make the payments in accordance with the terms set forth in the First Amended Plan of Reorganization dated March 16, 2009, Case No. 0813883MER, in the United States Bankruptcy Court for the District of Colorado, and attached to this Consent Order as Attachment A. 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

EXHIBIT A

22. Dust and Dirt shall provide an annual financial accounting report on each anniversary of the date this order is signed. Further, Dust and Dirt shall, upon reasonable advanced notice, make available to the Division its financial records for the purpose of audit. Any costs for such audit shall be paid by the Division.

SCOPE AND EFFECT OF CONSENT ORDER

23. 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 August 18, 2006 Notice of Violation / Cease and Desist Order (Number: SO-060818-2).
24. 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 Dust & Dirt 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.
25. 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 Dust & Dirt, 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.
26. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order as of the date of approval by the Division.
27. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of the Act, or any subsequent violation of any requirement of this Consent Order or the Act.
28. Notwithstanding paragraph 20 above, the violations described in this Consent Order will constitute part of Dust & Dirt'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 Dust & Dirt. Dust & Dirt agrees not to challenge the use of the cited violations for any such purpose.
29. This Consent Order does not relieve Dust & Dirt from complying with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Division makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

EXHIBIT A

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 August 18, 2006 Notice of Violation / Cease and Desist Order (Number: SO-060818-2). 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 a latent condition is discovered that indicates such requirements are necessary to protect human health or the environment.
33. Upon the effective date of this Consent Order, Dust & Dirt 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. Dust & Dirt shall not seek to hold the State of Colorado or its employees, agents or representatives liable for any injuries or damages to persons or property resulting from acts or omissions of Dust & Dirt, or those acting for or on behalf of Dust & Dirt, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. Dust & Dirt shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by Dust & Dirt in carrying out activities pursuant to this Consent Order. 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

EXHIBIT A

For Dust & Dirt:

Darwin Derr
Dust & Dirt Excavating, LLC
699 N. 1st Avenue
Greeley, CO 80631

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 Dust & Dirt 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. 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 DUST & DIRT EXCAVATING LLC:

 Darwin Derr, Owner

Date: 6/24/08

EXHIBIT A

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

Lori M Gerzina

Date:

July 2, 2009

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

EXHIBIT A
Attachment A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

In re:)	
)	Case No. 08-13883 MER
DUST & DIRT EXCAVATING, LLC)	
EIN: 84-1296039)	Chapter 11
)	
Debtor.)	

**DUST & DIRT EXCAVATING, LLC'S CORRECTED FIRST AMENDED PLAN OF
REORGANIZATION DATED MARCH 16, 2009**

Dust & Dirt Excavating, LLC, Debtor in Possession, by and through its counsel Sender & Wasserman, P.C., proposes the following Corrected First Amended Plan of Reorganization (the "Plan") pursuant to Section 1121(a) of the Bankruptcy Code.

**ARTICLE I
DEFINITIONS**

Unless otherwise provided in this Plan, all terms used herein that are defined or used in the Bankruptcy Code are intended to be used in this Plan as defined or used in the Bankruptcy Code. The following capitalized terms shall have the respective meanings set forth below, and such meanings shall be equally applicable to the singular and plural forms of the terms.

"Administrative Claim" shall mean (i) a Claim for a cost or expense of administration of the Chapter 11 Case as contemplated in Section 503(b) of the Bankruptcy Code and entitled to priority pursuant to Section 507(a)(2) of the Bankruptcy Code; and (ii) all fees due under 28 U.S.C. § 1930.

"Allowed" when used with respect to a Claim other than an Administrative Claim, shall mean a Claim (i) to the extent it is not a Contested Claim; or (ii) a Contested Claim, proof of which was filed with the Bankruptcy Court on or before any applicable Bar Date, and (x) as to which no objection has been filed by the Objection Date, unless such Claim is to be determined in a forum other than the Bankruptcy Court, in which case such Claim shall not become Allowed until determined by Final Order of such other forum and allowed by Final Order of the Bankruptcy Court; or (y) as to which an objection was filed by the Objection Date, to the extent allowed by a Final Order. "Allowed" when used with respect to a Claim that is an Administrative Claim, shall mean an Administrative Claim that has been allowed pursuant to Article V of the Plan.

"Bankruptcy Code" shall mean Title 11 of the United States Code.

EXHIBIT A
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"Bankruptcy Court" shall mean the Bankruptcy Court unit of the United States District Court for the District of Colorado.

"Bar Date" shall mean July 31, 2008, the last date set by the Bankruptcy Court for filing Claims that are not Administrative Claims.

"Chapter 11 Case" shall mean the case commenced under Chapter 11 of the Bankruptcy Code for the Debtor.

"Claim" shall mean a claim, as defined in Section 101(5) of the Bankruptcy Code, against the Debtor.

"Confirmation" shall mean the entry by the Bankruptcy Court of an order confirming the Plan in accordance with Chapter 11 of the Bankruptcy Code; "Confirmation Order" shall mean such order; and "Confirmation Date" shall mean the date on which such order is entered.

"Contested" when used with respect to a Claim as to which a proof of claim has been timely filed with the Bankruptcy Court, shall mean a Claim that has not been Allowed: (i) that is listed in any of Debtor's schedules of liabilities as disputed, unliquidated, or contingent; (ii) to the extent the proof of claim exceeds the scheduled amount; (iii) that is not listed in any such schedules; or, (iv) as to which an objection has been filed and as to which no Final Order allowing such Claim has been entered.

"Debtor" shall mean Dust & Dirt Excavating, LLC.

"Disclosure Statement" shall mean the disclosure document describing the Plan as required to be filed by the Debtor, approved by the Court, and distributed to the various classes of Claims under the Plan as provided in Section 1125 of the Bankruptcy Code.

"Effective Date" shall mean the first business day after the passage of ten (10) days from the date the Confirmation Order becomes a Final Order.

"Equity Interest" shall mean the membership interest of the Debtor.

"Fee Claim" shall mean a Claim under Section 330 or 503 of the Bankruptcy Code for allowance of compensation and reimbursement of expenses in the Chapter 11 Case.

"Final Order" shall mean an order or judgment of the Bankruptcy Court or other court of competent jurisdiction which has not been reversed, stayed, modified, or amended and as to which (i) the time to appeal or seek review, rehearing, or certiorari has expired (without regard to whether the time to seek relief of a judgment under Rule 60(b) of the Federal Rules of Civil Procedure has expired); and (ii) no appeal or petition for review, rehearing, or certiorari is pending, or if pending as to which no bond or other stay has been issued, or as to which any right to appeal or seek review, rehearing, or certiorari has been waived.

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“Impaired” A class of claims or interests is “impaired” in accordance with 11 U.S.C. § 1124 if the Plan alters the legal, equitable and/or contractual rights of the holders of such claims or interests.

“Insider” shall mean any Person defined in Section 101(31)(B) of the Bankruptcy Code.

“Late Filed Claims” shall mean any claim filed in the Chapter 11 Case after June 30, 2008.

“Litigation” shall mean any civil action pending on the Confirmation Date or commenced thereafter by the Reorganized Debtor, including any preference or avoidance actions under the Bankruptcy Code, any state and federal court proceedings, and any matters submitted to binding arbitration.

“Net Profits” shall mean the Reorganized Debtor’s revenues received from gross sales, reduced by cost of goods sold, operating and administrative expenses, taxes, payments to unclassified priority Claims set forth in Article III, and payments to the Class 1 and 2 claimants. Funds subject to the trust provisions of C.R.S. § 38-22-127 or C.R.S. § 38-26-109 shall not be included in the calculation of Net Profits.

“Net Profits Fund” shall mean that fund established by the Debtor funded by 25% percent of its Net Profits, calculated quarterly, to make payments due to the Class 3 claimants under the Plan.

“Objection Date” shall mean, with respect to a Claim other than a Claim that is an Administrative Claim, the first business day following the passage of sixty (60) days from the Effective Date.

“Person” shall mean an individual, corporation, partnership, joint venture, trust, estate, unincorporated association, unincorporated organization, cooperative, limited liability company, governmental entity or political subdivision thereof, or any other legally recognized entity.

“Plan” shall mean the Debtor’s Plan of Reorganization, as amended from time to time.

“Plan Proponent” shall mean the Debtor.

“Post-petition” shall mean anytime on or subsequent to March 27, 2008 and prior to the Confirmation Date.

“Pre-petition” shall mean anytime prior to March 27, 2008.

“Priority Claim” shall mean a Claim entitled to priority in payment pursuant to Section 507(a)(4) or 507(a)(5) of the Bankruptcy Code.

“Pro Rata” shall mean with respect to any Person entitled to distribution, the percentage which such Person’s Allowed Claim bears to the sum of all Allowed Claims in the same class.

“Reorganized Debtor” shall mean the reorganized Debtor under the confirmed Plan.

EXHIBIT A
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“Secured Claim” shall mean any Claim secured by a valid and enforceable lien against the property of the Debtor, but only to the extent of the value of the collateral securing such Claim.

“Tax Claim” shall mean any Claim of a governmental unit for taxes entitled to priority under Section 507(a)(8) of the Bankruptcy Code.

“Unsecured Claim” shall mean a Claim that is not secured by a valid and enforceable lien against the property of the Debtor, other than Administrative Claims, Priority Claims, and Equity Interests.

“Unimpaired” A class of claims or interests is “unimpaired” in accordance with 11 U.S.C. § 1124 if the legal, equitable and/or contractual rights of the holders of such claims or interests are not altered under the Plan.

ARTICLE II
CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

The following is a designation of all classes of Claims and Equity Interests other than those Claims of a kind specified in Sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code.

- | | |
|----------------|---|
| <u>Class 1</u> | Allowed Impaired Secured Claim of New Frontier Bank. |
| <u>Class 2</u> | Allowed Impaired Secured Claim of Points West. |
| <u>Class 3</u> | Allowed Impaired Claims of unsecured creditors of the Debtor, including Allowed Impaired Claims of any taxing authority for penalties not related to actual pecuniary loss. |
| <u>Class 4</u> | Equity Interests. |
| <u>Class 5</u> | Late Filed Claims. |

ARTICLE III
TREATMENT OF UNCLASSIFIED PRIORITY CLAIMS

As provided in Section 1123(a)(1) of the Bankruptcy Code, the Claims against the Debtor covered in this Article III are not classified. The holders of such Claims are not entitled to vote on the Plan.

EXHIBIT A
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3.1 *Allowed Administrative Claims.*

The holders of Allowed Administrative Claims of the type specified in Section 507(a)(2) of the Bankruptcy Code shall receive cash equal to the allowed amount of such Claim or a lesser amount or different treatment as may be acceptable and agreed to by particular holders of such Claims. The only anticipated Allowed Administrative Claims are fee claims of professionals retained by the Debtor.

Unless otherwise agreed by the Debtor and the claimant, Allowed Administrative Claims shall be paid in full in twelve equal monthly installment payments, beginning on the Effective Date. Any holders of Allowed Administrative Claims who do not agree to such treatment or other treatment shall be paid in full on the Effective Date.

3.2 *Allowed Unsecured Tax Claims.*

The holders of Allowed Tax Claims of the type specified in Section 507(a)(8) of the Bankruptcy Code shall receive 100% of their priority claims in semi-annual installment payments of a value, as of the Effective Date, equal to the allowed amount of such claim, over a period of five years from the Petition Date. Claims for penalties not related to actual pecuniary loss shall be treated under Class 3.

The Debtor believes the only Section 507(a)(8) claims are the following: \$416.99 owed to the Internal Revenue Service.

3.3 *Fees Due Under 28 U.S.C. § 1930(a)(6).*

The Reorganized Debtor shall make all payments required to be made to the U.S. Trustee program pursuant to 28 U.S.C. § 1930(a)(6) until the Chapter 11 Case is closed, converted, or dismissed. All payments due to the U.S. Trustee program pursuant to 28 U.S.C. § 1930(a)(6) shall be paid on the Effective Date, and the U.S. Trustee shall thereafter be paid fees due on a quarterly basis until the Chapter 11 Case is closed, converted, or dismissed.

ARTICLE IV
IDENTIFICATION OF UNIMPAIRED AND IMPAIRED CLASSES

All Classes are impaired under the Plan.

ARTICLE V
TREATMENT OF CLAIMS AND EQUITY INTERESTS

Class 1. (New Frontier Bank). Debtor is obligated to New Frontier Bank under the following agreements:

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- (a) Deed of Trust (securing Promissory Note #101451-12 in the original face amount of \$325,000.00) recorded on March 14, 2006, as Reception No. 3370566 of the real property records of Weld County, Colorado;
- (b) Deed of Trust (securing Promissory Note #101451-13 in the original face amount of \$400,000.00) recorded on December 5, 2006, as Reception No. 3439730 of the real property records of Weld County, Colorado; and
- (c) Deed of Trust (securing the Promissory Note in the original face amount of \$700,000.00), recorded on July 10, 2006, as Reception No. 3401920 of the real property records of Weld County, Colorado.

New Frontier Bank's Allowed Class 1 Claim is fully secured. The principal amount of New Frontier Bank's secured claim also includes amounts that were due and owing to Wagner Equipment Pre-petition in the approximate amount of \$450,000.

In January, 2009, the Debtor and New Frontier Bank entered an Agreement for Adequate Protection and Modification of Obligation of New Frontier Bank (the "NFB Agreement"). The NFB Agreement includes both a provision for adequate protection payments prior to the Effective Date as well as treatment of New Frontier Bank's Allowed Class 1 Claim under the Plan. Under the NFB Agreement and the Plan, the Claim shall be treated as follows:

- (a) The principal amount of Debtor's indebtedness to New Frontier is \$1,332,692.81, not including future interest, attorney's fees and costs ("Restructured Debt"). Repayment and other terms of the Restructured Debt shall be evidenced by a Restructure Agreement and a Modification of Deed of Trust modifying the Deeds of Trust.
- (b) Interest shall accrue on the Restructured Debt at the rate of 8% per annum ("Interest Rate") effective as of January 15, 2009.
- (c) On the first day of each month from the Effective Date through and including December 1, 2009, Debtor shall pay New Frontier Bank monthly accrued interest payments on the Restructured Debt calculated at the outstanding balance as of March 1, 2009, based on a 15-year amortization schedule and the Interest Rate.
- (d) Commencing January 1, 2010, and continuing on the first (1st) day of each month thereafter through and including December 1, 2014, Debtor will make monthly principal and interest payments on the Restructured Debt calculated on then outstanding principal balance, a fifteen (15) year amortization schedule and the Interest Rate.

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- (e) All unpaid principal, any accrued but unpaid interest and any unpaid fees and costs due on the Restructured Indebtedness shall be fully due and payable on or before December 31, 2014.
- (f) Debtor shall pledge as additional collateral securing the Restructured Debt, all permits regarding the real properties which are the subject of the Deeds of Trust ("Properties").
- (g) If Debtor fails to timely make two (2) consecutive monthly payments during any period prior to December 31, 2010, New Frontier Bank will be entitled, upon notice and motion to this Court, to proceed to a Court supervised sale of the Properties, pursuant to 11 U.S.C. § 363, free and clear of all liens and encumbrances. The Court authorized sale shall be on a cash basis only, except that New Frontier Bank will be permitted to credit bid all or a part of the Restructured Debt, so that it will not be required to bring cash at such public sale unless it wishes to bid greater than the balance of the Restructured Debt. The minimum bid at such sale must be equal to the amount of the reasonable and customary closing costs and the outstanding amounts due on the balance of the Restructured Debt. The conveyance of the Properties shall be free clear of all liens and encumbrances, except those acceptable to the successful bidder. The sale will occur no later than sixty (60) days of filing of the motion.
- (h) If Debtor has timely made all payments on or before December 31, 2010, but fails to timely make any payment thereafter, New Frontier Bank will be entitled to pursue its legal rights and remedies as set forth in the restructured loan documents, including foreclosure of the Properties pursuant to any deed of trust without further relief from the Bankruptcy Court.
- (i) Debtor shall make a good faith effort to obtain life insurance policies on Darwin Derr and on Douglas Derr in the amount of One-Million Dollars (\$1,000,000.00) each, naming New Frontier Bank as the beneficiary thereunder on or before January 1, 2010.

Class 2. (Points West Community Bank). Debtor is obligated to Points West on account of an August 15, 2007 promissory note in the original principal amount of \$48,498.61. The loan was obtained to finance the Debtor's purchase of three Caterpillar 650 Wheel Scrapers, Serial Nos. 77-F137, 77-F130 and 77-F170 (the "Points West Collateral"). Points West retained a perfected, first priority security interest in the Points West Collateral. Points West also retained a perfected, junior security interest in the equipment subject to New Frontier Bank's senior lien.

The total amount owed to Points West on the Petition Date was \$43,308.14. During the pendency of the Chapter 11 Case, the Debtor was paying monthly adequate protection payments to Points West in the amount of \$1,028.05. The Debtor shall continue making such monthly payments until the Allowed Class 2 Claim is paid in full. The Claim accrues interest (as provided in the note)

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at the annual rate of 9.75%. Payments shall be due and payable on the 15th day of each month. Points West shall retain its liens and security interests in the Points West Collateral and the equipment subject to New Frontier Bank's senior lien.

Class 3. (Unsecured Claims). Class 3 shall be comprised of creditors holding Allowed Unsecured Claims against the Debtor, including any allowed penalty Claims held by any taxing authority which are not related to actual pecuniary loss. Allowed Class 3 Claims shall receive their pro rata share of the Net Profits Fund. Distributions from the Net Profits Fund shall continue for the shorter of (a) until Class 3 is paid in full or (b) eight (8) years following the Effective Date. Distributions to Class 3 claimants shall not exceed the amount of the Allowed Claims plus interest calculated at six percent (6%) per annum. Distributions to the Allowed Class 3 claimants shall be made quarterly and shall commence after the first full quarter following the Effective Date.

The unsecured claim filed by the State of Colorado, Department of Public Health and Environment ("CDPHE") shall be allowed in the amount of \$107,000 and treated under this Class 3. Including the allowed CDPHE claim, the Class 3 claims total \$257,433.39.

The Debtor projects 100% payment to the Class 3 claimants.

Class 4. (Equity Interests). The Pre-petition membership interests of Darwin Derr and Douglas Derr shall be retained. Managing members, or their successors or assigns, agree to take no distribution or other payment from Net Profits, however denominated, until unsecured creditors are paid in full.

Class 5. (Late Filed Claims). Class 5 is comprised of all Late Filed Claims against Debtor. As of the date of the filing of this Disclosure Statement, there were no Late Filed Claims.

ARTICLE VI DEFAULT AND PLAN MODIFICATION

6.1 *Default and Right to Cure.*

In the event of any default by the Reorganized Debtor of any payment to any class of claimants arising under the terms of the Plan (except as otherwise provided with respect to the Class 1 Claimant), the Reorganized Debtor shall have thirty (30) days within which to cure any default in payments due under this Plan after the date of issuance of written notice from any claim holder. Written notice shall be provided to the Reorganized Debtor and to Debtor's counsel as provided in paragraph 11.7 herein, unless written notice of substitution of legal counsel is served upon the claim holder at least fifteen (15) days prior to the date notice is sent.

6.2 *Failure to Cure Default.*

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In the event that the Reorganized Debtor fails to cure any default in the requirements to make payment under the Plan, within forty-five days from the date that written notice is sent in compliance with paragraph 6.1, the Reorganized Debtor shall be in default under the terms of the Plan.

6.3 *Plan Modification.*

At any time after Confirmation of the Plan but before the completion of payments under the Plan, the Plan may be modified upon the request of the Reorganized Debtor, after notice and a hearing, only to the extent allowed by 11 U.S.C. § 1127.

ARTICLE VII
MEANS FOR IMPLEMENTATION AND
EXECUTION OF THE PLAN

7.1 *Asset Transfer to Reorganized Debtor.*

On or about the Effective Date, all assets of the Debtor shall be transferred to the Reorganized Debtor free and clear of all liens, claims, and interests of creditors, equity holders, and other parties in interest, except as otherwise provided herein. Specifically, the assets shall be transferred subject to the liens held by the Class 1 and 2 secured creditors as discussed in the treatment of these claims. The Reorganized Debtor shall not, except as otherwise provided in this Plan, be liable to repay any debts which accrued prior to the Confirmation Date. Except as provided in this Plan, on the Confirmation Date, the Debtor shall be granted a discharge under 11 U.S.C. § 1141.

7.2 *Means for Implementation.*

The Debtor shall fund its Plan obligations with cash from operations. Such funds shall be sufficient to pay in full all amounts due on the Effective Date.

7.3 *Execution of Plan.*

Thirty days after the Effective Date, the Reorganized Debtor shall implement its Plan of Reorganization pursuant to the terms for each class of claimants set forth above. Payments under the Plan shall come from the cash flow of the Reorganized Debtor generated by the Reorganized Debtor's business. On the due date for payments as set forth in Article V above, the Reorganized Debtor shall immediately distribute the required pro rata amount to each claimant holding an Allowed Secured or Unsecured Claim and escrow the same pro rata amount to creditors holding Contested Claims as provided in Article X herein.

7.4 *Net Profits Fund.*

7.4.1 Within 30 days following the last day of each quarter, beginning with the

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first full quarter after the Effective Date, the Reorganized Debtor shall calculate its Net Profits for the prior period and deposit 25% percent of the Net Profits into the Net Profits Fund for distribution to the Class 3 Claimants.

7.4.2 The Reorganized Debtor shall make quarterly distributions from the Net Profits Fund to Allowed Class 3 claimants. Distributions from the Net Profits fund shall commence after the first full quarter following the Effective Date.

7.4.3 The Reorganized Debtor shall provide an annual accounting of revenues and expenses to show how the payment to Class 3 creditors is being calculated.

7.4.4 Upon request by an Allowed Class 3 claimant, the Reorganized Debtor shall provide its calculation of Net Profits for the period requested.

7.5 *Financial Records.*

The Reorganized Debtor's financial records shall be available for review by creditors upon reasonable notice during normal business hours subject to execution of an appropriate confidentiality agreement.

7.6 *Avoidance and Recovery Actions.*

The Reorganized Debtor may pursue any claims or recovery actions held by the Debtor, including but not limited to recovery under 11 U.S.C. §§ 544, 547, 548 and 549. The Reorganized Debtor may abandon any claim it has against any third party if it determines that the claim is burdensome or of inconsequential value and benefit. The Reorganized Debtor is authorized to employ counsel to represent it in litigation or any cause of action or claims held by the Debtor.

7.7 *Deposit Accounts.*

All funds held by the Reorganized Debtor for distribution under the Plan shall be held in accounts which meet the insurance and guaranty requirements 11 U.S.C. § 345(b).

7.8 *Claims Objections.*

Following the Effective Date, the Reorganized Debtor may compromise objections to Claims or causes of action referred to in this Plan without notice and hearing for claims or causes of action asserted in the original amount of \$50,000 or less. Settlements or compromises of any claims or causes of action asserted in the amount of \$50,000 or more shall be subject to notice and an opportunity for hearing under the provisions after notice in compliance with the Local Rules of Bankruptcy Procedure.

7.9 *Continued Operations.*

After the Effective Date, the Reorganized Debtor exercising its business judgment may sell,

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operate or abandon any of its assets.

7.10 *Management Compensation.*

Salary increases for the Reorganized Debtor's managing members shall be capped at 5% per year.

7.11 *CDPHE Claim.*

As stated in the treatment of Class 3 claims, the unsecured claim of CDPHE shall be allowed in the amount of \$107,000. CDPHE has the right to audit the Debtor's books and records upon reasonable advance notice, provided CDPHE pays all audit costs. The Reorganized Debtor shall reasonably cooperate with state inquiries regarding its Net Profit Fund accounting and any audit. In addition, pursuant to the agreement between the Debtor and CDPHE, the Reorganized Debtor shall enter into a Compliance Order on Consent that resolves the pending administrative proceeding brought by CDPHE against the Debtor. The Reorganized Debtor will not admit any wrongdoing, but CDPHE will make a record as to the circumstances that led to the issuance of the Notice of Violation.

7.12 *Discharge and Injunctive Relief.*

The Reorganized Debtor shall receive a discharge to the extent permitted by 11 U.S.C. § 1141 and the Reorganized Debtor shall be entitled to seek injunctive relief from the Court, if necessary, to enforce any and all provisions of the Plan.

ARTICLE VIII
EFFECT OF CONFIRMATION

Upon Confirmation, the provisions of this Plan shall bind the Debtor and any creditor or equity security holder of the Debtor, whether or not the Claim or Equity Interest of such Person is impaired under this Plan and whether or not such Person has accepted this Plan. Upon Confirmation, all of the property of the Debtor's estates shall be vested in the Reorganized Debtor as provided in this Plan, free and clear of all Claims and Equity Interests, except as specifically provided in this Plan. Upon Confirmation, all creditors and equity security holders of the Debtor are permanently enjoined from commencing or pursuing any action against the Reorganized Debtor, other than an action to enforce the provisions of this Plan.

ARTICLE IX
PROVISION FOR ASSUMPTION OR
REJECTION OF EXECUTORY CONTRACTS

All unexpired leases and executory contracts between the Debtor and any other Person (if any) which have not prior to the Effective Date of the Plan been affirmatively assumed by the

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Debtor, are hereby rejected.

ARTICLE X PROVISION AS TO DISPUTED CLAIMS

10.1 *Objections.*

The Reorganized Debtor may, at any time within sixty (60) days after the Effective Date, file an objection to any claim which in its opinion should be objected to as improper, in whole or in part. The Reorganized Debtor may further designate claims held by creditors against whom the Reorganized Debtor believes actions may be brought under Sections 544, 547, 548 or 549 of the Bankruptcy Code as Contested Claims by sending notice in writing to the Claimant within sixty (60) days after the Effective Date.

Upon the filing of such objection or service of said written notice, such claim shall be considered a Contested Claim, and any cash or other instruments or property otherwise distributable to such creditor under this Plan shall be held by the Reorganized Debtor in escrow until final disposition of the objection to the claim either by settlement or entry of a Final Order. If the claim is only contested in part, payment shall be made to the claimant on the uncontested portion under the provisions of Article V and the balance shall be treated as a Contested Claim under the provisions of Article X. If the objection is overruled or denied, in whole or in part, or the claim is allowed by stipulation of the Reorganized Debtor and the claimant, such claimant shall receive the amount of cash provided in this Plan to the extent of the amount of the claim finally allowed, including back installments.

10.2 *Contested Claims Escrow.*

From and after the Effective Date, the Reorganized Debtor shall reserve and hold for the benefit of each holder of a Contested Claim cash in an amount equal to the pro rata payments which would have been made to the holder of such contested claim if it were an Allowed Claim in an amount equal to the lesser of: (i) the amount of the Contested Claim or (ii) the amount in which the Contested Claim shall be estimated by the Bankruptcy Court pursuant to § 502 of the Bankruptcy Code for purposes of allowance, which amount shall constitute and represent the maximum amount in which such claim may ultimately become an Allowed Claim. No payments or distributions shall be made with respect to all or any portion of any Contested Claim pending the entire resolution thereof by Final Order.

ARTICLE XI AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS OF DEBTOR

As may be required, the Articles and Bylaws of the Debtor shall be amended on or before the Effective Date to the extent necessary to effectuate the provisions of the Plan.

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ARTICLE XII
MISCELLANEOUS PROVISIONS

12.1 *Retention of Jurisdiction.*

The Reorganized Debtor reserves the right to reopen the Chapter 11 Case after Confirmation and dismissal for the purposes set forth in this paragraph. The Bankruptcy Court shall retain jurisdiction over the Chapter 11 Case for the following purposes:

- (a) To hear and determine any and all objections to the allowance of Claims or Interests.
- (b) To determine any and all applications for allowances of compensation and reimbursement of expenses and any other fees and expenses authorized to be paid or reimbursed under the Bankruptcy Code or the Plan, to the extent such claim was incurred prior to the Effective Date.
- (c) To hear and determine any and all pending applications for the rejection or assumption, or for the assumption and assignment, as the case may be, of executory contracts or unexpired leases to which the Debtor is a party, and to hear and determine any and all Claims arising therefrom.
- (d) To hear and determine any and all applications, adversary proceedings, and contested or litigated matters that may be pending on the Effective Date or instituted by the Reorganized Debtor thereafter.
- (e) To consider any modifications of the Plan, to remedy any defect or omission, or reconcile any inconsistency in the Plan or in any order of the Bankruptcy Court, including the Confirmation Order.
- (f) To hear and determine any application to sell the Debtor's property free and clear of liens.
- (g) To hear and determine all controversies, suits, and disputes that may arise in connection with the interpretation, enforcement, or consummation of the Plan.
- (h) To consider and act on the compromise and settlement of any claim or cause of action by or against the Debtor where the original claim or cause of action is in excess of \$50,000.00.
- (i) To issue orders in aid of execution of the Plan as contemplated by Section 1142 of the Bankruptcy Code.
- (j) To determine such other matters as may be set forth in the Confirmation Order or which may arise in connection with the Plan or the Confirmation Order.

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12.2 *Vesting of Property.*

The Reorganized Debtor shall be vested with ownership to all property of the estate upon the Effective Date.

12.3 *Satisfaction of Claims.*

The payment of Allowed Claims, Allowed Administrative Claims and Allowed Secured Claims shall be in exchange for all claims against the Debtor and shall constitute full settlement, release, discharge, and satisfaction of all such claims against the Debtor. Confirmation of the Plan shall constitute a modification of any note or obligation for which specification and treatment is provided under the Plan as set forth in the Plan. Any obligation or note, previously in default, so modified, shall be cured as modified as of the Confirmation Date. This provision shall be operable regardless of whether the Plan provides for any obligation to be evidenced by a rewritten loan or security document following confirmation of the Plan.

12.4 *Pre-Existing Causes of Action.*

Nothing herein contained shall prevent the Reorganized Debtor from taking any action as may be necessary to the enforcement of any cause of action which may exist on behalf of the Reorganized Debtor and which may not have been enforced or prosecuted by the Debtor prior to the Effective Date.

12.5 *Reservation of Rights.*

The Reorganized Debtor reserves the right to modify the Plan prior to the Confirmation, and thereafter to modify the Plan in accordance with 11 U.S.C. § 1127(b) and paragraph 6.3 herein.

12.6 *Headings.*

The headings used in the Plan are for convenience of reference only and shall not limit or in any manner affect the meaning or interpretation of the Plan.

12.7 *Notices.*

All notices, request, demands, or other communications required or permitted in this Plan must be given in writing to the party(ies) to be notified. All communications will be deemed delivered when received at the following addresses:

(a) To Debtor:

Darwin Derr
Dust & Dirt Excavating, LLC
699 N. 1st Avenue
Greeley, CO 80631

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With a copy to:

Harvey Sender
Sender & Wasserman, P.C.
1660 Lincoln Street, Suite 2200
Denver, CO 80264

- (b) To an allowed claimant, at the addresses set forth in the allowed Proof of Claim, if filed, or, if no Proof of Claim is filed, at the address set forth for the claimant in the Debtor's Schedules filed with the Bankruptcy Court.

12.8 *Successors and Assigns.*

The Plan will be binding upon the Reorganized Debtor, any creditor affected by the Plan and their heirs, successors, assigns and legal representatives.

12.9 *Unclaimed Payments.*

If a Person entitled to receive a payment or distribution pursuant to this Plan fails to negotiate a check, accept a distribution, or provide a forwarding address in the event notice cannot be provided as set forth in paragraph 12.7, within one (1) year of the Effective Date, the person or entity is deemed to have released and abandoned any right to payment or distribution under the Plan.

12.10 *Liability.*

Except as set forth in this Plan, neither the Reorganized Debtor, nor any of its agents, managers, representatives, attorneys, accountants or advisors shall have or incur any liability for any past, present or future actions taken or omitted to be taken under, in connection with, related to, affecting or arising out of the Chapter 11 Case or this Plan except for claims based on gross negligence or willful misconduct.

DATED the 16th day of March, 2009.

Dust & Dirt Excavating, LLC

By: /s/ Darwin Derr

Darwin Derr, Manager

By: Harvey Sender, #7546

David V. Wadsworth, #32066

1660 Lincoln Street, Suite 2200

Denver, Colorado 80264

(303) 296-1999, Fax: (303) 296-7600

ATTORNEYS FOR DEBTOR