STATE OF COLORADO

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Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department
of Public Health
and Environment

December 6, 2010

Ann D. Stiers, Registered Agent
S&A Holdings, LLC
PO Box 230
Mesa, Colorado 81643

Certified Mail Number: 7009 1680 0000 2094 5005

RE: Service of Notice of Violation/Cease and Desist Order, Number: DO-101206-2

Dear Ms. Stiers:

S&A Holdings, LLC is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). This NOV/CDO 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 §§25-8-602 and 25-8-605, C.R.S., of the *Colorado Water Quality Control Act*, (the "Act"). The Division bases this NOV/CDO upon findings that S&A Holdings, LLC has violated the Act, and/or Permit regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., S&A Holdings, LLC is required, within thirty (30) calendar days of receipt of this NOV/CDO, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

This action could result in the imposition of civil penalties. The Division is authorized pursuant to §25-8-608, C.R.S. to impose a penalty of $10,000 per day for each day during which such violation occurs.

Please be advised that the Division is continuing its investigation into this matter and the Division may identify supplementary violations that warrant amendments to this NOV/CDO or the issuance of additional enforcement actions.

Should you or representatives of S&A Holdings, LLC desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO, please do not hesitate to contact Joseph Campbell of this office by phone at (303) 692-2356 or by electronic mail at joseph.campbell@state.co.us.

Sincerely,

Russell Zigler

Russell Zigler, Legal Assistant
Compliance Assurance Section
Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Mesa County Health Department

ec: Aaron Urdiales, EPA Region VIII
Mark Kadnuck, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Gary Beers, Permits Unit, CDPHE
Michael Beck, OPA
Joseph Campbell, Case Person
Tania Watson, Compliance Assurance, CDPHE

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST ORDER **NUMBER: DO-101206-2**

IN THE MATTER OF: S&A HOLDINGS, LLC
MESA LAKES RESORT
3619 HIGHWAY 65
MESA 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 is implemented through 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 violations cited herein, S&A Holdings, LLC ("S&A") was a Colorado limited liability company in good standing and registered to conduct business in the State of Colorado.

2. The Mesa Lakes Resort is located within the Grand Mesa National Forest at (or near) 3619 Highway 65, Mesa County, Colorado. The United States Department of Agriculture, Forest Service (the "USFS") owns the land associated with the Mesa Lakes Resort. On January 28, 2008, S&A purchased the improvements associated with the Mesa Lakes Resort from Mr. Mike Harvey, et al (the "Former Operator"). Those improvements include a central lodge, including a store and restaurant; a two-story modern cabin; four (4) single-story modern cabins, eleven (11) rustic cabins, a three-unit motel, a bath house, a laundry building, an employee cabin, a drinking water treatment system and pump house, a water sewage treatment system, roads, parking lots and utility service lines.

3. On or about December 31, 2007, S&A accepted a Special Use Permit from the USFS, which authorized S&A to use and occupy the National Forest System lands and improvements associated with the Mesa Lakes Resort.

4. The Mesa Lakes Resort water sewage treatment system ("the System") is located near the entrance to the resort, to the north of the parking area, within a small unnamed surface water drainage. The System consists of two septic tanks of unknown size and an unlined lagoon approximately 6,400 ft^2 in size.

5. Wastewater (raw, untreated sewage) is collected and conveyed through service/collection lines from the various buildings associated with the resort to the septic tanks where solids separation and limited biological treatment occurs.

6. Partially treated sewage from the septic tanks gravity flows into the unlined lagoon where passive biological treatment occurs prior to seepage/discharge into the underlying groundwater. Historical water use data establishes that the System has a maximum average daily inflow of 1,246 gallons per day.

7. Partially treated sewage flows out of the unlined lagoon and into the adjacent unnamed surface water drainage and into Jumbo Reservoir.

Unauthorized Discharge

8. Pursuant to §25-8-501(1), C.R.S. and 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, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article.

9. S&A 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).

10. On May 16 and 23, 2007, representatives from the Division's Engineering Section (the "ES Inspectors") conducted an on-site inspection of the System pursuant to the Division's authority under §25-8-306, C.R.S. , to determine the Former Operator's compliance with the Water Quality Control Act. During the inspection, the ES Inspectors interviewed the Former Operator of the resort and performed a physical inspection of the System.

11. During the May 16, 2007 inspection, the ES Inspectors observed water seeping from the down gradient bank/dike of the System's lagoon. The observed seep was flowing water into the adjacent unnamed surface water drainage and into Jumbo Reservoir. Laboratory analysis of water from the seep establishes that the seep discharge contained bacterial contamination consistent with the partially treated sewage contained within the System's lagoon.

12. On May 23, 2007, the ES Inspectors performed a dye test on the System's lagoon to determine if the lagoon was the source of water discharging through the seep located on the down gradient bank/dike of the lagoon. During the dye test, the ES Inspectors observed that dye was transmitted from the lagoon through the seep and into the unnamed surface water drainage establishing that partially treated sewage, contained within the System's lagoon, was the source of the water discharging from the seep.

13. On May 25, 2007, the Division sent a Compliance Advisory to the Former Operator of the Mesa Lakes Resort. The Compliance Advisory advised the Former Operator that the System's lagoon seep discharge constitutes an unauthorized discharge of pollutants from a point source into state waters in violation of 25-8-501(1) C.R.S. and informed the Former Operator of the Division's expectations to resolve the unauthorized discharge.

14. On June 4, 2007, the Former Operator formally responded to the May 25, 2007 Compliance Advisory. The response indentified the steps taken to comply with the Compliance Advisory and included a draft plan to resolve the issue of the unauthorized (unpermitted) seep discharge.

15. In January 2008, a Division representative spoke with representatives of S&A and advised them of the ongoing unauthorized (unpermitted) discharge and informed S&A of the responsibility to resolve the matter of the unauthorized (unpermitted) discharge if they proceeded and acquired the improvements associated with the Mesa Lakes Resort.

16. On March 25, 2009, the Division sent a Compliance Advisory to S&A. The Compliance Advisory officially notified S&A that the continuing unauthorized (unpermitted) seep discharge constituted violations of 25-8-501(1) C.R.S. The Compliance Advisory further informed S&A of the Division's expectations to address and eliminate the unauthorized (unpermitted) seep discharge.

17. The Division did not received a formal response from S&A regarding the March 25, 2009 Compliance Advisory.

18. On August 19, 2009, a Division representative met with representatives of S&A to discuss the continuing unauthorized (unpermitted) seep discharge and associated permitting issues. In response to the meeting S&A provided water usage records for Mesa Lakes Resort in a letter to the Division, dated August 20, 2009. However, the letter did not address the elimination of the unauthorized (unpermitted) seep discharge.

19. On May 24, 2010, the Division sent a follow-up Compliance Advisory to S&A. The Compliance Advisory informed S&A of the Division's concerns regarding S&A's progress to address and eliminate the unauthorized (unpermitted) discharge of pollutants from the seep associated with the System's lagoon. The Compliance advisory requested S&A to submit to the Division a plan and schedule to eliminate the unauthorized (unpermitted) discharge.

20. The Division did not received a response from S&A regarding the May 24, 2010 Compliance Advisory.

21. On September 22, 2010, representatives from the Division's Permit and Compliance Assurance Sections (the "P&CA Inspectors"), the Mesa County Health Department, and the USFS conducted an on-site inspection of Mesa Lakes Resort's System pursuant to the Division's authority under §25-8-306, C.R.S. The inspection was conducted to determine S&A's current compliance with the Water Quality Control Act. During the inspection, the P&CA Inspectors interviewed an S&A representative and performed a physical inspection of the System.

22. During the September 2010 inspection, the P&CA Inspectors observed that partially treated sewage contained within the System's lagoon was still discharging through the seep identified during the Division's May 16 & 23, 2007 inspections. The P&CA Inspectors observed that the water from the seep continued to flow into the adjacent unnamed surface water drainage which eventually leads into Jumbo Reservoir.

23. The partially treated sewage that is seeping from the lagoon is a "pollutant" as defined by §25-8-103(15), C. R. S. and it's implementing permit regulation, 5 CCR 1002-61, §61.2 (76).

24. The seep of partially treated sewage, as described above, from S&A's lagoon into the unnamed surface water drainage and Jumbo Reservoir constitutes a "discharge of pollutants" as defined by §25-8-103(3), C.R.S.

25. The unnamed surface water drainage and Jumbo Reservoir are each "state waters" as defined by §25-8-103(19), C.R.S. and it's implementing permit regulation, 5 CCR 1002-61, §61.2 (102).

26. The lagoon associated with the System and the associated seep are a "point source" as defined by §25-8-103(14), C.R.S. and it's implementing permit regulation, 5 CCR 1002-61, §61.2 (75).

27. S&A does not have a permit from the Division authorizing the surface water discharge of pollutants, described above, from the System into the unnamed surface water drainage and Jumbo Reservoir.

28. S&A's discharge of partially treated sewage from the System's lagoon, through the seep and into the unnamed surface water drainage and Jumbo Reservoir constitutes an unauthorized discharge of pollutants from a point source into state waters in violation of §25-8-501(1), C.R.S. and 5 CCR 1002-61, §61.3(1)(a).

NOTICE OF VIOLATION

29. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that S&A has violated the following section of the Colorado Water Quality Control Act:

    Section 25-8-501(1), C.R.S., which states in part "*No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the division for such discharge,*"

    5 CCR 1002-61 §61.3(1)(a), which state in part *"No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge"*

REQUIRED CORRECTIVE ACTION

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

    a. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 to 703, C.R.S., and its implementing regulations promulgated thereunder.

31. Furthermore, the Division hereby orders S&A to comply with the following specific terms and conditions of this order:

    a. Immediately initiate measures to eliminate the seep discharge, from the System's lagoon, into the unnamed surface water drainage that leads to Jumbo Reservoir.

b. Within thirty (30) calendar days of receipt of this order, S&A shall retain a qualified individual or entity *(such as a professional engineer, specifically experienced in sanitary sewer treatment and design)* to evaluate and recommend interim measures and improvements to the resort's domestic wastewater collection and treatment systems to ensure ongoing compliance with applicable Federal, State and Local laws and regulations. The evaluation shall consider, but not be limited to, the following:

   i. An evaluation and accounting of the Mesa Lakes Resort's water usage and wastewater generation rates;
   ii. An evaluation of the applicability of the Colorado Water Quality Control Act, §§25-8-101 to 703, C.R.S. (specifically including the site approval / design approval requirements) and/or the Colorado Individual Sewage Disposal Systems Act, §25-10-101 through 113, C. R. S., as they relate to any proposed wastewater treatment improvements;
   iii. An evaluation and recommendation of specific improvements for the resort's wastewater collection, treatment and disposal methods, including development of a detailed description of the proposed improvements; and
   iv. An evaluation of the interim measures that may be employed to mitigate the effects of the unauthorized discharge until such time that the unauthorized discharge has ceased. The evaluation of the interim measures should consider, at a minimum, the applicability of capturing the unauthorized discharge and pumping it back to the lagoon, ongoing downstream monitoring and the ongoing posting of the impacted/contaminated areas.
   v. An evaluation of the closure requirements (relating to lagoon dewatering, sludge removal/disposal and backfilling/grading) of the existing lagoon, if it is proposed to be removed from service.

c. Within forty five (45) calendar days of receipt of this order, S&A shall provide documentation to the Division that it has retained the services of the qualified individual or entity identified in paragraph 31(b). This documentation shall include at, a minimum, a copy of the individual or entity's qualifications and a copy of the written contract or agreement for such services, including a copy of the scope of services to be provided.

d. Within ninety (90) calendar days of receipt of this order, S&A shall submit in writing to the Division a final report on the findings of the evaluation identified and outlined in paragraph 31(b) above. Along with the findings of the evaluation, the report must identify, for each criterion, specific interim, short-term, and long-term measures that will be taken by S&A to rectify deficiencies identified in the resort's wastewater collection, treatment and disposal systems. For each interim, short-term and long-term measure identified, S&A shall also submit a time schedule for completion of each measure. **The implementation time schedule submitted must identify completion of all measures by no later than June 1, 2011.** The measures and time schedule submitted shall become a condition of this Order, and S&A shall implement the measures and time schedule as submitted unless notified by the Division, in writing, that alternate measures and/or time schedules are appropriate. If the Division imposes alternate measures and/or time schedules, they shall also become a condition of this Order.

e. S&A shall submit "Progress Reports" to the Division every thirty (30) calendar days. The first report shall be submitted to the Division by December 15, 2010. At a minimum, each report shall indicate the status of the activities undertaken to comply with this order at the time the report is filed, and outline the activities to be undertaken within in the next thirty (30) calendar days.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, S&A 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-CAS
Compliance Assurance Section
Attention: Joe Campbell
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Email: joesph.campbell@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.

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 Department 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 and 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 6th day of December, 2010.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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