

# STATE OF COLORADO

Bill Ritter, Jr., Governor  
Martha E. Rudolph, Executive Director

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 1, 2010

Jacinto Rodrigues, Registered Agent  
Sumo Development Company, Inc.  
2960 Siloam Rd.  
Florence, Colorado 81226

Certified Mail Number: 7007 0220 0001 0162 1696

**RE: Order for Civil Penalty, Number: SP-101201-1**

Dear Mr. Rodrigues:

Sumo Development Company, Inc. is hereby served with the enclosed Order for Civil Penalty ("Penalty Order"). This Penalty Order is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §25-8-608(2) of the *Colorado Revised Statutes*. Payment of the imposed civil penalty should be made in accordance with the methods referenced in the Penalty Order and Notice of Violation/Cease and Desist Order Number: SO-080108-1.

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

Sincerely,

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

*Enclosure(s)*

cc: Fremont County Environmental Health Department

ec: Aaron Urdiales, EPA Region VIII  
Joe Talbott, Engineering Section, CDPHE  
Nathan Moore, Permits Section, CDPHE  
Dick Parachini, Watershed Program, CDPHE  
Michael Beck, FSU, CDPHE  
Michael Harris, Case Person



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

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**ORDER FOR CIVIL PENALTY**

**NUMBER: SP-101201-1**

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**IN THE MATTER OF: SUMO DEVELOPMENT COMPANY, INC.**  
**d/b/a: SUMO ENTERPRISES, INC.**  
**CDPS PERMIT NO. COR-030000**  
**CERTIFICATION NO. COR-03B265**  
**FREMONT COUNTY, COLORADO**

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This matter comes before the Executive Director of the Colorado Department of Public Health & Environment on petition by the Water Quality Control Division for a civil penalty against Sumo Development Company, Inc. ("Sumo"). The Executive Director, through her designee (hereinafter the "Executive Director"), having considered this petition, 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.

**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 January 8, 2008, the Division issued Sumo a Notice of Violation/Cease and Desist Order (the "NOV/CDO") which included findings that Sumo violated the Act, its implementing permit regulations, and a permit issued under the Act. A copy of the NOV/CDO is attached hereto as Exhibit A and is incorporated herein by reference.
3. On June 25, 2009, the Division issued Amendment Number One to the NOV/CDO. A copy of Amendment Number One to the NOV/CDO is attached hereto as Exhibit B and is incorporated herein by reference.
4. On February 7, 2008, Sumo appealed the NOV/CDO. That appeal is pending. Amendment Number One has not been appealed.

**ORDER FOR CIVIL PENALTY**

5. Based upon the facts described in the NOV/CDO and Amendment Number One to the NOV/CDO, the Executive Director has determined that a civil penalty is appropriate and warranted in this matter. Therefore, the Executive Director hereby imposes a civil penalty in the amount of One Hundred Seventy Seven Thousand Two Hundred Fifty Six Dollars (\$177,256.00) against Sumo for the violations cited in the NOV/CDO and Amendment Number One to 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 C 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-CAS-B2  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

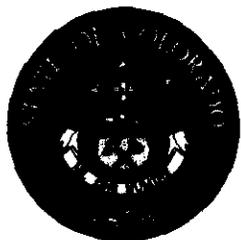
**REQUEST FOR APPEAL**

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

Issued at Denver, Colorado, this 1<sup>st</sup> day of December, 2010.



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**

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**NOTICE OF VIOLATION / CEASE AND DESIST ORDER**

**NUMBER: SO-080108-1**

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**IN THE MATTER OF: SUMO DEVELOPMENT COMPANY, INC.**  
**d/b/a: SUMO ENTERPRISES, INC.**  
**CDPS PERMIT NO. COR-030000**  
**CERTIFICATION NO. COR-03B265**  
**FREMONT COUNTY, COLORADO**

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Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority has been delegated to the Department's Water Quality Control Division (the "Division"), and pursuant to §§25-8-602 and 25-8-605, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. At all times relevant to the alleged violations identified herein, Sumo Development Company, Inc. ("Sumo") was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
2. Sumo is a "person" as defined by the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).

**Operating Without a Stormwater Permit**

3. Pursuant to §25-8-501(1), C.R.S. and its implementing permit regulation, 5CCR 1002-61, §61.3(1)(a), no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge.
4. Pursuant to 5 CCR 1002-61, §61.3(2)(e), stormwater discharges associated with industrial activity are point sources requiring Colorado Discharge Permit System ("CDPS") permit coverage.
5. Pursuant to 5 CCR 1002-61, §61.3(2)(e)(iii)(J), construction activity, including clearing, grading and excavation, that results in the disturbance of five or more acres of total land area, or will ultimately result in the disturbance of five or more acres of total land area, is considered to be "industrial activity."

## Exhibit A

6. On or about April 19, 2002, Sumo initiated construction activities to build a residential subdivision on forty five (45) acres of property located at or near State Highway 67 and Bear Paw Drive in or near the City of Florence, Fremont County, Colorado (the "Project").
7. On November 8, 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 Sumo's compliance with the Water Quality Control Act. During the inspection, the Inspector interviewed Project representatives, conducted a review of the Project's stormwater management system records, and performed a physical inspection of the Project.
8. During the November 8, 2006 inspection, the Inspector determined that the Project was not covered under a CDPS permit authorizing discharges of stormwater from the Project.
9. On January 5, 2007, Sumo, doing business as Sumo Enterprises, Inc., applied for Project coverage under the CDPS General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit") in response to the November 8, 2006 inspection.
10. On January 9, 2007, the Division provided Sumo Certification Number COR-03B265, authorizing Sumo to discharge stormwater from the construction activities associated with the Project to the Arkansas River under the terms and conditions of the Permit. Certification Number COR-03B265 became effective January 9, 2007 and remains in effect until June 30, 2012 or until Sumo inactivates Permit coverage.
11. The Arkansas 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(101).
12. The Division records establish that Sumo did not have any permits authorizing discharges of stormwater from the Project prior to January 9, 2007.
13. Sumo's failure to obtain CDPS permit coverage for the Project, prior to January 9, 2007, 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)

### **Deficient and/or Incomplete Stormwater Management Plan**

14. Pursuant to 5 CCR 1002-61, §61.8, a permittee must comply with all the terms and conditions of a permit and violators of the terms and conditions specified in a permit may be subject to civil and criminal liability pursuant to sections 25-8-601 through 612, C.R.S.
15. Pursuant to Part I. B. of the Permit, Sumo is required to prepare 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.

## Exhibit A

16. 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 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.
  - 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).
- 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.
  - 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. Material Handling and Spill Prevention - The SWMP shall identify any procedures or significant materials handled at the site that could contribute pollutants to runoff.
- 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.

## Exhibit A

- 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.
17. In response to the November 8, 2006 inspection, Sumo submitted a copy of the Project's SWMP to the Division on January 31, 2007.
18. The Division has determined that Sumo failed to prepare and maintain a complete and accurate SWMP for the Project as described in paragraphs 18(a-f) below:
- a. Upon receipt of the January 31, 2007 submittal, the Division reviewed the Project's SWMP and identified that the SWMP did not include an estimate of the runoff coefficient of the site before and after construction activities are completed.
  - b. Upon receipt of the January 31, 2007 submittal, the Division reviewed the Project's SWMP and identified that the SWMP did not include an estimate of the percent vegetative ground cover.
  - c. Upon receipt of the January 31, 2007 submittal, the Division reviewed the Project's SWMP and identified that the SWMP did not include the locations of potential pollution sources.
  - d. Upon receipt of the January 31, 2007 submittal, the Division reviewed the Project's SWMP and identified that the SWMP did not include a site map.
  - e. Upon receipt of the January 31, 2007 submittal, the Division reviewed the Project's SWMP and identified that the SWMP did not clearly describe the relationship between the phases of construction and the implementation and maintenance of controls and measures.
  - f. Upon receipt of the January 31, 2007 submittal, the Division reviewed the Project's SWMP and identified that the SWMP did not include the site specific scheduling of the implementation of non-structural practices.
19. Sumo's failure to prepare and maintain a complete and accurate SWMP for the Project constitutes violation(s) of Part I. B. 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 Sumo has violated the following sections Colorado Water Quality Control Act, its implementing permit regulations, and the Permit:

## Exhibit A

**Section 25-8-501(1), C.R.S.**, which states “No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article.”

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

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

**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.”

### **CEASE AND DESIST ORDER**

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

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

Furthermore, the Division hereby orders Sumo to comply with the following specific terms and conditions of this Order:

21. Sumo shall comply with the terms and conditions of the Permit and the associated certification, COR-03B265, which was issued to Sumo on January 9, 2007.
22. Sumo shall immediately evaluate the Project’s SWMP and implement necessary measures to ensure that the SWMP contains all of the elements required by the Permit and is effective in managing stormwater and pollutant discharges from the Project. Within thirty (30) calendar days of receipt of this Order, Sumo 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.
23. Sumo shall immediately implement measures to ensure that functional BMPs are in place to control stormwater and pollutant discharges from the Project. Within thirty (30) calendar days of receipt of this Order, Sumo 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, Sumo shall submit photographs to the Division documenting the current conditions and the associated BMPs implemented at the Project.

## Exhibit A

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

### **NOTICES AND SUBMITTALS**

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, Sumo 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 / Enforcement Program  
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(A) you are required to submit to the Division an answer affirming or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

Section 25-8-603, C.R.S. and 5 CCR 1002, §21.11 also provide that the recipient of a Notice of Violation may request the Division to conduct a public hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002, §21.4(B)(2). Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent Department proceeding.

Both the answer and the request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

## Exhibit A

### **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 of Colorado has not waived its right to bring an action for penalties under §§25-8-608 and 25-8-609, C.R.S., and may bring such action in the future.

### **RELEASE OR DISCHARGE NOTIFICATION**

Pursuant to §25-8-601, C.R.S., you are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

### **EFFECT OF ORDER**

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters. Nothing herein contained shall be construed to preclude other individuals, cities, towns, counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances or to preclude any other lawful actions by the State.

For further clarification of your rights and obligations under this Notice of Violation / Cease and Desist Order, you are advised to consult the Colorado Water Quality Control Act, §§25-8-101 to 703, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Exhibit A

Issued at Denver, Colorado, this 8<sup>th</sup> day of January, 2008.

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**



Lori M. Gerzina, Section Manager  
Compliance Assurance and Data Management Section  
Water Quality Control Division

Exhibit B



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

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**AMENDMENT NUMBER ONE**

**NOTICE OF VIOLATION / CEASE AND DESIST ORDER**

**NUMBER: SO-080108-1**

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**IN THE MATTER OF: SUMO DEVELOPMENT COMPANY, INC.**  
**d/b/a: SUMO ENTERPRISES, INC.**  
**CDPS PERMIT NO. COR-030000**  
**CERTIFICATION NO. COR-03B265**  
**FREMONT COUNTY, COLORADO**

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Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority has been delegated to the Department's Water Quality Control Division (the "Division"), and pursuant to §§25-8-602 and 25-8-605, C.R.S., the Division hereby issues the following Amendment Number One to its original Notice of Violation / Cease and Desist Order, Number: SO-080108-1 ("NOV/CDO"), dated January 8, 2008:

**AMENDMENT NUMBER ONE**

To further clarify the violations cited in the January 8, 2008 NOV/CDO, the Division hereby amends the NOV/CDO as follows:

1. Paragraph 5a is added, which reads as follows, "5a. Pursuant to 5 CCR 1002-61, §61.4(3)(a)(i), facilities proposing a discharge of stormwater associated with industrial activity shall submit a permit application 180 days before that facility commences industrial activity which may result in a discharge of stormwater associated with that industrial activity. Facilities involved in construction activities shall submit a permit application at least 90 days before the date on which construction is to commence."
2. Paragraph 6a is added, which reads as follows, "6a. Sumo's construction activity constitutes industrial activity that is subject to stormwater permitting requirements."
3. Paragraph 6b is added, which reads as follows, "6b. Sumo's construction activity at the Project has the potential to result in a discharge of stormwater to state waters."

## Exhibit B

4. Paragraph 13a is added, which reads as follows, “13a. Additionally, Sumo’s failure to obtain CDPS permit coverage for the Project, prior to January 9, 2007, constitutes violation(s) of 5 CCR 1002-61, §61.4(3)(a)(i).”

5. The NOTICE OF VIOLATION section is revised to reflect the addition of Paragraph 5a and Paragraph 13a. A new paragraph is added to the end of the section, which reads as follows, “**5 CCR 1002-61, §61.4(3)(a)(i)**, which states in part, ‘Facilities proposing a new discharge of stormwater associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of stormwater associated with that industrial activity. Facilities described under sections 61.3(2)(e)(iii)(J) and 61.3(2)(f)(ii)(A) shall submit applications at least 90 days before the date on which construction is to commence.’”

### **OBLIGATION TO ANSWER AND REQUEST FOR HEARING**

Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11(A) you are required to submit to the Division an answer affirming or denying the findings in paragraphs 1-4 of this Amendment Number One to the NOV/CDO, and responding to the violation cited in paragraph 5.

Section 25-8-603, C.R.S. and 5 CCR 1002, § 21.11 also state that you may request the Division to conduct a public hearing to determine the validity of this Amendment Number One to the NOV/CDO. The Division is aware that you previously submitted a request for a hearing to contest certain findings and violations cited in the original NOV/CDO. In order to contest any of the findings or violations cited in this Amendment Number One, you must file a separate request for a hearing. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002-21, § 21.4(B)(2). In such event, the Division would schedule a hearing to deal with the issues you contest from both the original NOV/CDO and this Amendment Number One. If you do not file a separate request for hearing regarding this Amendment, the validity of the factual allegations and the violations cited herein shall be deemed established in any subsequent Department proceeding. In such case, the adjudicatory hearing which you previously requested would be limited to the findings of fact and violations that you denied from the original NOV/CDO.

Both the answer and request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this Amendment Number One. The filing of an answer does not constitute a request for hearing.

### **SCOPE OF AMENDMENT NUMBER ONE**

The scope of this Amendment Number One to the NOV/CDO is limited to the revisions outlined above. All other terms and conditions of the NOV/CDO shall remain unchanged and in effect.

Exhibit B

Issued at Denver, Colorado, this 25<sup>th</sup> day of June, 2009.

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

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

Exhibit C

**STORMWATER PENALTY COMPUTATION WORKSHEET**

<b>System Name:</b> Sumo Development Company, Inc.	<b>Permit Number:</b> COR-03B265
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<b>Beneficial Use Classification:</b> Upper Arkansas River Segment 14b – <i>Aq Life Cold 2</i> , Recreation E, Agriculture	<b>Date of NOV/CDO:</b> January 8, 2008 <b>Number:</b> SO-080108-1
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<b>Type of Facility:</b> Construction	<b>Disturbed Acres:</b> 45 <b>Number of Employees:</b> N/A
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**Part I – Base Penalty Calculation**

**A. Potential Damage Component**

	<b>Violation Type</b>	<b>Adjustment</b>	<b>Amount in Dollars</b>
Line 1	<b>Conducting Covered Activity Without A Stormwater Permit</b>	Moderate = +25% of \$500	\$625.00
	<i>Adjustment Justification:</i> The Division conducted an inspection and identified that the project was not covered under a stormwater permit. Additionally, The inspector identified a failure to develop and implement a stormwater management system at the site, including a complete lack of soil stabilization practices and failures to implement and maintain structural sediment controls. Stormwater from the areas under construction at the project would discharge to two flood control ponds that were direct conveyances to a system of arroyos leading to the Arkansas River, located approximately 1.5 miles away. The ponds were solely designed to manage and release flood waters and had not been constructed or modified to function as sediment control BMPs for construction activities. As determined by EPA in their 2000 National Water Quality Inventory Report, sediment is one of the leading causes of water quality impairment in the United States. Therefore, given the contaminate type, the direct proximity to surface waters, and a lack of BMPs in place to prevent erosion and sediment transport from the construction site, through the flood control pond, and into the arroyos, the Division conservatively assigns a moderate potential harm to health/environment.		
Line 2	<b>Failure to Prepare Stormwater Management Plan (SWMP)</b>		\$0.00
	<i>Adjustment Justification:</i>		
Line 3	<b>Deficient Stormwater Management Plan (SWMP)</b>	Moderate = +25% of \$300	\$375.00
	<i>Adjustment Justification:</i> The Division reviewed the SWMP and identified deficiencies in the development of the plan, including a failure to describe the relationship between the phases of construction and the implementation of control measures, a failure to develop a site map, and a failure to include the locations of potential pollutant sources at the site – all of which are critical and necessary components to a functional SWMP. The number of counts of violation was relatively many. Given the contaminate type, the project’s direct proximity to surface waters, and the number of critical components missing from the SWMP, the Division conservatively assigns a moderate potential harm to health/environment.		

## Exhibit C

	Violation Type	Adjustment	Amount in Dollars
Line 4	<b>Failure to Install, Maintain or Properly Select Best Management Practices</b>		\$0.00
	<i>Adjustment Justification:</i>		
Line 5	<b>Failure to Perform Inspections of Stormwater Management System</b>		\$0.00
	<i>Adjustment Justification:</i>		
Line 6	<b>Failure to Submit Required/ Requested Reports (Annual Reports, Permit Compliance Schedule Items, Etc.)</b>		\$0.00
	<i>Adjustment Justification:</i>		
Line 7	<b>Failure to Maintain Required Records</b>		\$0.00
	<i>Adjustment Justification:</i>		
Line 8	<b>Pollution, Contamination or Degradation of State Waters</b>		\$0.00
	<i>Adjustment Justification:</i>		
Line 9	<b>Other Administrative Violations</b>		\$0.00
	<i>Adjustment Justification:</i>		
<b>Line 10</b>	<b>Potential Damage Total (Sum of Lines 1 through 9)</b>	<i>(Not to exceed \$6000/day)</i>	<b>\$1,000.00</b>

### B. Fault Component

		Amount in Dollars
Line 11	<b>Fault: Category 2</b>	<i>(Not to exceed \$3000/day)</i>
	<i>Justification:</i> Sumo is a professional construction company that operates nationwide and should have been aware of the state and federal requirement to obtain stormwater permit coverage for construction activities, which have been in place since 1992. Additionally, upon obtaining coverage under the permit, Sumo should have been aware of its obligations concerning the development of a complete SWMP. 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.	
		<b>\$1,000.00</b>

### C. History Component

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

Exhibit C

**Part II – Determination of Days of Violation**

		Days of Violation
Line 13	Total Days of Violation	730
<p><i>Justification:</i></p> <p><b>Conducting Covered Activity Without A Stormwater Permit:</b> Sumo initiated construction on April 19, 2002. Sumo obtained permit coverage on January 9, 2007. Therefore, 1,725 days of violation occurred. However, for the purposes of this penalty calculation and consistent with past practice, the Division has chosen to conservatively limit the days of violation to one year from the date that Sumo obtained permit coverage for the project. Therefore, the Division is conservatively utilizing 365 days of violation for this penalty calculation – the period from January 9, 2006, through January 8, 2007.</p> <p><b>Deficient Stormwater Management Plan (SWMP):</b> Sumo obtained permit coverage on January 9, 2007, at which time it certified that a complete SWMP had been developed. The Division received a copy of the SWMP from Sumo on January 31, 2007, and subsequently identified that it was deficient. On January 8, 2008, the Division issued Sumo a Notice of Violation/Cease and Desist Order. On March 10, 2008, in response to the NOV, Sumo submitted a certification that its SWMP was updated and was consistent with the requirements of the permit. However, the Division performed a follow up inspection of the project on March 17, 2010, and identified that the SWMP on site was identical to the deficient plan that Sumo submitted in January 2007. At a minimum, the Division believes that Sumo operated with a deficient SWMP from January 9, 2007 until at least January 8, 2008. As such, at least 365 days of violation occurred. Therefore, the Division is conservatively utilizing 365 days of violation for this penalty calculation – the period from January 9, 2007 through January 8, 2008.</p>		

**Part III – Determination of Multi-Day Penalty Amount**

		Amount in Dollars																																
Line 14	Multi-Day Penalty Amount	\$166,987.50																																
<p><i>Calculations:</i></p> <p><i>(Note: Days 1-365 account for the No Permit violations. Days 366-730 account for the SWMP violations. 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 to both the No Permit violations and SWMP violations in this case.)</i></p> <p>Base Penalty = (Potential Damage + Fault + History) × days of violation</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Day 1</td> <td style="width: 45%;">(\$625 + \$1000 + \$0) × 1 day</td> <td style="width: 15%; text-align: right;">= \$ 1,625.00</td> <td style="width: 25%;"></td> </tr> <tr> <td>+ Days 2-10</td> <td>\$1,625 × 9 days × 50%</td> <td style="text-align: right;">= \$ 7,312.50</td> <td></td> </tr> <tr> <td>+ Days 11-50</td> <td>\$1,625 × 40 days × 40%</td> <td style="text-align: right;">= \$ 26,000.00</td> <td></td> </tr> <tr> <td>+ Days 51-100</td> <td>\$1,625 × 50 days × 30%</td> <td style="text-align: right;">= \$ 24,375.00</td> <td></td> </tr> <tr> <td>+ Days 101-200</td> <td>\$1,625 × 100 days × 20%</td> <td style="text-align: right;">= \$ 32,500.00</td> <td></td> </tr> <tr> <td>+ Days 201-365</td> <td>\$1,625 × 165 days × 10%</td> <td style="text-align: right;">= \$ 26,812.50</td> <td></td> </tr> <tr> <td>+ Days 366-730</td> <td>(\$325 + \$1000 + \$0) × 365 days × 10%</td> <td style="text-align: right;">= \$ 48,362.50</td> <td></td> </tr> <tr> <td></td> <td style="text-align: right;">Multi-Day Base Gravity Penalty</td> <td style="text-align: right;">= \$166,987.50</td> <td></td> </tr> </table>			Day 1	(\$625 + \$1000 + \$0) × 1 day	= \$ 1,625.00		+ Days 2-10	\$1,625 × 9 days × 50%	= \$ 7,312.50		+ Days 11-50	\$1,625 × 40 days × 40%	= \$ 26,000.00		+ Days 51-100	\$1,625 × 50 days × 30%	= \$ 24,375.00		+ Days 101-200	\$1,625 × 100 days × 20%	= \$ 32,500.00		+ Days 201-365	\$1,625 × 165 days × 10%	= \$ 26,812.50		+ Days 366-730	(\$325 + \$1000 + \$0) × 365 days × 10%	= \$ 48,362.50			Multi-Day Base Gravity Penalty	= \$166,987.50	
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Exhibit C

**Part IV – Base Penalty Total**

		Amount in Dollars
<b>Line 15</b>	<b>Base Penalty = Potential Damage + Fault + History (Sum of Line 10 + Line 11 + Line 12, OR Line 14)</b>	<b>\$166,987.50</b>

**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 the regulatory inspection process. Sumo 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> Sumo certified that it addressed the deficiencies outlined in the NOV/CDO, but Sumo did not meet all of the Division’s compliance requirements within the designated time periods. Therefore, the Division reduces the base penalty by 15%.	– 15%	– \$25,048.50
Line 18	Factor C: Environmental Compliance Program <i>Justification:</i> The Division did not receive any information suggesting that Sumo implemented 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> As a professional construction/land development company, Sumo should have been aware of the stormwater regulations, which went into effect in 1992 for construction operations larger than 5 acres. At the very least, the Division believes Sumo’s violations involved negligence. However, the Division has conservatively chosen not to apply a penalty aggravation.	0%	\$0.00
Line 20	Factor E: Other Aggravating or Mitigating Circumstances <i>Justification:</i> Sumo failed to obtain permit coverage for its construction project and failed to implement a functional stormwater management system during the time period it was operating without a permit. The <i>Stormwater Civil Penalty Policy</i> (Table 1, footnote 3) allows the Division to aggravate penalties for sites that fail the obtain permit coverage <u>and</u> fail to implement functional stormwater management systems. However, the Division has conservatively chosen not to apply a penalty aggravation in.	0%	\$0.00
Line 21	Sum of Line 16 through Line 20	– 15%	– \$25,048.50
<b>Line 22</b>	<b>Adjusted Base Penalty (Sum of Line 15 + Line 21)</b>		<b>\$141,939.00</b>

Exhibit C

**Part VI– Economic Benefit Consideration**

		<b>Amount in Dollars</b>
<b>Line 23</b>	<b>Economic Benefit</b>	<b>\$35,317.00</b>
<p><i>Justification:</i></p> <p>Sumo avoided the cost of obtaining a stormwater permit for the project from April 19, 2002 until January 9, 2007. The yearly fee for a construction stormwater permit was \$449 until June 30, 2004, \$339 from July 1, 2004 to June 30, 2005, and \$270 from July 1, 2005 on. Therefore, Sumo realized an economic benefit of <b>\$1,717.00</b> from the avoided cost of not obtaining a stormwater permit for over 4 years and 8 months.</p> <p>During the time period Sumo operated without a permit, Sumo delayed the cost of developing a SWMP and avoided the associated costs of revising and updating its SWMP over a period of at least 1,725 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 \$1000. Due to the often changing conditions at construction sites, frequent evaluation of 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. Therefore, the Division has determined Sumo realized an economic benefit of <b>\$9,000.00</b> from the avoided costs associated with not revising and updating a SWMP for over 4 years and 8 months.</p> <p>During the time period Sumo operated without a permit, Sumo avoided the cost of inspecting its stormwater management system at least every 14 days and after every precipitation event that caused surface erosion. Sumo should have performed at least 123 routine 14-day inspections of the project. The Division estimates that it would take 3man-hours to thoroughly inspect a project of this size. (3 man-hours × \$25/hour × 123 inspections = \$9,225). Additionally, the Division estimates the cost of management review and implementation of corrective actions to be \$125 for each inspection event. (\$125 × 123 inspections = \$15,375). Therefore, the Division has conservatively determined Sumo realized an economic benefit of <b>\$24,600.00</b> from the avoided cost of not inspecting the project’s stormwater management system.</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**

		<b>Amount in Dollars</b>
<b>Line 24</b>	<b>Civil Penalty: (Sum Line 22 + Line 23)</b>	<b>\$177,256.00</b>

Exhibit C

**Part VIII – Ability to Pay Adjustment**

			<b>Amount in Dollars</b>
<b>Line 25</b>	<b>Ability to Pay Reduction:</b>		<i>\$0.00</i>
	<i>Justification:</i> Sumo has not provided any financial information or made any claims of an inability to pay a penalty. Therefore, an ability to pay assessment could not be conducted and was not included in this penalty calculation.		

**Part IX – Final Adjusted Penalty**

			<b>Amount in Dollars</b>
<b>Line 26</b>	<b>Total Civil Penalty: (Sum Line 24 + Line 25)</b>		<b>\$177,256.00</b>