

STATE OF COLORADO

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Executive Director and Chief Medical Officer

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

June 16, 2011

Mr. David Schultejan, Registered Agent
120th Estates Partners, LLP
10201 Brighton Rd.
Henderson, Colorado 80640

Certified Mail Number: 7006 2760 0003 4263 9366

RE: Service of Notice of Violation/Cease and Desist Order, Number: SO-110616-1

Dear Mr. Schultejan:

120th Estates Partners, LLP 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 120th Estates Partners, LLP 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., 120th Estates Partners, LLP 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 120th Estates Partners, LLP 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 Michael Harris of this office by phone at (303) 692-3598 or by electronic mail at michael.harris@state.co.us.

Sincerely,



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

Enclosure(s)

cc: Tri-County Health Department

cc: Natasha Davis, EPA Region VIII
Amy Zimmerman, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Gary Beers, Permits Unit, CDPHE
Michael Beck, OPA
Nathan Moore, Permits Section, CDPHE
Michael Harris, 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: SO-110616-1

IN THE MATTER OF: 120TH ESTATES PARTNERS, LLP
CDPS PERMIT NO. COG-500000
CERTIFICATION NO. COG-501500
ADAMS COUNTY, COLORADO

Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority 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 (the "Order"):

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the alleged violations identified herein, 120th Estates Partners, LLP ("120th Estates") was a Colorado limited liability partnership registered to conduct business in the State of Colorado.
2. 120th Estates is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
3. 120th Estates owns and/or operates the 120th Pit, a sand and gravel mining, crushing, and washing operation located at or near 10701 E. 120th Avenue, in or near the Town of Henderson, Adams County, Colorado (the "Facility").

Discharge without a Permit

4. 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, 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. Pursuant to 5 CCR 1002-65, §65.2(1) (2005), no person shall discharge any pollutant, except for pollutants in naturally-occurring stormwater, from a point source that flows to a storm sewer without first having obtained a permit for such discharge from the Division.
6. On December 5, 2007, a representative from the Division observed the discharge of extremely turbid, sediment-laden water to the South Platte River just south of the 124th Avenue bridge, in or near the Town of Henderson.
7. On December 6, 2007, a representative from Adams County observed the discharge of extremely turbid, sediment-laden water to the South Platte River just south of the 124th Avenue bridge, in or near the Town of Henderson. The Adams County representative identified that the discharge originated from 120th Estates' Facility via a blue hose that was inserted into a City of Brighton water augmentation pipeline, which then flowed to the South Platte River. The December 6, 2007 discharge is further depicted in Attachment A.
8. Sediment is a "pollutant" as defined by §25-8-103(15), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(76).
9. The City of Brighton's water augmentation pipeline and the blue hose from the Facility are "point sources" as defined by §25-8-103(14), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(75).
10. The South Platte River is "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(102).
11. 120th Estates' discharge of sediment from the Facility into the South Platte River constitutes a "discharge of pollutants" as defined by §25-8-103(3), C.R.S.
12. The Division records establish that 120th Estates did not have any permits authorizing the discharge of pollutants that occurred on December 5 and 6, 2007.
13. 120th Estates' discharge of sediment from the Facility to the South Platte River without a permit constitutes an unauthorized discharge of pollutants from a point source into state waters in violation of §25-8-501(1) C.R.S., 5 CCR 1002-61, §61.3(1)(a) and 5 CCR 1002-65, §65.2(1).

Failure to Comply with Permit Effluent Limitations

14. On December 13, 2007, and in response to the discovery of the discharge events described above, the Division received an application from 120th Estates for Facility coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COG-500000, for Sand and Gravel Mining and Processing (the "Permit").
15. On December 20, 2007, the Division provided 120th Estates Certification Number COR-501500 (the "Certification") authorizing 120th Estates to discharge process generated wastewater and/or stormwater in accordance with the terms and conditions of the Permit. Certification Number COR-501500 became effective December 20, 2007, and remains in effect until June 30, 2013 or until 120th Estates inactivates Permit coverage.

16. The Permit/Certification authorizes 120th Estates to discharge treated wastewater and stormwater from the Facility through Outfall 001 to Ski Lake – a tributary of the South Platte River – and through Outfall 002A to the City of Brighton’s water augmentation pipeline and into the South Platte River.
17. Ski Lake is “state waters” as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(102)
18. Pursuant to 5 CCR 1002-61, §61.8, 120th Estates must comply with all the terms and conditions of the Permit, and violations of such terms and conditions as specified in the Permit may be subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.
19. Pursuant to Part I. B. 1. of the Permit and Page 1 of the Certification, 120th Estates’ permitted discharge shall not exceed the effluent limitations specified below:

Effluent Parameter	Discharge Limitation		
	30-Day Average	7-Day Average	Daily Maximum
Flow, MGD	Report	N/A	Report
pH, s.u.	N/A	N/A	6.5-9.0
Oil & Grease, mg/l	N/A	N/A	10
Total Suspended Solids, mg/l	30	45	N/A

20. Pursuant to Page 1a of the Certification, 120th Estates is required to implement and maintain Best Management Practices (“BMPs”) for the prevention of erosion and control of pollutants due to its permitted discharge.
21. On February 22, 2011, a representative from Metro Wastewater Reclamation District observed the discharge of extremely turbid, sediment-laden water to the South Platte River from 120th Estates’ permitted Outfall 002A. The February 22, 2011 discharge is further depicted in Attachment A.
22. On the morning of March 1, 2011, a representative from Metro Wastewater Reclamation District observed the discharge of extremely turbid, sediment-laden water to the South Platte River from 120th Estates’ permitted Outfall 002A. The March 1, 2011 discharge is further depicted in Attachment A.
23. On the afternoon of March 1, 2011, representatives from the Division visited the Facility and observed the ongoing discharge of extremely turbid, sediment-laden water to the South Platte River from 120th Estates’ permitted Outfall 002A, and to Ski Lake from permitted Outfall 001A. The combined discharge rate was approximately 1,100 gallons/minute. Division representatives took a sample of the discharge from Outfall 002A and delivered it to the Department’s Laboratory Services Division for analysis. The March 1, 2011 discharge is further depicted in Attachment A.

24. Laboratory analysis conducted by the Department's Laboratory Services Division determined that the March 1, 2011 discharge water from 120th Estates' Outfall 002A contained the following concentration of Total Suspended Solids:

Test Parameter	Sample Date	Result	Units
Total Suspended Solids	3/1/2011	11,000	mg/l

A copy of the Laboratory Services Division's analytical report is attached hereto as Attachment B and incorporated herein by reference.

25. On May 2, 2011, a representative from the Division observed the discharge of extremely turbid, sediment-laden water to Ski Lake from 120th Estates' permitted Outfall 001A. Additionally, 120th Estates' discharge had caused, and was causing, significant erosion and sediment discharge from the southern bank of Ski Lake. No BMPs were observed in place to control erosion and sediment transport due to the discharge. The May 2, 2011 discharge is further depicted in Attachment A.
26. The Division has determined that 120th Estates' discharges of sediment-laden wastewater and/or stormwater to the South Platte River and Ski Lake, as described in paragraphs 21-25 above, exceeded the effluent limitations for Total Suspended Solids imposed by the Permit.
27. 120th Estates' failure to comply with the effluent limitations for Total Suspended Solids, as set forth above, constitutes violations of Part I. B. 1. of the Permit and Page 1 of the Certification.
28. 120th Estates' failure to implement and maintain BMPs for the prevention of erosion and sediment discharge from the bank of Ski Lake constitutes violations of Page 1a of the Certification.

Failure to Properly Monitor and Report

29. Pursuant to Part I. B. 1. of the Permit and Page 1 of the Certification, 120th Estates is required to monitor defined effluent parameters at specified frequencies, including 2 days/month for pH and Total Suspended Solids.
30. Pursuant to Part I. D. 1. of the Permit, 120th Estates is required to summarize and report the results of its effluent monitoring to the Division via quarterly discharge monitoring reports ("DMRs"). Each DMR is to include a certification by 120th Estates that the information provided therein is true, accurate and complete to the knowledge and belief of 120th Estates. The DMRs are required to be mailed to the Division so that they are received no later than the 28th day of the month following the end of the quarterly reporting period. The Permit specifies that if no discharge occurs during the quarterly reporting period, "No Discharge" shall be reported.
31. Pursuant to Part I. D. 3. of the Permit and Page 1a of the Certification, 120th Estates is required to take samples and measurements that are representative of the volume and nature of the discharge from the Facility.

32. Division records, as supplemented by 120th Estates' DMRs, establish that 120th Estates failed to monitor its wastewater and/or stormwater discharges from Outfalls 001A and 002A on a 2 day/month frequency for pH and Total Suspended Solids during the reporting periods identified below:

Reporting Period	Outfall	Effluent Parameter	Reported Monitoring Frequency
7/1/2009 – 9/30/2009	001A	pH, s.u.	1 day/month
7/1/2009 – 9/30/2009	001A	Total Suspended Solids, mg/l	1 day/month
7/1/2009 – 9/30/2009	002A	pH, s.u.	1 day/month
7/1/2009 – 9/30/2009	002A	Total Suspended Solids, mg/l	1 day/month
1/1/2010 – 3/31/2010	002A	pH, s.u.	1 day/month
1/1/2010 – 3/31/2010	002A	Total Suspended Solids, mg/l	1 day/month
4/1/2010 – 6/30/2010	002A	pH, s.u.	1 day/month
4/1/2010 – 6/30/2010	002A	Total Suspended Solids, mg/l	1 day/month
7/1/2010 – 9/30/2010	001A	pH, s.u.	1 day/month
7/1/2010 – 9/30/2010	001A	Total Suspended Solids, mg/l	1 day/month
10/1/2010 – 12/31/2010	002A	pH, s.u.	1 day/month
10/1/2010 – 12/31/2010	002A	Total Suspended Solids, mg/l	1 day/month
1/1/2011 – 3/31/2011	002A	pH, s.u.	1 day/month
1/1/2011 – 3/31/2011	002A	Total Suspended Solids, mg/l	1 day/month

33. Division records, as supplemented by 120th Estates' DMRs, establish that 120th Estates failed to submit DMR data for the following reporting periods and effluent parameters:

Reporting Period	Outfall	Effluent Parameter
12/20/2007 – 12/31/2007	001A	Flow, MGD (30 Day Average)
12/20/2007 – 12/31/2007	001A	Flow, MGD (Daily Max)
12/20/2007 – 12/31/2007	002A	Flow, MGD (30 Day Average)
12/20/2007 – 12/31/2007	002A	Flow, MGD (Daily Max)
12/20/2007 – 12/31/2007	002A	Total Suspended Solids, mg/l (30 Day Average)
12/20/2007 – 12/31/2007	002A	Total Suspended Solids, mg/l (7 Day Average)
12/20/2007 – 12/31/2007	002A	Oil and Grease, mg/l
12/20/2007 – 12/31/2007	002A	pH, s.u. (Minimum)
12/20/2007 – 12/31/2007	002A	pH, s.u. (Maximum)
12/20/2007 – 12/31/2007	002A	Selenium, µg/l (30 Day Average)
12/20/2007 – 12/31/2007	002A	Selenium, µg/l (Daily Max)
1/1/2008 – 3/31/2008	001A	Flow, MGD (30 Day Average)
1/1/2008 – 3/31/2008	001A	Flow, MGD (Daily Max)
1/1/2008 – 3/31/2008	002A	Flow, MGD (30 Day Average)
1/1/2008 – 3/31/2008	002A	Flow, MGD (Daily Max)
4/1/2008 – 6/30/2008	002A	Flow, MGD (30 Day Average)
4/1/2008 – 6/30/2008	002A	Flow, MGD (Daily Max)
10/1/2009 -12/31/2009	001A	Flow, MGD (30 Day Average)
10/1/2009 -12/31/2009	001A	Flow, MGD (Daily Max)
4/1/2010 – 6/30/2010	001A	Flow, MGD (30 Day Average)
4/1/2010 – 6/30/2010	001A	Flow, MGD (Daily Max)
4/1/2010 – 6/30/2010	001A	Total Suspended Solids, mg/l (30 Day Average)
4/1/2010 – 6/30/2010	001A	Total Suspended Solids, mg/l (7 Day Average)

Reporting Period	Outfall	Effluent Parameter
4/1/2010 – 6/30/2010	001A	Oil and Grease, mg/l
4/1/2010 – 6/30/2010	001A	pH, s.u. (Minimum)
4/1/2010 – 6/30/2010	001A	pH, s.u. (Maximum)
7/1/2010 – 9/30/2010	002A	Flow, MGD (30 Day Average)
7/1/2010 – 9/30/2010	002A	Flow, MGD (Daily Max)
7/1/2010 – 9/30/2010	002A	Total Suspended Solids, mg/l (30 Day Average)
7/1/2010 – 9/30/2010	002A	Total Suspended Solids, mg/l (7 Day Average)
7/1/2010 – 9/30/2010	002A	Oil and Grease, mg/l
7/1/2010 – 9/30/2010	002A	pH, s.u. (Minimum)
7/1/2010 – 9/30/2010	002A	pH, s.u. (Maximum)

34. Division records, as supplemented by 120th Estates' DMRs, establish that 120th Estates failed to submit DMRs to the Division by the 28th day of the month following the end of the quarter, for the following reporting periods:

Reporting Period	Outfall	DMR Receipt Date
7/1/2008 – 9/30/2008	001A	1/12/2011
7/1/2008 – 9/30/2008	002A	1/12/2011
10/1/2008 – 12/31/2008	001A	1/12/2011
10/1/2008 – 12/31/2008	002A	1/12/2011
1/1/2009 – 3/31/2009	001A	1/12/2011
1/1/2009 – 3/31/2009	002A	1/12/2011
4/1/2009 – 6/30/2009	001A	1/12/2011
4/1/2009 – 6/30/2009	002A	1/12/2011
10/1/2009 – 12/31/2009	002A	1/12/2011
1/1/2010 – 3/31/2010	001A	1/12/2011

35. Division records, as supplemented by 120th Estates' DMRs, establish that 120th Estates failed to take samples and measurements that are representative of the nature of the discharge from the Facility and/or failed to submit true, accurate, and complete information on its wastewater and stormwater discharges from the Facility, as described in paragraph 35 (a-b) below:

- a. On March 1, 2011, and as further described in paragraphs 22-24 above, 120th Estates discharged extremely turbid, sediment-laden water from Outfall 001A, and discharged water with a Total Suspended Solids concentration of 11,000 mg/l from Outfall 002A.
- b. On April 6, 2011, the Division received DMRs from 120th Estates covering the quarterly reporting period from January 1, 2011 to March 31, 2011. In the DMRs, 120th Estates reported "No Discharge" from Outfall 001A during the quarterly reporting period, and reported Total Suspended Solids concentrations of "< 5 mg/l" for both the 30 day average and 7 day average from Outfall 002A.

36. 120th Estates' failure to monitor its wastewater and/or stormwater discharges from the Facility on a 2 day/month frequency for pH and Total Suspended Solids constitutes violations of Part I. B. 1. of the Permit and Page 1 of the Certification.
37. 120th Estates' failure to submit DMR data for each effluent parameter, for each reporting period, constitutes violations of Part I. D. 1. of the Permit.
38. 120th Estates' failure to submit DMRs to the Division by the 28th day of the month following each reporting period constitutes violations of Part I. D. 1. of the Permit.
39. 120th Estates' failure to take samples and measurements that are representative of the nature of the discharge from the Facility and/or failure to submit true, accurate, and complete information on its wastewater and stormwater discharges from the Facility constitute violations of Part I. D. 1. and Part I. D. 3. of the Permit, and Page 1a of the Certification.

Deficient and/or Incomplete Stormwater Management Plan

40. Pursuant to Part I. C. 1. of the Permit, 120th Estates is required to prepare and maintain a Stormwater Management Plan ("SWMP") in accordance with good engineering, hydrologic, and pollution control practices. The SWMP is required to identify all potential sources of pollution which may be reasonably expected to affect the quality of stormwater discharges associated with mining activity. In addition, the plan is required to describe and ensure the implementation of BMPs to reduce the pollutants in stormwater discharges at the Facility.
41. Pursuant to Part I. C. 1. of the Permit, the SWMP for the Facility shall include, at a minimum, the following items:
 - a. Site Map – The SWMP shall provide a site map or maps, which indicate at a minimum:
 - i. Mining site boundaries.
 - ii. Access and haul roads.
 - iii. Stormwater outfalls and an outline of the drainage area of each stormwater outfall.
 - iv. An estimate of the direction of flow.
 - v. Each existing structural control measure to reduce pollutants in stormwater runoff.
 - vi. Non-structural BMPs, as applicable.
 - vii. Springs, streams, wetlands and other surface waters.
 - viii. Mine drainage or any other process water.
 - ix. Dedicated asphalt or concrete batch plants.
 - x. Areas used for recycling of asphalt or concrete.
 - xi. All areas of soil disturbance.
 - xii. The location and description of all potential stormwater pollution sources, including materials handling areas; vehicle fueling areas; fertilizer or chemical storage areas; areas used for storage or disposal of overburden, materials, soils or wastes; and areas used for mineral milling and processing.
 - xiii. Boundary of tributary area that is subject to effluent limitations.
 - xiv. Date the map was prepared.

- b. Description of Potential Pollutant Sources/Material Inventory – The SWMP shall identify potential pollutants and assess the potential of these sources to contribute to stormwater discharges. The SWMP must also describe appropriate BMPs for the sources. At a minimum, each of the following shall be evaluated for the potential to contribute pollutants to runoff:
 - i. Loading and unloading operations.
 - ii. Outdoor storage of chemicals or equipment.
 - iii. Crushing facilities or significant dust and particulate generating activities.
 - iv. On site waste disposal practices.
 - v. Stockpiles of overburden, raw material, waste, etc.
 - vi. Dedicated asphalt or concrete batch plants.
 - vii. Areas used for recycling of asphalt or concrete.
 - viii. Routine maintenance activities involving fertilizers, pesticides, detergents, fuels, etc.
 - ix. Haul roads.
 - x. Disturbed areas.

- c. Stormwater Quality Controls - The SWMP shall include a description of stormwater quality controls, including:
 - i. SWMP Administrator – The SWMP shall identify a specific individual(s), position or title that is responsible for developing, implementing, maintaining, and revising the SWMP.
 - ii. Materials Handling and Spill Prevention – The SWMP shall clearly describe and locate all practices implemented at the site to minimize impacts from procedures or significant materials that could contribute pollutants to runoff.
 - iii. Erosion and Sediment Controls – The SWMP shall describe BMPs that will be used to reduce erosion and prevent sediment delivery to State waters.
 - iv. Other Pollution Prevention Measures – The SWMP shall identify any other structural and non-structural measures for stormwater quality control.
 - v. Preventive Maintenance – The SWMP shall include a plan for inspecting and maintaining stormwater management devices.
 - vi. Good Housekeeping – The SWMP shall identify good housekeeping procedures that will be followed.
 - vii. Identification of Discharges other than Stormwater – The SWMP shall include a description of the results of any evaluation for the presence of discharges other than stormwater.

- 42. On May 4, 2011, the Division sent 120th Estates Partners a letter requesting information on 120th Estates' operation of the Facility. In the letter, the Division requested that 120th Estates provide a copy of the Facility's SWMP.

- 43. On May 16, 2011, the Division received a response to its May 4, 2011 letter from 120th Estates, including a copy of the Facility's SWMP.

44. The Division reviewed the Facility's SWMP and identified the following deficiencies, as described in paragraphs 44 (a-l) below:
- a. The Site Map did not include stormwater outfalls or an outline of the drainage area of each stormwater outfall, including the area of soil piles lining the south and southeast perimeter of the Facility that discharge to Fulton Ditch.
 - b. The Site Map did not include an estimate of the direction of flow.
 - c. The Site Map did not include each structural control measure to reduce pollutants in stormwater runoff, including the berms referenced in the SWMP.
 - d. The Site Map did not indicate all areas of soil disturbance.
 - e. The Description of Potential Pollutant Sources did not identify loading and unloading operations.
 - f. The Description of Potential Pollutant Sources did not identify stockpiles of overburden and materials, including the soil piles on the perimeter of the site.
 - g. The Description of Potential Pollutant Sources did not identify the haul roads at the site.
 - h. The Description of Potential Pollutant Sources did not identify the disturbed soils throughout the site.
 - i. The Stormwater Quality Controls section did not include complete procedures for materials handling and spill prevention. The SWMP states that spill areas will be isolated and the material will be removed from the mining area to a point near the fueling area. However, the SWMP did not describe what will happen next or identify any procedures for preventing spills at the site.
 - j. The Stormwater Quality Controls section did not include a preventive maintenance program to inspect and maintain stormwater management devices.
 - k. The Stormwater Quality Controls section did not include good housekeeping procedures.
 - l. The Stormwater Quality Controls section did not include a description of the methods used to identify discharges other than stormwater, the date of the evaluation, or the on-site drainage points that were directly observed during the evaluation.
45. The Division has determined that 120th Estates failed to prepare and maintain a complete and accurate SWMP for the Facility.
46. 120th Estates' failure to prepare and maintain a complete and accurate SWMP for the Facility constitutes violation(s) of Part I. C. 1. of the Permit.

Failure to Perform and Document Inspections of Stormwater Management System

47. Pursuant to Part I. C. 4. of the Permit, 120th Estates is required to conduct a comprehensive inspection of its stormwater management system at least twice per year.
48. Pursuant to Part I. C. 4. c. of the Permit, 120th Estates is required to document its permit-required inspections in a report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, significant observations relating to the implementation of the SWMP, any incidents of noncompliance, and actions taken to repair and maintain stormwater controls.
49. On May 4, 2011, the Division sent 120th Estates a letter requesting information on 120th Estates' operation of the Facility. In the letter, the Division requested that 120th Estates provide copies of its inspection records covering the period from January 2008 to present.
50. On May 11, 2011, a representative from the Division spoke by telephone with Lew Ewegen, Project Manager for 120th Estates, in regards to the Division's May 4, 2011 letter. Mr. Ewegen stated that inspections of the site had not been conducted.
51. On May 16, 2011, the Division received a response to its May 4, 2011 letter from 120th Estates. No inspection records were provided.
52. 120th Estates' failure to perform and document inspections of the Facility's stormwater management system constitutes violations of Part I. C. 4. of the Permit.

Failure to Prepare and Submit Stormwater Annual Reports

53. Pursuant to Part I. D. 2. of the Permit, 120th Estates is required to prepare and submit an Annual Report on the Facility's overall compliance with the SWMP. The Annual Report is due to the Division by February 15th of each year. The annual report is required to contain, at a minimum:
 - a. Name of permittee, address, phone number, and permit certification number.
 - b. A report on the facility's overall compliance with the SWMP.
 - c. A summary of each comprehensive stormwater facility inspection made; including date, findings, and action taken.
 - d. Results and interpretation of any stormwater monitoring performed.
 - e. A signed certification.
54. Division records establish that 120th Estates has not submitted any Annual Reports to the Division.
55. On May 4, 2011, the Division sent 120th Estates Partners a letter requesting information on 120th Estates' operation of the Facility. In the letter, the Division requested that 120th Estates provide copies of its Annual Reports for 2008, 2009, and 2010.
56. On May 11, 2011, a representative from the Division spoke by telephone with Lew Ewegen, Project Manager for 120th Estates, in regards to the Division's May 4, 2011 letter. Mr. Ewegen stated that Annual Reports for the Facility had not been prepared.

57. On May 16, 2011, the Division received a response to its May 4, 2011 letter from 120th Estates. No Annual Reports were provided.
58. 120th Estates' failure to prepare and submit a 2008, 2009, and 2010 Annual Report for the Facility constitutes violations of Part I. D. 2. of the Permit

NOTICE OF VIOLATION

59. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined 120th Estates has violated the following sections of the Colorado Water Quality Control, its implementing permit regulation, and the Permit and Certification:

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, 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, §65.2(1) (2005), which stated, "No person shall discharge any pollutant, except for pollutants in naturally-occurring stormwater, from a point source that flows to a storm sewer without first having obtained a permit for such discharge from the Division pursuant to section 25-8-501, C.R.S."

Part I. B. 1. of the Permit and Page 1 of the Certification, which outline in part that discharges of wastewater and/or stormwater shall not exceed the effluent limitations described in the Permit and that monitoring of effluent parameters shall be conducted at specified frequencies, including 2 days/month for pH and Total Suspended Solids.

Page 1a of the Certification, which states in part, "Samples must be representative of what is entering the stream" and "The permittee shall implement and maintain Best Management Practices (BMP) for the prevention of erosion and the control of solid and liquid pollutants due to the discharge."

Part I. D. 1. of the Permit, which states in part, "Reporting of the data gathered in compliance with part I. B. 3. shall be on a quarterly basis... Monitoring results shall be summarized for each calendar quarter and reported on Division approved discharge monitoring report (DMR) forms (EPA form 3320-1). The form shall be mailed to the Division at the address listed below so they are received no later than the 28th day of the month following the end of the quarter... If no discharge occurs during the reporting period 'No Discharge' shall be reported."

Part I. D. 3. of the Permit, which states in part, "Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge."

Par I. C. 1. of the Permit, which states in part, “The SWMP shall include the following items, at a minimum: ...”

Part I. C. 4. of the Permit, which states in part, “...qualified personnel identified by the permittee shall make a comprehensive inspection of their stormwater management system, at least twice per year... These comprehensive inspections must be documented and summarized in the Annual Report... c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, significant observations relating to the implementation of the SWMP, and actions taken in accordance with paragraph (b) above, shall be made and retained as part of the SWMP for at least three years after the date of inspection.”

Part I. D. 2. of the Permit, which states in part, “The permittee will be required to submit an Annual Report, covering January 1 through December 31 of each year, on the overall compliance with the SWMP. The Annual Report will contain, at a minimum: ...”

REQUIRED CORRECTIVE ACTION

Based upon the foregoing factual and legal determinations and pursuant to §25-8-602 and §25-8-605, C.R.S., 120th Estates is hereby ordered to:

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

Furthermore, the Division hereby orders 120th Estates to comply with the following specific terms and conditions of this Order:

61. Within thirty (30) calendar days of receipt of this Order, 120th Estates shall submit all records of its effluent discharge monitoring at the Facility for the period from July 1, 2008 through the date of this Order. The records shall include all laboratory data reports, all field measurement reports, and all calibration and maintenance records, including all information required to be retained by Part I. D. 5. of the Permit.
62. 120th Estates shall immediately develop and implement an inspection and record-keeping program to visually monitor, on an on-going daily basis, the Facility’s settling ponds and the discharge of process wastewater and/or stormwater to Ski Lake and the South Platte River. The implementation of the inspection program shall be documented by maintaining a records log that contains 1) the date, time and location of each visual monitoring event, 2) the name of the individual performing each visual monitoring event, 3) an indication of whether or not a compliant discharge was observed during each visual monitoring event, 4) documentation that noncompliance notification requirements (when applicable) were fulfilled in accordance with Part II. A. 4. of the Permit, 5) an indication of whether samples were collected of the observed discharge, 6) identified deficiencies and corrective actions taken; and 7) any other pertinent information regarding the quality of discharge being observed. The inspection and record-keeping program shall be implemented and the records log maintained until 120th Estates ceases its discharge and terminates Permit coverage. 120th Estates shall submit a copy of its inspection records log to the Division each calendar month until 120th Estates ceases its discharge and terminates Permit coverage. The first records log submittal shall be provided to the Division by no later than August 7,

2011. Subsequent monthly submittals shall be provided to the Division by the 7th calendar day of each calendar month.

63. Within thirty (30) calendar days of the receipt of this Order, 120th Estates shall review the requirements of the Permit and Certification with its staff responsible for ensuring compliance with the terms and conditions of the Permit. The review shall focus on, but not be limited to, 1) the effluent limitations imposed by the Permit, 2) the representative sampling provisions of the Permit, 3) the record keeping provisions of the Permit, 4) the noncompliance notification procedures required by the Permit, 5) the reduction, loss or failure of treatment facility provisions of the Permit, 6) the reduction, loss, or failure of treatment facility provisions of the Permit, and 7) the reporting obligations of the Permit, along with the instruction for proper completion of DMRs required by the Permit. Within forty five (45) calendar days of receipt of this Order, 120th Estates shall submit a written certification to the Division stating that it has completed the review of the Permit and Certification with its responsible staff.
64. Within forty five (45) calendar days of the receipt of this Order, 120th Estates shall perform a detailed evaluation of the events/circumstances related to the alleged effluent violations identified above and develop and submit a specific written plan and implementation schedule to ensure ongoing compliance with the terms and conditions of the Permit and the Colorado Water Quality Control Act. The proposed activities and implementation schedule submitted shall become a condition of this Order and 120th Estates shall implement the proposed activities as submitted unless notified by the Division, in writing, that alternate activities and/or time schedule(s) are appropriate. If the Division imposes alternate activities and/or time schedule(s), they shall also become a condition of this Order.
65. 120th Estates shall immediately implement necessary measures to ensure that adequate BMPs are in place to prevent erosion and control pollutant discharges at Outfalls 001A and 002A. Within thirty (30) calendar days of receipt of this Order, 120th Estates shall submit photographs to the Division documenting the current conditions and the associated BMPs located at each Outfall.
66. 120th Estates shall immediately evaluate the Facility's SWMP and implement necessary measures to ensure the SWMP contains all of the elements required by the Permit and is effective in managing stormwater pollutant discharges from the Facility. Within thirty (30) calendar days of receipt of this Order, 120th Estates shall submit a written certification to the Division stating that a complete, effective, and up-to-date SWMP has been fully developed and implemented at the Facility.
67. 120th Estates shall immediately implement necessary measures to ensure that stormwater management system inspections are being conducted and documented pursuant to the provisions outlined in the Permit. Within thirty (30) calendar days of receipt of this Order, 120th Estates shall submit a written certification to the Division stating that all such inspections are being conducted and documented in accordance with the terms and conditions of the Permit.
68. 120th Estates shall immediately implement necessary measures to ensure that stormwater Annual Reports are prepared and submitted pursuant to the provisions outlined in the Permit. Within thirty (30) calendar days of receipt of this Order, 120th Estates shall submit a written certification to the Division stating that 120th Estates has developed business processes to ensure that future, timely, stormwater annual reporting is performed.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, 120th Estates 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: Michael Harris
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Email: michael.harris@state.co.us

For any person submitting documents, plans, records and reports pursuant to this Notice of Violation / Cease and Desist Order, that person shall make the following certification with each submittal:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

OBLIGATION TO ANSWER AND REQUEST FOR HEARING

Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11 you are required to submit to the Division an answer affirming or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

Section 25-8-603, C.R.S. and 5 CCR 1002, §21.11 also provide that the recipient of a Notice of Violation may request the Division to conduct a public hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002, §21.4(B)(2). Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent Department proceeding. The request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

FALSIFICATION AND TAMPERING

Be advised, in accord with §25-8-610, C.R.S., that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Colorado Water Quality Control Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

POTENTIAL CIVIL AND CRIMINAL PENALTIES

You are also advised that any person who violates any provision of the Colorado Water Quality Control Act (the "Act"), §§25-8-101 to 703, C.R.S., or of any permit issued under the Act, or any control regulation promulgated pursuant to the Act, or any final cease and desist order or clean-up order issued by the Division shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution if such discharge is made without a permit, if a permit is required by the Act for such discharge, or if such discharge is made in violation of any permit issued under the Act or in violation of any Cease and Desist Order or Clean-up Order issued by the Division. By virtue of issuing this Notice of Violation / Cease and Desist Order, the State has not waived its right to bring an action for penalties under §§25-8-608 and 609, C.R.S, and may bring such action in the future.

RELEASE OR DISCHARGE NOTIFICATION

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

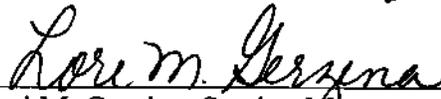
EFFECT OF ORDER

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

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

Issued at Denver, Colorado, this 16th day of June, 2011.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



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

Attachment A

Site Photographs

120th Estates Partners, LLP
CDPS Permit COG-501500
Notice of Violation/Cease and Desist Order



Colorado Department
of Public Health
and Environment



December 6, 2007 discharge of sediment-laden water from 120th Estates' Facility into the South Platte River. Looking east from the 124th Avenue bridge at outfall of City of Brighton water augmentation line. (Photo by Adams County)



December 6, 2007 discharge of sediment-laden water from 120th Estates' Facility into the South Platte River. Looking southwest at discharge as it enters the South Platte River from the City of Brighton water augmentation line. (Photo by Adams County)



December 6, 2007 discharge of sediment-laden water from 120th Estates' Facility into the South Platte River. Significant turbidity was observed just downstream of City of Brighton water augmentation line. (Photo by Adams County)



December 6, 2007 discharge of sediment-laden water from 120th Estates' Facility into the South Platte River. 120th Estates was discharging wastewater via a blue hose that was inserted into a City of Brighton water augmentation line. (Photo by Adams County)

Attachment A

Site Photographs

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CDPS Permit COG-501500
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Colorado Department
of Public Health
and Environment



February 22, 2011 discharge of sediment-laden water from 120th Estates' Facility into the South Platte River. Looking east from the 124th Avenue bridge at 120th Estates' permitted Outfall 002A, which is also a City of Brighton water augmentation line. (Photo by Metro Wastewater Reclamation District)



February 22, 2011 discharge of sediment-laden water from 120th Estates' Facility into the South Platte River. Looking north (downstream) from the 124th Avenue bridge. (Photo by Metro Wastewater Reclamation District)



March 1, 2011 (A.M.) discharge of sediment-laden water from 120th Estates' Facility into the South Platte River. Looking east from the 124th Avenue bridge at 120th Estates' permitted Outfall 002A, which is also a City of Brighton water augmentation line. (Photo by Metro Wastewater Reclamation District)



March 1, 2011 (A.M.) discharge of sediment-laden water from 120th Estates' Facility into the South Platte River. Looking north (downstream) from the 124th Avenue bridge. (Photo by Metro Wastewater Reclamation District)

Attachment A

Site Photographs

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CDPS Permit COG-501500
Notice of Violation/Cease and Desist Order



Colorado Department
of Public Health
and Environment



March 1, 2011 (P.M.) ongoing discharge of sediment-laden water from 120th Estates' Facility into the South Platte River. Looking east from the 124th Avenue bridge at 120th Estates' permitted Outfall 002A, which is also a City of Brighton water augmentation line. (Photo by Water Quality Control Division)



March 1, 2011 (P.M.) ongoing discharge of sediment-laden water from 120th Estates' Facility into the South Platte River. 120th Estates was discharging wastewater through permitted Outfall 002A via a black pipe that was inserted into a City of Brighton water augmentation line. (Photo by Water Quality Control Division)



March 1, 2011 discharge of sediment-laden water from 120th Estates' Facility into Ski Lake. Looking southwest from neighboring property at 120th Estates' permitted Outfall 001A. (Photo by Water Quality Control Division)



March 1, 2011 discharge of sediment-laden water from 120th Estates' Facility into the South Platte River and Ski Lake. Looking west at 120th Estates' Facility. Wastewater discharge from pictured settling pond was being split between Outfalls 001A and 002A. (Photo by Water Quality Control Division)

Attachment A

Site Photographs

120th Estates Partners, LLP
CDPS Permit COG-501500
Notice of Violation/Cease and Desist Order



Colorado Department
of Public Health
and Environment



May 2, 2011 discharge of sediment-laden water from 120th Estates' Facility into Ski Lake. Looking west at 120th Estates' permitted Outfall 001A. (Photo by Water Quality Control Division)



May 2, 2011 discharge of sediment-laden water from 120th Estates' Facility into Ski Lake. Significant turbidity was observed along the southern bank of Ski Lake. (Photo by Water Quality Control Division)



May 2, 2011 discharge of sediment-laden water from 120th Estates' Facility into Ski Lake. Looking west at 120th Estates' permitted Outfall 001A. Discharge had caused significant erosion and sediment transport from the southern bank of Ski Lake. (Photo by Water Quality Control Division)



May 2, 2011 discharge of sediment-laden water from 120th Estates' Facility into Ski Lake. Looking west at the Facility's settling pond. Active dredging within the pond and/or conveyance channel was occurring during pumping activities, thus resulting in significant turbidity. (Photo by Water Quality Control Division)

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

Laboratory Services Division
8100 Lowry Boulevard Denver, CO 80230
PO Box 17123 Denver, CO 80217
303-692-3090
www.coloradostatelab.us



Colorado Department
of Public Health
and Environment

Laboratory Results For Sample Number: ENV-2011002289-

Site ID/PWSID	CO0-501500-000	Contact	Gary Halbersleben
Site	120TH ESTATE PARTNERS L&P	Phone	
Address	10201 BRIGHTON RD	Fax	
	HENDERSON CO 80604	Email	gary.halbersleben@state.co.us
Site Description	BRIDGE @ 120TH DISCHARGE 2	Collected By	KJ
Customer ID	00000317	Collected	03/01/2011 13:52:00
Customer	CDPHE-WQCD-ES	Received	03/01/2011 16:06:00
	4300 Cherry Creek Drive South	Reported	03/24/2011 00:00:00
	Denver CO 80246	Bottles	1-LNEUT
	2	Matrix	Surface Water
		Field Fluoride	
		Residual Chlorine	
		Temperature at Receipt	3.8C

Test Name	Result	Units	MCL	MRL	Method Name	Date Analyzed	Qualifier
Solids, Suspended*	11000	mg/L	No Limit Established	NA	EPA 160.2	03/03/2011 00:00:00	

Comments:

Please note that the MDL for Suspended Solids analysis was < 40 mg/L, as only 25 mL of sample was used. - KAK

Registry Comments:

7.62 PH FIELD

MRL - Minimum Reporting Limit. MCL - Maximum Contaminant Limit per EPA regulations.

BDL - Below Detection Limit. H - Holding Time exceeded. Q - Quality Control limit exceeded. NT - No Test.

Units: mg/L - milligrams per liter (ppm), ug/L - micrograms per liter (ppb)

LSD Internet Address: www.coloradostatelab.us