

# STATE OF COLORADO

John W. Hickenlooper, Governor  
Christopher E. Urbina, MD, MPH  
Executive Director and Chief Medical Officer

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

4300 Cherry Creek Dr. S.      Laboratory Services Division  
Denver, Colorado 80246-1530      8100 Lowry Blvd.  
Phone (303) 692-2000      Denver, Colorado 80230-6928  
Located in Glendale, Colorado      (303) 692-3090  
<http://www.cdphe.state.co.us>



Colorado Department  
of Public Health  
and Environment

January 19, 2012

Mr. Joel A. Ovalle  
A & E Painting  
18994 E. Progress Avenue  
Centennial, Colorado 80015

Certified Mail Number: 7010 2780 0002 8752 3741

**RE: Expedited Settlement Agreement, Number: EI-120118-2  
No CDPS Permit**

Dear Mr. Ovalle:

Enclosed for your records you will find your copy of the recently executed Expedited Settlement Agreement ("ESA"). Please be advised that the first page of the ESA was changed in order to place the correct ESA Number on the final document. The ESA is now fully enforceable and constitutes a final agency action.

As specified in the enclosed ESA, you must, within fifteen (15) calendar days, submit a certified or cashier's check for the amount specified in the ESA to the Water Quality Control Division in order for this matter to be resolved.

If you have any questions, please don't hesitate to contact me at (303) 692-3546 or by electronic mail at [russell.zigler@state.co.us](mailto:russell.zigler@state.co.us).

Sincerely,

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

cc: Tri-County Health Department  
Enforcement File

ec: Natasha Davis, EPA Region VIII  
Kelly Jacques, Engineering Section, CDPHE  
Tania Watson, Compliance Assurance Section, CDPHE



Colorado Department of Public Health & Environment  
Water Quality Control Division

## EXPEDITED SETTLEMENT AGREEMENT

Number: EI-120118-2

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The Colorado Department of Public Health and Environment (“Department”), through the Water Quality Control Division (“Division”), issues this Expedited Settlement Agreement (“ESA”), pursuant to the Division’s authority under §§25-8-602, 25-8-605 and 25-8-608, C.R.S. of the Colorado Water Quality Control Act (the “Act”) §§25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of Joel A. Ovalle (d/b/a A & E Painting). The Division and Joel A. Ovalle may be referred to collectively as “the Parties.”

1. Joel A. Ovalle 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).
2. Joel A. Ovalle operates A & E Painting, located at 18994 East Progress Avenue, City of Centennial, Arapahoe County, Colorado, as a sole proprietor.
3. On June 15, 2011, the Division responded to a spill reported to the Department’s Environmental Release and Incident Reporting Line (Spill Case Number 2011-0370). A representative of Southeast Metro Stormwater Authority identified the spill as a white plume discharging from a storm drain originating at Hunter’s Run Apartments, located at 7777 East Yale Avenue, Denver, Colorado, into Cherry Creek, a water of the state, as represented in Attachment A. The Division determined that the source of the June 15, 2011 discharge originated from Joel A. Ovalle’s painting activities at Hunter’s Run Apartments, as described in Attachment A.
4. The Division has determined that Joel A. Ovalle discharged pollutants from a point source into a storm sewer and state waters in violation of 5 CCR 1002-65, §65.2(1), and §25-8-501(1), C.R.S., and its implementing permit regulation 5 CCR 1002-61, §61.3(1)(a), as further described in Attachment A.
5. The parties enter into this ESA in order to resolve the matter of civil penalties associated with the violation(s) alleged herein and in Attachment A for a penalty of \$2,500.00.
6. By accepting this ESA, Joel A. Ovalle neither admits nor denies the violations or deficiencies specified herein and in Attachment A.
7. Joel A. Ovalle certifies that A & E Painting has evaluated, revised and implemented operating procedures to ensure that paint waste is properly managed and disposed of in accordance with applicable Colorado laws and regulations.

NOV 15 2011  
Water Quality Control

- 8. Joel A. Ovalle agrees to the terms and conditions of this ESA. Joel A. Ovalle agrees that this ESA constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602, 25-8-605 and 25-8-608, C.R.S., and is an enforceable requirement of the Act. By signing the ESA, Joel A. Ovalle waives: (1) the right to contest the finding(s) specified herein and in Attachment A; and (2) the opportunity for a public hearing pursuant to §25-8-603, C.R.S.
- 9. This ESA is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and Joel A. Ovalle each reserve the right to withdraw consent to this ESA if comments received during the thirty-day period result in any proposed modification to the ESA.
- 10. This ESA constitutes a final agency order or action upon the date when the Executive Director or his designee signs the ESA and effectively imposes the civil penalty.
- 11. Joel A. Ovalle agrees that within fifteen (15) calendar days of receiving the signed and final ESA from the Division, Joel A. Ovalle shall submit a certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," for the amount specified in paragraph 5 above, to:

Russell Zigler  
 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

- 12. Notwithstanding paragraph 6 above, the violations described in this ESA will constitute part of Joel A. Ovalle's compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against Joel A. Ovalle. Joel A. Ovalle agrees not to challenge the use of the cited violations for any such purpose.
- 13. This ESA, when final, is binding upon Joel A. Ovalle his successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this ESA.

**ACCEPTED BY JOEL A. OVALLE:**

	11/7/11
Signature	Date
Joel A. Ovalle	Owner
Name (printed)	Title

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH & ENVIRONMENT:**

Lori M. Gerzina	Date: 1/18/12
Lori M. Gerzina, Section Manager Compliance Assurance and Data Management Section WATER QUALITY CONTROL DIVISION	

Attachment A  
**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**  
**Water Quality Control Division**

TO: Scott Klarich, Water Pollution Control Enforcement Unit Manager

FROM: Kelly Jacques, District Engineer

DATE: October 12, 2011

SUBJECT: A&E Painting; Unpermitted Discharge, Denver County

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On Tuesday, 06/15/2011, a call was received by the 24 hour Incident Hotline and forwarded to the Engineering Section regarding a suspect discharge identified in Cherry Creek (photo's 1 and 2, taken by Wayne Habenicht, Arapahoe County Public Works) near the intersection of Yale and Yosemite in Denver (80231). Subsequent response by the Engineering Section included the following:

- Called Brad Cox (Southeast Metro Stormwater Authority) at approximately 4:00pm on 06/15/2011
  - Mr Cox indicated that the white plumb seen in Cherry Creek (Photo 1 and 2) had been tracked back to power washing activities being performed by a painting company (A&E Painting).
  - Mr Cox emailed the Division, at 4:46 PM the same day, photos of the incident and contact information for the Property Manager (John Condur; Hunter's Run Apartments, 777 E Yale Ave, Denver CO 80231) and A&E Painting representative (Joel Ovalle) of the suspected source.
  - Due to Mr Cox onsite investigation, he deemed it appropriate to provided contact information for another potential source of pollution to the creek (Economy Paving Inc, Dan Moore) within the same email. Concrete washout activities were identified as impacting the storm drain on this property but evidence that pollutants from this activity had reached the stream prior to stopping activity and mitigating the impact was not identified.
- Called John Condur (Property Manager at Hunter's Run Apartments) – date and time not noted
  - Mr Condur confirmed that the discharge had originated from activities on his property and that he had already spoken to A&E Painting (allegedly responsible for the discharge) and Economy Paving Inc.
  - Mr. Condur noted that Brad Cox and Wayne Habenicht (Arapahoe County) had been in contact with him in regard to the spill.
  - Mr Condur indicated the source of the spill had been terminated but no cleanup activities were planned as the pollutants were considered unrecoverable.
- Called both potentially responsible parties of the discharges
  - Mr Ovalle admitted to the Division over the phone that his workers had been washing paint brushes out into the storm drain and that they had power washed the residue into the storm drain as well. He stated that he was unaware this type of discharge was not allowed. The Division discussed what was and was not allowed by the Water Quality Control Act with Mr Ovalle.
  - Mr Moore also admitted to the Division during the phone conversation that concrete washout activities had been performed over a stormwater inlet on the property and stated the practice had been stopped. The Division discussed the Water Quality Control Act requirements with him.
- Compliance Advisories were issued to both A&E Painting (Attachment I) and Economy Paving on 06/28/2011 by the Division. NOTE: the CA sent to both entities references Highline Canal as the receiving water. This is incorrect – the stormwater conveyance system runs under Highline Canal and discharges to Cherry Creek. The A&E response to the CA is also included in Attachment I.
- An Illicit Discharge Report was generated by the South East Metro Stormwater Authority (Attachment II).

## Attachment A

120<sup>th</sup> Estate Partners, 120<sup>th</sup> Pit  
Potentially Unpermitted Discharge, Denver County

October 12, 2011  
Page 2

### A&E PAINTING; POTENTIALLY UNPERMITTED DISCHARGE PHOTO LOG



**Photo 1:** White plumb into Cherry Creek. Photo looking upstream from across the bridge over Cherry Creek, adjacent to Hunters Run Apartments, taken by Wayne Habenicht, Arapahoe County Public Works, on 06/15/2011 at approximately 11:30AM.



**Photo 2:** Close up of white plumb into Cherry Creek, photo taken by Wayne Habenicht, Arapahoe County Public Works on 06/15/2011 at approximately 11:30AM.

# Attachment A

STATE OF COLORADO

## ATTACHMENT I



### Compliance Advisory from the Division to A&E Painting and A&E Response Letter

Division of Environmental Health and Safety  
1500 Court Street, Suite 1000  
Denver, Colorado 80202

Division of Environmental Health and Safety  
1500 Court Street, Suite 1000  
Denver, Colorado 80202  
Phone: 303.839.3300  
Fax: 303.839.3300  
E-mail: [denver@denvergov.org](mailto:denver@denvergov.org)

June 18, 2011

Mr. [Name]  
A&E Painting  
1500 Court Street, Suite 1000  
Denver, Colorado 80202

Re: Compliance Advisory regarding Discharge to Waters of the State  
A&E Painting  
Denver, Colorado

Dear Mr. [Name]:

The Water Quality Control Division (WQCD) reported to a spill reported to the Colorado Department of Public Health and the state's Environmental Health and Safety Division (EHS) on June 13, 2011. The spill was identified as a white plastic discharge from a storm drain originating at the site. The spill was located at 1775 E. Yale Ave, Denver, CO 80202. The spill was reported to the WQCD by the manager of the site, Mr. [Name]. The WQCD and EHS conducted an investigation and confirmed the spill. The spill was caused by a worker at the site who was not properly trained in the handling of hazardous materials. The spill was contained and cleaned up. The WQCD and EHS are providing this advisory to inform you of the spill and to ensure that you are aware of the requirements for the discharge of hazardous materials.

The WQCD and EHS are providing this advisory to inform you of the spill and to ensure that you are aware of the requirements for the discharge of hazardous materials. The spill was caused by a worker at the site who was not properly trained in the handling of hazardous materials. The spill was contained and cleaned up. The WQCD and EHS are providing this advisory to inform you of the spill and to ensure that you are aware of the requirements for the discharge of hazardous materials.

1. Colorado Water Quality Control Act Section 25-2-201(1), C.R.S. and its implementing permit regulation, CCR 1003-01-01.1(1)(a) which states in part that:

No person shall discharge any pollutant into any water body or into any water body which is a part of the State's water resources system without first having obtained a permit from the Division for such discharge.

2. Section 25-2-1(1) of Regulation No. 69, Regulations Concerning Discharge to State Waters, CCR 1003-01-01.1(1)(a) which states in part that:

No person shall discharge any pollutant into any water body or into any water body which is a part of the State's water resources system without first having obtained a permit from the Division for such discharge.

As a result of the above-cited alleged violations, please be advised of the following:

- The Division requests A&E Painting to immediately initiate efforts to demonstrate its compliance with the Colorado Water Quality Control Act, specifically including the permit to discharge to state waters.

Attachment A

# STATE OF COLORADO

John W. Hickenlooper, Governor  
Christopher E. Urbina, MD, MPH  
Executive Director and Chief Medical Officer

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Phone (303) 692-2000      Denver, Colorado 80230-6928  
Located in Glendale, Colorado      (303) 692-3090  
<http://www.cdphe.state.co.us>



Colorado Department  
of Public Health  
and Environment

June 28, 2011

*Certified Number: 7010 2780 0002 8752 1822*

Joel Ovalle  
A&E Painting  
18994 East Progress Avenue  
Centennial, CO 80015

**RE: Compliance Advisory; Unpermitted Discharge to Waters of the State  
A&E Painting  
Denver County**

Dear Mr. Ovalle:

The Water Quality Control Division (Division) responded to a spill reported to the Colorado Department of Public Health and Environment's Environmental Release and Incident Reporting Line (24-hour) on June 15, 2011 (Spill Case Number 2011-0370). This spill was identified as a white plume discharging from a storm drain originating at Hunter's Run Apartments, located at 7777 E Yale Ave, Denver CO 80231, into Highline Canal, a water of the state. Brad Cox, Stormwater Inspector for Southeast Metro Stormwater Authority, tracked the source of the discharge to your painting activities at Hunter's Run Apartments and contacted John Condur, Property Manager of Hunter's Run Apartments. Both Mr. Cox and Mr. Condur directed your staff to discontinue activities linked to this discharge.

Division records establish that A&E Painting does not have a permit authorizing the discharge of pollutants from painting activities into the storm sewer or to state waters. Therefore, based on the information provided above, the Division finds that the A&E Painting is allegedly in violation of the following:

1. Colorado Water Quality Control Act Section 25-8-501 (1), C.R.S. and its implementing permit regulation, 5CCR 1002-61, §61.3(1)(a), which states in part that:

*"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..."*

2. Section 65.2 (1) of Regulation No. 65: Regulations Controlling Discharges to Storm Sewers, CCR 1002-65 (Regulation 65) which states in part that:

*"No person shall discharge any pollutant from a point source that flows directly into a storm sewer pipe or inlet to such pipe."*

As a result of the above identified alleged violations, please be advised of the following:

3. The Division expects A&E Painting to immediately initiate efforts to discontinue all violations of the Colorado Water Quality Control Act, specifically including Regulation 61 and Regulation 65.

## Attachment A

Mr. Ovalle  
A&E Painting

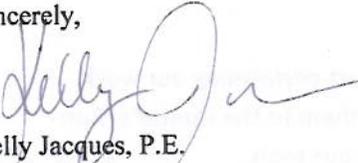
June 28, 2011  
Page 2 of 2

4. By **July 28, 2011**, the Division expects A&E Painting to submit a written waste management strategy to the Division that enables A&E Painting to comply with the Colorado Water Quality Control Act, specifically including Regulation 61 and Regulation 65, for prevention of point source discharges from painting activities. The plan must include a well-defined outline indicating best management practices to be utilized by A&E Painting to prevent discharges of pollutants which are not compliant with the Colorado Water Quality Control Act. Please direct this submission to my attention.

This Compliance Advisory is intended to advise you of alleged violations of the Colorado Water Quality Control Act and Colorado Revised Statutes so that you may take appropriate steps to correct our records and/or avoid or mitigate formal enforcement action. This Compliance Advisory does not constitute a Notice of Violation or Cease and Desist Order and is not subject to appeal. However, the issuance of this Compliance Advisory does not limit or preclude the Division from pursuing its enforcement options concerning the above alleged violations. The Division will evaluate the facts associated with the above described violations, including the response to this advisory, and if a formal enforcement action is appropriate, A&E Painting may be issued a Notice of Violation/Cease and Desist Order that may include the assessment of penalties.

If you have any questions regarding this Compliance Advisory, please contact me via email at [kelly.jacques@state.co.us](mailto:kelly.jacques@state.co.us) or by telephone at 303-692-3588. Thank you for your time and cooperation.

Sincerely,



Kelly Jacques, P.E.  
District Engineer  
Engineering Section  
Water Quality Control Division

cc: Brad Cox, Stormwater Inspector, Southeast Metro Stormwater Authority, 76 Inverness Drive East, Suite A, Englewood, CO 80112  
Ehrig Lance, Special Agent, EPA Region 8 Criminal Task Force  
John Condur, Property Manager, Hunter's Run Apartments, 7777 East Yale Ave, Denver, CO 80231

cc: Bret Icenogle, WQCD-ES Denver Field Unit 1 Manager  
Kathleen Rosow, WQCD Permits Section – Stormwater  
Mike Harris, WQCD Compliance Assistance

## Attachment A

Joel A. Ovalle  
18994 E. Progress Ave.  
Centennial, CO 80015



Office 303-693-6060  
Cell 303-522-4615  
Fax 303-699-5923

July 25, 2011

### ***Water Quality Control Division***

Attention: Kelly Jacques, P.E.

The purpose of this letter is to verify that we, A&E Painting, have taken several actions after the spill incident occurred at Hunter's run Apartments; we are focusing on important protective strategies to ensure the water source protection:

1. Every morning we have a meeting with all the painter's before we start performing our work, and review if the tools needs to be wash it if this is the case we take them to the Hunter's Run shop and we have been using **only waste drain sewers** sink to clean our tools.
2. We have also sent a written letter notification to our painter's establishing rules in the property and focusing on protective plans for example; do not clean any tool on sidewalks, pavement, or any ground at the mentioned property.
3. All painters are under the supervision of the supervisor on site whether they need to wash their tools in the property to ensure the rules are being followed.

We understand that protect our water is very important and due to this incident protect this important resource has become our top priority in our company. We regret this incident and any inconvenience this may caused to our nature we are looking forward to work hard to prevent this accidents in the future.

Sincerely,

Joel Ovalle  
A&E Painting

Attachment A

ATTACHMENT II

**Southeast Metro Stormwater Authority Field Report**

Attachment A

EXHIBIT B

Appendix B - Attachment A

# SEMSWA Illicit Discharge Report

## Water Quality Program

Report Date: Monday, September 19, 2011



### Location / General Information

**IDDE Record#:** WOW-00034-2011  
**Issue:** Illicit Discharge  
**Address:** 7777 E YALE AVE  
**Intersect. Street:** S SYRACUSE WAY  
**General Location:** Four Square Mile  
**Jurisdiction:** Arapahoe County

**Date Entered:** 6/15/2011 5:19:28 PM  
**Assigned To:** Brad Cox  
**Entered By:** bcox  
**County Request #:**

### **Alleged Discharge Description:**

Paint discharging to Cherry Creek from storm sewer. Outfall is on southwest side of Yale-Wabash bridge.

### Observation Information

**Date Observed:** 6/15/2011  
**Time Observed:** 11:30:00 AM  
**Observer:** Wayne Habenicht  
**Observer Info:** Arapahoe County inspector  
**Discharge From:** Storm Pipe  
**Discharge To:** Stream  
**Substance:** Paint

**Discharger Name:** John Kondur  
**Discharger Address:** 7777 E Yale Ave. Denver CO 80231  
**Discharger Company Name:** Hunter's Run  
**Discharger Supervisor:**  
**Discharger Vehicle:**

### **Observation Notes:**

A concentrated flow of paint was observed for 10-15 minutes coming from the storm sewer outfall to Cherry Creek on the southwest side of the Yale-Wabash bridge. Diluted flow was observed one hour from initial observation. Investigation of upstream storm system found a painting crew working at the Hunter's Run Apartment Communities. Visible signs were present of painters washing brushes, buckets, and equipment at detention pond facility outlets. Water hoses were left in the facilities at outlets with visible signs of paint present.

#### Painting Company information:

A&E Painting  
Joel Ovalle  
18994 E Progress Ave  
Centennial CO 80015  
303-693-6060  
303-522-4615 cell

### Status / Investigation Actions

Investigation Reason:	Staff Complaint	Action Taken	Date
		Verbal Notification	6/15/2011
		Other	6/15/2011

**Verification:** Verified

**Status:** Completed

**Priority:** High

**Start Date:** 6/15/2011

**Stop Date:** 7/22/2011

### **Action Notes:**

Contact made with Hunter's Run Property Manager (John Kondur) and instructed to cease immediately. Report made to CDPHE reporting line (2011-0370). Contact received from Kelly Jacques WQCD (303-692-3588)

SEMSWA contacted on State correspondence (see folder path)

