

# 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

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Colorado Department  
of Public Health  
and Environment

February 6, 2012

David Schultejan, Registered Agent  
120th Estates Partners, LLP  
10201 Brighton Road  
Henderson, CO 80640

Certified Mail Number: 7010 2780 0002 8752 3758

**RE: Order for Civil Penalty, Number: SP-120206-1**

Dear Mr. Schultejan:

120th Estates Partners, LLP 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-110616-1.

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

*Enclosure(s)*

cc: Tri-County Health Department  
Enforcement File

ec: Natasha Davis, EPA Region VIII  
Amy Zimmerman, Engineering Section, CDPHE  
Nathan Moore, Permits Section, CDPHE  
Dick Parachini, Watershed Program, CDPHE  
Michael Beck, FSU, CDPHE  
Kelly Hargadin, MS4 Program Contact  
Michael Harris, Case Person, CDPHE  
Tania Watson, Compliance Assurance, CDPHE



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

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**ORDER FOR CIVIL PENALTY**

**NUMBER: SP-120206-1**

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**IN THE MATTER OF: 120<sup>TH</sup> ESTATES PARTNERS, LLP**  
**CDPS PERMIT NO. COG-500000**  
**CERTIFICATION NO. COG-501500**  
**ADAMS 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 120<sup>th</sup> Estates Partners, LLP (“120<sup>th</sup> Estates”). The Executive Director, through his 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 June 16, 2011, the Division issued 120<sup>th</sup> Estates a Notice of Violation / Cease and Desist Order, Number SO-110616-1 (the “NOV/CDO”), which included findings that 120<sup>th</sup> Estates violated the Act 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. Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11, 120<sup>th</sup> Estates was required to submit an answer to each alleged violation contained in the NOV/CDO and was allowed thirty (30) calendar days to file a request for a public hearing to determine the validity of the NOV/CDO. As further outlined in the NOV/CDO, absent a request for a hearing, the validity of the factual allegations and the NOV/CDO shall be deemed established in any subsequent Department proceeding.
4. The Division did not receive a request for a hearing from 120<sup>th</sup> Estates, nor the required answer to the NOV/CDO.

5. 120<sup>th</sup> Estates' forfeiture of a hearing request constitutes a waiver of its right to a hearing, including a waiver of its right to contest the findings and conclusions set forth in the NOV/CDO. Since 120<sup>th</sup> Estates has so waived its right to contest those findings and conclusions, the Director hereby accepts those findings and conclusions as true and enters the following order.

**ORDER FOR CIVIL PENALTY**

6. Based upon the facts described in 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 Sixty Thousand One Hundred Sixty Eight Dollars (\$60,168.00) against 120<sup>th</sup> Estates for the violations cited in the NOV/CDO. The civil penalty was determined in accordance with the procedures outlined in the Division's *Civil Penalty Policy* (May 1, 1993). A copy of the civil penalty calculation is attached hereto as Exhibit B 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**

7. Pursuant to 5 CCR 1002, §§21.12(B) and 21.4(A)(3)(b), an appeal of the determination of the civil penalty by the Executive Director shall be made in writing to the Division. Requests for such an appeal should be made in accordance with 5 CCR 1002, §21.12(B), shall be filed no later than thirty (30) calendar days after issuance of this action, and shall include the information specified in 5 CCR 1002, §21.4(B)(2).

Issued at Denver, Colorado, this 6th day of February 2012.



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-110616-1**

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**IN THE MATTER OF: 120<sup>TH</sup> ESTATES PARTNERS, LLP**  
**CDPS PERMIT NO. COG-500000**  
**CERTIFICATION NO. COG-501500**  
**ADAMS 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 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, 120<sup>th</sup> Estates Partners, LLP ("120<sup>th</sup> Estates") was a Colorado limited liability partnership registered to conduct business in the State of Colorado.
2. 120<sup>th</sup> 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. 120<sup>th</sup> Estates owns and/or operates the 120<sup>th</sup> Pit, a sand and gravel mining, crushing, and washing operation located at or near 10701 E. 120<sup>th</sup> 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.

## Exhibit A

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 124<sup>th</sup> 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 124<sup>th</sup> Avenue bridge, in or near the Town of Henderson. The Adams County representative identified that the discharge originated from 120<sup>th</sup> 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. 120<sup>th</sup> 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 120<sup>th</sup> Estates did not have any permits authorizing the discharge of pollutants that occurred on December 5 and 6, 2007.
13. 120<sup>th</sup> 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 120<sup>th</sup> 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 120<sup>th</sup> Estates Certification Number COR-501500 (the "Certification") authorizing 120<sup>th</sup> 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 120<sup>th</sup> Estates inactivates Permit coverage.

## Exhibit A

16. The Permit/Certification authorizes 120<sup>th</sup> 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, 120<sup>th</sup> 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, 120<sup>th</sup> 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, 120<sup>th</sup> 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 120<sup>th</sup> 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 120<sup>th</sup> 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 120<sup>th</sup> 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.

## Exhibit A

24. Laboratory analysis conducted by the Department's Laboratory Services Division determined that the March 1, 2011 discharge water from 120<sup>th</sup> 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 120<sup>th</sup> Estates' permitted Outfall 001A. Additionally, 120<sup>th</sup> 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 120<sup>th</sup> 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. 120<sup>th</sup> 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. 120<sup>th</sup> 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, 120<sup>th</sup> 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, 120<sup>th</sup> 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 120<sup>th</sup> Estates that the information provided therein is true, accurate and complete to the knowledge and belief of 120<sup>th</sup> Estates. The DMRs are required to be mailed to the Division so that they are received no later than the 28<sup>th</sup> 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, 120<sup>th</sup> Estates is required to take samples and measurements that are representative of the volume and nature of the discharge from the Facility.

Exhibit A

32. Division records, as supplemented by 120<sup>th</sup> Estates' DMRs, establish that 120<sup>th</sup> 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 120<sup>th</sup> Estates' DMRs, establish that 120<sup>th</sup> 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)

Exhibit A

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 120<sup>th</sup> Estates' DMRs, establish that 120<sup>th</sup> Estates failed to submit DMRs to the Division by the 28<sup>th</sup> 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 120<sup>th</sup> Estates' DMRs, establish that 120<sup>th</sup> 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, 120<sup>th</sup> 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 120<sup>th</sup> Estates covering the quarterly reporting period from January 1, 2011 to March 31, 2011. In the DMRs, 120<sup>th</sup> 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.

## Exhibit A

36. 120<sup>th</sup> 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. 120<sup>th</sup> 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. 120<sup>th</sup> Estates' failure to submit DMRs to the Division by the 28<sup>th</sup> day of the month following each reporting period constitutes violations of Part I. D. 1. of the Permit.
39. 120<sup>th</sup> 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, 120<sup>th</sup> 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.

## Exhibit A

- 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 120<sup>th</sup> Estates Partners a letter requesting information on 120<sup>th</sup> Estates' operation of the Facility. In the letter, the Division requested that 120<sup>th</sup> 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 120<sup>th</sup> Estates, including a copy of the Facility's SWMP.

## Exhibit A

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. 120<sup>th</sup> 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.

## Exhibit A

### **Failure to Perform and Document Inspections of Stormwater Management System**

47. Pursuant to Part I. C. 4. of the Permit, 120<sup>th</sup> 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, 120<sup>th</sup> 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 120<sup>th</sup> Estates a letter requesting information on 120<sup>th</sup> Estates' operation of the Facility. In the letter, the Division requested that 120<sup>th</sup> 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 120<sup>th</sup> 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 120<sup>th</sup> Estates. No inspection records were provided.
52. 120<sup>th</sup> 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, 120<sup>th</sup> 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 15<sup>th</sup> 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 120<sup>th</sup> Estates has not submitted any Annual Reports to the Division.
55. On May 4, 2011, the Division sent 120<sup>th</sup> Estates Partners a letter requesting information on 120<sup>th</sup> Estates' operation of the Facility. In the letter, the Division requested that 120<sup>th</sup> 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 120<sup>th</sup> Estates, in regards to the Division's May 4, 2011 letter. Mr. Ewegen stated that Annual Reports for the Facility had not been prepared.

## Exhibit A

57. On May 16, 2011, the Division received a response to its May 4, 2011 letter from 120<sup>th</sup> Estates. No Annual Reports were provided.
58. 120<sup>th</sup> 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 120<sup>th</sup> 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 28<sup>th</sup> 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."

## Exhibit A

**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., 120<sup>th</sup> 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 120<sup>th</sup> Estates to comply with the following specific terms and conditions of this Order:

61. Within thirty (30) calendar days of receipt of this Order, 120<sup>th</sup> 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. 120<sup>th</sup> 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 120<sup>th</sup> Estates ceases its discharge and terminates Permit coverage. 120<sup>th</sup> Estates shall submit a copy of its inspection records log to the Division each calendar month until 120<sup>th</sup> 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,

## Exhibit A

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

63. Within thirty (30) calendar days of the receipt of this Order, 120<sup>th</sup> 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, 120<sup>th</sup> 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, 120<sup>th</sup> 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 120<sup>th</sup> 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. 120<sup>th</sup> 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, 120<sup>th</sup> Estates shall submit photographs to the Division documenting the current conditions and the associated BMPs located at each Outfall.
66. 120<sup>th</sup> 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, 120<sup>th</sup> 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. 120<sup>th</sup> 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, 120<sup>th</sup> 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. 120<sup>th</sup> 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, 120<sup>th</sup> Estates shall submit a written certification to the Division stating that 120<sup>th</sup> 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, 120<sup>th</sup> 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**

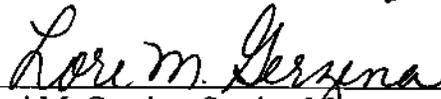
Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters. 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.

Exhibit A

Issued at Denver, Colorado, this 16<sup>th</sup> 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

Exhibit A  
Attachment A

# Site Photographs

120<sup>th</sup> 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 120<sup>th</sup> Estates' Facility into the South Platte River. Looking east from the 124<sup>th</sup> Avenue bridge at outfall of City of Brighton water augmentation line. (Photo by Adams County)



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

Exhibit A  
Attachment A

# Site Photographs

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



Colorado Department  
of Public Health  
and Environment



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



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

Exhibit A  
Attachment A

# Site Photographs

120<sup>th</sup> Estates Partners, LLP  
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 120<sup>th</sup> Estates' Facility into the South Platte River. Looking east from the 124<sup>th</sup> Avenue bridge at 120<sup>th</sup> 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 120<sup>th</sup> Estates' Facility into the South Platte River. 120<sup>th</sup> 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 120<sup>th</sup> Estates' Facility into Ski Lake. Looking southwest from neighboring property at 120<sup>th</sup> Estates' permitted Outfall 001A. (Photo by Water Quality Control Division)



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

Exhibit A  
Attachment A

# Site Photographs

120<sup>th</sup> 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 120<sup>th</sup> Estates' Facility into Ski Lake. Looking west at 120<sup>th</sup> Estates' permitted Outfall 001A. (Photo by Water Quality Control Division)



May 2, 2011 discharge of sediment-laden water from 120<sup>th</sup> 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 120<sup>th</sup> Estates' Facility into Ski Lake. Looking west at 120<sup>th</sup> 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 120<sup>th</sup> 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  
Site 120TH ESTATE PARTNERS L&P  
Address 10201 BRIGHTON RD  
HENDERSON CO 80604

Contact Gary Halbersleben  
Phone  
Fax  
Email gary.halbersleben@state.co.us

Site Description BRIDGE @ 120TH DISCHARGE 2  
Customer ID 00000317  
Customer CDPHE-WQCD-ES  
4300 Cherry Creek Drive South  
Denver CO 80246

Collected By KJ  
Collected 03/01/2011 13:52:00  
Received 03/01/2011 16:06:00  
Reported 03/24/2011 00:00:00  
Bottles 1-LNEUT  
Matrix Surface Water  
Field Fluoride  
Residual Chlorine  
Temperature at Receipt 3.8C

2

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

Exhibit B

**PENALTY COMPUTATION SUMMARY**

<b>System Name:</b> 120 <sup>th</sup> Estates Partners, LLP	<b>Permit Number:</b> COG-501500
<b>Beneficial Use Classification:</b> Upper South Platte River Segment 15 – Aq Life Cold 2, Recreation E, Water Supply, Agriculture	<b>Date of NOV/CDO:</b> 6/16/11 <b>Number:</b> SO-110616-1
<b>Type of Facility:</b> Sand and Gravel Mining	<b>Flow:</b> Average 0.7 MGD <b>Number of Employees:</b> 6-20

	<b>Wastewater</b>	<b>Stormwater</b>	<b>Total</b>
Base Penalty Total	\$50,220	\$0	\$50,220
Mitigated Amount	\$0	\$0	\$0
Economic Benefit	\$9,948	\$0	\$9,948
<b>Total Civil Penalty</b>	\$60,168	\$0	<b>\$60,168</b>

**Note:** After the issuance of the Notice of Violation/Cease and Desist Order (SO-11-0616-1) to 120<sup>th</sup> Estates Partners, LLP, the Division became aware that another entity, GSL/Brush LLC, had assumed ownership/operational control of the sand and gravel pit where the violations occurred. GSL/Brush LLC disclosed that it took ownership of the sand and gravel pit on June 22, 2009. As such, this calculation includes penalties against 120<sup>th</sup> Estate Partners, LLP for only those violations that occurred prior to June 22, 2009.

Exhibit B

**WASTEWATER PENALTY COMPUTATION WORKSHEET**

<b>System Name:</b> 120 <sup>th</sup> Estates Partners, LLP	<b>Permit Number:</b> COG-501500
<b>Beneficial Use Classification:</b> Upper South Platte River Segment 15 – Aq Life Cold 2, Recreation E, Water Supply, Agriculture	<b>Date of NOV/CDO:</b> 6/16/11 <b>Number:</b> SO-110616-1
<b>Type of Facility:</b> Sand and Gravel Mining	<b>Flow:</b> Average 0.7 MGD

**Part I – Effluent Violations Penalty Determination**

**A. Potential Damage Component**

	<b>Violation Type</b>	<b>Adjustment</b>	<b>Amount in Dollars</b>
Line 1	<b>Discharge Without Permit</b>	\$1032 + 50%	<b>\$1,548.00</b>
	<p><i>Calculation:</i> On December 5, 2007, the Division observed the discharge of extremely turbid, sediment-laden water to the South Platte River just south of the 124<sup>th</sup> Avenue bridge, in or near the Town of Henderson. On December 5, 2007, Adams County observed the discharge of extremely turbid, sediment-laden water to the South Platte River just south of the 124<sup>th</sup> Avenue Bridge, in or near the Town of Henderson. The Division determined that the source of the discharge was 120<sup>th</sup> Estates' facility. The primary pollutant was Total Suspended Solids (TSS). TSS limits are based on state effluent standards that are technology-based. Therefore, in accordance with the Division's Civil Penalty Policy, a point value of 3 is assigned. Actual flow is determined to be approximately 0.7 MGD with a pollutant exceedance of &gt;200%, which yields a percent exceedance multiplier of 1.72.</p> <p>Point Total = % Exceedance × Point Value = 1.72 × 3 = 5.16                      Potential Damage Value = 5.16 × \$200 = \$1032</p> <p><i>Adjustment Justification:</i> To account for the fact the discharge was not authorized, the potential damage value was increased by 50% over the calculated value.</p>		
Line 2			N/A
	<i>Calculation:</i>		
Line 3			N/A
	<i>Calculation:</i>		
Line 4			N/A
	<i>Calculation:</i>		
<b>Line 5</b>	<b>Potential Damage Total (Sum of Lines 1 through 4)</b>	<i>(Not to exceed \$6000/day)</i>	<b>\$1,548.00</b>

## Exhibit B

### B. Fault Component

			Amount in Dollars
<b>Line 6</b>	<b>Fault: Category 2</b>	<i>(Not to exceed \$3000/day)</i>	<b>\$1,500.00</b>
<i>Justification:</i> 120 <sup>th</sup> Estates had adequate technical, financial and managerial capacity and should have been aware of the circumstances that lead to the violations and its obligation to obtain a discharge permit. Further, the noncompliant (muddy) discharges were visually apparent and should have been easily identified by 120 <sup>th</sup> Estates. Therefore, the Division assigns a Category 2 Fault. The Division has chosen the midpoint of the Category 2 range, as the Division has no additional information to support adjustments from this value.			

### C. History Component

			Amount in Dollars
<b>Line 7</b>	<b>History: N/A</b>	<i>(Not to exceed \$1000/day)</i>	<b>\$0.00</b>
<i>Justification:</i> 120 <sup>th</sup> Estates has no prior violation history with the Division.			

### D. Days of Violation Determination

			Days of Violation
<b>Line 8</b>	<b>Total Days of Violation</b>		<b>15</b>
<i>Justification:</i>  <b>Discharge Without Permit:</b> The Division observed 120 <sup>th</sup> Estates discharging without a Permit on December 5, 2007, and Adams County observed 120 <sup>th</sup> Estates discharging without a Permit on December 6, 2007. In response to the discovery of the discharge, 120 <sup>th</sup> Estates obtained a discharge permit on December 20, 2007. However, on December 6, 2007, when contacted by the Division, 120 <sup>th</sup> Estates' site operator stated that pumping and discharge must continue to prevent the pit from flooding. Therefore, the Division believes the unauthorized discharge occurred from at least December 5, 2007 through December 19, 2007, or at least 15 days.			

### E. Effluent Violations Multi-Day Penalty Calculation

			Amount in Dollars
<b>Line 9</b>	<b>Multi-Day Penalty Amount</b>		<b>\$45,720.00</b>
<i>Calculation:</i>  (Potential Damage + Fault + History) × Days of Violation (\$1548 + \$1500 + \$0) × 15 = \$45,720			

Exhibit B

**Part II – Administrative Violations Penalty Determination**

	<b>Violation Type</b>	<b>Adjustment</b>	<b>Amount in Dollars</b>																																																						
Line 10	<b>Delinquent and/or Late DMRs</b>	+/- 0%	<b>\$2,000.00</b>																																																						
	<p><i>Calculation:</i> 120<sup>th</sup> Estates failed to submit DMRs by the due date described in the permit for the following reporting periods:</p> <table border="1"> <thead> <tr> <th>Reporting Period</th> <th>Outfall</th> <th>DMR Receipt Date</th> </tr> </thead> <tbody> <tr><td>7/1/2008 – 9/30/2008</td><td>001A</td><td>1/12/2011</td></tr> <tr><td>7/1/2008 – 9/30/2008</td><td>002A</td><td>1/12/2011</td></tr> <tr><td>10/1/2008 – 12/31/2008</td><td>001A</td><td>1/12/2011</td></tr> <tr><td>10/1/2008 – 12/31/2008</td><td>002A</td><td>1/12/2011</td></tr> <tr><td>1/1/2009 – 3/31/2009</td><td>001A</td><td>1/12/2011</td></tr> <tr><td>1/1/2009 – 3/31/2009</td><td>002A</td><td>1/12/2011</td></tr> <tr><td>4/1/2009 – 6/30/2009</td><td>001A</td><td>1/12/2011</td></tr> <tr><td>4/1/2009 – 6/30/2009</td><td>002A</td><td>1/12/2011</td></tr> </tbody> </table> <p>However, as indicated in the table, the DMRs were eventually received. In accordance with the Division’s Civil Penalty Policy, the penalty for delinquent or late DMRs shall be \$250/DMR if the DMR is submitted prior to the issuance of an NOV. 8 late DMRs × \$250 = \$2000</p>			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																											
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Line 11	<b>Failure to Complete DMRs</b>	+/-0%	<b>\$2,500.00</b>																																																						
	<p><i>Calculation:</i> 120<sup>th</sup> Estates failed to complete several DMRs, which included failures to report and/or monitor the following parameters during the following reporting periods:</p> <table border="1"> <thead> <tr> <th>Reporting Period</th> <th>Outfall</th> <th>Effluent Parameter</th> </tr> </thead> <tbody> <tr><td>12/20/2007 – 12/31/2007</td><td>001A</td><td>Flow, MGD (30 Day Average)</td></tr> <tr><td>12/20/2007 – 12/31/2007</td><td>001A</td><td>Flow, MGD (Daily Max)</td></tr> <tr><td>12/20/2007 – 12/31/2007</td><td>002A</td><td>Flow, MGD (30 Day Average)</td></tr> <tr><td>12/20/2007 – 12/31/2007</td><td>002A</td><td>Flow, MGD (Daily Max)</td></tr> <tr><td>12/20/2007 – 12/31/2007</td><td>002A</td><td>Total Suspended Solids, mg/l (30 Day Average)</td></tr> <tr><td>12/20/2007 – 12/31/2007</td><td>002A</td><td>Total Suspended Solids, mg/l (7 Day Average)</td></tr> <tr><td>12/20/2007 – 12/31/2007</td><td>002A</td><td>Oil and Grease, mg/l</td></tr> <tr><td>12/20/2007 – 12/31/2007</td><td>002A</td><td>pH, s.u. (Minimum)</td></tr> <tr><td>12/20/2007 – 12/31/2007</td><td>002A</td><td>pH, s.u. (Maximum)</td></tr> <tr><td>12/20/2007 – 12/31/2007</td><td>002A</td><td>Selenium, µg/l (30 Day Average)</td></tr> <tr><td>12/20/2007 – 12/31/2007</td><td>002A</td><td>Selenium, µg/l (Daily Max)</td></tr> <tr><td>1/1/2008 – 3/31/2008</td><td>001A</td><td>Flow, MGD (30 Day Average)</td></tr> <tr><td>1/1/2008 – 3/31/2008</td><td>001A</td><td>Flow, MGD (Daily Max)</td></tr> <tr><td>1/1/2008 – 3/31/2008</td><td>002A</td><td>Flow, MGD (30 Day Average)</td></tr> <tr><td>1/1/2008 – 3/31/2008</td><td>002A</td><td>Flow, MGD (Daily Max)</td></tr> <tr><td>4/1/2008 – 6/30/2008</td><td>002A</td><td>Flow, MGD (30 Day Average)</td></tr> <tr><td>4/1/2008 – 6/30/2008</td><td>002A</td><td>Flow, MGD (Daily Max)</td></tr> </tbody> </table> <p>In accordance with the Division’s Civil Penalty Policy, the penalty for an incomplete DMR will consist of a base penalty of up to \$500/DMR plus the cost of analysis for each missing parameter. Considering the fact that the violations were re-occurring over a significant period of time (2½ years) without apparent correction, the Division has determined that a penalty of \$500/DMR is appropriate. 5 incomplete DMRs × \$500/DMR = \$2500</p>			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)
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## Exhibit B

	Note: The cost of analysis for each missing parameter is described in the Economic Benefit Consideration section below.	
Line 12		N/A
	<i>Calculation:</i>	
Line 13		N/A
	<i>Calculation:</i>	
<b>Line 14</b>	<b>Administrative Violation Total (Sum of Lines 10 through 13)</b>	<b>\$4,500.00</b>

### Part III – Base Penalty Total

		Amount in Dollars
<b>Line 15</b>	<b>Base Penalty Total (Sum of Line 9 + Line 14)</b>	<b>\$50,220.00</b>

### Part IV – Application of Mitigating Circumstances

	Mitigating Circumstances	% Base Penalty Decrease	Amount in Dollars
Line 16	Factor A: Adhering to a Compliance Schedule	0%	\$0.00
	<i>Justification:</i> 120 <sup>th</sup> Estates has not responded to the NOV/CDO and has not adhered to the compliance schedule outlined in the NOV/CDO. Therefore, no penalty mitigation was applied.		
Line 17	Factor B: Steps Taken Beyond Required Actions	0%	\$0.00
	<i>Justification:</i> 120 <sup>th</sup> Estates has not responded to the NOV/CDO and, as such, has not taken any steps beyond the required actions. Therefore, no penalty mitigation was applied.		
Line 18	Factor C: Environmental Compliance Project	0%	\$0.00
	<i>Justification:</i> The Division has not received or identified any information suggesting that 120 <sup>th</sup> Estates implemented an environmental compliance project. Therefore, no penalty mitigation was applied.		
Line 19	Factor D: Other Mitigating Circumstances	0%	\$0.00
	<i>Justification:</i> No other mitigating circumstances were identified.		
Line 20	Sum of Lines 16 through Line 19	0%	\$0.00
<b>Line 21</b>	<b>Adjusted Base Penalty Total (Sum of Line 15 + Line 20)</b>		<b>\$50,220.00</b>

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**Part V – Economic Benefit Consideration**

		Amount in Dollars
<b>Line 22</b>	<b>Economic Benefit</b>	<b>\$9,948.00</b>
	<p><i>Justification:</i></p> <p><b>Discharge Without Permit:</b> 120<sup>th</sup> Estates Partners’ sand and gravel pit produces an average of 61,345 cubic yards of gravel per month based on current production records. 120<sup>th</sup> Estates discharged wastewater from its pit without a permit from at least December 5, 2007 through December 19, 2007, during which time 120<sup>th</sup> Estates informed the Division that it could not cease discharging without its pit flooding and thus preventing gravel mining. As such, 120<sup>th</sup> Estates likely produced approximately 30,672 cubic yards of gravel during the two weeks it was unwilling to halt operations at the facility, thereby realizing a significant economic benefit during its period of non-compliance. The Division has approximated the economic benefit as follows:</p> <p>Total estimated production during days of noncompliance (15 days) = 30,672 cubic yards  1 cubic yard of gravel = approximately 1.5 tons of gravel  30,672 cubic yards × 1.5 tons/cubic yard = 46,008 tons produced during days of noncompliance  Approximate weighted average price of gravel = \$4.00/ton  Estimated profit margin = 5%</p> <p>Economic Benefit = <math>(\\$4.00 \times 5\%) \times 46,008 = \mathbf{\\$9,201}</math></p> <p><b>Delinquent and/or Late DMRs:</b> 120<sup>th</sup> Estates Partners delayed the cost of submitting several DMRs. However, the economic benefit of the delayed cost was determined to be relatively insignificant.</p> <p><b>Failure to Complete DMRs:</b> 120<sup>th</sup> Estates avoided the cost of monitoring/reporting several effluent parameters. The Division conservatively estimates the cost of obtaining and processing a sample (including collection, paperwork, lab delivery, calculations, reporting, etc.) to be \$40/sample. 120<sup>th</sup> Estates failed to sample/report the effluent parameters specified in Line 11 above, which included 5 DMR reporting periods/outfalls.</p> <p>5 reporting periods × 3 samples/reporting period × \$40/sample = \$600</p> <p>Additionally, 120<sup>th</sup> Estates avoided the cost of laboratory analysis for the missing parameters, including TSS (one reporting period × 3 samples/period), pH (one reporting period × 3 samples/period), and selenium (one reporting period × 3 samples/period). Utilizing the Laboratory Services Division’s list of fees, the Division estimates the cost of analysis of the missing parameters to be:</p> <p>pH = <math>\\$15/\text{test} \times 3 \text{ tests} = \\$45</math>  TSS = <math>\\$15/\text{test} \times 3 \text{ tests} = \\$45</math>  Selenium = <math>\\$19/\text{test} \times 3 \text{ tests} = \\$57</math></p> <p><math>(\\$45 + \\$45 + \\$57) + \\$600 = \\$747</math></p> <p>Therefore, 120<sup>th</sup> Estates realized an economic benefit of <b>\$747</b>.</p>	

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**Part VII – Violation Penalty Total**

		Amount in Dollars
<b>Line 23</b>	<b>Civil Penalty:</b> (Sum Line 21 + Line 22)	<b>\$60,168.00</b>

**Part IX – Ability to Pay Adjustment**

		Amount in Dollars
<b>Line 24</b>	Ability to Pay Reduction: N/A	<b>\$0.00</b>
	<i>Justification:</i> 120 <sup>th</sup> Estates has not made any claims or submitted any information documenting an ability to pay issue. Therefore, an ability to pay assessment could not be performed and was not included in this penalty calculation.	

**Part X – Final Adjusted Penalty**

		Amount in Dollars
<b>Line 25</b>	<b>Total Civil Penalty:</b> (Sum Line 23 + Line 24)	<b>\$60,168.00</b>