

STATE OF COLORADO

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

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

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Denver, Colorado 80230-6928
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Colorado Department
of Public Health
and Environment

February 23, 2010

Ronald J. Snow, Registered Agent
Sonoran Custom Homes, LLC
1600 Stout Street, Suite 1600
Denver, Colorado 80202

Certified Mail Number: 7005 1820 0000 3208 1043

RE: Order for Civil Penalty, Number: SP-100223-1

Dear Mr. Snow:

Sonoran Custom Homes, LLC 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.

If you have any questions regarding the Penalty Order or the payment method, please do not hesitate to contact me at (303) 692-2356 or by electronic mail at joseph.campbell@state.co.us.

Sincerely,

Joe Campbell
Compliance Assurance Section
Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Aaron Urdiales, EPA Region VIII
Tom Schaffer, Engineering Section, CDPHE
Nathan Moore, Permits Unit, CDPHE
Dick Parachini, Watershed Program, CDPHE
Carolyn Schachterle, Financial Solutions Unit, CDPHE



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

ORDER FOR CIVIL PENALTY

NUMBER: SP-100223-1

IN THE MATTER OF: SONORAN CUSTOM HOMES, LLC
CDPS PERMIT NO. COR-030000
CERTIFICATION NO. COR-03B020
JEFFERSON COUNTY, COLORADO

Pursuant to the authority vested in the Colorado Department of Public Health & 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"), the Division hereby 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. The Department's Executive Director has delegated the authority to determine civil penalties in this matter to the Director of the Water Quality Control Division.

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 April 14, 2009, the Division issued Sonoran Custom Homes, LLC ("Sonoran") a Notice of Violation/Cease and Desist Order (the "NOV/CDO") which included findings that Sonoran violated the Act and the Colorado Discharge Permit System General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity. 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, Sonoran 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 Sonoran nor the required answer to the NOV/CDO.

5. Sonoran's 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 Sonoran 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

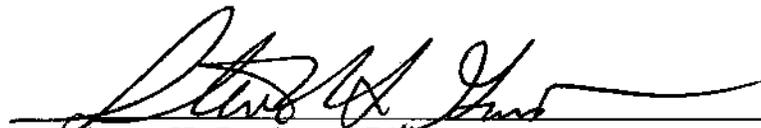
6. Based upon the facts described in the NOV/CDO, the Division has determined that a civil penalty is appropriate and warranted in this matter. Therefore, the Division hereby imposes a civil penalty in the amount of Twenty Nine Thousand Seven Hundred and Thirty-five Dollars (\$29,735.00) against Sonoran Custom Homes, LLC for the violations cited in the NOV/CDO. The civil penalty was determined in accordance with the procedures outlined in the Division's Stormwater Civil Penalty Policy (January 25, 2007). A copy of the civil penalty calculation is attached hereto as Exhibit 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:

Joe Campbell
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CADM-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

REQUEST FOR APPEAL

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

Issued at Denver, Colorado, this 23 day of February 2010.



Steven H. Gunderson, Director
Water Quality Control Division
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Exhibit A



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

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: SO-090414-3

**IN THE MATTER OF: SONORAN CUSTOM HOMES, LLC
 CDPS PERMIT NO. COR-030000
 CERTIFICATION NO. COR-03B020
 JEFFERSON COUNTY, COLORADO**

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the alleged violations identified herein, Sonoran Custom Homes, LLC ("SCH") was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
2. SCH 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. On or about September 29, 2004, SCH initiated construction of a single family residential development on 8.55 acres of property located at or near West 73rd Avenue and Eldridge Street, in or near the City of Arvada, Jefferson County, Colorado (the "Project").
4. On October 30, 2006, the Division received an application from SCH for Project coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit").
5. On October 31, 2006, the Division provided SCH Certification Number COR-03B020 authorizing SCH to discharge stormwater from the construction activities associated with the Project to Clear Creek under the terms and conditions of the Permit. Certification Number COR-03B020 became effective October 31, 2006 remains in effect until it is inactivated at the request of SCH.
6. Clear Creek 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).

Exhibit A

7. Pursuant to 5 CCR 1002-61, §61.8, a permittee must comply with all the terms and conditions of a permit and violators of the terms and conditions specified in a permit may be subject to civil and criminal liability pursuant to §§25-8-601 through 612, C.R.S.
8. On May 23, 2007, a representative from PG Environmental, LLC (the "Inspector") conducted an on-site inspection of the Project on behalf of the Division, pursuant to the Division's authority under §25-8-306, C.R.S., to determine SCH's compliance with the Water Quality Control Act and the Permit. During the inspection, the Inspector interviewed Project representatives, reviewed the Project's stormwater management system records, and performed a physical inspection of the Project.

Deficient and/or Incomplete Stormwater Management Plan

9. Pursuant to Part I. B. of the Permit, SCH is required to prepare and maintain a Stormwater Management Plan ("SWMP") that identified Best Management Practices ("BMPs") that, when implemented, would meet the terms and conditions of the Permit. The SWMP is required to identify potential sources of pollution, which may be reasonably expected to affect the quality of stormwater discharges associated with construction activity from the Project. In addition, the plan is required to describe and ensure the implementation of BMPs, which would be used to reduce the pollutants in stormwater discharges associated with construction activity.
10. Pursuant to Part I. B. of the Permit, each project's SWMP shall include, at a minimum, the following items:
 - a. Site Description - Each plan shall provide a description of the following:
 - i. A description of the construction activity.
 - ii. The proposed sequence for major activities.
 - iii. Estimates of the total area of the site, and the area of the site that is expected to undergo clearing, excavation or grading.
 - iv. An estimate of the runoff coefficient of the site before and after construction activities are completed and any existing data describing the soil, soil erosion potential or the quality of any discharge from the site.
 - v. A description of the existing vegetation at the site and an estimate of the percent vegetative ground cover.
 - vi. The location and description of any other potential pollution sources, such as vehicle fueling, storage of fertilizers or chemicals, etc.
 - vii. The location and description of any anticipated non-stormwater components of the discharge, such as springs and landscape irrigation return flow.
 - viii. The name of the receiving water(s) and the size, type and location of any outfall or, if the discharge is to a municipal separate storm sewer, the name of that system, the location of the storm sewer discharge, and the ultimate receiving water(s).
 - b. Site Map - Each plan shall provide a generalized site map or maps which indicate:
 - i. Construction site boundaries.
 - ii. All areas of soil disturbance.
 - iii. Areas of cut and fill.

Exhibit A

- iv. Areas used for storage of building materials, soils or wastes.
 - v. Location of any dedicated asphalt or concrete batch plants.
 - vi. Location of major erosion control facilities or structures.
 - vii. Springs, streams, wetlands and other surface waters.
 - viii. Boundaries of 100-year flood plains, if determined.
- c. BMPs for Stormwater Pollution Prevention - The plan shall include a narrative description of appropriate controls and measures that will be implemented before and during construction activities at the facility.
- i. Erosion and Sediment Controls - A description of structural site management controls (Structural Practices) which will minimize erosion and sediment transport and a description of interim and permanent stabilization practices (Non-Structural Practices), including the site-specific scheduling of the implementation of the practices.
 - ii. Phased BMP Implementation-The SWMP shall clearly describe the relationship between the phases of construction and the implementation and maintenance of BMP's.
 - iii. Material Handling and Spill Prevention - The SWMP shall identify any procedures or significant materials handled at the site that could contribute pollutants to runoff.
 - iv. Dedicated Concrete or Asphalt Batch Plants – The SWMP shall clearly describe and locate BMPs to control stormwater pollution from dedicated concrete batch plants or dedicated asphalt batch plants.
- d. Final Stabilization and Long-Term Stormwater Management - Description of the measures used to achieve final stabilization and measures to control pollutants in stormwater discharges that will occur after construction operations have been completed.
- e. Other Controls - Description of other measures to control pollutants in stormwater discharges, including plans for waste disposal and limiting off-site soil tracking.
- f. Inspection and Maintenance - Description of procedures to inspect and maintain in good and effective operating condition the vegetation, erosion and sediment control measures and other protective measures identified in the SWMP.
11. The Division has determined that SCH failed to prepare and maintain a complete and accurate SWMP for the Project, as described in paragraphs 11(a-h) below:
- a. During the May 23, 2007 inspection, the inspector reviewed the Project's SWMP and identified that the section in the SWMP on Site Description did not provide an estimate of the runoff coefficient of the site before and after construction activities are completed and any existing data describing the soil, soil erosion potential or the quality of any discharge from the site, as required by Part I.B.1.d of the permit.
 - b. During the May 23, 2007 inspection, the inspector reviewed the Project's SWMP and identified that the section in the SWMP on Site Description did not provide an adequate description of the existing vegetation at the site and an estimate of the percent vegetative ground cover as required by Part I.B.1.e of the permit.

Exhibit A

- c. During the May 23, 2007 inspection, the inspector reviewed the Project's SWMP and identified that the Site Map did not clearly identify all areas of soil disturbance. Specifically, the Site Map did not depict that Lot 11 would be exposed at the time of inspection.
- d. During the May 23, 2007 inspection, the inspector reviewed the Project's SWMP and identified that the Site Map did not identify areas of cut and fill as required by Part I.B.2 of the Permit.
- e. During the May 23, 2007 inspection, the inspector reviewed the Project's SWMP and identified that the Site Map did not identify all areas used for storage of building materials, soils, or wastes as required by Part I.B.2 of the permit. For example, the Site Map did not include the soil stockpiles located on Lots 7 and 11.
- f. During the May 23, 2007 inspection, the inspector reviewed the Project's SWMP and determined that the section on BMPs for Stormwater Pollution Prevention did not clearly describe the relationship between the phases of construction and the implementation and maintenance of controls and measures as required by Part I.B.3 of the Permit. For example, which controls and maintenance procedures will be implemented during each of the following stages of construction: clearing and grubbing necessary for perimeter controls, initiation of perimeter controls remaining clearing and grubbing, road grading, final grading, stabilization, and removal of control measures.
- g. During the May 23, 2007 inspection, the inspector reviewed the Project's SWMP and determined that the section on BMPs for Stormwater Pollution Prevention did not include a description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices as required by Part I.B.3.a.2 of the Permit. Particularly, site-specific scheduling of non-structural practices (e.g., temporary seeding, mulching, grading, geotextiles, vegetative buffer strips, preservation of mature vegetation, etc.) was not described in the SWMP.
- h. During the May 23, 2007 inspection, the inspector reviewed the Project's SWMP and determined that the section on Final Stabilization and Long-term Stormwater Management did not include a description of the measures used to achieve final stabilization and measures to control pollutants in stormwater discharges that will occur after construction operations have been completed, as required by Part I.B.4 of the Permit.

Failure to Implement and/or Maintain Best Management Practices to Protect Stormwater Runoff

- 12. Pursuant to Part I. B. 3. a. (1) of the Permit, SCH is required to minimize erosion and sediment transport from the Project. The Permit specifies that structural site management practices may include, but are not limited to: straw bales, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, inlet protection, outlet protection, gabions, and temporary or permanent sediment basins.
- 13. Pursuant to Part I. B. 3. a. (2) of the Permit, SCH is required to implement interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. The Permit specifies that site plans should ensure existing vegetation is preserved where possible and that

Exhibit A

disturbed areas are stabilized. The Permit specifies that non-structural practices may include, but are not limited to: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees and preservation of mature vegetation.

14. The Division has determined that SCH failed to implement and/or maintain functional BMPs at the Project as described in paragraphs 14(a–e) below:
 - a. During the May 23, 2007 inspection, the Inspector observed that adequate BMPs were not implemented to prevent the discharge of sediment from Lot 11 to Ellis Street. The straw wattles utilized along the roadway were not installed in accordance with specifications and design criteria meeting best engineering practice requirements. Specifically, the wattles were not properly entrenched in the ground to retain sediment and prevent failure. As a result, the sediment was observed in Ellis Street.
 - b. During the May 23, 2007 inspection, the Inspector observed that BMPs were not adequately maintained near the southwestern perimeter of the construction site. Specifically, the silt fence had been undercut by a previous flow event and was torn in one area. As a result, a large rill formation was observed beyond the silt fence to the south.
 - c. During the May 23, 2007 inspection, the Inspector observed that BMPs were not adequately maintained to prevent the discharge of sediment to Ellis Street, near the southern portion of the construction site. Specifically, the straw wattle was flattened in response to being run over by machinery and equipment. As a result, there was potential to discharge sediment to Ellis Street.
 - d. During the May 23, 2007 inspection, the Inspector observed that BMPs were not implemented to prevent the discharge of sediment from the southwestern corner of the construction site. Specifically, there was a gap between two portions of silt fence. As a result, sediment was observed beyond the silt fence to the west.
 - e. During the May 23, 2007 inspection, the Inspector observed that BMPs were not implemented to prevent the discharge of sediment along the western side of Lots 9 and 10. The straw wattles utilized as perimeter control BMPs were not installed in accordance with specifications and design criteria meeting best engineering practice requirements. Specifically, the wattles were not properly entrenched in the ground to retain sediment and prevent failure. As a result, there was a potential to discharge sediment to the west.
15. SCH's failure to implement and maintain functional BMPs to protect stormwater quality during construction activities at the Project constitutes violations of Part I. B. 3. a. of the Permit.

NOTICE OF VIOLATION

16. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that SCH has violated the following sections of the Colorado Water Quality Control Act's implementing permit regulations.

Exhibit A

Part I. B. of the Permit, which states in part, “The SWMP shall be prepared in accordance with good engineering, hydrologic and pollution control practices. The main objective of the plan shall be to identify Best Management Practices (BMPs) which when implemented will meet the terms and conditions of this permit. The plan shall identify potential sources of pollution (including sediment) which may be reasonably expected to affect the quality of stormwater discharges associated with construction activity from the facility. In addition, the plan shall describe and ensure the implementation of BMPs which will be used to reduce the pollutants in stormwater discharges associated with construction activity. Construction operations must implement the provisions of the SWMP required under this part as a condition of this permit.”

Part I. B. 3. a. of the Permit, which outlines in part that BMPs for Stormwater Pollution Prevention shall address erosion and sediment controls, including “structural site management practices which will minimize erosion and sediment transport,” and “interim and permanent stabilization practices, including site specific scheduling of the implementation of the practices. Site plans should ensure that existing vegetation is preserved where possible and that disturbed areas are stabilized.”

REQUIRED CORRECTIVE ACTION

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

17. 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.

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

18. SCH shall immediately evaluate the Project’s SWMP and implement necessary measures to ensure that the SWMP contains all of the elements required by the current version of the Permit and is effective in managing stormwater and pollutant discharges from the Project. Within thirty (30) calendar days of receipt of this Order, SCH shall submit to the Division a written certification stating that a complete, effective and up-to-date SWMP has been fully developed and implemented at the Project.
19. SCH shall immediately implement necessary measures to ensure that adequate BMPs are in place to control stormwater and pollutant discharges from the Project. Within thirty (30) calendar days of receipt of this Order, SCH shall evaluate and modify all existing BMPs at the Project to ensure the BMPs meet the design requirements specified in the Project’s complete and up-to-date SWMP. Within thirty (30) calendar days of receipt of this Order, SCH shall submit photographs to the Division documenting the current conditions and the associated BMPs implemented at the Project.
20. Within thirty (30) calendar days of receipt of this Order, SCH shall submit to the Division a detailed written statement outlining the standard procedures SCH will undertake to ensure that functional stormwater management systems are fully implemented at its Colorado construction sites.

Exhibit A

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, SCH shall submit an original and an electronic copy to the Division at the following address:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-B2
Compliance Assurance and Data Management Section
Attention: Danelle Morgan
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
danelle.morgan@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

Exhibit A

misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

POTENTIAL CIVIL AND CRIMINAL PENALTIES

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

RELEASE OR DISCHARGE NOTIFICATION

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

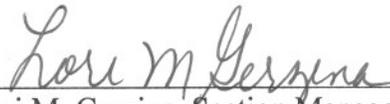
EFFECT OF ORDER

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

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

Issued at Denver, Colorado, this 14th day of April, 2009.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



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

STORMWATER PENALTY COMPUTATION WORKSHEET

System Name: Sonoran Custom Homes, LLC	Permit Number: COR-03B020
Beneficial Use Classification: Clear Creek River Basin, Segment 18a, Aq Life Warm 2, Recreation E, <u>Water Supply</u> , Agriculture	Date of NOV/CDO: April 14, 2009 Number: SO-090414-3
Type of Facility: Construction	Disturbed Acres: 5.75 Number of Employees: N/A

Part I – Base Penalty Calculation

A. Potential Damage Component

	Violation Type	Adjustment	Amount in Dollars
Line 1	Conducting Covered Activity Without A Stormwater Permit		\$0.00
	<i>Adjustment Justification:</i>		
Line 2	Failure to Prepare Stormwater Management Plan (SWMP)		\$0.00
	<i>Adjustment Justification:</i>		
Line 3	Deficient Stormwater Management Plan (SWMP)	Minor/Moderate = \$100.00 + 20%	\$120.00
	<i>Adjustment Justification:</i> PG Environmental, LLC, an authorized representative for the Colorado Department of Public Health and Environment, Water Quality Control Division (the "Division"), conducted an inspection of the project and identified deficiencies in the development of the plan, including a failure to identify all areas of soil disturbance and all areas of potential pollutants, and a failure to describe the relationship between the phases of construction and the implementation of control measures. The Division believes the SWMP deficiencies contributed to the BMP deficiencies observed at the site. Additionally, the project is located in close proximity to state waters and the main pollutant on the site (sediment), as determined by EPA in their 2000 National Water Quality Inventory Report, is one of the leading causes of water quality impairment. However, the number of counts of violation was relatively average. Therefore, the Division conservatively assigns a minor/moderate potential harm to health/environment.		
Line 4	Failure to Install, Maintain or Properly Select Best Management Practices	Minor = \$500.00 + 5%	\$525.00
	<i>Adjustment Justification:</i> An authorized representative for the Division conducted an inspection of the project and identified failures to implement and maintain BMPs at the site. Though several BMPs were in place, the BMPs were not implemented according to best engineering practices and, thus, would not act as functional controls. In relation to the overall size of the project, the number of counts of violation was relatively few. Additionally, the project is located in close proximity to state waters and the main pollutant on the site (sediment), as determined by EPA in their 2000 National Water Quality Inventory Report, is one of the leading causes of water quality impairment. However, the Division conservatively assigns a minor potential harm to health/environment.		
Line 5	Failure to Perform Inspections of Stormwater Management System		\$0.00

Exhibit B

	Violation Type	Adjustment	Amount in Dollars
	<i>Adjustment Justification:</i>		
Line 6	Failure to Submit Required/ Requested Reports (Annual Reports, Permit Compliance Schedule Items, Etc.)		\$0.00
	<i>Adjustment Justification:</i>		
Line 7	Failure to Maintain Required Records		\$0.00
	<i>Adjustment Justification:</i>		
Line 8	Pollution, Contamination or Degradation of State Waters		\$0.00
	<i>Adjustment Justification:</i>		
Line 9	Other Administrative Violations		\$0.00
	<i>Adjustment Justification:</i>		
Line 10	Potential Damage Total (Sum of Lines 1 through 9)	<i>(Not to exceed \$6000/day)</i>	\$645.00

B. Fault Component

		Amount in Dollars
Line 11	Fault: Category 2	<i>(Not to exceed \$3000/day)</i>
	<i>Justification:</i> Sonoran Custom Homes, LLC applied for and obtained a stormwater permit. Sonoran Custom Homes, LLC should have been aware its obligations under the permit and of the circumstances that led to the violations. Therefore, the Division has assigned a category-2 fault. The Division has chosen the midpoint of the category two range, as the Division has no additional information to support adjustments from this value.	
		\$300.00

C. History Component

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

Part II – Determination of Days of Violation

		Days of Violation
Line 13	Total Days of Violation	205
	<i>Justification:</i>	
	Deficient Stormwater Management Plan: Sonoran Custom Homes, LLC's permit became effective on October 31, 2006. Upon applying for the permit on October 27, 2006, Sonoran Custom Homes, LLC certified that a complete and accurate SWMP had been prepared for the project. PG	

Exhibit B

	<p>Environmental, LLC reviewed the project’s SWMP on May 23, 2007 and identified that Sonoran Custom Homes, LLC’s SWMP did not contain all of the requirements outlined in the permit. The Division issued Sonoran Custom Homes, LLC a letter and a Compliance Advisory requiring Sonoran Custom Homes, LLC to correct this finding and respond to the Division. The Division has not received Sonoran Custom Homes, LLC’s response. Therefore, the Division believes this finding has not been corrected. However, for the purpose of this calculation, the Division has determined the SWMP was deficient from at least October 31, 2006 until at least May 23, 2007. Therefore, at least 205-Days of violation occurred.</p> <p>Failure to Install, Maintain or Properly Select Best Management Practices: The site began covered activity at the Project on March, 2005, according to Matt Daugherty (Owner, Sonoran Custom Homes, LLC.) An inspection was conducted by PG Environmental, LLC on May 23, 2007. During the inspection, PG Environmental, identified failures to install and/or maintain BMPs at the site. The Division believes the deficiencies persisted for some time period surrounding the inspection. However, the Division has conservatively chosen to limit the period of violation to 1 day.</p> <p><i>{Note: The BMP violations coincided with the SWMP violations. Therefore, 205-Days of violation will be utilized for this penalty calculation.}</i></p>
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Part III – Determination of Multi-Day Penalty Amount

			Amount in Dollars																																								
Line 14	Multi-Day Penalty Amount		\$24,735.00																																								
	<p><i>Calculations:</i></p> <p><i>(Note: Days 1-204 account for penalties associated only with SWMP violations. Day 205 accounts for the final day of SWMP violation and one day of BMP violation. The percentage multiplier for each duration interval below is derived from the Multi-Day Violation Matrix outlined on Page 6 of the Stormwater Civil Penalty Policy, and applies only to the SWMP violations in this case.)</i></p> <p>(Potential Damage + Fault + History) x days of violation</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Day 1</td> <td style="width: 40%;">(\$120.00 + \$300.00 + \$0.00) × 1 day</td> <td style="width: 10%;"></td> <td style="width: 10%; text-align: right;">= \$ 420.00</td> <td style="width: 15%;"></td> </tr> <tr> <td>+ Days 2-10</td> <td>\$420.00 × 9 days × 50%</td> <td></td> <td style="text-align: right;">= \$ 1,890.00</td> <td></td> </tr> <tr> <td>+ Days 11-50</td> <td>\$420.00 × 40 days × 40%</td> <td></td> <td style="text-align: right;">= \$ 6,720.00</td> <td></td> </tr> <tr> <td>+ Days 51-100</td> <td>\$420.00 × 50 days × 30%</td> <td></td> <td style="text-align: right;">= \$ 6,300.00</td> <td></td> </tr> <tr> <td>+ Days 101-200</td> <td>\$420.00 × 100 days × 20%</td> <td></td> <td style="text-align: right;">= \$ 8,400.00</td> <td></td> </tr> <tr> <td>+ Days 201-204</td> <td>\$420.00 × 4 days × 10%</td> <td></td> <td style="text-align: right;">= \$ 168.00</td> <td></td> </tr> <tr> <td>+ Day 205</td> <td>(\$120.00 × 10%) + \$825.00</td> <td></td> <td style="text-align: right;">= \$ 837.00</td> <td></td> </tr> <tr> <td></td> <td>Multi-Day Base Gravity Penalty</td> <td></td> <td style="text-align: right;">= \$24,735.00</td> <td></td> </tr> </table>		Day 1	(\$120.00 + \$300.00 + \$0.00) × 1 day		= \$ 420.00		+ Days 2-10	\$420.00 × 9 days × 50%		= \$ 1,890.00		+ Days 11-50	\$420.00 × 40 days × 40%		= \$ 6,720.00		+ Days 51-100	\$420.00 × 50 days × 30%		= \$ 6,300.00		+ Days 101-200	\$420.00 × 100 days × 20%		= \$ 8,400.00		+ Days 201-204	\$420.00 × 4 days × 10%		= \$ 168.00		+ Day 205	(\$120.00 × 10%) + \$825.00		= \$ 837.00			Multi-Day Base Gravity Penalty		= \$24,735.00		
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	Multi-Day Base Gravity Penalty		= \$24,735.00																																								

Part IV – Base Penalty Total

			Amount in Dollars
Line 15	Base Penalty = Potential Damage + Fault + History (Sum of Line 10 + Line 11 + Line 12, OR Line 14)		\$24,735.00

Exhibit B

Part V – Application of Aggravating or Mitigating Factors

	Aggravating / Mitigating Factors	% Base Penalty Increase or Decrease	Amount in Dollars
Line 16	Factor A: Voluntary and Complete Disclosure of Violations	0%	\$0.00
	<i>Justification:</i> The Division identified the violations through a regulatory inspection. Sonoran Custom Homes, LLC did not disclose the violations. Therefore, no penalty mitigation was applied.		
Line 17	Factor B: Full and Prompt Cooperation	0%	\$0.00
	<i>Justification:</i> Sonoran Custom Homes, LLC failed to respond to the NOV/CDO and did not submit any documentation demonstrating that it had resolved its non-compliance. However, the Division conservatively chose not to apply any penalty aggravation.		
Line 18	Factor C: Environmental Compliance Program	0%	\$0.00
	<i>Justification:</i> Sonoran Custom Homes, LLC did not implement a regularized and comprehensive environmental compliance/audit program. Therefore, no penalty mitigation was applied.		
Line 19	Factor D: Intentional, Reckless or Negligent Violations	0%	\$0.00
	<i>Justification:</i> Since Sonoran Custom Homes, LLC is a professional development/construction entity who obtained a stormwater permit, it should have been well aware of the requirements of the permit and of the stormwater regulations, which went into effect in 1992 for construction operations larger than 5 acres. At the very least, the Division believes Sonoran Custom Homes, LLC's violations involved negligence. However, the Division conservatively chose not to apply any penalty aggravation.		
Line 20	Factor E: Other Aggravating or Mitigating Circumstances	0%	\$0.00
	<i>Justification:</i> None identified		
Line 21	Sum of Line 16 through Line 20	0%	\$0.00
Line 22	Adjusted Base Penalty (Sum of Line 15 + Line 21)		\$24,735.00

Part VI– Economic Benefit Consideration

		Amount in Dollars
Line 23	Economic Benefit	\$5,000.00
	<i>Justification:</i>	
	Deficient Stormwater Management Plan: Sonoran Custom Homes, LLC delayed the cost of developing a complete SWMP and avoided the cost of revising and updating its SWMP over a period of at least 205 days. The Division estimates the cost of periodically evaluating and updating a SWMP, including consulting and reprinting fees, to be \$500. The Division estimates that a SWMP for construction will need to be updated at least every 6 months. Therefore, the Division has conservatively determined that Sonoran Custom Homes, LLC realized an economic benefit of at least	

Exhibit B

<p>\$500.00 from the avoided costs of not revising and updating the project’s SWMP for 205 days.</p> <p>Failure to Install, Maintain or Properly Select Best Management Practices: Sonoran Custom Homes, LLC avoided the cost of implementing and/or maintaining BMPs at the Project. The Division estimates the cost of properly implementing a BMP to be \$1,000.00 and the cost of maintaining a BMP, throughout its use, to be \$500.00. Thus, Sonoran Custom Homes, LLC realized an economic benefit for failures to install and maintain BMPs as follows:</p> <table border="1"> <thead> <tr> <th>DATE</th> <th># of Installation Deficiencies (\$1000ea.)</th> <th># of Maintenance Deficiencies (\$500ea.)</th> <th>Total Economic Benefit</th> </tr> </thead> <tbody> <tr> <td>05/23/07</td> <td align="center">3</td> <td align="center">3</td> <td align="right">\$4,500.00</td> </tr> <tr> <td></td> <td></td> <td></td> <td align="right">\$4,500.00</td> </tr> </tbody> </table> <p>Therefore, the Division has conservatively determined that Sonoran Custom Homes, LLC realized an economic benefit of \$4,000.00 from the avoided costs of not properly implementing and/or maintaining BMPs at the Project.</p> <p><i>(Note: Time value of money for time periods in question was predicted to be insignificant and thus BEN runs were not performed)</i></p>	DATE	# of Installation Deficiencies (\$1000ea.)	# of Maintenance Deficiencies (\$500ea.)	Total Economic Benefit	05/23/07	3	3	\$4,500.00				\$4,500.00
DATE	# of Installation Deficiencies (\$1000ea.)	# of Maintenance Deficiencies (\$500ea.)	Total Economic Benefit									
05/23/07	3	3	\$4,500.00									
			\$4,500.00									

Part VII – Violation Penalty Total

		Amount in Dollars
Line 24	Civil Penalty: (Sum Line 22 + Line 23)	\$29,735.00

Part VIII – Ability to Pay Adjustment

		Amount in Dollars
Line 25	Ability to Pay Reduction: <i>Justification:</i> Sonoran Custom Homes, LLC has not submitted any information documenting ability to pay issues. Therefore, the Division was unable to perform any ability to pay assessment.	\$0.00

Part IX – Final Adjusted Penalty

		Amount in Dollars
Line 26	Total Civil Penalty: (Sum Line 24 + Line 25)	\$29,735.00