

# 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 23, 2012

Jacinto Rodrigues  
Sumo Development Company, Inc.  
27 Prince Street  
Elizabeth, NJ 07208

**RE: Compliance Order on Consent, Number: SC-120222-1**

Dear Mr. Rodrigues:

Enclosed for Sumo Development Company, Inc.'s records you will find your copy, with original signatures, of the recently executed Compliance Order on Consent. Please remember that this agreement is subject to a thirty-day public comment period (paragraph 30). Upon initiation, if the Division receives any comments during this period we will contact your office to discuss. Also, please be advised that the first page of the Order was changed in order to place the assigned Order Number on the final document.

If you have any questions, please don't hesitate to contact Michael Harris at (303) 692-3598 or by electronic mail at [michael.harris@state.co.us](mailto:michael.harris@state.co.us).

Sincerely,

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

*Enclosure(s)*

cc: Fremont County Environmental Health Department  
Richard D. Trenk, Esq. & Jennifer D. Talley, Esq., 347 Mt. Pleasant Ave., Suite 300  
West Orange, NJ 07052  
Enforcement File

cc: Natasha Davis, EPA Region VIII  
Andrew Rice, Engineering Section, CDPHE

Sumo Development Company, Inc.

Compliance Order on Consent

2 of 2

Dick Parachini, Watershed Program, CDPHE

Janet Kieler, Permits Section, CDPHE

Nathan Moore, Permits Section, CDPHE

Michael Beck, Grants and Loans Unit, CDPHE

Michael Harris, Case Person

Tania Watson, Compliance Assurance, CDPHE



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

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**COMPLIANCE ORDER ON CONSENT**

**NUMBER: SC-120222-1**

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

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The Colorado Department of Public Health and Environment (“Department”), through the Water Quality Control Division (“Division”), issues this Compliance Order on Consent (“Consent Order”), pursuant to the Division’s authority under §§25-8-602 and 605, C.R.S. of the Colorado Water Quality Control Act (“the Act”) §§25-8-101 to 803, C.R.S., and its implementing regulations, with the express consent of Sumo Development Company, Inc. (“Sumo”). The Division and Sumo may be referred to collectively as “the Parties.”

**STATEMENT OF PURPOSE**

1. The mutual objectives of the Parties in entering into this Consent Order are to resolve, without litigation, the civil penalties associated with the alleged violations cited herein and in the Notice of Violation / Cease and Desist Order, Number: SO-080108-1, that the Division issued to Sumo on January 8, 2008, including its Amendment Number One that the Division issued on June 25, 2009 (collectively, the “NOV/CDO”), and the Order for Civil Penalty, Number: SP-101201-1 (the “Penalty Order”), that the Division issued to Sumo on December 1, 2010.

**DIVISION’S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS**

2. Based upon the Division’s investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602 and 605, C.R.S., the Division has made the following determinations regarding Sumo and Sumo’s compliance with the Act and a permit issued pursuant to the Act.
3. At all times relevant to the alleged violations identified herein, Sumo was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.

4. Sumo is a “person” as defined by the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).

#### Operating Without a Stormwater Permit

5. 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.
6. Pursuant to 5 CCR 1002-61, §61.3(2)(e), stormwater discharges associated with industrial activity are point sources requiring Colorado Discharge Permit System (“CDPS”) permit coverage.
7. Pursuant to 5 CCR 1002-61, §61.3(2)(e)(iii)(J), construction activity, including clearing, grading and excavation, that results in the disturbance of five or more acres of total land area, or will ultimately result in the disturbance of five or more acres of total land area, is considered to be “industrial activity.”
8. Pursuant to 5 CCR 1002-61, §61.4(3)(a)(i), facilities proposing a discharge of stormwater associated with industrial activity shall submit a permit application 180 days before that facility commences industrial activity which may result in a discharge of stormwater associated with that industrial activity. Facilities involved in construction activities shall submit a permit application at least 90 days before the date on which construction is to commence.
9. On or about April 19, 2002, Sumo initiated construction activities to build a residential subdivision on forty five (45) acres of property located at or near State Highway 67 and Bear Paw Drive in or near the City of Florence, Fremont County, Colorado (the “Project”).
10. Sumo’s construction activity constitutes industrial activity that is subject to stormwater permitting requirements.
11. Sumo’s construction activity at the Project has the potential to result in a discharge of stormwater to state waters.
12. On November 8, 2006, a representative from PG Environmental, LLC (the “Inspector”) conducted an on-site inspection of the Project on behalf of the Division, pursuant to the Division’s authority under §25-8-306, C.R.S., to determine Sumo’s compliance with the Water Quality Control Act. During the inspection, the Inspector interviewed Project representatives, conducted a review of the Project’s stormwater management system records, and performed a physical inspection of the Project.
13. During the November 8, 2006 inspection, the Inspector determined that the Project was not covered under a CDPS permit authorizing discharges of stormwater from the Project.
14. On January 5, 2007, Sumo Enterprises, Inc., on behalf of Sumo, applied for Project coverage under the CDPS General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the “Permit”) in response to the November 8, 2006 inspection.

15. On January 9, 2007, the Division provided Sumo Certification Number COR-03B265, authorizing Sumo to discharge stormwater from the construction activities associated with the Project to the Arkansas River under the terms and conditions of the Permit. Certification Number COR-03B265 became effective January 9, 2007 and remains in effect until June 30, 2012 or until Sumo inactivates Permit coverage.
16. The Arkansas River is “state waters” as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(101).
17. The Division records establish that Sumo did not have any permits authorizing discharges of stormwater from the Project prior to January 9, 2007.
18. Sumo’s failure to obtain CDPS permit coverage for the Project, prior to January 9, 2007, constitutes violation(s) of §25-8-501(1) C.R.S., 5 CCR 1002-61, §61.3(1)(a), and 5 CCR 1002-61, §61.3(2).
19. Additionally, Sumo’s failure to obtain CDPS permit coverage for the Project, prior to January 9, 2007, constitutes violation(s) of 5 CCR 1002-61, §61.4(3)(a)(i).

Deficient and/or Incomplete Stormwater Management Plan

20. Pursuant to 5 CCR 1002-61, §61.8, a permittee must comply with all the terms and conditions of a permit and violators of the terms and conditions specified in a permit may be subject to civil and criminal liability pursuant to sections 25-8-601 through 612, C.R.S.
21. Pursuant to Part I. B. of the Permit, Sumo is required to prepare a Stormwater Management Plan (“SWMP”) that identifies Best Management Practices (“BMPs”) that, when implemented, will meet the terms and conditions of the Permit. The SWMP is required to identify potential sources of pollution, which may be reasonably expected to affect the quality of stormwater discharges associated with construction activity from the Project. In addition, the plan is required to describe and ensure the implementation of BMPs, which will be used to reduce the pollutants in stormwater discharges associated with construction activity.
22. In response to the November 8, 2006 inspection, Sumo submitted a copy of the Project’s SWMP to the Division on January 31, 2007.
23. The Division determined that Sumo failed to prepare and maintain a complete and accurate SWMP for the Project as described in paragraphs 23(a–f) below:
  - a. The SWMP did not include an estimate of the runoff coefficient of the site before and after construction activities are completed.
  - b. The SWMP did not include an estimate of the percent vegetative ground cover.
  - c. The SWMP did not include the locations of potential pollution sources.
  - d. The SWMP did not include a site map.

- e. The SWMP did not clearly describe the relationship between the phases of construction and the implementation and maintenance of controls and measures.
  - f. The SWMP did not include the site specific scheduling of the implementation of non-structural practices.
24. Sumo's failure to prepare and maintain a complete and accurate SWMP for the Project constitutes violation(s) of Part I. B. of the Permit.

### **ORDER AND AGREEMENT**

25. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605, C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein and in the NOV/CDO and Penalty Order, the Division orders Sumo to comply with all provisions of this Consent Order, including all requirements set forth below.
26. Sumo agrees to the terms and conditions of this Consent Order. Sumo agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. Sumo also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Sumo against the Division:
- a. The issuance of this Consent Order;
  - b. The factual and legal determinations made by the Division herein; and
  - c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.
27. Notwithstanding the above, Sumo does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Sumo pursuant to this Consent Order shall not constitute evidence of fault and liability by Sumo with respect to the conditions of the Project.

### **CIVIL PENALTY**

28. Based upon the application of the Division's Stormwater Civil Penalty Policy (January 25, 2007) and consistent with Departmental policies for violations of the Act, Sumo agrees to the assessment of One Hundred Thousand Dollars (\$100,000.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the One Hundred Thousand Dollar (\$100,000.00) civil penalty for the above violation(s). Subject to approval by the United States Bankruptcy Court for the District of New Jersey, this penalty shall constitute a general unsecured claim against the Sumo estate in Bankruptcy Case No. 11-43096(MS). Any distributions to satisfy this claim shall be 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

### **SCOPE AND EFFECT OF CONSENT ORDER**

29. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations alleged herein and in the NOV/CDO and Penalty Order.
30. This Consent Order is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and Sumo each reserve the right to withdraw consent to this Consent Order if comments received during the thirty-day period result in any proposed modification to the Consent Order.
31. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or his designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by Sumo, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.
32. Notwithstanding paragraph 27 above, the violations described in this Consent Order will constitute part of Sumo's compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against Sumo. Sumo agrees not to challenge the use of the cited violations for any such purpose.

### **LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY**

33. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to civil penalties for the specific instances of violations cited herein and in the NOV/CDO and Penalty Order.
34. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
35. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.
36. Upon the effective date of this Consent Order, Sumo releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act specifically addressed herein.

37. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

### **NOTICES**

38. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Colorado Department of Public Health and Environment  
Water Quality Control Division / WQCD-CAS-B2  
Attention: Michael Harris  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530  
Telephone: 303.692.3598  
E-mail: michael.harris@state.co.us

For Sumo:

Jacinto Rodrigues  
Sumo Development Company, Inc.  
27 Prince Street  
Elizabeth, NJ 07208

Richard D. Trenk, Esq.  
Jennifer D. Talley, Esq.  
347 Mt. Pleasant Ave., Suite 300  
West Orange, NJ 07052

### **MODIFICATIONS**

39. This Consent Order may be modified only upon mutual written agreement of the Parties.

### **NOTICE OF EFFECTIVE DATE**

40. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or his designee imposes the civil penalty following closure of the public comment period referenced in paragraph 30. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

**BINDING EFFECT AND AUTHORIZATION TO SIGN**

41. This Consent Order is binding upon Sumo and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

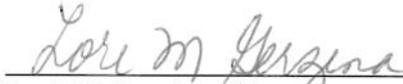
**FOR SUMO DEVELOPMENT COMPANY, INC.:**



Date: 2/12/12

Richard D. Trenk, Esq.  
Attorney for Respondent

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



Date: 2/22/12

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