

# STATE OF COLORADO

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

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

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



Colorado Department  
of Public Health  
and Environment

February 29, 2012

Inder Mathur, President and CEO  
The Western Sugar Cooperative  
7555 E. Hampden Ave, Suite 600  
Denver, Colorado 80231

**RE: Compliance Order on Consent, Number: IC-120228-1**

Dear Mr. Mathur:

On February 28, 2012, the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") signed a Compliance Order on Consent (the "Consent Order") between the Division and The Western Sugar Cooperative. This Consent Order supersedes and replaces the Compliance Order on Consent, Number IC-110831-1 that was previously executed between the Division and The Western Sugar Cooperative on August 31, 2011, so that the compliance schedule requirements of this Consent Order coincide with the issuance and effective date of the Renewed Permit (Permit Number CO-0041351/ sixth renewal, effective March 1, 2012).

Following the closure of the Renewed Permit appeal period, the Consent Order constitutes a final agency action upon a determination from the Division. The Renewed Permit appeal period elapsed on February 24, 2012 and The Western Sugar Cooperative did not contest any of the conditions of the Renewed Permit. The Division is hereby providing The Western Sugar Cooperative notice that on March 1, 2012 the Division considers the Consent Order to be fully effective, enforceable and final.

If you have any questions, please don't hesitate to contact me at (303) 692-3634 or by electronic mail at [kelly.morgan@state.co.us](mailto:kelly.morgan@state.co.us).

Sincerely,

Kelly Morgan  
Clean Water Compliance & Enforcement Unit  
WATER QUALITY CONTROL DIVISION

cc: Northeast Colorado Health Department  
Enforcement File

ec: Natasha Davis, EPA Region VIII ([davis.natasha@epa.gov](mailto:davis.natasha@epa.gov))  
Dick Parachini, Watershed Program, CDPHE

Michael Beck, Financial Solutions Unit, CDPHE  
Tania Watson, Clean Water Compliance & Enforcement Unit, CDPHE  
Engineering Section, CDPHE  
Tom Roan, Colorado Office of the Attorney General (tom.roan@state.co.us)  
Dennis Arfmann, Hogan Lovells US LLP (dennis.arfmann@hoganlovells.com)  
Shawn Sullivan, The Western Sugar Cooperative (shsullivan@westernsugar.com)

*Enclosure(s)*



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

---

**COMPLIANCE ORDER ON CONSENT**

**NUMBER: IC-120228-1**

---

**IN THE MATTER OF:     THE WESTERN SUGAR COOPERATIVE  
                              CDPS PERMIT NO. CO-0041351  
                              MORGAN COUNTY, COLORADO**

---

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 §25-8-605, C.R.S. of the Colorado Water Quality Control Act ("the Act") §§ 25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of The Western Sugar Cooperative ("Western Sugar"). The Division and Western Sugar 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:
  - a. To establish compliance requirements and criteria for the continued operation of Western Sugar's sugar beet factory and associated wastewater treatment works, located at or near 18317 Highway 144 (Riverside Avenue), Fort Morgan, Morgan County, Colorado / North Latitude 40.2666°, West Longitude 103.8000° (the "Facility"); and
  - b. To resolve the compliance issue(s) created by the revised implementation of the federal Effluent Limitations Guidelines ("ELGs") for the Sugar Processing Point Source Category, as they apply to the Facility; and
  - c. To establish an enforceable compliance schedule for Western Sugar to achieve compliance with its Colorado Discharge Permit System permit, Permit Number: CO-0041351 / sixth renewal, effective March 1, 2012 (the "Renewed Permit") fecal coliform and BOD5 effluent limitations; and
  - d. To supersede and replace the Compliance Order on Consent, Number IC-110831-1 previously executed between the Parties on August 31, 2011, so that the compliance schedule requirements of this Consent Order coincide with the issuance and effective date of the Renewed Permit.

## **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 §25-8-605, C.R.S., the Division has made the following determinations regarding Western Sugar, the Facility, and Western Sugar's compliance with the Act, its implementing permit regulations, and the permit.
3. At all times relevant to the issues identified herein, Western Sugar was a Colorado Cooperative in good standing.
4. Western Sugar is a "person" as defined by §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
5. The Facility routes wastewater into several on-site unlined ponds: the Condenser Pond, the Ash Pond, the Lime (PCC) Pond, and the Mud Ponds. The Condenser Pond primarily treats non-contact and contact condenser cooling water, but recycled water from the Ash Pond and the intake pond have the potential to end up in the Condenser Pond. Treatment in the Condenser Pond includes evaporation, cooling and settling. The Ash Pond receives the ash transport water from the boiler. The source water is condenser water that sluices the waste ash from the boilers, thereby comprising the ash transport waters. Passive treatment includes evaporation and settling. The Lime (PCC) Pond receives water from the kiln burner cooler and gas scrubber, as well as the filter sluice. Passive treatment includes evaporation and settling. The Mud Ponds receive water utilized in beet transport and washing. Passive treatment consists of evaporation and settling.
6. The Facility is the subject of Colorado Discharge Permit System, Permit No. CO-0041351 (the "Permit"). The Division has a lengthy permitting history with the Facility dating back to 1986. The most recent renewal Permit was issued and became effective February 1, 2006. The Permit was amended with Amendment #1 and reissued effective January 1, 2007. The Permit was subsequently amended with Amendment #2 and reissued effective March 1, 2009 (the "Amended Permit"). The Amended Permit expired January 31, 2011 and was subsequently administratively extended until the Renewed Permit is effective (March 1, 2012).
7. The Permit authorized Western Sugar to discharge treated wastewater from the Facility through Outfall 001 (the outfall from the Condenser Pond, prior to entering the ditch that empties to the South Platte River). The Permit also authorized Western Sugar to discharge via the pond system to groundwater, with compliance being monitored at Outfall 002 (the point of inflow to the Condenser Pond); Outfall 003 (the point of inflow to the Ash Pond); Outfall 004 (the point of inflow to the Lime (PCC) Pond); and Outfall 005 (the point of inflow to the first of the Mud Ponds). The Amended Permit authorizes Western Sugar to discharge from Outfall 001A (the outfall from the Condenser Pond, prior to entering the ditch that empties to the South Platte River); Outfall 050B (MW-2 located downgradient of the Lime (PCC) Pond); Outfall 050D (MW-4 located downgradient of the Mud Pond Aeration System); and Outfall 050E (MW-5 located downgradient of the Mud Ponds). Monitoring of ambient groundwater quality is required at Outfall 050A (MW-1 located upgradient of all onsite ponds).
8. The South Platte River and the groundwater underlying and adjacent to the Facility are "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(102).

9. Pursuant to 5 CCR 1002-61, §61.8, Western Sugar 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.
10. Pursuant to Part I.A.1. of the Permit, among other parameters, Western Sugar's permitted discharge at Outfalls 002, 003, 004, and 005 beginning April 1, 2008 shall not exceed the effluent limitations specified below:

Effluent Parameter	Discharge Limitations		
	30-Day Average	7-Day Average	Daily Maximum
Flow, MGD	Report	NA	Report
pH, s.u. (minimum-maximum)	NA	NA	6.5-8.5
5-day BOD, lbs/day	Report	Report	NA
Total Coliforms, Number/ 100 ml	1.0	NA	Report
Total Nitrate plus Nitrite, mg/l as N	10	NA	Report
Total Dissolved Solids	Report	NA	1650
Dissolved Chloride, mg/l	250	NA	Report
Dissolved Sulfate, mg/l	250	NA	Report
Dissolved Manganese, mg/l	Report	NA	Report

11. Pursuant to Part I.A.1. of the Amended Permit, among other parameters, beginning March 1, 2009 Western Sugar's permitted discharge at Outfalls 050B, 050D, and 050E shall not exceed the effluent limitations specified below:

Effluent Parameter	Discharge Limitations		
	30-Day Average	7-Day Average	Daily Maximum
5-day BOD, lbs/day	152	Report	228
pH, s.u. (minimum-maximum)	NA	NA	6.5-8.5
Oil and Grease, mg/l	NA	NA	10
Total Coliforms, Number/ 100 ml	1.0	NA	23
Total Nitrate plus Nitrite, mg/l as N	10	NA	Report
Dissolved Chloride, mg/l	250	NA	Report
Dissolved Sulfate, mg/l			
Until 12/31/13	Report	NA	Report
Beginning 01/01/14	420	NA	Report
Dissolved Manganese, mg/l			
Until 12/31/13	Report	NA	Report
Beginning 01/01/14	50	NA	Report
Total Dissolved Solids			
Until 12/31/13	Report	NA	Report
Beginning 01/01/14	1650	NA	Report

12. Pursuant to Part I.B.1 of the Permit and the Amended Permit, Western Sugar is required to monitor defined effluent parameters at specified frequencies to provide an indication of compliance or non-compliance with the effluent limitations identified in the Permit and the Amended Permit.
13. Pursuant to Part I.E.1 of the Permit and the Amended Permit, Western Sugar is required to summarize and report the analytical results of its effluent monitoring to the Division via monthly discharge monitoring reports ("DMRs"). Each discharge monitoring report is to include a certification by Western Sugar that the information provided therein is true, accurate and complete to the knowledge and belief of Western Sugar.
14. Western Sugar's DMRs submitted to the Division include, among other information and data, the following effluent concentration summary data for total nitrate plus nitrite (as N), total dissolved solids, pH, dissolved chloride, total coliform, and oil and grease which exceeded the effluent limitations imposed by Part I.A.1. of the Permit and the Amended Permit:

<b>Western Sugar EFFLUENT SELF-MONITORING DATA</b>			
<b>DISCHARGE MONITORING REPORTING PERIOD</b>	<b>OUTFALL NUMBER</b>	<b>SAMPLE MEASUREMENT</b>	<b>SAMPLE MEASUREMENT</b>
<b>NITRATE PLUS NITRITE, AS N</b>		—	30-DAY AVG. LIMIT = 10 mg/l
September 1-30, 2008	002A	—	11.90 mg/l
September 1-30, 2008	005A	—	13.20 mg/l
October 1-31, 2008	002A	—	11.10 mg/l
November 1-30, 2008	004A	—	32.60 mg/l
January 1-31, 2009	002A	—	11.30 mg/l
<b>TOTAL DISSOLVED SOLIDS</b>		DAILY MAXIMUM = 1630 mg/l	
September 1-30, 2008	003A	1,740 mg/l	—
September 1-30, 2008	004A	1,690 mg/l	—
September 1-30, 2008	005A	8,060 mg/l	—
October 1-31, 2008	003A	1,690 mg/l	—
October 1-31, 2008	004A	1,760 mg/l	—
October 1-31, 2008	005A	11,000 mg/l	—
November 1-30, 2008	003A	1,940 mg/l	—
November 1-30, 2008	004A	13,700 mg/l	—
November 1-30, 2008	005A	10,800 mg/l	—
December 1-31, 2008	003A	1,850 mg/l	—
December 1-31, 2008	004A	4,120 mg/l	—
December 1-31, 2008	005A	9,840 mg/l	—

<b>Western Sugar EFFLUENT SELF-MONITORING DATA</b>			
<b>DISCHARGE MONITORING REPORTING PERIOD</b>	<b>OUTFALL NUMBER</b>	<b>SAMPLE MEASUREMENT</b>	<b>SAMPLE MEASUREMENT</b>
<b>TOTAL DISSOLVED SOLIDS</b>		DAILY MAXIMUM = 1650 mg/l	
January 1-31, 2009	003A	1,840 mg/l	--
January 1-31, 2009	004A	2,480 mg/l	--
January 1-31, 2009	005A	8,340 mg/l	--
February 1-28, 2009	003A	1,850 mg/l	--
February 1-28, 2009	004A	2,810 mg/l	--
February 1-28, 2009	005A	6,960 mg/l	--
<b>PH</b>		MINIMUM = 6.5 SU	MAXIMUM = 8.5 SU
September 1-30, 2008	004A	--	11.22
September 1-30, 2008	005A	--	11.80
October 1-31, 2008	004A	--	11.20
October 1-31, 2008	005A	--	11.50
November 1-30, 2008	004A	--	10.50
November 1-30, 2008	005A	--	9.0
December 1-31, 2008	004A	--	10.81
December 1-31, 2008	005A	--	10.55
January 1-31, 2009	004A	--	10.87
January 1-31, 2009	005A	--	10.60
February 1-28, 2009	004A	--	10.34
February 1-28, 2009	005A	--	11.37
June 1-30, 2010	050E	--	8.95
January 1-31, 2011	050B	6.37	--
January 1-31, 2011	050E	6.39	--
<b>CHLORIDE (DISSOLVED)</b>			30-DAY AVG. LIMIT = 10 mg/l
November 1-30, 2008	004A	--	593 mg/l
<b>TOTAL COLIFORM, #/100 ML</b>		DAILY MAXIMUM = 23/100 ml	30-DAY AVG. LIMIT = 1.0/100 ml
March 1-31, 2009	050D	--	2.0/100 ml
April 1-30, 2009	050B	--	2.0/100 ml
April 1-30, 2009	050D	--	2.0/100 ml

<b>Western Sugar EFFLUENT SELF-MONITORING DATA</b>			
<b>DISCHARGE MONITORING REPORTING PERIOD</b>	<b>OUTFALL NUMBER</b>	<b>SAMPLE MEASUREMENT</b>	<b>SAMPLE MEASUREMENT</b>
<b>TOTAL COLIFORM, #/100 ML</b>		<b>DAILY MAXIMUM = 23/100 ml</b>	<b>30-DAY AVG. LIMIT = 1.0/100 ml</b>
April 1-30, 2009	<b>050E</b>	--	<b>3.0/100 ml</b>
May 1-31, 2009	<b>050B</b>	--	<b>2.0/ 100 ml</b>
May 1-31, 2009	<b>050E</b>	<b>130/ 100 ml</b>	<b>130/ 100 ml</b>
June 1-30, 2009	<b>050E</b>	<b>68/ 100 ml</b>	<b>68/ 100 ml</b>
September 1-30, 2009	<b>050E</b>	<b>120/ 100 ml</b>	<b>120/ 100 ml</b>
October 1-31, 2009	<b>050B</b>	--	<b>2.0/ 100 ml</b>
November 1-30, 2009	<b>050E</b>	<b>TNTC</b>	<b>TNTC</b>
December 1-31, 2009	<b>050B</b>	--	<b>4.0/ 100 ml</b>
December 1-31, 2009	<b>050D</b>	<b>900/ 100 ml</b>	<b>900/ 100 ml</b>
December 1-31, 2009	<b>050E</b>	--	<b>2/ 100 ml</b>
January 1-31, 2010	<b>050B</b>	--	<b>&lt;2.0/ 100 ml</b>
January 1-31, 2010	<b>050E</b>	<b>TNTC</b>	<b>TNTC</b>
February 1-28, 2010	<b>050D</b>	<b>420/ 100 ml</b>	<b>420/ 100 ml</b>
March 1-31, 2010	<b>050D</b>	<b>33/ 100 ml</b>	<b>33/ 100 ml</b>
March 1-31, 2010	<b>050E</b>	--	<b>13/ 100 ml</b>
April 1-30, 2010	<b>050D</b>	--	<b>6.67/ 100 ml</b>
May 1-31, 2010	<b>050B</b>	<b>24.9/ 100 ml</b>	<b>24.9/ 100 ml</b>
May 1-31, 2010	<b>050D</b>	<b>10,800/ 100 ml</b>	<b>10,800/ 100 ml</b>
May 1-31, 2010	<b>050E</b>	--	<b>6.45/ 100 ml</b>
June 1-30, 2010	<b>050D</b>	--	<b>22.6/ 100 ml</b>
June 1-30, 2010	<b>050E</b>	--	<b>6.56/ 100 ml</b>
July 1-31, 2010	<b>050B</b>	<b>66/ 100 ml</b>	<b>66/100 ml</b>
August 1-31, 2010	<b>050D</b>	<b>TNTC</b>	<b>TNTC</b>
August 1-31, 2010	<b>050E</b>	<b>45.16/ 100 ml</b>	<b>45.16/ 100 ml</b>
September 1-30, 2010	<b>050B</b>	--	<b>14.43/ 100 ml</b>
September 1-30, 2010	<b>050D</b>	<b>1,400/ 100 ml</b>	<b>1,400/ 100 ml</b>
September 1-30, 2010	<b>050E</b>	<b>9,900/ 100 ml</b>	<b>9,900/ 100 ml</b>
October 1-31, 2010	<b>050B</b>	<b>27/ 100 ml</b>	<b>27/ 100 ml</b>

<b>Western Sugar EFFLUENT SELF-MONITORING DATA</b>			
<b>DISCHARGE MONITORING REPORTING PERIOD</b>	<b>OUTFALL NUMBER</b>	<b>SAMPLE MEASUREMENT</b>	<b>SAMPLE MEASUREMENT</b>
<b>TOTAL COLIFORM, #/100 ML</b>		DAILY MAXIMUM = 23/100 ml	30-DAY AVG. LIMIT = 1.0/100 ml
October 1-31, 2010	<b>050D</b>	TNTC	TNTC
October 1-31, 2010	<b>050E</b>	TNTC	TNTC
November 1-30, 2010	<b>050B</b>	--	12/ 100 ml
November 1-30, 2010	<b>050D</b>	TNTC	TNTC
November 1-30, 2010	<b>050E</b>	240/ 100 ml	240/ 100 ml
December 1-31, 2010	<b>050E</b>	4,100/ 100 ml	4,100/ 100 ml
January 1-31, 2011	<b>050D</b>	27/ 100 ml	27/ 100 ml
January 1-31, 2011	<b>050E</b>	137/ 100 ml	137/ 100 ml
February 1-28, 2011	<b>050D</b>	216/ 100 ml	216/ 100 ml
February 1-28, 2011	<b>050E</b>	3,600/ 100 ml	3,600/ 100 ml
March 1-31, 2011	<b>050D</b>	TNTC	TNTC
March 1-31, 2011	<b>050E</b>	35.5/ 100 ml	35.5/100 ml
April 1-30, 2011	<b>050D</b>	210/ 100 ml	210/ 100 ml
April 1-30, 2011	<b>050E</b>	210/ 100 ml	210/ 100 ml
May 1-31, 2011	<b>050D</b>	77.4/ 100 ml	77.4/ 100 ml
June 1-30, 2011	<b>050D</b>	580/ 100 ml	580/ 100 ml
July 1-31, 2011	<b>050E</b>	201.8/ 100 ml	201.8/ 100 ml
August 1-31, 2011	<b>050E</b>	33.3/ 100 ml	33.3/ 100 ml
September 1-30, 2011	<b>050D</b>	--	3.33/ 100 ml
October 1-31, 2011	<b>050B</b>	--	8/ 100 ml
October 1-31, 2011	<b>050D</b>	113/ 100 ml	113/ 100 ml
October 1-31, 2011	<b>050E</b>	70/ 100 ml	70/ 100 ml
November 1-30, 2011	<b>050D</b>	2,599/ 100 ml	2,599/ 100 ml
November 1-30, 2011	<b>050E</b>	731/ 100 ml	731/ 100 ml
December 1-31, 2011	<b>050D</b>	--	19/ 100 ml
December 1-31, 2011	<b>050E</b>	--	6/ 100 ml
<b>OIL AND GREASE</b>			INSTANTANEOUS MAXIMUM = 10 mg/l
August 1-31, 2009	<b>050B</b>	--	22.0 mg/l

15. Total nitrate plus nitrite (as N), total dissolved solids, pH, dissolved chloride, total coliform, and oil and grease are "pollutants" as defined by §25-8-103(15), C.R.S.
16. Division records establish that neither the Permit nor the Amended Permit authorize(d) the pollutant discharge levels identified above in paragraph 14 nor does Western Sugar have any other permits authorizing such discharge into State Waters.
17. Western Sugar's failure to comply with the effluent limitations set forth in the Permit and the Amended Permit constitutes violations of Part I.A.1. of the Permit and the Amended Permit.
18. With the development of the Renewed Permit, the Division has determined that groundwater standards do not apply to the Facility's discharge on the basis that the discharge from the unlined ponds is to the South Platte alluvium and that this water is within the zone of influence of the South Platte River for at least a portion of the site. Therefore, the protection of groundwater uses is not applicable and groundwater standards are not implemented in the Renewed Permit. Compliance with the groundwater standards of total coliform, total dissolved solids, dissolved chloride, and nitrate+nitrite (as N) are no longer required.

**Implementation of the Federal Effluent Limitations Guidelines ("ELGs") for the Sugar Processing Point Source Category**

19. On January 31, 1974, the U.S. Environmental Protection Agency (the "EPA") published its Final Rule (Federal Register Volume 29, Page 4037) for the "*Beet Sugar Processing Subcategory of the Sugar Processing Point Source Category*" (the "Final Rule"). The Final Rule requires facilities to achieve effluent limitations attainable by the application of the best practicable control technology currently available. The Final Rule establishes the Federal Effluent Limitations Guidelines for the "*Beet Sugar Processing Subcategory*" outlined in 40 CFR § 409, Subpart A (the "ELGs").
20. Pursuant to 40 CFR § 409.10, the ELGs are applicable to discharges resulting from any operation that processes sugar beets for the production of sugar. The ELGs require facilities that discharge process wastewater from barometric condensing operations to comply with fecal coliform and BOD5 effluent limitations.
21. The Facility manufactures sugar from sugar beets via a barometric condenser processing operation and therefore is subject to the ELGs.
22. In accordance with the ELGs, the Division has determined the following fecal coliform limits will be applied to Western Sugar's Renewed Permit at Outfall 001A (the flow weighted sample from combined grab samples from any pond discharging to the Jacoby Ditch prior to entering the South Platte River) and the newly identified Outfall 006A (the flow weighted sample from combined grab samples from the Condenser Pond, Ash Pond, Lime (PCC) Pond, and Mud Ponds) or such new outfall as may be developed:

EFFLUENT PARAMETER	DISCHARGE LIMITATIONS OUTFALLS 001A AND 006A	
	30-Day Average	Daily Maximum
Fecal Coliform Bacteria, #/ 100 ml	400	400

23. In accordance with the ELGs, the Division has determined the following BOD5 limits will be applied to Western Sugar's Renewed Permit at the newly identified Outfall 006A or such new outfall as may be developed:

EFFLUENT PARAMETER	DISCHARGE LIMITATIONS OUTFALL 006A	
	30-Day Average	Daily Maximum
BOD5, lbs/ day	3,300	4,950

24. Under current operating capacity and using current treatment systems, Western Sugar will be unable to immediately comply with the new fecal coliform limits at Outfalls 001A and 006A and the BOD5 limits at Outfall 006A as specified in Part I.A.2 of the Renewed Permit.
25. The Division recognizes that Western Sugar will need additional time to implement the significant Facility improvements necessary to comply with the new fecal coliform and the BOD5 limits of the Renewed Permit.

#### ORDER AND AGREEMENT

26. Based on the foregoing factual and legal determinations, pursuant to its authority under §25-8-605, C.R.S., and in satisfaction of the violations referenced herein, the Division orders Western Sugar to comply with all provisions of this Consent Order, including all requirements set forth below.
27. Western Sugar agrees to the terms and conditions of this Consent Order. Western Sugar 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. Western Sugar also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Western Sugar 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.

28. Notwithstanding the above, Western Sugar does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Western Sugar pursuant to this Consent Order shall not constitute evidence of fault by Western Sugar with respect to the conditions of the Facility.

### **COMPLIANCE REQUIREMENTS**

29. Within thirty (30) calendar days of the effective date of this Consent Order, Western Sugar shall provide documentation to the Division certifying that it has retained the services of a qualified individual or entity experienced in wastewater treatment systems to perform a detailed evaluation of the Facility's wastewater treatment system. This shall be conducted consistent with the goal of facilitating the design and construction of improvements to the Facility's treatment system to ensure compliance with the Renewed Permit, specifically including the fecal coliform and BOD5 effluent limits of the Renewed Permit. The documentation submitted should include a copy of the written contract or agreement for such services, including a copy of the scope of services to be provided.
30. Western Sugar shall design and implement the following measures in order for the Facility to consistently produce effluent that is in compliance with the Renewed Permit, specifically including the fecal coliform and BOD5 effluent limits of the Renewed Permit in accordance with the following measures and associated time schedules:

#### **A. Mud Belt Press System**

- 1) On or before March 31, 2012, Western Sugar shall submit to the Division a report outlining the final design of the Mud Belt Press System.
- 2) On or before April 1, 2012 Western Sugar shall provide written notification to the Division that it has initiated construction and installation of the Mud Belt Press System.
- 3) By no later than October 1, 2012, Western Sugar shall provide written certification to the Division stating that the Mud Belt Press System is in operation and functioning as designed.

#### **B. PCC Filter Press System**

- 1) On or before December 31, 2012, Western Sugar shall submit to the Division a report outlining the final design of the PCC Filter Press System.
- 2) On or before January 1, 2013, Western Sugar shall provide written notification to the Division that it has initiated construction and installation of the PCC Filter Press System.
- 3) By no later than October 1, 2013, Western Sugar shall provide written certification to the Division stating that the PCC Filter Press System is in operation and functioning as designed.

#### **C. Sampling and Data Evaluation**

- 1) On or before July 1, 2013 Western Sugar shall submit to the Division an approvable sampling plan including, but not limited to, plant influent and effluent monitoring and sampling schedules, internal process monitoring and sampling schedules and locations. The sampling plan shall be sufficient enough to evaluate the quality and quantity of all wastewater sources necessary to determine the appropriate process changes and wastewater treatment options.
- 2) By no later than July 1, 2014, Western Sugar shall provide a report summarizing the results of the sampling plan. The report shall include, but is not limited to, an analysis of wastewater strength and loading and an evaluation of the selected wastewater treatment system designed to ensure waste stream from plant will be compliant with the fecal coliform and BOD5 effluent limitations of the Renewed Permit.

- 3) Based on the results of the above report, by no later than July 1, 2014, Western Sugar shall proceed with the Wastewater Treatment System plan outlined in Part D below, or request a modification of its permit pursuant to 5 CCR 1002-61, and/or request modification of this Consent Order pursuant to paragraph 58 below.

**D. Wastewater Treatment System**

- 1) On or before April 1, 2015, Western Sugar shall submit to the Division a report outlining the final design of the Wastewater Treatment System.
  - 2) On or before May 15, 2015 Western Sugar shall provide written notification to the Division that it has initiated construction and installation of the Wastewater Treatment System.
  - 3) By no later than December 1, 2016, Western Sugar shall provide written certification to the Division stating that the Wastewater Treatment System is in operation and functioning as designed, and the Facility is consistently producing effluent that is in compliance with the fecal coliform and BOD5 effluent limits of the Renewed Permit.
31. Beginning March 31, 2012, and with each submittal outlined in paragraph 30, parts A through D, Western Sugar shall outline activities undertaken since the previous report and shall specify what activities will be undertaken within the next six months to achieve compliance with this Consent Order.
  32. Beginning April 1, 2012, Western Sugar shall conduct monthly in-stream monitoring of the South Platte River at a point immediately upstream of the Facility and at a point below the Facility's mixing zone for fecal coliform and BOD5. Monthly in-stream sample collection shall be conducted on the same day as a sample collection event for fecal coliform and BOD5 at Outfalls 001A and 006A. Sample collection and laboratory analysis shall be conducted using U.S. Environmental Protection Agency approved methods. Western Sugar shall report the results of the monthly monitoring electronically to the Division within thirty (30) calendar days of receipt of the results. Western Sugar shall continue the monthly monitoring until closure of this Consent Order or until such time as the Division issues written notice modifying the monitoring requirement of written notice that the monitoring may cease.
  33. All documents submitted under this Consent Order shall use the same titles as stated in this Consent Order, and shall reference both the number of this Consent Order and the number of the paragraph pursuant to which the document is required. Within thirty (30) calendar days of receiving Division comments on submitted documents, Western Sugar shall revise the submitted document(s) to properly address the Division's comments and resubmit the document(s) for Division review.

**SCOPE AND EFFECT OF CONSENT ORDER**

34. This Consent Order does not supersede or replace any terms, conditions or limitations imposed by the Renewed Permit, but creates an enforceable compliance schedule for Western Sugar to achieve compliance with the fecal coliform and BOD5 effluent limitations of the Renewed Permit.
35. This Consent Order constitutes a final agency order or action upon a determination by the Division following closure of the Renewed Permit appeal period. Any violation of the provisions of this Consent Order by Western Sugar 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.

36. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order.
37. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of the Act, or any subsequent violation of any requirement of this Consent Order or the Act.
38. Western Sugar shall comply with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Division makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

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

39. 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 the specific violations referenced herein. The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties and/or injunctive relief.
40. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
41. 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.
42. Upon the effective date of this Consent Order, Western Sugar 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.
43. Western Sugar shall not seek to hold the State of Colorado or its employees, agents or representatives liable for any injuries or damages to persons or property resulting from acts or omissions of Western Sugar, or those acting for or on behalf of Western Sugar, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. Western Sugar shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by Western Sugar in carrying out activities pursuant to this Consent Order. 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.

### **OFFSITE ACCESS**

44. To the extent any plan submitted by Western Sugar requires access to property not owned or controlled by Western Sugar, Western Sugar shall use its best efforts to obtain site access from the present owners of such property to conduct required activities and to allow Division access to such property to oversee such activities. In the event that site access is not obtained when necessary, Western Sugar shall notify the Division in writing regarding its best efforts and its failure to obtain such access.

### **SITE ACCESS AND SAMPLING**

45. The Division shall be permitted to oversee any and all work being performed under this Consent Order. The Division shall be permitted access to the Facility property at any time work is being conducted pursuant to this Consent Order, and during reasonable business hours during any period work is not being conducted, for the purposes of determining Western Sugar's compliance with the Act, the Regulations, and this Consent Order. The Division shall be permitted to inspect work sites, operating and field logs, contracts, purchasing/shipping records, and other relevant records and documents relating to this Consent Order or any requirement under this Consent Order and to interview Western Sugar personnel and contractors performing work required by this Consent Order. Nothing in this paragraph limits or impairs the Division's statutory authorities to enter and inspect the Facility.
46. The Division may conduct any tests necessary to ensure compliance with this Consent Order and to verify the data submitted by Western Sugar. Western Sugar shall notify the Division in writing of any sampling activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of seventy-two (72) hours prior to the sampling being conducted, and shall provide split samples to the Division upon request.
47. Western Sugar shall notify the Division in writing of any excavation, construction (including the construction of monitoring wells) or other investigatory or remedial activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of seventy-two (72) hours prior to beginning the excavation, construction, or required activity. Western Sugar shall provide the Division any blue print, diagram, construction or other permits for any construction activity undertaken pursuant to this Consent Order upon request.

### **FORCE MAJEURE**

48. Western Sugar shall perform the requirements of this Consent Order within the schedules and time limits set forth herein and in any approved plan unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of Western Sugar, and which cannot be overcome by due diligence.
49. Within seventy-two (72) hours of the time that Western Sugar knows or has reason to know of the occurrence of any event which Western Sugar has reason to believe may prevent Western Sugar from timely compliance with any requirement under this Consent Order, Western Sugar shall provide verbal notification to the Division. Within seven (7) calendar days of the time that Western Sugar knows or has reason to know of the occurrence of such event, Western Sugar shall submit to

the Division a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.

50. The burden of proving that any delay was caused by a force majeure shall at all times rest with Western Sugar. If the Division agrees that a force majeure has occurred, the Division will so notify Western Sugar. The Division will also approve or disapprove of Western Sugar's proposed actions for mitigating the delay. If the Division does not agree that a force majeure has occurred, or if the Division disapproves of Western Sugar's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to Western Sugar. Pursuant to the Dispute Resolution section within fifteen (15) calendar days of receipt of the explanation, Western Sugar may file an objection.
51. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Consent Order is found to have been delayed by a force majeure, Western Sugar shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

### **DISPUTE RESOLUTION**

52. If the Division determines that that a violation of this Consent Order has occurred, that a force majeure has not occurred; that the actions taken by Western Sugar to mitigate the delay caused by a force majeure are inadequate; if the Division disapproves of any request to modify this Consent Order; or that Western Sugar's Notice of Completion should be rejected pursuant to paragraph 59, the Division shall provide a written explanation of its determination to Western Sugar. Within fifteen (15) calendar days of receipt of the Division's determination, Western Sugar shall:
  - a. Submit a notice of acceptance of the determination; or
  - b. Submit a notice of dispute of the determination.

If Western Sugar fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

53. If the Division disapproves or approves with modifications any original or revised plan submitted by Western Sugar pursuant to this Consent Order, the Division shall provide a written explanation of the disapproval or approval with modifications. Within fifteen (15) calendar days of receipt of the Division's approval with modifications or disapproval of the plan, Western Sugar shall:
  - a. In the case of an approval with modifications only, submit a notice of acceptance of the plan as modified and begin to implement the modified plan;
  - b. In the case of a disapproval only, submit a revised plan for Division review and approval. Western Sugar may not select this option if the Division has included in its disapproval an alternate plan that shall be implemented by Western Sugar; or
  - c. Submit a notice of dispute of the disapproval or approval with modifications.

If Western Sugar fails to do any of the above within the specified time, Western Sugar shall be deemed to have failed to comply with the Consent Order, and the Division may bring an enforcement action, including an assessment of penalties.

54. If Western Sugar submits a revised plan, the plan shall respond adequately to each of the issues raised in the Division's written explanation of the disapproval or approval with modifications. The Division may determine that failure to respond adequately to each of the issues raised in the Division's written explanation constitutes a violation of this Consent Order. The Division shall notify Western Sugar in writing of its approval, approval with modifications, or disapproval of the revised plan. If the Division disapproves the revised plan, it may include in its disapproval a plan for implementation by Western Sugar. Such disapproval and plan shall be deemed effective and subject to appeal in accordance with the Act and the Colorado State Administrative Procedures Act, §§ 24-4-101 through 108, C.R.S. (the "APA"), unless Western Sugar submits a notice of dispute, pursuant to paragraph 53 above, of the Division's disapproval and plan for implementation. All requirements and schedules of the Division's plan shall not become effective pending resolution of the dispute.
55. If Western Sugar files any notice of dispute pursuant to paragraph 52, 53, or 54 the notice shall specify the particular matters in the Division's determination that Western Sugar seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by Western Sugar. The Division and Western Sugar shall have thirty (30) calendar days from the receipt by the Division of the notification of dispute to reach an agreement. If agreement cannot be reached on all issues within this thirty (30) calendar day period, the Division shall confirm or modify its decision within an additional fourteen (14) calendar days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act and the APA.

#### NOTICES

56. 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-CADM-B2  
Attention: Kelly Morgan  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530  
Telephone: (303) 692-3634  
E-mail: [kelly.morgan@state.co.us](mailto:kelly.morgan@state.co.us)

For Western Sugar:

The Western Sugar Cooperative  
Attention: Shawn Sullivan, Environmental Manager  
1221 8<sup>th</sup> Avenue  
Greeley, Colorado 80631  
Telephone: (970) 304-6027  
E-mail: [shsullivan@westernsugar.com](mailto:shsullivan@westernsugar.com)

## **OBLIGATIONS UNAFFECTED BY BANKRUPTCY**

57. The obligations set forth herein are based on the Division's police and regulatory authority. These obligations require specific performance by Western Sugar of corrective actions carefully designed to prevent on-going or future harm to public health or the environment, or both. Enforcement of these obligations is not stayed by a petition in bankruptcy. Western Sugar agrees that the penalties set forth in this Consent Order are not in compensation of actual pecuniary loss. Further, the obligations imposed by this Consent Order are necessary for Western Sugar and the Facility to achieve and maintain compliance with State law.

## **MODIFICATIONS**

58. This Consent Order may be modified or amended only upon mutual written agreement of the Parties. In the event that the corrective actions that Western Sugar has undertaken in accordance with this Consent Order do not result in compliance with applicable effluent limits, Western Sugar shall submit a written modification or amendment request that identifies a timeline and specific short-term and long-term measures that will be taken by Western Sugar in order for the Facility to consistently produce effluent that is in compliance with the fecal coliform and BOD5 effluent limits of the Renewed Permit. Any dispute regarding a decision to deny a modification or amendment request shall be addressed through the dispute resolution process referenced in paragraphs 52, 53, 54, and 55.

## **COMPLETION OF REQUIRED ACTIONS**

59. Western Sugar shall submit a Notice of Completion to the Division upon satisfactory completion of all requirements of this Consent Order. The Division shall either accept or reject Western Sugar's Notice of Completion in writing within thirty (30) calendar days of receipt. If the Division rejects Western Sugar's Notice of Completion, it shall include in its notice a statement identifying the requirements that the Division considers incomplete or not satisfactorily performed and a schedule for completion. Western Sugar shall, within fifteen (15) days of receipt of the Division's rejection, either:
- a. Submit a notice of acceptance of the determination; or
  - b. Submit a notice of dispute.

If Western Sugar fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

## **NOTICE OF EFFECTIVE DATE**

60. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon notice from the Division following closure of the Renewed Permit appeal period.

**BINDING EFFECT AND AUTHORIZATION TO SIGN**

61. This Consent Order is binding upon Western Sugar and its 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. Western Sugar agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. In the event that a party does not sign this Consent Order within thirty five (35) 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 THE WESTERN SUGAR COOPERATIVE:**

I. K. Mathur Date: 1/31/12  
Inder K. Mathur, President & CEO  
The Western Sugar Cooperative

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

Lori M Gerzina Date: 2/28/12  
Lori Gerzina, Unit Manager  
Compliance Assurance Section  
WATER QUALITY CONTROL DIVISION

# STATE OF COLORADO

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

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

4300 Cherry Creek Dr. S.      Laboratory Services Division  
Denver, Colorado 80246-1530      8100 Lowry Blvd.  
Phone (303) 692-2000      Denver, Colorado 80230-6928  
Located in Glendale, Colorado      (303) 692-3090

<http://www.cdphe.state.co.us>



Colorado Department  
of Public Health  
and Environment

April 20, 2012

Inder Mathur, President and CEO  
The Western Sugar Cooperative  
7555 E. Hampden Ave., Suite 600  
Denver, CO 80231

**RE: Service of Amendment One to Compliance Order on Consent Number: IC-120228-1**

Dear Mr. Mathur:

Enclosed for The Western Sugar Cooperative's records you will find your copy of the recently executed Amendment Number One to Compliance Order on Consent, Number: IC-120228-1 ("the Order"). The Western Sugar Cooperative and the Water Quality Control Division ("the Division") of the Colorado Department of Public Health and Environment amend the Order that was finally executed between the Division and The Western Sugar Cooperative on February 28, 2012, upon mutual agreement.

Please note that all other requirements, conditions, and dates referenced in the Order remain unchanged and in effect.

Should you desire to discuss this matter with the Division or if you have any questions regarding the Order amendment(s), please do not hesitate to contact Kelly Morgan of this office at (303) 692-3634 or by electronic mail at [kelly.morgan@state.co.us](mailto:kelly.morgan@state.co.us).

Sincerely,

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

cc: Enforcement File

cc: Northeast Colorado Health Department  
Dick Parachini, Watershed Program, CDPHE  
Tania Watson, Clean Water Compliance & Enforcement Unit, CDPHE  
Michael Beck, Grants and Loans Unit, CDPHE  
Natasha Davis, EPA Region VIII  
Kelly Morgan, Case Lead, CDPHE  
Paul Kosik, Engineering Section, CDPHE  
Shawn Sullivan, The Western Sugar Cooperative ([shsullivan@westernsugar.com](mailto:shsullivan@westernsugar.com))  
Dennis Arfmann, Hogan Lovells US LLP ([dennis.arfmann@hoganlovells.com](mailto:dennis.arfmann@hoganlovells.com))  
Tom Roan, Colorado Office of the Attorney General ([tom.roan@state.co.us](mailto:tom.roan@state.co.us))



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

---

AMENDMENT NUMBER ONE  
COMPLIANCE ORDER ON CONSENT

NUMBER: IC-120228-1

---

IN THE MATTER OF:     **THE WESTERN SUGAR COOPERATIVE**  
                              **CDPS PERMIT NO. CO-0041351**  
                              **MORGAN COUNTY, COLORADO**

---

The Colorado Department of Public Health and Environment (“Department”), through the Water Quality Control Division (“Division”), issues this Amendment Number One to the February 28, 2012 Compliance Order on Consent Number: IC-120228-1 (*see attached copy, marked as “Attachment A” for reference*), which was executed between the Department and The Western Sugar Cooperative (“Western Sugar”). The Compliance Order on Consent became effective and a final agency action on March 1, 2012. This amendment is issued pursuant to the Division’s authority under 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 Western Sugar. The Division and Western Sugar may be referred to collectively as “the Parties.”

**STATEMENT OF PURPOSE**

1. The mutual objectives of the Parties in amending the Compliance Order on Consent, Number: IC-120228-1 (the “Consent Order”) is to include additional Discharge Monitoring Report (“DMR”) data submitted by Western Sugar subsequent to the Consent Order being executed and made effective. Because DMRs are required to be submitted to the Division by the 28<sup>th</sup> day of the month following the monitoring period, some DMR data was not available and therefore not included in the Consent Order when it was executed and made effective.

**AMENDMENT NUMBER ONE**

2. Paragraph 14 of the Consent Order is hereby amended to include the following effluent concentration summary data for total coliform:

Western Sugar EFFLUENT SELF-MONITORING DATA			
DISCHARGE MONITORING REPORTING PERIOD	OUTFALL NUMBER	SAMPLE MEASUREMENT	SAMPLE MEASUREMENT
TOTAL COLIFORM, #/100 ML		DAILY MAXIMUM = 23/100 ml	30-DAY AVG. LIMIT = 1.0/100 ml
January 1-30, 2012	050D	120/ 100 ml	120/ 100 ml
January 1-30, 2012	050E	--	2/ 100 ml
February 1-29, 2012	050B	--	6/ 100 ml
February 1-29, 2012	050D	--	4/ 100 ml
February 1-29, 2012	050E	163/ 100 ml	163/ 100 ml

**NOTICE OF EFFECTIVE DATE OF AMENDMENT NUMBER ONE**

3. This Consent Order amendment shall be fully effective, enforceable and constitute a final agency action on the date signed by the authorized representative of the last party.

**SCOPE OF AMENDMENT NUMBER ONE**

4. The scope of this amendment to the Consent Order is expressly limited to the matters specifically identified herein. All other terms, conditions or requirements of the Consent Order shall remain unchanged and in effect.

**AUTHORIZATION TO SIGN**

5. The undersigned warrant that they are authorized to legally bind their respective principals to this amendment to the Consent Order. In the event that a party does not sign this amendment to the Consent Order within thirty (30) calendar days of the other party's signature, this amendment becomes null and void.

**FOR THE WESTERN SUGAR COOPERATIVE:**

Inder K. Mathur Date: 4/12/12  
 Inder K. Mathur, President & CEO  
 The Western Sugar Cooperative

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

Lori M. Gerzina Date: 4/19/12  
 Lori M. Gerzina, Section Manager  
 Compliance Assurance Section  
 WATER QUALITY CONTROL DIVISION

# STATE OF COLORADO

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

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

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



Colorado Department  
of Public Health  
and Environment

February 29, 2012

Inder Mathur, President and CEO  
The Western Sugar Cooperative  
7555 E. Hampden Ave, Suite 600  
Denver, Colorado 80231

**RE: Compliance Order on Consent, Number: IC-120228-1**

Dear Mr. Mathur:

On February 28, 2012, the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") signed a Compliance Order on Consent (the "Consent Order") between the Division and The Western Sugar Cooperative. This Consent Order supersedes and replaces the Compliance Order on Consent, Number IC-110831-1 that was previously executed between the Division and The Western Sugar Cooperative on August 31, 2011, so that the compliance schedule requirements of this Consent Order coincide with the issuance and effective date of the Renewed Permit (Permit Number CO-0041351/ sixth renewal, effective March 1, 2012).

Following the closure of the Renewed Permit appeal period, the Consent Order constitutes a final agency action upon a determination from the Division. The Renewed Permit appeal period elapsed on February 24, 2012 and The Western Sugar Cooperative did not contest any of the conditions of the Renewed Permit. The Division is hereby providing The Western Sugar Cooperative notice that on March 1, 2012 the Division considers the Consent Order to be fully effective, enforceable and final.

If you have any questions, please don't hesitate to contact me at (303) 692-3634 or by electronic mail at [kelly.morgan@state.co.us](mailto:kelly.morgan@state.co.us).

Sincerely,

Kelly Morgan  
Clean Water Compliance & Enforcement Unit  
WATER QUALITY CONTROL DIVISION

cc: Northeast Colorado Health Department  
Enforcement File

cc: Natasha Davis, EPA Region VIII ([davis.natasha@epa.gov](mailto:davis.natasha@epa.gov))  
Dick Parachini, Watershed Program, CDPHE

*The Western Sugar Cooperative  
Compliance Order on Consent, Number IC-120228-1  
Notice of Effective Date  
Page 2 of 2*

Michael Beck, Financial Solutions Unit, CDPHE  
Tania Watson, Clean Water Compliance & Enforcement Unit, CDPHE  
Engineering Section, CDPHE  
Tom Roan, Colorado Office of the Attorney General (tom.roan@state.co.us)  
Dennis Arfmann, Hogan Lovells US LLP (dennis.arfmann@hoganlovells.com)  
Shawn Sullivan, The Western Sugar Cooperative (shsullivan@westernsugar.com)

*Enclosure(s)*



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

---

**COMPLIANCE ORDER ON CONSENT**

**NUMBER: IC-120228-1**

---

**IN THE MATTER OF: THE WESTERN SUGAR COOPERATIVE  
CDPS PERMIT NO. CO-0041351  
MORGAN COUNTY, COLORADO**

---

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 §25-8-605, C.R.S. of the Colorado Water Quality Control Act ("the Act") §§ 25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of The Western Sugar Cooperative ("Western Sugar"). The Division and Western Sugar 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:
  - a. To establish compliance requirements and criteria for the continued operation of Western Sugar's sugar beet factory and associated wastewater treatment works, located at or near 18317 Highway 144 (Riverside Avenue), Fort Morgan, Morgan County, Colorado / North Latitude 40.2666°, West Longitude 103.8000° (the "Facility"); and
  - b. To resolve the compliance issue(s) created by the revised implementation of the federal Effluent Limitations Guidelines ("ELGs") for the Sugar Processing Point Source Category, as they apply to the Facility; and
  - c. To establish an enforceable compliance schedule for Western Sugar to achieve compliance with its Colorado Discharge Permit System permit, Permit Number: CO-0041351 / sixth renewal, effective March 1, 2012 (the "Renewed Permit") fecal coliform and BOD5 effluent limitations; and
  - d. To supersede and replace the Compliance Order on Consent, Number IC-110831-1 previously executed between the Parties on August 31, 2011, so that the compliance schedule requirements of this Consent Order coincide with the issuance and effective date of the Renewed Permit.

## **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 §25-8-605, C.R.S., the Division has made the following determinations regarding Western Sugar, the Facility, and Western Sugar's compliance with the Act, its implementing permit regulations, and the permit.
3. At all times relevant to the issues identified herein, Western Sugar was a Colorado Cooperative in good standing.
4. Western Sugar is a "person" as defined by §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
5. The Facility routes wastewater into several on-site unlined ponds: the Condenser Pond, the Ash Pond, the Lime (PCC) Pond, and the Mud Ponds. The Condenser Pond primarily treats non-contact and contact condenser cooling water, but recycled water from the Ash Pond and the intake pond have the potential to end up in the Condenser Pond. Treatment in the Condenser Pond includes evaporation, cooling and settling. The Ash Pond receives the ash transport water from the boiler. The source water is condenser water that sluices the waste ash from the boilers, thereby comprising the ash transport waters. Passive treatment includes evaporation and settling. The Lime (PCC) Pond receives water from the kiln burner cooler and gas scrubber, as well as the filter sluice. Passive treatment includes evaporation and settling. The Mud Ponds receive water utilized in beet transport and washing. Passive treatment consists of evaporation and settling.
6. The Facility is the subject of Colorado Discharge Permit System, Permit No. CO-0041351 (the "Permit"). The Division has a lengthy permitting history with the Facility dating back to 1986. The most recent renewal Permit was issued and became effective February 1, 2006. The Permit was amended with Amendment #1 and reissued effective January 1, 2007. The Permit was subsequently amended with Amendment #2 and reissued effective March 1, 2009 (the "Amended Permit"). The Amended Permit expired January 31, 2011 and was subsequently administratively extended until the Renewed Permit is effective (March 1, 2012).
7. The Permit authorized Western Sugar to discharge treated wastewater from the Facility through Outfall 001 (the outfall from the Condenser Pond, prior to entering the ditch that empties to the South Platte River). The Permit also authorized Western Sugar to discharge via the pond system to groundwater, with compliance being monitored at Outfall 002 (the point of inflow to the Condenser Pond); Outfall 003 (the point of inflow to the Ash Pond); Outfall 004 (the point of inflow to the Lime (PCC) Pond); and Outfall 005 (the point of inflow to the first of the Mud Ponds). The Amended Permit authorizes Western Sugar to discharge from Outfall 001A (the outfall from the Condenser Pond, prior to entering the ditch that empties to the South Platte River); Outfall 050B (MW-2 located downgradient of the Lime (PCC) Pond); Outfall 050D (MW-4 located downgradient of the Mud Pond Aeration System); and Outfall 050E (MW-5 located downgradient of the Mud Ponds). Monitoring of ambient groundwater quality is required at Outfall 050A (MW-1 located upgradient of all onsite ponds).
8. The South Platte River and the groundwater underlying and adjacent to the Facility are "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(102).

9. Pursuant to 5 CCR 1002-61, §61.8, Western Sugar 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.
10. Pursuant to Part I.A.1. of the Permit, among other parameters, Western Sugar's permitted discharge at Outfalls 002, 003, 004, and 005 beginning April 1, 2008 shall not exceed the effluent limitations specified below:

Effluent Parameter	Discharge Limitations		
	30-Day Average	7-Day Average	Daily Maximum
Flow, MGD	Report	NA	Report
pH, s.u. (minimum-maximum)	NA	NA	6.5-8.5
5-day BOD, lbs/day	Report	Report	NA
Total Coliforms, Number/ 100 ml	1.0	NA	Report
Total Nitrate plus Nitrite, mg/l as N	10	NA	Report
Total Dissolved Solids	Report	NA	1650
Dissolved Chloride, mg/l	250	NA	Report
Dissolved Sulfate, mg/l	250	NA	Report
Dissolved Manganese, mg/l	Report	NA	Report

11. Pursuant to Part I.A.1. of the Amended Permit, among other parameters, beginning March 1, 2009 Western Sugar's permitted discharge at Outfalls 050B, 050D, and 050E shall not exceed the effluent limitations specified below:

Effluent Parameter	Discharge Limitations		
	30-Day Average	7-Day Average	Daily Maximum
5-day BOD, lbs/day	152	Report	228
pH, s.u. (minimum-maximum)	NA	NA	6.5-8.5
Oil and Grease, mg/l	NA	NA	10
Total Coliforms, Number/ 100 ml	1.0	NA	23
Total Nitrate plus Nitrite, mg/l as N	10	NA	Report
Dissolved Chloride, mg/l	250	NA	Report
Dissolved Sulfate, mg/l			
Until 12/31/13	Report	NA	Report
Beginning 01/01/14	420	NA	Report
Dissolved Manganese, mg/l			
Until 12/31/13	Report	NA	Report
Beginning 01/01/14	50	NA	Report
Total Dissolved Solids			
Until 12/31/13	Report	NA	Report
Beginning 01/01/14	1650	NA	Report

12. Pursuant to Part I.B.1 of the Permit and the Amended Permit, Western Sugar is required to monitor defined effluent parameters at specified frequencies to provide an indication of compliance or non-compliance with the effluent limitations identified in the Permit and the Amended Permit.
13. Pursuant to Part I.E.1 of the Permit and the Amended Permit, Western Sugar is required to summarize and report the analytical results of its effluent monitoring to the Division via monthly discharge monitoring reports ("DMRs"). Each discharge monitoring report is to include a certification by Western Sugar that the information provided therein is true, accurate and complete to the knowledge and belief of Western Sugar.
14. Western Sugar's DMRs submitted to the Division include, among other information and data, the following effluent concentration summary data for total nitrate plus nitrite (as N), total dissolved solids, pH, dissolved chloride, total coliform, and oil and grease which exceeded the effluent limitations imposed by Part I.A.1. of the Permit and the Amended Permit:

Western Sugar EFFLUENT SELF-MONITORING DATA			
DISCHARGE MONITORING REPORTING PERIOD	OUTFALL NUMBER	SAMPLE MEASUREMENT	SAMPLE MEASUREMENT
NITRATE PLUS NITRITE, AS N		—	30-DAY AVG. LIMIT = 10 mg/l
September 1-30, 2008	002A	—	11.90 mg/l
September 1-30, 2008	005A	—	13.20 mg/l
October 1-31, 2008	002A	—	11.10 mg/l
November 1-30, 2008	004A	—	32.60 mg/l
January 1-31, 2009	002A	—	11.30 mg/l
TOTAL DISSOLVED SOLIDS		DAILY MAXIMUM = 1650 mg/l	
September 1-30, 2008	003A	1,740 mg/l	—
September 1-30, 2008	004A	1,690 mg/l	—
September 1-30, 2008	005A	8,060 mg/l	—
October 1-31, 2008	003A	1,690 mg/l	—
October 1-31, 2008	004A	1,760 mg/l	—
October 1-31, 2008	005A	11,000 mg/l	—
November 1-30, 2008	003A	1,940 mg/l	—
November 1-30, 2008	004A	13,700 mg/l	—
November 1-30, 2008	005A	10,800 mg/l	—
December 1-31, 2008	003A	1,850 mg/l	—
December 1-31, 2008	004A	4,120 mg/l	—
December 1-31, 2008	005A	9,840 mg/l	—

Western Sugar EFFLUENT SELF-MONITORING DATA			
DISCHARGE MONITORING REPORTING PERIOD	OUTFALL NUMBER	SAMPLE MEASUREMENT	SAMPLE MEASUREMENT
<b>TOTAL DISSOLVED SOLIDS</b>		DAILY MAXIMUM = 1650 mg/l	
January 1-31, 2009	003A	1,840 mg/l	--
January 1-31, 2009	004A	2,480 mg/l	--
January 1-31, 2009	005A	8,340 mg/l	--
February 1-28, 2009	003A	1,850 mg/l	--
February 1-28, 2009	004A	2,810 mg/l	--
February 1-28, 2009	005A	6,960 mg/l	--
<b>PH</b>		MINIMUM = 6.5 SU	MAXIMUM = 8.5 SU
September 1-30, 2008	004A	--	11.22
September 1-30, 2008	005A	--	11.80
October 1-31, 2008	004A	--	11.20
October 1-31, 2008	005A	--	11.50
November 1-30, 2008	004A	--	10.50
November 1-30, 2008	005A	--	9.0
December 1-31, 2008	004A	--	10.81
December 1-31, 2008	005A	--	10.55
January 1-31, 2009	004A	--	10.87
January 1-31, 2009	005A	--	10.60
February 1-28, 2009	004A	--	10.34
February 1-28, 2009	005A	--	11.37
June 1-30, 2010	050E	--	8.95
January 1-31, 2011	050B	6.37	--
January 1-31, 2011	050E	6.39	--
<b>CHLORIDE (DISSOLVED)</b>			30-DAY AVG. LIMIT = 10 mg/l
November 1-30, 2008	004A	--	593 mg/l
<b>TOTAL COLIFORM, #/100 ML</b>		DAILY MAXIMUM = 23/100 ml	30-DAY AVG. LIMIT = 1.0/100 ml
March 1-31, 2009	050D	--	2.0/100 ml
April 1-30, 2009	050B	--	2.0/100 ml
April 1-30, 2009	050D	--	2.0/100 ml

Western Sugar EFFLUENT SELF-MONITORING DATA			
DISCHARGE MONITORING REPORTING PERIOD	OUTFALL NUMBER	SAMPLE MEASUREMENT	SAMPLE MEASUREMENT
TOTAL COLIFORM, #/100 ML		DAILY MAXIMUM = 23/100 ml	30-DAY AVG. LIMIT = 1.0/100 ml
April 1-30, 2009	050E	—	3.0/100 ml
May 1-31, 2009	050B	--	2.0/ 100 ml
May 1-31, 2009	050E	130/ 100 ml	130/ 100 ml
June 1-30, 2009	050E	68/ 100 ml	68/ 100 ml
September 1-30, 2009	050E	120/ 100 ml	120/ 100 ml
October 1-31, 2009	050B	—	2.0/ 100 ml
November 1-30, 2009	050E	TNTC	TNTC
December 1-31, 2009	050B	—	4.0/ 100 ml
December 1-31, 2009	050D	900/ 100 ml	900/ 100 ml
December 1-31, 2009	050E	—	2/ 100 ml
January 1-31, 2010	050B	—	<2.0/ 100 ml
January 1-31, 2010	050E	TNTC	TNTC
February 1-28, 2010	050D	420/ 100 ml	420/ 100 ml
March 1-31, 2010	050D	33/ 100 ml	33/ 100 ml
March 1-31, 2010	050E	—	13/ 100 ml
April 1-30, 2010	050D	—	6.67/ 100 ml
May 1-31, 2010	050B	24.9/ 100 ml	24.9/ 100 ml
May 1-31, 2010	050D	10,800/ 100 ml	10,800/ 100 ml
May 1-31, 2010	050E	—	6.45/ 100 ml
June 1-30, 2010	050D	—	22.6/ 100 ml
June 1-30, 2010	050E	—	6.56/ 100 ml
July 1-31, 2010	050B	66/ 100 ml	66/100 ml
August 1-31, 2010	050D	TNTC	TNTC
August 1-31, 2010	050E	45.16/ 100 ml	45.16/ 100 ml
September 1-30, 2010	050B	—	14.43/ 100 ml
September 1-30, 2010	050D	1,400/ 100 ml	1,400/ 100 ml
September 1-30, 2010	050E	9,900/ 100 ml	9,900/ 100 ml
October 1-31, 2010	050B	27/ 100 ml	27/ 100 ml

Western Sugar EFFLUENT SELF-MONITORING DATA			
DISCHARGE MONITORING REPORTING PERIOD	OUTFALL NUMBER	SAMPLE MEASUREMENT	SAMPLE MEASUREMENT
<b>TOTAL COLIFORM, #/100 ML</b>		DAILY MAXIMUM = 23/100 ml	30-DAY AVG. LIMIT = 1.0/100 ml
October 1-31, 2010	050D	TNTC	TNTC
October 1-31, 2010	050E	TNTC	TNTC
November 1-30, 2010	050B	—	12/ 100 ml
November 1-30, 2010	050D	TNTC	TNTC
November 1-30, 2010	050E	240/ 100 ml	240/ 100 ml
December 1-31, 2010	050E	4,100/ 100 ml	4,100/ 100 ml
January 1-31, 2011	050D	27/ 100 ml	27/ 100 ml
January 1-31, 2011	050E	137/ 100 ml	137/ 100 ml
February 1-28, 2011	050D	216/ 100 ml	216/ 100 ml
February 1-28, 2011	050E	3,600/ 100 ml	3,600/ 100 ml
March 1-31, 2011	050D	TNTC	TNTC
March 1-31, 2011	050E	35.5/ 100 ml	35.5/100 ml
April 1-30, 2011	050D	210/ 100 ml	210/ 100 ml
April 1-30, 2011	050E	210/ 100 ml	210/ 100 ml
May 1-31, 2011	050D	77.4/ 100 ml	77.4/ 100 ml
June 1-30, 2011	050D	580/ 100 ml	580/ 100 ml
July 1-31, 2011	050E	201.8/ 100 ml	201.8/ 100 ml
August 1-31, 2011	050E	33.3/ 100 ml	33.3/ 100 ml
September 1-30, 2011	050D	—	3.33/ 100 ml
October 1-31, 2011	050B	—	8/ 100 ml
October 1-31, 2011	050D	113/ 100 ml	113/ 100 ml
October 1-31, 2011	050E	70/ 100 ml	70/ 100 ml
November 1-30, 2011	050D	2,599/ 100 ml	2,599/ 100 ml
November 1-30, 2011	050E	731/ 100 ml	731/ 100 ml
December 1-31, 2011	050D	—	19/ 100 ml
December 1-31, 2011	050E	—	6/ 100 ml
<b>OIL AND GREASE</b>			INSTANTANEOUS MAXIMUM = 10 mg/l
August 1-31, 2009	050B	—	22.0 mg/l

15. Total nitrate plus nitrite (as N), total dissolved solids, pH, dissolved chloride, total coliform, and oil and grease are "pollutants" as defined by §25-8-103(15), C.R.S.
16. Division records establish that neither the Permit nor the Amended Permit authorize(d) the pollutant discharge levels identified above in paragraph 14 nor does Western Sugar have any other permits authorizing such discharge into State Waters.
17. Western Sugar's failure to comply with the effluent limitations set forth in the Permit and the Amended Permit constitutes violations of Part I.A.1. of the Permit and the Amended Permit.
18. With the development of the Renewed Permit, the Division has determined that groundwater standards do not apply to the Facility's discharge on the basis that the discharge from the unlined ponds is to the South Platte alluvium and that this water is within the zone of influence of the South Platte River for at least a portion of the site. Therefore, the protection of groundwater uses is not applicable and groundwater standards are not implemented in the Renewed Permit. Compliance with the groundwater standards of total coliform, total dissolved solids, dissolved chloride, and nitrate+nitrite (as N) are no longer required.

**Implementation of the Federal Effluent Limitations Guidelines ("ELGs") for the Sugar Processing Point Source Category**

19. On January 31, 1974, the U.S. Environmental Protection Agency (the "EPA") published its Final Rule (Federal Register Volume 29, Page 4037) for the "*Beet Sugar Processing Subcategory of the Sugar Processing Point Source Category*" (the "Final Rule"). The Final Rule requires facilities to achieve effluent limitations attainable by the application of the best practicable control technology currently available. The Final Rule establishes the Federal Effluent Limitations Guidelines for the "*Beet Sugar Processing Subcategory*" outlined in 40 CFR § 409, Subpart A (the "ELGs").
20. Pursuant to 40 CFR § 409.10, the ELGs are applicable to discharges resulting from any operation that processes sugar beets for the production of sugar. The ELGs require facilities that discharge process wastewater from barometric condensing operations to comply with fecal coliform and BOD5 effluent limitations.
21. The Facility manufactures sugar from sugar beets via a barometric condenser processing operation and therefore is subject to the ELGs.
22. In accordance with the ELGs, the Division has determined the following fecal coliform limits will be applied to Western Sugar's Renewed Permit at Outfall 001A (the flow weighted sample from combined grab samples from any pond discharging to the Jacoby Ditch prior to entering the South Platte River) and the newly identified Outfall 006A (the flow weighted sample from combined grab samples from the Condenser Pond, Ash Pond, Lime (PCC) Pond, and Mud Ponds) or such new outfall as may be developed:

EFFLUENT PARAMETER	DISCHARGE LIMITATIONS OUTFALLS 001A AND 006A	
	30-Day Average	Daily Maximum
Fecal Coliform Bacteria, #/ 100 ml	400	400

23. In accordance with the ELGs, the Division has determined the following BOD5 limits will be applied to Western Sugar's Renewed Permit at the newly identified Outfall 006A or such new outfall as may be developed:

EFFLUENT PARAMETER	DISCHARGE LIMITATIONS OUTFALL 006A	
	30-Day Average	Daily Maximum
BOD5, lbs/ day	3,300	4,950

24. Under current operating capacity and using current treatment systems, Western Sugar will be unable to immediately comply with the new fecal coliform limits at Outfalls 001A and 006A and the BOD5 limits at Outfall 006A as specified in Part LA.2 of the Renewed Permit.
25. The Division recognizes that Western Sugar will need additional time to implement the significant Facility improvements necessary to comply with the new fecal coliform and the BOD5 limits of the Renewed Permit.

#### ORDER AND AGREEMENT

26. Based on the foregoing factual and legal determinations, pursuant to its authority under §25-8-605, C.R.S., and in satisfaction of the violations referenced herein, the Division orders Western Sugar to comply with all provisions of this Consent Order, including all requirements set forth below.
27. Western Sugar agrees to the terms and conditions of this Consent Order. Western Sugar 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. Western Sugar also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Western Sugar 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.

28. Notwithstanding the above, Western Sugar does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Western Sugar pursuant to this Consent Order shall not constitute evidence of fault by Western Sugar with respect to the conditions of the Facility.

### **COMPLIANCE REQUIREMENTS**

29. Within thirty (30) calendar days of the effective date of this Consent Order, Western Sugar shall provide documentation to the Division certifying that it has retained the services of a qualified individual or entity experienced in wastewater treatment systems to perform a detailed evaluation of the Facility's wastewater treatment system. This shall be conducted consistent with the goal of facilitating the design and construction of improvements to the Facility's treatment system to ensure compliance with the Renewed Permit, specifically including the fecal coliform and BOD5 effluent limits of the Renewed Permit. The documentation submitted should include a copy of the written contract or agreement for such services, including a copy of the scope of services to be provided.
30. Western Sugar shall design and implement the following measures in order for the Facility to consistently produce effluent that is in compliance with the Renewed Permit, specifically including the fecal coliform and BOD5 effluent limits of the Renewed Permit in accordance with the following measures and associated time schedules:
- A. Mud Belt Press System**
- 1) On or before March 31, 2012, Western Sugar shall submit to the Division a report outlining the final design of the Mud Belt Press System.
  - 2) On or before April 1, 2012 Western Sugar shall provide written notification to the Division that it has initiated construction and installation of the Mud Belt Press System.
  - 3) By no later than October 1, 2012, Western Sugar shall provide written certification to the Division stating that the Mud Belt Press System is in operation and functioning as designed.
- B. PCC Filter Press System**
- 1) On or before December 31, 2012, Western Sugar shall submit to the Division a report outlining the final design of the PCC Filter Press System.
  - 2) On or before January 1, 2013, Western Sugar shall provide written notification to the Division that it has initiated construction and installation of the PCC Filter Press System.
  - 3) By no later than October 1, 2013, Western Sugar shall provide written certification to the Division stating that the PCC Filter Press System is in operation and functioning as designed.
- C. Sampling and Data Evaluation**
- 1) On or before July 1, 2013 Western Sugar shall submit to the Division an approvable sampling plan including, but not limited to, plant influent and effluent monitoring and sampling schedules, internal process monitoring and sampling schedules and locations. The sampling plan shall be sufficient enough to evaluate the quality and quantity of all wastewater sources necessary to determine the appropriate process changes and wastewater treatment options.
  - 2) By no later than July 1, 2014, Western Sugar shall provide a report summarizing the results of the sampling plan. The report shall include, but is not limited to, an analysis of wastewater strength and loading and an evaluation of the selected wastewater treatment system designed to ensure waste stream from plant will be compliant with the fecal coliform and BOD5 effluent limitations of the Renewed Permit.

- 3) Based on the results of the above report, by no later than July 1, 2014, Western Sugar shall proceed with the Wastewater Treatment System plan outlined in Part D below, or request a modification of its permit pursuant to 5 CCR 1002-61, and/or request modification of this Consent Order pursuant to paragraph 58 below.

#### **D. Wastewater Treatment System**

- 1) On or before April 1, 2015, Western Sugar shall submit to the Division a report outlining the final design of the Wastewater Treatment System.
  - 2) On or before May 15, 2015 Western Sugar shall provide written notification to the Division that it has initiated construction and installation of the Wastewater Treatment System.
  - 3) By no later than December 1, 2016, Western Sugar shall provide written certification to the Division stating that the Wastewater Treatment System is in operation and functioning as designed, and the Facility is consistently producing effluent that is in compliance with the fecal coliform and BOD5 effluent limits of the Renewed Permit.
31. Beginning March 31, 2012, and with each submittal outlined in paragraph 30, parts A through D, Western Sugar shall outline activities undertaken since the previous report and shall specify what activities will be undertaken within the next six months to achieve compliance with this Consent Order.
  32. Beginning April 1, 2012, Western Sugar shall conduct monthly in-stream monitoring of the South Platte River at a point immediately upstream of the Facility and at a point below the Facility's mixing zone for fecal coliform and BOD5. Monthly in-stream sample collection shall be conducted on the same day as a sample collection event for fecal coliform and BOD5 at Outfalls 001A and 006A. Sample collection and laboratory analysis shall be conducted using U.S. Environmental Protection Agency approved methods. Western Sugar shall report the results of the monthly monitoring electronically to the Division within thirty (30) calendar days of receipt of the results. Western Sugar shall continue the monthly monitoring until closure of this Consent Order or until such time as the Division issues written notice modifying the monitoring requirement of written notice that the monitoring may cease.
  33. All documents submitted under this Consent Order shall use the same titles as stated in this Consent Order, and shall reference both the number of this Consent Order and the number of the paragraph pursuant to which the document is required. Within thirty (30) calendar days of receiving Division comments on submitted documents, Western Sugar shall revise the submitted document(s) to properly address the Division's comments and resubmit the document(s) for Division review.

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

34. This Consent Order does not supersede or replace any terms, conditions or limitations imposed by the Renewed Permit, but creates an enforceable compliance schedule for Western Sugar to achieve compliance with the fecal coliform and BOD5 effluent limitations of the Renewed Permit.
35. This Consent Order constitutes a final agency order or action upon a determination by the Division following closure of the Renewed Permit appeal period. Any violation of the provisions of this Consent Order by Western Sugar 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.

36. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order.
37. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of the Act, or any subsequent violation of any requirement of this Consent Order or the Act.
38. Western Sugar shall comply with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Division makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

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

39. 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 the specific violations referenced herein. The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties and/or injunctive relief.
40. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
41. 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.
42. Upon the effective date of this Consent Order, Western Sugar 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.
43. Western Sugar shall not seek to hold the State of Colorado or its employees, agents or representatives liable for any injuries or damages to persons or property resulting from acts or omissions of Western Sugar, or those acting for or on behalf of Western Sugar, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. Western Sugar shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by Western Sugar in carrying out activities pursuant to this Consent Order. 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.

### OFFSITE ACCESS

44. To the extent any plan submitted by Western Sugar requires access to property not owned or controlled by Western Sugar, Western Sugar shall use its best efforts to obtain site access from the present owners of such property to conduct required activities and to allow Division access to such property to oversee such activities. In the event that site access is not obtained when necessary, Western Sugar shall notify the Division in writing regarding its best efforts and its failure to obtain such access.

### SITE ACCESS AND SAMPLING

45. The Division shall be permitted to oversee any and all work being performed under this Consent Order. The Division shall be permitted access to the Facility property at any time work is being conducted pursuant to this Consent Order, and during reasonable business hours during any period work is not being conducted, for the purposes of determining Western Sugar's compliance with the Act, the Regulations, and this Consent Order. The Division shall be permitted to inspect work sites, operating and field logs, contracts, purchasing/shipping records, and other relevant records and documents relating to this Consent Order or any requirement under this Consent Order and to interview Western Sugar personnel and contractors performing work required by this Consent Order. Nothing in this paragraph limits or impairs the Division's statutory authorities to enter and inspect the Facility.
46. The Division may conduct any tests necessary to ensure compliance with this Consent Order and to verify the data submitted by Western Sugar. Western Sugar shall notify the Division in writing of any sampling activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of seventy-two (72) hours prior to the sampling being conducted, and shall provide split samples to the Division upon request.
47. Western Sugar shall notify the Division in writing of any excavation, construction (including the construction of monitoring wells) or other investigatory or remedial activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of seventy-two (72) hours prior to beginning the excavation, construction, or required activity. Western Sugar shall provide the Division any blue print, diagram, construction or other permits for any construction activity undertaken pursuant to this Consent Order upon request.

### FORCE MAJEURE

48. Western Sugar shall perform the requirements of this Consent Order within the schedules and time limits set forth herein and in any approved plan unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of Western Sugar, and which cannot be overcome by due diligence.
49. Within seventy-two (72) hours of the time that Western Sugar knows or has reason to know of the occurrence of any event which Western Sugar has reason to believe may prevent Western Sugar from timely compliance with any requirement under this Consent Order, Western Sugar shall provide verbal notification to the Division. Within seven (7) calendar days of the time that Western Sugar knows or has reason to know of the occurrence of such event, Western Sugar shall submit to

the Division a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.

50. The burden of proving that any delay was caused by a force majeure shall at all times rest with Western Sugar. If the Division agrees that a force majeure has occurred, the Division will so notify Western Sugar. The Division will also approve or disapprove of Western Sugar's proposed actions for mitigating the delay. If the Division does not agree that a force majeure has occurred, or if the Division disapproves of Western Sugar's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to Western Sugar. Pursuant to the Dispute Resolution section within fifteen (15) calendar days of receipt of the explanation, Western Sugar may file an objection.
51. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Consent Order is found to have been delayed by a force majeure, Western Sugar shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

#### DISPUTE RESOLUTION

52. If the Division determines that that a violation of this Consent Order has occurred, that a force majeure has not occurred; that the actions taken by Western Sugar to mitigate the delay caused by a force majeure are inadequate; if the Division disapproves of any request to modify this Consent Order; or that Western Sugar's Notice of Completion should be rejected pursuant to paragraph 59, the Division shall provide a written explanation of its determination to Western Sugar. Within fifteen (15) calendar days of receipt of the Division's determination, Western Sugar shall:
  - a. Submit a notice of acceptance of the determination; or
  - b. Submit a notice of dispute of the determination.

If Western Sugar fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

53. If the Division disapproves or approves with modifications any original or revised plan submitted by Western Sugar pursuant to this Consent Order, the Division shall provide a written explanation of the disapproval or approval with modifications. Within fifteen (15) calendar days of receipt of the Division's approval with modifications or disapproval of the plan, Western Sugar shall:
  - a. In the case of an approval with modifications only, submit a notice of acceptance of the plan as modified and begin to implement the modified plan;
  - b. In the case of a disapproval only, submit a revised plan for Division review and approval. Western Sugar may not select this option if the Division has included in its disapproval an alternate plan that shall be implemented by Western Sugar; or
  - c. Submit a notice of dispute of the disapproval or approval with modifications.

If Western Sugar fails to do any of the above within the specified time, Western Sugar shall be deemed to have failed to comply with the Consent Order, and the Division may bring an enforcement action, including an assessment of penalties.

54. If Western Sugar submits a revised plan, the plan shall respond adequately to each of the issues raised in the Division's written explanation of the disapproval or approval with modifications. The Division may determine that failure to respond adequately to each of the issues raised in the Division's written explanation constitutes a violation of this Consent Order. The Division shall notify Western Sugar in writing of its approval, approval with modifications, or disapproval of the revised plan. If the Division disapproves the revised plan, it may include in its disapproval a plan for implementation by Western Sugar. Such disapproval and plan shall be deemed effective and subject to appeal in accordance with the Act and the Colorado State Administrative Procedures Act, §§ 24-4-101 through 108, C.R.S. (the "APA"), unless Western Sugar submits a notice of dispute, pursuant to paragraph 53 above, of the Division's disapproval and plan for implementation. All requirements and schedules of the Division's plan shall not become effective pending resolution of the dispute.
55. If Western Sugar files any notice of dispute pursuant to paragraph 52, 53, or 54 the notice shall specify the particular matters in the Division's determination that Western Sugar seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by Western Sugar. The Division and Western Sugar shall have thirty (30) calendar days from the receipt by the Division of the notification of dispute to reach an agreement. If agreement cannot be reached on all issues within this thirty (30) calendar day period, the Division shall confirm or modify its decision within an additional fourteen (14) calendar days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act and the APA.

#### NOTICES

56. 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-CADM-B2  
Attention: Kelly Morgan  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530  
Telephone: (303) 692-3634  
E-mail: kelly.morgan@state.co.us

For Western Sugar:

The Western Sugar Cooperative  
Attention: Shawn Sullivan, Environmental Manager  
1221 8<sup>th</sup> Avenue  
Greeley, Colorado 80631  
Telephone: (970) 304-6027  
E-mail: shsullivan@westernsugar.com

### **OBLIGATIONS UNAFFECTED BY BANKRUPTCY**

57. The obligations set forth herein are based on the Division's police and regulatory authority. These obligations require specific performance by Western Sugar of corrective actions carefully designed to prevent on-going or future harm to public health or the environment, or both. Enforcement of these obligations is not stayed by a petition in bankruptcy. Western Sugar agrees that the penalties set forth in this Consent Order are not in compensation of actual pecuniary loss. Further, the obligations imposed by this Consent Order are necessary for Western Sugar and the Facility to achieve and maintain compliance with State law.

### **MODIFICATIONS**

58. This Consent Order may be modified or amended only upon mutual written agreement of the Parties. In the event that the corrective actions that Western Sugar has undertaken in accordance with this Consent Order do not result in compliance with applicable effluent limits, Western Sugar shall submit a written modification or amendment request that identifies a timeline and specific short-term and long-term measures that will be taken by Western Sugar in order for the Facility to consistently produce effluent that is in compliance with the fecal coliform and BOD5 effluent limits of the Renewed Permit. Any dispute regarding a decision to deny a modification or amendment request shall be addressed through the dispute resolution process referenced in paragraphs 52, 53, 54, and 55.

### **COMPLETION OF REQUIRED ACTIONS**

59. Western Sugar shall submit a Notice of Completion to the Division upon satisfactory completion of all requirements of this Consent Order. The Division shall either accept or reject Western Sugar's Notice of Completion in writing within thirty (30) calendar days of receipt. If the Division rejects Western Sugar's Notice of Completion, it shall include in its notice a statement identifying the requirements that the Division considers incomplete or not satisfactorily performed and a schedule for completion. Western Sugar shall, within fifteen (15) days of receipt of the Division's rejection, either:
- a. Submit a notice of acceptance of the determination; or
  - b. Submit a notice of dispute.

If Western Sugar fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

### **NOTICE OF EFFECTIVE DATE**

60. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon notice from the Division following closure of the Renewed Permit appeal period.

**BINDING EFFECT AND AUTHORIZATION TO SIGN**

61. This Consent Order is binding upon Western Sugar and its 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. Western Sugar agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. In the event that a party does not sign this Consent Order within thirty five (35) 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 THE WESTERN SUGAR COOPERATIVE:**

I. K. Mathur Date: 1/31/12  
Inder K. Mathur, President & CEO  
The Western Sugar Cooperative

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

Lori M Gerzina Date: 2/28/12  
Lori Gerzina, Unit Manager  
Compliance Assurance Section  
WATER QUALITY CONTROL DIVISION