

STATE OF COLORADO

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

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

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Colorado Department
of Public Health
and Environment

March 1, 2011

Joe Ricci, Registered Agent
Rocky Mountain Materials and Asphalt, Inc.
1910 Rand Ave.
Colorado Springs, CO 80905

Certified Mail Number: 7007 0220 0001 0162 1450

**RE: Service of Amendment Number One to Notice of Violation/Cease and Desist Order
Number: SO-081110-1**

Dear Mr. Ricci:

Rocky Mountain Materials and Asphalt, Inc. is hereby issued the enclosed Amendment Number One to the Notice of Violation / Cease and Desist Order, Number: SO-081110-1 (the "NOV/CDO"), that was issued to Rocky Mountain Materials and Asphalt, Inc. on November 10, 2008. This amendment is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §§25-8-602 and 25-8-605, C.R.S. of the *Colorado Water Quality Control Act*, (the "Act").

Should you desire to discuss this matter with the Division or if you have any questions regarding the order amendment(s), please don't hesitate to contact Michael Harris at (303) 692-3598 or by electronic mail at michael.harris@state.co.us.

Sincerely,

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

cc: El Paso County Department of Health and Environment

cc: Joe Talbott, Engineering Section, CDPHE
Dave Knope, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Natasha Davis, EPA Region VIII
Michael Beck, OPA



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

AMENDMENT NUMBER ONE

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: SO-081110-1

IN THE MATTER OF: ROCKY MOUNTAIN MATERIALS AND ASPHALT, INC.
CDPS PERMIT NO. COR-030000
CERTIFICATION NO. COR-03A246
EL PASO COUNTY, COLORADO

Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority has been delegated to the Department's Water Quality Control Division (the "Division"), and pursuant to §§25-8-602, 25-8-605 and 25-8-606, C.R.S., the Division hereby issues the following Amendment Number One to its original Notice of Violation / Cease and Desist Order, Number: SO-081110-1 ("NOV/CDO").

GENERAL FINDINGS

1. On November 10, 2008, the Division issued the NOV/CDO to Rocky Mountain Materials and Asphalt, Inc. ("RMM") citing violations of the Colorado Discharge Permit System General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit"), including a failure to prepare and maintain a complete and accurate Stormwater Management Plan ("SWMP") for RMM's construction project. A copy of the NOV/CDO is attached hereto as Exhibit A and is incorporated herein by reference.
2. On December 10, 2008, and in response to the NOV/CDO, Quality submitted a response to the NOV/CDO and copies of its SWMP, including copies of various site maps that had not been presented to the Division's inspector at the time of the April 16, 2007 inspection.
3. After reviewing the submitted SWMP and site maps, the Division has determined the following revisions to the NOV/CDO are appropriate:

AMENDMENT NUMBER ONE

4. Paragraph 9.a. is added, which reads as follows, “9.a. Pursuant to Part I. C. 4. b. of the Permit, RMM was required to amend the SWMP whenever there was a significant change in design, construction, operation, or maintenance at the Project, or if the SWMP proved to be ineffective in controlling pollutants.”
5. Paragraph 11, is superseded and replaced with the following, “11. The Division has determined that RMM failed to prepare and maintain a complete and accurate SWMP for the Project, as described in paragraphs 11(a-g) below:”
6. Paragraphs 11.a. – 11.f. are superseded and replaced with the following, which includes new paragraph 11.g.:
 - a. “11.a. The SWMP included two site map documents that were dated 1/23/06 – sheet numbers EC01 and EC03. Sheet numbers EC01 and EC03 represented conditions that would be present at final build out and grade, but did not include any amendments or edits to account for changes as the Project progressed through the various phases of construction, operation, and maintenance.”
 - b. “11.b. The SWMP included eight site map documents that had a ‘last modification date’ of 12/1/05 – sheet numbers 77, 78, 79, 80, 81, 82, 83, and 84. Sheet numbers 77-84 represented conditions that would be present at final build out and grade. Sheet number 78 included a notation dated 7/1/06, indicating ‘New Wetlands Area.’ Sheet number 79 included a notation dated 10/1/06, indicating ‘Staging and Storage Area.’ Aside from these two notations, sheet numbers 77-84 did not include any other amendments or edits to account for changes as the Project progressed through the various phases of construction, operation, and maintenance.”
 - c. “11.c. The site maps did not indicate construction site boundaries.”
 - d. “11.d. The site maps did not indicate all areas of soil disturbance.”
 - e. “11.e. The site maps did not indicate areas of cut and fill.”
 - f. “11.f. The SWMP did not describe the relationship between the phases of construction and the implementation and maintenance of controls and measures.”
 - g. “11.g. Section 3.8 of the SWMP, titled ‘Receiving Waters,’ identifies three wetlands on the Project. However, the site maps only include one wetland on sheet number 79.”
7. The NOTICE OF VIOLATION section is revised to reflect the addition of Paragraph 9.a. A new paragraph is added to the end of the section, which reads as follows, “Part I. C. 4. b. of the Permit, which states, ‘The permittee shall amend the plan whenever there is a significant change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the State, or if the SWMP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activity.’”

OBLIGATION TO ANSWER AND REQUEST FOR HEARING

Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11(A) you are required to submit to the Division an answer affirming or denying the findings in paragraphs 4, 5, and 6(a-g) of this Amendment Number One to the NOV/CDO. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

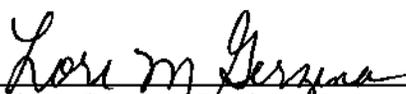
Section 25-8-603, C.R.S. and 5 CCR 1002, § 21.11 also state that you may request the Division to conduct a public hearing to determine the validity of this Amendment Number One to the NOV/CDO. The Division is aware that you previously submitted a request for a hearing to contest certain findings and violations cited in the original NOV/CDO. In order to contest any of the findings or violations cited in this Amendment Number One, you must file a separate request for a hearing. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002-21, § 21.4(B)(2). The request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. In such event, the Division would schedule a hearing to deal with the issues you contest from both the original NOV/CDO and this Amendment Number One. If you do not file a separate request for hearing regarding this Amendment, the validity of the factual allegations and the violations cited herein shall be deemed established in any subsequent Department proceeding. In such case, the adjudicatory hearing which you previously requested would be limited to the findings of fact and violations that you denied from the original NOV/CDO. The filing of an answer does not constitute a request for hearing.

SCOPE OF AMENDMENT NUMBER ONE

The scope of this Amendment Number One to the NOV/CDO is limited to the revisions outlined above. All other terms and conditions of the NOV/CDO shall remain unchanged and in effect.

Issued at Denver, Colorado, this 29th day of February, 2011.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



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

Exhibit A



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

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: SO-081110-1

IN THE MATTER OF: ROCKY MOUNTAIN MATERIALS AND ASPHALT, INC.
CDPS PERMIT NO. COR-030000
CERTIFICATION NO. COR-03A246
EL PASO COUNTY, COLORADO

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the alleged violations identified herein, Rocky Mountain Materials and Asphalt, Inc. ("RMM") was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
2. RMM is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
3. In or about June 2006, RMM initiated construction of a road development project on sixty five (65) acres of property located at or near Baptist Road and Interstate 25, in on near the Town of Monument, El Paso County, Colorado (the "Project").
4. On June 7, 2006, the Division received an application from RMM for Project coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit").
5. On June 13, 2006, the Division provided RMM Certification Number COR-03A246 authorizing RMM to discharge stormwater from the construction activities associated with the Project to Jackson Creek and Monument Creek under the terms and conditions of the Permit. Certification Number COR-03A246 became effective June 13, 2006 and remained in effect until it was inactivated on November 4, 2008 at the request of RMM.

Exhibit A

6. Jackson Creek and Monument Creek 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).
7. Pursuant to 5 CCR 1002-61, §61.8, a permittee must comply with all the terms and conditions of a permit and violators of the terms and conditions specified in a permit may be subject to civil and criminal liability pursuant to §§25-8-601 through 612, C.R.S.
8. On April 16, 2007, a representative from PG Environmental, LLC (the “Inspector”) conducted an on-site inspection of the Project on behalf of the Division, pursuant to the Division’s authority under §25-8-306, C.R.S., to determine RMM’s compliance with the Water Quality Control Act and the Permit. During the inspection, the Inspector interviewed Project representatives, reviewed the Project’s stormwater management system records, and performed a physical inspection of the Project.

Deficient and/or Incomplete Stormwater Management Plan

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

Exhibit A

- b. **Site Map - Each plan shall provide a generalized site map or maps which indicate:**
 - i. **Construction site boundaries.**
 - ii. **All areas of soil disturbance.**
 - iii. **Areas of cut and fill.**
 - iv. **Areas used for storage of building materials, soils or wastes.**
 - v. **Location of any dedicated asphalt or concrete batch plants.**
 - vi. **Location of major erosion control facilities or structures.**
 - vii. **Springs, streams, wetlands and other surface waters.**
 - viii. **Boundaries of 100-year flood plains, if determined.**

 - c. **BMPs for Stormwater Pollution Prevention - The plan shall include a narrative description of appropriate controls and measures that will be implemented before and during construction activities at the facility, including:**
 - i. **Erosion and Sediment Controls – A description of structural site management controls (Structural Practices) which will minimize erosion and sediment transport and a description of interim and permanent stabilization practices (Non-Structural Practices), including the site-specific scheduling of the implementation of the practices.**
 - ii. **Phased BMP Implementation – The SWMP shall clearly describe the relationship between the phases of construction and the implementation and maintenance of BMPs**
 - iii. **Materials Handling and Spill Prevention - The SWMP shall identify any procedures or significant materials handled at the site that could contribute pollutants to runoff.**
 - iv. **Dedicated Concrete or Asphalt Batch Plants – The SWMP shall clearly describe and locate BMPs to control stormwater pollution from dedicated concrete batch plants or dedicated asphalt batch plants.**

 - d. **Final Stabilization and Long-Term Stormwater Management - Description of the measures used to achieve final stabilization and measures to control pollutants in stormwater discharges that will occur after construction operations have been completed.**

 - e. **Other Controls - Description of other measures to control pollutants in stormwater discharges, including plans for waste disposal and limiting off-site soil tracking.**

 - f. **Inspection and Maintenance - Description of procedures to inspect and maintain in good and effective operating condition the vegetation, erosion and sediment control measures and other protective measures identified in the SWMP.**
11. **The Division has determined that RMM failed to prepare and maintain a complete and accurate SWMP for the Project, as described in paragraphs 11(a-f) below:**
- a. **During the April 16, 2007 inspection, the Inspector reviewed the Project's SWMP and identified that the site map did not include all areas used for the storage of building materials, soils or wastes.**

 - b. **During the April 16, 2007 inspection, the Inspector reviewed the Project's SWMP and identified that the site map did not include the construction site boundaries, areas of soil disturbance or areas of cut and fill.**

Exhibit A

- c. During the April 16, 2007 inspection, the Inspector reviewed the Project's SWMP and identified that the site map did not include the location of major erosion control facilities or structures.
 - d. During the April 16, 2007 inspection, the Inspector reviewed the Project's SWMP and identified that the site map did not include dedicated asphalt or concrete batch plants.
 - e. During the April 16, 2007 inspection, the Inspector reviewed the Project's SWMP and identified that the site map did not include the locations of springs, streams, wetlands and other surface waters, or the boundaries of the 100-yr flood plain.
 - f. During the April 16, 2007 inspection, the Inspector reviewed the Project's SWMP and identified that the SWMP did not describe the relationship between the phases of construction and the implementation and maintenance of controls and measures.
12. RMM's failure to prepare and maintain a complete and accurate SWMP for the Project constitutes violations of Part I. B. of the Permit.

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

13. Pursuant to Part I. B. 3. a. (1) of the Permit, RMM was required to minimize erosion and sediment transport from the Project. The Permit specifies that structural site management practices may include, but are not limited to: straw bales, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, inlet protection, outlet protection, gabions, and temporary or permanent sediment basins.
14. Pursuant to Part I. B. 3. a. (2) of the Permit, RMM was required to implement interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. The Permit specifies that site plans should ensure existing vegetation is preserved where possible and that disturbed areas are stabilized. The Permit specifies that non-structural practices may include, but are not limited to: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees and preservation of mature vegetation.
15. The Division has determined that RMM failed to implement and/or maintain functional BMPs at the Project as described in paragraphs 15(a-i) below:
- a. During the April 16, 2007 inspection, the Inspector observed a disturbed area located at the intersection of Baptist Road and Jackson Creek Parkway at the Project, directly adjacent to Jackson Creek. No BMPs were observed in place to stabilize the disturbed area or to prevent sediment from discharging to Jackson Creek during storm events.
 - b. During the April 16, 2007 inspection, the Inspector observed a disturbed area located along the southern portion of New Strauthers Road at the Project. No BMPs were observed in place to stabilize the disturbed area or to prevent sediment from discharging to the storm sewer drop inlet located within the disturbed area. Consequently, sediment and debris was observed in the storm sewer drop inlet.

Exhibit A

- c. During the April 16, 2007 inspection, the Inspector observed a disturbed slope located along the southern portion of New Strauthers Road, north of Spanish Bit Road at the Project. No BMPs were observed in place to stabilize the disturbed slope or to prevent sediment from discharging from the area. Consequently, significant erosion and gully formation was observed along the unstabilized slope and in the adjacent drainage ditch. Additionally, sediment discharge was observed at the toe of the slope and in a down gradient culvert pipe.
 - d. During the April 16, 2007 inspection, the Inspector observed a disturbed slope located along the northern portion of New Strauthers Road at the Project. No BMPs were observed in place to stabilize the disturbed slope or to prevent sediment from discharging from the area.
 - e. During the April 16, 2007 inspection, the Inspector observed disturbed slopes located on the north side of Baptist Road, between Jackson Creek Parkway and Leather Chaps Drive at the Project. No BMPs were observed in place to stabilize the disturbed slopes or to prevent sediment from discharging from the area. Consequently, significant erosion and rill formation was observed on the disturbed slopes.
 - f. During the April 16, 2007 inspection, the Inspector observed a disturbed slope located on the north side of Baptist Road, west of Kingswood Drive at the Project. No BMPs were observed in place to stabilize the disturbed slope or to prevent sediment from discharging from the area. Consequently, significant erosion and gully formation was observed, along with sediment discharge to the down gradient drop structure drainage channel, which functions as an erosion control device for the channel, not as a sediment trap for up gradient disturbed soils.
 - g. During the April 16, 2007 inspection, the Inspector observed disturbed slopes adjacent a drainage ditch running parallel to the south side of Baptist Road at the Project. No BMPs were observed in place to stabilize the disturbed slopes or to prevent sediment from discharging to the drainage ditch. Soil check dams were in place in the channel, however, the check dams were not stabilized to prevent erosion, and the check dams were not sized or spaced in accordance with good engineering practices.
 - h. During the April 16, 2007 inspection, the Inspector observed a culvert outlet located at the corner of Baptist Road and Gleaneagle Drive at the Project. No BMPs were observed in place to stabilize the area surrounding the culvert outlet or to prevent sediment from discharging from the area. Consequently, significant erosion and scouring of the disturbed area below the outlet was observed.
 - i. During the April 16, 2007 inspection, the Inspector observed a disturbed area surrounding a spring fed drainage ditch located at the intersection of Baptist Road and Gleaneagle Drive at the Project. No BMPs were observed in place to stabilize the disturbed area and slopes surrounding the drainage ditch. Consequently, erosion of the disturbed area was observed.
16. RMM's failure to implement and maintain functional BMPs to protect stormwater quality during construction activities at the Project constitutes violations of Part I. B. 3. a. of the Permit.

Exhibit A

NOTICE OF VIOLATION

Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined RMM has violated the following sections of the Permit:

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

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

REQUIRED CORRECTIVE ACTION

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

17. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 through 25-8-703, C.R.S., its implementing regulations promulgated thereto and the Permit.

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

18. Within thirty (30) calendar days of receipt of this Order, RMM shall submit to the Division a detailed written statement outlining the standard procedures RMM will undertake to ensure that functional stormwater management systems, including erosion and sediment controls for all disturbed areas, are fully implemented at its Colorado construction sites.

NOTICES AND SUBMITTALS

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

Exhibit A

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-B2
Compliance Assurance and Data Management Section
Attention: Michael Harris
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
michael.harris@state.co.us

For any person submitting documents, plans, records and reports pursuant to this Notice of Violation / Cease and Desist Order, that person shall make the following certification with each submittal:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

OBLIGATION TO ANSWER AND REQUEST FOR HEARING

Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11 you are required to submit to the Division an answer affirming or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

Section 25-8-603, C.R.S. and 5 CCR 1002, §21.11 also provide that the recipient of a Notice of Violation may request the Division to conduct a public hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002, §21.4(B)(2). Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent Department proceeding. The request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

FALSIFICATION AND TAMPERING

Be advised, in accord with §25-8-610, C.R.S., that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Colorado Water Quality Control Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

Exhibit A

POTENTIAL CIVIL AND CRIMINAL PENALTIES

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

RELEASE OR DISCHARGE NOTIFICATION

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

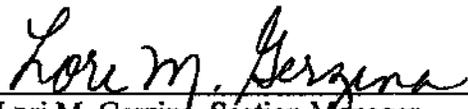
EFFECT OF ORDER

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

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

Issued at Denver, Colorado, this 10th day of November, 2008.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



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