

# 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

March 1, 2011

Jon Turner, Registered Agent  
Timnath Ranch LLC  
8020 S. CR 5, Suite 200  
Windsor, Colorado 80528

**Certified Mail Number: 7007 0220 0001 0162 1429**

**RE: Order for Civil Penalty, Number: SP-110301-1**

Dear Mr. Turner:

Timnath Ranch LLC is hereby served with the enclosed Order for Civil Penalty ("Penalty Order"). This Penalty Order is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §25-8-608(2) of the *Colorado Revised Statutes*. Payment of the imposed civil penalty should be made in accordance with the methods referenced in the Penalty Order and Notice of Violation/Cease and Desist Order Number: SO-080729-5.

If you have any questions regarding the Penalty Order or the payment method, please do not hesitate to contact Michael Harris of this office at (303) 692-3598 or by electronic mail at [michael.harris@state.co.us](mailto:michael.harris@state.co.us).

Sincerely,

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

*Enclosure(s)*

cc: Larimer County Health Department

ec: Natasha Davis, EPA Region VIII  
Kelly Jacques, Engineering Section, CDPHE  
Nathan Moore, Permits Section, CDPHE  
Dick Parachini, Watershed Program, CDPHE  
Michael Beck, FSU, CDPHE



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

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**ORDER FOR CIVIL PENALTY**

**NUMBER: SP-110301-3**

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**IN THE MATTER OF:   TIMNATH RANCH LLC**  
**CDPS PERMIT NO. COR-030000**  
**CERTIFICATION NO. COR-03A954**  
**LARIMER COUNTY, COLORADO**

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This matter comes before the Executive Director of the Colorado Department of Public Health & Environment on petition by the Water Quality Control Division for a civil penalty against Timnath Ranch LLC ("Timnath"). The Executive Director, through his designee (hereinafter the "Executive Director"), having considered this petition, makes the following findings and issues the following Order for Civil Penalty in accordance with §25-8-608, C.R.S., and 5 CCR 1002-21, §21.12.

**GENERAL FINDINGS**

1. Pursuant to §25-8-608(1), C.R.S., any person who violates the Colorado Water Quality Control Act (the "Act"), or any permit issued under the Act, shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs.
2. On July 29, 2008, the Division issued Timnath a Notice of Violation / Cease and Desist Order (the "NOV/CDO") which included findings that Timnath violated a permit issued under the Act. A copy of the NOV/CDO is attached hereto as Exhibit A and is incorporated herein by reference.
3. Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11, Timnath was required to submit an answer to each alleged violation contained in the NOV/CDO and was allowed thirty (30) calendar days to file a request for a public hearing to determine the validity of the NOV/CDO. As further outlined in the NOV/CDO, absent a request for a hearing, the validity of the factual allegations and the NOV/CDO shall be deemed established in any subsequent Department proceeding.
4. The Division did not receive a request for a hearing from Timnath within the thirty (30) day period.

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

### **ORDER FOR CIVIL PENALTY**

6. Based upon the facts described in the NOV/CDO, the Executive Director has determined that a civil penalty is appropriate and warranted in this matter. Therefore, the Executive Director hereby imposes a civil penalty in the amount of Ninety Thousand Two Hundred Twenty Three Dollars (\$90,223.00) against Timnath for the violations cited in the NOV/CDO. The civil penalty was determined in accordance with the procedures outlined in the Division's *Stormwater Civil Penalty Policy* (January 25, 2007). A copy of the civil penalty calculation is attached hereto as Exhibit B and is incorporated herein by reference. The civil penalty shall be paid within thirty (30) calendar days of the date of this Order for Civil Penalty. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

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

### **REQUEST FOR APPEAL**

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

Issued at Denver, Colorado, this 1st day of March, 2011.

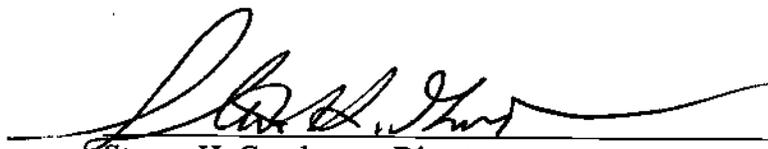
  
\_\_\_\_\_  
Steven H. Gunderson, Director  
Water Quality Control Division  
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Exhibit A



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

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**NOTICE OF VIOLATION / CEASE AND DESIST ORDER**

**NUMBER: SO-080729-5**

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**IN THE MATTER OF:   TIMNATH RANCH LLC**  
**CDPS PERMIT NO. COR-030000**  
**CERTIFICATION NO. COR-03A954**  
**LARIMER COUNTY, COLORADO**

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Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority 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, Timnath Ranch LLC ("Timnath") was a Colorado limited liability company in good standing and registered to conduct business in the State of Colorado.
2. Timnath is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
3. On or about December 7, 2006, Timnath initiated construction activities of a commercial and residential subdivision on 260 acres of property located at or near County Road 3 and County Road 36, in Larimer County, Colorado (the "Project").
4. On October 17, 2006, the Division received an application from Timnath for Project coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit").
5. On October 24, 2006, the Division provided Timnath Certification Number COR-03A954 authorizing Timnath to discharge stormwater from the construction activities associated with the Project to Timnath Reservoir Outlet Ditch and the Cache la Poudre River under the terms and conditions of the Permit. Certification Number COR-03A954 became effective October 24, 2006 and remains in effect until June 30, 2012 or until Timnath inactivates permit coverage.

## Exhibit A

6. Timnath Reservoir Outlet Ditch and the Cache la Poudre River 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 May 1, 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 Timnath'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, Timnath is required to prepare and maintain a Stormwater Management Plan ("SWMP") that identifies Best Management Practices ("BMPs") that, when implemented, will meet the terms and conditions of the Permit. The SWMP 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 is required to describe and ensure the implementation of BMPs, which will be used to reduce the pollutants in stormwater discharges associated with construction activity.
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 (2002 Permit) 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 (2002 Permit) or allowable sources of non-stormwater discharge at the site, e.g., uncontaminated springs, landscape irrigation return flow, construction dewatering, and concrete washout (2007 Permit).
    - 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 Timnath failed to prepare and maintain a complete and accurate SWMP for the Project as described in paragraphs 11(a-e) below:**
- a. **During the May 1, 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. Specifically, the map did not include the portable toilets or waste receptacles located at the southwest corner of the site.**
  - b. **During the May 1, 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.**

## Exhibit A

- c. During the May 1, 2007 inspection, the Inspector reviewed the Project's SWMP and identified that the SWMP did not include all procedures of significant materials that could contribute pollutants to runoff. Specifically, the SWMP did not include spill prevention and response procedures for the vehicle fueling activities that were taking place at the site.
  - d. During the May 1, 2007 inspection, the Inspector reviewed the Project's SWMP and identified that the SWMP did not include a description of procedures to inspect and maintain in good and effective operating condition the vegetation, erosion and sediment control measures and other protective measures.
  - e. During the May 1, 2007 inspection, the Inspector reviewed the Project's SWMP and identified that the SWMP did not include a description of the measures used to achieve final stabilization and measures to control pollutants in stormwater discharges that will occur after construction operations have been completed.
12. Timnath'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, Timnath is required to minimize erosion and sediment transport from the Project. The Permit specifies that structural site management practices may include, but are not limited to: straw bales, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, inlet protection, outlet protection, gabions, and temporary or permanent sediment basins.
14. Pursuant to Part I. B. 3. a. (2) of the Permit, Timnath is required to implement interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. The Permit specifies that site plans should ensure existing vegetation is preserved where possible and that 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 Timnath failed to implement and/or maintain functional BMPs at the Project as described in paragraphs 15(a-g) below:
- a. During the May 1, 2007 inspection, the Inspector observed a dewatering channel located at the southwest portion of the Project. No BMPs were observed in place to stabilize the disturbed slopes of the channel or to prevent sediment from discharging to the channel and into Timnath Reservoir Outlet Ditch. Additionally, no BMPs were observed in place to stabilize the disturbed area surrounding the outlet pipe to Timnath Reservoir Outlet Ditch.
  - b. During the May 1, 2007 inspection, the Inspector observed soil stockpiles located adjacent to the south side of the dewatering channel located at the southwest portion of the Project. No BMPs were observed in place to stabilize the stockpiles or to prevent sediment from discharging from the stockpiles during storm events.

## Exhibit A

- c. During the May 1, 2007 inspection, the Inspector observed a temporary culvert pipe leading to the dewatering channel located at the southwest portion of the Project. No BMPs were observed in place to stabilize the disturbed ditch at the outlet of the culvert or to prevent sediment from discharging from the ditch, into the dewatering channel and into Timnath Reservoir Outlet Ditch. Additionally, no BMPs were observed in place to stabilize the disturbed slopes surrounding the culvert and ditch or to prevent sediment from discharging from the area, into the dewatering channel and into Timnath Reservoir Outlet Ditch.
  - d. During the May 1, 2007 inspection, the Inspector observed disturbed slopes located adjacent to the Timnath Reservoir Outlet Ditch along the western boundary of the Project. No BMPs were observed in place to stabilize the slopes, prevent run-on to the disturbed slopes, or to prevent sediment from discharging to the Timnath Reservoir Outlet Ditch during storm events. Consequently, erosion of the disturbed slopes was observed.
  - e. During the May 1, 2007 inspection, the Inspector observed a disturbed area located to East Harmony Road near the northern entrance to the Project. No BMPs were observed in place to stabilize the disturbed area or to prevent sediment from discharging to the pre-existing concrete drainage channel located adjacent to the disturbed area. Consequently, sediment and soil discharge was observed within the concrete drainage channel.
  - f. During the May 1, 2007 inspection, the Inspector observed a disturbed soil stockpile located on the west side of the southwest construction site entrance at the Project. No BMPs were observed in place to stabilize the stockpile or to prevent sediment from discharging from the stockpile during storm events.
  - g. During the May 1, 2007 inspection, the Inspector observed a disturbed construction entrance located at the southeast corner of the Project. No BMPs were observed in place to stabilize the construction entrance or to prevent sediment from discharging from the site.
16. Timnath's failure to implement and maintain functional BMPs to protect stormwater quality during construction activities at the Project constitutes violations of Part I. B. 3. a. of the Permit.

### **NOTICE OF VIOLATION**

Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that Timnath 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."

## Exhibit A

**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., Timnath 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 Timnath to comply with the following specific terms and conditions of this Order:

18. Timnath shall immediately evaluate the Project’s SWMP and implement necessary measures to ensure that the SWMP contains all of the elements required by the current version of the Permit and is effective in managing stormwater and pollutant discharges from the Project. Within thirty (30) calendar days of receipt of this Order, Timnath shall submit to the Division a written certification stating that a complete, effective and up-to-date SWMP has been fully developed and implemented at the Project.
19. Timnath shall immediately implement necessary measures to ensure that adequate BMPs are in place to control stormwater and pollutant discharges from the Project. Within thirty (30) calendar days of receipt of this Order, Timnath shall evaluate and modify all existing BMPs at the Project to ensure the BMPs meet the design requirements specified in the Project’s complete and up-to-date SWMP. Within forty-five (45) calendar days of receipt of this Order, Timnath shall submit photographs to the Division documenting the current conditions and the associated BMPs implemented at the Project.
20. Within thirty (30) calendar days of receipt of this Order, Timnath shall submit to the Division a detailed written statement outlining the standard procedures Timnath will undertake to ensure that functional stormwater management systems 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, Timnath 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 29<sup>th</sup> day of July, 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

Exhibit B

**STORMWATER PENALTY COMPUTATION WORKSHEET**

<b>System Name:</b> Timnath Ranch, LLC	<b>Permit Number:</b> COR-03A954
<b>Beneficial Use Classification:</b> Discharge is to an irrigation ditch - <u>Agriculture</u>	<b>Date of NOV/CDO:</b> July 29, 2008 <b>Number:</b> SO-080729-5
<b>Type of Facility:</b> Construction	<b>Disturbed Acres:</b> 260 <b>Number of Employees:</b> N/A

**Part I – Base Penalty Calculation**

**A. Potential Damage Component**

	<b>Violation Type</b>	<b>Adjustment</b>	<b>Amount in Dollars</b>
Line 1	<b>Conducting Covered Activity Without A Stormwater Permit</b> <i>Adjustment Justification:</i>		\$0.00
Line 2	<b>Failure to Prepare Stormwater Management Plan (SWMP)</b> <i>Adjustment Justification:</i>		\$0.00
Line 3	<b>Deficient Stormwater Management Plan (SWMP)</b> <i>Adjustment Justification:</i> The Division reviewed the SWMP and identified deficiencies in the development of the plan, including failures to identify all areas used for the storage of waste, to describe the relationship between the phases of construction and the implementation of control measures, and to include procedures for final stabilization – all of which are critical and necessary components to a functional SWMP. The number of counts of violation was relatively average. The project is located directly adjacent to state waters. The main pollutant of concern on the site (sediment) is one of the leading causes of water quality impairment in the U.S. (according to EPA’s 2000 Water Quality Inventory Report) and is a primary carrier of adsorbed chemicals, chlorinated pesticides, and metals. The Division believes the SWMP violations directly contributed to the BMP violations observed onsite. However, a portion of the 260 acre construction site (areas which were not cited as violations in the NOV/CDO) drained to a stormwater detention pond, which may have provided some level of pollutant control for that portion of the site. Therefore, the Division conservatively assigns a minor/moderate potential harm to health/environment.	Minor/Moderate = –10% of \$500	\$450.00
Line 4	<b>Failure to Install, Maintain or Properly Select Best Management Practices</b> <i>Adjustment Justification:</i> The Division conducted an inspection of the project and identified a failure to implement and maintain BMPs at the site. Some of the violations were directly in or adjacent to state waters. The number of counts of violation was relatively many. The main pollutant of concern on the site (sediment) is one of the leading causes of water quality impairment in the U.S. (according to EPA’s 2000 Water Quality Inventory Report) and is a primary carrier of adsorbed chemicals, chlorinated pesticides, and metals. However, a portion of the 260 acre construction site (areas which were not cited	Minor/Moderate = –10% of \$3000	\$2,700.00

## Exhibit B

	Violation Type	Adjustment	Amount in Dollars
	as violations in the NOV/CDO) drained to a stormwater detention pond, which may have provided some level of pollutant control for that portion of the site. Therefore, the Division conservatively assigns a minor/moderate potential harm to health/environment for the purpose of settlement.		
Line 5	<b>Failure to Perform Inspections of Stormwater Management System</b>		\$0.00
	<i>Adjustment Justification:</i>		
Line 6	<b>Failure to Submit Required/ Requested Reports (Annual Reports, Permit Compliance Schedule Items, Etc.)</b>		\$0.00
	<i>Adjustment Justification:</i>		
Line 7	<b>Failure to Maintain Required Records</b>		\$0.00
	<i>Adjustment Justification:</i>		
Line 8	<b>Pollution, Contamination or Degradation of State Waters</b>		\$0.00
	<i>Adjustment Justification:</i>		
Line 9	<b>Other Administrative Violations</b>		\$0.00
	<i>Adjustment Justification:</i>		
<b>Line 10</b>	<b>Potential Damage Total (Sum of Lines 1 through 9)</b>	<i>(Not to exceed \$6000/day)</i>	<b>\$3,150.00</b>

### B. Fault Component

		Amount in Dollars
Line 11	<b>Fault: Category 2</b>	<i>(Not to exceed \$3000/day)</i>
	<b>\$1,800.00</b>	
	<i>Justification:</i> Timnath was operated by a professional construction/land development company who applied for and obtained a stormwater permit and, at the very least, should have been aware of its obligations under the permit and the circumstances that lead to the violations. Therefore, the Division conservatively assigns a category-2 fault. The Division has chosen the midpoint of the category two range, as the Division has no additional information to support adjustments from this value.	

### C. History Component

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

Exhibit B

**Part II – Determination of Days of Violation**

		Days of Violation
Line 13	<b>Total Days of Violation</b>	<b>146</b>
<p><i>Justification:</i></p> <p><b>Deficient Stormwater Management Plan (SWMP):</b> Timnath initiated construction activities on December 7, 2006, at which time it had certified through a permit application that a complete SWMP had been developed. The Division reviewed the SWMP on May 1, 2007 and identified it was deficient. The Division believes the SWMP was deficient from at least December 7, 2006 through at least May 1, 2007 – a period of 146 days. Therefore, the Division is conservatively utilizing 146 days of violation for this penalty calculation.</p> <p><b>Failure to Install, Maintain or Properly Select Best Management Practices:</b> The Division inspected the project on May 1, 2007 and identified a failure to implement and maintain BMPs. Due to the nature of the SWMP, the state of the project, and scope of the deficiencies, the Division believes the BMP violations had persisted for quite some time, likely the life of the project. However, the Division is conservatively utilizing 1 day of violation for this penalty calculation.</p> <p><i>(Note: The BMP violations coincided with the time frame of the SWMP violations. Therefore, a total of 146 days of violation were utilized for this settlement calculation.)</i></p>		

**Part III – Determination of Multi-Day Penalty Amount**

		Amount in Dollars																												
Line 14	<b>Multi-Day Penalty Amount</b>	<b>\$106,965.00</b>																												
<p><i>Calculations:</i></p> <p><i>(Note: Days 1-145 account for penalties associated with SWMP violations only. Day 146 accounts for the final day of SWMP violation and the one day of BMP violation. The percentage multiplier for each duration interval below is derived from the Multi-Day Violation Matrix outlined on Page 6 of the Stormwater Civil Penalty Policy, and applies only to the SWMP violations in this case.)</i></p> <p>Base Penalty = (Potential Damage + Fault + History) × days of violation</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Day 1</td> <td style="width: 45%;">(\$450.00 + \$1800.00 + \$0.00) × 1 day</td> <td style="width: 15%; text-align: right;">= \$ 2,250.00</td> <td style="width: 25%;"></td> </tr> <tr> <td>+ Days 2-10</td> <td>\$2250.00 × 9 days × 50%</td> <td style="text-align: right;">= \$ 10,125.00</td> <td></td> </tr> <tr> <td>+ Days 11-50</td> <td>\$2250.00 × 40 days × 40%</td> <td style="text-align: right;">= \$ 36,000.00</td> <td></td> </tr> <tr> <td>+ Days 51-100</td> <td>\$2250.00 × 50 days × 30%</td> <td style="text-align: right;">= \$ 33,750.00</td> <td></td> </tr> <tr> <td>+ Days 101-145</td> <td>\$2250.00 × 45 days × 20%</td> <td style="text-align: right;">= \$ 20,250.00</td> <td></td> </tr> <tr> <td>+ Day 146</td> <td>(\$450.00 × 20%) + \$2700.00 + \$1800.00</td> <td style="text-align: right;">= \$ 4,590.00</td> <td></td> </tr> <tr> <td></td> <td style="text-align: right;"><b>Multi-Day Base Gravity Penalty</b></td> <td style="text-align: right;"><b>= \$106,965.00</b></td> <td></td> </tr> </table>			Day 1	(\$450.00 + \$1800.00 + \$0.00) × 1 day	= \$ 2,250.00		+ Days 2-10	\$2250.00 × 9 days × 50%	= \$ 10,125.00		+ Days 11-50	\$2250.00 × 40 days × 40%	= \$ 36,000.00		+ Days 51-100	\$2250.00 × 50 days × 30%	= \$ 33,750.00		+ Days 101-145	\$2250.00 × 45 days × 20%	= \$ 20,250.00		+ Day 146	(\$450.00 × 20%) + \$2700.00 + \$1800.00	= \$ 4,590.00			<b>Multi-Day Base Gravity Penalty</b>	<b>= \$106,965.00</b>	
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	<b>Multi-Day Base Gravity Penalty</b>	<b>= \$106,965.00</b>																												

\*

Exhibit B

**Part IV – Base Penalty Total**

		Amount in Dollars
<b>Line 15</b>	<b>Base Penalty = Potential Damage + Fault + History (Sum of Line 10 + Line 11 + Line 12, OR Line 14)</b>	<b>\$106,965.00</b>

**Part V – Application of Aggravating or Mitigating Factors**

	Aggravating / Mitigating Factors	% Base Penalty Increase or Decrease	Amount in Dollars
Line 16	Factor A: Voluntary and Complete Disclosure of Violations <i>Justification:</i> The Division identified the violations through the regulatory inspection process. Timnath did not disclose the violations. Therefore, no penalty mitigation was applied.	0%	\$0.00
Line 17	Factor B: Full and Prompt Cooperation <i>Justification:</i> Timnath undertook efforts to address the deficiencies outlined in the NOV/CDO and Timnath Ranch met the Division's compliance requirements within the designated time periods. Therefore, the Division has reduced the base penalty by 25% for Timanth's full and prompt cooperation.	- 25%	- \$26,742.00
Line 18	Factor C: Environmental Compliance Program <i>Justification:</i> The Division did not receive or identify any information suggesting that Timnath implemented a regularized and comprehensive environmental compliance/audit program. Therefore, no penalty mitigation was applied.	0%	\$0.00
Line 19	Factor D: Intentional, Reckless or Negligent Violations <i>Justification:</i> Timnath was operated by a professional construction/land development operator that obtained a permit and should have been aware of its requirements. At the very least, the Division believes Timnath's violations involved negligence. However, the Division has conservatively chosen not to apply a penalty aggravation in this case.	0%	\$0.00
Line 20	Factor E: Other Aggravating or Mitigating Circumstances <i>Justification:</i> No other aggravating or mitigating circumstances were indentified.	0%	\$0.00
Line 21	Sum of Line 16 through Line 20	- 25%	- \$26,742.00
Line 22	<b>Adjusted Base Penalty (Sum of Line 15 + Line 21)</b>		<b>\$80,223.00</b>

**Part VI – Economic Benefit Consideration**

		Amount in
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## Exhibit B

		<b>Dollars</b>
<b>Line 23</b>	<b>Economic Benefit</b>	<b>\$10,000.00</b>
	<p><i>Justification:</i></p> <p>Timnath delayed the cost of developing a complete SWMP and avoided the cost of revising and updating its SWMP for at least 190 days. However, the Division has conservatively determined the economic benefit of these avoided/delayed costs to be insignificant. Therefore, the Division has conservatively determined that Timnath realized an economic benefit of \$0 from its SWMP violations.</p> <p>Timnath Ranch avoided the cost of implementing and/or maintaining BMPs at the project. The Division conservatively estimates the cost of implementing a typical BMP to be \$1000 and the cost of maintaining a BMP throughout its use to be \$500. As documented in the NOV/CDO, Timnath Ranch failed to implement at least 10 BMPs at the project. Therefore, the Division has conservatively determined that Timnath Ranch realized an economic benefit of \$10,000.00 from the avoided costs of not implementing and maintaining BMPs at the site.</p> <p><i>(Note: Time value of money for time periods in question was predicted to be insignificant and thus BEN runs were not performed)</i></p>	

### Part VII – Violation Penalty Total

		<b>Amount in Dollars</b>
<b>Line 24</b>	<b>Civil Penalty: (Sum Line 22 + Line 23)</b>	<b>\$90,223.00</b>

### Part VIII – Ability to Pay Adjustment

		<b>Amount in Dollars</b>
<b>Line 25</b>	<b>Ability to Pay Reduction:</b>	<b>\$0.00</b>
	<p><i>Justification:</i> Timnath has not provided any financial information or made any claims of an inability to pay a penalty. Therefore, an ability to pay assessment could not be conducted and was not included in this penalty calculation.</p>	

### Part IX – Final Adjusted Penalty

		<b>Amount in Dollars</b>
<b>Line 26</b>	<b>Total Civil Penalty: (Sum Line 24 + Line 25)</b>	<b>\$90,223.00</b>