

# STATE OF COLORADO

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

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

4300 Cherry Creek Dr. S.  
Denver, Colorado 80246-1530  
Phone (303) 692-2000  
TDD Line (303) 691-7700  
Located in Glendale, Colorado

Laboratory Services Division  
8100 Lowry Blvd.  
Denver, Colorado 80230-6928  
(303) 692-3090

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



Colorado Department  
of Public Health  
and Environment

March 29, 2010

Joe O'Dea  
Concrete Express, Inc.  
2027 W. Colfax Ave.  
Denver, Colorado 80204

**Certified Mail Number: 7009 1680 0000 2094 4572**

**RE: Service of Notice of Violation/Cease and Desist Order, Number: SO-100329-1**

Dear Mr. O'Dea:

Concrete Express, Inc. is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). This NOV/CDO 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"). The Division bases this NOV/CDO upon findings that Concrete Express, Inc. has violated the Act, and/or [COR-030000] regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., Concrete Express, Inc. is required, within thirty (30) calendar days of issuance of this NOV/CDO, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

This action could result in the imposition of civil penalties. The Division is authorized pursuant to §25-8-608, C.R.S., to impose a penalty of \$10,000 per day for each day during which such violation occurs.

Please be advised that the Division is continuing its investigation into this matter and the Division may identify supplementary violations that warrant amendments to this NOV/CDO or the issuance of additional enforcement actions.

Should you or representatives of Concrete Express, Inc. desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO, please do not hesitate to contact Michael Harris of this office by phone at (303) 692-3598 or by electronic mail at michael.harris@state.co.us.

Sincerely,



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

*Enclosure(s)*

cc: Denver Environmental Health  
Enforcement File

ec: Aaron Urdiales, EPA Region VIII  
Doug Camrud, Engineering Section, CDPHE  
Dick Parachini, Watershed Program, CDPHE  
Gary Beers, Permits Unit, CDPHE  
Carolyn Schachterle, OPA  
Nathan Moore, Permits, Section, CDPHE  
Terry Baus, MS4 Stormwater Program



**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-100329-1**

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**IN THE MATTER OF:      CONCRETE EXPRESS, INC.**  
**CDPS PERMIT NO. COR-030000**  
**CERTIFICATION NO. COR-03F285**  
**DENVER 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 is implemented through 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, Concrete Express, Inc. ("CEI") was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
2. CEI 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 July 20, 2009, CEI initiated construction activities that resulted in the disturbance of 160 acres of land located at or near East 84<sup>th</sup> Avenue and Allium Street in the City and County of Denver, Colorado (the "Project").
4. On July 2, 2009, the Division received an application from CEI 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 July 7, 2009, the Division provided CEI Certification Number COR-03F285 authorizing CEI to discharge stormwater from the construction activities associated with the Project to the South Platte River under the terms and conditions of the Permit. Certification Number COR-03F285 became effective July 7, 2009 and remains in effect until June 30, 2012 or until CEI inactivates permit coverage.

6. The South Platte River is “state waters” as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (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 September 1, 2009, a representative from the Division (the “Inspector”) conducted an on-site inspection of the Project pursuant to the Division’s authority under §25-8-306, C.R.S., to determine CEI’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, CEI is required to prepare and maintain a Stormwater Management Plan (“SWMP”) in accordance with good engineering, hydrologic, and pollution control practices. The SWMP is required to identify all 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 Best Management Practices (“BMPs”) at the Project, which will be used to reduce the pollutants in stormwater discharges associated with construction activity.
10. Pursuant to Part I. C. of the Permit, the Project’s SWMP shall include, at a minimum, the following items:
  - a. Site Description – The SWMP shall clearly describe the construction activity, including:
    - i. The nature 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. A summary of any existing data used in the development of the construction plans or SWMP that describe the soil or existing potential for soil erosion.
    - 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 all potential pollution sources, including ground surface disturbance, vehicle fueling, storage of fertilizers or chemicals, etc.
    - vii. The location and description of any allowable sources of non-stormwater discharge, such as springs, landscape irrigation return flow, construction dewatering, and concrete washout.
    - viii. The name of the receiving water(s) and the size, type, and location of any outfall or, if the discharge is to a municipal separate storm sewer, the name of that system, the location of the storm sewer discharge, and the ultimate receiving water(s).

- b. **Site Map** – The SWMP shall include a legible site map(s), showing the entire site, identifying:
- i. Construction site boundaries.
  - ii. All areas of ground surface disturbance.
  - iii. Areas of cut and fill.
  - iv. Areas used for storage of building materials, equipment, soil, or waste.
  - v. Locations of dedicated asphalt or concrete batch plants.
  - vi. Locations of all structural BMPs
  - vii. Locations of all non-structural BMPs.
  - viii. Locations of springs, streams, wetlands and other surface waters.
- c. **Stormwater Management Controls** - The SWMP must include a description of all stormwater management controls that will be implemented as part of the construction activity to control pollutants in stormwater discharges, including:
- i. **SWMP Administrator** – The SWMP shall identify a specific individual(s), position or title that is responsible for developing, implementing, maintaining, and revising the SWMP.
  - ii. **Identification of Potential Pollutant Sources** – The SWMP shall identify and describe those sources determined to have the potential to contribute pollutants to stormwater discharges.
  - iii. **Best Management Practices (BMPs) for Stormwater Pollution Prevention** – The SWMP shall identify and describe appropriate BMPs that will be implemented at the facility to reduce the potential of pollution sources to contribute pollutants to stormwater discharges. The SWMP shall clearly describe the installation and implementation specifications for each BMP identified in the SWMP.
    - (1) **Structural Practices for Erosion and Sediment Control** – The SWMP shall clearly describe and locate all structural practices implemented at the site to minimize erosion and sediment transport. Practices may include, but are not limited to: straw bales, wattles/sediment control logs, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, pipe slope drains, inlet protection, outlet protection, gabions, and temporary or permanent sediment basins.
    - (2) **Non-Structural Practices for Erosion and Sediment Control** – The SWMP shall clearly describe and locate all non-structural practices implemented at the site to minimize erosion and sediment transport. Description must include interim and permanent stabilization practices, and site-specific scheduling for implementation of the practices. Non-structural practices may include, but are not limited to: temporary vegetation, permanent vegetation, mulching, geotextiles, sod stabilization, slope roughening, vegetative buffer strips, protection of trees, and preservation of mature vegetation.
    - (3) **Phased BMP Implementation** – The SWMP shall clearly describe the relationship between the phases of construction and the implementation and maintenance of BMPs. The SWMP must identify the stormwater management controls to be implemented during the project phases, which can include, but are not limited to, clearing and grubbing, road construction, utility and infrastructure installation, vertical construction, final grading and final stabilization.

- (4) **Materials Handling and Spill Prevention** – The SWMP shall clearly describe and locate all practices implemented at the site to minimize impacts from procedures or significant materials that could contribute pollutants to runoff.
  - (5) **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.
  - (6) **Vehicle Tracking Control** – The SWMP shall clearly describe and locate all practices implemented at the site to control potential sediment discharges from vehicle tracking.
  - (7) **Waste Management and Disposal, Including Concrete Washout** – The SWMP shall clearly describe and locate the practices implemented at the site to control stormwater pollution from all construction site wastes, including concrete washout activities.
  - (8) **Groundwater and Stormwater Dewatering** – The SWMP shall clearly describe and locate the practices implemented at the site to control stormwater pollution from the dewatering of groundwater or stormwater from excavations, wells, etc.
- d. **Final Stabilization and Long-Term Stormwater Management** – The SWMP shall clearly describe the practices used to achieve final stabilization of all disturbed areas at the site, and any planned practices to control pollutants in stormwater discharges that will occur after construction operations have been completed at the site.
  - e. **Inspection and Maintenance** – The SWMP shall clearly describe the inspection and maintenance procedures implemented at the site to maintain all erosion and sediment control practices and other protective practices in good and effective operating condition.
11. Pursuant to Part I. D. 5. of the Permit, CEI is required to update the SWMP as appropriate and is required to amend the plan when there is a change in design, construction, operation, or maintenance of the site, when the SWMP proves to be ineffective in controlling pollutants in stormwater discharges, or when BMPs are no longer necessary and are removed.
  12. During the September 1, 2009 inspection, the Inspector reviewed the Project's SWMP and identified the following deficiencies, as described in paragraphs 12(a-e) below:
    - a. The site description section of the SWMP did not include an estimate of the total area of the site.
    - b. The SWMP did not include the location of all potential pollution sources (i.e., equipment fueling) nor the location of all anticipated allowable sources of non-stormwater discharge (i.e., concrete washout).
    - c. The SWMP had not been prepared and/or updated to reflect current site conditions. Several of the BMPs located on the site map were prescribed for noncurrent construction phases and, as such, were not implemented onsite.

- d. The SWMP did not clearly describe the relationship between the phases of construction and the implementation and maintenance of structural and non-structural practices. The SWMP included two conflicting descriptions of phased BMP implementation. The main SWMP document described three distinct construction phases (i.e., site preparation/grading, infrastructure/paving operations, and site stabilization/landscaping) with specific BMPs dictated for each of those phases. The supplemental documentation to the SWMP stated that all BMPs identified would be implemented at the beginning of the Project due to time constraints. No clarification was provided to indicate which of these phased BMP implementation plans was in effect.
  - e. The SWMP did not describe adequate procedures to maintain all erosion and sediment control practices in good and effective operating condition. The Permit requires that BMP maintenance be completed as soon as possible, immediately in most cases. However, the SWMP directed Project personnel to complete necessary maintenance of BMPs within seven days of discovery.
13. The Division has determined that CEI failed to prepare and maintain a complete and accurate SWMP for the Project.
  14. CEI's failure to prepare and maintain a complete and accurate SWMP for the Project constitutes violations of Part I. B., Part I. C., and Part I. D. 5. of the Permit.

**Failure to Conduct and/or Document Inspections of Stormwater Management System**

15. Pursuant to Part I. D. 6. (a) of the Permit, for active sites where construction has not been completed, CEI is required to make a thorough inspection of the Project's stormwater management system at least every 14 calendar days and within 24 hours of any precipitation or snowmelt event that causes surface erosion.
16. Pursuant to Part I. D. 6. (b) (2) of the Permit, PDC is required to keep a record of inspections that describes any corrective actions taken, the dates the corrective actions were taken, and any measures taken to prevent future violations. After corrective action has been taken, or where a report does not identify any incidents requiring corrective action, the inspection report shall contain a signed statement indicating the site is in compliance with the Permit.
17. During the September 1, 2009 inspection, the Inspector identified that CEI's inspection reports from 7/20/09, 7/27/09, 7/30/09, 8/7/09, 8/10/09, 8/14/09, 8/17/09, 8/19/09, 8/24/09, and 8/31/09 all failed to include a signed statement indicating the site was in compliance with the Permit.
18. CEI's failure to properly document its inspections constitutes violations of Part I. D. 6. (b) (2) of the Permit.

**Failure to Install, Maintain, or Properly Select Best Management Practices**

19. Pursuant to Part I. C. 3. (c) of the Permit, CEI is required to implement BMPs to reduce the potential of pollution sources from contributing pollutants to stormwater discharges, including minimizing erosion and sediment transport from the Project. The Permit specifies that structural site management practices may include, but are not limited to: straw bales, wattles/sediment control logs, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, pipe slope drains, inlet protection, outlet protection, gabions,

and temporary or permanent sediment basins. The Permit specifies that non-structural site management practices may include, but are not limited to: temporary vegetation, permanent vegetation, mulching, geotextiles, sod stabilization, slope roughening, vegetative buffer strips, protection of trees and preservation of mature vegetation.

20. Pursuant to Part I. D. 2. of the Permit, CEI is required to select, design, install, implement and maintain appropriate BMPs for all potential pollutant sources at the Project, following good engineering, hydrologic and pollution control practices.
21. Pursuant to Part I. B. 3. of the Permit, CEI is required to implement the provisions of the SWMP, as written and updated, from commencement of construction activity until final stabilization is complete.
22. During the September 1, 2009 inspection, the Inspector identified the following deficiencies related to BMP installation and maintenance at the Project, as described in Paragraphs 22(a-q) below:
  - a. The Inspector observed a disturbed drainage swale located at the south portion of the Project, west of Taxiway P. No BMPs were implemented to control concentrated flow along the bottom of the swale. Additionally, no BMPs were implemented to control run-on from the disturbed and unprotected areas adjacent to the swale or to stabilize or prevent sediment transport from the disturbed drainage swale slopes.
  - b. The Inspector observed a disturbed drainage swale located at the south portion of the Project, west of Taxiway P at the intersection with P4. No BMPs were implemented to control concentrated flow along the bottom of the swale. Additionally, no BMPs were implemented to control run-on from the disturbed and unprotected areas adjacent to the swale or to stabilize or prevent sediment transport from the disturbed drainage swale slopes.
  - c. The Inspector observed a disturbed drainage swale located at the north central portion of the Project, south of Taxiway EC. No BMPs were implemented to control concentrated flow along the bottom of the swale. Additionally, no BMPs were implemented to control run-on from the disturbed and unprotected areas adjacent to the swale or to stabilize or prevent sediment transport from the disturbed drainage swale slopes.
  - d. The Inspector observed a disturbed drainage swale located at the north central portion of the Project, south of Taxiway ED. A concrete trickle channel was present in the base of the swale; however, the constructed trickle channel was elevated above the low point of the swale bottom and no BMPs were implemented to control erosion and concentrated flow along these disturbed areas. Additionally, no BMPs were implemented to control run-on from the disturbed and unprotected areas adjacent to the swale or to stabilize or prevent sediment transport from the disturbed drainage swale slopes.
  - e. The Inspector observed a disturbed area located east of Taxiway P at the Project, near the intersection with 84<sup>th</sup> Avenue. No BMPs were implemented to stabilize the disturbed area or to prevent sediment from discharging to the preexisting stormwater conveyance system, which leads to state waters.

- f. The Inspector observed a disturbed area located west of Taxiway P7 and north of Taxiway EC at the Project. No BMPs were implemented to stabilize the disturbed area or to prevent sediment from discharging to the preexisting stormwater conveyance system, which leads to state waters.
- g. The Inspector observed a disturbed area located between Taxiway P and Taxiway P7 at the Project. No BMPs were implemented to stabilize the disturbed area or to prevent sediment from discharging to the preexisting stormwater conveyance system, which leads to state waters.
- h. The Inspector observed disturbed areas at the Project located 1) in the south portion of the site, east of Taxiway P at the intersection with P4 and 2) in the central portion of the site, west of Taxiway P and south of Taxiway EC. A Vehicle Tracking Control (“VTC”) was observed at both locations; however, the VTCs were not installed in accordance with implementation specifications described in the SWMP, as the VTCs were not 50 feet in length and 6 inches in depth. Consequently, sediment tracking was visible on the adjacent, paved Taxiway.
- i. The Inspector observed a disturbed area surrounding a culvert at the Project, located at the south portion of the site, west of Taxiway P. No BMPs were implemented to stabilize the disturbed area surrounding the culvert, to prevent run-on to the disturbed area, or to prevent sediment transport to the adjoining, disturbed drainage system.
- j. The Inspector observed a disturbed area surrounding a culvert at the Project, located east of Taxiway P, near the intersection with 84<sup>th</sup> Avenue. Rock wattles were observed in place inside each culvert opening; however, the SWMP did not prescribe or include specifications for that type of culvert inlet protection. No BMPs were implemented to stabilize the disturbed area surrounding the culvert, to prevent run-on to the disturbed area, or to prevent sediment transport to the adjoining, disturbed drainage system. *(Note: In accordance with good engineering and pollution control practices, inlet protection is not designed to function without comprehensive, upstream erosion and sediment control practices.)*
- k. The Inspector observed a disturbed area surrounding a culvert at the Project, located at the southwest corner of Taxiway P, south of Taxiway EC. A rock wattle was observed at the base of the culvert opening; however, the rock wattle was not installed in accordance with the implementation specifications described in the SWMP, as the wattle did not extend from wingwall to wingwall leaving no gap. No BMPs were implemented to stabilize the disturbed area surrounding the culvert, to prevent run-on to the disturbed area, or to prevent sediment transport to the adjoining, disturbed drainage system. *(Note: In accordance with good engineering and pollution control practices, inlet protection is not designed to function without comprehensive, upstream erosion and sediment control practices.)*
- l. The Inspector observed a disturbed area surrounding a culvert at the Project, located adjacent to Taxiway P7, north of Taxiway EC. No BMPs were implemented to stabilize the disturbed area surrounding the culvert, to prevent run-on to the disturbed area, or to prevent sediment transport to the adjoining, disturbed drainage system.

- m. The Inspector observed a disturbed area surrounding a culvert at the Project, located at the southwest corner of Taxiway ED and Taxiway P7. A rock wattle were observed at the base of the culvert opening; however, the rock wattle was not installed in accordance with the implementation specifications described in the SWMP, as the wattle did not extend from wingwall to wingwall leaving no gap. No BMPs were implemented to stabilize the entire disturbed area surrounding the culvert, to prevent run-on to the disturbed area, or to prevent sediment transport to the adjoining drainage system. *(Note: In accordance with good engineering and pollution control practices, inlet protection is not designed to function without comprehensive, upstream erosion and sediment control practices.)*
- n. The Inspector observed a disturbed area surrounding a culvert at the Project, located at the at the north portion of the site, between Taxiway P and Taxiway P7. No BMPs were implemented to stabilize the disturbed area surrounding the culvert, to prevent run-on to the disturbed area, or to prevent sediment transport to the adjoining, disturbed drainage system.
- o. The Inspector observed a disturbed area surrounding a culvert at the Project, located at the southwest corner of Taxiway P and Taxiway ED. No BMPs were implemented to stabilize the disturbed area surrounding the culvert, to prevent run-on to the disturbed area, or to prevent sediment transport to the adjoining, disturbed drainage system.
- p. The Inspector observed a disturbed drainage swale located at the northeast portion of the Project. A rock check dam was observed in place; however, the rock check dam was not installed in accordance with implementation specifications described in the SWMP, as the rock check dam did not have a median stone size of twelve inches, was not trenched into the ground one foot to eight inches, and did not extend across the swale with the ends of the check dam a minimum of one foot to six inches higher than the center of the check dam. No other BMPs were implemented to stabilize the disturbed soils in and around the drainage swale or to prevent down gradient sediment transport.
- q. The Inspector observed a disturbed detention area located in the northeast corner of the site. Stormwater from the entire construction site is channeled to this location where it is conveyed offsite and ultimately into the Hayesmount Tributary. A reinforced culvert protection was observed in place; however, the culvert protection was not installed in accordance with the implementation specifications described in the SWMP, as the culvert protection was placed on top of the concrete apron rather than being trenched into the ground, and erosion blanket was not utilized. A rock wattle was observed at the base of the culvert opening; however, the rock wattle was not installed in accordance with the implementation specifications described in the SWMP, as the wattle did not extend from wingwall to wingwall leaving no gap. No other BMPs were implemented to stabilize the disturbed soils in and around the detention area or to prevent sediment transport offsite. *(Note: In accordance with good engineering and pollution control practices, inlet protection is not designed to function without comprehensive, upstream erosion and sediment control practices.)*

23. The Division has determined that CEI failed to implement and/or maintain functional BMPs for all potential pollutant sources at the Project, following good engineering, hydrologic, and pollution control practices.
24. CEI's failure to implement and/or maintain functional BMPs to protect stormwater quality during construction activities at the Project constitutes violations Part I. C. 3. (c), Part I. D. 2. and Part I. B. 3. of the Permit.

### **NOTICE OF VIOLATION**

25. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined CEI 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 SWMP shall: a) Identify all potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharges associated with construction activity from the facility; b) Describe the practices to be used to reduce the pollutants in stormwater discharges associated with construction activity at the facility; and ensure the practices are selected and described in accordance with good engineering practices, including the installation, implementation and maintenance requirements; and c) Be properly prepared and updated in accordance with Part I.D.5.c., to ensure compliance with the terms and conditions of this permit. Facilities must implement the provision of the SWMP as written and updated, from commencement of construction activity until final stabilization is complete, as a condition of this permit."

**Part I. C. of the Permit**, which states in part, "The SWMP shall include the following items, at a minimum."

**Part I. D. 5. of the Permit**, which states in part, "The plan shall be updated as appropriate... The permittee shall amend the SWMP: 1) when there is a change in design, construction, operation, or maintenance of the site, which would require the implementation of new or revised BMPs; or 2) if the SWMP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activity; or 3) when BMPs are no longer necessary and are removed."

**Part I. D. 6. (b) (2) of the Permit**, which states in part, "The permittee shall keep a record of inspections. Inspection reports must identify any incidents of non-compliance with the terms and conditions of this permit. ... At a minimum, the inspection report must include: ... viii) After adequate corrective action(s) has been taken, or where a report does not identify any incidents requiring corrective action, the report shall contain a signed statement indicating the site is in compliance with the permit to the best of the signer's knowledge and belief."

**Part I. C. 3. c. of the 2007 Permit**, which outlines in part that BMPs for Stormwater Pollution Prevention shall address erosion and sediment control, including “structural practices implemented at the site to minimize erosion and sediment transport” and “non-structural practices implemented at the site to minimize erosion and sediment transport,” as well as phased BMP implementation, materials handling and spill prevention, dedicated concrete or asphalt batch plants, vehicle tracking control, waste management and disposal, including concrete washout, and groundwater and stormwater dewatering.

**Part I. D. 2. of Permit**, which states, “Facilities must select, install, implement, and maintain appropriate BMPs, following good engineering, hydrologic and pollution control practices. BMPs implemented at the site must be adequately designed to provide control for all potential pollutant sources associated with construction activity to prevent pollution or degradation of State waters.”

**Part I. B. 3. of the 2007 Permit**, which states in part, “Facilities must implement the provisions of the SWMP as written and updated, from commencement of construction activity until final stabilization is complete, as a condition of this permit.”

### **REQUIRED CORRECTIVE ACTION**

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

26. 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 CEI to comply with the following specific terms and conditions of this Order:

27. CEI shall immediately evaluate the Project’s SWMP and implement necessary measures to ensure the SWMP contains all of the elements required by the Permit and is effective in managing stormwater and pollutant discharges from the Project. Within thirty (30) calendar days of receipt of this Order, CEI shall submit a written certification to the Division stating that a complete, effective, and up-to-date SWMP has been fully developed and implemented at the Project.
28. CEI shall immediately implement necessary measures to ensure that adequate BMPs are in place to control stormwater and pollutant discharges from the Project. This includes ensuring that all disturbed areas at the Project are stabilized and/or protected with a system/series of erosion and sediment control practices, and that all BMPs at the site are selected, installed, implemented, and maintained following good engineering, hydrologic and pollution control practices. Within thirty (30) calendar days of receipt of this Order, CEI 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, CEI shall submit photographs to the Division documenting the current conditions and the associated BMPs implemented at the Project.

29. CEI shall immediately begin conducting and documenting inspections of the Project's stormwater management system pursuant to the provisions outlined in the Permit. Within thirty (30) calendar days of receipt of this Order, CEI shall submit a written certification to the Division stating that all such inspections are being conducted and documented in accordance with the terms and conditions of the Permit.
30. Within sixty (60) calendar days of receipt of this Order, CEI shall submit a detailed written plan to the Division outlining the standard procedures CEI will undertake to ensure that functional and effective stormwater management systems are fully implemented at its Colorado construction sites. The plan shall include a detailed description of how CEI will ensure that each of its stormwater management systems at each of its Colorado construction sites are adequately staffed, trained, implemented and supervised. The plan shall specifically discuss CEI's commitment to the resources needed to adequately implement the provisions of the Permit at its construction sites, including a commitment to providing elevated staff and supervisor training in erosion control, BMP implementation, and overall stormwater management.

### **NOTICES AND SUBMITTALS**

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

Colorado Department of Public Health and Environment  
Water Quality Control Division / WQCD-B2-CAS  
Compliance Assurance 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.

### **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.

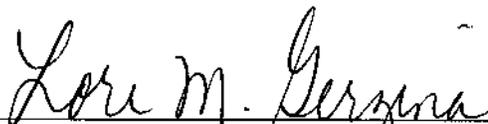
**EFFECT OF ORDER**

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 day of March, 2010.

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

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