

# STATE OF COLORADO

Bill Ritter, Jr., Governor  
James B. Martin, 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 30, 2010

Laura J. Riese, Esq.  
Davis Graham & Stubbs LLP  
1550 Seventeenth Street, Suite 500  
Denver, CO 80202

Certified Mail Number: 7009 1680 0000 2094 4619

**RE: Expedited Settlement Agreement, Number: ES-100330-4  
CDPS Permit No: No Permit**

Dear Ms. Riese:

Enclosed for your records you will find American Infrastructure, Inc.'s copy of the recently executed Expedited Settlement Agreement ("ESA"). Please be advised that the first page of the ESA was changed in order to place the correct ESA Number on the final document. The ESA is now fully enforceable and constitutes a final agency action.

As specified in the enclosed ESA, American Infrastructure, Inc. must, within fifteen (15) calendar days, submit a certified or cashier's check for the amount specified in the ESA to the Water Quality Control Division in order for this matter to be resolved.

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

Sincerely,

Russell Zigler, Legal Assistant  
Water Quality Protection Section  
WATER QUALITY CONTROL DIVISION

cc: Tri-County Health Department

ec: Aaron Urdiales, EPA Region VIII  
Gary Beers, Permits Unit, CDPHE



Colorado Department of Public Health & Environment  
Water Quality Control Division

## EXPEDITED SETTLEMENT AGREEMENT

Number: ES-100330-4

The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Expedited Settlement Agreement ("ESA"), pursuant to the Division's authority under §§25-8-602, 25-8-605 and 25-8-608, C.R.S. of the Colorado Water Quality Control Act (the "Act") §§25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of American Infrastructure, Inc. The Division and American Infrastructure, Inc. may be referred to collectively as "the Parties."

1. American Infrastructure, Inc. 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).
2. On or about October 24, 2006, American Infrastructure, Inc. initiated construction activities to build the Roxborough Sanitation Sewer Interceptor on property located at or near South Federal Boulevard and West Bowles Avenue, in or near the City of Littleton, Arapahoe County, Colorado (the "Project").
3. American Infrastructure, Inc. failed to obtain coverage for the Project under the Colorado Discharge Permit System General Permit for Stormwater Discharges Associated with Construction Activity (the "Permit"), in violation of §25-8-501(1), C.R.S. and its implementing permit regulation, 5CCR 1002-61, §61.3(1)(a), as described in the attached Notice of Violation/Cease and Desist Order, Number SO-080729-1 (the "NOV/CDO").
4. The parties enter into this ESA in order to resolve the matter of civil penalties associated with the violation(s) alleged herein and in the attached NOV/CDO for a penalty of \$6,000.00.
5. By accepting this ESA, American Infrastructure, Inc. neither admits nor denies the violations or deficiencies specified herein and in the attached NOV/CDO.
6. American Infrastructure, Inc. agrees to the terms and conditions of this ESA. American Infrastructure, Inc. agrees that this ESA constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602, 25-8-605 and 25-8-608, C.R.S., and is an enforceable requirement of the Act. By signing the ESA, American Infrastructure, Inc. waives: (1) the right to contest the finding(s) specified herein and in the NOV/CDO; and (2) the opportunity for a public hearing pursuant to §25-8-603, C.R.S.
7. This ESA is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and American Infrastructure, Inc. each reserve the right to withdraw consent to this ESA if comments received during the thirty-day period result in any proposed modification to the ESA.
8. This ESA constitutes a final agency order or action upon the date when the Executive Director or his designee signs the ESA and effectively imposes the civil penalty.

9. American Infrastructure, Inc. agrees that within fifteen (15) calendar days of receiving the signed and final ESA from the Division, American Infrastructure, Inc. shall submit a certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," for the amount specified in paragraph 4 above, to:

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

10. Notwithstanding paragraph 5 above, the violations described in this ESA will constitute part of American Infrastructure, Inc.'s compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against American Infrastructure, Inc. American Infrastructure, Inc. agrees not to challenge the use of the cited violations for any such purpose.

11. This ESA, when final, is binding upon American Infrastructure, Inc. and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this ESA.

**ACCEPTED BY AMERICAN INFRASTRUCTURE, INC.:**

FK Anth PVh 1-18-2010  
Signature Date

Frank Anthony Rekele VA / COO  
Name (printed) Title

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

Lori M. Gerzina Date: 3/25/10  
Lori M. Gerzina, Manager  
Compliance Assurance Section  
WATER QUALITY CONTROL DIVISION



**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-080729-1**

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**IN THE MATTER OF:     **AMERICAN INFRASTRUCTURE, INC.****  
****ARAPAHOE 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, American Infrastructure, Inc. ("AII") was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
2. AII 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).

**Operating Without a Stormwater Permit**

3. Pursuant to §25-8-501(1), C.R.S. and its implementing permit regulation, 5CCR 1002-61, §61.3(1)(a), no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge.
4. Pursuant to 5 CCR 1002-61, §61.3(2)(e), stormwater discharges associated with industrial activity are point sources requiring Colorado Discharge Permit System ("CDPS") permit coverage.
5. Pursuant to 5 CCR 1002-61, §61.3(2)(e)(iii)(J), construction activity, including clearing, grading and excavation, that results in the disturbance of five or more acres of total land area, or will ultimately result in the disturbance of five or more acres of total land area, is considered to be "industrial activity."
6. On or about October 24, 2006, AII initiated construction activities to build the Roxborough Sanitation Sewer Interceptor on property located at or near South Federal Boulevard and West Bowles Avenue, in or near the City of Littleton, Arapahoe County, Colorado (the "Project").

7. On February 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 AII's compliance with the Water Quality Control Act. During the inspection, the Inspector interviewed Project representatives, conducted a review of the Project's stormwater management system records, and performed a physical inspection of the Project.
8. During the February 16, 2007 inspection, the Inspector observed AII performing construction activities at the Project, which had resulted in the disturbance of five or more acres of total land area at the site. The Inspector also identified that the Project was not covered under a CDPS permit authorizing discharges of stormwater from the Project.
9. The Division records establish that AII did not obtain, and does not have, any permits authorizing discharges of stormwater from the Project.
10. AII's failure to obtain CDPS permit coverage for the Project, constitutes violation(s) of §25-8-501(1) C.R.S., 5 CCR 1002-61, §61.3(1)(a), and 5 CCR 1002-61, §61.3(2).

### **NOTICE OF VIOLATION**

Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that AII has violated the following sections of Colorado Water Quality Control Act and its implementing permit regulations.

**Section 25-8-501(1), C.R.S.**, which states "No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article."

**5 CCR 1002-61, §61.3(1)(a)**, which states in part, "No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge..."

**5 CCR 1002-61, §61.3(2)**, which states in part, "...discharges of stormwater as set forth in 61.3(2) and 61.4(3) are point sources requiring a permit," and "The following discharges composed entirely of stormwater are required to obtain a permit. (ii) A stormwater discharge associated with industrial activity."

### **REQUIRED CORRECTIVE ACTION**

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

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

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

12. Within thirty (30) calendar days of receipt of this Order, AII shall evaluate the status of the Project and prepare and submit to the Division, if necessary, an application for Project coverage under the CDPS General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit).
13. Within thirty (30) calendar days of receipt of this Order, AII shall submit to the Division a detailed written statement outlining the standard procedures AII will undertake to ensure that coverage under all applicable CDPS permits is obtained and functional stormwater management systems are fully implemented at its Colorado construction sites.
14. Within sixty (60) calendar days of receipt of this Order, AII shall submit photographs to the Division documenting the current site conditions and associated BMPs implemented at the Project.

#### NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, AII 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  
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.

### **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

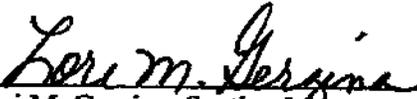
**EFFECT OF ORDER**

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**

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