

# 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.      Laboratory Services Division  
Denver, Colorado 80246-1530      8100 Lowry Blvd.  
Phone (303) 692-2000      Denver, Colorado 80230-6928  
TDD Line (303) 691-7700      (303) 692-3090  
Located in Glendale, Colorado  
<http://www.cdphe.state.co.us>



Colorado Department  
of Public Health  
and Environment

March 31, 2010

Dave Hammers  
Claremont Development, Inc.  
1411 Woolsey Heights  
Colorado Springs, CO 80915

**Certified Mail Number: 7009 1680 0000 2094 4596**

**RE: Order for Civil Penalty, Number: SP-100330-2**

Dear Mr. Hammers:

Claremont Development, Inc. 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 Compliance Order on Consent Number: SC-100126-1.

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: El Paso County Department of Health and Environment

cc: Aaron Urdiales, EPA Region VIII  
Dave Knope, Engineering Section, CDPHE  
Nathan Moore, Permits Section, CDPHE  
Dick Parachini, Watershed Program, CDPHE  
Carolyn Schachterle, FSU, CDPHE  
Lisa Ross, MS4 Stormwater Program



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

---

**ORDER FOR CIVIL PENALTY**

**NUMBER: SP-100330-2**

---

**IN THE MATTER OF: CLAREMONT DEVELOPMENT, INC.**  
**CDPS PERMIT NO. COR-030000**  
**CERTIFICATION NO. COR-038148**  
**EL PASO COUNTY, COLORADO**

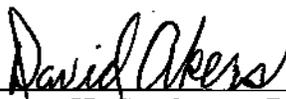
---

This matter having come to my attention as the Designee of the Executive Director of the Colorado Department of Public Health and Environment upon petition for imposition of a civil penalty by the Water Quality Control Division's Compliance Assurance Section, and pursuant to §25-8-608 C.R.S., I hereby impose a civil penalty in the amount of Thirty Four Thousand Twelve Dollars (\$34,012.00) against Claremont Development, Inc. for the violations cited in the January 26, 2010 Compliance Order on Consent (Number: SC-100126-1). A copy of the Compliance Order on Consent is attached hereto as Exhibit A and is incorporated herein by reference. The civil penalty shall be paid through six installment payments as set forth in the Compliance Order on Consent, the first due 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-CADM-B2  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530"*

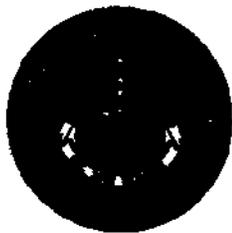
Dated this 30 day of March, 2010.

*for* 

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**

---

**COMPLIANCE ORDER ON CONSENT**

**NUMBER: SC-100126-1**

---

**IN THE MATTER OF: CLAREMONT DEVELOPMENT, INC.  
CDPS PERMIT NO. COR-030000  
CERTIFICATION NO. COR-038148  
EL PASO COUNTY, COLORADO**

---

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

**STATEMENT OF PURPOSE**

1. The mutual objectives of the Parties in entering into this Consent Order are to resolve, without litigation, the civil penalties associated with alleged violations cited herein and in the Notice of Violation / Cease and Desist Order / Clean-up Order (Number: SO-080513-1) that the Division issued to Claremont on May 13, 2008.

**DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS**

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602 and 605, C.R.S., the Division has made the following determinations regarding Claremont and Claremont's compliance with the Act and its stormwater permit certification.
3. At all times relevant to the alleged violations identified herein, Claremont was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
4. Claremont 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).

## Exhibit A

5. On or about May 12, 2005, Claremont initiated construction activities to build a commercial development on property located at or near State Highway 24 and Marksheffel Road in or near the City of Colorado Springs, El Paso County, Colorado (the "Project").
6. On May 2, 2005, the Division received an application from Claremont for Project coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit").
7. On May 3, 2005, the Division provided Claremont Certification Number COR-038148 authorizing Claremont to discharge stormwater from the construction activities associated with the Project to East Fork Sand Creek and the Arkansas River under the terms and conditions of the Permit. Certification Number COR-038148 became effective May 3, 2005 and remained in effect until Claremont certified that final stabilization was achieved and inactivated its Permit coverage on January 8, 2009.
8. East Fork Sand Creek and the Arkansas 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 (101).
9. 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.
10. On November 16, 2006, 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 Claremont'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**

11. Pursuant to Part I. B. of the Permit, Claremont 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 is 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.
12. 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.

## Exhibit A

- iv. An estimate of the runoff coefficient of the site before and after construction activities are completed and any existing data describing the soil, soil erosion potential or the quality of any discharge from the site.
  - v. A description of the existing vegetation at the site and an estimate of the percent vegetative ground cover.
  - vi. The location and description of any other potential pollution sources, such as vehicle fueling, storage of fertilizers or chemicals, etc.
  - vii. The location and description of any anticipated non-stormwater components of the discharge, such as springs and landscape irrigation return flow.
  - 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** - 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.
- 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.

## Exhibit A

13. During the November 16, 2006 inspection, the Inspector reviewed the Project's SWMP and identified that the SWMP did not describe all the potential pollution sources that were onsite, including the vehicle fueling and washing station and the areas used to store solvents, sealants, and wastes.
14. During the November 16, 2006 inspection, the Inspector reviewed the Project's SWMP and identified that the site map did not include all areas used for storage of building materials, soils and wastes, including the jobsite trailer and material storage area located near the southwest corner of Woolsey Heights at the Project.
15. The Division has determined that Claremont failed to prepare and maintain a complete and accurate SWMP for the Project.
16. Claremont'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**

17. Pursuant to Part I. B. 3. a. (1) of the Permit, Claremont 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.
18. Pursuant to Part I. B. 3. a. (2) of the Permit, Claremont 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.
19. The Division has determined that Claremont failed to implement and/or maintain functional BMPs at the Project as described in paragraphs 19(a-g) below:
  - a. During the November 16, 2006 inspection, the Inspector observed disturbed areas located adjacent to East Fork Sand Creek near the western corner of the proposed Cole View roadway at the Project. No BMPs were observed in place to stabilize the disturbed areas or to prevent sediment from discharging to East Fork Sand Creek during storm events. Consequently, erosion of the disturbed areas was observed leading down into East Fork Sand Creek.
  - b. During the November 16, 2006 inspection, the Inspector observed multiple soil stockpiles located along the length of the proposed Selix Grove roadway. No BMPs were observed in place to prevent soil and sediment from discharging from the stockpiles during storm events.

## Exhibit A

- c. During the November 16, 2006 inspection, the Inspector observed disturbed areas all along the access road located at the northwest perimeter of the Project. Silt fencing was observed in place near this location, however, the silt fencing was not acting as a functional BMP, as the silt fencing had collapsed. Consequently, erosion of the disturbed areas was observed leading toward East Fork Sand Creek.
  - d. During the November 16, 2006 inspection, the Inspector observed a large disturbed area located adjacent to East Fork Sand Creek, along the northwest corner of Marksheffel Road and Meadowbrook Parkway at the Project. No BMPs were observed in place to stabilize the vast disturbed area or to prevent sediment from discharging to East Fork Sand Creek during a storm event. Consequently, erosion of the disturbed area was observed leading down into East Fork Sand Creek.
  - e. During the November 16, 2006 inspection, the Inspector observed a disturbed area located up gradient from the intersection of Meadowbrook Parkway and the Woolsey Heights roadway at the Project. A silt fence was observed in place, however, the silt fence was not acting as a functional BMP, as the silt fence was falling down and had been bypassed by a previous storm event. No other BMPs were observed in place to stabilize the disturbed area or to prevent sediment from discharging to an adjacent storm sewer inlet, which was directly connected to East Fork Sand Creek.
  - f. During the November 16, 2006 inspection, the Inspector observed a disturbed area located along the southeast side of Meadowbrook Parkway at the Project. A silt fence was observed in place, however, the silt fence was not acting as a functional BMP, as the silt fence had collapsed and had been bypassed by a previous storm event. No other BMPs were observed in place to stabilize the disturbed areas or to prevent sediment from discharging from the area during storm events.
  - g. During the November 16, 2006 inspection, the Inspector observed a disturbed area located adjacent to the Woolsey Heights roadway, northeast of the jobsite trailer at the Project. No BMPs were observed in place to stabilize the disturbed area or to prevent sediment from discharging from the area during storm events. Consequently, sediment and debris was observed in the Woolsey Heights roadway.
20. Claremont'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.

### **ORDER AND AGREEMENT**

21. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605, C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein and in the Notice of Violation / Cease and Desist Order / Clean-up Order (Number: SO-080513-1), the Division orders Claremont to comply with all provisions of this Consent Order, including all requirements set forth below.

## Exhibit A

22. Claremont agrees to the terms and conditions of this Consent Order. Claremont agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. Claremont also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Claremont against the Division:
- The issuance of this Consent Order;
  - The factual and legal determinations made by the Division herein; and
  - The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.
23. Notwithstanding the above, Claremont does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Claremont pursuant to this Consent Order shall not constitute evidence of fault by Claremont with respect to the conditions of the Project.

### CIVIL PENALTY

24. Based upon the application of the Division's Stormwater Civil Penalty Policy (January 25, 2007), and consistent with Departmental policies for violations of the Act, Claremont shall pay Thirty Four Thousand Twelve Dollars (\$34,012.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the Thirty Four Thousand Twelve Dollar (\$34,012.00) civil penalty for the above violation(s) and Claremont agrees to make the payment through 6 installment payments as described in the table below:

| Payment | Amount     | Due Date  |
|---------|------------|---|
| 1       | \$5,668.67 | Within thirty (30) calendar days of issuance of a Penalty Order by the Executive Director or his designee |
| 2       | \$5,668.67 | September 1, 2010   |
| 3       | \$5,668.67 | March 1, 2011   |
| 4       | \$5,668.67 | September 1, 2011   |
| 5       | \$5,668.66 | March 1, 2012   |
| 6       | \$5,668.66 | September 1, 2012   |

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-CADM-B2  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

## Exhibit A

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

25. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations alleged herein and in the May 13, 2008 Notice of Violation / Cease and Desist Order / Clean-up Order (Number: SO-080513-1).
26. This Consent Order is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and Claremont each reserve the right to withdraw consent to this Consent Order if comments received during the thirty-day period result in any proposed modification to the Consent Order.
27. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or his designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by Claremont, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.
28. Notwithstanding paragraph 23 above, the violations described in this Consent Order will constitute part of Claremont'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 Claremont. Claremont agrees not to challenge the use of the cited violations for any such purpose.

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

29. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to civil penalties for the specific instances of violations cited herein and in the May 13, 2008 Notice of Violation / Cease and Desist Order / Clean-up Order (Number: SO-080513-1). The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.
30. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
31. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.
32. Upon the effective date of this Consent Order, Claremont releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act specifically addressed herein.
33. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

## Exhibit A

### NOTICES

34. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Colorado Department of Public Health and Environment  
Water Quality Control Division / WQCD-CADM-B2  
Attention: Michael Harris  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530  
Telephone: 303.692.3598  
E-mail: michael.harris@state.co.us

For Claremont:

Dave Hammers  
Claremont Development, Inc.  
1411 Woolsey Heights  
Colorado Springs, CO 80915

### MODIFICATIONS

35. This Consent Order may be modified only upon mutual written agreement of the Parties.

### NOTICE OF EFFECTIVE DATE

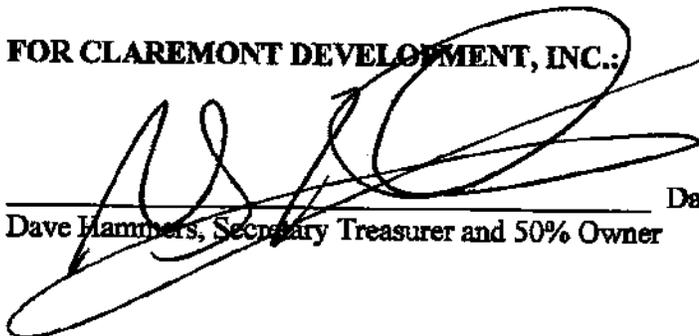
36. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or his designee imposes the civil penalty. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

### BINDING EFFECT AND AUTHORIZATION TO SIGN

37. This Consent Order is binding upon Claremont 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 Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

Exhibit A

**FOR CLAREMONT DEVELOPMENT, INC.:**

  
\_\_\_\_\_  
Dave Hammers, Secretary Treasurer and 50% Owner

Date: \_\_\_\_\_

1/15/10

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

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

Date: \_\_\_\_\_

1/26/10