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.
Denver, Colorado 80246-1530
Phone (303) 692-2000
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

April 19, 2011

Mr. Jerry Forte, P.E
Chief Operating Officer
Colorado Springs Utilities, an enterprise of the
City of Colorado Springs, Colorado
P.O. Box 1103, M/C 950
Colorado Springs, Colorado 80947-0931

Certified Mail Number: 7005 1820 0000 3213 7467

RE: Order for Civil Penalty, Number: MP-110419-1

Dear Mr. Forte:

The City of Colorado Springs 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 Amendment Number Three to Compliance Order on Consent, Number: MC-031211-1.

If you have any questions regarding the Penalty Order or the payment method, please do not hesitate to contact Scott Klarich of this office at (303) 692-3564 or by electronic mail at scott.klarich@state.co.us.

Sincerely,

Russell Zigler

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

Enclosure(s)

cc: El Paso County Public Health EH Division
Mr. Dave Padgett, Environmental Services Department Manager, Colorado Springs Utilities, City of Colorado Springs, P.O. Box 1103, M/C 940, Colorado Springs, CO 80947-0940
City of Colorado Springs, P.O. Box 1103, M/C 610, Colorado Springs, CO 80947

ec: Natasha Davis, EPA Region VIII
Joe Talbott, Engineering Section, CDPHE
Dave Knope, Engineering Section, CDPHE

Dick Parachini, Watershed Program, CDPHE
Michael Beck, FSU, CDPHE
Scott Klarich, Case Person, CDPHE

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

ORDER FOR CIVIL PENALTY **NUMBER: MP-110419-1**

IN THE MATTER OF: CITY OF COLORADO SPRINGS AND COLORADO SPRINGS UTILITIES CDPS PERMIT NO. CO-0026735

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 Forty Three Thousand, Six Hundred Twenty Four Dollars ($43,624.00) against the City of Colorado Springs and Colorado Springs Utilities for the violations cited in the August 18, 2010 Amendment Number Three to Compliance Order on Consent Number MC-031211-1. A copy of Amendment Number Three to Compliance Order on Consent Number MC-031211-1 is attached hereto as Exhibit A and is incorporated herein by reference. The City of Colorado Springs and Colorado Springs Utilities shall pay the civil penalty within thirty (30) calendar days of the date of this Order for Civil Penalty as set forth in Amendment Number Three to Compliance Order on Consent Number MC-031211-1.

"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:

Mr. Scott Klarich
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CA-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530"

Dated this 19th day of April 2011.

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

Exhibit A

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

AMENDMENT NUMBER THREE
COMPLIANCE ORDER ON CONSENT **NUMBER: MC-031211-1**

IN THE MATTER OF: **CITY OF COLORADO SPRINGS**
COLORADO SPRINGS UTILITIES
CDPS PERMIT NUMBER CO-0026735

The Colorado Department of Public Health and Environment ("CDPHE"), through the Water Quality Control Division ("Division"), issues this Amendment Number Three to the December 11, 2003 Compliance Order on Consent, Number: MC-031211-1, (*See attached copy, including prior amendments, marked as "Attachment A" for reference.)* which was executed between the Department and the City of Colorado Springs ("Colorado Springs"), on behalf of its enterprise, Colorado Springs Utilities (the "Utilities"). The Compliance Order on Consent became effective and a final agency action on February 3, 2004. This amendment is issued pursuant to the Division's authority under the Colorado Water Quality Control Act, sections 25-8-101 to 703, C.R.S. ("CWQCA"), and with the express consent of Colorado Springs and the Utilities. The Division, Colorado Springs and the Utilities may be referred to collectively as "the Parties."

STATEMENT OF PURPOSE

The mutual objectives of the Parties in amending Compliance Order on Consent Number: MC-031211-1 are:

1. To resolve all violations of the CWQCA based on the Utilities' reported sanitary sewer overflows ("SSOs"), listed in paragraph 3 below, that have occurred between November 23, 2006 and July 31, 2010.

2. To expeditiously resolve violations of the CWQCA without unilateral enforcement or litigation expenditures by the Parties.

Exhibit A

DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

3. The Utilities has reported the following wastewater discharges; either as spills or upsets, to the Division from November 23, 2006 through July 31, 2010. The reports are public records under the Colorado Public (Open) Records Act (see C.R.S. Title 24, Article 72, Part 2) and are available for inspection and copying from the Division and the Utilities.

Date of Event	Location	Cause of Release / Discharge	Quantity Released / Discharged (Gallons)	Receiving Stream/ Waterbody	Nature of Release, as Reported
13-Jan-07	3225 Broadmoor Valley Road (Cheyenne Mountain Resort)	Grease Blockage	230	Curr's Reservoir	Upset
8-Feb-07	4385 Tutt Blvd. (Behind Security Service Field)	(1) Hole in top of plugged service line and burst service line and (2) bypass plug burst.	2,100/500 (1st release, 100 gallons reached surface water, 2nd release, 500 gallons comingled with groundwater.)	Sand Creek/ Groundwater	Upset/Spill
29-May-07	Weld Street and Platte Place	Grease Blockage	2	Shooks Run / Fountain Creek	Spill
28-Sep-07	2718 Andromeda Drive	Root Blockage	10	Bear Creek / Fountain Creek	Upset
12-Jan-08	825 E. Las Vegas Street (Las Vegas WWTF)	Grease and Debris Blockage	5,000 (50 gallons reached surface water.)	Fountain Creek	Spill
25-Jan-08	3225 Austin Bluffs Parkway	Vandalism (Blockage caused by traffic cone placed in wastewater line.)	40	Templeton Gap Creek	Upset
15-Mar-08	825 E. Las Vegas Street (Las Vegas WWTF)	Equipment Malfunction	1,200,000 (100 gallons reached surface water.)	Storm Sewer / Fountain Creek	Spill
18-Mar-08	21st St. and Rio Grande St.	Grease and Debris Blockage	100 (20 gallons reached surface water.)	Storm Sewer / Bear Creek	Upset
26-Mar-08	5475 Mark Dabling Blvd.	Construction Debris and Root Blockage	350	Monument Creek	Upset
17-Jun-08	1307 Parkview Blvd.	Root and Debris Blockage	1,500 (Entire release recovered.)	Dry Drainage /Groundwater	Spill
18-Jun-08	Otero Ave and Old Ranch Road	Grease Blockage	1,060	Kettle Creek / Monument Creek / Fountain Creek	Upset
25-Jul-08	Space Center Drive and E. Platte Ave.	Construction Debris Blockage	10	Groundwater	Upset
24-Oct-08	2501 Chamberlain South Street	Grease and Mud Blockage	100	Storm Drain / Fountain Creek	Spill

Exhibit A

Date of Event	Location	Cause of Release / Discharge	Quantity Released / Discharged (Gallons)	Receiving Stream/ Waterbody	Nature of Release, as Reported
28-Oct-08	Filmore St. and Sage St.	Roots and Rags Blockage	255	Monument Creek	Spill
4-Apr-09	2635 Maroon Bells Ave.	Grease, Roots, Rags and Debris Blockage (Vandalism)	5,150	Storm Drain / Monument Creek	Upset
10-May-09	Pecan Street near Baltimore Court	Grease and Rags Blockage	8,700	Fountain Creek	Upset
8-Jul-09	8155 Table Mesa Way	Grease Blockage	156 (50 gallons reached surface water.)	Unnamed Drainage / Wetland Area	Upset
27-Dec-09	522 E. Rio Grande Street	Roots and Grease Blockage	1,040	Storm Drain / Shooks Run	Spill

4. Pursuant to §25-8-501(1), C.R.S., 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. Part I, section A(4) of CDPS permit number CO-0026735 provides in part: "The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee as necessary to achieve compliance with the conditions of this permit. This provision requires the operation of back-up or auxiliary facilities or similar systems when installed by the permittee only when necessary to achieve compliance with the conditions of the permit."

6. Part II, section A(6) of CDPS permit number CO-0026735 states, "Any discharge to the waters of the State from a point source other than specifically authorized herein is prohibited."

7. The discharges, identified in paragraph 3 above, were each discharges from a point source, as defined by section 25-8-103(14), C.R.S., to "State Waters," as defined by section 25-8-103(19), C.R.S.

8. Wastewater contains, among other substances, biochemical oxygen demand ("BOD"), total suspended solids ("TSS"), and fecal coliform bacteria, which are "pollutants", within the meaning of section 25-8-102(15), C.R.S. or indicators thereof.

9. Each of the Utilities' sanitary sewer overflows identified in paragraph 3 above, constitutes a "Discharge of Pollutants" as defined by section 25-8-103(3), C.R.S.

10. The Utilities complied with all noncompliance notification procedures, verbal and written for each unauthorized discharge incident described in paragraph 3 above, as required under Part I, section D(4)(b)(ii) of CDPS permit number CO-0026735.

11. The Utilities performed proper site clean-up and implemented appropriate remedies at the site of each incident described in paragraph 3 above. The clean-up procedures and remedies were documented in the written noncompliance reports, which are available for review as provided in paragraph 3 above.

12. The Utilities does not have any permits authorizing the discharges (sanitary sewer overflows) identified in paragraph 3 above into state waters.

13. To-date the Utilities has satisfactorily implemented or is implementing the injunctive requirements imposed by Compliance Order on Consent, Number: MC-031211-1. These requirements were specifically designed to prevent or minimize future sanitary sewer overflows from the Utilities sanitary sewer collection system.

VIOLATIONS

14. Each of the Utilities' discharges (sanitary sewer overflows) identified in paragraph 3 above constitute an unauthorized discharge of pollutants from a point source into state waters in violation of section 25-8-501(1), C.R.S. and in violation of CDPS permit number CO-0026735 Part I, section A(4) and Part II, section A(6).

CIVIL PENALTY

15. Based upon the application of the Division's Civil Penalty Policy (May 1, 1993), and consistent with Departmental policies for violations of the Act, Utilities shall pay forty three thousand six hundred twenty four dollars ($43,624.00) in civil penalties. The Division intends to petition the Executive Director, or her designee, to impose the forty three thousand six hundred twenty four dollar ($43,624.00) civil penalty for the above violation(s) and Utilities agrees to make the payment within thirty (30) calendar days of the issuance of a Penalty Order by the Executive Director or his designee. 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:

    Mr. Scott Klarich
    Colorado Department of Public Health and Environment
    Water Quality Control Division
    Mail Code: WQCD-CA-B2
    4300 Cherry Creek Drive South
    Denver, Colorado 80246-1530

Exhibit A

NOTICE OF EFFECTIVE DATE OF AMENDMENT NUMBER THREE

16. This amendment 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 amendment is not imposed, or an alternate penalty is imposed, this amendment becomes null and void.

SCOPE OF AMENDMENT NUMBER THREE

17. The scope of this amendment to Compliance Order on Consent, Number MC-031211-1 is expressly limited to the matters specifically identified herein. All other terms, conditions or requirements of Compliance Order on Consent, Number MC-031211-1 and its Amendment Number One and Two shall remain unchanged and in effect, specifically including, but not limited to, all provisions of that Compliance Order on Consent, Number MC-031211-1 with respect to Notices and Submittals, Force Majeure, Dispute Resolution, and Releases and Reservations of Rights, all of which specifically apply to this amendment and the violations and the civil penalty herein.

18. This amendment is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy", which includes a thirty-day public comment period. The Division, Colorado Springs and the Utilities each reserve the right to withdraw consent to this amendment if comments received during the thirty-day period result in any proposed modification to the amendment.

AUTHORIZATION TO SIGN

19. The undersigned warrant that they are authorized to bind legally their respective principals to this amendment to Compliance Order on Consent, Number MC-031211-1. This amendment to Compliance Order on Consent, Number MC-031211-1 may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same amendment. In the event that a party does not sign this amendment to Compliance Order on Consent, Number MC-031211-1 within twenty (20) calendar days of the other party's signature, this amendment becomes null and void.

FOR THE CITY OF COLORADO SPRINGS / COLORADO SPRINGS UTILITIES

Bruce McSwain for JAF Date: 8/12/2010

Jerry A. Forte, Chief Executive Officer
Colorado Springs Utilities

Approved as to Form:

Date: 8/12/2010

Kenneth Burgess
City Attorney's Office – Utilities Division

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, WATER QUALITY CONTROL DIVISION:

Lori M. Gerzina Date: 8/18/10

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

E Exhibit A

Signed original

STATE OF COLORADO

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT **NUMBER: MC-031211-1**

IN THE MATTER OF: **CITY OF COLORADO SPRINGS**
COLORADO SPRINGS UTILITIES
CDPS PERMIT NUMBER CO-0026735

This Compliance Order on Consent is issued and entered into by the Colorado Department of Public Health and Environment ("CDPHE") through the Water Quality Control Division (the "Division"), pursuant to the Division's authority under the Colorado Water Quality Control Act, sections 25-8-101 to 703, C.R.S. ("CWQCA"), and with the express consent of the City of Colorado Springs ("Colorado Springs"), on behalf of its enterprise, Colorado Springs Utilities ("the Utilities"). The Division and the Utilities may be referred to collectively as the "Parties." This Compliance Order on Consent supercedes and replaces the Compliance Order on Consent (Number MC-021212-1) that was executed between the Parties in December of 2002 but which never became a final agency action. Neither the United States Environmental Protection Agency ("EPA"), nor the Division, has initiated a unilateral enforcement action relative to the issues that are the subject of this Compliance Order on Consent. At the request of the Utilities, the issues that are the subject of this Compliance Order on Consent are settled by agreement of the Division and the Utilities without trial or adjudication of any issue of fact or law. Accordingly, the Parties agree to the terms and provisions set forth in this Compliance Order on Consent.

STATEMENT OF PURPOSE

The mutual objectives of the Parties entering into this Compliance Order on Consent are:

1. To resolve all alleged violations of the CWQCA based on the Utilities' reported sanitary sewer overflow ("SSO") discharges, listed in paragraph 19 below, that have occurred between June 23, 1998 and November 11, 2003.

2. To expeditiously resolve this matter without unilateral enforcement or litigation expenditure by the Parties.

Exhibit A

FINDINGS OF FACT

3. The National Pollutant Discharge Elimination System ("NPDES") permitting program in Colorado is approved by the EPA pursuant to Section 402 of the Clean Water Act, (33 U.S.C. § 1342). The Division implements and enforces the federal NPDES permitting program in the State of Colorado for non-federal facilities.

4. The Division is responsible for ensuring compliance with the requirements of the Federal Clean Water Act and the CWQCA in the State of Colorado.

5. Under the CWQCA, the Division regulates the point source discharge of pollutants to state waters through the "Colorado Discharge Permit System Regulations," Regulation No. 61, (5 CCR 1002-61).

6. Under the CWQCA, "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," (§25-8-501(1), C.R.S.).

7. The Utilities is an enterprise of Colorado Springs, a municipal corporation and home rule city organized pursuant to the Colorado Constitution. Colorado Springs, through the Utilities, is a "person" under federal law (40 CFR § 122.2) and Colorado law (§25-8-103(13), C.R.S.).

8. The Utilities collects and treats approximately 46 million gallons of domestic and industrial wastewater daily. The Utilities' wastewater collection system is comprised of approximately 1,400 miles of pipeline, 28,000 manholes and 14 lift stations and covers 204 square miles.

9. The Utilities currently operates under a Colorado Discharge Permit System ("CDPS") permit, number CO-0026735 (the "Permit"), issued by the Division. The most recent renewal of the permit was effective on September 1, 1999.

10. CDPS permit number CO-0026735 authorizes the Utilities to discharge treated wastewater from eight outfall points from its wastewater treatment facility located at 825 East Las Vegas Street, Colorado Springs, Colorado. Discharges are authorized at Fountain Mutual Irrigation Canal, various points on the non-potable irrigation system, and to groundwater (monitoring location only) in accordance with effluent limitations, monitoring requirements, and other conditions set forth in the permit.

11. Part I, section A(4) of CDPS permit number CO-0026735 provides in part: "The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee as necessary to achieve compliance with the conditions of this permit. This provision requires the operation of back-up or auxiliary facilities or similar systems when installed by the Permittee only when necessary to achieve compliance with the conditions of the permit."

12. Part II, section A(6) of CDPS permit number CO-0026735 states, "Any discharge to the waters of the State from a point source other than specifically authorized herein is prohibited."

13. Part I, section D(4)(a)(iii) of CDPS permit number CO-0026735 defines "Spill" as "An incident in which flows or solid materials are accidentally or unintentionally allowed to flow or escape so as to be lost from the domestic wastewater treatment works as defined in the Colorado Water Quality Control Act, which may cause pollution of state waters."

14. Part I, section D(4)(a)(i) of CDPS permit number CO-0026735 defines "Bypass" as "The intentional diversion of waste streams from any portion of a domestic wastewater treatment works."

15. Part I, section D(4)(a)(iv) of CDPS permit number CO-0026735 defines "Upset" as "An exceptional incident in which there is unintentional and temporary noncompliance with permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation."

16. Part II, section A(1) of CDPS permit number CO-0026735, referring to "Bypass," states:

    a. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, <u>but only if</u> it also is for essential maintenance to assure optimal operation. These bypasses are not subject to the provisions noted in item b, below. Division notification is not required.

    b. A bypass, which causes effluent limitations to be exceeded, is prohibited, and the division may take enforcement action against a permittee for such a bypass, unless:

        i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

        ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee could have installed adequate backup equipment to prevent a bypass which occurred during periods of equipment downtime or preventive maintenance; and

        iii) The permittee submitted notices as required in "Non-Compliance Notification," Part I, Section D.

17. Part I, section D(4)(b) of CDPS permit number CO-0026735, referring to "Noncompliance Notification," states:

    i) If, for any reason, the permittee does not comply with or will be unable to comply with any maximum discharge limitations, standards or conditions specified in this permit, the permittee shall, at a minimum, provide the Water Quality Control Division and EPA with the following information:

        (1) A description of the discharge and cause of non-compliance;

(2) The period of noncompliance, including exact dates and times and/or the anticipated time when the discharge will return to compliance; and

(3) Steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.

ii) The following instances of noncompliance shall be reported orally within twenty-four (24) hours from the time the permittee becomes aware of the circumstances, and a written report mailed to the Division within five (5) working days of the time the permittee becomes aware of the circumstances.

(1) Any instance of noncompliance, which may endanger human health or the environment, regardless of the cause for the incident.

(2) Any unanticipated bypass, or any upset or spill, which causes any permit limitation to be violated.

(3) Any suspected discharges of toxic pollutants or hazardous substances, which are listed in Part III of this permit, in excess of a daily maximum limit or where there is no limit for the toxic pollutant or hazardous substance in question.

18. Part II, section A(2) of CDPS permit number CO-0026735, referring to "Upsets," states:

a. Effect of an Upset

An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of paragraph (b) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

b. Conditions Necessary for a Demonstration of Upset

A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the specific cause(s) of the upset;
(ii) The permitted facility was at the time properly operated and maintained; and
(iii) The permittee submitted notice of the upset as required in Part I, Section C of this permit (24-hour notice).
(iv) The permittee took all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit, which has a reasonable likelihood of adversely affecting human health or the environment.

In addition to the demonstration required above, if the permittee who wishes to establish the affirmative defense of upset for a violation of effluent limitations based upon water quality standards, they shall also demonstrate through monitoring, modeling or other methods that the relevant standards were achieved in the receiving water.

c. Burden of proof

In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

19. The Utilities has reported the following SSO discharges; either as spills, bypasses or upsets, to the Division from June 23, 1998 through November 11, 2003. The reports are public records under the Colorado Public (Open) Records Act (see C.R.S. Title 24, Article 72, Part 2) and are available for inspection and copying from the Division and the Utilities.

Date	Location	Cause of Release	Gallons	As
11-Nov-03	7710 Durant Drive	Mortar and sand blockage	25	Upset
10-Jul-03	3720 S. Highway 85/87 (Sand Creek Lift Station)	Excessive pressure during temporary pumping operations	294	Spill
10-Mar-03	Behind 3445 Oro Blanco Drive	Grease blockage	600	Upset
1-Mar-03	7025 Pebble Way	Rag blockage	900	Upset
28-Feb-03	Behind 4465 North Park Drive	Grease blockage	120	Upset
29-Jan-03	Intersection of Vermijo and Institute	Grease and root blockage	180	Upset
25-Jan-03	Briargate Blvd. & Brisbane Dr.	Grease (residential)	360	Upset
23-Jan-03	Tutt Avenue, 500 feet north of the intersection of Barnes Road	Sand and dirt blockage	375	Spill
2-Jan-03	Intersection of Yellowwood and Barrelwood	Grease blockage	1,200	Spill
22-Dec-02	7090 Austin Bluffs Parkway (Field Behind)	Vandalism	19,200	Upset
15-Dec-02	145 Del Oro Circle	Roots	8,250	Spill
13-Nov-02	7130 Commerce Center Drive (behind)	Root blockage	2400	Upset
3-Nov-02	Open Field - E of Havenwood Drive/ S of Woodman Rd.	Vandalism/Rocks	480	Upset
22-Aug-02	7130 Corporate Center Drive	Vandalism/Rocks	800	Upset
14-Aug-02	Airport Rd. & Academy Blvd.	Vandalism - Rocks created blockage during cleaning operation	95,929	Upset
25-Jul-02	Monument Creek near Pikeview Reservoir	Storm damage, bank erosion	1.5	Spill
27-May-02	1343 West Pikes Peak Avenue	Roots	900	Spill
7-May-02	San Rafael Street & Shooks Run	Line Blockage	30	Upset
15-Apr-02	Cascade Ave. & Winters Drive	Roots	300	Spill
14-Feb-02	4005 Interpark Drive	Grease & Line Deterioration	750	Spill
28-Dec-01	2300 block of Busch Ave.	Vandalism	900	Upset
26-Dec-01	2300 block of Busch Ave.	Vandalism	1200	Upset
17-Dec-01	3484 Atlantic Drive	Grease	120	Upset
3-Oct-01	Sinton Road and Filmore Street	Roots	750	Spill
25-Sep-01	Serendipity Circle & TeeTime Place	Grease, debris	1,200	Upset
24-Sep-01	Sand Creek Lift Station	Control failure, possible lightning	270,000	Upset
10-Sep-01	Academy Blvd & Austin Bluffs Blvd	Rock fell on exposed pipe	48,000	Spill
1,2-Aug-01	Sand Creek & N. Carefree Cir.	Storm damage causing blockage	300,000	Upset
30-Jul-01	Academy Blvd., Cottonwood Cr.	Stream damage, heavy rains	2,400	Spill

Exhibit A

Date	Location	Cause of Release	Gallons	As
16-May-01	Serendipity Cir. & Radiant Dr.	Grease	120	Spill
9-May-01	8650 Corporate Dr.	Leaking joint in manhole	1	Spill
26-Mar-01	N. Chestnut St. & Madison St.	Grease, debris	225	Spill
17-Mar-01	617 St. Vrain in Shooks Run Park	Root Blockage	1,200	Spill
8-Mar-01	490-95 Guyout Ridge Court	Break	4,800	Upset
7-Mar-01	3315 Drennan Industrial Loop	Sand/Construction traffic	1,350	Upset
1-Oct-00	Bijou St. & Corona St.	Grease, grit, gravel	450	Spill
19-Sep-00	4350 Valencia Dr.	Grease	8,700	Upset
12-Aug-00	Lotus St. & Rosalie St.	Vandalism	30,000	Upset
30-Jul-00	2226 Carmel Dr. I-25	Debris, grease, roots	3,000	Spill
24-Jul-00	I-25 & Rusina Rd.	Debris, grease, roots	200	Upset
5-Jul-00	Mount View Lane & Jasmine St.	Root Blockage (free roots)	240	Spill
29-Jun-00	Bijou St. & Corona St.	Grease	1,825	Upset
14-May-00	6150 Corporate Dr.	Debris Blockage	345	Spill
3-May-00	5855 Corporate Center Dr.	Debris Blockage	630	Spill
26-Apr-00	Corner of 27th St. & West Colorado Ave.	Root Blockage	74	Spill
16-Apr-00	Corner of Walnut St & Columbia St	Debris Blockage	1,800	Spill
30-Mar-00	Southwest corner of Valli Hi Golf Course	Root Blockage	5,500	Spill
29-Feb-00	4551 Sleepy Hollow Circle	Vandalism	3,600	Upset
2-Feb-00	Cucharras St. & Walnut St.	Debris Blockage	15,300	Upset
1-Feb-00	1685 South 21st St.	Debris Blockage	1,700	Spill
8-Jan-00	Sand Creek & Constitution Ave.	Unknown Blockage	1,500	Spill
5-Nov-99	3400 Oro Blanco Dr.	Vandalism	13,650	Spill
1-Nov-99	2285 Bush Ave.	Unknown Blockage	840	Spill
19-Oct-99	Sand Creek Lift Station	Constant Speed Pump Failure	130,000	Spill
14-Oct-99	1806 Wooten Rd.	Vandalism	2,500	Spill
15-Aug-99	1004 Pecan Dr.	Root Blockage	9,000	Spill
25-May-99	Shooks Run & Fountain Creek (12-inch line)	April-May 1999 Storm	2,038	Upset
19-May-99	Shooks Run & Fountain Creek (12-inch line)	April-May 1999 Storm	38	Upset
19-May-99	Shooks Run & Fountain Creek (15-inch line)	April-May 1999 Storm	2,520,000	Upset
5-May-99	500 yards east of Sinton Rd.	April-May 1999 Storm	7,500	Upset
3-May-99	North of Holmes Middle School near Mesa Rd.	April-May 1999 Storm	7,200	Upset
3-May-99	Shooks Run & Fountain Creek/12-inch line	April-May 1999 Storm	150	Upset
1-May-99	Sand Creek Force Main/Lift Station	April-May 1999 Storm	60,230,000	Upset
30-Apr-99	1400 block of Custer Ave.	April-May 1999 Storm	2,163,000	Bypass
30-Apr-99	Platte Ave. & 17th St.	April-May 1999 Storm	1,110,000	Bypass
30-Apr-99	31st St. & Fontanero St.	April-May 1999 Storm	1,402,000	Bypass
30-Apr-99	Near 518 E. Bijou St.	April-May 1999 Storm	240,000	Bypass
30-Apr-99	Alsace Wy. & Cheyenne Rd.	April-May 1999 Storm	1,710,000	Bypass
29-Apr-99	825 E. Las Vegas St. bar screens	April-May 1999 Storm	2,500,000	Upset

Exhibit A

Date	Location	Cause of Release	Gallons	As
27-Mar-99	Peregrine Lift Station	Debris Blockage	4,200	Spill
4-Feb-99	21st St. & Bott Ave.	Aerial Line Failure	40	Spill
8-Oct-98	1/4 mile north of Popes Valley Dr.	Root Blockage	8,400	Spill
3-Oct-98	4010 Shelley Ave.	Root & Grease Blockage	800	Spill
28-Sep-98	Sand Creek Lift Station	Pipeline Failure	120,000	Spill
13-Sep-98	21st St. & Bear Creek	Root Blockage	900	Spill
28-Jul-98	Vickers Dr. & Academy Blvd.	Construction Damage	3,000	Spill
23-Jun-98	Powers Blvd. & Constitution Ave.	Vandalism	54,000	Spill

20. The untreated wastewater SSO discharges, identified in paragraph 19 above, were each discharges from a point source, as defined by section 25-8-103(14), C.R.S., to "State Waters," as defined by section 25-8-103(19), C.R.S. or, in the case of discharges to storm drains, may have reached "State Waters."

21. Untreated wastewater contains, among other substances, biochemical oxygen demand ("BOD"), total suspended solids ("TSS"), and fecal coliform bacteria, which are "pollutants" within the meaning of section 25-8-102(15), C.R.S.

22. The total volume of the Utilities' discharges between June 23, 1998 and November 11, 2003, identified in paragraph 19 above, was approximately 73 million gallons. Ninety-eight percent of this volume was associated with catastrophic flooding in April and May of 1999. During this period, the Colorado Springs area experienced an unusual series of storms; resulting in a Presidential Disaster Area Declaration that included Colorado Springs. These storms produced flood flows of an unusually long duration, and thus, unusually high volume. These storms necessitated emergency bypass pumping, which was initiated in order to protect public health and property, and caused several washouts of wastewater pipelines in and around Fountain Creek, plus caused a treatment facility overflow.

23. The Utilities complied with all noncompliance notification procedures, verbal and written for each unpermitted discharge incident described in paragraph 19 above, as required under Part I, section D(4)(b)(ii) of CDPS permit number CO-0026735, with the exception of the incidents that occurred on October 3, 1998, March 27, 1999, and April 16, 2000 where the 24-hour verbal notifications were completed within 26 to 72 hours.

24. The Utilities performed proper site clean-up and implemented appropriate remedies at the site of each incident described in paragraph 19 above. The clean-up procedures and remedies were documented in the written noncompliance reports, which are available for review as provided in paragraph 19 above. Clean-up generally included recovery of pooled liquids, physical removal of residues and debris, and flushing the area with potable water. Remedies for blockages generally included removal of the obstruction through mechanical cleaning followed by closed circuit television ("CCTV") inspection of the affected pipeline. Remedies for equipment failures and pipeline damage generally included replacement or repair of the affected component.

25. In reviewing the Utilities' non-compliance notification reports pertaining to the SSO discharges specified in paragraph 19 of this Compliance Order on Consent, the Division finds that the Utilities has sufficiently identified the cause(s) resulting in each discharge event and has shown that the events were generally exceptional, unintentional, and temporary.

26. The Utilities performs routine inspection, operations and maintenance ("O&M") activities on a continuous basis and the Utilities uses dynamic operation and maintenance procedures that are continually reviewed and modified based upon the collection system requirements. The Utilities' operation and maintenance procedures are continuously implemented on a regularly scheduled basis and are performed separate from the requirements of this Compliance Order on Consent. The Utilities uses these procedures to ensure that system deficiencies and repairs are scheduled or implemented to assure proper operation and maintenance of the Utilities wastewater collection system. Following are brief descriptions of the Utilities' on-going O&M program efforts and related programs and projects:

    a. *Collection System Maintenance.* The preventative maintenance program for collection system basins and subbasins occurs in intervals ranging from six months to five years. This program is based on the historical performance of sewer lines in the basins and includes assessment of such factors as age of basin, material type, number of blockages and pipeline operator observations. The Utilities uses these factors as performance indicators for monitoring and adjusting system maintenance schedules and basin priorities to maximize performance and serviceable life of the infrastructure. Practices include rodding, jet-rodding, jet vacuuming, flushing, bucketing, pipeline point repairs, manhole adjustment programs, manhole rehabilitation, and manhole access safety improvements.

    b. *Lift Station Maintenance.* Routine maintenance is performed on lift stations at various intervals designed to ensure safe and consistent operation. Lift station inspections are conducted based upon a preventative maintenance work order system. Monthly maintenance includes checking wet wells for grease and performing appropriate clean-up activities. Semi-annual maintenance includes calibrating sensors, checking grease levels in pumps, cleaning the lift station buildings, exercising valves, checking the supervisory control and data acquisition (SCADA) system and verification of alarms and backup systems. Finally, annual maintenance includes pump rotating assembly inspections and vibration analysis on pumps and motors. If these inspections reveal the need for repairs, then repairs are scheduled through the work order system.

    c. *Existing Collection System Inspections.* Inspections that occur on the existing wastewater collection system include visual and CCTV inspections. These inspections usually occur when a particular need is identified by collection system personnel.

    d. *New Construction Inspection.* When new homes or businesses are built, which will eventually connect to the Utilities' collection system, a mainline field inspector from the Utilities inspects the pipeline construction at various intervals. An inspector may make a field change or send plans back for redesign if there are concerns about plans meeting the Utilities' published standards and specifications for construction. When construction is completed and is consistent with the plans, the contractor or owner must perform an air test on portions of the mainline and service lines to demonstrate compliance with the Utilities' specifications. Following a successful air test, a CCTV inspection is conducted on the main line and service stubs. Once the CCTV inspection is complete, if everything is in compliance, the project is preliminarily accepted into the Utilities' collection system (under warranty by the contractor for 1 year). Three months prior to warranty expiration, the lines are CCTV'd one more time for a condition assessment before final acceptance into the system. In addition, any new buildings that will be

connecting to a previously approved service stub will be inspected to ensure the service line tap is constructed in accordance with the Utilities' specifications.

e. *Root Control Program.* A chemical root control program was initiated in 1998 to supplement conventional pipeline cleaning procedures. Approximately 100,000 feet of collection pipeline were treated in 1998 and 1999. Approximately 300,000 feet of collection pipeline were treated in 2000. Another 400,000 feet were treated in 2001 at a cost of $500,000. In 2002, the Utilities treated approximately 463,000 feet of collection pipeline at a cost of approximately $580,000. The program involves an initial treatment, CCTV inspection approximately six months after initial treatment to evaluate effectiveness and a second treatment approximately 2 years after the initial treatment, if needed. The need for, and frequency of root control is dictated by historical performance indicators such as CCTV inspections, weather and stoppages.

f. *Fat/Oil/Grease ("FOG") Management Program Improvements.* The Utilities conducts prompt enforcement actions against businesses who do not comply with pretreatment requirements or who are responsible for stoppages, and then provides follow-up with specific timetables to help the business comply. The Utilities enhanced its FOG Management Program in 2003 to reduce backups and provide even better protection of the wastewater collection system. Standards and specifications have been developed by the Utilities to help ensure restaurants control oil and grease releases appropriately. A formal FOG Policies and Procedures Manual ("PPM") for use by food service establishments contains Best Management Practices ("BMPs"), grease interceptor installation and operations & maintenance requirements, and public education materials. The FOG PPM underwent public review and was provided to the Division, the EPA, and the Colorado Restaurant Association. It was formally adopted January 2003.

g. *Sand Creek Lift Station and Force Main Replacement.* The Sand Creek lift station and force main convey much of the wastewater flow from the eastern, southeastern and southwestern regions of Colorado Springs (approximately 15 million gallons per day at current capacity) to the Las Vegas Street Wastewater Treatment Facility. An assessment of the condition and capacity of the Sand Creek Lift Station and Force Main facilities was completed in 1999, and engineering efforts to support replacement of the Force Main facilities have been completed. Interim upgrades include relief valve replacement on the force main, a thorough investigation of pumping pressures and wet well operating levels, lift station ventilation improvements, and repairs to the overflow pond liner. Construction of the new force main was completed in December 2002. Engineering and design of the lift station commenced in 2002 and construction is anticipated to be complete in July 2004. Total replacements costs are estimated to be approximately $14 million.

h. *Pipeline Flood Protection Program.* The Utilities commits funds on a yearly basis dedicated to identifying and correcting collection system pipeline problems along streams. This program is primarily used to prevent line washouts during flood events, and ensures that funds are available to make repairs when necessary. In 1999 and 2000, the Utilities designated approximately $700,000 each year for this program, not including money used for repairing damage from the April-May 1999 flood. In 2002 and 2003, the Utilities designated approximately $400,000 for pipeline flood protection each year.

i. *Wastewater Infiltration and Inflow Abatement Program.* The Utilities aggressively pursues reduction of infiltration/inflow through this program, which was initiated in 1986. This program includes data collection, physical sewer system evaluation surveys, permanent sanitary sewer flow monitoring of eight key interceptor and major trunklines, identification of known/suspected sources, elimination of these sources, and prevention of new sources. This on-going program, administered by the Wastewater Collection System Operational Performance Task Force, has been the primary driver in significantly reducing these sources over the past 15 years.

j. *Plan Review/Standards and Specifications Program.* The Utilities has standards and specifications in place that must be met prior to approval of development and building plans. These plans are reviewed for individual commercial developments to ensure developments meet capacity and collection system connection criteria. The review ensures that collection system protections are in place where necessary (e.g. grease interceptors), and that system extensions meet the Utilities' standards and specifications. Finally, the Utilities' personnel inspect the completed construction to ensure the construction is consistent with approved plans.

k. *Construction Contractor Management.* Whenever a contractor works within or adjacent to the Utilities' wastewater collection system, they must have a flow management program to handle flows from these pipelines in the event of a pipeline break or routine system tie-in. This includes contractors constructing system extensions and contractors that the Utilities hires for work on the collection system. The Utilities requires these contractors to prepare a bypass pumping plan, which provides details and guidance for ensuring any wastewater flows are handled appropriately in order to avoid wastewater spills as a result of construction activities.

l. *Sanitary Sewer Overflow Response Plan.* The Utilities has a sanitary sewer overflow response plan for protecting public health and the environment, which provides procedures for responding to and reporting sanitary sewer overflows. This plan contains specific procedures for: overflow detection and personnel dispatch; incident assessment and coordination with hazardous materials responders if appropriate; overflow correction, containment, and clean-up; regulatory agency and public notifications; and staff accountability and training.

27. The Utilities does not have any permits authorizing the SSO discharges identified in paragraph 19 above into state waters.

28. Each of the Utilities' untreated wastewater SSO discharges, identified in paragraph 19 above, constitutes a "Discharge of Pollutants" as defined by section 25-8-103(3), C.R.S.

VIOLATIONS

29. Each of the Utilities' SSO discharges identified in paragraph 19 above constitute an unauthorized discharge of pollutants from a point source into state waters in violation of section 25-8-501(1), C.R.S. and in violation of CDPS permit number CO-0026735 Part I, section A(4) and Part II, section A(6).

COMPLIANCE ORDER

30. The Utilities shall conduct a comprehensive re-evaluation of its collection system (including trunk sewers and lift stations) and prepare schedules for facilities inspection according to the milestones set forth in the table below. Repair and rehabilitation schedules shall be developed concurrent with and based upon the rankings assigned during the evaluation. These evaluations, assessments, repair and rehabilitation will be conducted in accordance with reasonable engineering practices or judgment. The following definitions apply for purposes of this Compliance Order on Consent, in lieu of statutory or regulatory definitions:

    i) *Sanitary Sewer Collector*: A 10- to 15-inch diameter sanitary sewer where one or more sanitary sewer mains are tributary.

    ii) *Sanitary Sewer Trunk Line*: A 16- to 36-inch diameter sanitary sewer that receives many tributary sewers and serves a large territory.

    iii) *Sanitary Sewer Interceptor*: A 36- to 72-inch diameter sanitary sewer that serves a large basin, receives wastewater flows from one or more sanitary sewer trunk lines, is commonly found along streams and drainage ways, and conveys wastewater flows to the treatment facility.

Sanitary Sewer Evaluation and Rehabilitation Program

31. The Sanitary Sewer Evaluation and Rehabilitation Program ("SSERP") is independent of the Utilities' normal operation and maintenance program and is intended to fulfill the requirements of this Compliance Order on Consent. In order to expedite the program, the Utilities has secured an engineering consultant to assist in the implementation of the SSERP. This program will analyze the condition and capacity of the existing system to establish repair and rehabilitation schedules for major interceptors, associated trunk lines and collector sewers. This multi-year effort is designed to focus on a flexible prioritization schedule, based upon historical performance, for a subset of basins each year for the term of this Compliance Order on Consent until all basins have been evaluated, monitored, repaired and/or rehabilitated as provided in paragraphs 55 and 56 of this Compliance Order on Consent.

COMPLIANCE ISSUE	SYSTEM COMPONENT	ACTION	MILESTONE DUE DATE
System Capacity Evaluation	All Lift Stations >10 Years Old	The Utilities or its consultant conducted an assessment of the capacity of each lift station >10 years old to convey current and future average and peak flows projected within the Utilities's 20-year planning period	The Utilities submitted a Lift Station (>10 years old) Capacity Evaluation Report to the Division on or before: ***January 31, 2003***

Exhibit A

COMPLIANCE ISSUE	SYSTEM COMPONENT	ACTION	MILESTONE DUE DATE
	All lift stations <10 Years Old, Interceptors, Trunk Lines, and Collectors	The Utilities or its consultant shall conduct an assessment of the capacity of these system components to convey current and future average and peak flows projected within the Utilities' 20-year planning period. System components shall be assessed as follows: 2002 – 10% of system 2003 – 20% of system 2004 – 30% of system 2005 – 40% of system	The Utilities shall submit a System Capacity Evaluation Report to the Division on or before: ***January 31, 2006***
Program Evaluations	All Components	Enhance and revise the Sanitary Sewer Collection System Operations & Maintenance Manual and Root Control Program	The Utilities submitted revised programs to the Division on or before: ***May 31, 2003***
		The Utilities shall address comments the Division has on the revised programs.	The Utilities shall begin to implement the revised programs on or before: ***December 31, 2003***
Collection System Condition Evaluation	Lift Stations, Interceptors, and Trunk Lines	The Utilities or its consultant shall evaluate the condition of the Utilities' trunk sewers and lift stations. This evaluation shall include a review of existing information and supplementation with new information as necessary. Using this information, and any other available relevant information, the Utilities or its consultant shall prepare a Lift Station, Interceptor, and Trunk Line Condition Evaluation Report. Approximately 25% of the trunk sewers, interceptors and lift stations shall be evaluated per year from 2002 through 2005 and is presently underway.	The Utilities shall submit the Lift Station, Interceptor, and Trunk Line Condition Evaluation Report to the Division on or before: ***January 31, 2006***

COMPLIANCE ISSUE	SYSTEM COMPONENT	ACTION	MILESTONE DUE DATE
	Collectors	The Utilities or its consultant shall evaluate the condition of the Utilities' collectors. This evaluation shall include a review of existing information and supplementation with new information as necessary. Using this information, and any other available relevant information, the Utilities or its consultant shall prepare a Collector Condition Evaluation Report. Approximately 20% of the collectors shall be evaluated per year from 2004 through 2008.	The Utilities shall submit the Collector Condition Evaluation Report to the Division on or before: ***January 31, 2009***
Collection System Improvements	All Components	The Utilities shall use the results of its capacity and condition evaluations and inspections as the basis for rectifying identified system deficiencies. Schedules for monitoring, repair or rehabilitation shall be developed and implemented concurrent with the Collection System Condition Evaluations and based upon the rankings* assigned during the evaluation. Monitoring may include, but need not include, CCTV inspections.	Corrective actions for deficiencies found to pose an imminent threat of an overflow shall be commenced with due diligence following discovery. Other point defects rating a grade 4 or 5 (structural or O&M) will be tracked and either monitored, repaired or rehabilitated within assigned time frames, but in no case will any grade 5 defect be repaired or rehabilitated later than December 31, 2012. Point defects rating a grade 1, 2, or 3 (structural or O&M) identified during the Collection System Condition Evaluations will be tracked. If subsequent evaluation(s), conducted prior to December 31, 2008, reclassify these previously identified defects as a grade 5, these defects will then be required to be repaired / rehabilitated within

COMPLIANCE ISSUE	SYSTEM COMPONENT	ACTION	MILESTONE DUE DATE
			assigned time frames, but in no case later than December 31, 2012. Any identified defect rating a grade 5, (structural or O&M) that has not been repaired / rehabilitated by December 31, 2008 shall be repaired / rehabilitated by December 31, 2012.
* The Utilities' collection system condition evaluations rank pipe condition in general accordance with the Pipeline Assessment and Certification Program's ("PACP") Condition Grading System. The PACP, developed by the National Association of Sewer Service Companies ("NASSCO"), provides a mechanism for creating reliable descriptions of pipe condition. The methodology and description of the PACP Condition Grading System is contained in NASSCO's PACP Second Edition Reference Manual, copyright © 2001. The Utilities will be transitioned to the NASSCO PACP Condition Grading System by July 31, 2003. Data collected prior to this time was ranked pursuant to a similar system for purposes of condition evaluation only, and is deemed acceptable for purposes of this Compliance Order on Consent. The defect coding system that the Utilities used for the SSERP prior to transition to the NASSCO PACP system is approximately equivalent to the NASSCO PACP system. Both systems employ a 1 to 5 grading scale and the severity of defects within each rating category is generally comparable.			

32. The Utilities' collection system basins have been prioritized for evaluation based upon the following considerations; current and anticipated development, past history and knowledge of system condition, the age of the system, construction material, maintenance history, available flow monitoring data, and best professional judgment.

33. Based upon review of the above considerations, the current basin prioritization schedule is indicated in the following table:

Basin	Condition Evaluation Priority
Spring Creek	1
West Side	2
Shooks Run	3
Patty Jewett	4
South Tejon	5
Stratton Meadows	6
Downtown	7
Bear Creek	8
North Suburban	9
Lower Sand Creek	10
Mesa Valley	11

Exhibit A

Basin	Condition Evaluation Priority
Bott	12
Templeton Gap	13
Cragmoor	14
Lower Cottonwood Creek	15
Upper Sand Creek	16
Cheyenne Mountain	17
Pulpit Rock	18
Douglas Creek	19
Garden Of The Gods	20
Popes Valley	21
Stratmoor	22
Rockrimmon	23
Pine Creek	24
Carson Valley	25
Upper Cottonwood	26
Peregrine	27
Briargate	28
Kettle Creek	29

34. The Utilities may elect to change the schedule of the basin prioritization plan, at any time, based upon collection system conditions and population growth, if such conditions warrant a higher priority. Such determinations shall be based on information developed through the capacity and condition reviews, the occurrence of overflows, or major storm events.

Progress Reports

35. During the course of the compliance schedule and until this Compliance Order on Consent is no longer in effect, the Utilities shall submit semi-annual (twice yearly) progress reports to the Division on or before July 31st and January 31st of each year. The reporting period for the July 31st report is January 1st through June 30th and the reporting period for the January 31st report is July 1st through December 31st. These reports will detail the accomplishments during the respective period. The first report was submitted to the Division on July 31, 2003. At a minimum, each semi-annual progress reports shall include the following information:

    a. Enhancements and/or updates to the PACP Condition Grading System; and
    b. Identification of point defects, their ratings and timeframes assigned by the Utilities for monitoring, repair and rehabilitation; and
    c. Identification of actions implemented, including repair and rehabilitation activities, during the reporting period, including a signed certification stating that each identified defect has been monitored, repaired or rehabilitated (to-date) within the assigned time frames; and
    d. Problems encountered and solutions implemented, including modifications or amendments to the Utilities' O&M procedures; and
    e. Activities planned for the next reporting period; and
    f. For each of the categories, "system capacity evaluation," "program evaluations," "collection system condition evaluation," and "collection system improvements," as provided in the table in paragraph 31, herein, the costs incurred during the reporting period.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

36. In addition to all other funds necessary to comply with the requirements of this Compliance Order on Consent, the Utilities agrees to pay $121,682.00 on expenditures related to the implementation of the Supplemental Environmental Project ("SEP"), described in Attachment A. The Parties agree that the SEP is intended to secure significant environmental or public health protection and improvements.

37. The Utilities hereby certifies that, as of the date of this Compliance Order on Consent, it is not required to perform or develop the SEP by any federal, state or local law or regulation, and it is not required to perform or develop the SEP by any agreement, grant or any injunctive relief in this or any other case. The Utilities further certifies that it has not received, and will not receive, credit in any other enforcement action for the SEP.

38. The SEP, identified in Attachment A, must be completed to the satisfaction of the Division by December 31, 2004, unless otherwise modified in accordance with paragraph 72, herein, but no later than July 31, 2005. The Parties acknowledge that completion of the SEP is dependent on the performance of a third party, identified in Attachment A. If the Utilities cannot perform the SEP, due to acts or omissions of the third party, then: (1) the Utilities and the Division may agree to extend the deadline; or (2) the Utilities has the option of (a) paying a civil/administrative penalty in the amount of $121,682.00 or (b) performing a SEP of identical value that is mutually agreeable to both the Utilities and the Division. The Parties agree to negotiate a revised SEP, if necessary, in good faith and within ninety (90) calendar days. If the Parties cannot reach agreement on an alternative SEP within ninety (90) calendar days, the Utilities shall pay $121,682.00 to the Division as a (civil/administrative) cash penalty within thirty (30) calendar days of receipt of a written demand for payment by the Division.

39. The Utilities shall submit a SEP Completion Report to the Division by January 31, 2005, or within 30 days following the modified completion date as provided in paragraph 38, whichever is later. To the extent relevant, the SEP Completion Report shall contain the following information:

    a. A detailed description of the SEP as implemented;
    b. Itemized costs, (documented by copies of purchase orders and receipts or canceled checks);
    c. Certification that the SEP has been fully implemented pursuant to the provisions of this Compliance Order on Consent; and
    d. A description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible).

    In addition, the Utilities agrees that failure to submit the SEP Completion Report with the required information shall be deemed a violation of this Compliance Order on Consent and the Utilities shall become liable for penalties as a violation of this Compliance Order on Consent.

40. In the event that the Utilities fails to comply with any of the terms or provisions of the SEP described in Attachment A, the Utilities shall be liable for payment of an administrative penalty in the amount specified in paragraph 36, above, less the amount of any expenditure made on the SEP by the Utilities, as approved by the Division. The Utilities shall pay these penalties within thirty (30) calendar days of receipt of written demand by the Division.

41. The Utilities shall include the following language in any written public statement making reference to the SEP: "This project was undertaken in connection with the Compliance Order on Consent between Colorado Springs Utilities and the Colorado Department of Public Health and Environment, Water Quality Control Division, for alleged violations of the Colorado Water Quality Control Act and/or implementing control regulations."

NOTICES AND SUBMITTALS

42. Any plan, report, notice or other document or communication required under the Compliance Order on Consent shall be sent or directed to:

For the Division:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-CADM-B2
Attention: Mr. Scott Klarich
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

For the Utilities:

Mr. Jerry Forte, P.E.
Chief Operating Officer
Colorado Springs Utilities, an enterprise of the
City of Colorado Springs, Colorado
P.O. Box 1103, M/C 950
Colorado Springs, Colorado 80947-0931

Mr. Dave Padgett
Environmental Services Department Manager
Colorado Springs Utilities, an enterprise of the
City of Colorado Springs, Colorado
P.O. Box 1103, M/C 940
Colorado Springs, Colorado 80947-0940

FORCE MAJEURE

43. The Utilities shall perform the requirements of this Compliance Order on Consent within the schedules and time limits set forth herein and in any approved plan unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of the Utilities, and which cannot be overcome by due diligence. Force majeure events shall include, but not be limited to: (a) severe weather; (b) natural disasters; (c) nonperformance or default by any of the Utilities' contractors, materialmen or suppliers; (d) impossibility or commercial impracticability due to unavailability of contractors or materials; (e) imposition of state or federal regulatory requirements, making compliance impossible; or (f) failure of state or federal regulatory

agencies to act, making compliance impossible, if such events, can not be overcome by due diligence and, through no fault of the Utilities, delay implementation of any activities required by this Compliance Order on Consent.

44. Within seven (7) calendar days of the time that the Utilities knows or has reason to know of the occurrence of any event which the Utilities has reason to believe may prevent the Utilities from timely compliance with any requirement under this Compliance Order on Consent, the Utilities shall provide verbal notification to the Division. Within fourteen (14) calendar days of the time that the Utilities knows or has reason to know of the occurrence of such event, the Utilities shall submit to the Division a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions that will be taken to mitigate the duration of the delay.

45. The burden of proving that any delay was caused by a force majeure shall at all times rest with the Utilities. If the Division agrees that a force majeure has occurred, the Division will so notify the Utilities. The Division will also approve or disapprove of the Utilities proposed actions for mitigating the delay. If the Division does not agree that a force majeure has occurred, or if the Division disapproves of the Utilities proposed actions for mitigating the delay, it shall provide a written explanation of its determination to the Utilities.

46. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Compliance Order on Consent is found to have been delayed by a force majeure, the Utilities shall perform the requirements of this Compliance Order on Consent that were delayed by the force majeure with all due diligence.

DISPUTE RESOLUTION

47. If the Division determines that a violation of this Compliance Order on Consent has occurred; that a force majeure has not occurred; that the Utilities' SEP Completion Report shall be rejected or, pursuant to paragraph 73, that the Utilities' Notice of Completion should be rejected, the Division shall provide a written explanation of its determination to the Utilities. Within fifteen (15) calendar days of receipt of the Division's determination, the Utilities may submit a notice of dispute of the determination. If the Utilities fail to submit such a notice within the specified time, it will be deemed to have accepted the Division's determination.

48. If the Division disapproves or approves with modifications any original or revised plan or schedule submitted by the Utilities pursuant to this Compliance Order on Consent for which the Division has approval authority under this Compliance Order on Consent (including the Utilities' proposed actions for mitigating delay caused by a force majeure event), the Division shall provide a written explanation of the disapproval or approval with modifications. Within fifteen (15) days of receipt of the Division's approval with modifications or disapproval of the plan or schedule, the Utilities shall: 1) submit a notice of acceptance and begin to implement the modified plan or schedule; 2) submit a revised plan or schedule for Division review and approval; or 3) submit a notice of dispute of the disapproval or approval with modifications. If the Utilities fail to do any of the above within the specified time, the Utilities shall be deemed to have failed to comply with the Order on Consent, and the Division may bring an enforcement action. The Utilities is not required to submit a revised plan or schedule before seeking dispute resolution and exercise of the option not to

submit a revised plan or schedule shall not be deemed a failure to exhaust administrative remedies in the event that the Utilities chooses to appeal the results of the dispute resolution.

49. If the Utilities submits a revised plan or schedule, the revised plan/schedule shall respond adequately to each of the issues raised in the Division's written explanation of the disapproval or approval with modifications. The Division shall notify the Utilities in writing of its approval, approval with modifications, or disapproval of the revised plan or schedule. If the Division disapproves the revised plan or schedule, it may include in its disapproval a plan/schedule for implementation by the Utilities. Such disapproval and plan/schedule and any approval with modifications of the revised plan/schedule shall be deemed effective and subject to appeal in accordance with the CWQCA and the State Administrative Procedures Act (the "APA"), unless the Utilities submits a notice of dispute, pursuant to paragraph 47 above, of the Division's disapproval and plan/schedule or approval with modifications. All requirements and schedules of the Division's plan/schedule or approval with modifications shall not become effective pending resolution of the dispute.

50. If the Utilities files any notice of dispute pursuant to paragraph 47, 48, or 49, the notice shall specify the particular matters in the Division's determination that the Utilities seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by the Utilities. The Division and the Utilities shall have thirty (30) calendar days from the receipt by the Division of the notification of dispute to reach an agreement. If agreement is reached and would modify a requirement of this Compliance Agreement upon Consent, then such modification must be made in accordance with section 64, herein. If agreement cannot be reached on all issues within this thirty (30) day period, the Division shall confirm or modify its decision within an additional fourteen (14) days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the CWQCA and the APA.

51. The Utilities may seek judicial review under the CWQCA and the APA of any final determination by the Division under this Compliance Order on Consent without being required to first seek administrative reconsideration under the CWQCA and the APA. The choice not to seek administrative reconsideration shall not be deemed a failure to exhaust administrative remedies in the event that the Utilities chooses to seek judicial review of the results of the dispute resolution. the Utilities is not precluded from seeking judicial review in accordance with the Colorado Rule of Civil Procedure 106(a)(4), if a remedy under the CWQCA and the APA is not available.

SCOPE AND EFFECT OF THIS COMPLIANCE ORDER ON CONSENT

52. This Compliance Order on Consent is entered into pursuant to the authority delegated to the Division under the CWQCA. Pursuant to such authority, the legislature through the CWQCA created the Division and authorized it to reach settlement in actions brought under the CWQCA and the regulations promulgated thereunder.

53. Except with respect to legal actions by persons not parties to this Compliance Order on Consent, by entering into this Compliance Order on Consent, the Utilities waives any and all rights it may have for any hearing or any administrative or judicial review regarding this matter and the Utilities agrees not to challenge the terms and conditions of this Compliance Order on Consent in any

proceeding to enforce this Compliance Order on Consent before any State administrative body or judicial forum. The Utilities also agrees not to challenge the Division's authority to issue this Compliance Order on Consent and specifically waives its right to a hearing pursuant to section 25-8-603, C.R.S.

54. The Utilities agrees that this Compliance Order on Consent has the same force and effect as a final Cease and Desist Order issued pursuant to 25-8-605, C.R.S., and that any violation of this Compliance Order on Consent may be subject to action, including penalties, pursuant to 25-8-602 through 612, C.R.S. The Utilities also agrees not to challenge the legal authority of the Division to enforce this Compliance Order on Consent.

55. This Compliance Order on Consent applies to the condition evaluations conducted according to the SSERP described in paragraph 31. Components of the collection system evaluated pursuant to the SSERP prior to execution of this Compliance Order on Consent will not be re-evaluated. Defects identified during these previous evaluations will be tracked and repaired or rehabilitated as provided in paragraph 31. Time periods for response to these defects will commence upon the effective date of this Compliance Order on Consent. Evaluations performed subsequent to the initial evaluations performed under the SSERP ("Subsequent Evaluations"), are not reportable under, or enforceable portions of, this Compliance Order on Consent, unless the Subsequent Evaluations result in a revised point defect rating of grade "5." Results of Subsequent Evaluations performed pursuant to this Compliance Order on Consent shall be made available to the Division, within a reasonable time, upon request received prior to January 31, 2009. Evaluations that are not performed pursuant to this Compliance Order on Consent and prior to the SSERP need not be reported.

56. Point defects rated a grade "5" (structural or O&M) prior to December 31, 2008, as generally determined pursuant to the NASSCO Pipeline Assessment and Certification Program's Condition Grading System, for which the assigned time frame for repair and rehabilitation extend beyond December 31, 2008, are reportable under, and enforceable portions of, this Compliance Order on Consent. Repair and rehabilitation of point defects (structural or O&M) rated grades "1" through "4," for which the assigned time frame for monitoring, repair or rehabilitation extend beyond December 31, 2008, are not reportable under, or enforceable portions of, this Compliance Order on Consent.

57. The Utilities' normal operation & maintenance activities and related programs, referenced in this Compliance Order on Consent, are not an enforceable component of this Compliance Order on Consent. Interceptors, trunk lines, and collectors installed/constructed after December 31, 1993 will be inspected through normal operations and maintenance programs, rather than as part of the condition assessment in this Compliance Order on Consent. These pipelines are required to comply with Utilities standard specifications and initial inspection criteria, which include CCTV inspection after installation, and therefore are expected to remain in good condition for many years.

58. This Compliance Order on Consent applies only to the wastewater collection system that is both owned and operated by the Utilities; it does not apply to satellite wastewater collection systems that are not owned by the Utilities and for which the Utilities provides contract wastewater treatment services.

59. This Compliance Order on Consent documents the diligent administrative prosecution and settlement of alleged violations under the CWQCA, a federally approved program under the CWA, as administered and enforced by Division. This Compliance Order on Consent is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and the Utilities each reserve its right to withdraw its consent to this Compliance Order on Consent if comments received result in the need to modify this Compliance Order on Consent.

60. Subject to paragraphs 58, 59 and 70, this Compliance Order on Consent applies to and is binding upon the Parties, their agents, employees, successors in interest, and assigns.

61. The Parties agree that the obligations of the Utilities under this Compliance Order on Consent are governed by the following:

    a. Performance of the obligations of the Utilities under this Compliance Order on Consent will be paid solely out of the Utilities' total fund balance ("Limited Source of Payment").
    b. The obligations of the Utilities under this Compliance Order on Consent shall not be payable in whole or part from the general funds of Colorado Springs, are not secured by the full faith and credit of the Colorado Springs and are not general obligations of the Colorado Springs.
    c. The obligations of the Utilities under this Compliance Order on Consent do not constitute debt of the City under the Colorado Constitution, including, but not limited to, Article XI, Section 6 and Article X, Section 20 thereof, or otherwise. Further, the Agreement shall not constitute any evidence of indebtedness under the City Charter, including, but not limited to Section 7-80, thereof.
    d. The obligations of the Utilities under this Compliance Order on Consent shall not require, nor be subject to, prior appropriation of funds as set forth in the City Charter, including but not limited to Section 7-60 thereof.
    e. The obligations of the Utilities under this Compliance Order on Consent shall not be subject to the requirements of the City Charter or the Colorado Constitution regarding multi-year agreements or spending limitations, and do not require voter approval.
    f. The Limited Source of Payment does not relieve the Utilities in any way of its obligations under this Compliance Order on Consent.

62. The Utilities shall comply with all applicable federal, state, and/or local laws or regulations, and shall obtain all approvals or permits necessary to conduct the activities required by this Compliance Order on Consent. The Division makes no representation with respect to approvals or permits required by federal and local laws or regulations or state laws or regulations other than those required under the CWQCA and regulations promulgated thereunder.

63. Full and complete performance of the System Capacity Evaluation; Program Evaluations; Collection System Condition Evaluations, as provided in paragraph 55, herein; Collection System Improvements, as provided in paragraph 56, herein; and completion of the SEP described in Attachment A shall constitute full and final resolution of all alleged violations specifically addressed in this Compliance Order on Consent.

64. By providing a copy of this Compliance Order on Consent to EPA, the Division has notified EPA that this Compliance Order on Consent is being issued and that the Division is the primary agency for coordinating, overseeing, and enforcing the response required by this Compliance Order on Consent.

RELEASES AND RESERVATION OF RIGHTS

65. For SSO discharges identified in paragraph 19 herein, the Division releases the Utilities from all causes of action that are addressed, or could have been addressed, at the time of execution of this Compliance Order on Consent. For SSO discharges other than those identified in paragraph 19, herein, the Division reserves the right to bring any action or to seek civil or administrative penalties for any past, present, or future violations of the CWQCA, its implementing control regulations, or the Permit not specifically identified and addressed herein.

66. The Division reserves the right to bring any action it deems necessary to enforce this Compliance Order on Consent.

67. The Utilities neither admits nor denies any of the factual or legal determinations made by the Division herein, and any action undertaken by the Utilities pursuant to this Compliance Order on Consent and any statement, term or provision of this Compliance Order on Consent agreed to by the Utilities shall not constitute an admission of liability by the Utilities with respect to its operations, or conditions at the Utilities' facilities. The Utilities expressly reserves, and shall be accorded, the right to challenge any and all findings and all factual or legal assertions of any alleged violations that are described in this Compliance Order on Consent in any further State or Federal proceeding that may take place outside of the confines of this State administrative action and expressly reserves all rights and defenses it has with respect to it or otherwise.

68. This Compliance Order on Consent was negotiated, mutually drafted and executed by the Parties in good faith. Neither the execution of this Compliance Order on Consent nor any action taken hereunder is an admission of any fact, liability or wrongdoing of any kind regarding any matters addressed herein. Accordingly, with the exception of this proceeding, this Compliance Order on Consent shall not be admissible in any judicial or administrative proceeding for use against any party over the objection of that party.

69. Nothing in this Compliance Order on Consent shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Compliance Order on Consent. The Division and the Utilities each reserve any and all rights, defenses, claims, demands, and causes of action that each party may have with respect to any matter, transaction, or occurrence relating in any way to the Utilities' facilities against any party not a party to this Compliance Order on Consent.

70. Nothing in the preceding paragraphs shall preclude the Division from imposing additional requirements necessary to protect against an imminent threat to public health or the environment pursuant to the terms of this Compliance Order on Consent. Nor shall anything in this Compliance Order on Consent preclude the Division from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect against an imminent threat to public health or the environment.

NOTICE OF EFFECTIVE DATE OF ORDER

71. This Compliance Order on Consent shall constitute final agency action and be fully effective and enforceable upon the date it is executed by the Department of Public Health and Environment's Executive Director or his designee. If the Executive Director or his designee fails to execute this Compliance Order on Consent within 30 days following the close of the public notice and comment period, this Compliance Order on Consent becomes null and void.

MODIFICATIONS

72. This Compliance Order on Consent constitutes the entire agreement by the Parties and may only be modified by a written amendment duly signed and authorized by both Parties. The Parties agree that the Division may, in writing, extend any deadlines set forth herein, and such extension shall constitute a proper modification to this Compliance Order on Consent.

NOTICE OF COMPLETION

73. The Utilities shall submit a Notice of Completion to the Division upon satisfactory completion of all requirements of this Compliance Order on Consent. The Division shall either accept or reject the Utilities' Notice of Completion in writing within thirty (30) calendar days of receipt. If the Division rejects the Utilities' Notice of Completion, it shall include in its notice a statement identifying the requirements that the Division considers incomplete or not satisfactorily performed and a schedule for completion. The Utilities shall, within fifteen (15) calendar days of receipt of the Division's rejection, either 1) submit a notice of acceptance of the determination; or 2) submit a notice of dispute to the determination. If the Utilities fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

74. Upon the Division's acceptance of the Utilities' Notice of Completion, this Compliance Order on Consent will be considered complete and no longer in effect.

AUTHORIZATION TO SIGN

75. The undersigned warrant that they are authorized to bind legally their respective principals to this Compliance Order on Consent. This Compliance Order on Consent may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Compliance Order on Consent. In the event that a party does not sign this Compliance Order on Consent within twenty (20) calendar days of the other party's signature, this Compliance Order on Consent becomes null and void.

Exhibit A

FOR THE CITY OF COLORADO SPRINGS / COLORADO SPRINGS UTILITIES

Phillip H. Tollefson Date: 12/9/2003
Phillip H. Tollefson, Chief Executive Officer

Approved as to Form:

Nettie J. Rosenthal Date: 12-9-03
Nettie J. Rosenthal
General Counsel's Division

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, WATER QUALITY CONTROL DIVISION:

David Akers Date: 12/11/03
David Akers, Section Manager
Water Quality Protection Section

FINAL AGENCY ACTION

Upon closure of the public notice and comment period and upon the Division's petition of the Executive Director, or his designee for ratification of this Compliance Order on Consent, the execution by the Executive Director or his designee of this Compliance Order on Consent will constitute final agency action.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Howard Roitman Date: 2-3-04
~~Cynthia S. Honssinger~~ Environmental Programs
~~Deputy Executive~~ Director

ATTACHMENT A

COLORADO SPRINGS UTILITIES
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Description of SEP

Colorado Springs Utilities will credit $121,682.00 to the Garden Valley Water and Sanitation District ("Garden Valley") for payment of System Development Charges related to connection of Garden Valley to Colorado Springs Utilities. Such credit is conditional upon: (1) Garden Valley initiating operations with the Colorado Springs Utilities wastewater system by December 31, 2004; and (2) full compliance with the Colorado Springs Utilities Wastewater Standards and Specifications, unless specifically waived in writing by Colorado Springs Utilities. The Division agrees that Colorado Springs Utilities is solely responsible for interpreting and applying the Colorado Springs Utilities' Wastewater Standards and Specifications. This SEP does not impose a continuing obligation on the part of the Colorado Springs Utilities to provide wastewater treatment service to Garden Valley.

This SEP will be deemed complete upon Colorado Springs Utilities credit of $121,682.00 to Garden Valley and Garden Valley initiating operations within the Colorado Springs Utilities wastewater system.

Environmental Benefit

Decommissioning Garden Valley's wastewater treatment facility and consolidating wastewater services with Colorado Springs Utilities would be a benefit to Fountain Creek, as well as to public health and the community.

The facility is near the end of its useful life, as it was originally constructed in the late 1960's. Maintenance of the steel structures within the facilities has been questioned in recent years with some evaluators warning of the risk of structural failure. Thus, the risk of serious malfunction or catastrophic structural failure threatens the water quality in Fountain Creek and could easily pose a public health hazard.

The facility has routinely violated permit limits over the years and has been the subject of formal enforcement actions by the Water Quality Control Division. Permit effluent violations for total suspended solids (TSS) and fecal coliform bacteria have continued since 2000 and could result in additional enforcement activity if the facility continues to be operated. These effluent violations indicate the potential for water quality impacts and public health hazards in the downstream vicinity on Fountain Creek.

City of Colorado Springs recreational amenities including a river trail, athletic fields, and park facilities are in close proximity to the facility, creating additional nuisance and potential public health risks for area residents. Since Garden Valley is enveloped within the Colorado Springs Utilities service area, consolidation is a highly favorable project.

Exhibit A

Background

Garden Valley is an enclave within the Colorado Springs Utilities wastewater service area. The Garden Valley Wastewater Treatment Plant is adjacent to, and discharges into, Fountain Creek. According to Garden Valley's 2001 financial assistance application to the Colorado Water Pollution Control Revolving Fund: "The existing Garden Valley Wastewater Treatment Facility is an old, poorly maintained package plant without sludge handling facilities. C.D.P.H.E. issued a 'Notice of Violation' and 'Cease and Desist Order' to Garden Valley in April, 1994. Economically and operationally it makes more sense to connect to the Colorado Springs wastewater system rather than to upgrade and continue operating the existing treatment plant."

In 2001, Garden Valley was approved for $500,000.00 of funding for purposes of connection to Colorado Springs Utilities and decommissioning of its existing wastewater treatment plant. A grant of $200,000.00 was approved through the Colorado Wastewater Construction Grant Program and expires June 30, 2005. The Colorado Water Resources and Power Development Authority authorized staff to begin negotiating a direct loan from the Colorado Water Pollution Control Revolving Fund in the amount of $300,000.00 for 20 years at a rate of 4.0%. The Division's Outreach and Assistance Unit indicates that it would take at least twelve (12) weeks to execute the loan and approximately, thirteen (13) months beyond that to initiate operation.

In May 2000, Garden Valley and Colorado Springs Utilities entered into an agreement, which governed the terms and conditions under which Garden Valley could connect to the wastewater collection system of Colorado Springs Utilities ("Agreement"). The Agreement provided that Garden Valley would be responsible for assuring payment of System Development Charges and Recovery Charges as provided in Colorado Springs Utilities' Wastewater Tariffs, as they may be amended from time to time.

At the time the Agreement was executed in 2000, the then-applicable tariffs would have allowed Garden Valley to connect to Colorado Springs Utilities for $289,743.45. Garden Valley was not able to connect to Colorado Springs Utilities during the years 2000, 2001 and 2002 due to circumstances beyond the control of Colorado Springs Utilities. Since 2000, the System Development Charges have increased in the tariffs. Considering the revised tariffs, the cost of connection of Garden Valley to Colorado Springs Utilities' wastewater system is $410,732.32.

Exhibit A

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

AMENDMENT NUMBER ONE
COMPLIANCE ORDER ON CONSENT

NUMBER: MC-031211-1

IN THE MATTER OF: **CITY OF COLORADO SPRINGS**
COLORADO SPRINGS UTILITIES
CDPS PERMIT NUMBER CO-0026735

The Colorado Department of Public Health and Environment ("CDPHE"), through the Water Quality Control Division ("Division"), issues this Amendment No. One to the December 11, 2003 Compliance Order on Consent, Number: MC-031211-1, (*See attached copy marked as "Attachment C" for reference.)* which was executed between the Department and the City of Colorado Springs ("Colorado Springs"), on behalf of its enterprise, Colorado Springs Utilities (the "Utilities"). The Compliance Order on Consent became effective and a final agency action on February 3, 2004. This amendment is issued pursuant to the Division's authority under the Colorado Water Quality Control Act, sections 25-8-101 to 703, C.R.S. ("CWQCA"), and with the express consent of Colorado Springs and the Utilities. The Division, Colorado Springs and the Utilities may be referred to collectively as "the Parties." This amendment supercedes and replaces the amendment that was executed between the Parties on October 7, 2005, which was effective from that date until the effective date of this amendment, but which never became a final agency action.

STATEMENT OF PURPOSE

The mutual objectives of the Parties in amending Compliance Order on Consent Number: MC-031211-1 are:

1. To resolve all alleged violations of the CWQCA based on the Utilities' reported sanitary sewer overflows ("SSOs") and transformer oil discharges, listed in paragraph 3 below, that have occurred between January 14, 2004 and November 16, 2005.

2. To expeditiously resolve violations of the CWQCA without unilateral enforcement or litigation expenditures by the Parties.

Exhibit A

AMENDMENT NUMBER ONE

3. The Utilities has reported the following discharges; either as spills, bypasses or upsets, to the Division from January 14, 2004 through November 16, 2005. Excluded from this list are discharges previously resolved in Compliance Order on Consent Number: MC-050412-1 and reclaimed water discharges. The reports are public records under the Colorado Public (Open) Records Act (see C.R.S. Title 24, Article 72, Part 2) and are available for inspection and copying from the Division and the Utilities.

Date of Event	Location	Cause of Discharge/Release	Quantity Discharged/Released (Gallons)	Receiving Stream	Nature of Release, As Reported
16-Nov-05	2775 Delta Drive	Grease and rag blockage caused manhole to overflow.	1,545 (Wastewater)	Fountain Mutual Irrigation Canal / Big Johnson Reservoir	Upset
02-Nov-05	Cimarron Street (U.S. Highway 24) and 21st Street	Equipment failure during bypass operations.	1000 (Wastewater)	Fountain Creek	Spill
20-Oct-05	1830 Parkview Boulevard	Root ball lodged in pipe segment.	200 (Wastewater)	Unnamed Tributary to Fountain Creek	Upset
04-Oct-05	Spectra Drive & 21st Street	Construction contractor filled in a manhole during construction operations at new subdivision.	1000 (Wastewater)	Fountain Creek	Upset
21-Sept-05	24" aerial creek crossing near 2414 Tremont	Pipe corrosion resulted in untreated wastewater dripping from pipe.	<1 (Wastewater)	Monument Creek	Spill
19-Sept-05	36" aerial creek crossing near Commerce Drive	Pipe corrosion resulted in untreated wastewater dripping from pipe.	<1 (Wastewater)	Monument Creek	Spill
22-Jun-05	Manhole at intersection of Hancock Expressway & Astrozon Blvd.	During storm event debris damaged a joint, causing collapse of pipe and discharge of sewage.	218,750 (Wastewater)	Sand Creek	Upset
22-Jun-05	Near intersection of Wooten Rd. & Town Center Dr.	During storm event concrete section torn off by excessive stormwater flow that resulted in severed pipeline and discharge of sewage.	98,800 (Wastewater)	Sand Creek	Upset

Exhibit A

Date of Event	Location	Cause of Discharge/Release	Quantity Discharged/Released (Gallons)	Receiving Stream	Nature of Release, As Reported
28&29 May-05	Dublin Blvd & Austin Bluffs Colorado Springs, Co	A large amount of rocks and debris were purposely placed into a sanitary sewer line which caused a significant backup of wastewater and sewage to impact a nearby-unnamed creek which empties into the Arkansas River.	26,400 (Wastewater)	Unnamed Creek. Cottonwood Creek, Monument Creek and Arkansas River	Upset
21-May-05	1030 Calvert Ave Colorado Springs, CO 80903	Due to a blockage caused by shop rags and wire, a backup and subsequent release of wastewater occurred.	600 (Wastewater)	Storm Sewer - Fountain Creek	Upset
17-May-05	6652 McEwan St Colorado Springs, CO	A vehicle hit a transformer causing release of non-pcb transformer oil.	26 (Transformer Oil)	Storm sewer - Sand Creek	Upset
22-Mar-05	E. Columbia St. & N. Prospect ST.	Due to a failure of equipment during a bypass operation, a hose from a pump failed. The pump was immediately shut down to prevent further release of untreated wastewater.	100 (Wastewater)	Shooks Run, Fountain Creek	Spill
18-Feb-05	3635 Michigan Ave.	A motorist drove over a bypass connection, which then caused it to break.	500 (Wastewater)	Storm sewer - Sand Creek	Upset
11-Feb-05	Black Hawk & Allegheny Dr.	A blockage in an 8" line caused wastewater to flow out of a manhole cover and flow to a nearby storm drainage ditch.	1,500 (Wastewater)	Storm drainage ditch - Monument Creek	Spill
31-Jan-05	1650 Telstar Drive	Snow removal contractor hit skid mounted transformer resulting in the discharge of mineral oil to the storm drain system	120 (Transformer Oil)	Monument Creek	Spill
28-Jan-05	227 Old Broadmoor Road	A blockage caused by roots in a sanitary sewer line allowed for a back up of materials to occur in a manhole.	75 (Wastewater)	Storm sewer - Spring Run / Fountain Creek	Spill

Exhibit A

Date of Event	Location	Cause of Discharge/Release	Quantity Discharged/Released (Gallons)	Receiving Stream	Nature of Release, As Reported
26-Jan-05	W. Cimarron St. & Fountain Creek	During bypass operations, a wastewater line ruptured while crews were draining the line and released untreated wastewater. Approximately 50 gallons impacted Fountain Creek.	150 (Wastewater)	Fountain Creek	Spill
31-Dec-04	2002 Prong Horn Lane	Large rock and debris caused blockage (suspect vandalism).	3,150 (Wastewater)	Sand Creek	Upset
08-Nov-04	Pierce Dr. & Woodburn St.	Due to an equipment failure of a broken wastewater pipe, the release of raw wastewater was allowed to occur down a street gutter. This release and flow from the street gutter impacted a nearby storm sewer.	150 (Wastewater)	Storm sewer - Little Fountain Creek / Fountain Creek	Spill
07-Oct-04	2855 Mesa Rd.	Due to a blockage caused by the dumping of asphalt into an 8-inch sewer main, wastewater was released from a manhole and impacted Fountain Creek.	79 (Wastewater)	Sewer drain - Fountain Creek	Upset
17-Aug-04	Academy Blvd. & Astrozon Blvd.	A clamp on a twelve-inch bypass hose broke, thereby allowing for the release of the wastewater.	500 (Wastewater)	Sand Creek	Upset
16-Aug-04	Academy Blvd. & Astrozon Blvd.	Due to an equipment failure of a bypass system, which was set up during slip lining operations that a contractor was performing, two pipes came apart at a welded location, thereby allowing for the release of wastewater.	1,700 (Wastewater)	Sand Creek	Spill
04-Aug-04	2245 Broadway	An eight-inch sewer main line was blocked due to heavy infiltration of tree roots.	495 (Wastewater)	Fountain Creek	Spill

Exhibit A

Date of Event	Location	Cause of Discharge/Release	Quantity Discharged/Released (Gallons)	Receiving Stream	Nature of Release, As Reported
23-May-04	Between 4689 Barnes Rd. and spillway next to Doherty High School	Grease and root blockage.	200 (Wastewater)	Monument Creek	Spill
11-Mar-04	24th Street and Howbert, Colorado Springs, Colorado	An 8-inch main line became blocked with tree roots.	600 (Wastewater)	Fountain Creek	Spill
14-Jan-04	Behind 5000 North Park Drive, Colorado Springs, Colorado (Pioneer Sand)	Vandals put rags and boards into a manhole and caused a blockage.	4,500 (Wastewater)	Monument Creek	Upset

4. Pursuant to §25-8-501(1), C.R.S., 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. Part I, section A(4) of CDPS permit number CO-0026735 provides in part: "The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee as necessary to achieve compliance with the conditions of this permit. This provision requires the operation of back-up or auxiliary facilities or similar systems when installed by the Permittee only when necessary to achieve compliance with the conditions of the permit."

6. Part II, section A(6) of CDPS permit number CO-0026735 states, "Any discharge to the waters of the State from a point source other than specifically authorized herein is prohibited."

7. The discharges, identified in paragraph 3 above, were each discharges from a point source, as defined by section 25-8-103(14), C.R.S., to "State Waters," as defined by section 25-8-103(19), C.R.S. or, in the case of discharges to storm drains, may have reached "State Waters."

8. Wastewater contains, among other substances, biochemical oxygen demand ("BOD"), total suspended solids ("TSS"), and fecal coliform bacteria, which are "pollutants" within the meaning of section 25-8-102(15), C.R.S.

9. Transformer Oil contains, among other substances, petroleum hydrocarbons that are "pollutants" within the meaning of section 25-8-102(15), C.R.S.

10. Each of the Utilities' SSOs and transformer oil discharges, identified in paragraph 3 above, constitutes a "Discharge of Pollutants" as defined by section 25-8-103(3), C.R.S.

11. The Utilities complied with all noncompliance notification procedures, verbal and written for each unauthorized discharge incident described in paragraph 3 above, as required under Part I, section D(4)(b)(ii) of CDPS permit number CO-0026735 with the exception of the incident that occurred on May 12, 2005, where notification was made on May 17, 2005. Utilities made proper notification on the January 31, 2005 and May 17, 2005 incidents, which were discharge events that are outside the scope and coverage of the Utilities CDPS permit.

12. In a letter dated July 8, 2005, the Division requested the Utilities to provide additional and specific information related to its recent releases of untreated wastewater from its collection system. The Utilities responded to the Division's request in a submittal dated August 15, 2005.

13. The Utilities performed proper site clean-up and implemented appropriate remedies at the site of each incident described in paragraph 3 above. The clean-up procedures and remedies were documented in the written noncompliance reports, which are available for review as provided in paragraph 3 above.

14. The Utilities does not have any permits authorizing the SSOs or transformer oil discharges identified in paragraph 3 above into state waters.

VIOLATIONS

15. Each of the Utilities' SSO discharges identified in paragraph 3 above constitute an unauthorized discharge of pollutants from a point source into state waters in violation of section 25-8-501(1), C.R.S. and in violation of CDPS permit number CO-0026735 Part I, section A(4) and Part II, section A(6).

16. Each of the Utilities' transformer oil discharges identified in paragraph 3 above constitute an unauthorized discharge of pollutants from a point source into state waters in violation of section 25-8-501(1), C.R.S.

COMPLIANCE ORDER AMENDMENTS

17. Paragraph 31 of Compliance Order on Consent Number MC-031211-1 is amended to include the following provisions:

COMPLIANCE ISSUE	SYSTEM COMPONENT	ACTION	MILESTONE DUE DATE
Collection System Condition Evaluation	Stream Crossings	The Utilities or its consultant shall first evaluate the condition of all the Utilities' stream crossings in its five major drainages. (Fountain Creek, Sand Creek, Cottonwood Creek, Monument Creek and Shooks Run - 131 identified)	The Utilities shall submit a Stream Crossing Condition Evaluation Report and a Monitoring/ Repair/Rehabilitation Priority Plan for the stream crossings located in its five major drainages

COMPLIANCE ISSUE	SYSTEM COMPONENT	ACTION	MILESTONE DUE DATE
		The Utilities or its consultant shall also evaluate the condition of all the Utilities' remaining stream crossings in minor drainages. These evaluations shall include both a review of external structural conditions and internal pipe conditions. External structural conditions shall be compared to the Utilities' sanitary sewer creek crossing evaluation criteria and the Department's design standards *(Design Criteria Considered in the Review of Wastewater Treatment Facilities Policy 96-1, Updated: May 14, 2002)* utilizing best engineering practices and judgment. Internal pipe conditions shall be graded in general accordance with the Pipeline Assessment and Certification Program's ("PACP") Condition Grading System.	to the Division on or before: ***January 31, 2006*** The Utilities shall submit a Stream Crossing Condition Evaluation Report and a Monitoring/ Repair/Rehabilitation Priority Plan for all remaining stream crossings in minor drainages to the Division on or before: ***June 30, 2006***
Collection System Improvements	Stream Crossings	The Utilities, utilizing best engineering practices and judgment, shall use the results of its capacity and condition evaluations and inspections as the basis for rectifying identified collection system stream crossing deficiencies. Schedules for monitoring, repair or rehabilitation of the Utilities stream crossings in its five major drainages shall be developed and implemented by January 31, 2006.	Corrective actions for deficiencies (external or internal) found to pose an imminent threat of an overflow or release shall be commenced within thirty-six (36) hours following discovery and shall be completed or temporarily repaired to mitigate the risk of release within seven (7) calendar days of discovery. External defects shall be rated, tracked and either monitored, repaired or rehabilitated within assigned time frames in

COMPLIANCE ISSUE	SYSTEM COMPONENT	ACTION	MILESTONE DUE DATE
		Schedules for monitoring, repair or rehabilitation of the Utilities stream crossings in its minor drainages shall be developed and implemented by June 30, 2006. Monitoring may include, but need not include, CCTV inspections.	accordance with the External Stream Crossing Response Matrix. (*See Attachment B*) External stream crossing defects rating a grade 5 that are found in the Utilities' five major drainages will be tracked and repaired or rehabilitated no later than June 30, 2006. External stream crossing defects rating a grade 5 that are found in the Utilities' minor drainages will be tracked and repaired or rehabilitated no later than December 31, 2006. External defects rating a grade 3 or 4 identified during the Collection System Stream Crossing Condition Evaluations will be tracked and monitored within assigned time frames. If subsequent evaluation(s), conducted prior to December 31, 2008, reclassify these previously identified defects as a grade 5, these defects will then be required to be repaired / rehabilitated within assigned time frames, but in no case later than six (6) months after the defect reclassification. Internal point defects rating a grade 4 or 5 (structural or O&M) will be tracked and either monitored, repaired or rehabilitated within assigned time frames, but in no case will any grade 5 defect be repaired or

COMPLIANCE ISSUE	SYSTEM COMPONENT	ACTION	MILESTONE DUE DATE
			rehabilitated later than December 31, 2012. Internal point defects rating a grade 1, 2, or 3 (structural or O&M) identified during the Collection System Stream Crossing Condition Evaluations will be tracked. If subsequent evaluation(s), conducted prior to December 31, 2008, reclassify these previously identified defects as a grade 5, these defects will then be required to be repaired / rehabilitated within assigned time frames, but in no case later than December 31, 2012.
Program Evaluations and Improvements	Vandalism	The Utilities shall perform a system wide evaluation of SSO events associated with acts of vandalism and develop a specific written plan and implementation schedule to reduce acts of vandalism within the collection system. This should include consideration of system security features, (manhole security technology, alarms, surveillance cameras, etc.) and a community awareness and reward program.	The Utilities shall submit a written report of its evaluation and plan to the Division on or before: ***December 31, 2005***
		The Utilities shall address comments the Division has on its revised vandalism plan/program.	The Utilities shall begin to implement its revised vandalism plan/program on or before: ***February 28, 2006***
		The Utilities shall perform an effectiveness evaluation of its implemented vandalism program every two (2) calendar years.	The Utilities shall submit a written report of its evaluation to the Division on or before:

COMPLIANCE ISSUE	SYSTEM COMPONENT	ACTION	MILESTONE DUE DATE
			January 31, 2008 ***January 31, 2010*** ***January 31, 2012***
	Spill/Release Response	The Utilities shall perform a detailed evaluation of its spill/release response policies and procedures (including its "*Wastewater, Sludge and Reclaimed Water Release Notification Procedure*" and its "*Draft Wastewater Spill Emergency Response Plan*"), and develop an implementation plan, if applicable, for enhancements or identified modifications or improvements. The evaluation shall consider, at a minimum; response initiation triggers, notification and signage requirements (regulatory and downstream), response equipment availability, response equipment staging locations, personnel training requirements, interim mitigation measures (including field monitoring) and final remedial actions. In addition, the Utilities shall develop and begin to track specific spill/release response performance measures. (e.g. time to discover, time to terminate discharge, time to implement interim measures)	The Utilities shall submit a written report of its evaluation, copies of its revised policies and procedures and identified performance measures to the Division on or before: ***December 31, 2005***
		The Utilities shall address comments the Division has on its spill/release response evaluation and its proposed policy and procedure modifications and improvements.	The Utilities shall begin to implement its revised spill/release response policies and procedures on or before: ***February 28, 2006***

COMPLIANCE ISSUE	SYSTEM COMPONENT	ACTION	MILESTONE DUE DATE
	Sanitary Sewer Stream Crossing Inspections	The Utilities shall perform a detailed evaluation of its Sanitary Sewer Crossing Inspection procedures and develop a specific written plan and implementation schedule for improvements. The evaluation should include, at a minimum, an evaluation of the following; frequency of inspections, trigger events for inspections, scope of evaluations, qualifications of individuals conducting inspections and the relationship between Storm Patrol Inspections and Sanitary Sewer Crossing Inspections.	The Utilities shall submit a written report of its evaluation to the Division on or before: ***January 31, 2006***
		The Utilities shall address comments the Division has on its Sanitary Sewer Crossing Inspection procedures.	The Utilities shall begin to implement its revised Sanitary Sewer Crossing Inspection procedures on or before: ***March 31, 2006***
* Internal pipe defects shall be evaluated and ranked in general accordance with the Pipeline Assessment and Certification Program's ("PACP") Condition Grading System and the Internal Pipe Segment Response Schedule Matrix (Attachment A). External defects shall be evaluated and ranked using a comparison to the Utilities' sanitary sewer creek crossing evaluation criteria, the Utilities External Stream Crossing Response Matrix (Attachment B), and the Department's design standards *(Design Criteria Considered in the Review of Wastewater Treatment Facilities Policy 96-1, Updated: May 14, 2002)* utilizing best engineering practices and judgment.			

18. The Utilities shall submit by January 31, 2006, and in conjunction with the Monitoring/ Repair/Rehabilitation Priority Plan required above, a Stream Crossing Repair/Rehabilitation Priority Policy for Division review and approval. The policy must state, in detail, the methodology and considerations that the Utilities will utilize in determining its initial repair/rehabilitation priorities or subsequent modification of such priorities.

19. The Utilities, upon notice to the Division, may change the schedule of the stream crossing Monitoring/Repair/Rehabilitation Priority plan based upon the Stream Crossing Repair/ Rehabilitation Priority Policy.

20. Paragraph 35 of Compliance Order on Consent Number MC-031211-1 is amended to include the following semi-annual (twice yearly) progress report elements:

    a. Identification of stream crossing defects (both external and internal), their ratings and time frames assigned by the Utilities for monitoring, repair and rehabilitation.
    b. Costs incurred during each reporting period for stream crossing evaluation, monitoring, repair and rehabilitation activities.
    c. The Utilities shall provide a summary report on its spill/release response performance measures.
    d. An accounting of the occurrence of unauthorized discharges from the Utilities' sanitary sewer collection system for the current reporting period and the cumulative reductions in number and volume of unauthorized discharges since June 23, 1998.
    e. A cumulative to-date, visual, geographical representation of the following: collection system pipe segments and stream crossings evaluated, collection system pipe segments and stream crossings repaired or rehabilitated, collection system pipe segments and stream crossings being monitored, collection system pipe segments and stream crossings scheduled for repair or rehabilitation pursuant to the terms of the Consent Order.

CIVIL PENALTY AND SUPPLEMENTAL ENVIRONMENTAL PROJECTS

21. In addition to all other funds necessary to comply with the requirements of this amendment, the Utilities shall pay One Hundred Thirty Thousand Three Hundred dollars ($130,300.00) in the form of civil penalties and expenditures on Supplemental Environmental Projects ("SEPs") in order to achieve settlement of this matter.

Civil Penalty

22. Based upon the application of the Division's Civil Penalty Policy (May 1, 1993), and consistent with Departmental policies for violations of the Act, Utilities shall pay Thirty Eight Thousand Eight Hundred Sixty dollars ($38,860.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the Thirty Eight Thousand Eight Hundred Sixty dollars ($38,860.00) civil penalty for the above violation(s) and Utilities agrees to make the payment within thirty (30) calendar days of the issuance of a Penalty Order by the Executive Director or his designee. 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:

    Mr. Scott Klarich
    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

Supplemental Environmental Project

23. Utilities' total expenditure for the SEP shall be not less than Ninety One Thousand Four Hundred Forty dollars ($91,440.00). The final value of the SEP will be determined in accordance with the Department's "*Agency-Wide Supplemental Environmental Projects*" policy. The funds will be used for a project or projects, to be approved by the Division, which improve or protect water quality in the segment of Fountain Creek between the City of Colorado Spring and the City of Pueblo.

24. The Utilities shall submit a description of the proposed SEP for Division approval by no later than February 28, 2006. The submittal, at a minimum, shall outline the proposed project(s), including a description of the environmental benefit(s), implementation costs and a timetable for completion. The Division reserves the right to accept or deny the SEP, or to require modifications to any provisions of the proposed project(s). If the Division denies the proposed SEP or requires modification thereof, the Utilities shall develop an alternative proposed SEP for Division consideration or provide notice that the proposed SEP was modified as the Division requested within thirty (30) calendar days of receipt of written notice from the Division. In addition, the submittal shall include a certification by the Utilities that, as of the date of the submittal, it is not under any existing legal obligation to perform or develop the SEP. The Utilities must further certify that it has not received, and will not receive, credit in any other enforcement action for the SEP. In the event that Utilities has, or will receive credit under any other legal obligation for the SEP, Utilities shall pay Ninety One Thousand Four Hundred Forty dollars ($91,440.00) to the Division as a civil penalty within thirty (30) calendar days of receipt of a demand for payment by the Division. Method of payment shall be as specified in paragraph 22 above.

25. Upon receiving approval of the proposed SEP from the Division, the Utilities shall implement the SEP in accordance with the approved time schedule.

26. Unless the Division approves a different completion date as part of its approval of the proposed SEP, Utilities must ensure the proposed and Division-approved SEP is fully implemented and completed by December 31, 2006.

27. The Utilities shall not deduct the payment of the SEP donation provided for in this paragraph for any tax purpose or otherwise obtain any favorable tax treatment of such payment or project.

28. In the event that the Division ultimately does not approve a proposed SEP, the Utilities shall be liable for payment of a civil penalty in the amount of Ninety One Thousand Four Hundred Forty dollars ($91,440.00). Utilities shall pay this penalty within thirty (30) calendar days of receipt of written demand by the Division. Method of payment shall be as specified in paragraph 22 above.

29. Utilities shall complete and submit a SEP Completion Report to the Division within thirty (30) calendar days of the Division-approved completion date. The SEP Completion Report shall contain the following information:

a. A detailed description of the SEP as implemented;

b. A description of any operating problems encountered and the solutions thereto;

c. Itemized costs, documented by copies of purchase orders and receipts or canceled checks;

d. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Order; and

e. A description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible).

30. Failure to submit the SEP Completion Report with the required information, or any periodic report, shall be deemed a violation of this Consent Order.

31. The SEP must be completed to the satisfaction of the Division by December 31, 2006, unless the Division approves a different completion date as part of its approval of the proposed SEP, in which case the SEP must be completed by that approved completion date.

32. In the event that Utilities fails to comply with any of the terms or provisions of this Consent Order relating to the performance of the SEP, Utilities shall be liable for penalties as follows:

a. Payment of a civil penalty in the amount of Ninety One Thousand Four Hundred Forty dollars ($91,440.00). The Division, in its sole discretion, may elect to reduce this penalty for environmental benefits created by the partial performance of the SEP.

b. Utilities shall pay this penalty within thirty (30) calendar days of receipt of written demand by the Division. Method of payment shall be as specified in paragraph 22 above.

33. Utilities shall include the following language in any public statement, oral or written, making reference to the SEP: "This project was undertaken in connection with the settlement of an enforcement action taken by the Colorado Department of Public Health and Environment for alleged violations of the Colorado Water Quality Control Act."

NOTICE OF EFFECTIVE DATE OF AMENDMENT

34. This amendment shall be fully effective, enforceable and constitute a final agency action upon the date signed by the authorized representative of the last party.

Exhibit A

SCOPE OF AMENDMENT NO. 1

35. The scope of this amendment to Compliance Order on Consent, Number MC-031211-1 is expressly limited to the matters specifically identified herein. All other terms, conditions or requirements of Compliance Order on Consent, Number MC-031211-1 shall remain unchanged and in effect, specifically including, but not limited to, all provisions of that Compliance Order on Consent, Number MC-031211-1 with respect to Notices and Submittals, Force Majeure, Dispute Resolution, and Releases and Reservations of Rights, all of which specifically apply to this amendment and the alleged violations and the compliance order herein.

AUTHORIZATION TO SIGN

36. The undersigned warrant that they are authorized to bind legally their respective principals to this amendment to Compliance Order on Consent, Number MC-031211-1. This amendment to Compliance Order on Consent, Number MC-031211-1 may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same amendment. In the event that a party does not sign this amendment to Compliance Order on Consent, Number MC-031211-1 within twenty (20) calendar days of the other party's signature, this amendment becomes null and void.

FOR THE CITY OF COLORADO SPRINGS / COLORADO SPRINGS UTILITIES

Date: 12-29-05

Mayor Lionel Rivera
City of Colorado Springs

Approved as to Form:

Date: 12/29/05

John A. Fredell
City Attorney's Office – Utilities Division

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, WATER QUALITY CONTROL DIVISION:

Date: 12/29/05

David A. Akers, Manager
Water Quality Protection Section

Exhibit A

Attachment A

Colorado Springs Utilities
Internal Pipe Segment Response Schedule Matrix

Response Code	Structural Defects	O&M Defects
A – Requires immediate attention	• Minimize the risk of a sanitary sewer overflow by implementing mitigating measures immediately (e.g., bypass pumping, temporary repair, obstruction removal) • If the mitigating measure is temporary: Initiate planning or design of long-term corrective measures (e.g., permanent repair, infrastructure replacement, or rehabilitation), within a time frame commensurate with the expected longevity and reliability of the mitigation effort.	• Minimize the risk of a sanitary sewer overflow by performing required maintenance (e.g., cleaning) immediately upon defect confirmation, and • Schedule and perform enhanced maintenance, as appropriate.
B – Requires near term repairs or maintenance in 90 to 180 days	• Minimize the risk of a sanitary sewer overflow by implementing mitigating measures within 90-180 days of defect confirmation, (e.g., bypass pumping, temporary repair, obstruction removal) • If the mitigating measure is temporary: Initiate planning or design of long-term corrective measures (e.g., permanent repair, infrastructure replacement, or rehabilitation), within a time frame commensurate with the expected longevity and reliability of the mitigation effort.	• Minimize the risk of a sanitary sewer overflow by performing required maintenance (e.g., cleaning) within 90-180 days of defect confirmation, and • Schedule and perform enhanced maintenance, as appropriate.
C – Requires repairs or maintenance to be completed within 1-2 years	• Commence planning for long-term corrective measures (e.g., repair, replacement, or rehabilitation), and • Perform design, permitting, and construction, as appropriate, of long-term corrective measures within 1-2 years of inspection data analysis.	• Commence planning for required maintenance (e.g., cleaning), • Perform maintenance within 1-2 years of inspection data analysis, and • Schedule and perform enhanced maintenance, as appropriate.
D – Reinspect within 3-5 years	• Perform a reinspection within 3-5 years of inspection data analysis.	
E – Reinspect and maintain through normal O&M[1]	• Perform a reinspection during routine inspection of the basin, subbasin, or other defined area, typically within 15 years of the initial inspection.	• Perform maintenance consistent with the schedules contained within the Utilities Sanitary Sewer Operations and Maintenance Manual.

Pipeline Segments that receive an overall condition grade of "4" or "5" will not be assigned a response code of "E".

Defect Grade	Description
5	Immediate Attention: Defects requiring immediate attention (pipe has failed or will likely fail within the next five years),
4	Poor: Severe defects that will become Grade 5 defects within the foreseeable future (pipe will probably fail in 5 to 10 years),
3	Fair: Moderate defects that will continue to deteriorate (pipe may fail in 10 to 20 years),
2	Good: Defects that have not begun to deteriorate (pipe unlikely to fail for at least 20 years), and
1	Excellent: Minor defects (failure unlikely in the foreseeable future)

Exhibit A

Attachment B
Colorado Springs Utilities
External Stream Crossing Response Matrix

Response Code	Action Schedule
5 - Immediate action necessary (0-180 days)	• Minimize the risk of a sanitary sewer overflow by implementing mitigating measures immediately (e.g., bypass pumping, temporary repair, obstruction removal) • If the mitigating measure is temporary: Initiate planning or design of long-term corrective measures (e.g., permanent repair, infrastructure replacement, or rehabilitation), within a timeframe commensurate with the expected longevity and reliability of the mitigation effort.
4 - Work necessary within 2-5 years	• Minimize the risk of a sanitary sewer overflow by implementing mitigating measures as applicable. • Commence planning for long-term corrective measures (e.g., repair, replacement, or rehabilitation) • Perform design, permitting, and construction, as appropriate, of long-term corrective measures within 1-2 years of inspection data analysis. • Monitor yearly
3 - Work necessary within 5 years	• Monitor Every Other Year • Commence planning for long-term corrective measures (e.g., repair, replacement, or rehabilitation) • Perform design, permitting, and construction, as appropriate, of long-term corrective measures within 1-2 years of inspection data analysis.
2 - Work necessary within 10 years.	• Monitor every 4 years under normal operation & maintenance activities and related programs.
1 – No Action needed	--

Exhibit A

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

AMENDMENT NUMBER TWO
COMPLIANCE ORDER ON CONSENT

NUMBER: MC-031211-1

IN THE MATTER OF: **CITY OF COLORADO SPRINGS**
COLORADO SPRINGS UTILITIES
CDPS PERMIT NUMBER CO-0026735

The Colorado Department of Public Health and Environment ("CDPHE"), through the Water Quality Control Division ("Division"), issues this Amendment Number Two to the December 11, 2003 Compliance Order on Consent, Number: MC-031211-1, (*See attached copy marked as "Attachment A" for reference.)* which was executed between the Department and the City of Colorado Springs ("Colorado Springs"), on behalf of its enterprise, Colorado Springs Utilities (the "Utilities"). The Compliance Order on Consent became effective and a final agency action on February 3, 2004. This amendment is issued pursuant to the Division's authority under the Colorado Water Quality Control Act, sections 25-8-101 to 703, C.R.S. ("CWQCA"), and with the express consent of Colorado Springs and the Utilities. The Division, Colorado Springs and the Utilities may be referred to collectively as "the Parties."

STATEMENT OF PURPOSE

The mutual objectives of the Parties in amending Compliance Order on Consent Number: MC-031211-1 are:

1. To resolve all violations of the CWQCA based on the Utilities' reported sanitary sewer overflows ("SSOs"), listed in paragraph 3 below, that have occurred between July 5, 2006 and November 22, 2006.

2. To expeditiously resolve violations of the CWQCA without unilateral enforcement or litigation expenditures by the Parties.

Exhibit A

DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

3. The Utilities has reported the following discharges; either as spills or upsets, to the Division from July 5, 2006 through November 22, 2006. The reports are public records under the Colorado Public (Open) Records Act (see C.R.S. Title 24, Article 72, Part 2) and are available for inspection and copying from the Division and the Utilities.

Date of Event	Location	Cause of Discharge/Release	Quantity Discharged/Released (Gallons)	Receiving Stream	Nature of Release, As Reported
22-Nov-06	Woods Avenue and Jackson Street	Grease and rag blockage	28 (Wastewater)	Storm Drain, Monument Creek	Spill
18-Nov-06	544 Superior Street	Roots and rags plugged an 8-inch main.	113 (Wastewater)	Storm Drain, Fountain Creek	Upset
7-Nov-06	315 N. Foot Avenue	Blockage in 8" main	1,295 (Wastewater)	Storm Drain, Shooks Run, Fountain Creek	Upset
6-Nov-06	1400 E. Boulder Street – Memorial Hospital	Blockage in 8" main	23,800 (Wastewater)	Storm Drain, Shooks Run, Fountain Creek	Upset
4-Nov-06	5220 Farthing Road	Inflatable plug released and dislodged in downstream manhole.	1,675 (Wastewater)	Unnamed Tributary, Fountain Creek	Upset
30-Oct-06	2102 E. Bijou Street	Grease blockage	370 (Wastewater)	Shooks Run, Fountain Creek	Upset
9-Oct-06	Sand Creek Lift Station	Corrosion of valve fitting on the surge tank for the force main.	10,540 (Wastewater)	Fountain Creek	Spill
15-Sep-06	Constellation Drive and Cresta Road	Partial blockage of 8" line due to asphalt chunks and asphalt millings	2,770 (Wastewater)	Dry Drainage / Groundwater	Spill
25-Aug-06	2804 W. Bijou	Blockage of 8" line caused by rocks, debris and roots	785 (Wastewater)	Storm Drain, Fountain Creek	Spill
10-Aug-06	2606 Wheeler Avenue	Blockage due to rootballs off lateral	22 (Wastewater)	Storm Drain, Fountain Creek	Upset

Exhibit A

Date of Event	Location	Cause of Discharge/Release	Quantity Discharged/Released (Gallons)	Receiving Stream	Nature of Release, As Reported
4-Aug-06	Austin Bluffs and Brenner-floodway	Corrosion	250 (Wastewater)	Templeton Gap Floodway, Monument Creek	Spill
24-Jul-06	South of Security Service Field (Sky Sox Stadium)	Subcontractor hit 8" WW line while excavating (co-mingled with ground water)	1,045 (Wastewater)	Groundwater	Spill
5-Jul-06	Fountain Blvd @ Shooks Run Park	Manhole surcharged due to pump not re-primed in time for flow	3,590 (Wastewater)	Shooks Run, Fountain Creek	Spill

4. Pursuant to §25-8-501(1), C.R.S., 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. Part I, section A(4) of CDPS permit number CO-0026735 provides in part: "The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee as necessary to achieve compliance with the conditions of this permit. This provision requires the operation of back-up or auxiliary facilities or similar systems when installed by the permittee only when necessary to achieve compliance with the conditions of the permit."

6. Part II, section A(6) of CDPS permit number CO-0026735 states, "Any discharge to the waters of the State from a point source other than specifically authorized herein is prohibited."

7. The discharges, identified in paragraph 3 above, were each discharges from a point source, as defined by section 25-8-103(14), C.R.S., to "State Waters," as defined by section 25-8-103(19), C.R.S.

8. Wastewater contains, among other substances, biochemical oxygen demand ("BOD"), total suspended solids ("TSS"), and fecal coliform bacteria, which are "pollutants" within the meaning of section 25-8-102(15), C.R.S.

9. Each of the Utilities' sanitary sewer overflows identified in paragraph 3 above, constitutes a "Discharge of Pollutants" as defined by section 25-8-103(3), C.R.S.

10. The Utilities complied with all noncompliance notification procedures, verbal and written for each unauthorized discharge incident described in paragraph 3 above, as required under Part I, section D(4)(b)(ii) of CDPS permit number CO-0026735 with the exception of the incident that occurred on November 4, 2006, where notification was made on November 5, 2006.

11. The Utilities performed proper site clean-up and implemented appropriate remedies at the site of each incident described in paragraph 3 above. The clean-up procedures and remedies were documented in the written noncompliance reports, which are available for review as provided in paragraph 3 above.

12. The Utilities does not have any permits authorizing the discharges (sanitary sewer overflows) identified in paragraph 3 above into state waters.

VIOLATIONS

13. Each of the Utilities' discharges (sanitary sewer overflows) identified in paragraph 3 above constitute an unauthorized discharge of pollutants from a point source into state waters in violation of section 25-8-501(1), C.R.S. and in violation of CDPS permit number CO-0026735 Part I, section A(4) and Part II, section A(6).

CIVIL PENALTY

Based upon the application of the Division's Civil Penalty Policy (May 1, 1993), and consistent with Departmental policies for violations of the Act, Utilities shall pay sixty five thousand five hundred forty two dollars ($65,542.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the sixty five thousand five hundred forty two dollar ($65,542.00) civil penalty for the above violation(s) and Utilities agrees to make the payment within thirty (30) calendar days of the issuance of a Penalty Order by the Executive Director or his designee. 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:

Mr. Scott Klarich
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

NOTICE OF EFFECTIVE DATE OF AMENDMENT NUMBER TWO

14. This amendment 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 amendment is not imposed, or an alternate penalty is imposed, this amendment becomes null and void.

Exhibit A

SCOPE OF AMENDMENT NUMBER TWO

15. The scope of this amendment to Compliance Order on Consent, Number MC-031211-1 is expressly limited to the matters specifically identified herein. All other terms, conditions or requirements of Compliance Order on Consent, Number MC-031211-1 and its Amendment Number One shall remain unchanged and in effect, specifically including, but not limited to, all provisions of that Compliance Order on Consent, Number MC-031211-1 with respect to Notices and Submittals, Force Majeure, Dispute Resolution, and Releases and Reservations of Rights, all of which specifically apply to this amendment and the violations and the civil penalty herein.

16. This amendment is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy", which includes a thirty-day public comment period. The Division, Colorado Springs and the Utilities each reserve the right to withdraw consent to this amendment if comments received during the thirty-day period result in any proposed modification to the amendment.

AUTHORIZATION TO SIGN

17. The undersigned warrant that they are authorized to bind legally their respective principals to this amendment to Compliance Order on Consent, Number MC-031211-1. This amendment to Compliance Order on Consent, Number MC-031211-1 may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same amendment. In the event that a party does not sign this amendment to Compliance Order on Consent, Number MC-031211-1 within twenty (20) calendar days of the other party's signature, this amendment becomes null and void.

FOR THE CITY OF COLORADO SPRINGS / COLORADO SPRINGS UTILITIES

Date: 12/4/06

Jerry A. Forte, Chief Executive Officer
Colorado Springs Utilities

Approved as to Form:

Date: 12/04/06

John A. Fredell
City Attorney's Office – Utilities Division

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, WATER QUALITY CONTROL DIVISION:

Lori M Gerzina

Date: 12/4/06

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