

# STATE OF COLORADO

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Executive Director and Chief Medical Officer

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

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Colorado Department  
of Public Health  
and Environment

April 27, 2011

Mr. Thomas Horsting, Registered Agent  
AP Mountain States, LLC  
797 Ventura Street  
Aurora, Colorado 80011

**RE: Compliance Order on Consent, Number: SC-110427-1**

Dear Mr. Horsting:

Enclosed for AP Mountain States, LLC's records you will find your copy, with original signatures, of the recently executed Compliance Order on Consent. Please remember that this agreement is subject to a thirty-day public comment period (paragraph 35). Upon initiation, if the Division receives any comments during this period we will contact your office to discuss. Also, please be advised that the first page of the Order was changed in order to place the assigned Order Number on the final document.

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

Sincerely,

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

*Enclosure(s)*

cc: Alamosa County Public Health Department  
Fred Rippy, National Director of H&S/Environmental, AP Mountain States, LLC, 797  
Ventura Street, Aurora, CO 80011

cc: Natasha Davis, EPA Region VIII

Andrew Rice, Engineering Section, CDPHE  
Dick Parachini, Watershed Program, CDPHE  
Gary Beers, Permits Unit, CDPHE  
Nathan Moore, Permits Section, CDPHE  
Michael Beck, OPA  
Michael Harris, Case Person  
Tania Watson, Compliance Assurance, CDPHE



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

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**COMPLIANCE ORDER ON CONSENT**

**NUMBER: SC-110427-1**

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**IN THE MATTER OF:      AP MOUNTAIN STATES, LLC**  
**D/B/A ADOLFSON & PETERSON CONSTRUCTION**  
**CDPS PERMIT NO. COR-030000**  
**CERTIFICATION NO. COR-03F288**  
**ALAMOSA COUNTY, COLORADO**

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

**STATEMENT OF PURPOSE**

1. The mutual objectives of the Parties in entering into this Consent Order are to resolve, without litigation, the civil penalties associated with alleged violations cited herein and in the Notice of Violation / Cease and Desist Order, Number: SO-101210-1 (the “NOV/CDO”), that the Division issued to AP Mountain States on December 10, 2010.

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

2. Based upon the Division’s investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602 and 605, C.R.S., the Division has made the following determinations regarding AP Mountain States and AP Mountain States’ compliance with the Act and and/or a stormwater permit.
3. At all times relevant to the alleged violations identified herein, AP Mountain States was a Colorado limited liability company in good standing and registered to conduct business in the State of Colorado.
4. AP Mountain States is a “person” as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).

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5. On April 10, 2006, and April 23, 2007, AP Mountain States registered the trade name "Adolfson & Peterson Construction" with the Colorado Secretary of State.
6. On July 10, 2009, AP Mountain States initiated construction activities at or near 208 Edgemont Boulevard in the City of Alamosa, Alamosa County, Colorado (the "Project").
7. On July 1, 2009, the Division received an application from Adolfson & Peterson Construction for Project coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit").
8. On July 7, 2009, the Division provided Adolfson & Peterson Construction Certification Number COR-03F288 authorizing AP Mountain States to discharge stormwater from the construction activities associated with the Project to the Rio Grande River under the terms and conditions of the Permit. Certification Number COR-03F288 became effective July 7, 2009 and remained in effect it was terminated on January 3, 2011 upon receiving certification from AP Mountain States that the Project had reached final stabilization.
9. The Rio Grande River is "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (102).
10. Pursuant to 5 CCR 1002-61, §61.8, AP Mountain States must comply with all the terms and conditions of the Permit, and violations of such terms and conditions as specified in the Permit may be subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.
11. On September 21, 2010, a representative from the Division (the "Inspector") conducted an on-site inspection of the Project pursuant to the Division's authority under §25-8-306, C.R.S., to determine AP Mountain States' compliance with the Water Quality Control Act and the Permit. During the inspection, the Inspector interviewed Project representatives, reviewed the Project's stormwater management system records, and performed a physical inspection of the Project.

**Deficient and/or Incomplete Stormwater Management Plan**

12. Pursuant to Part I. B. of the Permit, AP Mountain States was required to prepare and maintain a Stormwater Management Plan ("SWMP") in accordance with good engineering, hydrologic, and pollution control practices. The SWMP is required to identify all potential sources of pollution, which may be reasonably expected to affect the quality of stormwater discharges associated with construction activity from the Project. In addition, the plan is required to describe and ensure the implementation of Best Management Practices ("BMPs") at the Project, which will be used to reduce the pollutants in stormwater discharges associated with construction activity.
13. Pursuant to Part I. C. of the Permit, the Project's SWMP shall include, at a minimum, the following items:
  - a. Site Description – The SWMP shall clearly describe the construction activity, including:
    - i. The nature of the construction activity.
    - ii. The proposed sequence for major activities.

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- iii. Estimates of the total area of the site and the area of the site that is expected to undergo clearing, excavation or grading.
  - iv. A summary of any existing data used in the development of the construction plans or SWMP that describe the soil or existing potential for soil erosion.
  - v. A description of the existing vegetation at the site and an estimate of the percent vegetative ground cover.
  - vi. The location and description of all potential pollution sources, including ground surface disturbance, vehicle fueling, storage of fertilizers or chemicals, etc.
  - vii. The location and description of any allowable sources of non-stormwater discharge, such as springs, landscape irrigation return flow, construction dewatering, and concrete washout.
  - viii. The name of the receiving water(s) and the size, type, and location of any outfall or, if the discharge is to a municipal separate storm sewer, the name of that system, the location of the storm sewer discharge, and the ultimate receiving water(s).
- b. Site Map – The SWMP shall include a legible site map(s), showing the entire site, identifying:
- i. Construction site boundaries.
  - ii. All areas of ground surface disturbance.
  - iii. Areas of cut and fill.
  - iv. Areas used for storage of building materials, equipment, soil, or waste.
  - v. Locations of dedicated asphalt or concrete batch plants.
  - vi. Locations of all structural BMPs
  - vii. Locations of all non-structural BMPs.
  - viii. Locations of springs, streams, wetlands and other surface waters.
- c. Stormwater Management Controls - The SWMP must include a description of all stormwater management controls that will be implemented as part of the construction activity to control pollutants in stormwater discharges, including:
- i. SWMP Administrator – The SWMP shall identify a specific individual(s), position or title that is responsible for developing, implementing, maintaining, and revising the SWMP.
  - ii. Identification of Potential Pollutant Sources – The SWMP shall identify and describe those sources determined to have the potential to contribute pollutants to stormwater discharges.
  - iii. Best Management Practices (BMPs) for Stormwater Pollution Prevention – The SWMP shall identify and describe appropriate BMPs that will be implemented at the facility to reduce the potential of pollution sources to contribute pollutants to stormwater discharges. The SWMP shall clearly describe the installation and implementation specifications for each BMP identified in the SWMP.
- (1) Structural Practices for Erosion and Sediment Control – The SWMP shall clearly describe and locate all structural practices implemented at the site to minimize erosion and sediment transport. Practices may include, but are not limited to: straw bales, wattles/sediment control logs, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, pipe slope drains, inlet protection, outlet protection, gabions, and temporary or permanent sediment basins.

- (2) **Non-Structural Practices for Erosion and Sediment Control** – The SWMP shall clearly describe and locate all non-structural practices implemented at the site to minimize erosion and sediment transport. Description must include interim and permanent stabilization practices, and site-specific scheduling for implementation of the practices. Non-structural practices may include, but are not limited to: temporary vegetation, permanent vegetation, mulching, geotextiles, sod stabilization, slope roughening, vegetative buffer strips, protection of trees, and preservation of mature vegetation.
  - (3) **Phased BMP Implementation** – The SWMP shall clearly describe the relationship between the phases of construction and the implementation and maintenance of BMPs. The SWMP must identify the stormwater management controls to be implemented during the project phases, which can include, but are not limited to, clearing and grubbing, road construction, utility and infrastructure installation, vertical construction, final grading and final stabilization.
  - (4) **Materials Handling and Spill Prevention** – The SWMP shall clearly describe and locate all practices implemented at the site to minimize impacts from procedures or significant materials that could contribute pollutants to runoff.
  - (5) **Dedicated Concrete or Asphalt Batch Plants** – The SWMP shall clearly describe and locate BMPs to control stormwater pollution from dedicated concrete batch plants or dedicated asphalt batch plants.
  - (6) **Vehicle Tracking Control** – The SWMP shall clearly describe and locate all practices implemented at the site to control potential sediment discharges from vehicle tracking.
  - (7) **Waste Management and Disposal, Including Concrete Washout** – The SWMP shall clearly describe and locate the practices implemented at the site to control stormwater pollution from all construction site wastes, including concrete washout activities.
  - (8) **Groundwater and Stormwater Dewatering** – The SWMP shall clearly describe and locate the practices implemented at the site to control stormwater pollution from the dewatering of groundwater or stormwater from excavations, wells, etc.
- d. **Final Stabilization and Long-Term Stormwater Management** – The SWMP shall clearly describe the practices used to achieve final stabilization of all disturbed areas at the site, and any planned practices to control pollutants in stormwater discharges that will occur after construction operations have been completed at the site.
  - e. **Inspection and Maintenance** – The SWMP shall clearly describe the inspection and maintenance procedures implemented at the site to maintain all erosion and sediment control practices and other protective practices in good and effective operating condition.
14. During the September 21, 2010 inspection, the Inspector reviewed the Project's onsite SWMP and identified the following deficiencies, as described in paragraphs 14(a-d) below:
- a. The onsite SWMP did not include a description of the construction activity, including the items required by Part I.C.1.(a) through I.C.1.(h) of the Permit.

- b. The onsite SWMP did not include a description of stormwater management controls, including the items required by Part I.C.3.(a) through I.C.3.(c) of the Permit.
  - c. The onsite SWMP did not describe the practices used to achieve final stabilization.
  - d. The onsite SWMP did not describe inspection and maintenance procedures to maintain all erosion and sediment control practices and other protective practices in good and effective operating condition.
15. On December 27, 2010, AP Mountain States provided the Division with a copy of a SWMP that AP Mountain States represented as the complete SWMP that had been developed for the Project. The Division reviewed the SWMP and identified the following deficiencies, as described in paragraphs 15(a-e) below:
- a. The SWMP did not identify all areas used for the storage of building materials, soil, or waste.
  - b. The SWMP did not identify the potential pollutants associated with the northeast storage area or prescribe any BMPs for those pollutants.
  - c. The SWMP did not identify the location of concrete or asphalt batch plants.
  - d. The SWMP did not provide details on the location and practices that would be implemented to control pollution from construction site wastes and concrete washout activities.
  - e. The SWMP did not identify the specific practices that would be used to achieve final stabilization.
16. The Division has determined that AP Mountain States failed to prepare and maintain a complete and accurate SWMP for the Project.
17. AP Mountain States' failure to prepare and maintain a complete and accurate SWMP for the Project constitutes violation(s) of Part I. B. and Part I. C. of the Permit.

**Failure to Provide Information**

- 18. Pursuant to Part II. B. 2. of the Permit, AP Mountain States was required to furnish the Division with any information which the Division may request to determine compliance with the Permit, including copies of records required to be kept by the Permit.
- 19. Pursuant to Part I. B., Part I. D. 5., Part I. D. 6. b. (2), and Part I. F. 2. of the Permit, AP Mountain States was required to prepare and retain a SWMP and a record of inspections for the Project.
- 20. Prior to the September 21, 2010 inspection, and as noted in the Division's October 21, 2010 inspection report, the Inspector requested that AP Mountain States provide the Division with a copy of the SWMP and inspection records for the Project.

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21. The Division records establish that AP Mountain States failed to provide the Division with a copy of the SWMP and inspection records for the Project.
22. AP Mountain States' failure to furnish the Division with copies of records required to be kept by the Permit constitutes violation(s) of Part II. B. 2. of the Permit.

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

23. Pursuant to Part I. C. 3. (c) of the Permit, AP Mountain States was required to implement BMPs to reduce the potential of pollution sources from contributing pollutants to stormwater discharges, including minimizing erosion and sediment transport from the Project. The Permit specifies that structural site management practices may include, but are not limited to: straw bales, wattles/sediment control logs, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, pipe slope drains, inlet protection, outlet protection, gabions, and temporary or permanent sediment basins. The Permit specifies that non-structural site management practices may include, but are not limited to: temporary vegetation, permanent vegetation, mulching, geotextiles, sod stabilization, slope roughening, vegetative buffer strips, protection of trees and preservation of mature vegetation.
24. Pursuant to Part I. D. 2. of the Permit, AP Mountain States was required to select, design, install, implement and maintain appropriate BMPs for all potential pollutant sources at the Project, following good engineering, hydrologic and pollution control practices.
25. Pursuant to Part I. D. 1. (c) of the Permit, storage of petroleum products and other chemicals shall have secondary containment or equivalent adequate protection.
26. Pursuant to Part I. D. 1. (a) of the Permit, stormwater discharges from construction activities shall not cause, have the reasonable potential to cause, or measurably contribute to an exceedance of any water quality standard.
27. During the September 21, 2010 inspection, the Inspector identified the following deficiencies related to BMP installation and maintenance at the Project, as described in Paragraphs 27(a-d) below:
  - a. The Inspector observed a concrete mixing area at the north end of the Project. No BMPs were implemented to prevent stormwater from contacting and mobilizing pollutants in the area, including concrete waste that was observed on the ground, or to prevent pollutants from discharging to the storm sewer inlets at the north end of the site and ultimately into the Rio Grande River.
  - b. The Inspector observed an asphalt mixing area at the Project, which was located immediately north of the housing complex. No BMPs were implemented to prevent stormwater from contacting and mobilizing pollutants in the area, or to prevent pollutants from discharging to the storm sewer inlets at the north end of the site and ultimately into the Rio Grande River.

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- c. The Inspector observed a storage area at the north end of the Project that contained fuel cans and chemicals. No secondary containment or equivalent BMPs were in place to contain spills or to prevent pollutants from discharging to the storm sewer inlets on Stadium Drive and ultimately into the Rio Grande River.
  - d. The Inspector observed a storage area at the northeast end of the Project that contained disturbed soils and a storage yard for equipment, scrap materials, and soil stockpiles. At the time of the inspection, AP Mountain States stated that it was actively utilizing this area to store equipment, scrap materials, and soil stockpiles. No BMPs were implemented to stabilize the disturbed soils or to prevent sediment and pollutant transport from the area to the storm sewer inlets on Stadium Drive and ultimately into the Rio Grande River. As a result, accumulated soil and sediment was observed in the storm sewer inlets located on Stadium Drive.
28. The Division has determined that AP Mountain States failed to implement and/or maintain functional BMPs for all potential pollutant sources at the Project, following good engineering, hydrologic, and pollution control practices.
29. AP Mountain States' failure to implement and/or maintain functional BMPs to protect stormwater quality during construction activities at the Project constitutes violations Part I. C. 3. (c), Part I. D. 2. , Part I. D. 1. (c), and Part I. D. 1. (a) of the Permit..

### **ORDER AND AGREEMENT**

30. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605, C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein and in the NOV/CDO, the Division orders AP Mountain States to comply with all provisions of this Consent Order, including all requirements set forth below.
31. AP Mountain States agrees to the terms and conditions of this Consent Order. AP Mountain States agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. AP Mountain States also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by AP Mountain States against the Division:
- a. The issuance of this Consent Order;
  - b. The factual and legal determinations made by the Division herein; and
  - c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.
32. Notwithstanding the above, AP Mountain States does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by AP Mountain States pursuant to this Consent Order shall not constitute evidence of fault and liability by AP Mountain States with respect to the conditions of the Project.

**CIVIL PENALTY**

33. Based upon the application of the Division's Stormwater Civil Penalty Policy (January 25, 2007), and consistent with Departmental policies for violations of the Act, AP Mountain States shall pay Twenty Four Thousand Dollars (\$24,000.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the Twenty Four Thousand Dollar (\$24,000.00) civil penalty for the above violation(s) and AP Mountain States 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:

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

**SCOPE AND EFFECT OF CONSENT ORDER**

34. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations alleged herein and in the NOV/CDO.
35. This Consent Order is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and AP Mountain States each reserve the right to withdraw consent to this Consent Order if comments received during the thirty-day period result in any proposed modification to the Consent Order.
36. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or his designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by AP Mountain States, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.
37. Notwithstanding paragraph 32 above, the violations described in this Consent Order will constitute part of AP Mountain States' compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against AP Mountain States. AP Mountain States agrees not to challenge the use of the cited violations for any such purpose.

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

38. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to civil penalties for the specific instances of violations cited herein and in the NOV/CDO. The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.
39. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
40. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.
41. Upon the effective date of this Consent Order, AP Mountain States releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act specifically addressed herein.
42. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

**NOTICES**

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

For the Division:

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

For AP Mountain States:

Fred Rippy, National Director of H&S/Environmental  
AP Mountain States, LLC  
797 Ventura Street  
Aurora, CO 80011  
Telephone: 303.363.7101  
E-mail: frippy@a-p.com

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**MODIFICATIONS**

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

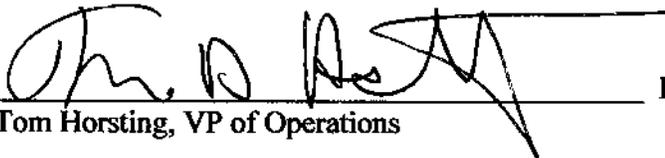
**NOTICE OF EFFECTIVE DATE**

45. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or his designee imposes the civil penalty following closure of the public comment period referenced in paragraph 35. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

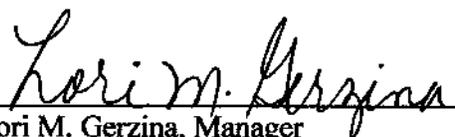
**BINDING EFFECT AND AUTHORIZATION TO SIGN**

46. This Consent Order is binding upon AP Mountain States and its corporate subsidiaries or parents, their officers, directors, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

**FOR AP MOUNTAIN STATES, LLC:**

  
Date: 4-20-2011  
Tom Horsting, VP of Operations

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

  
Date: 04-27-2011  
Lori M. Gerzina, Manager  
Compliance Assurance Section  
WATER QUALITY CONTROL DIVISION