# 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

July 11, 2012

Ms. Ann E. Finn
Prairie Center Metropolitan District No. 9
141 Union Boulevard, Suite 150
Lakewood, Colorado 80228-1898

***Certified Mail Number: 7012 1010 0002 1774 3217***

**RE: Order for Civil Penalty, Number: IP-120711-1**

Dear Ms. Finn:

Prairie Center Metropolitan District No. 9 is hereby served with the enclosed Order for Civil Penalty ("Penalty Order"). This Penalty Order is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by § 25-8-608(2) of the *Colorado Revised Statutes*. Payment of the imposed civil penalty should be made in accordance with the methods referenced in the Penalty Order and Compliance Order on Consent Number: IC-120514-1.

If you have any questions regarding the Penalty Order or the payment method, please do not hesitate to contact Kelly Morgan of this office at (303) 692-3634 or by electronic mail at kelly.morgan@state.co.us.

Sincerely,

Russell Zigler

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

*Enclosure(s)*

cc: Enforcement File
Karen Blumenstein, 600 Grant Street, Suite 610, Denver, Colorado 80203

ec: Tom Eisenman, Park County Environmental Health Department (teisenman@parkco.us)
Natasha Davis, EPA Region VIII
Jon Erickson, Engineering Section, CDPHE
Janet Kieler, Permits Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Kelly Morgan, Case Lead, CDPHE
Tania Watson, Compliance Assurance, CDPHE
Annette M. Quill, Colorado Attorney General's Office
Lee H. Johnson, Carlson, Hammond & Paddock, L.L.C.

**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

**DIVISION OF ADMINISTRATION**

**WATER QUALITY CONTROL DIVISION**

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**ORDER FOR CIVIL PENALTY** **NUMBER: IP-120711-1**

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**IN THE MATTER OF:** **PRAIRIE CENTER METROPOLITAN DISCTRICT NO. 9**
**LONDON MINE EXTENSION TUNNEL**
**CDPS PERMIT NO. CO-0045209**
**PARK COUNTY, COLORADO**

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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 and Data Management Section, and pursuant to §25-8-608 C.R.S, I hereby impose a civil penalty in the amount of Sixty Eight Thousand and Six Hundred Seventy Three Dollars ($68,673.00) against Prairie Center Metropolitan District No. 9 for the violations cited in the May 14, 2012 Compliance Order on Consent (Number: IC-120514-1). A copy of the Compliance Order on Consent is attached hereto as Exhibit A and is incorporated herein by reference. The civil penalty shall be paid within thirty (30) calendar days of the date of this Order for Civil Penalty as set forth in the Compliance Order on Consent.

*"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:*

*Kelly Morgan*
*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"*

Dated this 11th day of July 2012.

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

EXHIBIT A

# STATE OF COLORADO

John W. Hickenlooper, Governor
Christopher E. Urbina, MD, MPH
Executive Director and Chief Medical Officer

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Colorado Department
of Public Health
and Environment

May 14, 2012

Ms. Ann E. Finn
Prairie Center Metropolitan District No. 9
141 Union Boulevard, Suite 150
Lakewood, Colorado 80228-1898

**RE: Compliance Order on Consent, Number: IC-120514-1**

Dear Ms. Finn:

Enclosed for Prairie Center Metropolitan District No. 9'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 33). 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 Kelly Morgan at (303) 692-3634 or by electronic mail at kelly.morgan@state.co.us.

Sincerely,

Russell Zigler

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

cc: Enforcement File
Karen Blumenstein, 600 Grant Street, Suite 610, Denver, Colorado 80203

ec: Park County Environmental Health Department
Natasha Davis, EPA Region VIII
Jon Erickson, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Janet Kieler, Permits Section, CDPHE
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Kelly Morgan, Case Person, CDPHE
Tania Watson, Compliance Assurance, CDPHE
Annette M. Quill, Colorado Attorney General's Office
Lee H. Johnson, Carlson, Hammond & Paddock, L.L.C.

**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

**DIVISION OF ADMINISTRATION**

**WATER QUALITY CONTROL DIVISION**

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**COMPLIANCE ORDER ON CONSENT** **NUMBER: IC-120514-1**

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**IN THE MATTER OF:** **PRAIRIE CENTER METROPOLITAN DISTRICT NO. 9**
**LONDON MINE EXTENSION TUNNEL**
**CDPS PERMIT NUMBER: CO-0045209**
**PARK COUNTY, COLORADO**

The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under §§25-8-602 and 605, C.R.S. of the Colorado Water Quality Control Act ("the Act") §§25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of Prairie Center Metropolitan District No. 9 ("Prairie Center"). The Division and Prairie Center 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:

    a. To establish compliance requirements and criteria for the continued operation of the London Mine Extension Tunnel (the "Extension Tunnel") wastewater treatment works, located approximately twelve (12) miles northwest of Fairplay, Park County, Colorado. (the "Facility"); and

    b. To resolve, without litigation, the civil penalties associated with alleged violations cited herein and in the Notice of Violation / Cease and Desist Order (Number: IO-090909-2) that the Division issued to Prairie Center on September 9, 2009; and

    c. To establish an enforceable compliance schedule for Prairie Center to achieve compliance with its Colorado Discharge Permit System permit, Permit Number: CO-0045209 (the "Permit"); and

    d. To establish stipulated penalties for effluent violations that may occur subsequent to Prairie Center's signature to this Consent Order and prior to completion of the compliance schedule specified herein (September 30, 2013).

## 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 Prairie Center, the Facility, and Prairie Center's compliance with the Act and its implementing permit regulations and the Permit.

3. At all times relevant to the alleged violations identified herein, Prairie Center Metropolitan District No. 1 and Prairie Center Metropolitan District No. 9 ("Prairie Center") was a "Special District" formed in Adams County pursuant to the Colorado Special District Act, §§32-1-101 to 32-19-115 C.R.S.

4. Prairie Center 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).

5. In accordance with the terms and conditions of the stipulation executed in 2004 between the Parties concerning the classifications and standards for the Upper South Platte River Basin and related discharge permits and wastewater treatment facilities (the "2004 Stipulation"), Prairie Center operates the Extension Tunnel wastewater treatment works located on property owned by London Mine, L.L.C., approximately twelve (12) miles northwest of Fairplay, Park County, Colorado (the "Facility"). Prairie Center is neither the owner nor the operator of the London Mine or the Extension Tunnel itself and has no ownership or leaseholder interests in the mineral rights or mineral interests associated with the London Mine.

6. The Facility is adjacent to the Extension Tunnel which is part of the London Mine itself. The London Mine is an underground gold mine which has ceased operation. Historically, the principal ores at this mine included gold and a small amount of silver. The contributing wastewater sources at the Facility include acid mine drainage from the Extension Tunnel of the London Mine. The Facility's wastewater treatment process is comprised of four main unit processes: a system inside the Extension Tunnel adit that collects raw water from the Extension Tunnel; chemical precipitation; sedimentation; and effluent pH control. The Extension Tunnel adit includes a partial bulkhead constructed to impound Extension Tunnel flows and has a relief valve at the bottom and a collection pipe two feet above the floor of the mine. The relief valve regulates influent flow to the downstream processes and flushes sediments that accumulate behind the partial bulkhead into the settling pond outside of the adit. Water flows out of the Extension Tunnel into a flash tank where lime is added to the water by a rotary valve. The lime/water mixture then flows through a static mixer into a corrugated plastic line into the settling pond where residual lime and precipitated metals settle out. Overflow from the settling pond discharges to No Name Creek through a 2-inch Parshall flume equipped with an acid feed pump that lowers effluent pH prior to discharging.

7. The Facility is the subject of the Permit. The Permit became effective on February 1, 2006 and expired on January 31, 2011 and has subsequently been administratively extended, pending permit reissuance. The Permit was issued to and is held by Prairie Center pursuant to the terms and conditions of the 2004 Stipulation.

8. The Permit authorizes Prairie Center to discharge treated wastewater from the Facility through Outfall 001A and MON 1, which are identified as the discharge point from the final sedimentation pond prior to mixing with No Name Creek. MON1is located at the same physical location as outfall 001A and is a database distinction assigned to outfall 001A for monitoring only effluent parameters.

9. No Name Creek 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, Prairie Center 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. Prairie Center holds the Permit pursuant to the terms and conditions set forth in the 2004 Stipulation.

## Failure to Comply with Permit Effluent Limitations

11. Pursuant to Part I.A.1. of the Permit, Prairie Center's permitted discharge shall not exceed the effluent limitations specified below:

| Outfall 001A | | | |
|---|---|---|---|
| **Effluent Parameter** | **Discharge Limitations** | | |
| | 30-Day Average | 7-Day Average | Daily Maximum |
| Flow, MGD | 0.202 | 0.202 | N/A |
| Total Suspended Solids, mg/l | 30 | 45 | N/A |
| pH, s.u. (minimum-maximum) | N/A | N/A | 6.5-9.0 |
| Oil and Grease, mg/l | N/A | N/A | 10 |
| Zinc (Potentially Dissolved), µg/l<br>Through 2/28/2007<br>Beginning 3/1/2007 | <br>5,000<br>500 | N/A | N/A |
| Cadmium (Potentially Dissolved), µg/l<br>Through 2/28/2007<br>Beginning 3/01/2007 | <br>4<br>3.2 | <br>N/A<br>N/A | <br>N/A<br>N/A |
| Whole Effluent Toxicity, Chronic<br>Through 2/28/2007<br>Beginning 3/01/2007 | <br>N/A<br>N/A | <br>N/A<br>N/A | <br>Report<br>Statistical Difference |

12. Pursuant to Part I.B.1 of the Permit, Prairie Center is required to monitor defined effluent parameters at specified frequencies to provide an indication of compliance or non-compliance with the effluent limitations identified in the Permit.

13. Pursuant to Part I.E.1 of the Permit, Prairie Center is required to summarize and report the analytical results of its effluent monitoring to the Division via monthly discharge monitoring reports ("DMRs").

Each discharge monitoring report is to include a certification by Prairie Center that the information provided therein is true, accurate and complete to the knowledge and belief of Prairie Center.

14. Prairie Center's DMRs submitted to the Division include, among other information and data, the following effluent concentration summary data for total suspended solids, pH, potentially dissolved cadmium, and potentially dissolved zinc, which exceeded the effluent limitations imposed by Part I.A.1. of the Permit as specified below:

| Prairie Center Metropolitan District No. 9<br>EFFLUENT SELF-MONITORING DATA | | | |
|---|---|---|---|
| **DISCHARGE MONITORING REPORTING PERIOD** | **OUTFALL NUMBER** | **SAMPLE MEASUREMENT** | **SAMPLE MEASUREMENT** |
| **TOTAL SUSPENDED SOLIDS** | | 7-DAY AVG. LIMIT = 45 mg/l | 30-DAY AVG. LIMIT = 30 mg/l |
| June 1-30, 2006 | **001A** | -- | **36 mg/l** |
| July 1-31, 2008 | **001A** | **190 mg/l** | **106 mg/l** |
| September 1-30, 2008 | **001A** | **50 mg/l** | **36.5 mg/l** |
| June 1-30, 2009 | **001A** | -- | **32 mg/l** |
| September 1-30, 2009 | **001A** | **140 mg/l** | **140 mg/l** |
| October 1-31, 2009 | **001A** | **130 mg/l** | **130 mg/l** |
| November 1-30, 2009 | **001A** | **54 mg/l** | **54 mg/l** |
| December 1-31, 2009 | **001A** | **100 mg/l** | **100 mg/l** |
| **pH** | | MINIMUM LIMIT = 6.5 S.U. | MAXIMUM LIMIT = 9.0 S.U. |
| May 1-31, 2006 | **001A** | **4.0 s.u.** | **10.6 s.u.** |
| June 1-30, 2006 | **001A** | -- | **9.8 s.u.** |
| July 1-31, 2006 | **001A** | -- | **10.98 s.u.** |
| August 1-31, 2006 | **001A** | -- | **11.8 s.u.** |
| September 1-30, 2006 | **001A** | -- | **11.24 s.u.** |
| October 1-31, 2006 | **001A** | -- | **11.9 s.u.** |
| November 1-30, 2006 | **001A** | -- | **11.4 s.u** |
| March 1-31, 2007 | **001A** | -- | **10.20 s.u** |
| May 1-31, 2007 | **001A** | -- | **9.99 s.u** |
| June 30, 2007 | **001A** | -- | **9.72 s.u** |
| July 31, 2007 | **001A** | -- | **9.30 s.u** |

| Prairie Center Metropolitan District No. 9<br>EFFLUENT SELF-MONITORING DATA | | | |
|---|---|---|---|
| **DISCHARGE MONITORING REPORTING PERIOD** | **OUTFALL NUMBER** | **SAMPLE MEASUREMENT** | **SAMPLE MEASUREMENT** |
| **pH** | | MINIMUM LIMIT = 6.5 S.U. | MAXIMUM LIMIT = 9.0 S.U. |
| August 1-31, 2007 | **001A** | -- | **9.26 s.u** |
| September 1-30, 2007 | **001A** | -- | **10.51 s.u** |
| October 1-31, 2007 | **001A** | -- | **10.81 s.u** |
| November 1-30, 2007 | **001A** | -- | **10.17 s.u** |
| December 1-31, 2007 | **001A** | -- | **9.38 s.u** |
| April 1-30, 2008 | **001A** | -- | **9.33 s.u** |
| May 1-31, 2008 | **001A** | -- | **9.33 s.u** |
| July 1-31, 2008 | **001A** | -- | **11.68 s.u** |
| August 1-31, 2008 | **001A** | -- | **11.80 s.u** |
| September 1-30, 2008 | **001A** | -- | **11.10 s.u** |
| October 1-31, 2008 | **001A** | -- | **9.90 s.u** |
| November 1-30, 2008 | **001A** | -- | **11.80 s.u** |
| December 1-31, 2008 | **001A** | -- | **11.63 s.u.** |
| June 1-30, 2009 | **001A** | **3.3 s.u.** | **12.9 s.u.** |
| July 1-31, 2009 | **001A** | **3.4 s.u.** | **11.7 s.u.** |
| August 1-30, 2009 | **001A** | -- | **11.7 s.u.** |
| September 1-30, 2009 | **001A** | -- | **12 s.u.** |
| October 1-31, 2009 | **001A** | -- | **11.5 s.u.** |
| November 1-30, 2009 | **001A** | -- | **10.4 s.u.** |
| December 1-31, 2009 | **001A** | -- | **10.5 s.u.** |
| **CADMIUM (POTENTIALLY DISSOLVED)** | | -- | 30-DAY AVG. LIMIT = 4.0 µg/l Through 2/28/07 |
| February 1-28, 2006 | **001A** | -- | **190 µg/l** |
| April 1-30, 2006 | **001A** | -- | **53.6 µg/l** |
| July 1-31, 2006 | **001A** | -- | **27.25 µg/l** |
| August 1-31, 2006 | **001A** | -- | **7.6 µg/l** |
| September 1-30, 2006 | **001A** | -- | **20.6 µg/l** |

| Prairie Center Metropolitan District No. 9<br>EFFLUENT SELF-MONITORING DATA | | | |
|---|---|---|---|
| **DISCHARGE MONITORING REPORTING PERIOD** | **OUTFALL NUMBER** | **SAMPLE MEASUREMENT** | **SAMPLE MEASUREMENT** |
| **CADMIUM (POTENTIALLY DISSOLVED)** | | | 30-DAY AVG. LIMIT = 3.2 µg/l Beginning 3/1/07 |
| May 1-31, 2007 | **001A** | -- | **53.5 µg/l** |
| July 1-31, 2007 | **001A** | -- | **36.5 µg/l** |
| August 1-31, 2007 | **001A** | -- | **70.3 µg/l** |
| October 1-31, 2008 | **001A** | -- | **6.3 µg/l** |
| November 1-30, 2008 | **001A** | -- | **4.3 µg/l** |
| September 1-30, 2009 | **001A** | -- | **3.3 ug/l** |
| October 1-31, 2009 | **001A** | -- | **71 ug/l** |
| November 1-30, 2009 | **001A** | -- | **4.8 ug/l** |
| December 1-31, 2009 | **001A** | -- | **20 ug/l** |
| May 1-31, 2010 | **001A** | -- | **9.8 ug/l** |
| June 1-30, 2010 | **001A** | -- | **4.6 ug/l** |
| May 1-31, 2011 | **001A** | -- | **26.7 ug/l** |
| June 1-30, 2011 | **001A** | -- | **20 ug/l** |
| July 1-31, 2011 | **001A** | -- | **13 ug/l** |
| **ZINC (POTENTIALLY DISSOLVED)** | | | 30-DAY AVG. LIMIT = 5,000 µg/l (Through 2/28/07) |
| February 1-28, 2006 | **001A** | -- | **22,000 µg/l** |
| April 1-30, 2006 | **001A** | -- | **9,666.7 µg/l** |
| **ZINC (POTENTIALLY DISSOLVED)** | | | 30-DAY AVG. LIMIT = 500 µg/l (Beginning 3/1/07) |
| May 1-31, 2007 | **001A** | -- | **18,181 µg/l** |
| July 1-31, 2007 | **001A** | -- | **6,190 µg/l** |
| August 1-31, 2007 | **001A** | -- | **12,500 µg/l** |
| August 1-31, 2009 | **001A** | -- | **579 µg/l** |
| October 1-31, 2008 | **001A** | -- | **1,000 µg/l** |
| November 1-30, 2008 | **001A** | -- | **1,300 µg/l** |

| Prairie Center Metropolitan District No. 9<br>EFFLUENT SELF-MONITORING DATA | | | |
|---|---|---|---|
| **DISCHARGE MONITORING REPORTING PERIOD** | **OUTFALL NUMBER** | **SAMPLE MEASUREMENT** | **SAMPLE MEASUREMENT** |
| ZINC (POTENTIALLY DISSOLVED) | | | 30-DAY AVG. LIMIT = 500 µg/l (Beginning 3/1/07) |
| September 1-30, 2009 | **001A** | -- | **950 ug/l** |
| October 1-31, 2009 | **001A** | -- | **22,000 ug/l** |
| November 1-30, 2009 | **001A** | -- | **1,600 ug/l** |
| December 1-31, 2009 | **001A** | -- | **6,300 ug/l** |
| May 1-31, 2010 | **001A** | -- | **1,000 ug/l** |
| June 1-30, 2010 | **001A** | -- | **690 ug/l** |
| May 1-31, 2011 | **001A** | -- | **2,290 ug/l** |
| June 1-30, 2011 | **001A** | -- | **2,580 ug/l** |
| July 1-31, 2011 | **001A** | -- | **1,850 ug/l** |

15. Total suspended solids, pH, potentially dissolved cadmium, and potentially dissolved zinc are "pollutants" as defined by §25-8-103(15), C.R.S. or indicators thereof.

16. Division records establish that the Permit does not authorize the pollutant discharge levels identified above in paragraph 14 and Prairie Center does not have any other permits authorizing such discharges into State Waters.

17. Prairie Center's failure to comply with the Permit effluent limitations, as identified above, constitutes violations of Part I.A.1 of the Permit.

**Failure to Submit Complete DMRs by the Required Date**

18. Pursuant to Part I.E.1 of the Permit, Prairie Center is required to summarize and report the analytical results of its effluent monitoring to the Division via monthly discharge monitoring reports ("DMRs"). The Division must receive these DMRs no later that the 28th day of the month following the reporting period. Each discharge monitoring report is to include a certification by Prairie Center that the information provided therein is true, accurate and complete to the knowledge and belief of Prairie Center.

19. Division records, as provided by Prairie Center and supplemented by the DMRs, establish that Prairie Center failed to submit complete DMRs by the required date for the following monitoring periods:

| Prairie Center Metropolitan District No. 9<br>EFFLUENT SELF MONITORING DATA | | | |
|---|---|---|---|
| OUTFALL | DISCHARGE MONITORING REPORT DATE | DISCHARGE MONITORING REPORT DUE DATE | COMPLETE DISCHARGE MONITORING REPORT RECIEVED |
| 001A | October 1-31, 2006 | November 28, 2006 | June 18, 2008 |
| 001A | November 1-30, 2006 | December 28, 2006 | June 18, 2008 |
| 001A | April 1-30, 2007 | May 28, 2007 | October 27, 2009 |
| 001A | June 1-30, 2008 | July 28, 2008 | September 3, 2008 |
| 001A | December 1-31, 2008 | January 28, 2009 | October 14, 2009 |
| MON1 | November 1-30, 2006 | December 28, 2006 | June 18, 2008 |
| MON1 | June 1-30, 2008 | July 28, 2008 | September 3, 2008 |
| MON1 | December 1-31, 2008 | January 28, 2009 | October 14, 2009 |

20. Prairie Center's failure to submit complete DMRs by the required date, as identified above in paragraph 19, constitutes violations of Part I.E.1 of the Permit.

## ORDER AND AGREEMENT

21. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605, C.R.S., and in satisfaction of the alleged violations cited herein and in the Notice of Violation / Cease and Desist Order (Number: CO-090909-2), the Division orders Prairie Center to comply with all provisions of this Consent Order, including all requirements set forth below.

22. Prairie Center agrees to the terms and conditions of this Consent Order. Prairie Center 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. Prairie Center also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Prairie Center 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.

23. Notwithstanding the above, Prairie Center does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Prairie Center pursuant to this Consent Order shall not constitute evidence of fault and liability by Prairie Center with respect to the conditions of the Facility.

## COMPLIANCE REQUIREMENTS

24. Within thirty (30) calendar days of the effective date of this Consent Order, Prairie Center shall provide documentation to the Division certifying that it has retained the services of a qualified individual or entity specifically experienced in mine-related wastewater treatment to perform a detailed evaluation of the Facility's wastewater treatment system sediment pond. This evaluation shall address uncontrolled inflows to the sediment pond and shall be conducted consistent with the goal of determining improvements to the Facility's treatment system to ensure compliance with the Permit. The documentation submitted should include a copy of the written contract or agreement for such services, including a copy of the scope of services to be provided. The scope of the evaluation required by this paragraph does not in any way limit or relieve Prairie Center of its obligation to comply with the applicable effluent limits in its Permit or its responsibility to ensure that the Facility is operating in a manner which ensures compliance with such Permit limits.

25. Within three hundred sixty five (365) calendar days of the effective date of this Consent Order, Prairie Center shall develop and submit to the Division a "Facility Improvement Action Plan." This action plan shall identify specific short-term and long-term measures that will be taken by Prairie Center in order for the Facility to address uncontrolled inflows to the sediment pond with the goal of consistently producing effluent that is in compliance with the Permit, specifically including the zinc and cadmium effluent limits of the Permit. This action plan shall include, but is not limited to, the following aspects of design and construction: 1) influent and effluent monitoring/sampling schedules, 2) development of design criteria, 3) preliminary design, 4) final design, 5) construction and phasing, and 6) Permit compliance. For each short-term and long-term measure identified, Prairie Center shall also submit a time schedule for completion of each measure. The implementation time schedule submitted must identify completion of all measures and ensure Permit compliance by no later than September 30, 2013. The submitted action plan and associated timelines shall become a condition of this Order, and Prairie Center shall implement the measures and time schedule as submitted unless notified by the Division, in writing, that alternate measures and/or time schedules are appropriate. If the Division imposes alternate measures and/or time schedules, they shall also become a condition of this Order. The scope of the action plan required by this paragraph does not in any way limit or relieve Prairie Center of its obligation to comply with the applicable effluent limits in its Permit or its responsibility to ensure that the Facility is operating in a manner which ensures compliance with such Permit limits.

26. Beginning in May 2012, Prairie Center shall conduct monthly stream sampling in South Mosquito Creek for hardness, dissolved zinc and dissolved cadmium at the location downstream of the Facility's outfall known as stream monitoring location number SMC003. Monthly sampling at SMC003 shall occur on the same day as the Permit specified effluent sampling event for zinc and cadmium. Sample collection and laboratory analysis shall be conducted using U.S. Environmental Protection Agency approved methods. Prairie Center shall report the results of the monthly stream monitoring electronically to the Division within thirty (30) calendar days of receipt of the results. Prairie Center shall continue the monthly stream monitoring until closure of this Consent Order or until such time as the Division issues written notice modifying the monitoring requirement or written notice that the monitoring may cease, whichever occurs sooner, but in no event will Prairie Center's downstream monitoring requirements outlined above extend beyond September 30, 2013.

27. Beginning June 30, 2012 and every calendar quarter thereafter, until such time as this Consent Order is closed or the Division decrees so in writing, Prairie Center shall submit quarterly progress reports to the Division. At a minimum, each report shall outline activities undertaken in the previous quarter and shall specify what activities will be undertaken within the next quarter to achieve compliance with this Consent Order.

28. All documents submitted under this Consent Order shall use the same titles as stated in this Consent Order, and shall reference both the number of this Consent Order and the number of the paragraph pursuant to which the document is required. Within thirty (30) calendar days of receiving Division comments on submitted documents, Prairie Center shall revise the submitted document(s) to properly address the Division's comments and resubmit the document(s) for Division review.

## CIVIL PENALTY

29. Based upon the application of the Division's Civil Penalty Policy (May 1, 1993), and consistent with Departmental policies for violations of the Act, Prairie Center shall pay Sixty Eight Thousand and Six Hundred Seventy Three Dollars ($68,673.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the Sixty Eight Thousand and Six Hundred Seventy Three Dollars ($68,673.00) civil penalty for the above violation(s) and Prairie Center 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:

Kelly Morgan
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

## STIPULATED PENALTIES

30. Prairie Center agrees that it shall pay a stipulated penalty payment for each zinc, cadmium, and total suspended solids ("TSS") effluent violation that occurs subsequent to Prairie Center's signature to this Consent Order and prior to September 30, 2013. In the event that a TSS effluent violation occurs, the stipulated penalty will be $750.00. In the event that a zinc or cadmium effluent violation occurs during a monitoring period, the magnitude of the penalty will be based on ambient water quality conditions. Should the ambient water quality monitoring data collected pursuant to paragraph 26 establish an exceedance of the applicable Water Quality Control Commission stream standard for zinc and/or cadmium in Segment COSPUS02c during the monitoring period, the stipulated penalty for such effluent violation(s) will be increased. On the condition that the quality of the effluent from the Facility does not deteriorate from the current quality and that Prairie Center is at all times properly operating and maintaining all facilities and systems of treatment and control at the Facility, the Division and Prairie Center agree that the following stipulated penalties shall apply to zinc, cadmium, and TSS effluent violations that occur following Prairie Center's signature to this Consent Order and lasting through September 30, 2013:

| Prairie Center Metropolitan District No. 9<br>**STIPULATED PENALTY TABLE** | | |
|---|---|---|
| **PARAMETER** | **Penalty per monitoring period for effluent violation and no exceedance of stream standard** | **Penalty per monitoring period for effluent violation and an exceedance of stream standard** |
| Zinc, potentially dissolved | $750 | $1,200 |
| Cadmium, potentially dissolved | $750 | $1,200 |
| Total Suspended Solids | $750 | NA |

31. Following Prairie Center's submittal of a Discharge Monitoring Report that establishes Permit effluent violation(s) for zinc and/or cadmium and/or TSS during a monitoring period, Prairie Center agrees that it will make a stipulated penalty payment within sixty (60) calendar days of its Discharge Monitoring Report submittal. All payment of stipulated penalties shall be made in the same manner set forth in paragraph 29 above and Prairie Center shall include a cover letter outlining Prairie Center's methodology of determining the stipulated penalty amount. If the Division disagrees with Prairie Center's submitted penalty amount, the Division shall issue a written request for supplemental penalty payment and Prairie Center shall make such supplemental penalty payment within forty five (45) calendar days of the Division's written request.

## SCOPE AND EFFECT OF CONSENT ORDER

32. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the specific violations alleged herein and in the September 9, 2009 Notice of Violation / Cease and Desist Order (Number: IO-090909-2).

33. 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 Prairie Center 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.

34. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or (his or her) designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by Prairie Center, 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.

35. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order.

36. The Parties agree and acknowledge that the rights, obligations, and defenses of the 2004 Stipulation are expressively preserved under the terms and conditions of the 2004 Stipulation.

37. The Parties agree and acknowledge that this Consent Order provides no relief or resolution for Permit effluent violations that may occur after September 30, 2013.

38. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of the Act, or any subsequent violation of any requirement of this Consent Order or the Act.

39. Notwithstanding paragraph 23 above, the violations described in this Consent Order will constitute part of Prairie Center's compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against Prairie Center. Prairie Center agrees not to challenge the use of the cited violations for any such purpose.

40. This Consent Order does not relieve Prairie Center from complying with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Division makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

## LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

41. 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 the specific instances of violations cited herein and in the September 9, 2009 Notice of Violation / Cease and Desist Order (Number: IO-090909-2). 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.

42. This Consent Order does not grant any release of liability for any violations not specifically cited herein.

43. 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.

44. The Division specifically reserves its rights to pursue civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S. for Permit effluent violations that may occur after September 30, 2013.

45. Upon the effective date of this Consent Order, Prairie Center 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.

46. Prairie Center shall not seek to hold the State of Colorado or its employees, agents or representatives liable for any injuries or damages to persons or property resulting from acts or omissions of Prairie Center, or those acting for or on behalf of Prairie Center, including its officers, employees, agents,

successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. Prairie Center shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by Prairie Center in carrying out activities pursuant to this Consent Order. 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.

## SITE ACCESS AND SAMPLING

47. The Division shall be permitted to oversee any and all work being performed under this Consent Order. The Division shall be permitted access to the Facility property at any time work is being conducted pursuant to this Consent Order, and during reasonable business hours during any period work is not being conducted, for the purposes of determining Prairie Center's compliance with the Act, the Regulations, and this Consent Order. The Division shall be permitted to inspect work sites, operating and field logs, contracts, purchasing/shipping records, and other relevant records and documents relating to this Consent Order or any requirement under this Consent Order and to interview Prairie Center personnel and contractors performing work required by this Consent Order. Nothing in this paragraph limits or impairs the Division's statutory authorities to enter and inspect the Facility.

48. The Division may conduct any tests necessary to ensure compliance with this Consent Order and to verify the data submitted by Prairie Center.

49. Prairie Center shall notify the Division in writing of any excavation, construction (including the construction of monitoring wells) or other investigatory or remedial activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of seventy-two (72) hours prior to beginning the excavation, construction, or required activity. Prairie Center shall provide the Division any blue print, diagram, construction or other permits for any construction activity undertaken pursuant to this Consent Order upon request.

## FORCE MAJEURE

50. Prairie Center shall perform the requirements of this Consent Order 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 Prairie Center, and which cannot be overcome by due diligence.

51. Within seventy-two (72) hours of the time that Prairie Center knows or has reason to know of the occurrence of any event which Prairie Center has reason to believe may prevent Prairie Center from timely compliance with any requirement under this Consent Order, Prairie Center shall provide verbal notification to the Division. Within seven (7) calendar days of the time that Prairie Center knows or has reason to know of the occurrence of such event, Prairie Center 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 which will be taken to mitigate the duration of the delay.

52. The burden of proving that any delay was caused by a force majeure shall at all times rest with Prairie Center. If the Division agrees that a force majeure has occurred, the Division will so notify Prairie Center. The Division will also approve or disapprove of Prairie Center's proposed actions for mitigating the delay. If the Division does not agree that a force majeure has occurred, or if the Division disapproves of Prairie Center's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to Prairie Center. Pursuant to the Dispute Resolution section, within fifteen (15) calendar days of receipt of the explanation, Prairie Center may file an objection.

53. 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 Consent Order is found to have been delayed by a force majeure, Prairie Center shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

## DISPUTE RESOLUTION

54. If the Division determines that that a violation of this Consent Order has occurred, that a force majeure has not occurred; that the actions taken by Prairie Center to mitigate the delay caused by a force majeure are inadequate; that Prairie Center's Notice of Completion should be rejected pursuant to paragraph 59, the Division shall provide a written explanation of its determination to Prairie Center. Within fifteen (15) calendar days of receipt of the Division's determination, Prairie Center shall:

    a. Submit a notice of acceptance of the determination; or
    b. Submit a notice of dispute of the determination.

    If Prairie Center fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

55. If the Division imposes additional measures or time schedules to the "Facility Improvement Action Plan" identified in paragraph 25 or if the Division imposes supplemental stipulated penalties pursuant to paragraph 31, within fifteen (15) calendar days of receipt of the Division's notice of such measures, time schedules or penalties, Prairie Center shall:

    a. In the case of a notice of additional measures or time schedules, submit a notice of acceptance of the additional measures or time schedules and begin to implement the modified plan;
    b. In the case of a notice of supplemental penalties, submit a supplemental penalty payment in the same manner set forth in paragraph 29; or
    c. Submit a notice of dispute of the additional measures, time schedules or supplemental penalty.

    If Prairie Center fails to do any of the above within the specified time, Prairie Center shall be deemed to have failed to comply with the Consent Order, and the Division may bring an enforcement action, including an assessment of penalties.

56. If Prairie Center files any notice of dispute pursuant to paragraph 54 or 55 the notice shall specify the particular matters in the Division's determination that Prairie Center seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by Prairie Center. The Division and Prairie Center shall have thirty (30) calendar days from the receipt by the Division of the notification of dispute to reach an agreement. If agreement cannot be reached on all issues within this thirty (30) calendar day period, the Division shall confirm or modify its decision within an additional fourteen (14) calendar days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act and the Colorado State Administrative Procedures Act, §§ 24-4-101 through 108, C.R.S. (the "APA").

## NOTICES

57. 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: Kelly Morgan
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303.692.3634
E-mail: kelly.morgan@state.co.us

For Prairie Center Metropolitan District No. 9:

Ms. Ann Finn
141 Union Blvd., Suite 150
Lakewood, Colorado 80228

Karen Blumenstein
600 Grant Street, Suite 610
Denver, Colorado 80203

## MODIFICATIONS

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

## COMPLETION OF REQUIRED ACTIONS

59. Prairie Center shall submit a Notice of Completion to the Division upon satisfactory completion of all requirements of this Consent Order. The Division shall either accept or reject Prairie Center's Notice of Completion in writing within thirty (30) calendar days of receipt. If the Division rejects

Prairie Center's 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. Prairie Center shall, within fifteen (15) calendar days of receipt of the Division's rejection, either:

a. Submit a notice of acceptance of the determination; or
b. Submit a notice of dispute.

If Prairie Center fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

## NOTICE OF EFFECTIVE DATE

60. 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 33. 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

61. This Consent Order is binding upon Prairie Center and its successors in interest and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. Prairie Center agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of 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 PRAIRIE CENTER METROPOLITAN DISTRICT NO. 9:**

M. Ty Date: 4/20/12
Michael Tamblyn, District President

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

Lori M Gerzina Date: 5/14/12
Lori M. Gerzina, Manager
Compliance Assurance Section
WATER QUALITY CONTROL DIVISION