STATE OF COLORADO

Bill Ritter, Jr., Governor
Martha E. Rudolph, Executive Director

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

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Colorado Department
of Public Health
and Environment

July 21, 2010

Bruce Matherly, District Manager
Aspen Consolidated Sanitation District
565 N. Mill Street
Aspen, Colorado 81611

RE: Compliance Order on Consent, Number: MC-100721-1

Dear Mr. Matherly:

Enclosed for Aspen Consolidated Sanitation District'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 32). 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 Jackie Whelan at (303) 692-3617 or by electronic mail at jackie.whelan@state.co.us.

Sincerely,

Russell Zigler

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

Enclosure(s)

cc: Pitkin County Public Health Agency (Community Health Services, Inc.)
Pitkin County Environmental Health & Natural Resources Department

ec: Aaron Urdiales, EPA Region VIII
Mark Kadnuck, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Gary Beers, Permits Unit, CDPHE
Barry Cress, DOLA
Michael Beck, OPA

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT **NUMBER: MC-100721-1**

IN THE MATTER OF: **ASPEN CONSOLIDATED SANITATION DISTRICT**
CDPS PERMIT NO. CO-0026387
PITKIN 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 the Aspen Consolidated Sanitation District (the "District"). The Division and the District may be referred to collectively as "the Parties."

STATEMENT OF PURPOSE

1. The mutual objective of the Parties in entering into this Consent Order is to resolve, without litigation, the civil penalties associated with the alleged violations cited herein and in the Notice of Violation and Cease and Desist Order (Number MO-080331-1) issued to the District on March 31, 2008 (the "NOV/CDO").

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 the District, the Facility and the District's compliance with the Act and its implementing regulations and the District's Colorado Discharge Permit System permit.

3. At all times relevant to the violations cited herein, the District was a "Special District" formed in Pitkin County, Colorado pursuant to the Special District Act, §§32-1-101 through 32-1-1807 C.R.S.

4. The District 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. The District owns and/or operates a wastewater treatment facility (the "Facility"), located Northwest of the City of Aspen off of Highway 82 in the Northeast ¼, Southeast ¼, Section 34, Township 9 South, Range 85 West, Pitkin County, Colorado.

6. The Facility is the subject of the Colorado Discharge Permit System, Permit No. CO-0026387 (the "Permit"). The current version of the Permit became effective on December 1, 2008 and is due to expire November 30, 2013 (the "Current Permit"). A prior version of the permit was in place during the period of February 1, 2000 through October 31, 2008 (the "Previous Permit").

7. The Current Permit authorizes the District to discharge treated wastewater from the Facility into the Roaring Fork River, through Outfall 001A or Outfall 001B. The Previous Permit authorized the District to discharge to the Roaring Fork River through Outfall 001A.

8. Outfall 001A and Outfall 001B are each a "point source" as defined by §25-8-103(14), C.R.S.

9. The Roaring Fork 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. Section 61.8, 5 CCR 1002-61, states in part that "A permittee must comply with all the terms and conditions of the permit."

Failure to Comply with Permit Effluent Limitations

11. Pursuant to Part I.A.5 and Part I.A.6 of the Previous Permit and the Current Permit, the District's discharge at outfalls 001A and 001B should not have exceeded the corresponding effluent limitations specified below:

EFFLUENT PARAMETER	**DISCHARGE LIMITATION**		
	30-Day Average	**7-Day Average**	**Daily Maximum (**
OUTFALLS 001A & 001B			
Five Day Biochemical Oxygen Demand ("BOD_5) (mg/l)	20	30	N/A
BOD_5 Removal (%)	85 (min.)	N/A	N/A
Total Suspended Solids ("TSS") (mg/l)	20	30	N/A
TSS Removal (%)	85 (min.)	N/A	N/A
Fecal Coliform. (#/100ml)	2,900	5,800	N/A
pH (s.u.)	N/A	N/A	9.0 (max.)

EFFLUENT PARAMETER	DISCHARGE LIMITATION (continued)		
	30-Day Average	7-Day Average	Daily Maximum
OUTFALLS 001A & 001B			
Total Ammonia as N (mg/l)	1.6 (March)* 2.7 (April)* 7.1 (July)** 5.4 (September)* 3.7 (October)* 3.3 (November)* 8.2 (December)*	N/A	N/A

**Previous Permit*
***Current Permit*

12. Pursuant to the requirements of the Current Permit and the Previous Permit, the District collects specific samples at points described in the Permit as Outfall 001A and 001B, following treatment and prior to entering the Roaring Fork River.

13. The analytical results of the samples collected at Outfall 001A and Outfall 001B are summarized by the District and reported to the Division via monthly discharge monitoring reports ("DMRs").

14. The DMRs submitted by the District include a certification by the District that the information provided therein is true, accurate and complete, to the knowledge and belief of the District.

15. The DMRs for the months of April 2007 through July 2009 include, in addition to other data not subject of this action, the following effluent measurement and/or calculated data for BOD_5, BOD_5 Removal, TSS, TSS Removal, Fecal Coliform, pH and Total Ammonia in violation of the corresponding effluent limits established in the Current Permit and the Previous Permit:

DMR REPORTING PERIOD	REPORTED RESULT		
	30-Day Average	7-Day Average	Daily Maximum
OUTFALL 001A			
BOD_5 (mg/l)	**LIMIT = 20 mg/l**	**LIMIT = 30 mg/l**	**N/A**
April 1-April 31, 2007	-	48	-
June 1-June 30, 2007	24	46	-
November 1-November 30, 2007	22	68	-
January 1-January 31, 2008	21	-	-
February 1-February 29, 2008	86	162	-

DMR REPORTING PERIOD	REPORTED RESULT		
	30-Day Average	7-Day Average	Daily Maximum
OUTFALL 001A (continued)			
BOD_5 (mg/l)	**LIMIT = 20 mg/l**	**LIMIT = 30 mg/l**	**N/A**
March 1-March 31, 2008	138	174	-
April 1-April 31, 2008	25	47	-
BOD_5 Removal (%)	**LIMIT = 85 % (minimum)**	**N/A**	**N/A**
February 1-February 29, 2008	74	-	-
March 1-March 31, 2008	57	-	-
TSS (mg/l)	**LIMIT = 20 mg/l**	**LIMIT = 30 mg/**	**N/A**
April 1-April 30, 2007	-	38	-
June 1-June 30, 2007	-	39	-
February 1-February 29, 2008	91	165	-
March 1-March 31, 2008	166	227	--
April 1-April 30, 2008	-	47	-
January 1-January 31, 2009	-	46	-
TSS Removal (%)	**LIMIT = 85 % (minimum)**	**N/A**	**N/A**
February 1-February 29, 2008	72	-	-
March 1-March 31, 2008	47	-	-
FECAL COLIFORM (#/100ml)	**LIMIT 2,900/100ml**	**LIMIT 5,800/100ml**	**N/A**
December 1-December 31, 2007	-	15,199	-
January 1-January 31, 2008	-	82,462	-
February 1-February 29, 2008	5,712	50,646	-
March 1-March 31, 2008	21,649	52,802	-
April 1-April 30, 2008	6,431	37,352	-
June 1-June 30, 2009	4,016	42,018	-

DMR REPORTING PERIOD	REPORTED RESULT		
	30-Day Average	7-Day Average	Daily Maximum
OUTFALL 001A			
TOTAL AMMONIA AS N (mg/l)	**LIMIT = 1.6 mg/l-14 mg/l (shown in parenthesis)**	**LIMIT = 8.6 mg/l-30 mg/l**	**N/A**
March 1-March 31, 2007	2.5 (1.6)	-	-
September 1-September 30, 2007	9.6 (5.4)	-	-
October 1-October 31, 2007	3.8 (3.7)	-	-
November 1-November 30, 2007	4.4 (3.3)	-	-
November 1-November 30, 2007	4.4 (3.3)	-	-
December 1-December 31, 2007	9.9 (8.2)	-	-
March 1-March 31, 2008	2.6 (1.6)	-	-
April 1-April 30, 2008	2.9 (2.7)	-	-
pH (s.u.)	**N/A**	**N/A**	**LIMIT = 9.0 s.u.**
November 1-November 30, 2007	-	-	9.10
OUTFALL 001B			
TSS (mg/l)	**LIMIT = 20 mg/l**	**LIMIT = 30 mg/**	**N/A**
January 1-January 31, 2009	-	46	-
TOTAL AMMONIA AS N (mg/l)	**N/A)**	**LIMIT = 4.9 mg/l-8.9 mg/l**	**N/A**
January 1-January 31, 2009	-	7.19	-

16. BOD_5, BOD_5 Removal, TSS, TSS Removal, Fecal Coliform, pH and Total Ammonia are "pollutants" as defined by §25-8-103(15), C.R.S., or indicators thereof.

17. The District's failure to comply with the effluent limitations identified in paragraph 15 above constitutes violations of the corresponding effluent limits established by Part I.A.5 and Part I.A.6 the Current Permit and the Previous Permit.

ORDER AND AGREEMENT

18. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605, C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein and in the Notice of Violation / Cease and Desist Order (Number: MO-080331-1), the

Division orders the District to comply with all provisions of this Consent Order, including all requirements set forth below.

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

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

CIVIL PENALTY AND SUPPLEMENTAL ENVIRONMENTAL PROJECTS

21. Based upon the application of the Division's Civil Penalty Policy (May 1, 1993), and consistent with Departmental policies for violations of the Act, the Division has determined that a penalty of Forty Four Thousand Six Hundred Seventeen Dollars ($44,617.00) is appropriate for the violations cited herein and in the Notice of Violation / Cease and Desist (Number: MO-080331-1).

22. Through the application of the criteria set forth in the Colorado Department of Public Health and Environment's *Final Agency-Wide Policy on Settling Administrative and/or Civil Penalties Against Eligible Governmental Entities*, the Division has determined that the entire penalty can be mitigated through the completion of the following Supplemental Environmental Project ("SEP") identified by the District and which is valued at Ninety Five Thousand Dollars ($95,000.00).

    a. The District shall complete installation of a pump station which will enable delivery of treated effluent to the City of Aspen's golf course for reuse in the form of irrigation. Additional landscape irrigation will also be possible as a result of installation of the pump station. The SEP is further described in the attached Exhibit A which is incorporated herein by reference.

23. The District shall not deduct the expenses associated with the implementation of the above-described SEP for any tax purpose or otherwise obtain any favorable tax treatment of such payment or project.

24. The District hereby certifies that, as of the date of this Consent Order, it is not under any existing legal obligation to perform or develop the SEP. The District further certifies that it has not received, and will not receive, credit in any other enforcement action for the SEP. In the event that the District has, or will receive credit under any other legal obligation for the SEP, the District shall pay Forty Four Thousand Six Hundred Seventeen Dollars ($44,617.00) 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 by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

Colorado Department of Public Health and Environment
WQCD-CAS
ATTN: Jacalyn Whelan
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

25. The SEP must be completed to the satisfaction of the Division by August 1, 2011. Additionally, the District shall demonstrate that treated wastewater is being delivered and utilized for reuse by July 1, 2012.

26. In the event that the District fails to comply with any of the terms or provisions of this Consent Order relating to the performance of the SEP, or if it fails to demonstrate that effluent is being delivered and utilized for reuse by July 1, 2012, the District shall be liable for penalties as follows:

    a. Payment of a penalty in the amount of Forty Four Thousand Six Hundred Seventeen Dollars ($44,617.00). The Division, in its sole discretion, may elect to reduce this penalty for environmental benefits created by the partial performance of the SEP or delayed use of effluent for irrigation as described in paragraph 22.

    b. The District 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 24 above.

27. The District shall submit a SEP Completion Report to the Division by August 30, 2011. 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 or other forms of proof of payment;

    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).

28. The District shall submit written notice to the Division, by July 31, 2012, indicating whether or not effluent is being delivered and utilized for reuse.

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

30. The District 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."

SCOPE AND EFFECT OF CONSENT ORDER

31. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations cited herein and in the March 31, 2008 Notice of Violation / Cease and Desist Order (Number: MO-080331-1).

32. 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 the District 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.

33. This Consent Order constitutes a final agency order or action upon a determination by the Division following the public comment period. Any violation of the provisions of this Consent Order by the District, 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 ($10,000.00) per day for each day during which such violation occurs.

34. Notwithstanding paragraph 20 above, the violations described in this Consent Order will constitute part of the District'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 the District. The District agrees not to challenge the use of the cited violations for any such purpose.

35. This Consent Order does not relieve the District 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

36. 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 civil penalties for the specific violations cited herein and in the March 31, 2008 Notice of Violation / Cease and Desist Order (Number: MO-080331-1). The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.

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

38. 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.

39. Upon the effective date of this Consent Order, the District 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.

40. The District 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 the District, or those acting for or on behalf of the District, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. The District shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by the District 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.

41. 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, the District shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

NOTICES

42. 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
WQCD-CAS
ATTN: Jacalyn Whelan
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Telephone: 303-692-3617
E-mail: jackie.whelan@state.co.us

For the District:

Bruce Matherly, District Manager
Aspen Consolidated Sanitation District
565 N. Mill Street
Aspen, CO 81611

MODIFICATIONS

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

COMPLETION OF REQUIRED ACTIONS

44. The District 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 the District's Notice of Completion in writing within thirty (30) calendar days of receipt. If the Division rejects the District'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. The District 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 the District fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

45. If the District files any notice of dispute pursuant to paragraph 44 the notice shall specify the particular matters in the Division's determination that the District seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by the District. The Division and the District 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.

NOTICE OF EFFECTIVE DATE

46. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon notice from the Division following closure of the public comment period referenced in paragraph 32.

BINDING EFFECT AND AUTHORIZATION TO SIGN

47. This Consent Order is binding upon the District and its elected officials, employees, agents, representatives, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. The District 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 THE ASPEN CONSOLIDATED SANITATION DISTRICT:

Bruce Matherly Date: 7-14-10
Bruce Matherly, District Manager

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

Lori M Gerzina Date: 7-21-10
Lori M. Gerzina, Manager
Compliance Assurance Section
WATER QUALITY CONTROL DIVISION

EXHIBIT A

Supplemental Environmental Project Proposal
to mitigate all of a civil penalty amount negotiated for the
Aspen Consolidated Sanitation District

I. Background

The Aspen Consolidated Sanitation District (the District) was issued a Notice of Violation and Cease and Desist Order on March 31, 2008 (MO-080-331-1) for violation of discharge permit limitations. The violations occurred between March of 2007 and January of 2009. During this time the district was completing an eleven million dollar major remodel of its treatment facility in order meet current discharge limitations. In November of 2008 the District received a 1500 gallon release of sodium hydroxide from the city water treatment facility. For unknown reasons the sodium hydroxide released from the city water treatment facility entered the District wastewater treatment facility in such a concentration that the basin pH levels rose to pH of 11 s.u. causing a catastrophic die off of the treatment facility's entire biomass. The inert material that resulted from the die-off slowly migrated through, accumulated in, and contaminated downstream treatment processes which led to many more permit violations over many subsequent months. The District had never experienced such a catastrophic event before and had no operational experience in dealing with the downstream problems that followed.

The District and CDPHE (the Division) reviewed each permit violation that occurred relative to the Division's policy on assessing civil penalties for permit violations. The Civil Penalty Policy requires three components to be evaluated in determining the fine associated with permit violations. Potential damage to the receiving stream, the amount of fault ascribed to the discharger and the history of the discharger's past compliance were all considered in detail. As a result, the District and Division negotiated a civil penalty in the amount of $44, 617 for the violations that occurred. The District is proposing to complete a supplemental environmental project in lieu of paying the civil penalty negotiated as allowed by the Division's policy on SEP's. The cost of the SEP proposed greatly exceeds the amount of the civil fine negotiated.

II. Proposed Supplemental Environmental Project

The District proposes to complete the first phase of a proposed City of Aspen project to pump District final effluent to the city golf course for irrigation (Reuse-SEP). Other areas to be irrigated include Sardy Airfield, the landscaped entrance to Aspen and employee housing project know as the Burlingame Subdivision. The District proposes to complete the primary pump station for the City of Aspen that is needed to deliver the District's treated effluent to the City for re-use. The cost of this project is estimated to be $95,000 according to a preliminary estimate completed by McLaughlin Rincon Engineering. The pump station will deliver effluent to a reuse use distribution system owned and maintained by the City of Aspen. The project would be completed and dedicated to the City during the 2010 building season. The project is proposed as a "Third Party SEP" since the improvements will be dedicated

and donated to the City of Aspen in 2010. The District is not required in any way to complete the improvements for the City. We believe review and oversight of such a project would be straightforward. The District has the reliant capacity to complete the project proposed. The SEP would fall under the "SEP performed by the violator to the benefit of a third party" as listed in the Division SEP Policy. The District would take responsibility for the completion of the project and would not attempt to transfer this responsibility to the third party (City).

III. Comportability with Categories of Approvable SEPs

The SEP policy lists seven categories of projects for potential SEPs. The policy states that each project will be closely scrutinized to ensure all aspects of the project fulfill the legitimate objectives of the policy in all respects. We feel the SEP project we propose meets the requirements of two of the seven approved categories for SEPs, specifically 1) Pollution Prevention Projects and 2) Pollution Reduction Projects.

1) Pollution Prevention Project criteria

The policy refers to the Pollution Prevention Act of 1992 which defines pollution prevention as "any practice which reduces the use of hazardous substance or *amount of any pollutant* or contaminant prior to recycling, treatment or *disposal*, and *reduces the hazards to and the environment associated with the release of such substances, pollutants or contaminants"*. The reuse of the District's treated effluent would be considered an Innovative Recycling Technology and Pollution Reduction Project[1]. Surface irrigation with recycled treated effluent is one of the only technologies proven to remove emerging contaminants, therefore the proposed SEP can be considered an innovative recycling technology that keeps pollutants out of the environment in perpetuity.

2) Pollution Reduction Project criteria

As noted above by the NWCCOG reference the project would also qualify as a pollution reduction project since the reuse of effluent would *go substantially beyond compliance with permit or regulatory limitations to further reduce the amount of pollution discharged into the environment.* Using treated effluent for surface irrigation purposes reduces the quantity of emerging pollutants discharged to the receiving stream. The load of nutrient pollutants discharged to the receiving stream in the various forms of nitrogen and phosphorus would also be reduced. The nutrient pollutants present in the recycled effluent would be beneficial to plant growth.

[1] Northwest Council of Government 1-14-10 memorandum from S. Koenig, NWCCOG/QQ Co-Director.

IV. Extent to Which a SEP Can Mitigate a Penalty

The policy looks at two ways to determine how much an SEP can mitigate a penalty.

1) The policy states that penalties are comprised of a gravity component and, when applicable, an economic benefit component.
   a) With regard to the gravity component, the minimum cash component of the penalty must equal 20% unless excluded as an "eligible governmental entity". *The Aspen Consolidated Sanitation District would qualify as an eligible governmental entity*. Discretion in this regard is left to the Division.
   b) With regard to the economic benefit component, the policy states that 100% of the economic benefit should be collected in cash unless the department allows a violator to mitigate economic benefit through a Third Party SEP. *The Division has determined that no economic benefit resulted from the violations.*
2) The policy states that the Division will review five factors in allowing penalty mitigation and that only exceptional projects will be allowed maximum mitigation. The areas listed in the policy are:
   a) Benefits to the Public or Environment at Large- the reuse project clearly provides benefits to the public at large by reducing nutrient pollutants and eliminating emerging pollutants that would otherwise be discharged to the Roaring Fork River (a gold medal trout stream) without recycling/ reuse.
   b) Innovations- effluent reuse has been talked about for many years and yet very few practical applications are operating today. The City's project would serve as a practical example of how two different municipal organizations can work together for the environmental benefit of the public. Aspen's stature as a destination resort would help promote effluent reuse in other areas.
   c) Environmental Justice- considers the projects effects in reducing risks to minority or low income populations that have been disproportionately exposed to pollution, or are at environmental risk. The Roaring Fork River serves as a primary contact recreational source for the populations considered in this category. Reducing and eliminating waterborne pollutants during the irrigation season would reduce primary contact risks to this population group.
   d) Cross-media Impacts- cross media benefits could result from reducing emerging contaminant bioaccumulation in the trout population that inhabit the receiving stream. The health risks of consuming trout exposed to emerging contaminants is not fully understood.
   e) Pollution Prevention- the reuse project clearly provides the potential to prevent pollution during times treated effluent is diverted from the receiving stream.
   f) Community Input- the effluent reuse project is being proposed by the City as a result of public input and city staff recommendations over many years. The impetus to begin the project has not been realized until now.

The policy states that the credit each dollar spent on an SEP should receive, the ratio of penalty mitigation to SEP cost shall typically be no less than 1 to 1.5 (e.g. to receive $100,000 in penalty mitigation, a violator must spend $150,000 on a SEP). The policy goes on to say that SEP costs may be lower than 150% and, at times, as low as 100% of the amount of the penalty mitigation, if the violator chooses a pollution prevention or energy efficiency SEP and can prove there is no benefit to the violator associated with the expenditures. There would be no direct benefits to the District in this instance and the District is considered an "eligible governmental entity" for a 1:1 credit. The project as proposed would cost approximately $95,000 to offset a $44,617 civil penalty. The proposed SEP would provide an environmental windfall to the public.

V. Legal Guidelines for Negotiating SEPs

The (SEP) project has a media nexus and benefits cross media as well. A media nexus is not required.

The project has a geographical nexus and such a connection is preferred.

The project would not be inconsistent with any underlying statute and it would advance the federal and state goals of encouraging recycling.

Public health benefits, that may not have occurred "but for" the settlement would result from the project.

The Division would not be required to play a role in managing or controlling funds nor required to retain any authority to manage or administer the project. No function of the project is required otherwise by statute.

VI. Drafting Enforceable SEP's

The SEP could be performed as a cash donation to the City of Aspen as a third party recipient but since the responsibility and legally liability for the project ultimately rests with the District (the "violator") the District proposes to complete the project during the 2010 construction season and dedicate the improvements to the City of Aspen. The District would publicize that the SEP was undertaken as the result of an enforcement action and the results of the SEP would also be published. Pollution elimination and reduction benefits could be tracked. Water savings could also be quantified.

VII. Measurement

The environmental benefits associated with the SEP could readily be estimated based upon flows and loads that are routinely measured at the wastewater treatment facility. Baseline data is readily available for flows and nutrient loads commonly found in the wastewater effluent stream. The methodology used to track pollution reduction and elimination would be based upon results from scheduled sampling and daily recorded flows. Nutrient pollutants could be quantified in pounds. Mass balance could be used to estimate the environmental benefit to the receiving stream.

SEP project Status Reports to the Division would be submitted. An SEP Completion Report would be filed with the Division once the project is complete (2010). The SEP Completion Report would include:

1) A detailed description of the project as implemented;

2) A description of any operating problems encountered and solutions thereto;

3) Itemized costs, documented by copies of purchase orders and receipts or canceled checks;

4) Certification and demonstration that the SEP has been fully implemented pursuant to the provisions of the Consent Order;

5) A description of the environmental and public health benefits resulting from implementation of the SEP along with quantification of the outcomes and benefits.

There are no apparent economic benefits to the violator (District) as a result of completing the SEP.

VIII. Failure to Complete an SEP and Penalties

The District (violator) recognizes that the SEP must be completed to the satisfaction of the Division in the time periods specified for the project completion. The SEP project would be completed during the 2010 construction season. The District acknowledges that the Division may impose a stipulated penalty, in addition to the remaining penalty mitigation attributed to the SEP, for the District's (violator's) failure to comply with the specific requirements of the SEP. The District believes it has the capacity to have the improvements designed and completed this year. Once complete and approved by the Division, the improvements would be dedicated and donated to the City of Aspen. The improvements completed through the SEP would be designed to meet City of Aspen proposed recycle program requirements.