# 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

August 16, 2011

Ms. Patricia Humphry, Registered Agent
Harvey Steamboat, Partnership, Ltd
421 D Aspen Business Center
Aspen, Colorado 81611-3551

***Certified Mail Number: 7007 0220 0001 0159 6079***

**RE: Service of Notice of Violation/Cease and Desist/Clean-up Order, No.: SO-110816-1**

Dear Ms. Humphry:

Harvey Steamboat, Partnership, Ltd is hereby served with the enclosed Notice of Violation / Cease and Desist / Clean-up Order (the "NOV/CD/CUO"). This NOV/CD/CUO 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 §§25-8-602, 25-8-605 and 25-8-606, C.R.S., of the *Colorado Water Quality Control Act*, (the "Act"). The Division bases this NOV/CD/CUO upon findings that Harvey Steamboat, Partnership, Ltd has violated the Act, and/or Permit regulations promulgated pursuant to the Act, as described in the enclosed NOV/CD/CUO.

Pursuant to §25-8-603, C.R.S., Harvey Steamboat, Partnership, Ltd is required, within thirty (30) calendar days of receipt of this NOV/CD/CUO, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

This action could result in the imposition of civil penalties. The Division is authorized pursuant to §25-8-608, C.R.S. to impose a penalty of $10,000 per day for each day during which such violation occurs.

Please note that the Stormwater Inspection Report for the inspection of the Buck Mountain Fence Line conducted by the Division on June 28, 2011, and the accompanying photographs (on compact disc), are enclosed for your reference.

Please be advised that the Division is continuing its investigation into this matter and the Division may identify supplementary violations that warrant amendments to this NOV/CDO/CUO or the issuance of additional enforcement actions.

Should you or representatives of Harvey Steamboat, Partnership, Ltd desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CD/CUO, please do not hesitate to contact Joe Campbell of this office by phone at (303) 692-2356 or by electronic mail at joseph.campbell@state.co.us.

Sincerely,

Russell Zigler

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

*Enclosure(s)*

cc: Routt County Department of Environmental Health
Mr. James Horner, Klauzer & Tremaine, LLC, 320 Lincoln Ave. – 2nd Floor, P.O. Box 774525, Steamboat Springs, CO 80477

ec: Natasha Davis, EPA Region VIII
Dennis Pontius, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Gary Beers, Permits Unit, CDPHE
Michael Beck, OPA
Nathan Moore, Permits Section. CDPHE
Joe Campbell, 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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**NOTICE OF VIOLATION / CEASE AND DESIST / CLEAN-UP ORDER NUMBER: SO-110816-1**

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**IN THE MATTER OF:** **HARVEY STEAMBOAT PARTNERSHIP, LTD**
**CDPS PERMIT NO. COR-030000**
**CERTIFICATION NO. COR-03H527**
**ROUTT COUNTY, COLORADO**

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Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority is implemented through the Department's Water Quality Control Division (the "Division"), and pursuant to §§25-8-602, 25-8-605 and 25-8-606, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order/ Clean-Up Order:

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the violations cited herein, Harvey Steamboat Partnership, LTD ("Harvey") was a Colorado limited liability partnership registered to conduct business in the state of Colorado.

2. Harvey 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).

### Operating Without a Stormwater Permit

3. Pursuant to §25-8-501(1), C.R.S. and its implementing permit regulation, 5CCR 1002-61, §61.3(1)(a), no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge.

4. Pursuant to 5 CCR 1002-61, §61.3(2)(e), stormwater discharges associated with industrial activity are point sources requiring Colorado Discharge Permit System ("CDPS") permit coverage.

5. Pursuant to 5 CCR 1002-61, §61.3(2)(e)(iii)(J), construction activity, including clearing, grading and excavation, that results in the disturbance of five or more acres of total land area, or will ultimately result in the disturbance of five or more acres of total land area, is considered to be "industrial activity."

6. Pursuant to 5 CCR 1002-61, §61.4(3)(a)(i), facilities proposing a discharge of stormwater associated with industrial activity shall submit a permit application 180 days before that facility commences industrial activity which may result in a discharge of stormwater associated with that industrial activity. Facilities involved in construction activities shall submit a permit application at least 90 days before the date on which construction is to commence.

7. On or about August 4, 2010, Harvey initiated construction activities associated with the construction of a fence line that included a planned disturbance of 7 acres of land in Routt County, Colorado (the "Project").

8. Harvey's construction activity at the Project constitutes industrial activity that is subject to stormwater permitting requirements.

9. On September 23, 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 Harvey's compliance with the Water Quality Control Act. During the inspection, the Inspector interviewed Project representatives and performed a physical inspection of the Project.

10. During the September 23, 2010 inspection, the Inspector determined that the Project was not covered under a CDPS permit authorizing discharges of stormwater from the Project.

11. Stormwater discharges from the Project discharge to unnamed tributaries of Dutch Gulch and associated wetlands.

12. On April 8, 2011, the Division received an application from Harvey for Project coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit").

13. On April 12, 2011, the Division provided Harvey Certification Number COR-03H527 authorizing Harvey to discharge stormwater from the construction activities associated with the Project under the terms and conditions of the Permit. Certification Number COR-03H527 became effective April 12, 2011 and remains in effect until June 30, 2012 or until Harvey inactivates Permit coverage.

14. The unnamed tributaries to Dutch Gulch and associated wetlands are "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (102).

15. Division records establish that Harvey did not have any permits authorizing discharges of stormwater from the Project prior to April 12, 2011.

16. Harvey's failure to obtain CDPS permit coverage for the Project, prior to April 12, 2011, constitutes violation(s) of §25-8-501(1) C.R.S., 5 CCR 1002-61, §61.3(1)(a), 5 CCR 1002-61, §61.3(2), and 5 CCR 1002-61, §61.4(3)(a)(i).

## Failure to Prepare Stormwater Management Plan

17. Pursuant to 5 CCR 1002-61, §61.8, Harvey 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.

18. On June 28, 2011, representatives from the Division (the "Inspectors") conducted an on-site inspection of the Project pursuant to the Division's authority under §25-8-306, C.R.S., to determine Harvey's compliance with the Water Quality Control Act and the Permit. During the inspection, the Inspectors interviewed Project representatives and performed a physical inspection of the Project.

19. Pursuant to Part I. B. of the Permit, Harvey is 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.

20. Included in Harvey's application for Project coverage under the Permit, Constance Harvey, Harvey's Owner, signed the following certification dated March 25, 2011:

> *"I certify under penalty of law that a complete Stormwater Management Plan, as described in Appendix A of this application, has been prepared for my activity. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the Stormwater Management Plan is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for falsely certifying the completion of said SWMP, including the possibility of fine and imprisonment for knowing violations."*

21. During the June 28, 2011 inspection, the Inspectors determined that a SWMP for the Project was retained onsite. However, a Project representative stated that the SWMP had not been prepared until June 22, 2011.

22. Harvey's failure to prepare a SWMP for the Project prior to June 22, 2011 constitutes violations of Part I. B. of the Permit.

## Deficient and/or Incomplete Stormwater Management Plan

23. 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.

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 Project 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.

24. During the June 28, 2011 inspection, the Inspectors requested that Harvey submit a copy of the Project's SWMP to the Division for review. The Division received a copy of the SWMP on July 12, 2011. The Division reviewed the Project's SWMP and identified the following deficiencies, as described in paragraphs 24(a-g) below:

a. The SWMP Site Map did not identify the location of the construction site boundaries.

b. The SWMP Site Map did not identify the location of the stream (unnamed tributary to Dutch Gulch) that crosses the Project approximately just north of the midpoint of the Project.

c. The SWMP did not identify the following potential pollutant sources identified during the inspection: the numerous slope failures of the cut slopes located on the southern portion of the Project, the landslides that occurred along southern portion of the Project as a result of the cut slope failures, the sediment and debris that was discharged down gradient of the Project from the land slides that occurred, the fill slope failure that occurred approximately just north of the midpoint of the Project where a stream crosses the Project, and the sediment and debris that was discharged down gradient of the Project and filled in the stream channel as a result of the fill slope failure. In addition, the SWMP did not identify and describe appropriate BMPs to manage stormwater discharges from the potential pollutant sources described in this finding.

d. The SWMP lists culverts, riprap culvert inlet protection, and riprap culvert outlet protection as structural BMPs being implemented on site. The SWMP did not include installation and implementation specifications for the culverts, riprap culvert inlet protection, and riprap culvert outlet protection.

e. The SWMP lists "crimped straw mulch" and "bonded fiber matrix" as the non-structural BMPs to be implemented on site at some point. The SWMP did not include installation and implementation specifications for the crimped straw mulch. The SWMP includes a general product description of the type of bonded fiber matrix being used, but did not include installation and implementation specifications for the bonded fiber matrix.

f. The SWMP did not include spill clean-up and response procedures.

g. The SWMP did not describe the practices used to achieve final stabilization of the disturbed areas described above in Paragraphs 20b and 20f.

25. The Division has determined that Harvey failed to prepare and maintain a complete and accurate SWMP for the Project.

26. Harvey's 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 Install, Maintain, or Properly Select Best Management Practices**

27. Pursuant to Part I. C. 3. (c) of the Permit, Harvey is 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.

28. Pursuant to Part I. D. 2. of the Permit, Harvey is 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.

29. Pursuant to Part I. B. 3. of the Permit, Harvey is required to implement the provisions of the Project's SWMP as written and updated, from commencement of construction activity until final stabilization is complete.

30. 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 measureable contribute to an exceedance of any water quality standard, including narrative standards for water quality.

31. Pursuant to 5 CCR 1002-31, §31.11(1), surface waters of the state shall be free from mud or silt deposits that are attributable to human-caused point source discharges, while wetlands shall be free from substances attributable to human-caused point source discharges that produce color, odor, or changes in pH or harm water quality dependent functions.

32. During the June 28, 2011 inspection, the Inspectors identified the following deficiencies related to BMP installation and maintenance at the Project, as described in Paragraphs 32(a-h) below:

    a. The Inspectors observed disturbed cut slopes located at the northern end of the Project. Erosion control blankets (ECBs) were installed on these cut slopes but, according to good engineering, hydrologic and pollution control practices, ECBs must be installed with an anchor trench at the top of the slope and anchor trenches along all outside perimeters of the ECBs and surface preparation must be preformed such that the ECB is in full contact with the subgrade. The ECBs that were installed on the cut slopes did not include the required anchor trenches and were not in full contact with the subgrade. Numerous gaps and voids were observed between the ECBs and the subgrade. Stormwater runoff from this area would flow south along the fence-line corridor and associated access roadway and eventually discharge into the stream that crosses the Project. The stream is an unnamed tributary to Dutch Gulch.

    b. The Inspectors observed that BMPs were not implemented according to the Project's SWMP. The site map in the Project's SWMP identified that "seed and mulch" was implemented along the entire fence-line corridor and associated access roadway of the project. However, it was noted during the inspection that seed and straw mulch was only implemented in some areas of the Project and not along the entire fence-line corridor and associated access roadway of the project.

c. The Inspectors observed that BMPs were not implemented to manage stormwater runoff from some of the disturbed cut slopes located north of the stream crossing. The stream is an unnamed tributary to Dutch Gulch. Stormwater runoff from these slopes would flow south along the fence-line corridor and associated access roadway and eventually discharge into the stream that crosses the Project.

d. The Inspectors observed that BMPs were not implemented to manage stormwater runoff from some of the disturbed fill slopes located north of the stream crossing. The stream is an unnamed tributary to Dutch Gulch. These slopes were comprised of highly erodible, unstabilized fill material. Some sections of these disturbed fill slopes were constructed directly adjacent to the stream that crosses the Project. Stormwater runoff from these slopes would flow to the southeast and into the stream.

e. The Inspectors observed a culvert that was conveying the flow of an unnamed tributary to Dutch Gulch, located just north of the midpoint of the project. BMPs were not implemented to stabilize the outlet side of the culvert. The outlet side of the culvert discharges the conveyed stream flow onto a disturbed, unstabilized fill slope and then down gradient to the east. As a result there was evidence of erosion, scouring, and subsequent discharge of sediment into the stream from the channel forming in the fill slope. The SWMP indicated that riprap rock would be installed on the outlet side of culverts. Riprap rock was not installed at this location.

f. The Inspectors observed that due to the cut and fill excavation and grading activities the unnamed tributary to Dutch Gulch and its channel, located just north of the midpoint of the Project, were filled in with sediment. This filling activity created a massive fill slope that blocked the flow of the stream. BMPs were not implemented to manage stormwater runoff from this disturbance or to provide a conveyance for the stream to flow across the fill material. As a result, the force of the stream flow combined with stormwater runoff pushed the wedge of fill material and covered the stream channel down gradient. This caused a massive amount of sediment to be discharged down gradient to the east into the stream, filled in the stream channel, and filled in wetlands adjacent to the stream. Iron bacteria was forming in the wetland and appeared to be the result of iron rich sediment that had discharged to the wetlands from the Project. The stream channel directly down gradient of the Project could no longer be identified because the amount of sediment that had filled it in. So much sediment had discharged into the stream that sediment had accumulated 3 feet up on the adjacent tree trunks. The stream channel up gradient of the Project flows in a well vegetated and defined channel. The stream channel down gradient of the Project was filled in with sediment and no longer flowed within a defined stream channel. It was also observed that the turbidity of the water down gradient of the Project was visibly higher than that of the stream up gradient of the Project.

g. The Inspectors observed that BMPs were not implemented to manage stormwater runoff from all of the disturbed unstabilized fill slopes extending south from the stream crossing identified in the above Paragraph 27e. Stormwater runoff from these slopes flows down a steep gradient to the east and eventually to Dutch Gulch.

h. The Inspectors observed that the cut slope excavation and grading activities that took place on the southern half of the Project caused the up-gradient cut slopes to become unstable. BMPs were not implemented to manage stormwater runoff from this disturbance or to provide proper planning, design, and engineering of the cut slope excavations to ensure the cut slopes could be stabilized. The instability of the cut slopes combined with stormwater runoff caused the cut slopes to collapse. The collapse of the cut slopes caused landslides to occur. The landslides and stormwater runoff pushed sediment and debris hundreds of yards down gradient of the Project. The sediment and debris that was discharged filled in and covered the down gradient vegetation. Stormwater runoff from these areas of disturbance flows down a steep gradient to the east and eventually discharges into Dutch Gulch.

33. The Division has determined that Harvey failed to implement and/or maintain functional BMPs for all potential pollutant sources at the Project, following good engineering, hydrologic, and pollution control practices.

34. Harvey's failure to implement and/or maintain functional BMPs to protect stormwater quality during construction activities at the Project constitutes violations of Part I. C. 3. (c), Part I. D. 1. (a), Part I. D. 2., and Part I. B. 3. of the Permit.

35. Harvey's discharges of sediment and debris from the Project to the unnamed tributary of Dutch Gulch and associated wetlands constitute violations of 5 CCR 1002-31, §31.11(1) and Part I. D. 1. (a) of the Permit.

## NOTICE OF VIOLATION

36. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that Harvey has violated the following sections of the Colorado Water Quality Control Act, the Colorado Discharge Permit System Regulations, and the Permit:

**Section 25-8-501(1), C.R.S.**, which states "No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article…"

**5 CCR 1002-61, §61.3(1)(a),** which states in part, "No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge…"

**5 CCR 1002-61, §61.3(2),** which states in part, "…discharges of stormwater as set forth in 61.3(2) and 61.4(3) are point sources requiring a permit," and "The following discharges composed entirely of stormwater are required to obtain a permit. (ii) A stormwater discharge associated with industrial activity."

**5 CCR 1002-61, §61.4(3)(a)(i),** which states in part, "Facilities proposing a new discharge of stormwater associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of stormwater associated with that industrial activity. Facilities described under sections 61.3(2)(e)(iii)(J) and 61.3(2)(f)(ii)(A) shall submit applications at least 90 days before the date on which construction is to commence."

**5 CCR 1002-31, §31.11(1),** which states in part, "All surface waters of the state are subject to the following basic standards; ... state surface waters shall be free from substances attributable to human-caused point source or nonpoint source discharge in amounts, concentrations or combinations which (a) for all surface waters except wetlands; (i) can settle to form bottom deposits detrimental to the beneficial uses. Depositions are stream bottom buildup of materials which include but are not limited to ... silt, or mud; ... (b) for surface waters in wetlands; (i) produce color, odor, changes in pH, or other conditions in such a degree as to create a nuisance or harm water quality dependent functions..."

**Part I. B. of the Permit,** which states in part, "The SWMP shall be prepared in accordance with good engineering, hydrologic and pollution control practices. ... The SWMP shall: a) Identify all potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharges associated with construction activity from the facility; b) Describe the practices to be used to reduce the pollutants in stormwater discharges associated with construction activity at the facility; and ensure the practices are selected and described in accordance with good engineering practices, including the installation, implementation and maintenance requirements; and c) Be properly prepared and updated in accordance with Part I.D.5.c., to ensure compliance with the terms and conditions of this permit."

**Part I. C. of the Permit,** which states in part, "The SWMP shall include the following items, at a minimum."

**Part I. B. 3. of the Permit,** which states in part, "Facilities must implement the provisions of the SWMP as written and updated, form commencement of construction activity until final stabilization is complete, as a condition of this permit."

**Part I. C. 3. (c) of the Permit,** which outlines in part that BMPs for Stormwater Pollution Prevention shall address erosion and sediment control, including "structural practices implemented at the site to minimize erosion and sediment transport" and "non-structural practices implemented at the site to minimize erosion and sediment transport," as well as phased BMP implementation, materials handling and spill prevention, dedicated concrete or asphalt batch plants, vehicle tracking control, waste management and disposal, including concrete washout, and groundwater and stormwater dewatering.

**Part I. D. 1. (a) of the Permit,** which states, "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, including narrative standards for water quality."

**Part I. D. 2. of the Permit,** which states, "Facilities must select, install, implement, and maintain appropriate BMPs, following good engineering, hydrologic and pollution control practices. BMPs implemented at the site must be adequately designed to provide control for all potential pollutant sources associated with construction activity to prevent pollution or degradation of State waters."

## REQUIRED CORRECTIVE ACTION

Based upon the foregoing factual and legal determinations and pursuant to §25-8-602, §25-8-605 and 25-8-606, C.R.S., Harvey is hereby ordered to:

37. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 through 25-8-703, C.R.S., its implementing regulations promulgated thereto and the Permit.

Furthermore, the Division hereby orders Harvey to comply with the following specific terms and conditions of this Order:

38. Harvey shall immediately retain a qualified individual or entity *(such as a professional engineer, specifically experienced in geotechnical engineering)* to evaluate the structural integrity of the cut slopes across the entire Project and recommend interim measures and improvements for the stabilization of the slopes. Within fifteen (15) calendar days of receipt of this Order, Harvey shall provide documentation to the Division that it has retained the services of the qualified individual or entity. This documentation shall include at, a minimum, a copy of the individual or entity's qualifications and a copy of the written contract or agreement for such services, including a copy of the scope of services to be provided.

39. Within thirty (30) calendar days of the receipt of this Order, Harvey shall submit to the Division a written plan and time schedule for the implementation of the recommended interim measures and improvements for the stabilization of the cut slopes, as referenced in Paragraph 38. The submitted plan and time schedule shall become a condition of this Order and Harvey shall comply with the plan and time schedule as submitted unless notified by the Division, in writing, that an alternate plan or schedule is appropriate. If the Division imposes an alternate plan or schedule, it shall also become a condition of this Order.

40. Harvey shall immediately evaluate the Project's SWMP and implement necessary measures to ensure the SWMP contains all of the elements required by the Permit and is effective in managing pollutant discharges from the Project. Within thirty (30) calendar days of receipt of this Order, Harvey shall submit a written certification to the Division stating that a complete, effective, and up-to-date SWMP has been fully developed and implemented at the Project.

41. Harvey shall immediately implement necessary measures to ensure that adequate BMPs are in place to control pollutant discharges from the Project. This includes ensuring that all disturbed areas at the Project are stabilized and/or protected with a system/series of erosion and sediment control practices, and that all BMPs at the site are selected, installed, implemented, and maintained following good engineering, hydrologic, and pollution control practices. Within thirty (30) calendar days of receipt of this Order, Harvey shall evaluate and modify all existing BMPs at the Project to ensure the BMPs meet the design requirements specified in the Project's complete and up-to-date SWMP. Within forty-five (45) calendar days of receipt of this Order, Harvey shall submit photographs to the Division documenting the current conditions at the site and the associated BMPs implemented at the Project.

42. Within fifteen (15) calendar days of receipt of this Order, Harvey shall retain the services of a qualified individual or entity and complete an evaluation of all stormwater drainage ways associated with the Project for the buildup of sediment and other pollutants. Within thirty (30) calendar days of completing the evaluation, Harvey shall submit to the Division: a) a report outlining the findings from the evaluation; b) a plan for remediating identified areas of sediment accumulation and pollutant discharges originating from the Project; and c) a time schedule for completing all remedial activities at the Project. The submitted plan and time schedule shall become a condition of this Order and Harvey shall comply with the plan and time schedule as submitted unless notified by the Division, in writing, that an alternate plan or schedule is appropriate. If the Division imposes an alternate plan or schedule, it shall also become a condition of this Order. Within fifteen (15) calendar days of completing the remediation activities, Harvey shall submit a final report to the Division outlining Harvey's remedial actions. Any drainage way evaluation and sediment clean-up that will occur on property not owned or controlled by Harvey shall be conducted in cooperation and agreement with the applicable property owner(s).

## NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, Harvey shall submit an original and an electronic copy to the Division at the following address:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-B2-CAS
Compliance Assurance Section
Attention: Joe Campbell
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Email: joseph.campbell@state.co.us
Fax: (303) 782-0390

*(For any facsimile transmittals, please include a cover sheet addressed to Joe Campbell.)*

For any person submitting documents, plans, records and reports pursuant to this Notice of Violation / Cease and Desist Order, that person shall make the following certification with each submittal:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

## OBLIGATION TO ANSWER AND REQUEST FOR HEARING

Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11 you are required to submit to the Division an answer affirming or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

Section 25-8-603, C.R.S. and 5 CCR 1002, §21.11 also provide that the recipient of a Notice of Violation may request the Division to conduct a public hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002, §21.4(B)(2). Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent Department proceeding. The request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

## FALSIFICATION AND TAMPERING

Be advised, in accord with §25-8-610, C.R.S., that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Colorado Water Quality Control Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

## POTENTIAL CIVIL AND CRIMINAL PENALTIES

You are also advised that any person who violates any provision of the Colorado Water Quality Control Act (the "Act"), §§25-8-101 to 703, C.R.S., or of any permit issued under the Act, or any control regulation promulgated pursuant to the Act, or any final cease and desist order or clean-up order issued by the Division shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution if such discharge is made without a permit, if a permit is required by the Act for such discharge, or if such discharge is made in violation of any permit issued under the Act or in violation of any Cease and Desist Order or Clean-up Order issued by the Division. By virtue of issuing this Notice of Violation / Cease and Desist Order, the State has not waived its right to bring an action for penalties under §§25-8-608 and 609, C.R.S, and may bring such action in the future.

## RELEASE OR DISCHARGE NOTIFICATION

Pursuant to §25-8-601, C.R.S., you are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

## EFFECT OF ORDER

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters. Nothing herein contained shall be construed to preclude other individuals, cities, towns, counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances or to preclude any other lawful actions by such entities or the State.

For further clarification of your rights and obligations under this Notice of Violation / Cease and Desist Order you are advised to consult the Colorado Water Quality Control Act, §§25-8-101 to 703, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 16th day of August, 2011.

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

Lori M Gerzina

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

## Stormwater Inspection Report

| | | |
|---|---|---|
| **Permittee:** Harvey Steamboat Partnership Ltd | **Cert. No.** COR03H527 | **Date(s):** 6/28/2011 |
| **Facility:** Buck Mountain Fence Line | **Industrial Type:** Construction | **Receiving Water:** unnamed tributary to Dutch Gulch. |
| **Facility Address:** 22990 CR 54, Routt County | | |
| **Persons present for part 1 of inspection:** Sandy Horner (Attorney, Klauzer & Tremaine, LLC), Constance Harvey (Owner, Harvey Steamboat Partnership, Ltd), Lyn Halliday (President, Environmental Solutions Unltd, LLC), Rick Myers (Ranch Manager, Harvey Steamboat Partnership, Ltd), Mike Miller (Owner, Rogue Resources), Paul Zywicki (Superintendent, Rogue Resources) | | |
| **Persons present for part 2 of inspection:** Robert Ellsworth (adjacent down gradient property owner to the east), Lynn Kornfeld (Attorney, Faegre & Benson LLP), Sarah Katherman (friend to Robert Ellswoth), Jim Borglum (step brother and co-property owner with Robert Ellsworth) | | |
| **Legally Responsible Person(s)/Title(s):** Constance Harvey (Owner, Harvey Steamboat Partnership Ltd) | | **Inspector(s):** Matt Czahor, Joe Campbell |

### Inspection Findings

Pursuant to all provisions of the Colorado Discharge Permit System General Permit for Stormwater Discharges Associated with Construction Activity (Permit), the findings below must be corrected.

**Records Review**

Notes: In order to conduct a thorough evaluation of the entire facility and to gain property access to evaluate the associated down gradient impacts the inspection was conducted in two parts. Part 1 of the inspection was conducted with the permittee (Harvey Steamboat Partnership Ltd) and their representatives. Part 2 of the inspection was conducted with the adjacent down gradient property owner to the east (Robert Ellsworth) and their representatives. The findings below are reflective of both Parts 1 and 2 of the inspection.

1. The Permit certification effective date was April 12, 2011 and the date construction activity began was on or about August 4, 2010, as provided by Robert Ellsworth during the Water Quality Control Division's (Division) previous inspection of this facility conducted on September 23, 2010.

2. A copy of the Stormwater Management Plan (SWMP) was retained onsite. The date the SWMP was prepared was June 22, 2011, as provided by Lyn Halliday during the inspection. It was requested during the inspection that the permittee submit a copy of the SWMP to the Division. The Division received a copy of the SWMP on July 12, 2011. The SWMP was reviewed and found to be inadequate for the following reasons:

   a) The SWMP that was submitted to the Division did not include a signed certification, as required by Part I.F.1 of the Permit. All reports required for submittal must be signed in accordance with Part I.F.1 of the Permit.

   b) The SWMP Site Description did not include the location and description of all potential pollutant sources, as required by Part I.C.1.f of the Permit. The SWMP did not include the location and description of the following potential pollutant sources identified during the inspection: numerous slope failures of the cut slopes located on the southern portion of the facility, the landslides that occurred along southern portion of the facility as a result of the cut slope failures, the sediment and debris that was discharged down gradient of the facility from the land slides that occurred, the fill slope failure that occurred approximately just north of the midpoint of the facility where a stream crosses the facility, and the sediment and debris that was discharged down gradient of the facility and filled in the stream channel as a result of the fill slope failure. The SWMP must be updated to include this information.

   c) The SWMP Site Map did not identify the location of the construction site boundaries, as required by Part I.C.2.a of

the Permit. The SWMP site map must be updated to include this information.

d) The SWMP Site Map did not identify the location of the stream (unnamed tributary to Dutch Gulch) that crosses the facility approximately just north of the midpoint of the facility, as required by Part I.C.2.h of the Permit. The SWMP must be updated to include this information.

e) The SWMP Site Map inadequately located all non-structural Best Management Practices (BMPs), as required by Part I.C.2.g of the Permit. The site map identified that "seed and mulch" was implemented along the entire fence-line corridor and associated access roadway of the project. However, it was noted during the inspection that seed and straw mulch was only implemented in some areas of the facility, and therefore not along the entire fence-line corridor and associated access roadway of the project. The SWMP site map must be updated to identify current non-structural BMPs being implemented at the site.

f) The SWMP Stormwater Management Controls included an inadequate section for Identification of Potential Pollutant Sources, as required by Part I.C.3.b of the Permit. The SWMP did not identify the following potential pollutant sources identified during the inspection: the numerous slope failures of the cut slopes located on the southern portion of the facility, the landslides that occurred along southern portion of the facility as a result of the cut slope failures, the sediment and debris that was discharged down gradient of the facility from the land slides that occurred, the fill slope failure that occurred approximately just north of the midpoint of the facility where a stream crosses the facility, and the sediment and debris that was discharged down gradient of the facility and filled in the stream channel as a result of the fill slope failure. In addition, the SWMP did not identify and describe appropriate BMPs following good engineering, hydrologic and pollution control practices to manage stormwater discharges from the potential pollutant sources described in this finding, as required by Part I.C.3.c of the Permit. The SWMP must be updated to identify all potential pollutant sources and must identify and describe appropriate BMPs following good engineering, hydrologic and pollution control practices to manage stormwater discharges from all potential pollutant sources.

g) The SWMP Stormwater Management Controls included an inadequate section for Structural Practices for Erosion and Sediment Control implemented at the site, as required by Part I.C.3.c.1 of the permit. The SWMP lists culverts, riprap culvert inlet protection, and riprap culvert outlet protection as structural BMPs being implemented on site. The SWMP does not include installation and implementation specifications for the culverts, riprap culvert inlet protection, and riprap culvert outlet protection. To ensure proper implementation and operation, implementation specifications for the culverts provide details that ensure sufficient hydraulic capacity to convey peak flows, including but not limited to the culvert size, type, length, design. The SWMP must be updated to include installation and implementation specifications for all BMPs implemented on site. All installation and implementation specifications included in the SWMP must be developed in accordance with good engineering, hydrologic and pollution control practices.

h) The SWMP Stormwater Management Controls included an inadequate section for Non-Structural Practices for Erosion and Sediment Control implemented at the site, as required by Part I.C.3.c.2 of the permit. Different sections of the SWMP lists "erosion mats", "erosion blankets", and "turf reinforcement mat" as the non-structural BMPs to be implemented on site at some point. The SWMP does not describe what the difference is between "erosion mats" and "erosion blankets." The SWMP includes a general installation specification for installing Rolled Erosion Control Products (RECPs). The SWMP does not indicate which specific type of RECP this installation specification is intended for. It should be noted that RECPs includes a broad category of different types of products and applications. In addition, this installation specification does not include guidelines for selecting the proper types of RECPs based on different slope gradients to ensure that the BMP implemented will be in accordance good engineering, hydrologic and pollution control practices for the location it is installed. The SWMP must be updated to include installation and implementation specifications for all BMPs implemented on site. All installation and implementation specifications included in the SWMP must be developed in accordance with good engineering, hydrologic and pollution control practices.

i) The SWMP Stormwater Management Controls included an inadequate section for Non-Structural Practices for Erosion and Sediment Control implemented at the site, as required by Part I.C.3.c.2 of the permit. The SWMP lists "crimped straw mulch" and "bonded fiber matrix" as the non-structural BMPs to be implemented on site at some point. The SWMP does not include installation and implementation specifications for the crimped straw mulch. The SWMP includes a general product description of the type of bonded fiber matrix being used. The SWMP does not include installation and implementation specifications for the bonded fiber matrix. The SWMP must be updated to include installation and implementation specifications for all BMPs implemented on site. All installation and implementation specifications included in the SWMP must be developed in accordance with good engineering, hydrologic and pollution control practices.

j) The SWMP Stormwater Management Controls included an inadequate section for Materials Handling and Spill Prevention, as required by Part I.C.3.c.4 of the Permit. The SWMP does not include spill clean-up and response procedures. The SWMP must be updated to include this information.

k) The SWMP Final Stabilization and Longterm Stormwater Management included an inadequate section for describing practices used to achieve final stabilization of **all** disturbed areas at the site, and any planned practices to control pollutants in stormwater discharges that that will occur after construction operations have been completed as required by Part I.C.4.b of the permit. The SWMP does not describe the practices used to achieve final stabilization of the disturbed areas described above in Findings 2b and 2f. The SWMP must be updated to include this information.

3. The inspection records were retained onsite. It was requested during the inspection that the permittee submit a copy of the inspection records to the Division. The Division received a copy of the inspection records on July 12, 2011. The inspection records that were submitted to the Division did not include a signed certification as required by Part I.F.1 of the Permit. All reports required for submittal must be signed in accordance with Part I.F.1 of the Permit.

**Facility Inspection**

Note: The construction activity associated with this facility consisted of cut-and-fill excavation and grading in order to construct a fence-line corridor and associated access roadway following the common property boundary between the Harvey property and Ellsworth property. The facility runs north to south. The Harvey property is to the west (on the up-gradient side) and the Ellsworth property is to the east (on the down-gradient side). The Stormwater runoff from the facility flows down a steep gradient to the east and eventually to Dutch Gulch. Located approximately just north of the midpoint of the facility is a stream that crosses the facility. The stream was flowing at the time of the inspection. This stream flows to the east and is an unnamed tributary to Dutch Gulch. Dutch Gulch discharges to the Elk River.

Note: The photos associated with the below findings will be contained on a CD that will be attached to this inspection report. Each of the photos will be identified by a specific number and further explained by a photo log attached to this report. In addition, a site map will also be attached to this report to identify with waypoint point numbers the locations of where some of the photos were taken.

Note: All BMPs mentioned in the below findings must be installed according to installation and implementation specifications outlined in the SWMP. These specifications must be developed in accordance with good engineering, hydrologic and pollution control practices.

4. It was noted during the inspection that inadequate BMPs were implemented to manage stormwater runoff from the disturbed cut slopes located at the northern end of the project (see photos 1 and 2). Erosion control blankets (ECBs) were installed on these cut slopes. According to good engineering, hydrologic and pollution control practices ECBs must be installed with an anchor trench at the top of the slope and anchor trenches along all outside perimeters of the ECBs. Also, surface preparation must be preformed such that the ECB is in full contact with the subgrade. The ECBs that were installed on the cut slopes did not include the required anchor trenches and were not in full contact with the subgrade. Numerous gaps and voids were observed between the ECBs and the subgrade. Stormwater runoff from this area would flow south along the fence-line corridor and associated access roadway and eventually discharge into the stream that

crosses the facility. The stream is an unnamed tributary to Dutch Gulch.

5. It was noted during the inspection that BMPs were not implemented to manage stormwater runoff from some of the disturbed cut slopes located north of the stream crossing (see photo 5). Stormwater runoff from these slopes would flow south along the fence-line corridor and associated access roadway and eventually discharge into the stream that crosses the facility. The stream is an unnamed tributary to Dutch Gulch. BMPs for interim and/or final stabilization must be implemented for all disturbed cut slopes associated with this facility.

6. It was noted during the inspection that BMPs were not implemented to manage stormwater runoff from some of the disturbed fill slopes located north of the stream crossing (see photos 3 and 4) These slopes were comprised of highly erodible unstabilized fill material. Some sections of these disturbed fill slopes were constructed directly adjacent to the stream that crosses the project. Stormwater runoff from these slopes would flow to the southeast and into the stream. The stream is an unnamed tributary to Dutch Gulch. BMPs for interim and/or final stabilization must be implemented for all disturbed fill slopes associated with this facility. BMPs must also be implemented to remove any placed or discharged sediment from any waterway where a discharge has occurred from the facility. In addition, BMPs must be implemented to mitigate any impacts to the waterway caused by the sediment discharge.

7. It was noted during the inspection that BMPs were not implemented to stabilize the outlet side of the culvert that is conveying flow of the stream that crosses the project located approximately just north of the midpoint of the facility (see photo 6). The outlet side of the culvert discharges the conveyed stream flow onto a disturbed unstabilized fill slope and then down gradient to the east. As a result there was evidence of erosion, scouring, and subsequent discharge of sediment into the stream from the channel forming in the fill slope. The SWMP indicated that riprap rock would be installed on the outlet side of culverts. Riprap rock was not installed at this location. BMPs must be implemented to provide a stabilized conveyance that will convey stream flow through the facility and prevent the discharge of sediment fill material into the stream. BMPs must also be implemented to remove any placed or discharged sediment from any waterway where a discharge has occurred from the facility. In addition, BMPs must be implemented to mitigate any impacts to the waterway caused by the sediment discharge.

8. It was noted during the inspection that during the cut and fill excavation and grading activities the stream that crosses the facility approximately just north of the midpoint of the facility and its channel were filled in with sediment. This filling activity created a massive fill slope that blocked the flow of the stream. BMPs were not implemented to manage stormwater runoff from this disturbance or to provide a conveyance for the stream to flow across the fill material. As a result, the force of the stream flow combined with stormwater runoff pushed the wedge of fill material that covered the stream channel down gradient. This caused a massive amount of sediment to be discharged down gradient to the east into the stream, filled in the stream channel, and filled in wetlands adjacent to the stream. Iron bacteria was forming in the wetland (see photos 15 and 16) and appeared to be the result of iron rich sediment that had discharged to the wetlands from the facility. The stream channel directly down gradient of the facility could no longer be identified because the amount of sediment that has filled it in (see photos 6, and 10 - 23). So much sediment had discharged into the stream that sediment had accumulated 3 feet up on the adjacent tree trunks. The stream up gradient of the facility flows in a well vegetated defined channel (see photo 7). The stream down gradient of the facility was spread out flat flowing across the sediment and the vegetation was covered in sediment. It was also observed during the inspection that the turbidity of the water down gradient of the facility was visibly higher than that of the stream up gradient of the facility (see photo 24). This stream segment and its associated wetlands are State waters. The discharge of sediment that occurred from the facility into these waters constitutes a discharge of pollution into State waters. This is a violation of Part. I.D.1.a of your Permit. BMPs must be implemented to ensure that future stormwater discharges from the facility do not cause or threaten to cause pollution, contamination or degradation of State waters. BMPs must also be implemented to remove any placed or discharged sediment from any waterway where a discharge has occurred from the facility. In addition, BMPs must be implemented to mitigate any impacts to the waterway caused by the sediment discharge.

9. It was noted during the inspection that BMPs were not implemented to manage stormwater runoff from all of the disturbed unstabilized fill slopes extending all the way south from the stream crossing identified in the above Finding 8 (see photos 25, 31 and 32). Stormwater runoff from these slopes flows down a steep gradient to the east and eventually to

Dutch Gulch. BMPs for interim and/or final stabilization must be implemented for all disturbed fill slopes associated with this facility.

10. It was noted during the inspection that the cut slope excavation and grading activities that took place on the southern half of the facility caused the up gradient cut slopes to become unstable. BMPs were not implemented to manage stormwater runoff from this disturbance or to provide proper planning, design, and engineering of the cut slope excavations to ensure the cut slopes could be stabilized. The instability of the cut slopes combined with stormwater runoff caused the cut slopes to collapse. The collapse of the cut slopes caused landslides to occur (see photos 26 - 39). The landslides and stormwater runoff pushed sediment and debris hundreds of yards down gradient of the facility. The sediment and debris that was discharged filled in and covered the down gradient vegetation. Stormwater runoff from these areas of disturbance flows down a steep gradient to the east and eventually discharges into Dutch Gulch. BMPs for interim and/or final stabilization must be implemented for all disturbed cut slopes associated with this facility. BMPs must also be implemented to remove any placed or discharged sediment from any waterway, or any other area outside the operational control of the permittee, where a discharge has occurred from the facility. In addition, BMPs must be implemented to mitigate any impacts to the waterway, or other areas of disturbance, caused by the sediment discharge.

# Photo Log – page 1

Harvey Steamboat Partnership Ltd COR03H527 Inspection conducted: 6/28/2011

photo1 - Waypoint 001, northern terminus of facility, looking south, ECBs to right

photo2 - Waypoint 001, close up of ECBs seen in photo1

photo3 - Waypoint 002, looking southeast at fill slopes

photo4 - Waypoint 002, looking southeast at fill slopes

photo5 - Waypoint 003, looking north, cut slopes to left

photo6 - Waypoint 004, from where the stream crosses facility, looking down gradient to the east, note the culvert outlet in left corner of photo

photo7 - Waypoint 004, from where the stream crosses facility, looking up gradient to the west at the stream entering the facility.

photo8 - Waypoint 005, looking down gradient to the east at fill slopes

photo9 - Waypoint 005, just south of stream crossing, looking north at facility corridor

photo10 - Waypoint 006, hundreds of yards down gradient to the east of the facility, looking at sediment deposition in the stream from the facility

photo11 - Waypoint 008, hundreds of yards down gradient to the east of the facility, looking at sediment deposition in the stream from the facility

photo12 - Waypoint 008, hundreds of yards down gradient to the east of the facility, looking at sediment deposition adjacent to the stream from the facility

photo13 - Waypoint 008, hundreds of yards down gradient to the east of the facility, looking at sediment deposition adjacent to the stream from the facility

photo14 - Waypoint 008, hundreds of yards down gradient to the east of the facility, south of the stream, looking at the natural forest floor without sediment deposition from the facility, note the difference in color of the sediment than the color of sediment that came from the facility

photo15 - Waypoint 007, hundreds of yards down gradient to the east of the facility, wetlands adjacent to stream, looking at sediment deposition in the wetland, note the difference in color of the iron rich sediment deposited from the facility versus the natural grayish - black reduced wetland soils that naturally occur in these wetlands, note the sheen formed on the water from the iron bacteria that are feeding on the iron rich sediment that was deposited from the facility

photo16 - Waypoint 007, wetlands adjacent to wetlands pictured in photo15, more sediment deposition from the facility

photo17 - Waypoint 009, just down gradient to the east of the facility, where the stream crosses the facility, standing approximately near where the old stream channel would have been, looking in various directions, note the widespread sediment deposition, note how high the sediment was deposited on the trees

## Photo Log – page 2

Harvey Steamboat Partnership Ltd COR03H527 Inspection conducted: 6/28/2011

photo18 - Waypoint 009, just down gradient to the east of the facility, where the stream crosses the facility, standing approximately near where the old stream channel would have been, looking in various directions, note the widespread sediment deposition, note how high the sediment was deposited on the trees

photo19 - Waypoint 009, just down gradient to the east of the facility, where the stream crosses the facility, standing approximately near where the old stream channel would have been, looking in various directions, note the widespread sediment deposition, note how high the sediment was deposited on the trees

photo20 - Waypoint 009, just down gradient to the east of the facility, where the stream crosses the facility, standing approximately near where the old stream channel would have been, looking in various directions, note the widespread sediment deposition, note how high the sediment was deposited on the trees

photo21 - Waypoint 009, just down gradient to the east of the facility, where the stream crosses the facility, standing approximately near where the old stream channel would have been, looking in various directions, note the widespread sediment deposition, note how high the sediment was deposited on the trees

photo22 - Waypoint 009, just down gradient to the east of the facility, where the stream crosses the facility, standing approximately near where the old stream channel would have been, looking in various directions, note the widespread sediment deposition, note how high the sediment was deposited on the trees

photo23 - Waypoint 009, just down gradient to the east of the facility, where the stream crosses the facility, standing approximately near where the old stream channel would have been, looking in various directions, note the widespread sediment deposition, note how high the sediment was deposited on the trees

photo24 - Waypoint 009, just down gradient to the east of the facility, where the stream crosses the facility, standing approximately near where the old stream channel would have been, looking down at the flowing stream, note the turbidity in the water from the sediment

photo25 - Waypoint 009, just down gradient to the east of the facility, where the stream crosses the facility, standing approximately near where the old stream channel would have been, looking southwest at fill slopes

photo26 - Southern half of facility, looking down gradient to the east at one of the landslides

photo27 - Southern half of facility, looking southwest at cut slopes

photo28 - Southern half of facility, looking northwest at cut slopes

photo29 - Southern half of facility, looking down gradient to the east at one of the landslides

photo30 - Southern half of facility, looking northwest at cut slopes

photo31 - Southern half of facility, looking southeast at fill slopes

# Photo Log – page 3

Harvey Steamboat Partnership Ltd COR03H527 Inspection conducted: 6/28/2011

photo32 - Southern half of facility, looking south along fill slopes

photo33 - Southern half of facility, looking down gradient to the east at one of the landslides

photo34 - Southern half of facility, looking down gradient to the east at one of the landslides

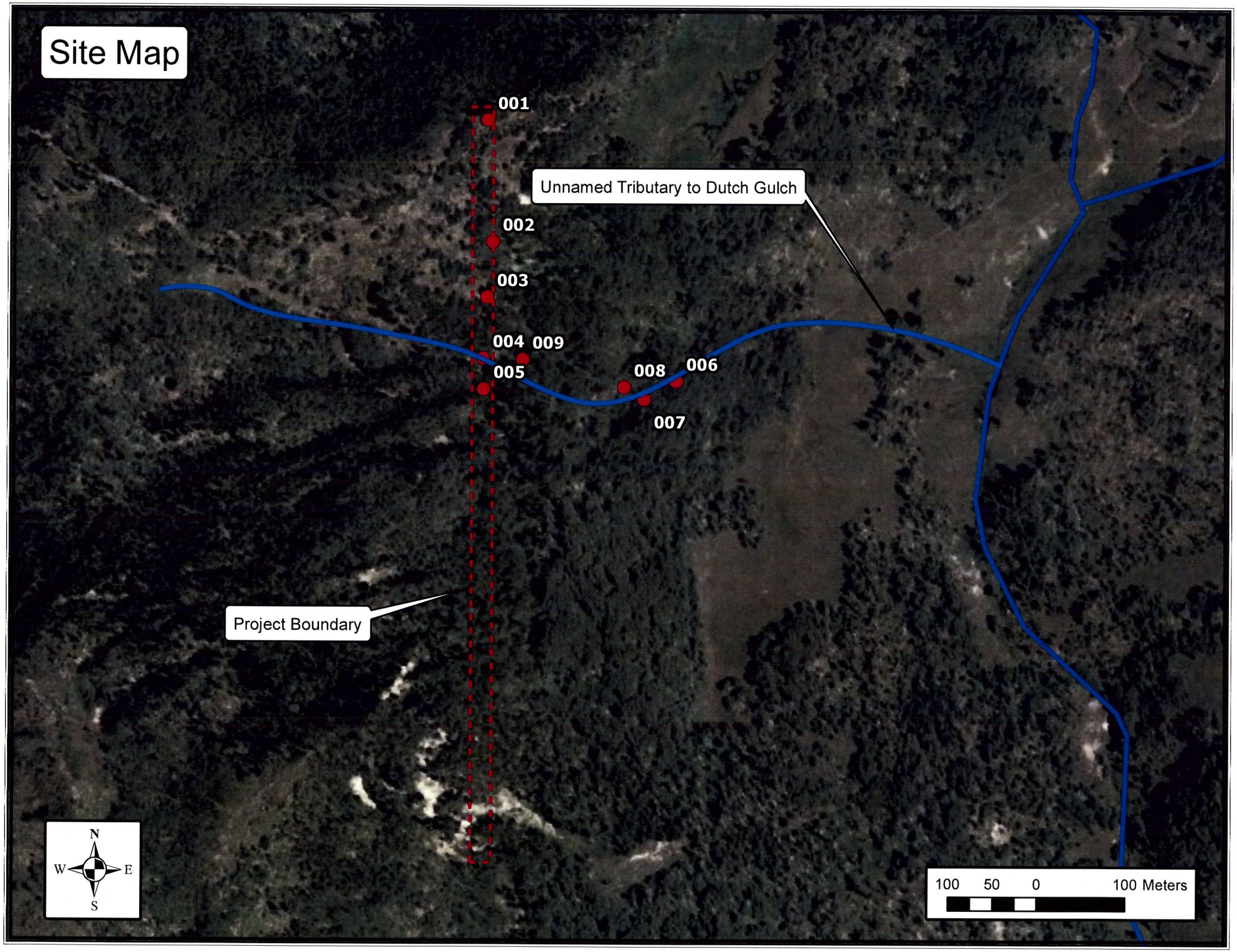
photo35 - Southern half of facility, looking northwest at cut slopes

photo36 - Southern terminus of facility, point where construction activity stopped

photo37 - Southern terminus of facility, looking just south and just beyond where construction activity stopped, note the well vegetated and stable surrounding landscape

photo38 - Southern terminus of facility, looking north along the facility corridor

photo39 - Southern terminus of facility, looking down gradient to the east, note the sediment accumulation in the middle of the photo


Site Map
001
002
003
004
009
005
008
006
007
Unnamed Tributary to Dutch Gulch
Project Boundary
N
W
E
S
100 50 0 100 Meters