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

September 10, 2010

Mr. J.C. Marvel, Jr.
Brannan Sand and Gravel Company, L.L.C.
2500 E. Brannan Way
Denver, Colorado 80229

Certified Mail Number: 7009 1680 0000 2094 4930

RE: Order for Civil Penalty, Number: SP-100910-2

Dear Mr. Marvel:

Brannan Sand and Gravel Company, L.L.C. is hereby served with the enclosed Order for Civil Penalty ("Penalty Order"). This Penalty Order is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §25-8-608(2) of the Colorado Revised Statutes. Payment of the imposed civil penalty should be made in accordance with the methods referenced in the Penalty Order and Compliance Order on Consent, Number: SC-100706-1.

If you have any questions regarding the Penalty Order or the payment method, please do not hesitate to contact Michael Harris of this office at (303) 692-3598 or by electronic mail at michael.harris@state.co.us.

Sincerely,

Russell Zigler

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

Enclosure(s)

cc: Tri-County Health Department

ec: Aaron Urdiales, EPA Region VIII
Doug Camrud, Engineering Section, CDPHE
Nathan Moore, Permits Section. CDPHE
Dick Parachini, Watershed Program, CDPHE
Michael Beck, FSU, CDPHE
Michael Harris, Case Person

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

ORDER FOR CIVIL PENALTY **NUMBER: SP-100910-2**

IN THE MATTER OF: **BRANNAN SAND AND GRAVEL COMPANY, L.L.C.**
CDPS PERMIT NO. COR-010000
CERTIFICATION NOS. COR-010296 & COR-011354
DENVER & ADAMS COUNTIES, COLORADO

This matter having come to my attention as the Designee of the Executive Director of the Colorado Department of Public Health and Environment, upon petition for the imposition of a civil penalty by the Water Quality Control Division's Compliance Assurance Section, and pursuant to §25-8-608, C.R.S., I hereby impose a civil penalty in the amount of One Hundred Thousand Dollars ($100,000.00) against Brannan Sand and Gravel Company, L.L.C. for the violations cited in the July 6, 2010 Compliance Order on Consent (Number: SC-100706-1). A copy of the Compliance Order on Consent is attached hereto as Exhibit A and is incorporated herein by reference. The civil penalty shall be paid within thirty (30) calendar days of the date of this Order for Civil Penalty and as set forth in the Compliance Order on Consent:

> *"Method of payment shall be by certified or cashier's check drawn to the order of the 'Colorado Department of Public Health and Environment,' and delivered to:*
>
> *Michael Harris*
> *Colorado Department of Public Health and Environment*
> *Water Quality Control Division*
> *Mail Code: WQCD-B2-CAS*
> *4300 Cherry Creek Drive South*
> *Denver, Colorado 80246-1530"*

Dated this 10th day of September, 2010.

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

EXHIBIT A

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT **NUMBER: SC-100706-1**

IN THE MATTER OF: **BRANNAN SAND AND GRAVEL COMPANY, L.L.C.**
CDPS PERMIT NO. COR-010000
CERTIFICATION NOS. COR-010296 & COR-011354
DENVER & ADAMS COUNTIES, 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 Brannan Sand and Gravel Company, L.L.C. ("Brannan"). The Division and Brannan may be referred to collectively as "the Parties."

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order are to resolve, without litigation, the alleged violations cited herein, in the Compliance Advisory the Division sent to Brannan on September 26, 2006, and in the Notice of Violation / Cease and Desist Order / Clean-up Order (Number: SO-070315-1) the Division issued to Brannan on March 15, 2007, including, without limitation, the administrative and civil penalties associated with said alleged violations.

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 Brannan and Brannan's compliance with the Act and its implementing permit regulations and permits.

3. At all times relevant to the alleged violations identified herein, Brannan was a Colorado limited liability company in good standing and registered to conduct business in the State of Colorado.

4. Brannan is a "person" as defined by the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).

Central Plant Facility Violations

5. In or about 1999, Brannan commenced operation of a ready mix concrete and asphalt batch plant located at and in the vicinity of 7271 Colorado Boulevard, in Commerce City, Adams County, Colorado (the "Central Plant"). The Central Plant is classified within the Standard Industrial Classification codes 2951 and 3273.

6. On September 20, 2006, a representative from the Division (the "Division Inspector") conducted an onsite inspection of the Central Plant, pursuant to the Division's authority under §25-8-306, C.R.S., to determine Brannan's compliance with the Act.

Operating without a Stormwater Permit

7. 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.

8. 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.

9. Pursuant to 5 CCR 1002-61, §61.3(2)(e)(iii)(B), facilities classified as Standard Industrial Classifications 29 and 32 (except 323) are considered to be engaging in "industrial activity."

10. 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.

11. During the September 20, 2006 inspection, the Division Inspector identified that the Central Plant was not covered under a CDPS permit for stormwater discharges. Additionally, the Division Inspector identified that stormwater from the Central Plant had discharged to the adjacent wetland.

12. On January 23, 2009, the Division received an application from Brannan for Central Plant coverage under the CDPS General Permit, Number COR-010000, for Stormwater Discharges Associated with Light Industrial Activity (the "Permit").

13. On January 26, 2009, the Division provided Brannan Certification Number COR-011354 authorizing Brannan to discharge stormwater from the industrial activities associated with the Central Plant to the South Platte River under the terms and conditions of the Permit. Certification Number COR-011354 became effective January 26, 2009 and remains in effect until June 30, 2011 or until Brannan inactivates Permit coverage.

14. Division records establish that Brannan did not have any permits authorizing discharges of stormwater from the Central Plant during the period from 1999 until January 26, 2009.

15. Brannan's failure to obtain Central Plant coverage under the Permit during the period from 1999 until January 26, 2009 and Brannan's discharge of stormwater from the Central Plant to the adjacent wetland constitute violations 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).

Discharge without a Permit

16. 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.

17. During the September 20, 2006 inspection, the Division Inspector identified that process wastewater containing concrete residuals and residue from the concrete mixer trucks and concrete washout at the Central Plant had discharged to an adjacent wetland.

18. Concrete residuals and residue are "pollutants" as defined by §25-8-103(15), C.R.S. and its implementing permit regulation 5 CCR 1002-61, §61.2(76).

19. The concrete mixer trucks and concrete washout at the Central Plant are "point sources" as defined by §25-8-103(14), C.R.S. and its implementing permit regulation 5 CCR 1002-61, §61.2(75).

20. The adjacent wetland at the Central plant 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).

21. Division records establish that Brannan did not have any permits authorizing the discharge of pollutants from the concrete mixer trucks and concrete washout to the adjacent wetland.

22. Brannan's discharge of process wastewater containing concrete residuals and residue to the adjacent wetland constitutes a "discharge of pollutants" as defined by §25-8-103(3), C.R.S.

23. Brannan's discharge of concrete residuals and residue into the adjacent wetland constitutes an unauthorized discharge of pollutants from a point source into state waters in violation of §25-8-501(1), C.R.S.

Yard B Facility Violations

24. Brannan operates an asphalt batch plant located at 4090 Galapago Street, in the City of Denver, Denver County, Colorado ("Yard B"). Yard B is classified within the Standard Industrial Classification code 2951.

25. Yard B is covered under the Permit. On October 31, 1992, the Division issued Brannan Certification Number COR-010296, authorizing Brannan to discharge stormwater from the industrial activities associated with Yard B to the South Platte River under the terms and conditions of a prior version of the Permit. Certification Number COR-010296 (under the current version of the Permit) remains in effect until June 30, 2011 or until Brannan inactivates Permit coverage.

26. Pursuant to 5 CCR 1002-61, §61.8, a permittee must comply with all the terms and conditions of a permit and violators of the terms and conditions specified in a permit may be subject to civil and criminal liability pursuant to sections 25-8-601 through 612, C.R.S.

27. On June 7, 2006, a representative from the Denver Department of Environmental Health (the "Denver Inspector") conducted an onsite inspection of Yard B on behalf of the Division, pursuant to the Division's authority under §25-8-306, C.R.S., to determine Brannan's compliance with the Water Quality Control Act and the Permit. During the inspection, the Denver Inspector interviewed Yard B representatives, conducted a review of Yard B's stormwater management records, and conducted a physical inspection of the facility.

Deficient and/or Incomplete Stormwater Management Plan

28. Pursuant to Part I. B. of the Permit, Brannan is required to prepare a Stormwater Management Plan ("SWMP") for Yard B that identifies Best Management Practices ("BMPs") that, when implemented, will meet the terms and conditions of the Permit. The SWMP is required to identify potential sources of pollution, which may be reasonably expected to affect the quality of stormwater discharges associated with industrial activity from Yard B. In addition, the plan is required to describe and ensure the implementation of BMPs, which will be used to reduce the pollutants in stormwater discharges associated with industrial activity.

29. Pursuant to Part I. B. of the Permit, the SWMP shall include, at a minimum, the following items:

    a. Industrial Activity Description – Each plan shall include a narrative description of the industrial activity taking place at the site.

    b. Site Map – Each plan shall include a site map indicating an outline of the drainage area of each stormwater outfall, each existing structural control measure to reduce pollutants in stormwater runoff, and surface water bodies.

    c. Stormwater Management Controls – Each plan shall include a description of stormwater management controls and shall address the following minimum components:

        i. SWMP Administrator – Each SWMP shall identify a specific individual(s) who is responsible for developing the SWMP and assisting the plant manager in its implementation, maintenance, and revision.

        ii. Identification of Potential Pollutant Sources and Best Management Practices – Each SWMP shall identify potential sources of pollutants and describe BMPs to reduce the potential of these sources to contribute pollutants to stormwater discharges. Each description of BMPs shall include stormwater diversions, materials handling and spill prevention, sediment and erosion prevention, and other pollution prevention measures.

        iii. Sampling Information – Each plan shall include a summary of any existing discharge sampling data describing pollutants in stormwater discharges and a description of each proposed sampling point, should monitoring be required.

iv. Preventive Maintenance – Each plan shall include a preventive maintenance program that involves inspection and maintenance of stormwater management devices, as well as inspecting and testing plant equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

v. Good Housekeeping – Each plan shall address cleaning and maintenance schedules, trash disposal and collection practices, grounds maintenance, etc.

vi. Spill Prevention and Response Procedures – Each plan shall identify areas where potential spills can occur, with their accompanying drainage points. Procedures for cleaning up spills shall be identified.

vii. Employee Training – Each plan shall include procedures for conducting employee training that addresses topics such as spill response, good housekeeping, material management practices, and plant operation and design features. Each plan shall identify periodic dates for such training.

viii. Identification of Discharges other than Stormwater – The plan shall include a description of the results of an evaluation for the presence of discharges other than stormwater, including the method used, the date of evaluation, and the onsite drainage points that were observed.

d. Comprehensive Inspections – Each SWMP shall identify qualified personnel that will inspect designated equipment and plant areas. Each SWMP shall specify the procedures and intervals of the comprehensive inspections.

e. Consistency with Other Plans – SWMPs may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under section 311 of the Clean Water Act, or BMP Programs otherwise required by a CDPS permit.

30. The Division has determined that Brannan failed to prepare and maintain a complete and accurate SWMP for Yard B as described in paragraphs 30(a–g) below:

a. During the June 7, 2006 inspection, the Inspector reviewed the SWMP and identified that the site map did not include an outline of the drainage area of each stormwater outfall, each existing structural control measure to reduce pollutants in stormwater runoff, nor surface water bodies.

b. During the June 7, 2006 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not describe the potential sources of pollutants at Yard B nor the specific BMPs that would be utilized to reduce the potential of these sources to contribute pollutants to stormwater discharges.

c. During the June 7, 2006 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not include a description of the stormwater management devices that would be inspected under the preventive maintenance program.

d. During the June 7, 2006 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not include cleaning and maintenance schedules, including trash collection and disposal practices nor grounds maintenance.

e. During the June 7, 2006 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not describe areas where potential spills could occur, their accompanying drainage points, nor procedures for cleaning up spills.

f. During the June 7, 2006 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not describe any discharges at Yard B other than stormwater, as required in the Permit.

g. During the June 7, 2006 inspection, the Inspector reviewed the SWMP and identified that the SWMP did not describe comprehensive inspection procedures, including qualified personnel that would perform the inspections nor the interval at which the inspections would be performed.

31. Brannan's failure to maintain a complete and accurate SWMP for Yard B constitutes violation(s) of Part I. B. of the Permit.

Failure to Implement and/or Maintain
Best Management Practices to Protect Stormwater Runoff

32. Pursuant to Part I. B. 3. b. of the Permit, Brannan is required to identify potential sources of pollutants at Yard B and implement BMPs to reduce the potential of these sources to contribute pollutants to stormwater discharges. The Permit specifies that where stormwater pollution potential exists, appropriate preventative measures must be taken and documented.

33. Pursuant to Part I. B. of the Permit, Brannan is required to implement the provisions of the SWMP as a condition of the Permit.

34. Pursuant to Part I. C. 1. b. of the Permit, Brannan is required to have adequate protections in place to contain potential spills from bulk storage structures for petroleum products and other chemicals.

35. The Division has determined that Brannan failed to implement and/or maintain adequate BMPs at Yard B as described in paragraphs 35(a-h) below:

a. During the June 7, 2006 inspection, the Inspector reviewed the SWMP and identified that the SWMP described a sediment pond that would be utilized as a BMP at Yard B. However, no sediment pond was observed onsite.

b. During the June 7, 2006 inspection, the Inspector observed a liquid, which was later determined by Brannan to be a cleaner used to clean parts and equipment at the Yard B, that was discharging into a storm sewer inlet at the facility. Hay bales and oil socks were in place but were not acting as functional BMPs to prevent the liquid from reaching the storm sewer.

c. During the June 7, 2006 inspection, the Inspector observed damaged, rusting 55-gallon drums and unlabeled plastic containers full of chemicals that were being stored northwest of the main entrance and southeast of the north entrance. No BMPs were observed in place to contain potential spills from the drums and plastic containers, as required by the Permit, and no other BMPs were observed in place to prevent spilled chemicals from discharging from the site during a storm event.

d. During the June 7, 2006 inspection, the Inspector observed a large fuel spill from a truck that was located in the parking area at Yard B. No BMPs were being utilized to clean up the fuel or to prevent spilled fuel from discharging from the site during a storm event.

e. During the June 7, 2006 inspection, the Inspector observed above-ground storage tanks located along the southwestern side of Yard B. Liquid asphalt had been spilled in the area but no BMPs were observed in place to clean up the spills.

f. During the June 7, 2006 inspection, the Inspector observed material storage piles located along the western side of Yard B, and a storage area located north of the tire shop at the facility. Grease and oil covered parts were being stored in each area with no BMPs in place to prevent stormwater from intermingling with the parts before discharging from each area.

g. During the June 7, 2006 inspection, the Inspector observed buckets of oil that were being stored near the fueling station at Yard B. The buckets were not covered and no secondary containment BMPs were in place.

h. During the June 7, 2006 inspection, the Inspector observed batteries that were being stored east of the maintenance shop at Yard B. The batteries were not under cover and no BMPs were observed in place to prevent stormwater from intermingling with the batteries before discharging from the area.

36. Brannan's failure to implement and maintain BMPs to protect stormwater quality at Yard B constitutes violations of Part I. B., Part I. B. 3. b. and Part I. C. 1. b. of the Permit.

<u>Failure to Conduct Inspections of Stormwater Management System</u>

37. Pursuant to Part I. B. 4. and Part I. C. 5. of the Permit, Brannan is required to perform and document comprehensive inspections of the stormwater management system at Yard B at least twice per year.

38. During the June 7, 2006 inspection, the Inspector reviewed the stormwater management system records for Yard B and identified that Brannan had not been conducting inspections of the stormwater management system at the facility.

39. Brannan's failure to conduct inspections of the stormwater management system at Yard B constitutes violation(s) of Part I. B. 4. and Part I. C. 5. of the Permit

Brannan's Position on Alleged Violations

40. Brannan denies the violations alleged by the Division at the Central Plant and at Yard B.

41. The Division finds that Brannan's position statement is not consistent with the information gathered in the course of the Division's inspections and investigation of the incidents described herein and the inclusion of Brannan's position statement in this order should not be construed to constitute any admission or agreement by the Division as to the content of the position statement.

ORDER AND AGREEMENT

42. 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, in the September 26, 2006 Compliance Advisory, and in the Notice of Violation / Cease and Desist Order (Number: S)-070315-1), the Division orders Brannan to comply with all provisions of this Consent Order, including all requirements set forth below.

43. Brannan agrees to the terms and conditions of this Consent Order, except for paragraphs 2 through 39, and paragraph 41 of the DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS. Brannan 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. Brannan also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Brannan 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.

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

CIVIL PENALTY

45. Based upon the application of the Division's penalty policies, and consistent with Departmental policies for violations of the Act, Brannan shall pay One Hundred Thousand Dollars ($100,000.00) in civil penalties. The Division intends to petition the Executive Director, or her designee, to impose the One Hundred Thousand Dollar ($100,000.00) civil penalty for the above violation(s) and Brannan agrees to make the payment through two installment payments of Fifty Thousand Dollars ($50,000.00) – the first within thirty (30) calendar days of the issuance of a Penalty Order by the Executive Director or her designee, and the second within six months thereafter. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

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

SCOPE AND EFFECT OF CONSENT ORDER

46. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the violations alleged herein, in the September 26, 2006 Compliance Advisory, and in the March 15, 2007 Notice of Violation / Cease and Desist Order (Number: SO-070315-1), including, without limitation, the administrative and civil penalties associated with said alleged violations.

47. 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 Brannan 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.

48. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or her designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by Brannan, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.

49. Notwithstanding paragraph 44 above, the violations described in this Consent Order will constitute part of Brannan'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 Brannan. Brannan agrees not to challenge the use of the cited violations for any such purpose.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

50. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to the specific instances of violations cited herein, in the September 26, 2006 Compliance Advisory, and in the March 15, 2007 Notice of Violation / Cease and Desist Order (Number: SO-070315-1). 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.

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

52. 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.

53. Upon the effective date of this Consent Order, Brannan 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.

54. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

NOTICES

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

For the Division:

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

For Brannan:

J. C. Marvel, Jr.
Brannan Sand and Gravel Company
2500 E. Brannan Way
Denver, CO 80229

MODIFICATIONS

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

NOTICE OF EFFECTIVE DATE

57. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or her designee imposes the civil penalty following closure of the public comment period referenced in paragraph 47. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

BINDING EFFECT AND AUTHORIZATION TO SIGN

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

FOR BRANNAN SAND AND GRAVEL, L.L.C.:

_____ Date: 6/23/10
J. C. Marvel, Jr., Manager

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

_____ Date: July 6, 2010
Lori M. Gerzina, Manager
Compliance Assurance Section
WATER QUALITY CONTROL DIVISION