STATE OF COLORADO

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

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

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Located in Glendale, Colorado

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Colorado Department
of Public Health
and Environment

September 12, 2012

Certified Mail Number: 7012 1010 0002 1774 3415

Corporation Service Company, Registered Agent
Peabody Sage Creek Mining, LLC
1560 Broadway, Suite 2090
Denver, CO 80202

RE: Service of Notice of Violation/Cease and Desist Order, Number: IO-120912-1

Dear Corporation Service Company:

Peabody Sage Creek Mining, LLC is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). This NOV/CDO 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 and 25-8-605, C.R.S., of the *Colorado Water Quality Control Act*, (the "Act"). The Division bases this NOV/CDO upon findings that Peabody Sage Creek Mining, LLC has violated the Act, and/or Permit regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., Peabody Sage Creek Mining, LLC is required, within thirty (30) calendar days of receipt of this NOV/CDO, 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 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 or the issuance of additional enforcement actions.

Should you or representatives of Peabody Sage Creek Mining, LLC desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO, please do not hesitate to contact Kelly Morgan of this office by phone at (303) 692-3634 or by electronic mail at kelly.morgan@state.co.us.

Sincerely,

Russell Zigler

Russell Zigler, Legal Assistant
Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Edwin J. Brady, Peabody Sage Creek Mining LLC, P.O. Box 250, Hayden, Colorado 81639-0250
Enforcement File

ec: Mike Zopf, Routt County Department of Environmental Health (mzopf@co.routt.co.us)
Natasha Davis, EPA Region VIII
KC Kay, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Janet Kieler, Permits Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Nathan Moore, Permits Section. CDPHE
Jason Musick, Division of Reclamation, Mining and Safety, DNR
Daniel Hernandez, Division of Reclamation, Mining and Safety, DNR
Kelly Morgan, Case Person
Tania Watson, Compliance Assurance, CDPHE
Edwin J. Brady, Peabody Sage Creek Mining LLC (ebrady@peabodyenergy.com)

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST **NUMBER: IO-120912-1**

IN THE MATTER OF: **PEABODY SAGE CREEK MINING, LLC**
f/k/a SAGE CREEK COAL COMPANY, LLC
CDPS PERMIT NUMBER: CO-0048275
ROUTT COUNTY, COLORADO

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 and 25-8-605, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the alleged violations identified herein, Peabody Sage Creek Mining, LLC, formerly known as Sage Creek Coal Company, LLC ("Peabody") was a Delaware limited liability company in good standing and registered to conduct business in the State of Colorado.

2. Peabody 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).

3. Peabody owns and/or operates the Peabody Sage Creek Mine Complex, located in the SW ¼, Section 27, T6N, R87W; at 36600 Routt County Road #27, south-southeast of the Town of Hayden, Routt County, Colorado (the "Facility").

4. The Facility consists of active underground coal mining operations with some portions of the Facility in the post-mining phase. Stormwater (surface runoff), spoils spring water, and mine water at the Facility are routed to sedimentation ponds for treatment and discharge.

5. The Facility is the subject of the Colorado Discharge Permit System, Permit No. CO-0048275 (the "Permit"). The Permit was originally issued to Sage Creek Coal Company, LLC and became effective on May 1, 2010. The Permit was modified with Modification #1 to add a footnote to the monitoring frequency table and reissued effective June 7, 2010. The Permit was further modified to change the organization named as the permittee from Sage Creek Coal Company, LLC to Peabody Sage Creek Mining, LLC effective May 26, 2011. The Permit expired October 31, 2011 and has been administratively extended, pending permit reissuance.

6. The Permit authorizes Peabody to discharge treated wastewater from the Facility through Outfall 002 (stormwater, spoils spring water, and mine water associated with active mining activities into Little Grassy Creek); Outfall 003 (stormwater associated with active mining activities into Little Grassy Creek); and Outfall 004 (stormwater and spoils spring water associated with post-mining activities into Cow Camp Creek).

7. Little Grassy Creek and Cow Camp Creek 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).

8. Pursuant to 5 CCR 1002-61, § 61.8, Peabody 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.

Failure to Comply with Permit Effluent Limitations

9. Pursuant to Part I.A.1. of the Permit, Peabody's permitted discharge at Outfalls 002 and 003 shall not exceed the effluent limitations specified below:

Effluent Parameter	Discharge Limitations		
	30- Day Average	7-Day Average	Daily Maximum
Flow, MGD	Report	NA	Report
pH, s.u. (minimum- maximum)	NA	NA	6.5 - 9
Oil and Grease, mg/l	NA	NA	10
Total Dissolved Solids, mg/l	Report	NA	Report
Total Suspended Solids (TSS), mg/l	35	NA	70
Potentially Dissolved Copper, ug/l	Report	NA	Report
Potentially Dissolved Selenium, ug/l	4.6	NA	Report
Total Recoverable Iron, ug/l	1,000	NA	Report
Settleable Solids, ml/l	Report	NA	0.5

10. Pursuant to Part I.A.1. of the Permit, any discharge or increase in the volume of discharge at Outfalls 002 and 003 caused by a precipitation event may comply with alternate limitations, subject to the burden of proof requirements described in Part I.A.3. of the Permit.

Alternate Limitations

Any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following limitations:

Effluent Parameter	Alternate Discharge Limitations		
	30- Day Average	7-Day Average	Daily Maximum
Flow, MGD	Report	NA	Report
pH, s.u. (minimum- maximum)	NA	NA	6.5 - 9
Oil and Grease, mg/l	NA	NA	10
Total Dissolved Solids, mg/l	Report	NA	Report

Effluent Parameter	Alternate Discharge Limitations		
	30- Day Average	7-Day Average	Daily Maximum
Total Suspended Solids (TSS), mg/l	Report	NA	Report
Potentially Dissolved Copper, ug/l (Outfall 002 only)	Report	NA	Report
Potentially Dissolved Selenium, ug/l	4.6	NA	Report
Total Recoverable Iron, ug/l	1,000	NA	Report
Settleable Solids, ml/l	Report	NA	0.5

Alternate Limitations

Any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or series of storms or snowmelt of equivalent volume) may comply with the following limitations:

Effluent Parameter	Alternate Discharge Limitations		
	30- Day Average	7-Day Average	Daily Maximum
Flow, MGD	Report	NA	Report
pH, s.u. (minimum- maximum)	NA	NA	6.5 - 9
Oil and Grease, mg/l	NA	NA	10
Total Dissolved Solids, mg/l	Report	NA	Report
Total Suspended Solids (TSS), mg/l	Report	NA	Report
Potentially Dissolved Copper, ug/l (Outfall 002 only)	Report	NA	Report
Potentially Dissolved Selenium, ug/l	4.6	NA	Report
Total Recoverable Iron, ug/l	1,000	NA	Report
Settleable Solids, ml/l	Report	NA	Report

11. Pursuant to Part I.A.1. of the Permit, Peabody's permitted discharge at Outfall 004A shall not exceed the effluent limitations specified below:

Effluent Parameter	Discharge Limitations		
	30- Day Average	7-Day Average	Daily Maximum
Flow, MGD	Report	NA	Report
pH, s.u. (minimum- maximum)	NA	NA	6.5 - 9
Oil and Grease, mg/l	NA	NA	10
Total Dissolved Solids, mg/l	Report	NA	Report
Potentially Dissolved Selenium, ug/l	4.6	NA	Report
Total Recoverable Iron, ug/l	1,000	NA	Report
Settleable Solids, ml/l	Report	NA	0.5

12. Pursuant to Part I.A.1. of the Permit, any discharge or increase in the volume of discharge at Outfall 004 caused by a precipitation event may comply with alternate limitations, subject to the burden of proof requirements described in Part I.A.3. of the Permit.

Alternate Limitations

Any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following limitations:

Effluent Parameter	Alternate Discharge Limitations		
	30- Day Average	7-Day Average	Daily Maximum
Flow, MGD	Report	NA	Report
pH, s.u. (minimum- maximum)	NA	NA	6.5 - 9
Oil and Grease, mg/l	NA	NA	10
Total Dissolved Solids, mg/l	Report	NA	Report
Potentially Dissolved Selenium, ug/l	4.6	NA	Report
Total Recoverable Iron, ug/l	1,000	NA	Report
Settleable Solids, ml/l	Report	NA	0.5

Alternate Limitations

Any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or series of storms or snowmelt of equivalent volume) may comply with the following limitations:

Effluent Parameter	Alternate Discharge Limitations		
	30- Day Average	7-Day Average	Daily Maximum
Flow, MGD	Report	NA	Report
pH, s.u. (minimum- maximum)	NA	NA	6.5 - 9
Oil and Grease, mg/l	NA	NA	10
Total Dissolved Solids, mg/l	Report	NA	Report
Potentially Dissolved Selenium, ug/l	4.6	NA	Report
Total Recoverable Iron, ug/l	1,000	NA	Report
Settleable Solids, ml/l	Report	NA	Report

13. Pursuant to Part I.B.1. of the Permit, Peabody is required to monitor all effluent parameters at specified frequencies to provide an indication of compliance or non-compliance with the effluent limitations of the Permit.

14. Pursuant to Part I.B.1. and Part I.E.1. of the Permit, Peabody is required to summarize and report the analytical results of its effluent monitoring to the Division via quarterly discharge monitoring reports. Each discharge monitoring report is to include a certification by Peabody that the information provided therein is true, accurate and complete to the knowledge and belief of Peabody.

15. Peabody's discharge monitoring reports for the 2nd Quarter 2011 (April 1st through June 30th), 3rd Quarter 2011 (July 1st through September 30th), 4th Quarter 2011 (October 1st through December 31st), 1st Quarter 2012 (January 1st through March 31st), and the 2nd Quarter 2012 (April 1st through June 30th), include, among other information and data, the following effluent concentration data for potentially dissolved selenium which exceeded the effluent limitations imposed by Part I.A.1. of the Permit:

PEABODY SAGE CREEK MINING, LLC EFFLUENT SELF-MONITORING DATA			
DISCHARGE MONITORING REPORTING PERIOD	**OUTFALL NUMBER**	**REPORTED SAMPLE MEASUREMENT VALUE**	**REPORTED SAMPLE MEASUREMENT VALUE**
Potentially Dissolved Selenium		7-DAY AVG.	30-DAY AVG. LIMIT **= 4.6 ug/l**
2nd Quarter 2011	**002A**	NA	11 ug/l
	004A	NA	14 ug/l
3rd Quarter 2011	**002A**	NA	6 ug/l
4th Quarter 2011	**002A**	NA	5 ug/l
1st Quarter 2012	**004A**	NA	6.5 ug/l
2nd Quarter 2012	**002A**	NA	4.7 ug/l
	004A	NA	5.7 ug/l

16. Potentially dissolved selenium is a "pollutant" as defined by § 25-8-103(15), C.R.S.

17. Division records establish that the Permit does not authorize the pollutant discharge levels identified above in paragraph 15 and Peabody does not have any other permit authorizing such discharge into State Waters.

18. Peabody's failure to comply with permit effluent limitations, as identified above in paragraph 15, constitutes violations of Part I.A.1. of the Permit.

Failure to Use Required Analytical Method / Failure to Report Representative Monitoring Data

19. Pursuant to Part I.E.1 of the Permit, reporting of the data gathered in compliance with Part I.B.1. shall comply with the requirements of Part I.E. (General Requirements) of the Permit. Monitoring results shall be summarized for each month and reported on the discharge monitoring report forms.

20. Pursuant to Part I.E.3 of the Permit, all sampling shall be performed by the permittee according to specified methods in 40 CFR Part 136; methods approved by EPA pursuant to 40 CFR Part 136; or methods approved by the Division, in the absence of a method specified in or approved pursuant to 40 CFR Part 136. The analytical method selected for a parameter shall be the one that can measure the lowest detected limit for that parameter unless the permit limitation or stream standard for those parameters not limited, is within the testing range of another approved method.

21. The Division's current established lowest detection limit for potentially dissolved selenium is based on the practical quantitation limit ("PQL") as determined by the State of Colorado Laboratory in November 2008 using a method approved in 40 CFR Part 136 (EPA Method 200.8). The current established lowest detection limit (PQL) for potentially dissolved selenium is 1 ug/l.

22. Laboratory data from the 2nd Quarter 2011 provided to the Division by Peabody establish that effluent from Outfalls 002 and 004 was analyzed for potentially dissolved selenium using two different analytical methods, each with a different corresponding PQL. The laboratory data sheets establish that the analysis of Peabody's effluent for potentially dissolved selenium using the Standard Method 3114 B, AA-Hydride had a corresponding PQL of 5 ug/l and the analysis of Peabody's effluent for potentially dissolved selenium using the EPA Method 200.8 ICP-MS had corresponding PQLs of 0.3ug/l and 0.5 ug/l. Peabody's laboratory data from the 2nd Quarter 2011 for potentially dissolved selenium analysis at Outfalls 002 and 004 is summarized below:

PEABODY SAGE CREEK MINING, LLC POTENTIALLY DISSOLVED SELENIUM ANALYSIS OUTFALL 002			
DATE OF SAMPLE	**METHOD OF ANALYSIS**	**PQL (ug/l)**	**RESULT (ug/l)**
April 20, 2011	SM 3114 B, AA-Hydride	5	5
	M200.8 ICP-MS	0.5	6.7
May 5, 2011	SM 3114 B, AA-Hydride	5	11
	M200.8 ICP-MS	0.3	14
June 16, 2011	SM 3114 B, AA-Hydride	5	7
	M200.8 ICP-MS	0.3	10.7

PEABODY SAGE CREEK MINING, LLC POTENTIALLY DISSOLVED SELENIUM ANALYSIS OUTFALL 004			
DATE OF SAMPLE	**METHOD OF ANALYSIS**	**PQL (ug/l)**	**RESULT (ug/l)**
April 5, 2011	M200.8 ICP-MS	0.3	3
May 16, 2011	SM 3114 B, AA-Hydride	5	14
	M200.8 ICP-MS	0.5	17.9
June 13, 2011	SM 3114 B, AA-Hydride	5	8
	M200.8 ICP-MS	0.5	10.8

23. Peabody's discharge monitoring reports for the 2nd Quarter 2011 (April 1st through June 30th) reported the following effluent concentration data for potentially dissolved selenium as compared with the effluent concentration data from the analytical method that measured the lowest detected limit for potentially dissolve selenium:

PEABODY SAGE CREEK MINING, LLC EFFLUENT SELF-MONITORING DATA			
DISCHARGE MONITORING REPORTING PERIOD	**OUTFALL NUMBER**	**SAMPLE MEASUREMENT VALUE REPORTED ON DISCHARGE MONITORING REPORT**	**SAMPLE MEASUREMENT VALUE USING REQUIRED DETECTION LIMIT**
Potentially Dissolved Selenium		30-DAY AVG.	30-DAY AVG.
2nd Quarter 2011	**002A**	11 ug/l	14 ug/l
	004A	14 ug/l	17.9 ug/l

24. Peabody's failure to report effluent concentration data on the discharge monitoring reports for potentially dissolved selenium using the results from the analytical measurement that could measure the lowest detection limit, as identified above in paragraph 23, constitutes violations of Part I.E.1. and Part I.E.3. of the Permit.

NOTICE OF VIOLATION

25. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that Peabody has violated the following sections of the Permit.

    Part I.A.1. of Permit No. CO-0048275 which states in part: "In accordance with the Water Quality Control Commission Regulations for Effluent Limitations, Section 62.4, and the Colorado Discharge Permit System Regulations, Section 61.8(2), 5 C.C.R. 1002-61, the permitted discharge shall not contain effluent parameter concentrations which exceed the following limitations specified below or exceed the specified flow limitation."

    Part I.E.1. of Permit No. CO-0048275 which states in part: "Routine reporting of the data gathered in compliance with Part I.B.1. shall be on a quarterly basis. Reporting of all data gathered shall comply with the requirements of Part I.E. (General Requirements). Monitoring results shall be summarized for each month and reported on Division approved discharge monitoring report forms."

    Part I.E.3. of Permit No. CO-0048275 which states in part: "The analytical method selected for a parameter shall be the one that can measure the lowest detected limit for that parameter..."

REQUIRED CORRECTIVE ACTION

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

26. Cease and desist from all violations of the Colorado Water Quality Control Act, §§ 25-8-101 through 25-8-803, C.R.S., its implementing regulations promulgated thereto and the Permit.

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

27. Within thirty (30) calendar days of receipt of this Order, Peabody shall retain the services of a qualified individual or entity, specifically experienced in coal mine related wastewater treatment, to evaluate and recommend Facility improvements to ensure compliance with the terms and conditions of the Permit. The evaluation must consider in detail the following:

    a. An evaluation of the personnel requirements and qualifications for the operation and management of the Facility, including an evaluation of each individual's role, duties, and responsibilities in ensuring the proper operation and maintenance of the Facility;

    b. An evaluation of all contributing pollutant sources and pollutant concentrations for all parameters/pollutants that could influence the treatment process, and what techniques or technologies may be utilized to produce effluent that consistently complies with the effluent limitations of the Permit;

    c. An evaluation of whether the Facility's treatment system as a whole is adequate to properly treat all contributing pollutant sources and pollutant concentrations to a level that consistently complies with the effluent limitations of the Permit.

28. Within forty five (45) calendar days of receipt of this Order, Peabody shall provide documentation to the Division that it has retained the services of the qualified individual or entity identified in paragraph 27. 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.

29. Within ninety (90) calendar days of receipt of this Order, Peabody shall submit in writing to the Division a final report on the findings of the evaluation identified and outlined in paragraph 27 above. Along with the findings of the evaluation, the report must identify, for each criterion, specific short-term and long-term measures that will be taken by Peabody to rectify deficiencies identified by the evaluation so that the Facility consistently produces effluent in compliance with the limitations identified in Part I.A.1 of the Permit. For each short-term and long-term measure identified, Peabody shall also submit a time schedule for completion of each measure. <u>The implementation time schedule submitted must identify completion of all measures by no later than February 28, 2013.</u> The measures and time schedule submitted shall become a condition of this Order, and Peabody shall implement the measures and time schedule as submitted unless notified by the Division, in writing, that alternate measures and/or time schedules are appropriate. If the Division imposes alternate measures and/or time schedules, they shall also become a condition of this Order.

30. Within thirty (30) calendar days of receipt of this Order, Peabody shall submit to the Division revised discharge monitoring reports to report the monitoring results from the potentially dissolved selenium analysis that was conducted using the EPA Method 200.8 ICP-MS (or the results from an analytical method specified in 40 CFR Part 136 that measured the lowest detection limit if EPA Method 200.8 ICP-MS was not conducted on an individual sample, as applicable). With this submittal, Peabody shall include a statement certifying that Peabody will analyze the effluent from the Facility using a method specified in 40 CFR Part 136 that is capable of measuring to the lowest detection limit, at or below the current established PQL of 1 ug/l for potentially dissolved selenium.

31. Beginning in October 2012, and every calendar month thereafter, until such time as this Order is closed or the Division decrees so in writing, Peabody shall submit written progress reports to the Division by the end of each calendar month. At a minimum, each report shall describe the activities undertaken in the previous calendar month and shall specify what activities will be undertaken within the next calendar month to comply with this Order.

32. If Peabody becomes aware of any situation or circumstances that cause Peabody to become unable to comply with any condition or time schedules set forth by this Order, Peabody shall provide written notice to the Division within five (5) calendar days of Peabody becoming aware of such circumstances. Peabody's notice shall describe what, if any, impacts will occur on Peabody's ability to comply with the Colorado Water Quality Control Act, its Permit and any impacts on the remaining conditions and/or time schedules specified by this Order and what steps Peabody is taking to mitigate such impacts.

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

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, Peabody 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: Kelly Morgan
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Email: kelly.morgan@state.co.us
Fax: (303) 782-0390

(For any facsimile transmittals, please include a cover sheet addressed to Ms. Morgan.)

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 803, 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 803, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 12th day of September, 2012.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Steven H. Gunderson, Director
WATER QUALITY CONTROL DIVISION