

# 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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<http://www.cdphe.state.co.us>



Colorado Department  
of Public Health  
and Environment

September 29, 2011

Mr. Brian Maslowsky, Registered Agent  
R&M Vista Ridge, Inc.  
8493 Baseline Road  
Boulder, Colorado 80303

**Certified Mail Number: 7010 2780 0002 8752 3451**

**RE: Notice of Violation / Order for Civil Penalty, Number: SO-110929-1**

Dear Mr. Maslowsky:

R&M Vista Ridge, Inc. is hereby served with the enclosed Notice of Violation / Order for Civil Penalty ("NOV/Penalty Order"). This NOV/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 §§25-8-602(1) and 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 NOV/Penalty Order.

If you have any questions regarding the NOV/Penalty Order or the payment method, please do not hesitate to contact Joe Campbell of this office at (303) 692-2356 or by electronic mail at [joseph.campbell@state.co.us](mailto:joseph.campbell@state.co.us).

Sincerely,

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

*Enclosure(s)*

cc: Boulder County Public Health

ec: Natasha Davis, EPA Region VIII  
Dennis Pontius, Engineering Section, CDPHE  
Nathan Moore, Permits Section, CDPHE  
Dick Parachini, Watershed Program, CDPHE  
Michael Beck, Grants and Loans Unit, CDPHE  
Joe Campbell, Case Person, CDPHE  
Gary Behlen, MS4 Contact



**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**  
**DIVISION OF ADMINISTRATION**  
**WATER QUALITY CONTROL DIVISION**

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**NOTICE OF VIOLATION / ORDER FOR CIVIL PENALTY**

**NUMBER: SO-110929-1**

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**IN THE MATTER OF:     R&M VISTA RIDGE, INC.**  
**CDPS PERMIT NO. COR-030000**  
**CERTIFICATION NO. COR-03B767**  
**BOULDER 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 and 25-8-608, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Order for Civil Penalty:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. At all times relevant to the alleged violations identified herein, R&M Vista Ridge, Inc. ("R&M") was a Colorado corporation and registered to conduct business in the State of Colorado.
2. R&M 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. On or about May 1, 2007, R&M initiated construction of a commercial development on 13.64 acres of property located at or near Mountain View Boulevard and Colorado Highway 7, in or near the Town of Erie, Boulder County, Colorado (the "Project").
4. On April 13, 2007, the Division received an application from R&M for Project coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit").
5. On April 17, 2007, the Division provided R&M Certification Number COR-03B767 authorizing R&M to discharge stormwater from the construction activities associated with the Project to the South Platte River under the terms and conditions of the Permit. Certification Number COR-03B767 became effective April 17, 2007 and remained in effect until it was inactivated due to final stabilization being achieved at the request of R&M on October 1, 2010.

6. The South Platte River is “state waters” as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (102).
7. 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 §§25-8-601 through 612, C.R.S.
8. On April 30, 2009, a representative from the Weld County Department of Public Health and Environment (the “Inspector”) conducted an on-site inspection of the Project on behalf of the Division, pursuant to the Division’s authority under §25-8-306, C.R.S., to determine R&M’s compliance with the Water Quality Control Act and the Permit. During the inspection, the Inspector interviewed Project representatives, reviewed the Project’s stormwater management system records, and performed a physical inspection of the Project.

**Deficient and/or Incomplete Stormwater Management Plan**

9. Pursuant to Part I. B. of the Permit, R&M 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.
10. 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 facility 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.
11. Pursuant to Part I. D. 5. of the Permit, R&M is required to update the SWMP and amend the SWMP when there is a change in design, construction, operation, or maintenance of the site; when the SWMP proves to be ineffective in controlling pollutants in stormwater discharges; or when BMPs are no longer necessary and are removed.
  12. During the April 30, 2009 inspection, the Inspectors reviewed the Project’s SWMP and identified the following deficiencies, as described in paragraphs 12(a-e) below:
    - a. The SWMP did not address the nature of the construction activity at the site.
    - b. The SWMP did not address a description of the existing vegetation and an estimate of the percent of vegetative ground cover at the site.
    - c. The construction site map included in the SWMP did not show the locations of the structural BMPs within the construction site.
    - d. The SWMP did not adequately address structural practices implemented at the site to minimize erosion and sediment transport. Specifically, the SWMP did not explain the engineering design and proper BMP installation design for the BMPs at the Project.

- e. The SWMP did not adequately describe the practices used to achieve final stabilization and any planned practices to control pollutants in stormwater discharges that may occur after construction operations have been completed at the site. Specifically, the SWMP did not describe the seed mix selection and application rates and methods, soil preparation and amendments, or soil stabilization requirements for the Project.
13. The Division has determined that R&M failed to prepare and maintain a complete and accurate SWMP for the Project.
  14. R&M's failure to prepare and maintain a complete and accurate SWMP for the Project constitutes violation(s) Part I. B., Part I. C., and Part I. D. 5. of the Permit.

**Failure to Install, Maintain, or Properly Select Best Management Practices**

15. Pursuant to Part I. C. 3. (c) of the Permit, R&M 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.
16. Pursuant to Part I. D. 2. of the Permit, R&M 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.
17. During the April 30, 2009 inspection, the Inspectors identified the following deficiencies related to BMP installation and maintenance at the Project, as described in Paragraphs 17(a-d) below:
  - a. The Inspector observed a disturbed area of soil located within the silt fence that bordered the detention pond on the northwest portion of the project. No BMPs were observed in place to stabilize the disturbed area or to prevent sediment and soil from discharging from the disturbed area and into the detention pond, which had minimal capacity to store water due to the outlet structure being located low in the pond.
  - b. The Inspector observed the silt fence bordering the detention pond located on the northwest portion of the project was not properly maintained. Specifically, the silt fence was observed to be falling down and was not trenched in properly. It was observed that sediment had previously been discharged underneath the silt fence and into the detention pond.

- c. The Inspectors observed heavy rilling of disturbed soils located in the north central portion of the project. No BMPs were observed in place to stabilize the disturbed area or to prevent sediment and soil from discharging from the disturbed area. Consequently, erosion and sediment discharge from the disturbed area was observed.
  - d. The Inspectors observed that no BMPs were in place for tracking control onto the private road located on the project. The private road conveys water to the detention pond located on the northwest portion of the project.
18. The Division has determined that R&M failed to implement and/or maintain functional BMPs for all potential pollutant sources at the Project, following good engineering, hydrologic, and pollution control practices.
19. R&M'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) and Part I. D. 2. of the Permit.

### **NOTICE OF VIOLATION**

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

**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. Facilities must implement the provision of the SWMP as written and updated, from commencement of construction activity until final stabilization is complete, as a condition 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. D. 5. of the Permit**, which states in part, "The plan shall be updated as appropriate... The permittee shall amend the SWMP: 1) when there is a change in design, construction, operation, or maintenance of the site, which would require the implementation of new or revised BMPs; or 2) if the SWMP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activity; or 3) when BMPs are no longer necessary and are removed."

**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. 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.”

### **ORDER FOR CIVIL PENALTY**

21. Pursuant to §25-8-608, C.R.S. any person who violates any provision of the Colorado Water Quality Control Act, 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 shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs.
22. Based upon the facts described in this action the Department has determined that a civil penalty is appropriate in this matter and therefore assesses a civil penalty of Ninety-One Thousand Nine Hundred Eighty-five Dollars (\$91,985.00) for the specific violations identified in this action. The civil penalty was determined in accordance with the procedures outlined in the Division’s *Stormwater Civil Penalty Policy* (January 25, 2007). A copy of the civil penalty calculation is attached hereto as Exhibit A and is incorporated herein by reference.
23. If R&M does not contest the findings and penalty assessment set out above, payment of the civil penalty for the violations shall be forwarded to the Colorado Department of Public Health and Environment within sixty (60) calendar days of the date of issue of this action. 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:

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

## NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, R&M 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 Mr. 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.

### **APPEAL OF CIVIL PENALTY**

Pursuant to 5 CCR 1002, §21.4(A)(3)(b), appeal of the determination of a civil penalty by the Executive Director or his designee shall be made in writing to the Division. Requests for such an appeal shall be made pursuant to 5 CCR 1002, §21.12 and should be filed no later than thirty (30) calendar days after issuance of this action and include the information specified in 5 CCR 1002, §21.4(B)(2).

### **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.

### **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 29 day of September, 2011.

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

A handwritten signature in black ink, appearing to read "Steven H. Gunderson", is written over a horizontal line.

Steven H. Gunderson, Director  
WATER QUALITY CONTROL DIVISION

**STORMWATER PENALTY COMPUTATION WORKSHEET**

|   |   |
|---|---|
| <b>System Name:</b> R & M Vista Ridge, Inc.   | <b>Permit Number:</b> COR-03B767                      |
| <b>Beneficial Use Classification:</b> Middle South Platte River Basin, Segment 3a, <i>Aquatic Life Warm 2</i> , Recreation E, Agriculture | <b>Date of NOV/CDO:</b><br><b>Number:</b> S0-110929-1 |
| <b>Type of Facility:</b> Construction   | <b>Size of Operation or Activity:</b> 13.64 Acres     |

**Part I – Base Penalty Calculation****A. Potential Damage Component**

|        | <b>Violation Type</b>   | <b>Adjustment</b>           | <b>Amount in Dollars</b> |
|--------|---|-----------------------------|--------------------------|
| Line 1 | <b>Conducting Covered Activity Without A Stormwater Permit</b>  |                             | N/A                      |
|        | <i>Adjustment Justification:</i>  |                             |                          |
| Line 2 | <b>Failure to Prepare Stormwater Management Plan (SWMP)</b>   |                             | N/A                      |
|        | <i>Adjustment Justification:</i>  |                             |                          |
| Line 3 | <b>Deficient Stormwater Management Plan (SWMP)</b>  | Minor/Moderate = \$200 +10% | \$220.00                 |
|        | <i>Adjustment Justification:</i> WDPHE, an authorized representative for the Division, conducted an inspection of the project and identified several deficiencies in the development of the SWMP, including a failure to address structural practices implemented at the site to minimize erosion and sediment transport, and did not show the locations of all structural BMPs within the construction site. The Division believes the SWMP deficiencies directly contributed to the BMP deficiencies observed at the site. Considering the beneficial use classification of the receiving waters, the project's proximity to surface waters, and the relatively few number of SWMP violations, the Division conservatively assigns a minor/moderate potential harm to health/environment for the purpose of this settlement calculation.  |                             |                          |
| Line 4 | <b>Failure to Install, Maintain or Properly Select Best Management Practices</b>  | Minor/Moderate = \$750 +10% | \$825.00                 |
|        | <i>Adjustment Justification:</i> Weld County Department of Public Health and Environment ("WDPHE"), an authorized representative for the Colorado Department of Public Health and Environment, Water Quality Control Division (the "Division"), conducted an inspection of the project and identified failures to implement and maintain BMPs at the site. Though several BMPs were in place, the BMPs were not implemented according to best engineering practices and, thus, would not act as functional controls. In relation to the overall size of the project, the number of counts of violation was relatively few. Considering the number and severity of violations noted, as well as the beneficial use classification of the receiving waters and the project's proximity to surface waters, the Division conservatively assigns a minor/moderate potential harm to health/environment for the purpose of this settlement calculation. |                             |                          |
| Line 5 | <b>Failure to Perform Inspections of Stormwater Management System</b>   |                             | N/A                      |

R&amp;M Vista Ridge, Inc.

Permit Number: COR-03B767

Stormwater Penalty Computation Worksheet

Page 1 of 6

**EXHIBIT A**

|                | <b>Violation Type</b>  | <b>Adjustment</b>                 | <b>Amount in Dollars</b> |
|----------------|--|-----------------------------------|--------------------------|
|                | <i>Adjustment Justification:</i>   |                                   |                          |
| Line 6         | <b>Failure to Submit Required/Requested Reports (Annual Reports, Permit Compliance Schedule Items, Etc.)</b>   | Minor/Moderate = \$750 +10%       | \$825.00                 |
|                | <i>Adjustment Justification:</i> WDPHE requested, in a letter dated May 11, 2009, that R & M Vista Ridge, Inc. ("R&M") provide a written response, to be received by the Division and WDPHE no later than June 5, 2009, to the deficiencies noted in the inspection report from the inspection that was conducted on April 30, 2009. As of August 29, 2010, a response has not been received by the Division. Due to the lack of a timely response and not being assured that the violations cited during the inspection were corrected in a timely manner, the Division conservatively assigns a minor/moderate potential harm to public health/environment for the purpose of this settlement calculation. |                                   |                          |
| Line 7         | <b>Failure to Maintain Required Records</b>  |                                   | N/A                      |
|                | <i>Adjustment Justification:</i>   |                                   |                          |
| Line 8         | <b>Pollution, Contamination or Degradation of State Waters</b>   |                                   | N/A                      |
|                | <i>Adjustment Justification:</i>   |                                   |                          |
| Line 9         | <b>Other Administrative Violations</b>   |                                   | N/A                      |
|                | <i>Adjustment Justification:</i>   |                                   |                          |
| <b>Line 10</b> | <b>Potential Damage Total (Sum of Lines 1 through 9)</b>   | <i>(Not to exceed \$6000/day)</i> | <b>\$2,275.00</b>        |

**B. Fault Component**

|         |   | <b>Amount in Dollars</b>          |
|---------|---|-----------------------------------|
| Line 11 | <b>Fault: Category 2</b>  | <i>(Not to exceed \$3000/day)</i> |
|         | <i>Justification:</i> R&M applied for and obtained a stormwater permit. R&M should have been aware its obligations under the permit and of the circumstances that led to the violations. Therefore, the Division has assigned a category-2 fault. The Division has chosen the midpoint of the category two range, as the Division has no additional information to support adjustments from this value. Additionally, as indicated in the permit application and in the SWMP, the disturbed area was 13.64 acres. |                                   |
|         |   | <b>\$600.00</b>                   |

**C. History Component**

|         |   | <b>Amount in Dollars</b>          |
|---------|---|-----------------------------------|
| Line 12 | <b>History: None</b>  | <i>(Not to exceed \$1000/day)</i> |
|         | <i>Justification:</i> R&M has no prior violation history with the Division. |                                   |
|         |   | <b>\$0.00</b>                     |

**Part II – Determination of Days of Violation**

|  |                                | Days of Violation |
|--|--------------------------------|-------------------|
| <b>Line 13</b>   | <b>Total Days of Violation</b> | <b>669</b>        |
| <p><i>Justification:</i></p> <p><b>Deficient Stormwater Management Plan (SWMP):</b> R&amp;M’s permit became effective on July 1, 2007. Upon applying for the permit on April 13, 2007, R&amp;M certified that a complete and accurate SWMP had been prepared for the project. WDPHE reviewed the project’s SWMP on April 30, 2009 and determined that R&amp;M’s SWMP did not contain all of the requirements outlined in the permit. The Division has determined the SWMP was deficient from at least July 1, 2007 until at least April 30, 2009. Therefore, at least 669-Days of violation occurred.</p> <p><b>Failure to Install, Maintain or Properly Select Best Management Practices:</b> The site began construction on May 1, 2007 and an inspection was conducted by WDPHE on April 30, 2009. During the inspection, WDPHE, identified failures to install and/or maintain BMPs at the site. The Division believes the deficiencies persisted for some time period surrounding the inspection. However, for the purpose of settlement, the Division has conservatively chosen to limit the period of violation to 1 day.</p> <p><i>{Note: The BMP violations coincide with the Deficient SWMP violations. Therefore, 669-Days of violation were utilized in this penalty calculation.}</i></p> |                                |                   |

**Part III – Determination of Multi-Day Penalty Amount**

|  |                                       | Amount in Dollars  |       |                  |   |    |        |             |                               |   |    |          |              |                                |   |    |           |               |                                |   |    |           |                |                                 |   |    |           |                |                                 |   |    |           |           |                                 |   |    |          |  |                                       |   |    |                  |
|--|---------------------------------------|--------------------|-------|------------------|---|----|--------|-------------|-------------------------------|---|----|----------|--------------|--------------------------------|---|----|-----------|---------------|--------------------------------|---|----|-----------|----------------|---------------------------------|---|----|-----------|----------------|---------------------------------|---|----|-----------|-----------|---------------------------------|---|----|----------|--|---------------------------------------|---|----|------------------|
| <b>Line 14</b>   | <b>Multi-Day Penalty Amount</b>       | <b>\$86,235.00</b> |       |                  |   |    |        |             |                               |   |    |          |              |                                |   |    |           |               |                                |   |    |           |                |                                 |   |    |           |                |                                 |   |    |           |           |                                 |   |    |          |  |                                       |   |    |                  |
| <p><i>Calculations:</i></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Day 1</td> <td style="width: 40%;">(\$820.00)</td> <td style="width: 10%; text-align: center;">=</td> <td style="width: 10%; text-align: right;">\$</td> <td style="width: 25%; text-align: right;">820.00</td> </tr> <tr> <td>+ Days 2-10</td> <td>(\$820.00) X (9 days) X (50%)</td> <td style="text-align: center;">=</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">3,690.00</td> </tr> <tr> <td>+ Days 11-50</td> <td>(\$820.00) X (40 days) X (40%)</td> <td style="text-align: center;">=</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">13,120.00</td> </tr> <tr> <td>+ Days 51-100</td> <td>(\$820.00) X (50 days) X (30%)</td> <td style="text-align: center;">=</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">12,300.00</td> </tr> <tr> <td>+ Days 101-200</td> <td>(\$820.00) X (100 days) X (20%)</td> <td style="text-align: center;">=</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">16,400.00</td> </tr> <tr> <td>+ Days 200-668</td> <td>(\$820.00) X (469 days) X (10%)</td> <td style="text-align: center;">=</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">38,458.00</td> </tr> <tr> <td>+ Day 669</td> <td>(\$220.00) X (10%) + \$1,425.00</td> <td style="text-align: center;">=</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">1,447.00</td> </tr> <tr> <td></td> <td style="text-align: right;"><u>Multi-Day Base Gravity Penalty</u></td> <td style="text-align: center;">=</td> <td style="text-align: right;">\$</td> <td style="text-align: right;"><u>86,235.00</u></td> </tr> </table> <p><i>Note: For the days of SWMP violation, the penalty amounts for Potential Damage and Fault were adjusted in accordance with the Multi-Day Violation Matrix outlined on Page 6 of the Stormwater Civil Penalty Policy. On any day in which more than one category of violation occurred (e.g., a SWMP violation and an inspection violation), the full fault amount (\$600) was applied for the combined violations.</i></p> <p><i>Note: Days 1 through 668 address the SWMP violations. Day 669 addresses the BMP violations and the SWMP violations.</i></p> |                                       |                    | Day 1 | (\$820.00)       | = | \$ | 820.00 | + Days 2-10 | (\$820.00) X (9 days) X (50%) | = | \$ | 3,690.00 | + Days 11-50 | (\$820.00) X (40 days) X (40%) | = | \$ | 13,120.00 | + Days 51-100 | (\$820.00) X (50 days) X (30%) | = | \$ | 12,300.00 | + Days 101-200 | (\$820.00) X (100 days) X (20%) | = | \$ | 16,400.00 | + Days 200-668 | (\$820.00) X (469 days) X (10%) | = | \$ | 38,458.00 | + Day 669 | (\$220.00) X (10%) + \$1,425.00 | = | \$ | 1,447.00 |  | <u>Multi-Day Base Gravity Penalty</u> | = | \$ | <u>86,235.00</u> |
| Day 1  | (\$820.00)                            | =                  | \$    | 820.00           |   |    |        |             |                               |   |    |          |              |                                |   |    |           |               |                                |   |    |           |                |                                 |   |    |           |                |                                 |   |    |           |           |                                 |   |    |          |  |                                       |   |    |                  |
| + Days 2-10  | (\$820.00) X (9 days) X (50%)         | =                  | \$    | 3,690.00         |   |    |        |             |                               |   |    |          |              |                                |   |    |           |               |                                |   |    |           |                |                                 |   |    |           |                |                                 |   |    |           |           |                                 |   |    |          |  |                                       |   |    |                  |
| + Days 11-50   | (\$820.00) X (40 days) X (40%)        | =                  | \$    | 13,120.00        |   |    |        |             |                               |   |    |          |              |                                |   |    |           |               |                                |   |    |           |                |                                 |   |    |           |                |                                 |   |    |           |           |                                 |   |    |          |  |                                       |   |    |                  |
| + Days 51-100  | (\$820.00) X (50 days) X (30%)        | =                  | \$    | 12,300.00        |   |    |        |             |                               |   |    |          |              |                                |   |    |           |               |                                |   |    |           |                |                                 |   |    |           |                |                                 |   |    |           |           |                                 |   |    |          |  |                                       |   |    |                  |
| + Days 101-200   | (\$820.00) X (100 days) X (20%)       | =                  | \$    | 16,400.00        |   |    |        |             |                               |   |    |          |              |                                |   |    |           |               |                                |   |    |           |                |                                 |   |    |           |                |                                 |   |    |           |           |                                 |   |    |          |  |                                       |   |    |                  |
| + Days 200-668   | (\$820.00) X (469 days) X (10%)       | =                  | \$    | 38,458.00        |   |    |        |             |                               |   |    |          |              |                                |   |    |           |               |                                |   |    |           |                |                                 |   |    |           |                |                                 |   |    |           |           |                                 |   |    |          |  |                                       |   |    |                  |
| + Day 669  | (\$220.00) X (10%) + \$1,425.00       | =                  | \$    | 1,447.00         |   |    |        |             |                               |   |    |          |              |                                |   |    |           |               |                                |   |    |           |                |                                 |   |    |           |                |                                 |   |    |           |           |                                 |   |    |          |  |                                       |   |    |                  |
|  | <u>Multi-Day Base Gravity Penalty</u> | =                  | \$    | <u>86,235.00</u> |   |    |        |             |                               |   |    |          |              |                                |   |    |           |               |                                |   |    |           |                |                                 |   |    |           |                |                                 |   |    |           |           |                                 |   |    |          |  |                                       |   |    |                  |

**Part IV – Base Penalty Total**

|                |   | Amount in Dollars  |
|----------------|---|--------------------|
| <b>Line 15</b> | <b>Base Penalty = Potential Damage + Fault + History<br/>(Sum of Line 10 + Line 11 + Line 12; or Line14 )</b> | <b>\$86,235.00</b> |

**Part V – Application of Aggravating or Mitigating Factors**

|                | Aggravating / Mitigating Factors  | % Base Penalty Increase or Decrease | Amount in Dollars  |
|----------------|---|-------------------------------------|--------------------|
| Line 16        | Factor A: Voluntary and Complete Disclosure of Violations   | 0%                                  | \$0.00             |
|                | <i>Justification:</i> The Division identified the violations through the regulatory inspection process. R&M did not disclose the violations. Therefore, no penalty mitigation was applied.  |                                     |                    |
| Line 17        | Factor B: Full and Prompt Cooperation   | 0%                                  | \$0.00             |
|                | <i>Justification:</i> R&M did not respond to or submit the requested documents identified in the inspection report. Therefore, no penalty mitigation was applied.   |                                     |                    |
| Line 18        | Factor C: Environmental Compliance Program  | 0%                                  | \$0.00             |
|                | <i>Justification:</i> The Division did not receive or identify any information suggesting that R&M implemented a regularized and comprehensive environmental compliance/audit program. Therefore, no penalty mitigation was applied.  |                                     |                    |
| Line 19        | Factor D: Intentional, Reckless or Negligent Violations   |                                     |                    |
|                | <i>Justification:</i> R&M was a professional development/construction entity that obtained a permit and should have been aware of its requirements. At the very least, the Division believes R&M's violations involved negligence. However, the Division has conservatively chosen not to apply a penalty aggravation in this case. |                                     |                    |
| Line 19        | Factor D: Other Aggravating or Mitigating Circumstances   | 0%                                  | \$0.00             |
|                | <i>Justification:</i> No other aggravating or mitigating circumstances were indentified.  |                                     |                    |
| Line 20        | Sum of Lines 16 through Line 19   |                                     | \$0.00             |
| <b>Line 21</b> | <b>Adjusted Base Penalty<br/>(Sum of Line 15 + Line 20)</b>   |                                     | <b>\$86,235.00</b> |

**Part VI– Economic Benefit Consideration**

|                |                         | Amount in Dollars |
|----------------|-------------------------|-------------------|
| <b>Line 22</b> | <b>Economic Benefit</b> | <b>\$5,750.00</b> |
|                | <i>Justification:</i>   |                   |

**EXHIBIT A**

**Deficient Stormwater Management Plan (SWMP):** R&M, at the very least, avoided the cost of revising and updating its SWMP over a period of at least 669 days. The Division estimates the cost of periodically evaluating, revising and updating a SWMP for a project of this size, including consulting and reprinting fees, to be \$750. Due to the often changing conditions at construction sites, frequent evaluation of a project's SWMP is necessary. As a result, the Division conservatively estimates that a SWMP for construction will need significant revisions and updates at least every 6 months. Therefore, the Division has conservatively determined that R&M realized an economic benefit of **\$2,250.00** from the avoided costs of not revising and updating the project's SWMP for nearly two years.

**Failure to Install, Maintain or Properly Select Best Management Practices / Pollution, Contamination, and Degradation of State Waters:** R&M avoided the cost of implementing and maintaining BMPs at the project. The Division estimates the cost of implementing a BMP to be \$1000 and the cost of maintaining a BMP, throughout its use, to be \$500. Thus, the Division believes R&M realized an economic benefit for failures to install and maintain BMPs on the following days:

| DATE      | # of Installation Deficiencies (\$1,000ea.) | # of Maintenance Deficiencies (\$500ea.) | Total Economic Benefit |
|-----------|---|--|------------------------|
| 4/30/2009 | 3   | 1  | \$3,500                |
|           |   |  | <b>\$3,500</b>         |

Therefore, R&M realized an economic benefit of **\$3,500.00** from the avoided costs of not implementing and/or maintaining BMPs at the Project.

*{Note: Time value of money for time periods in question was predicted to be insignificant and thus BEN runs were not performed}*

**Part VII – Violation Penalty Total**

|                |   | Amount in Dollars  |
|----------------|---|--------------------|
| <b>Line 23</b> | <b>Civil Penalty:<br/>(Sum Line 21 + Line 22)</b> | <b>\$91,985.00</b> |

**Part VIII – Ability to Pay Adjustment**

|                |  | Amount in Dollars |
|----------------|--|-------------------|
| <b>Line 24</b> | <b>Ability to Pay Reduction</b>  | <i>\$0.00</i>     |
|                | Justification: Not Applicable – The Division has not been provided any information demonstrating an inability to pay by R&M. |                   |

**Part IX – Final Adjusted Penalty**

|                |   | Amount in Dollars  |
|----------------|---|--------------------|
| <b>Line 25</b> | <b>Total Civil Penalty:<br/>(Sum Line 23 + Line 24)</b> | <b>\$91,985.00</b> |

**EXHIBIT A**