March 26, 2015

James Sandy Horner
Attorney at Law
Klauzer and Tremaine, LLC.
P.O. Box 774525
Steamboat Springs, CO 80477

RE: Compliance Order on Consent, Number: SC-150326-1

Dear Mr. Horner:

Enclosed for the Harvey family's records, you will find the Harvey Steamboat Partnership, Ltd's copy, with original signatures, of the Compliance Order on Consent (Order). Please remember that this agreement is subject to a thirty-day public comment period (Order, paragraph 48). The division will contact your office to discuss any comments received during this period. Please be advised that the first page of the Order was revised to reflect the assigned Order Number.

If you have any questions, please do not hesitate to contact me at (303) 692-2271 or lindsay.ellis@state.co.us. We appreciate your and the Harvey family's time and efforts in resolving this matter.

Sincerely,

Lindsay Ellis

Lindsay Ellis, Enforcement Specialist
Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Natasha Davis, EPA Region VIII
Mike Zopf, Routt County Department of Environmental Health
Nicole Rowan, Watershed Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Bret Icenogle, Engineering Section, CDPHE
Kelly Jacques, Field Services Section, CDPHE
Lillian Gonzalez, Permits Unit 1, CDPHE
Nathan Moore, Clean Water Compliance Unit, CDPHE
Michael Harris, Clean Water Enforcement Unit, CDPHE
Tania Watson, Compliance Assurance, CDPHE

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT **NUMBER: SC-150326-1**

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

The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under §§25-8-602 and 605, C.R.S. of the Colorado Water Quality Control Act ("Act") §§25-8-101 to 803, C.R.S., and its implementing regulations, with the express consent of Harvey Steamboat Partnership, Ltd ("Harvey"). The Division and Harvey 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 civil penalties associated with the alleged violations cited herein and in the Notice of Violation / Cease and Desist Order, Number: SO-110816-1 ("NOV/CDO"), that the Division issued to Harvey on August 16, 2011.

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 Harvey and Harvey's compliance with the Act and a permit issued pursuant to the Act.

3. At all times relevant to the violations cited herein, Harvey was a Colorado limited partnership existing in the state of Colorado.

4. Harvey 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).

Operating Without a Stormwater Permit

5. Pursuant to §25-8-501(1), C.R.S. and its implementing permit regulation, 5 CCR 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.

6. 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.

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

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

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

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

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

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

13. On September 23, 2010, a representative from the Division ("Inspector") conducted an on-site inspection of the Project pursuant to the Division's authority under §25-8-306, C.R.S., to determine Harvey's compliance with the Water Quality Control Act.

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

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

16. On April 12, 2011, the Division provided Harvey with Certification Number COR-03H527 ("Certification") authorizing Harvey to discharge stormwater from construction activities associated with the Project under the terms and conditions of the Permit. The Certification became effective April 12, 2011.

17. On September 8, 2014, the Division received a Notice of Termination from Harvey, seeking to terminate coverage under Certification Number COR-03H527. Based on Harvey's signed certification stating the requirements for permit inactivation had been met, the Division inactivated the Certification effective September 23, 2014.

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

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

<u>Failure to Prepare Stormwater Management Plan</u>

20. Pursuant to 5 CCR 1002-61, §61.8, Harvey must comply with all the terms and conditions of the Permit, and violations of such terms and conditions as specified in the Permit may make Harvey subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.

21. Pursuant to Part I. B. of the Permit, Harvey is required to prepare and maintain a Stormwater Management Plan ("SWMP") in accordance with good engineering, hydrologic, and pollution control practices. The SWMP is required to identify all potential sources of pollution, which may be reasonably expected to affect the quality of stormwater discharges associated with construction activity from the Project. In addition, the SWMP 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.

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

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

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

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

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

Deficient and/or Incomplete Stormwater Management Plan

26. 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 at the site.
        ii. The proposed sequence for major activities.
        iii. Estimates of the total area of the site, and the area and location expected to be disturbed by clearing, excavation, grading, or other construction activities.
        iv. A summary of any existing data used in the development of the site 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 disturbing activities, vehicle fueling, storage of fertilizers or chemicals, etc.
        vii. The location and description of any anticipated allowable sources of non-stormwater discharge at the site, such as uncontaminated 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(s). If the stormwater discharge is to a municipal separate storm sewer system, 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 non-structural BMPs as applicable.
        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 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. BMPs for Stormwater Pollution Prevention – The SWMP shall identify and describe appropriate BMPs that will be implemented at the Project to reduce the potential of pollution sources to contribute pollutants to stormwater discharges. The SWMP shall clearly describe the installation and implementation specifications for each BMP identified in the SWMP.

(1) Structural Practices for Erosion and Sediment Control – The SWMP shall clearly describe and locate all structural practices implemented at the site to minimize erosion and sediment transport. Practices may include, but are not limited to: straw bales, wattles/sediment control logs, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, pipe slope drains, inlet protection, outlet protection, gabions, and temporary or permanent sediment basins.

(2) Non-Structural Practices for Erosion and Sediment Control – The SWMP shall clearly describe and locate, as applicable, 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 both structural and non-structural stormwater management controls. 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. Such procedures or significant materials could include: exposed storage of building materials; paints and solvents; fertilizers or chemicals; waste material; and equipment maintenance or fueling procedures.

(5) Dedicated Concrete or Asphalt Batch Plants – The SWMP shall clearly describe and locate all practices implemented at the site 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 identified in the SWMP, in good and effective operating condition.

27. During the June 28, 2011 inspection, the Inspectors requested that Harvey submit a copy of the Project's SWMP for the Division's review. The Division received a copy of the SWMP on July 12, 2011. The Division reviewed the Project's SWMP and identified the following deficiencies, as described in paragraphs 27(a-g) below:

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

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

c. The SWMP did not identify the following pollutant sources observed during the inspection: cut slope failures located on the southern portion of the Project, landslides resulting from the cut slope failures along the southern portion of the Project, sediment and debris discharged downgradient of the landslides, a fill slope failure located at the stream crossing just north of the Project midpoint, and sediment and debris discharged into a stream channel downgradient of the Project as a result of the fill slope failure. In addition, the SWMP did not identify and describe appropriate BMPs to reduce the potential of these pollutants to contribute to stormwater discharges.

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

e. The SWMP listed crimped straw mulch and bonded fiber matrix as non-structural BMPs to be implemented on site. However, the SWMP did not include installation and implementation specifications for the crimped straw mulch. The SWMP included a general product description for the bonded fiber matrix, but did not include installation and implementation specifications.

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

g. The SWMP did not describe practices used to achieve final stabilization of all disturbed areas.

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

29. Harvey's failure to prepare and maintain a complete and accurate SWMP for the Project constitutes violation(s) of Part I. B. and Part I. C. of the Permit.

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

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

31. Pursuant to Part I. C. 3. (c) of the Permit, Harvey is required to implement BMPs to reduce the potential of pollution sources to contribute 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.

32. Pursuant to Part I. D. 2. of the Permit, Harvey is required to select, install, implement and maintain appropriate BMPs for all potential pollutant sources at the Project, following good engineering, hydrologic and pollution control practices.

33. Pursuant to Part I. D. 1. (a) of the Permit, stormwater discharges from construction activities shall not cause, have the reasonable potential to cause, or measureable contribute to an exceedance of any water quality standard, including narrative standards for water quality.

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

35. During the June 28, 2011 inspection, the Inspectors identified the following deficiencies related to BMP implementation and maintenance at the Project, as described in Paragraphs 35(a-h) below:

    a. The Inspectors observed erosion control blankets (ECBs) installed on disturbed cut slopes located at the northern end of the Project. Good engineering, hydrologic and pollution control practices require ECB installation with anchor trenches at the top of the slope and along the outside perimeter of the ECBs and surface preparation such that the ECB is in full contact with the subgrade. ECBs installed on the cut slopes did not include the required anchor trenches and were not in full contact with the subgrade. Numerous gaps and voids were observed between the ECBs and the subgrade. Stormwater runoff from this area flowed south along the fence line corridor and associated access roadway and into the stream (unnamed tributary to Dutch Gulch) crossing approximately just north of the Project midpoint.

    b. The Inspectors observed BMPs that were not implemented according to the Project's SWMP. The SWMP Site Map identified "seed and mulch" to be implemented along the entire fence line corridor and associated access roadway. However, seed and straw mulch was only implemented in some areas of the Project and not along the entire fence line corridor and associated access roadway.

c. The Inspectors did not observe BMPs to manage stormwater runoff from disturbed cut slopes located north of the stream (unnamed tributary to Dutch Gulch) crossing approximately just north of the Project midpoint. Stormwater runoff from the slopes flowed south along the fence line corridor and associated access roadway and into the stream.

d. The Inspectors did not observe BMPs to manage stormwater runoff from disturbed fill slopes located north of the stream (unnamed tributary to Dutch Gulch) crossing approximately just north of the Project midpoint. The slopes consisted of highly erodible, un-stabilized fill material. Some sections of the fill slopes were constructed adjacent to the stream. Stormwater runoff from the slopes flowed southeast into the stream.

e. The Inspectors observed a culvert conveying flows from the stream (unnamed tributary to Dutch Gulch) crossing approximately just north of the Project midpoint. BMPs were not implemented downgradient of the culvert outlet. The outlet discharged stream flow onto a disturbed, un-stabilized fill slope and then further east downgradient. As a result, erosion and scouring occurred and sediment discharged into the stream. The Project's SWMP proscribed riprap installation at the culvert outlet, however, no riprap rock was observed.

f. The Inspectors observed sediment filling the stream (unnamed tributary to Dutch Gulch) crossing approximately just north of the Project midpoint. Project excavation and grading activities created a large fill slope that blocked streamflow; however, no BMPs were implemented to manage stormwater runoff from the fill slope or to convey streamflow across the fill material. As a result, large amounts of sediment filled in the stream channel downgradient of the Project as well as wetlands adjacent to the stream. The Inspectors observed higher water turbidity downgradient of the Project and an accumulation of sediment such that the stream channel was no longer defined. In addition, three feet of sediment accumulated up tree trunks adjacent to the stream and iron bacteria formed in the wetlands.

g. The Inspectors did not observe BMPs to manage stormwater runoff from all disturbed, un-stabilized fill slopes extending south from the stream (unnamed tributary to Dutch Gulch) crossing approximately just north of the Project midpoint. Stormwater runoff from the slopes flowed east down a steep gradient and eventually to Dutch Gulch.

h. The Inspectors observed unstable cut slopes as a result of excavation and grading activities on the southern half of the Project. BMPs were not implemented to provide proper planning, design, and engineering of the cut slope excavations or to manage stormwater runoff from the slopes. The instability of the cut slopes, combined with stormwater runoff, caused the cut slopes to collapse, resulting in landslides that pushed sediment and debris hundreds of yards downgradient of the Project. The sediment and debris filled in and covered downgradient vegetation. Stormwater runoff from the slopes flowed east down a steep gradient and eventually to Dutch Gulch.

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

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

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

HARVEY'S POSITION ON THE ALLEGED VIOLATIONS

39. The Project SWMP described the disturbed area as approximately 2.9 acres.

40. Subsequent to the June 28, 2011 inspection, and at the request of the Division, Harvey hired geotechnical engineers to prepare an engineering plan to remediate the Project site. Such plan made recommendations to the SWMP with respect to stormwater management controls to be implemented as part of the construction activity to control pollutants in stormwater discharges and was approved by the Division. Harvey implemented the requirements of the engineered remediation plan.

41. Stormwater discharges from the Project did not reach the Elk River at any time.

42. The inclusion of Harvey'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

43. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605, C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein and in the NOV/CDO, the Division orders Harvey to comply with all provisions of this Consent Order, including all requirements set forth below.

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

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

CIVIL PENALTY

46. Based upon the application of the Division's Stormwater Civil Penalty Policy (January 25, 2007), and consistent with Departmental policies for violations of the Act, Harvey shall pay Seventy-Five Thousand, Two Hundred Seventy-Three Dollars and Seventy-Five Cents ($75,273.75) in civil penalties. Harvey agrees to make the payment within thirty calendar days of the issuance of a Penalty Order by the Executive Director or his designee. 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:

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

SCOPE AND EFFECT OF CONSENT ORDER

47. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the specific instances of violations cited herein and in the NOV/CDO.

48. This Consent Order is subject to the Division's "Public Notification on Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and Harvey 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.

49. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or his designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by Harvey, 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.

50. Notwithstanding paragraph 45 above, the violations described in this Consent Order will constitute part of Harvey's compliance history for purposes where such history is relevant.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

51. 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 civil penalties for the specific instances of violations cited herein and in the NOV/CDO. 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.

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

53. Harvey reserves its rights and defenses regarding the Project other than proceedings to enforce this Consent Order.

54. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the event that additional information is discovered that indicates such requirements are necessary to protect human health or the environment.

55. Harvey 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 or for any injuries or damages to persons or property resulting from acts or omissions of Harvey, or those acting for or on behalf of Harvey, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

NOTICES

56. 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-CWE-B2
Attention: Lindsay Ellis
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303-692-2271
E-mail: lindsay.ellis@state.co.us

For Harvey**:**

Hal Harvey, Director
Harvey Steamboat Partnership, Ltd.
6 Compton Circle
Mill Valley, CA 94941

With copy to:
Harvey Steamboat Corporation
421 D AABC
Aspen, CO 81611

MODIFICATIONS

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

NOTICE OF EFFECTIVE DATE

58. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or his designee imposes the civil penalty following closure of the public comment period referenced in paragraph 48. 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

59. This Consent Order is binding upon Harvey 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 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 HARVEY STEAMBOAT PARTNERSHIP, LTD:

_____ Date: 5 March 2015
Hal Harvey, Director

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

_____ Date: 26 Mar 15
Patrick J. Pfaltzgraff, Director
WATER QUALITY CONTROL DIVISION