



**COLORADO**  
Department of Public  
Health & Environment

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

February 4, 2015

Certified Mail Number: 7002 2410 0001 0130 4261

Kat Thompson, President  
St. Mary's Glacier Water and Sanitation District  
PO Box 1529  
Idaho Springs, CO 80452

**RE: Service of Notice of Violation/Cease and Desist Order, Number: MO-150204-1**

Dear Ms. Thompson:

St. Mary's Glacier Water and Sanitation District 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 St. Mary's Glacier Water and Sanitation District has violated the Act and/or regulations promulgated pursuant to a discharge permit, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., St. Mary's Glacier Water and Sanitation District 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 St. Mary's Glacier Water and Sanitation District desire to discuss the NOV/CDO with the Division, or if you have any questions regarding NOV/CDO, please don't hesitate to contact Eric Mink at (303) 692-2312 or by electronic mail at [eric.mink@state.co.us](mailto:eric.mink@state.co.us).

Sincerely,

Eric T. Mink, Enforcement Specialist  
Clean Water Enforcement Unit  
WATER QUALITY CONTROL DIVISION



*Enclosure(s)*

cc: Enforcement File

ec: Natasha Davis, EPA Region VIII  
Mitchell Brown, Environmental Health Specialist, Clear Creek County  
Nicole Rowan, Watershed Section, CDPHE  
Michael Beck, Grants and Loans Unit, CDPHE  
Doug Camrud, Engineering Section, CDPHE  
Kelly Jacques, Field Services Section, CDPHE  
Kenan Diker, Permits Section, CDPHE  
Mike Harris, Enforcement Unit, CDPHE  
Tania Watson, Compliance Assurance, CDPHE  
Barry Cress, DOLA





# COLORADO

## Department of Public Health & Environment

### WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: MO-150204-1

IN THE MATTER OF:        **ST. MARY'S GLACIER WATER AND SANITATION DISTRICT**  
                                  **CDPS PERMIT NO. CO0023094**  
                                  **CLEAR CREEK 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 violations cited herein, the St. Mary's Glacier Water and Sanitation District ("St. Mary's Glacier") was a "Special District" formed in Clear Creek County, Colorado pursuant to the Special District Act, §§32-1-101 et seq and 32-4-501 et seq, C.R.S.
2. St. Mary's Glacier 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. St. Mary's Glacier owns and/or operates a combined sewer collection system (the "Sewer System"), comprised of approximately thirteen (13) miles of pipeline, which was designed to collect and convey municipal sewage (domestic and commercial) and stormwater (rainfall and snowmelt) via gravity flow to the St. Mary's Glacier wastewater treatment facility, located at 39° 48' 34" N, 105° 38' 25" W, near the City of Idaho Springs, Clear Creek County, Colorado, (the "Facility").
4. The Facility is the subject of the Colorado Discharge Permit System ("CDPS"), Permit No. CO0023094 (the "Permit"). The current Permit became effective on November 1, 2009 and was set to expire on October 31, 2014, but has been administratively continued pending Permit reissuance.
5. The Permit authorizes St. Mary's Glacier to discharge treated wastewater from the Facility through Outfalls 001A and 001B, into Silver Creek. Outfalls 001A and 001B are both physically located at 39° 48' 34" N, 105° 38' 23" W but represent limit sets associated with different flow levels.

**Unauthorized Discharge to State Waters**

6. 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, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article.
7. Pursuant to Part II.A.8. of the Permit, St. Mary’s Glacier is prohibited from discharging to State waters from any other point than the discharge point specified in the Permit.
8. Division records establish that St. Mary’s Glacier reported the following combined sewer system overflow (“CSO”) events to the Division between June 3, 2013 and September 4, 2014, during which a combination of sewage and contaminated stormwater was spilled, released, or diverted from the Sewer System, and some portion of the combination of sewage and contaminated stormwater reached state waters:

<b>St. Mary’s Glacier Water and Sanitation District’s Combined Sewer System Overflow Events to State Waters</b>				
<b>Date of Event</b>	<b>Approximate Location</b>	<b>Cause of Release</b>	<b>Estimated Quantity Released (in gallons)</b>	<b>Impacted Waters</b>
June 3, 2013	283 Little Creek Rd.	Blockage (rocks, debris, ice and pieces of pipe)	22,500	Clear Creek
June 6, 2013	515 Brooke Dr.	Blockage (rocks, debris, and ice)	22,500	Lake Quivera
May 27, 2014	515 Brooke Dr.	Blockage (rocks, disposable wipes, debris, pillow cases, and grit)	12,000	Lake Quivera
July 2, 2014	403 Brooke Dr.	Blockage (large rock)	1,700	Lake Quivera
August 17, 2014 through September 4, 2014	On Fall River Road Across From Alice Street	Broken Pipe	97,920	Silver Creek

9. Municipal sewage and contaminated stormwater contain, among other substances, biochemical oxygen demand (“BOD”), total suspended solids (“TSS”), ammonia, fecal coliform and *E. coli*.
10. BOD, TSS, ammonia, fecal coliform and *E. coli* are “pollutants” as defined by §25-8-103(15), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(76).
11. Lake Quivera, Silver Creek, and Clear 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).

12. St. Mary's Glacier's Sewer System as it relates to each discharge event identified above in paragraph 8, is a "point source" as defined by §25-8-103(14), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(75).
13. Each of St. Mary's Glacier's CSOs, identified above in paragraph 8, that reached state waters constitutes a "discharge of pollutants" as defined by §25-8-103(3), C.R.S.
14. Division records establish that the Permit does not authorize the CSOs identified above in paragraph 8 and St. Mary's Glacier does not have any other permits authorizing the CSOs identified above in paragraph 8 into state waters.
15. Each of St. Mary's Glacier's CSOs that reached state waters constitutes an unauthorized discharge of pollutants from a point source into state waters in violation of §25-8-501(1), C.R.S. and 5 CCR 1002-61 §61.3(1)(a) and part II.A.8. of the Permit.

**Unauthorized Land Application**

16. Pursuant to 5 CCR 1002-61, §61.14(1)(a), a CDPS permit shall be required for all land application discharges unless the discharge meets the specific exemption criteria outlined in 5 CCR 1002-61, §61.14(1)(a)(i) through (v).
17. Division records establish that St. Mary's Glacier reported the following discharge events to the Division between May 28, 2012 and July 18, 2014, during which sewage and/or a combination of sewage and contaminated stormwater was spilled, released, or diverted from the Sewer System, the Facility, and/or ancillary equipment to the ground:

<b>St. Mary's Glacier Water and Sanitation District's Discharge Events to Land</b>			
<b>Date of Event</b>	<b>Approximate Location</b>	<b>Cause of Release</b>	<b>Estimated Quantity Released (in gallons)</b>
May 28, 2012	9 Stuart Court	CSO-Blockage (rocks)	5,000
May 27, 2014	St. Mary's Glacier Wastewater Treatment Facility	Personnel Compromised Discharge Pipe While Digging	Unknown
May 27, 2014	Clarifier Waste Holding Pond	Effluent from 5/27/14 Event Listed Above was pumped to the Holding Pond and Exceeded Pond Capacity and Caused Overflow	84,000
June 16, 2014	200 Yards North of 839 & 841 Brooke Drive	CSO-Unknown	Unknown
July 18, 2014	189 Harris Drive	CSO-Blockage (rocks)	57,600

18. St. Mary's Glacier's discharges of pollutant containing municipal sewage and contaminated stormwater from the Sewer System, the Facility, and ancillary equipment, as identified in paragraph 17 above, constitute "land application" as defined by 5 CCR 1002-61, §61.2(48).
19. St. Mary's Glacier's land application of municipal sewage and contaminated stormwater from the Sewer System, the Facility, and ancillary equipment, as identified in paragraph 17 above, do not meet any of the exemption criteria of 5 CCR 1002-61, §61.14(1)(a)(i) through (v), and, therefore, are subject to CDPS permit requirements.
20. Division records establish that St. Mary's Glacier does not have any permits authorizing the land application of municipal sewage and contaminated stormwater from the Sewer System, the Facility, and/or its ancillary equipment.
21. St. Mary's Glacier's land application of municipal sewage and contaminated stormwater from the Sewer System, the Facility, and ancillary equipment, constitutes unauthorized land application in violation of 5 CCR 1002-61, §61.14(1)(a).

**Failure to Properly Operate and Maintain**

22. Pursuant to Part I.B.4. of the Permit, St. Mary's Glacier is required to properly operate and maintain all facilities and systems of treatment and control including portions of the collection system installed or used by St. Mary's Glacier, in order to maintain Permit compliance.
23. The CSOs and unauthorized land application events reported by St. Mary's Glacier between May 2012 and September 2014, as identified in paragraphs 8 and 17 above, establish that St. Mary's Glacier has failed to properly operate and maintain the Sewer System, the Facility, and ancillary equipment (or portion thereof) in a manner that prevents CSOs, unauthorized discharges of pollutants from a point source into state waters, and unauthorized land application.
24. St. Mary's Glacier's failure to properly operate and maintain the Sewer System, the Facility, and ancillary equipment constitutes a violation of Part I.B.4. of the Permit.

**Failure to Properly Monitor**

25. Pursuant to Part I.A.2. of the Permit, St. Mary's Glacier is required to monitor influent flow at Outfall 300I via a continuous flow measuring device equipped with a recorder or totalizer. Pursuant to Part I.D.3. of the Permit, samples and measurements taken from the monitoring point shall be representative of the volume and nature of all influent wastes received at the Facility. Pursuant to Part I.D.7. of the Permit, the flow measuring device must provide representative measurement of St. Mary's Glacier's influent flows, and must be capable of indicating values within ten (10) percent of actual flow being measured.
26. On June 27, 2014, a representative of the Division (the "Inspector") conducted an on-site inspection of the Facility pursuant to the Division's authority under §25-8-306, C.R.S., to determine St. Mary's Glacier's compliance with the Water Quality Control Act and the Permit. During the inspection, the Inspector interviewed Facility representatives, reviewed the Facility's records, and performed a physical inspection of the Facility.
27. During the inspection, the Inspector identified that the influent Parshall Flume was not sized or installed properly and, therefore, could not continuously measure influent flow accurately. It was

also noted that during periods of high influent flows, the influent flume overtops and, given the installation dynamics, turbulence can occur in the throat of the flume causing inaccurate flow measurements

- 28. St. Mary's Glacier's failure to properly monitor influent flow constitutes violations of Parts I.A.2., I.D.3., and I.D.7. of the Permit.

**NOTICE OF VIOLATION**

- 29. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that St. Mary's Glacier has violated the following sections of the Colorado Water Quality Control Act, its implementing permit regulations and the Permit.

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

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

**5 CCR 1002-61, §61.14(1)(a)**, which states "Pursuant to this section, a permit shall be required for all land application discharges..."

**Part I.A.2. of the Permit**, which states in part: "In order to obtain an indication of the current influent loading as compared to the approved capacity specified in Part I, Section A.2., the permittee shall monitor influent parameters at the following required frequencies, the results to be reported on the Discharge Monitoring Report:"

<u>Influent Parameter</u>	<u>Frequency</u>	<u>Sample Type</u>
Flow, MGD	Continuous	Recorder

**Part I.B.4. of the Permit**, which states in part: "The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control including all portions of the collection system and lift stations owned by the Permittee (and related appurtenances) which are installed or used by the Permittee as necessary to achieve compliance with the conditions of this Permit."

**Part I.D.3. of the Permit**, which states in part: "Samples and measurements taken for the respective identified monitoring points as required herein shall be representative of the volume and nature of: 1) all influent wastes received at the facility..."

**Part I.D.7. of the Permit**, which states in part: "The metering device shall be equipped with a local flow indication instrument and a flow indication-recording-totalization device suitable for providing permanent flow records... The flow-measuring device must indicate values within ten (10) percent of the actual flow entering the facility."

**Part II.A.8. of the Permit**, which states : "Any discharge to the waters of the State from a point source other than specifically authorized by this permit is prohibited."

## REQUIRED CORRECTIVE ACTION

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

30. 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 St. Mary's Glacier to comply with the following specific terms and conditions of this Order:

31. In accordance with §25-8-601(2), C.R.S., St. Mary's Glacier shall notify the Division, as soon as St. Mary's Glacier has knowledge thereof, of any spills, releases, discharges, or diversions from the Sewer System, the Facility, and/or ancillary equipment that may cause pollution of waters of the state, including any spills, releases, discharges, or diversions from the Sewer System, the Facility, and/or ancillary equipment to land. St. Mary's Glacier shall also mitigate the effects of such spills, releases, discharges, or diversions by any means reasonably available.
32. Within fifteen (15) calendar days of receipt of this Order, St. Mary's Glacier shall retain the services of a professional engineer or individual experienced in domestic wastewater collection systems to perform an evaluation of the Sewer System and recommend measures to eliminate the occurrence of CSOs. The evaluation shall include, but not be limited to:
  - a. An evaluation of the collection system to identify deficiencies in the current design of the collection system. This should include, but not be limited to; an evaluation of past CSOs (location, cause, volume released, etc), and an evaluation of the capacity and integrity of the Sewer System;
  - b. Identification of sections of the Sewer System that are particularly subject to excessive infiltration/inflow (I/I);
  - c. An evaluation of St. Mary's Glacier's Sewer System operation and maintenance practices (including preventative maintenance) to identify any deficiencies that impact the Sewer System;
  - d. A risk based prioritization of each section of the Sewer System, as determined by but not limited to; sections with compromised integrity, sections most likely to sustain a CSO, sections where a CSO is most likely to result in a release to state waters, and the sections where a CSO are most likely to affect public health in any way.
33. Within thirty (30) calendar days of the receipt of this Order, St. Mary's Glacier shall provide documentation to the Division that it has retained the services of the qualified individual or entity described in paragraph 32. The 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.
34. Within forty five (45) calendar days of receipt of this Order, St. Mary's Glacier shall provide documentation that a continuous flow measuring device with recorder has been installed correctly and operating within Permit requirements at Outfalls 300I (the influent monitoring location). This documentation shall include calibration records, proof of accuracy of the flow measuring device indicating that the device is capable of measuring values within ten percent (10%) of the actual flow rates, and schedules and procedures for the ongoing calibration and maintenance of the flow measuring device.

35. Within ninety (90) calendar days of receipt of this Order, St. Mary's Glacier shall submit to the Division a report summarizing the results of the evaluation identified above in paragraph 32. The report shall also include an aggressive time schedule for the implementation of specific measures that St. Mary's Glacier will complete to address the deficiencies identified through the evaluation. This includes a specific plan and time schedule for commencing and completing upgrades and/or improvements, and obtaining planning and construction funding, if deemed necessary. If any of the corrective measures require Division site location and design approval, St. Mary's Glacier shall timely file a completed site location and/or design approval request in accordance with §25-8-702, C.R.S. and 5 CCR 1002-22. St. Mary's Glacier shall not initiate construction until such time as it has obtained the necessary site location and design approval(s) as required by §25-8-702, C.R.S. and 5 CCR 1002-22, or unless otherwise specifically authorized, in writing, by the Division. The submitted plan and time schedule shall become a condition of this Order and St. Mary's Glacier shall implement the plan and time schedule as submitted unless notified by the Division, in writing, that an alternate plan or time schedule is appropriate. If the Division imposes an alternate plan or time schedule, it shall also become a condition of this Order.
36. St. Mary's Glacier shall submit written monthly progress reports to the Division outlining efforts taken to achieve compliance with this Order. The first report shall be submitted to the Division on or before May 31, 2015 and subsequent reports shall be due at the end of every month thereafter. At a minimum, each report shall outline activities completed in the previous month and activities planned for the next month to remain in compliance with this Order. The progress reports shall be required until the issuance of written notice from the Division that the reports are no longer necessary.
37. If St. Mary's Glacier becomes aware of any situation or circumstances that cause St. Mary's Glacier to become unable to comply with any condition or time schedules set forth by this Order, St. Mary's Glacier shall provide written notice to the Division within five (5) calendar days of St. Mary's Glacier becoming aware of such circumstances. St. Mary's Glacier's notice shall describe what, if any, impacts will occur on the St. Mary's Glacier's ability to comply with the Colorado Water Quality Control Act and any impacts on the remaining conditions and/or time schedules specified by this Order, and what steps are being taken to mitigate the impacts.
38. 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, St. Mary's Glacier 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, St. Mary's Glacier shall submit an original and an electronic copy to the Division at the following address:

Eric T. Mink  
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

Telephone: (303) 692-2312  
Email: eric.mink@state.co.us

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.

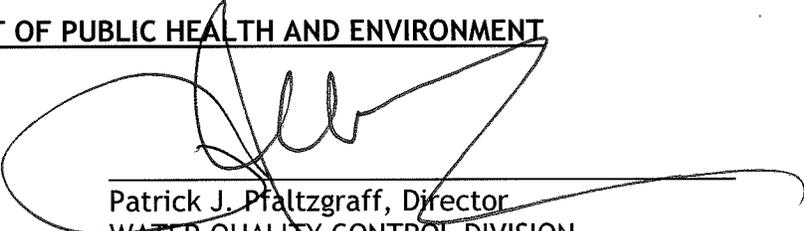
### EFFECT OF ORDER

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 4<sup>th</sup> day of February, 2014.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

  
Patrick J. Pfaltzgraff, Director  
WATER QUALITY CONTROL DIVISION