

# STATE OF COLORADO

John W. Hickenlooper, Governor  
Larry Wolk, MD, MSPH  
Executive Director and Chief Medical Officer

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

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Denver, Colorado 80246-1530  
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Located in Glendale, Colorado  
[www.colorado.gov/cdphe](http://www.colorado.gov/cdphe)



Colorado Department  
of Public Health  
and Environment

January 3, 2014

Larry Buckendorf, Registered Agent  
Clearview 4 Investments, LLC  
7251 West 20<sup>th</sup> Street, L-200  
Greely, Colorado 80634

Certified Mail Number: 7007 0220 0001 0163 0704

**RE: Service of Notice of Violation/Cease and Desist Order, Number: SO-140102-1**

Dear Mr. Buckendorf:

Clearview 4 Investments, LLC ("Clearview") is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). The 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 the NOV/CDO upon findings that Clearview has violated the Act and permit regulations promulgated pursuant to the Act and a permit, as described in the enclosed NOV/CDO.

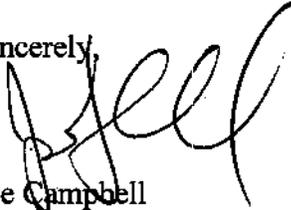
Pursuant to §25-8-603, C.R.S., Clearview is required, within thirty (30) calendar days of receipt of this NOV/CDO, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

This action could result in the imposition of civil penalties. The Division is authorized pursuant to §25-8-608, C.R.S., to impose a penalty of \$10,000 per day for each day during which such violation occurs.

Please be advised that the Division is continuing its investigation into this matter and the Division may identify supplementary violations that warrant amendments to this NOV/CDO or the issuance of additional enforcement actions.

Should you or representatives of Clearview desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO, please do not hesitate to contact me at by phone at (303) 692-2356 or by electronic mail at [joseph.campbell@state.co.us](mailto:joseph.campbell@state.co.us).

Sincerely,



Joe Campbell  
Clean Water Compliance & Enforcement Unit  
WATER QUALITY CONTROL DIVISION

*Enclosure(s)*

cc: Enforcement File

ec: Natasha Davis, EPA Region VIII  
Weld County Department of Public Health and Environment  
Michael Beck, Grants and Loans Unit, CDPHE  
Bret Icenogle, Engineering Section, CDPHE  
Kelly Jacques, Field Services Section, CDPHE  
Nathan Moore, Compliance Assistance Unit 2, CDPHE  
Joe Campbell, Compliance & Enforcement Unit, CDPHE  
Tania Watson, CDPHE



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

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**NOTICE OF VIOLATION / CEASE AND DESIST ORDER**

**NUMBER: SO-140102-1**

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**IN THE MATTER OF:      CLEARVIEW 4 INVESTMENTS, LLC**  
**d/b/a CLEARVIEW INVESTMENTS, LLC**  
**CDPS PERMIT NO. COR-030000**  
**CERTIFICATION NO. COR-03I786**  
**WELD 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 25-8-605, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. At all times relevant to the alleged violations identified herein, Clearview 4 Investments, LLC ("Clearview") was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
2. Clearview 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. Clearview is conducting construction activities of a residential development with a planned disturbance of 32.58 acres of land at or near Carlson Boulevard and Silverbell Drive in the Town of Johnstown, Weld County, Colorado (the "Project")
4. On January 17, 2013, the Division received an Application for Transfer of Ownership of permit certification number COR-03I786, issued under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit"), from Crow Creek Construction, LLC to Clearview doing business as Clearview Investments, LLC.
5. On January 18, 2013, the Division approved the transfer of coverage under the Permit, including Certification Number COR-03I786, to Clearview authorizing Clearview to discharge stormwater from the construction activities associated with the Project to the County Borrow Ditch and the Little

Thompson River under the terms and conditions of the Permit. Certification Number COR-03I786 became effective January 22, 2013, and has been administratively continued until a new Permit and associated certification is issued, or until Clearview inactivates Permit coverage.

6. Pursuant to 5 CCR 1002-61, §61.8, Clearview must comply with all the terms and conditions of the Permit, and violations of such terms and conditions as specified in the Permit may be subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S
7. The County Borrow Ditch and Little Thompson River are “state waters” as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (102).
8. On July 5, 2013, a representative from the Division (the “Inspector”) conducted an on-site inspection of the Project pursuant to the Division’s authority under §25-8-306, C.R.S., to determine Clearview’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, Clearview 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. During the July 5, 2013 inspection, the Inspector reviewed the Project’s SWMP and identified the following deficiencies, as described in paragraphs 11(a-c) below:
- a. The site description section of the SWMP did not contain the name and location of the municipal separate storm sewer system where the project’s stormwater discharge was directed.
  - b. The site map included with the SWMP did not identify the construction site boundaries; all areas of ground surface disturbance; areas of cut and fill; or areas used for storage of building materials, soil and waste.
  - c. The SWMP did not adequately address the method utilized for vehicle tracking control. The SWMP states that vehicle tracking would be maintained on a daily basis at the site. However, the SWMP did not provide what method would be utilized for the vehicle tracking maintenance as required by the Permit.

12. The Division has determined that Clearview failed to prepare and maintain a complete and accurate SWMP for the Project.
13. Clearview'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 Perform and/or Document Inspections of Stormwater Management System**

14. Pursuant to Part I. D. 6. (a) of the Permit, for active sites where construction has not been completed, Clearview is required to make a thorough inspection of the Project's stormwater management system at least every 14 calendar days and within 24 hours of any precipitation or snowmelt event that causes surface erosion.
15. Pursuant to Part I. D. 6. (b) (2) of the Permit, Clearview is required to keep a record of inspections that describes any corrective actions taken, the dates the corrective actions were taken, and any measures taken to prevent future violations, including requisite changes to the SWMP. Additionally, after adequate corrective action has been taken, or where a report does not identify any incidents requiring corrective action, the report shall contain a signed statement indicating the site is in compliance with the Permit to the best of the signer's knowledge and belief.
16. During the July 5, 2013 inspection, the Inspector reviewed the available inspection records for the period from March 13, 2013 – June 26, 2013 and identified the following deficiencies, as described in Paragraphs 16(a-c) below:
  - a. Inspections were not conducted between March 25, 2013 – April 11, 2013 and April 20, 2013 – May 12, 2013. These periods exceeded the minimum 14 day interval between inspections.
  - b. The inspection records did not include the dates that corrective actions were completed.
  - c. The inspection records did not include a signed certification statement indicating the site is in compliance with the Permit to the best of the signer's knowledge and belief.
17. The Division has determined that Clearview failed to properly perform and document inspections of the stormwater management system at the Project.
18. Clearview's failure to properly perform and document its inspections constitutes violations of Part I. D. 6. (a) and Part I. D. 6. (b) (2) of the Permit.

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

19. Pursuant to Part I. C. 3. (c) of the Permit, Clearview 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.

20. Pursuant to Part I. D. 2. of the Permit, Clearview 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.
21. Pursuant to Part I. B. 3. of the Permit, Clearview 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.
22. During the July 5, 2013 inspection, the Inspector identified the following deficiencies related to BMP installation and maintenance at the Project, as described in Paragraphs 22(a-f) below:
  - a. The Inspector observed approximately 20-acres of a disturbed area upgradient of Hickory Lane and Tupelo Street at the Project. A silt fence and sediment control logs were observed in place downgradient of the disturbed area along the perimeter boundary at this location. The installation and implementation specifications in the SWMP stated a maximum drainage area of 1/4 acre per 100 feet of silt fence and/or sediment control log. However, the silt fence and sediment control logs were only installed along the perimeter of an approximately 20-acre area, which exceeded the maximum drainage capacity as stated in the SWMP. Consequently, the silt fence and sediment control logs failed and sediment discharge was observed on offsite paved surfaces. No other BMPs were identified to stabilize the disturbed area or to prevent sediment discharges. Stormwater from this area of the Project flows to the Johnstown municipal storm sewer system and into to the Little Thompson River.
  - b. The Inspector observed a disturbed area upgradient of Honeysuckle Way at the Project. Installation and implementation specifications were included in the SWMP for perimeter control BMPs (e.g. silt fence, sediment control logs). However, the perimeter control BMPs identified for this area were not being implemented. No other BMPs were identified to stabilize the disturbed or to prevent sediment discharges. Stormwater from this area of the Project flows to the Johnstown municipal storm sewer system and into to the Little Thompson River.
  - c. The Inspector observed a disturbed area upgradient of Juniper Street at the Project. The tracking control BMPs identified in the SWMP for the ingress/egress points for this area were not implemented. Consequently, sediment was observed on the paved surfaces of the Project from vehicle tracking. No other BMPs were identified to prevent tracked sediment from discharging to state waters. Stormwater from this area of the Project flows to the Johnstown municipal storm sewer system and into to the Little Thompson River.
  - d. The Inspector observed a disturbed area adjacent to Sycamore Avenue at the Project. A Vehicle Tracking Control ("VTC") was observed within the disturbed area. Installation and implementation specifications were included in the SWMP for the VTC. However, the VTC rock pad was in need of maintenance as dirt was visible underlying the rock pad. Consequently, sediment tracking and discharge was observed on paved surfaces adjacent to the disturbed area. No other BMPs were identified to prevent tracked sediment from discharging to state waters.

Stormwater from this area of the Project flows to the Johnstown municipal storm sewer system and into to the Little Thompson River.

- e. The Inspector observed a Concrete Wash Out (“CWO”) at the west end of the Project. Installation and implementation specifications were included in the SWMP for the CWO. However, the CWO was not installed in accordance with the specifications, as the CWO did not have compacted berms on three sides, tracking control on the approach, and was in need of maintenance as the concrete waste material had exceeded the CWOs capacity. The Inspector also observed a concrete waste pile and a soil pile mixed with concrete waste near the CWO. Separate installation and implementation specifications were included in the SWMP for the concrete waste pile BMPs. However, the concrete waste pile BMPs in this location were not being implemented. Stormwater from this area of the Project flows to the Johnstown municipal storm sewer system and into to the Little Thompson River.
  - f. The Inspector observed numerous soil stockpiles throughout the Project. Installation and implementation specifications were included in the SWMP for soil stockpile BMPs. However, the soil stockpile BMPs were not being implemented. Stormwater from this area of the Project flows to the Johnstown municipal storm sewer system and into to the Little Thompson River.
23. The Division has determined that Clearview failed to implement and/or maintain functional BMPs for all potential pollutant sources at the Project, following good engineering, hydrologic, and pollution control practices.
24. Clearview’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), Part I. D. 2., and Part I. B. 3., of the Permit.

### **NOTICE OF VIOLATION**

25. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined Clearview 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.”

**Part I. C. of the Permit**, which states in part, “The SWMP shall include the following items, at a minimum.”

**Part I. D. 6. (a) of the Permit**, which states in part, “The permittee shall, at a minimum, make a thorough inspection, in accordance with the requirements in I.D.6.b below, at least once every 14 calendar days. Also, post-storm event inspections must be conducted within 24 hours after the end of any precipitation or snowmelt event that causes surface erosion.”

**Part I. D. 6. (b) (2) of the Permit**, which states in part, “The permittee shall keep a record of inspections. Inspection reports must identify any incidents of non-compliance with the terms and conditions of this permit. ... At a minimum, the inspection report must include: ... vii) Description of corrective action for items iii, iv, v, and vi, above, dates corrective action(s) taken, and measures taken to prevent future violations, including requisite changes to the SWMP, as necessary;...”

**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.”

**Part I. B. 3. of the Permit**, which states in part, “Facilities must implement the provisions of the SWMP as written and updated, from commencement of construction activity until final stabilization is complete, as a condition of this permit.”

### **REQUIRED CORRECTIVE ACTION**

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

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

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

27. Clearview shall immediately evaluate the Project’s SWMP and implement necessary measures to ensure the SWMP contains all of the elements required by the Permit and is effective in managing pollutant discharges from the Project. Within thirty (30) calendar days of receipt of this Order, Clearview shall submit a written certification to the Division stating that a complete, effective, and up-to-date SWMP has been fully developed and implemented at the Project.

28. Clearview shall immediately begin conducting and documenting inspections of the Project's stormwater management system pursuant to the provisions outlined in the Permit. Within thirty (30) calendar days of receipt of this Order, Clearview shall submit a written certification to the Division stating that all such inspections are being conducted and documented in accordance with the terms and conditions of the Permit.
29. Clearview shall immediately implement necessary measures to ensure that adequate BMPs are in place to control pollutant discharges from the Project. This includes ensuring that all disturbed areas at the Project are stabilized and/or protected with a system/series of erosion and sediment control practices, and that all BMPs at the site are selected, installed, implemented, and maintained following good engineering, hydrologic, and pollution control practices. Within thirty (30) calendar days of receipt of this Order, Clearview shall evaluate and modify all existing BMPs at the Project to ensure the BMPs meet the design requirements specified in the Project's complete and up-to-date SWMP. Within forty-five (45) calendar days of receipt of this Order, Clearview shall submit photographs to the Division documenting the current conditions at the site and the associated BMPs implemented at the Project.
30. Within sixty (60) calendar days of receipt of this Order, Clearview shall submit a detailed written plan to the Division outlining the standard procedures Clearview will undertake to ensure that functional and effective stormwater management systems are fully implemented at its Colorado construction sites. The plan shall include a detailed description of how Clearview will ensure that each of its stormwater management systems at each of its Colorado construction sites are adequately staffed, trained, implemented, and supervised. The plan shall specifically discuss Clearview's commitment to the resources needed to adequately implement the provisions of the Permit at its construction sites, including a commitment to providing elevated staff and supervisor training in erosion control, BMP implementation, and overall stormwater management.

### **NOTICES AND SUBMITTALS**

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, Clearview 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-CWE-B2  
Attention: Joe Campbell  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530  
Telephone: (303) 692-2356  
Email: joseph.campbell@state.co.us  
Fax: (303) 782-0390

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.

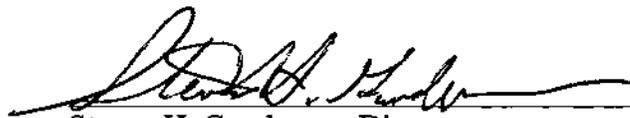
**EFFECT OF ORDER**

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 2<sup>nd</sup> day of January, 2014.

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

  
\_\_\_\_\_  
Steven H. Gunderson, Director  
WATER QUALITY CONTROL DIVISION

# STATE OF COLORADO

John W. Hickenlooper, Governor  
Karin McGowan  
Interim Executive Director

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

4300 Cherry Creek Dr. S.      Laboratory Services Division  
Denver, Colorado 80246-1530      8100 Lowry Blvd.  
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Located in Glendale, Colorado      (303) 692-3090

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



Colorado Department  
of Public Health  
and Environment

July 12, 2013

CERTIFIED NO: 7012-2920-0000-4116-4757

Larry Buckendorf, Manager  
Clearview Investments LLC  
7251 W 20 St. Ste L-200  
Greely, CO 80634

Re: Facility Inspection /**Compliance Advisory**  
Clearview Investments LLC—Clearview PUD Fil 4 Ph 1 facility  
CDPS Permit No. COR031786  
Weld County

Dear Mr. Buckendorf:

An inspection of the above-referenced facility was conducted by the Water Quality Control Division (the Division) on July 5<sup>th</sup>, 2013. The inspection procedure consists of two parts: a review of records, and an on-site facility inspection. Findings identified during the inspection are detailed in the enclosed inspection report. This correspondence documents:

1. the Division's expectations for correcting the inspection findings;
2. the Division's determination on whether the findings meet established criteria for formal enforcement; and
3. whether the Division requires a response to the inspection report.

### **Corrective action**

All discharges authorized by the Colorado Discharge Permit System (CDPS) General Permit for Stormwater Discharges Associated with Construction Activity (COR030000) (the permit) must be consistent with all requirements, and terms and conditions of the permit. Therefore, the Division expects Clearview Investments LLC (the permittee) to correct all findings identified in the enclosed inspection report and return the facility to compliance with the permit. A violation of the terms and conditions specified in this permit may be subject to civil and criminal liability pursuant to sections 25-8-601 through 612, C.R.S.. Correcting a permit violation does not remove the original violation.

### **Compliance determination**

The Division evaluated the inspection findings against the Division's Stormwater Enforcement Response Guide and has determined that the findings identified in the enclosed inspection report meet the criteria for a formal enforcement response. The following discussion provides the Division's expectation for the inspected entity's response to the inspection report, and information regarding response adequacy and future Division communication.

- a. Consistent with section 61.8(3) of 5 CCR 1002-61 (Regulation No. 61) and Part II.B.2 of the CDPS General Permit for Stormwater Discharges Associated with Construction Activity, the inspected entity must submit a response to the Division that documents the corrective action(s) implemented for each finding identified in the enclosed inspection report. Unless specifically requested by the Division, the inspected entity is not required to submit a copy of the revised Stormwater Management Plan with the response. The

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inspected entity must submit the response to the Colorado Department of Public Health and Environment, WQCD-P-B2, 4300 Cherry Creek Drive South, Denver, CO 80246-1530, Attn: Rik Gay, by **July 26, 2013**.

- b. The inspected entity is encouraged to provide any additional information they feel should be considered by the Division with respect to any finding identified in the enclosed inspection report. The Division will evaluate this information, and may modify the Compliance Determination if the information demonstrates the finding was not accurate.
- c. Following receipt and review of the inspected entity's response (as identified in a. above), the Division will identify whether all inspection findings were adequately addressed and whether there is, or is not, evidence of continuing noncompliance and potential for continued penalty liability for ongoing violations. The Division intends to communicate this determination, in writing, within 30 days following the receipt of an inspected entity's response, or will provide a revised schedule if additional time is required to complete the Division evaluation. If the Division determines the inspection findings have not been adequately addressed, the Division response will provide notification of the continued noncompliance and the need for corrective action.
- d. The Division's standard enforcement response process includes the issuance of a Notice of Violation/Cease and Desist Order. The Division has an internal time control goal of 180 days to issue a formal enforcement action for identified noncompliance meeting the established criteria for formal enforcement. If the Division determines that it will not meet its internal time control goal, the Division will provide written notification to the permittee within 180 days of the date of the inspection. If, at any time, the Division determines that it will forego a formal enforcement response for the identified noncompliance, the Division will provide written notification to the permittee at the time that decision is made.

This Compliance Advisory is intended to advise the inspected entity of alleged violations of the Colorado Water Quality Control Act, its implementing regulations and permits so that appropriate steps can be taken to avoid or mitigate formal enforcement action or to correct our records (if applicable). This Compliance Advisory does not constitute a Notice of Violation or Cease and Desist Order and is not subject to appeal. The issuance of this Compliance Advisory does not limit or preclude the Division from pursuing its enforcement options concerning the above violation(s). The Division will evaluate the facts associated with the above-described violation(s) and if a formal enforcement action is deemed necessary, the inspected entity may be issued a Notice of Violation / Cease and Desist Order that may include the assessment of penalties.

If you have any questions, please call me at (303) 692-3575.

Sincerely,

Rik Gay  
Environmental Protection Specialist  
Permits Section  
WATER QUALITY CONTROL DIVISION

cc: File Copy

## Stormwater Inspection Report

<b>Permittee:</b> Clearview Investments LLC	<b>Cert. No.</b> COR03I786	<b>Date:</b> 7/5/2013
<b>Facility:</b> Clearview PUD Fil 4 Ph 1	<b>Industrial Type:</b> Construction	<b>Receiving Water(s):</b> Little Thompson River
<b>Facility Address:</b> Carlson Blvd & Silverbell Dr. Johnstown CO		
<b>Persons present:</b> Scott McDonald, Journey Homes/Crow Creek; Shane McCoy SWPPP Colorado		
<b>Legally Responsible Person(s)/Title(s):</b> Larry Buckendorf/Manager		<b>Inspector:</b> Rik Gay

### Inspection Findings

The Water Quality Control Division (Division) inspector held a closing conference at the conclusion of the inspection, during which the inspector reviewed all alleged inspection findings with the facility representative. The inspector communicated the Division's expectation that the facility representative initiate corrective actions, immediately, for all alleged inspection findings, in accordance with the provisions of the CDPS General Permit for Stormwater Discharges Associated with Construction Activity (the permit).

### Records Review

**Note 1:** In a communication with the permittee prior to the inspection, the Division inspector requested that a copy of the Stormwater Management Plan (SWMP) and inspection records be provided to Division personnel at the inspection. A copy of the SWMP and a copy of the inspection records were provided to the Division inspector on July 5<sup>th</sup>, 2013 during the inspection.

**Note 2:** The permit certification effective date was March 13<sup>th</sup>, 2013. The date that construction started and land-disturbing activities began at the site was May 1<sup>st</sup>, 2013, as provided by Shane McCoy, SWPPP Colorado.

1. A copy of the SWMP was retained onsite. The Division inspector reviewed the SWMP and found it to be inadequate for the following reasons:
  - a) The Site Description section in the SWMP did not identify all items as required by Part I.C.1.h of the permit. Specifically, facility stormwater discharge was directed to a municipal separate storm sewer system and neither the location of the discharge point of that system nor the name of that system was specified. The permit requires that if the stormwater discharge is to a municipal separate storm sewer system, the Site Description must contain the name of that storm sewer system, the location of the storm sewer discharge and the name of the ultimate receiving water(s). The Division expects the permittee to update the Site Description to include all items required by the permit.
  - b) The Site Map did not identify all items required by Part I.C.2 of the permit. Specifically, the Site Map did not identify the construction site boundaries, all areas of ground surface disturbance, areas of cut and fill, areas used for storage of building materials and soil & waste which were observed in the field. The SWMP must 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 all structural BMPs;
    - vi. locations of non-structural BMPs as applicable;
    - vii. locations of surface waters (detention basins, storm sewer discharge points)The Division expects the permittee to update the Site Map to include all items required by the permit.
  - c) The Stormwater Management Control section in the SWMP did not adequately address Vehicle Tracking Control as required by Part I.C.3.c.6 of the permit. Specifically, the SWMP stated that vehicle tracking would be maintained on a daily basis but did not provide what method would be utilized (e.g. Street Sweeping). The permit requires that the SWMP clearly describe all practices implemented at the site to control potential sediment discharges from vehicle

tracking. The Division expects the permittee to update the Stormwater Management Controls to include all items required by the permit.

- d) The permittee did not implement the provisions of the SWMP as provided in Part I.B.3 of the permit. Specifically, the following SWMP provisions were not implemented in the field:
- i. stockpile management BMPs were not implemented to prevent the discharge of sediment in stormwater runoff (refer to field finding #8).

Facilities must implement the provisions of the SWMP as written from commencement of construction activity until final stabilization is complete, as a condition of the permit. The Division expects the permittee to implement the SWMP as required by the permit.

2. Inspection records were available for review by the Division inspector at the time of the inspection were found to be inadequate as they were not conducted as required by Part I.D.6 of the permit (records from 3/13/13 – 6/26/13 were reviewed by the inspector). Specifically,
- a) inspection records for the 3/25/13 - 4/11/13 and 4/20/13 – 5/12/13 inspection dates demonstrate that the inspections were conducted more that 14 days apart. The permittee must, at a minimum, make a thorough inspection at least once every 14 calendar days. Also, post-storm event inspections must be conducted within 24 hours after the end of any precipitation or snowmelt event that causes surface erosion. Provided the timing is appropriate, the post-storm inspections may be used to fulfill the 14-day routine inspection requirement. A more frequent inspection schedule than the minimum inspections described may be necessary, to ensure that BMPs continue to operate as needed to comply with the permit. Any deviations from the minimum inspection schedule must be explained in the subsequent report.
  - b) inspection records did not include the dates that the corrective actions were completed. Each inspection report must include a description of corrective action(s), dates corrective action(s) were taken, and measures to prevent future violations.
  - c) inspection records did not include a signed statement indicating that the site was in compliance with the permit to the best of the signer's knowledge and belief. For each inspection report, after adequate corrective action(s) has been taken, or where a report does not identify any incidents requiring corrective action, the report must contain a signed statement indicating the site is in compliance with the permit to the best of the signer's knowledge and belief.

The Division expects the permittee to conduct and document site inspections as required by the permit.

**Note 3:** Inspections must be conducted at least once every 14 days and within 24 hours after the end of any precipitation or snowmelt event that causes surface erosion, except during winter snow pack conditions where melting does not exist, or when all construction activities are completed. During winter snow pack conditions where melting does not exist, inspections do not need to be conducted; however, the dates when snow cover occurred, date when construction activities ceased, and date when melting conditions began must be documented for this exception. When all construction activities are completed but final stabilization has not been achieved due to a vegetative cover that has not become established, inspections must be conducted at least once a month and the SWMP must be amended to indicate those areas that will be inspected in accordance with this reduced schedule. For more detailed information on the required inspection frequency see Part I.D.6 of the permit.

## Site Inspection

**Note 4:** As required by Part I.D.2 of the permit: All Best Management Practices (BMPs) mentioned in the following findings must be selected, installed, implemented and maintained according to good engineering, hydrologic and pollution control practices, and consistent with the installation and implementation specifications identified in the SWMP. These BMPs must be adequately designed to provide control for all potential pollutant sources associated with the industrial activity to control pollution or degradation of State waters.

**1. It was noted during the inspection that inadequate BMPs were implemented to manage stormwater runoff from disturbed areas up gradient of the west end of Hickory Lane and west end of Tupelo St.**

- Specifically, sediment from approximately 20-acres of upgradient disturbed area was discharged beyond the permit boundary to offsite paved surfaces. Perimeter silt fence and sediment control log BMPs were implemented along the permit boundary at these locations. (see attached photographs #1-#10/Hickory Lane and photographs #11-#17/Tupelo St.)
- Installation and implementation specifications were provided in the SWMP; however, the maximum recommended tributary drainage area of 0.25 acres / 100 lineal feet of silt fence and/or sediment control log was significantly exceeded (disturbed area drainage tributary estimated at 20 acres).
- Stormwater runoff from the project flows to the Johnstown municipal separate storm sewer system which discharges to the Little Thompson River.
- As a result of the inadequate BMP, there was a discharge of pollutants to the Little Thompson River (state waters).
- The Division expects the permittee to implement BMPs, as required by the permit and consistent with the installation and implementation specifications outlined in the SWMP, to prevent pollution or degradation of State waters.

**2. It was noted during the inspection that BMPs were not implemented to manage stormwater runoff from disturbed areas up gradient of the west end of Honeysuckle Way.**

- Specifically, BMPs were not installed to control disturbed areas adjacent to paved surfaces, to prevent the discharge of sediment in stormwater runoff to these surfaces during stormwater runoff. (see attached photographs #18-#22.)
- Installation and implementation specifications were provided in the SWMP for perimeter control BMPs; however, the required BMPs were not installed.
- Stormwater runoff from the project flows to the Johnstown municipal separate storm sewer system which discharges to the Little Thompson River.
- As a result there was a potential discharge of pollutants to the Little Thompson River (state waters).
- The Division expects the permittee to implement BMPs, as required by the permit and consistent with the installation and implementation specifications outlined in the SWMP, to prevent pollution or degradation of State waters.

**3. It was noted during the inspection that BMPs were not implemented to control sediment transport to paved surfaces on the south end of Juniper St.**

- Specifically, BMPs were not installed to control vehicle tracking to paved surfaces at this construction access point, and sediment was observed on paved surfaces. (see attached photographs #24 & #25.)
- Installation and implementation specifications were provided in the SWMP for tracking control BMPs; however, the required BMPs were not installed and vehicle tracking of sediment was observed at the ingress/egress points of the construction site onto paved surfaces.
- Stormwater runoff from the project flows to the Johnstown municipal separate storm sewer system which discharges to

the Little Thompson River.

- As a result there was a potential discharge of pollutants to the Little Thompson River (state waters).
- The Division expects the permittee to implement BMPs, as required by the permit and consistent with the installation and implementation specifications outlined in the SWMP, to prevent pollution or degradation of State waters.

**4. It was noted during the inspection that inadequate BMPs were implemented to control sediment transport to paved surfaces on the south end of Sycamore Ave.**

- Specifically, vehicle tracking of sediment onto paved surfaces was observed at the ingress/egress point of the construction site. A vehicle tracking pad (VTC) was implemented at this location (see attached photographs #26, #27, #29 & #30).
- Installation and implementation specifications were provided in the SWMP; however, the VTC rock pad needed maintenance as dirt was visible underlying and on the rock pad.
- Stormwater runoff from the project flows to the Johnstown municipal separate storm sewer system which discharges to the Little Thompson River.
- As a result there was a potential discharge of pollutants to the Little Thompson River (state waters).
- The Division expects the permittee to implement BMPs, as required by the permit and consistent with the installation and implementation specifications outlined in the SWMP, to prevent pollution or degradation of State waters.

**5. It was noted during the inspection that inadequate BMPs were implemented to manage stormwater runoff from concrete washout at the west end of the project.**

- Specifically, concrete waste material had exceeded the capacity of the concrete wash out (CWO) implemented at this location (see attached photographs #31 & #33).
- Installation and implementation specifications were provided in the SWMP; however, the CWO did not have compacted berms on three sides, tracking control on the approach, the CWO needed maintenance, and was not signed.
- Stormwater runoff from the project flows to the Johnstown municipal separate storm sewer system which discharges to the Little Thompson River.
- As a result there was a potential discharge of pollutants to the Little Thompson River (state waters).
- The Division expects the permittee to implement BMPs, as required by the permit and consistent with the installation and implementation specifications outlined in the SWMP, to prevent pollution or degradation of State waters.

**6. It was noted during the inspection that BMPs were not implemented to manage stormwater runoff from concrete and other construction waste at the west end of the project.**

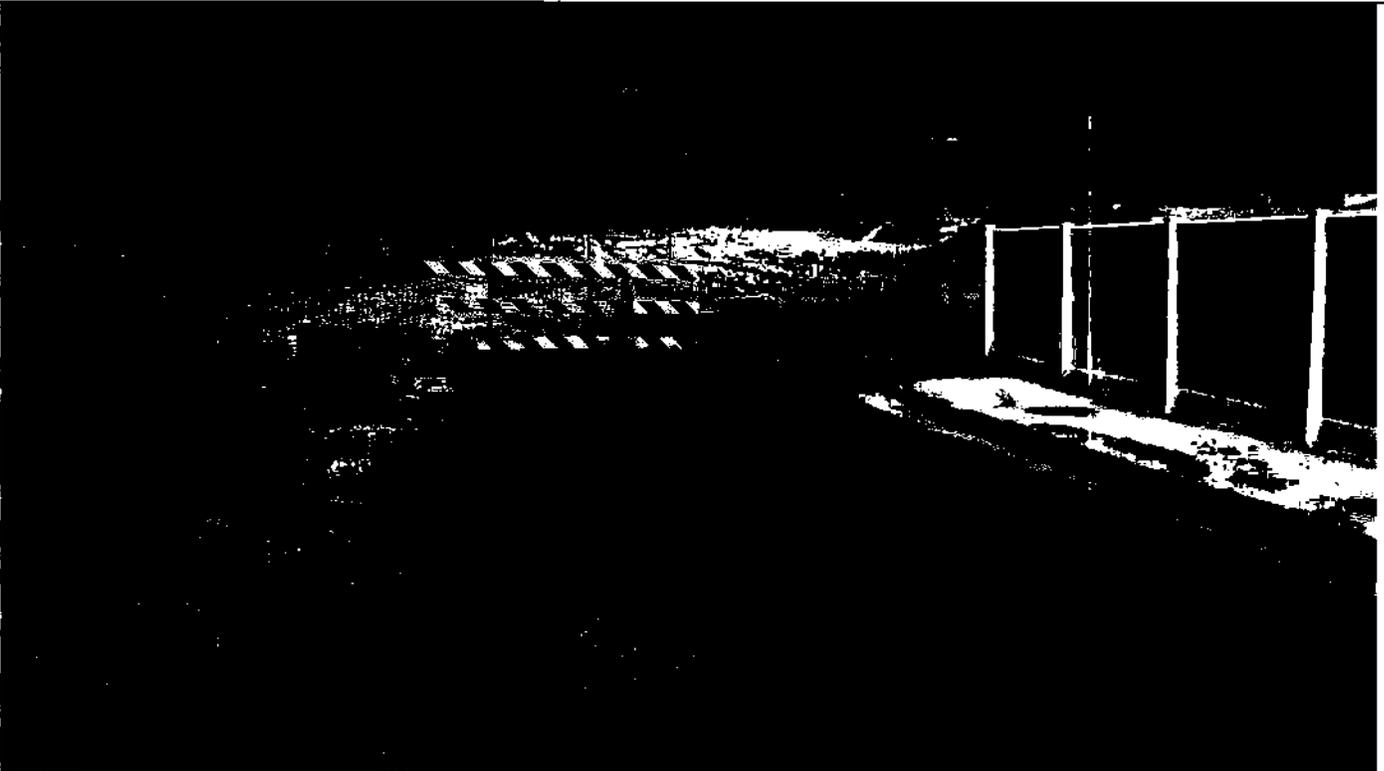
- Specifically, BMPs were not implemented for the concrete waste pile, and stockpile of soil mixed with waste concrete in this location to prevent the discharge of pollutants in stormwater runoff (see attached photograph #31).
- Installation and implementation specifications were provided in the SWMP; however, concrete and construction waste was not being contained within a correctly installed wash out designated area.
- Stormwater runoff from the project flows to the Johnstown municipal separate storm sewer system which discharges to the Little Thompson River.
- As a result there was a potential discharge of pollutants to the Little Thompson River (state waters).
- The Division expects the permittee to implement BMPs, as required by the permit and consistent with the installation and implementation specifications outlined in the SWMP, to prevent pollution or degradation of State waters.

- 7. It was noted during the inspection that BMPs were not implemented to manage stormwater runoff from stockpiles throughout the project.**
- Specifically, BMPs were not implemented to prevent the discharge of sediment from stockpiles in stormwater runoff. See attached photographs #34, #35, #6 & #19.
  - Installation and implementation specifications were provided in the SWMP for stockpile management BMPs; however, BMPs were not implemented at the base of the stockpiles.
  - Stormwater runoff from the project flows to the Johnstown municipal separate storm sewer system which discharges to the Little Thompson River.
  - As a result there was a potential discharge of pollutants to the Little Thompson River (state waters).
  - The Division expects the permittee to implement BMPs, as required by the permit and consistent with the installation and implementation specifications outlined in the SWMP, to prevent pollution or degradation of State waters.

Site Photographs – Clearview PUD Fil 4 Ph 1– 7/5/2013



Photograph #1 – Facing west, drainage to the east. At the end of Hickory Drive at the low point of the project. The only BMP was a single row of wattle.



Photograph #2 – See Photo #1.

Site Photographs – Clearview PUD Fil 4 Ph 1– 7/5/2013



Photograph #3 – Facing south. Part of a panorama at the end of Hickory St.



Photograph #4 - Facing SW See photo #3

**Site Photographs – Clearview PUD Fil 4 Ph 1– 7/5/2013**



**Photograph #5. Facing west, See photo #3**



**Photograph #6. Facing NW. See photo #3**

Site Photographs – Clearview PUD Fil 4 Ph 1– 7/5/2013

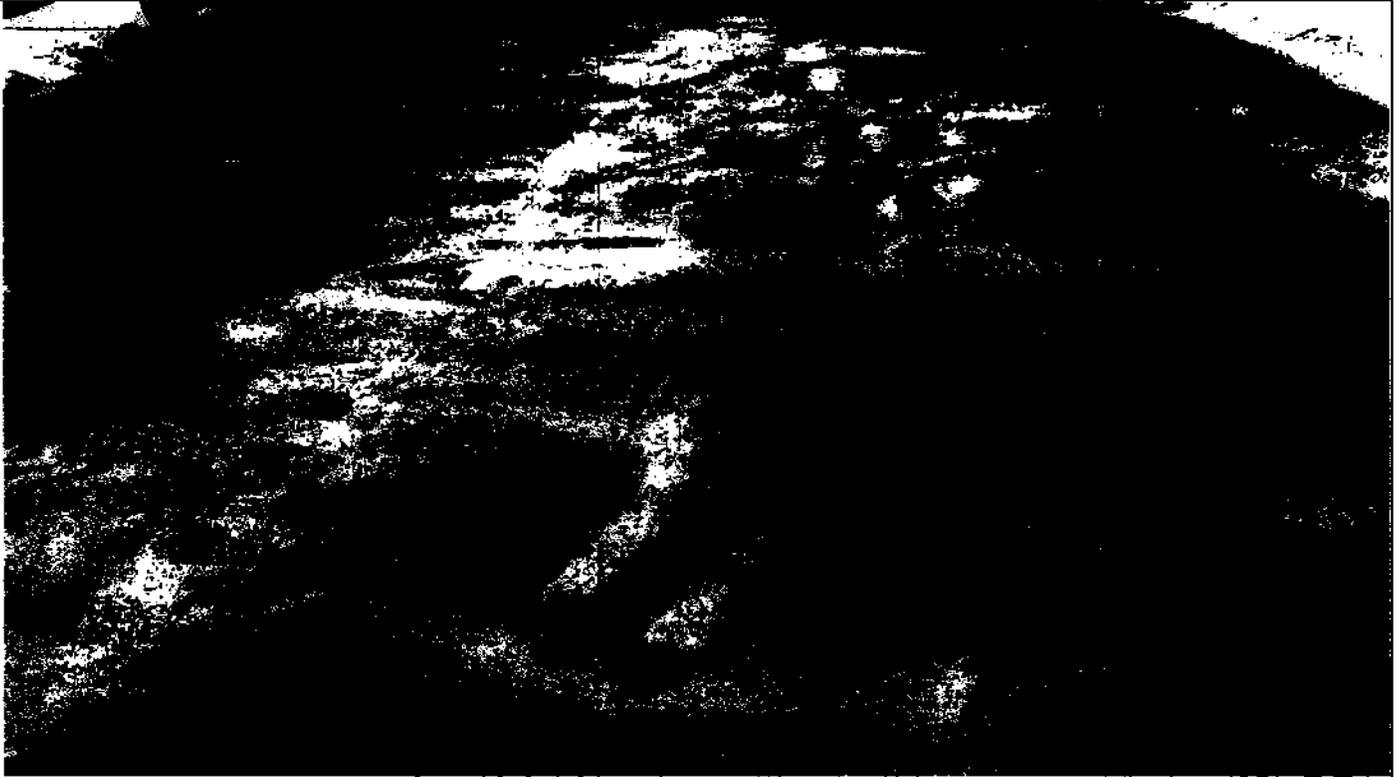


Photograph #7. Storm sewer.



Photograph #8. Straw wattle.

Site Photographs – Clearview PUD Fil 4 Ph 1– 7/5/2013

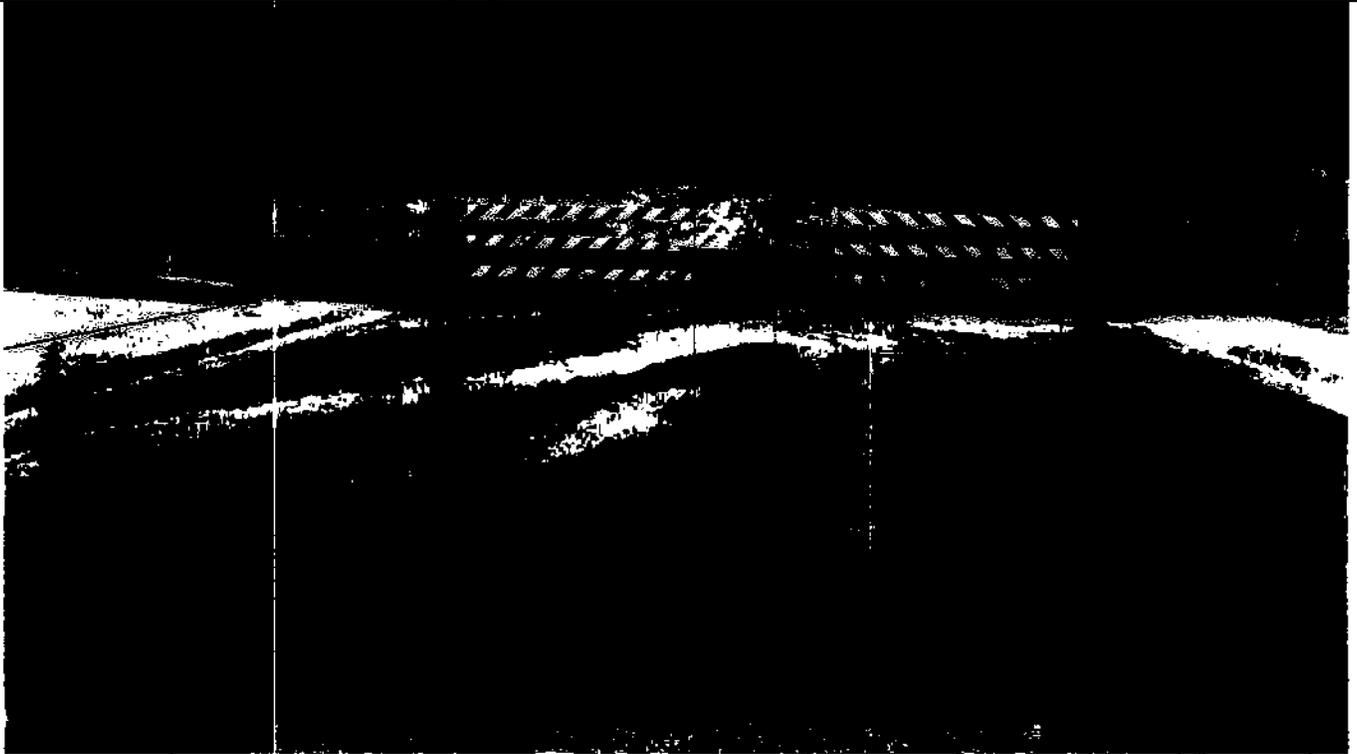


Photograph #9. Facing east, drainage to the east. See photo #1

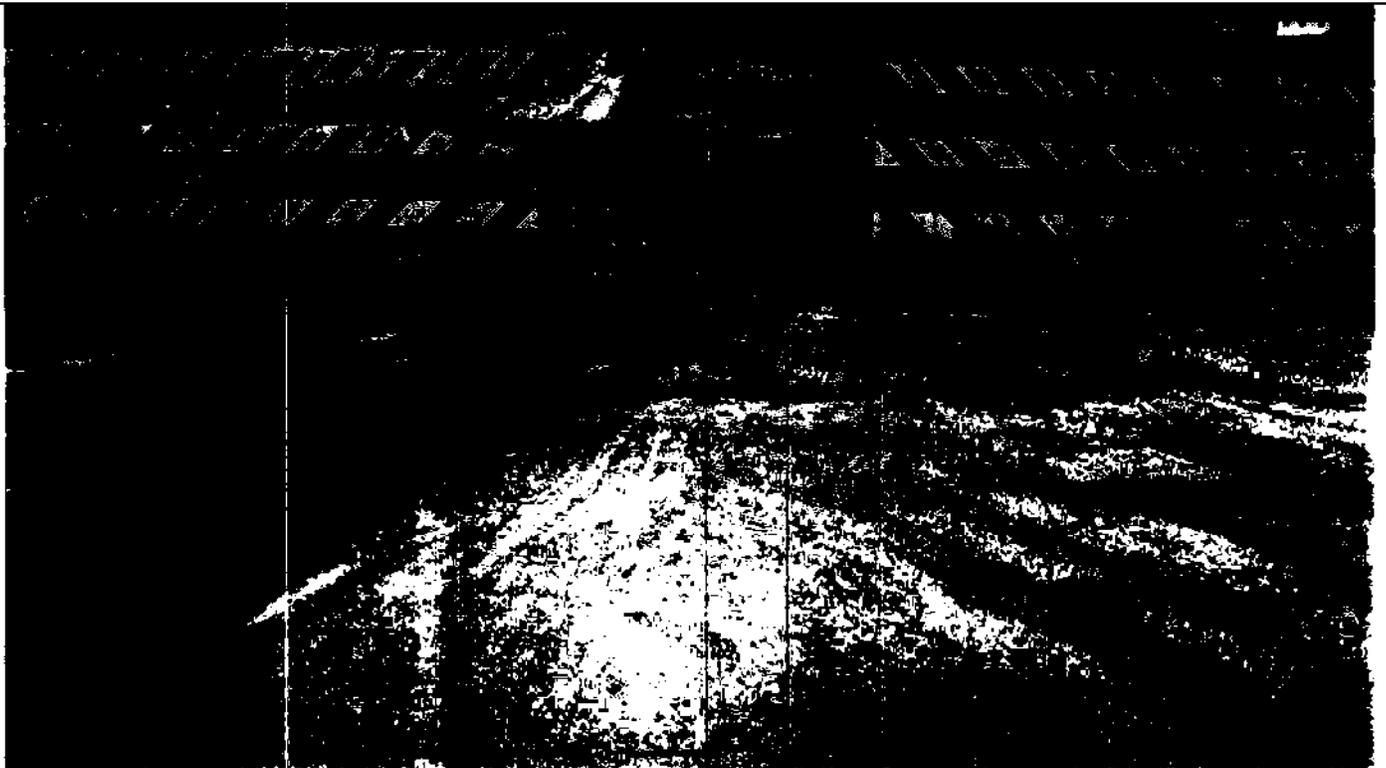


Photograph #10. Facing north.

Site Photographs – Clearview PUD Fil 4 Ph 1– 7/5/2013

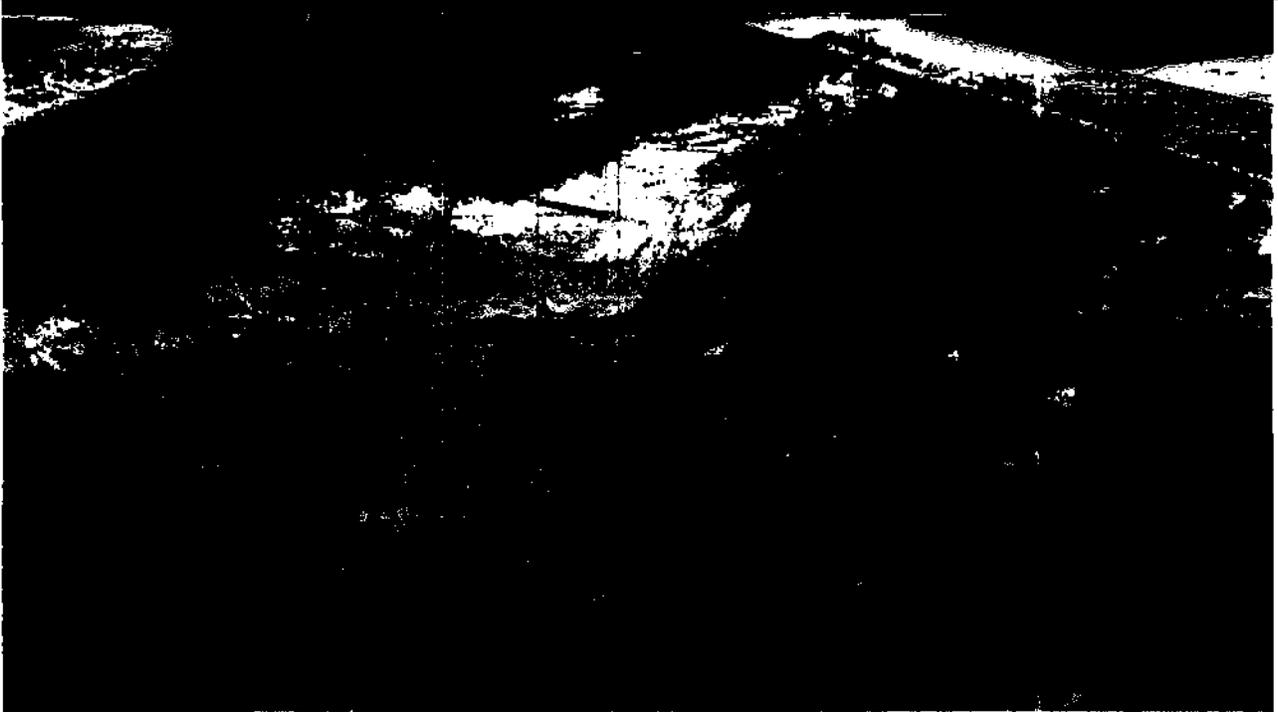


Photograph #11. Facing west, drainage to the east. Tupelo St. & Hickory Lane



Photograph #12. Closer view - photo #11.

Site Photographs – Clearview PUD Fil 4 Ph 1– 7/5/2013



Photograph #13. Facing east. See Photo #11



Photograph #14. Panorama. See photo #11

**Site Photographs – Clearview PUD Fil 4 Ph 1– 7/5/2013**



**Photograph #15. Panorama. See photo #11**



**Photograph #16. Panorama. See photo #11**

Site Photographs – Clearview PUD Fil 4 Ph 1– 7/5/2013

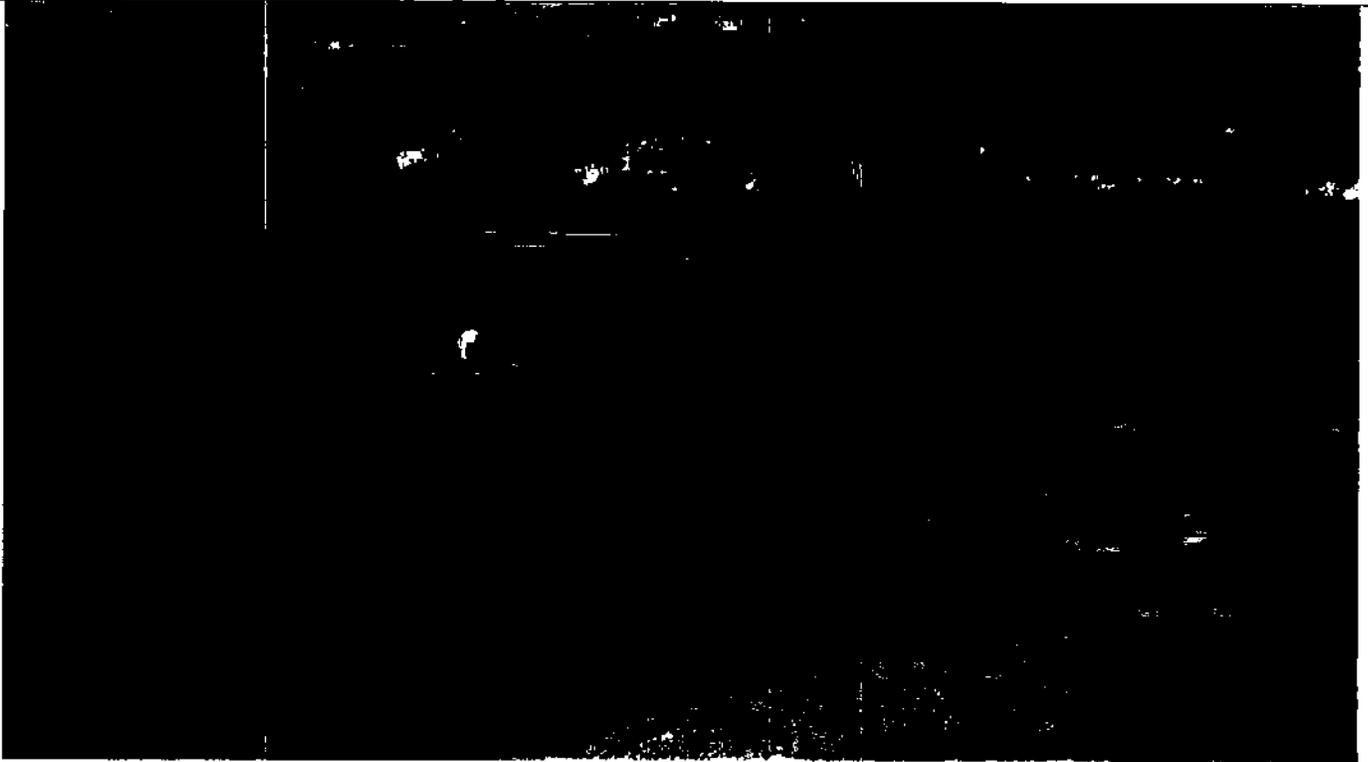


Photograph #17. Panorama. See photo #11



Photograph #18. Facing SW at Honeysuckle Way & Tamarac St. Uncontained stockpile with no BMP at perimeter of disturbance.

Site Photographs – Clearview PUD Fil 4 Ph 1– 7/5/2013



Photograph #19. Panorama at Honeysuckle Way & Tamarac St.

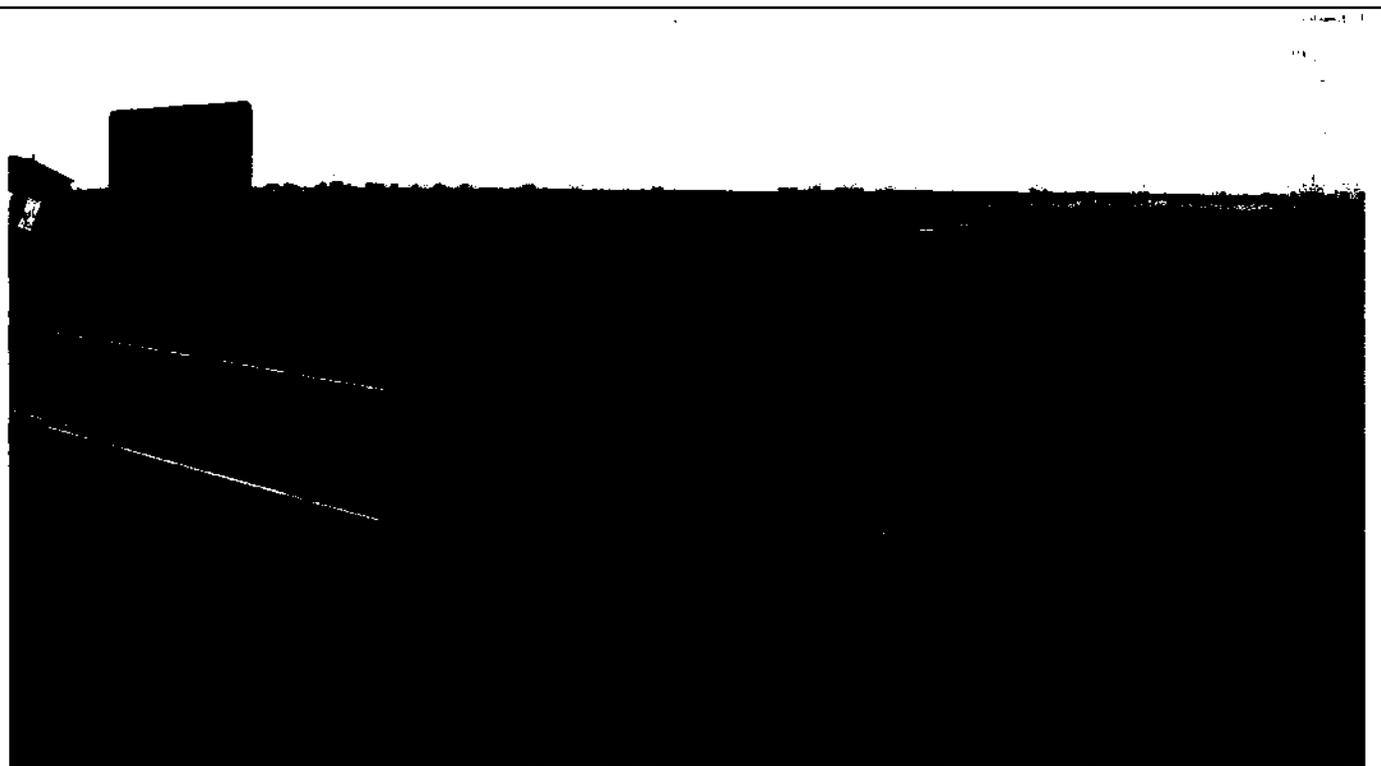


Photograph #20. Panorama at Honeysuckle Way & Tamarac St.

**Site Photographs – Clearview PUD Fil 4 Ph 1– 7/5/2013**



**Photograph #22. Panorama at Honeysuckle Way & Tamarac St.**



**Photograph #24. Facing SE at Juniper St. & Shadbush St. Construction access – no BMPs.**

**Site Photographs – Clearview PUD Fil 4 Ph 1– 7/5/2013**



**Photograph #25. Photograph #24. Facing South at Juniper St. & Shadbush St. Construction access - noBMPs.**

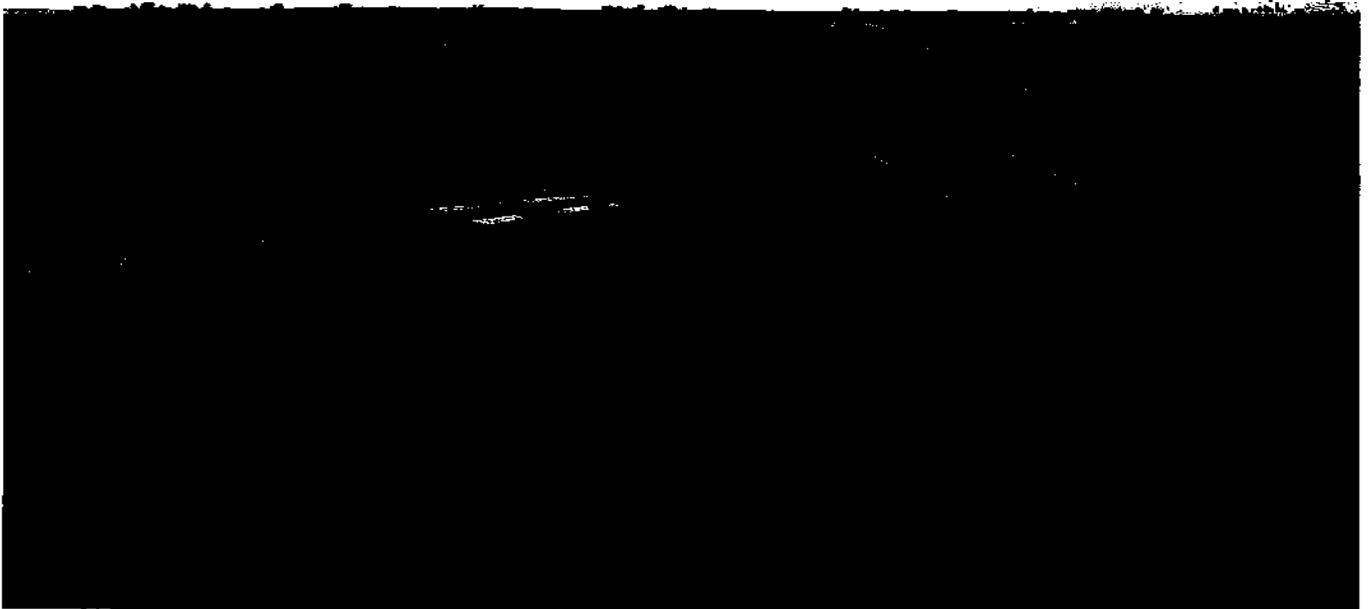


**Photograph #26. Facing south at Shadbush St. & Sycamore Ave. Tracking**

**Site Photographs – Clearview PUD Fil 4 Ph 1– 7/5/2013**



**Photograph #27. Facing north at the end Sycamore Ave. Tracking**



**Photograph #28. Panorama facing south at the end of Sycamore Ave.**

**Site Photographs – Clearview PUD Fil 4 Ph 1– 7/5/2013**

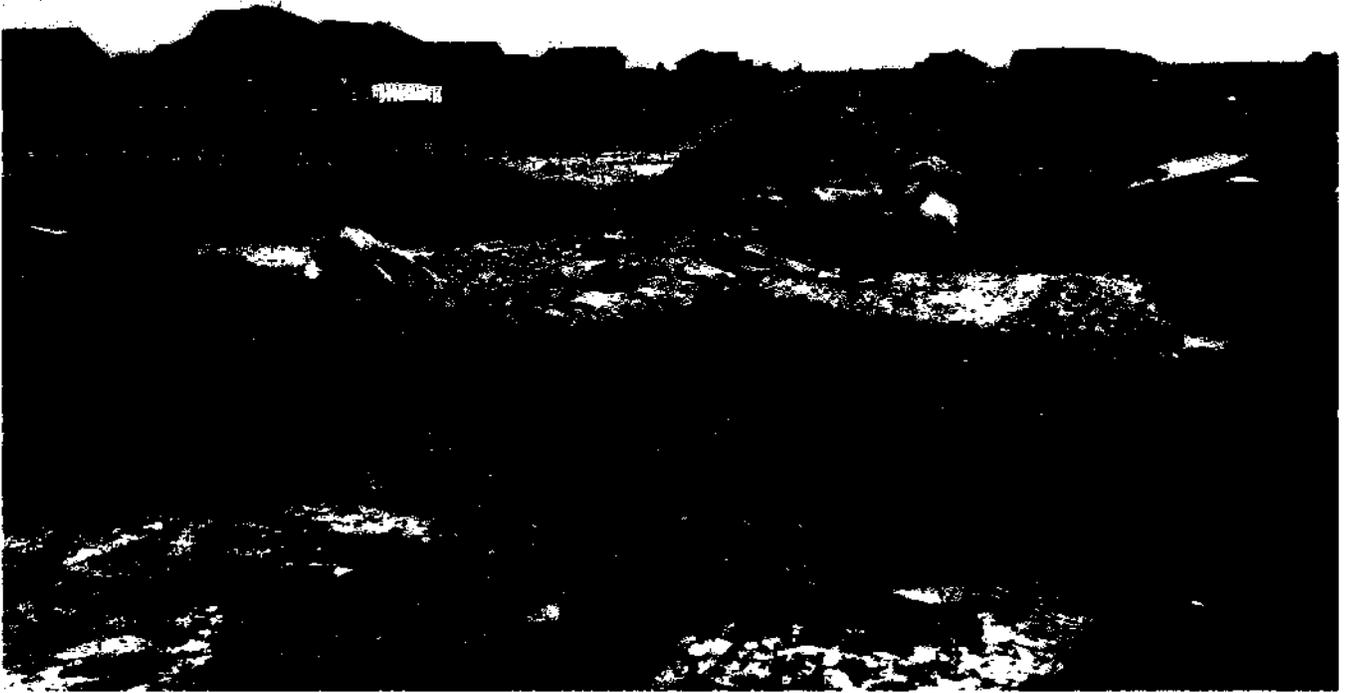


**Photograph #29. Panorama facing south at the end of Sycamore Ave.**



**Photograph #30. Panorama facing south at the end of Sycamore Ave.**

Site Photographs – Clearview PUD Fil 4 Ph 1– 7/5/2013

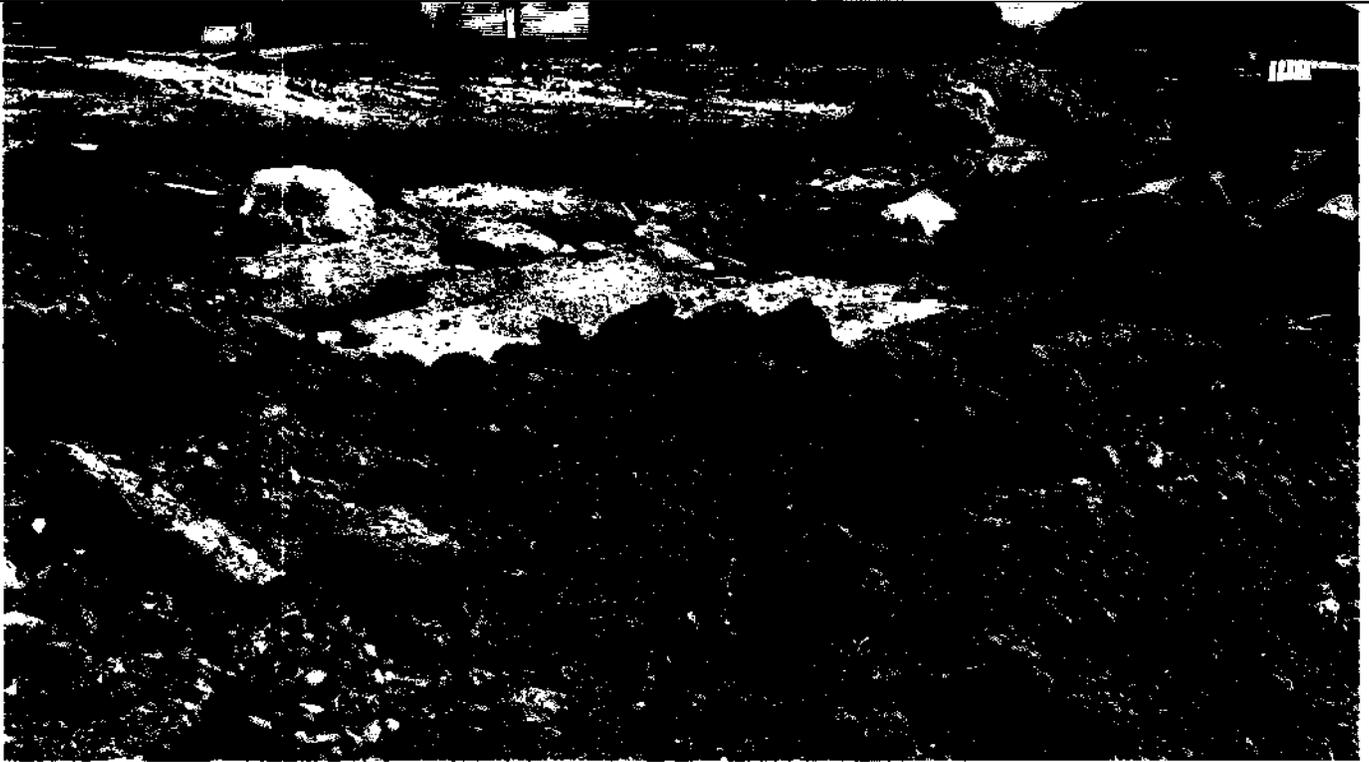


Photograph #31. Concrete Wash out at northwest corner of project.



Photograph #32. Concrete Wash out at northwest corner of project.

**Site Photographs – Clearview PUD Fil 4 Ph 1– 7/5/2013**



**Photograph #33. Concrete Wash out at northwest corner of project.**



**Photograph #34. Stockpile at west side of project – no BMPs**

**Site Photographs – Clearview PUD Fil 4 Ph 1– 7/5/2013**



Photograph #35. See photo #34