

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

4300 Cherry Creek Dr. S.
Denver, Colorado 80246-1530
Phone (303) 692-2000
Located in Glendale, Colorado

www.colorado.gov/cdphe



Colorado Department
of Public Health
and Environment

January 17, 2014

Patricia Diane Fiore, Registered Agent
Fiore & Sons, Inc.
730 W. 62nd Ave.
Denver, Colorado 80216

Certified Mail Number: 7007 0220 0001 0163 1084

RE: Service of Notice of Violation/Cease and Desist Order, Number: SO-140117-1

Dear Ms. Fiore:

Fiore & Sons, Inc. 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 Fiore & Sons, Inc. has violated the Act and/or a permit issued pursuant to the Act, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., Fiore & Sons, Inc. 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 Fiore & Sons, Inc. 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 Lindsay Ellis of this office by phone at (303) 692-2271 or by electronic mail at lindsay.ellis@state.co.us.

Sincerely,



Michael Harris, Manager
Clean Water Compliance & Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Natasha Davis, EPA Region VIII
Jeremy Simmons, Rio Blanco County Environmental Health
Michael Beck, Grants and Loans Unit, CDPHE
Bret Icenogle, Engineering Section, CDPHE
Kelly Jacques, Field Services Section, CDPHE
Nathan Moore, Compliance Unit 2, CDPHE
Tania Watson, Business Data Services, CDPHE



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

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: SO-140117-1

IN THE MATTER OF: **FIORE & SONS, INC.**
****CDPS PERMIT NO. COR-030000****
****CERTIFICATION NO. COR-03J343****
****RIO BLANCO COUNTY, COLORADO****

Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority is implemented through the Department's Water Quality Control Division (the "Division"), and pursuant to §§25-8-602 and 25-8-605, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the alleged violations identified herein, Fiore & Sons, Inc. was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
2. Fiore & Sons, Inc. is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
3. On August 16, 2012, Fiore & Sons, Inc. initiated reconstruction activities of an airport runway with a planned disturbance of 150 acres of land at or near State Highway 13, in or near the Town of Meeker, Rio Blanco County, Colorado (the "Project").
4. Construction activities at the Project include demolition of the existing runway pavement and base course, excavation and embankment construction to achieve new runway grades, and installation of subbase course, base course, underground conduit and wiring, asphalt pavement, pavement edge drains, runway lights, signs, and navigation aids.
5. On July 13, 2012, the Division received an application from Fiore & Sons, Inc. for Project coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit").
6. On July 18, 2012, the Division provided Fiore & Sons, Inc. Certification Number COR-03J343 authorizing Fiore & Sons, Inc. to discharge stormwater from the construction activities associated

with the Project to the White River under the terms and conditions of the Permit. Certification Number COR-03J343 became effective July 17, 2012 and has been administratively continued until a new Permit and associated certification is issued, or until Fiore & Sons, Inc. inactivates Permit coverage.

7. Pursuant to 5 CCR 1002-61, §61.8, Fiore & Sons, Inc. must comply with all the terms and conditions of the Permit, and violations of such terms and conditions may be subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.
8. The White River is “state waters” as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(102).
9. On July 22, 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 Fiore & Sons, Inc.’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

10. Pursuant to Part I. B. of the Permit, Fiore & Sons, Inc. 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.
11. 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. 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.

12. During the July 22, 2013 inspection, the Inspector reviewed the Project’s SWMP and identified the following deficiencies, as described in paragraphs 12(a-d) below:

- a. The SWMP did not clearly describe and locate all structural practices implemented at the site to minimize erosion and sediment transport. Section 3(c)(1) of the SWMP listed numerous structural BMPs to minimize sediment transport, including siltation fences, straw check dams, and sediment logs, with “the actual location, number, and type of structural BMPs” dependent upon “the phasing of construction activities and/or the stage in the sequence of construction.” However, the SWMP failed to:
 - i. locate all of the sediment control practices listed in Section 3(c)(1) of the SWMP;
 - ii. describe and locate riprap outlet protection implemented at the site; and
 - iii. describe and locate any structural practices to minimize erosion transport.
- b. The SWMP did not clearly describe and locate, as applicable, all non-structural practices implemented at the site to minimize erosion and sediment transport. Section 3(c)(2) of the SWMP listed numerous non-structural BMPs, including collection, storage and disposal of waste and debris, minimum fertilizer application, vehicle inspection, monitoring and

maintenance, use of spill kits, and spill clean-up. However, the SWMP failed to:

- i. locate all of the practices listed in Section 3(c)(2) of the SWMP; and
 - ii. describe and locate vegetative buffer strips implemented at the site.
- c. The site map included with the SWMP did not identify the locations of all BMPs observed in the field. Specifically, the site map did not identify the locations of the site's riprap outlet protection and vegetative buffer strips.
 - d. The site map included with the SWMP did not identify the construction site boundaries.
13. The Division has determined that Fiore & Sons, Inc. failed to prepare and maintain a complete and accurate SWMP for the Project.
14. Fiore & Sons, Inc.'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

15. Pursuant to Part I. D. 6. (a) of the Permit, for active sites where construction has not been completed, Fiore & Sons, Inc. 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.
16. During the July 22, 2013 inspection, the Inspector reviewed the available inspection records for the period from April 10, 2013 – July 18, 2013 and identified that Fiore & Sons, Inc. failed to perform inspections of the Project's stormwater management system between April 10, 2013 and May 12, 2013, and between May 12, 2013 and July 28, 2013. These periods exceeded the minimum 14-day interval required between inspections.
17. Fiore & Sons, Inc.'s failure to properly perform its inspections constitutes a violation of Part I. D. 6. (a) of the Permit.

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

18. Pursuant to Part I. C. 3. (c) of the Permit, Fiore & Sons, Inc. 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.
19. Pursuant to Part I. D. 2. of the Permit, Fiore & Sons, Inc. is required to select, design, install, implement and maintain appropriate BMPs, following good engineering, hydrologic and pollution

control practices. The BMPs implemented at the site must be adequately designed to provide control for all potential pollutant sources associated with construction activity at the Project.

20. Pursuant to Part I. B. 3. of the Permit, Fiore & Sons, Inc. 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.
21. On July 17, 2013, a precipitation event resulted in 0.97 inches of rainfall at the Project site. Private video footage captured a discharge of sediment-laden runoff from the southwest portion of the Project site. The video footage depicts sheet flows and concentrated flows of stormwater, which breached siltation fencing along the Project's southwest boundary and was subsequently discharged into unnamed tributaries flowing into Sulphur Creek and the White River.
22. During the July 22, 2013 inspection, the Inspector identified the following deficiencies related to BMP installation and maintenance at the Project, as described in Paragraphs 22(a-e) below:
 - a. The Inspector observed sediment located downgradient of approximately 140-acres of disturbed area and outside of the following Project boundaries:
 - i. southwest boundary;
 - ii. southeast boundary; and
 - iii. southern one-third of northwest boundary.

Silt fencing was the sole BMP observed in place downgradient of the disturbed area and along these boundaries. Installation of the silt fence on the Project site exceeded the maximum tributary drainage area of 0.25 acre per 100 linear-feet of silt fence that is recommended by industry publications. Additional installation and implementation specifications were included in the SWMP for sediment control BMPs (straw check dams and sediment logs). However, no additional BMPs were detected in place to stabilize the disturbed area or to prevent sediment discharges. Consequently, the silt fence failed to prevent sediment from discharging beyond the Project boundaries. Stormwater from these Project areas flows to Sulphur Creek and into the White River.

- b. The Inspector observed multiple soil stockpiles located approximately at the midway point of the Project, as well as in the Project's northwest boundary. The stockpiles were exposed to stormwater runoff. However, no BMPs were implemented to stabilize the stockpiles or to prevent sediment and soil from discharging outside of Project boundaries and into Sulphur Creek and the White River.
- c. The Inspector observed construction wastes located approximately at the midway point of the Project's southeast boundary. The construction wastes were exposed to stormwater runoff. However, no BMPs were implemented to control the construction wastes or to prevent such wastes from discharging outside of Project boundaries and into Sulphur Creek and the White River.
- d. The Inspector observed disturbed slopes and rill erosion located approximately between the midway point and the lower quarter of the Project's southeast boundary. However, no BMPs

were implemented to control run-on to the disturbed slopes, to stabilize the disturbed slopes, or to prevent erosion and discharge of sediment from the disturbed slope areas. Stormwater from these Project areas flows to Sulphur Creek and into the White River.

- e. The Inspector observed a disturbed area located north of the Project's midway point that collected and subsequently discharged stormwater run-on. Stormwater run-on entered the Project site and ponded in the disturbed area before being conveyed across additional disturbed area by way of a southerly culvert. Sediment observed at the culvert outlet was discharged outside of the Project boundary. No BMPs were implemented to divert the stormwater run-on away from the disturbed area, to prevent erosion of the disturbed area, or to prevent sediment transport through the culvert. Stormwater from this Project area flows to Sulphur Creek and into the White River.
23. On October 13 and 14, 2013, a precipitation event resulted in the discharge of asphalt emulsion from the Project boundaries. An estimated 1100 – 1500 gallons of the asphalt emulsion collected in a drainage ditch outside of the Project's southeast boundary. Section 3(b) of the SWMP lists "asphalt paving" as a potential pollutant source and asphalt "oil, petroleum distillates" as potential construction site stormwater pollutants. However, prior to the October 13 and 14, 2013 event, no BMPs were implemented to prevent asphalt paving chemicals, applied in the normal course of construction activity, from discharging outside of Project boundaries and into Sulphur Creek and the White River.
 24. The Division has determined that Fiore & Sons, Inc. failed to implement and/or maintain functional BMPs for all potential pollutant sources at the Project, following good engineering, hydrologic, and pollution control practices.
 25. Fiore & Sons, Inc.'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

26. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that Fiore & Sons, Inc. 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. 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., Fiore & Sons, Inc. is hereby ordered to:

27. 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 Fiore & Sons, Inc. to comply with the following specific terms and conditions of this Order:

28. Fiore & Sons, Inc. 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, Fiore & Sons, Inc. 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.
29. Fiore & Sons, Inc. 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, Fiore & Sons, Inc. 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.

30. Fiore & Sons, Inc. 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, Fiore & Sons, Inc. 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, Fiore & Sons, Inc. shall submit photographs to the Division documenting the current conditions at the site and the associated BMPs implemented at the Project.
31. Within sixty (60) calendar days of receipt of this Order, Fiore & Sons, Inc. shall submit a detailed written plan to the Division outlining the standard procedures Fiore & Sons, Inc. 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 Fiore & Sons, Inc. 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 Fiore & Sons, Inc.'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, Fiore & Sons, Inc. 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: Lindsay Ellis
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: (303) 692-2271
Fax: (303) 782-0390
Email: lindsay.ellis@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.

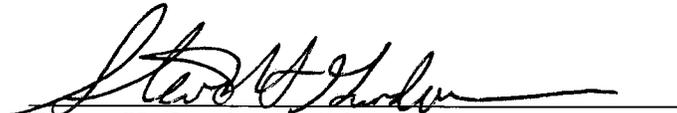
EFFECT OF ORDER

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 17th day of January, 2014.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT


Steven H. Gunderson, Director
WATER QUALITY CONTROL DIVISION