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

July 24, 2014

Abelardo Chacon
Alco Construction, Inc.
PO Box 6398
Colorado Springs, CO 80934

Certified Mail Number: 7007 0220 0001 0163 1152

RE: Service of Notice of Violation/Cease and Desist Order/Order for Civil Penalty, Number: IO-140724-2

Dear Mr. Chacon:

Alco Construction, Inc. is hereby served with the enclosed Notice of Violation / Cease and Desist Order / Order for Civil Penalty (the "NOV/CDO/OCP"). The NOV/CDO/OCP 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, 25-8-605, and 25-8-608 C.R.S., of the *Colorado Water Quality Control Act*, (the "Act"). The Division bases the NOV/CDO/OCP upon findings that Alco Construction, Inc. has violated the Act and a discharge permit, as described in the enclosed NOV/CDO/OCP.

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

Additionally, pursuant to the authority given to the Division by §25-8-608, C.R.S. the Division hereby imposes the civil penalty as outlined in the attached NOV/CDO/OCP. Payment of the imposed civil penalty should be made in accordance with the methods referenced in the Order for Civil Penalty.

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 enforcement action or the issuance of additional enforcement actions.

Should you or representatives of Alco Construction, Inc. desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO/OCP, please do not hesitate to contact Andrea Beebout of this office by phone at (303) 692-6498 or by electronic mail at andrea.beebout@state.co.us.

Sincerely,

Andrea Beebout
Enforcement Specialist
Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Natasha Davis, EPA Region VIII
El Paso County Public Health EH Division
Nicole Rowan, Watershed Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Amy Zimmerman, Engineering Section, CDPHE
Heather Drissel, Field Services Section, CDPHE
Lillian Gonzalez, Permits Section, CDPHE
Tania Watson, Data Management, CDPHE

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST ORDER / ORDER FOR CIVIL PENALTY

NUMBER: IO-140724-2

IN THE MATTER OF: **ALCO CONSTRUCTION, INC.**
CDPS PERMIT NO. COG-070000
CERTIFICATION NO. COG074150
EL PASO 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, 25-8-605 and 25-8-608, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order / Order for Civil Penalty:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the alleged violations identified herein, Alco Construction, Inc. was a Colorado corporation registered to conduct business in the State of Colorado.

2. Alco Construction, 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 June 13, 2012 the Division received an application from Alco Construction, Inc. for Colorado Discharge Permit System ("CDPS") coverage for the South Cascade Street Improvements project, which included planned construction dewatering discharges associated with the placement of a new water main located at approximately 38.819N, 104.826W near the City of Colorado Springs in El Paso County, Colorado (the "Project").

4. The Project is subject to CDPS General Permit, Number COG070000, for Construction Dewatering Discharges (the "Permit"). During the times relevant to the alleged violations identified herin, two versions of the Permit were in effect: 1) the version that became effective December 1, 2006, was amended with Amendment #1 on August 1, 2008, and was set to expire November 30, 2011 but was administratively continued until Permit reissuance (the "2006 Permit"); and 2) the current (reissued) version of the Permit that became effective September 1, 2013 and is set to expire August 31, 2018 (the "2013 Permit").

5. On July 13, 2012, the Division provided Alco Construction, Inc. Certification Number COG074150 authorizing Alco Construction, Inc. to discharge treated wastewater from the construction dewatering activities associated with the Project through Outfall 001A to Fountain Creek under the terms and conditions of the Permit (the "Certification"). The Certification became effective under the 2006 Permit on July 13, 2012. The Certification was reissued under the 2013 Permit effective September 1, 2013, and remains in effect until August 31, 2018 or until Alco Construction, Inc. inactivates Permit coverage.

6. Pursuant to 5 CCR 1002-61, §61.8, Alco Construction, Inc. must comply with all the terms and conditions of the 2006 Permit and the 2013 Permit, and violations of such terms and conditions as specified in the 2006 Permit and the 2013 Permit may be subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.

Failure to Submit Discharge Monitoring Reports

7. Pursuant to Part I.C.1. of the 2006 Permit and Part I.B.2. of the 2013 Permit, Alco Construction, Inc. is required to monitor the permitted discharge for defined effluent parameters at specified frequencies and report the results of such monitoring on a Discharge Monitoring Report ("DMR") form.

8. Pursuant to Part I.F.2. of the 2006 Permit and Part I.E.1. of the 2013 Permit, Alco Construction, Inc. is required to report all monitoring results on a monthly basis using Division approved DMRs. Alco Construction, Inc. is required to ensure the DMRs are mailed to the Division so that they are received by no later than the 28th day of the month following the monitoring period. The 2006 and 2013 Permit specify that if no discharge occurs during the reporting period, "No Discharge" shall be reported on the DMR.

9. Division records establish that Alco Construction, Inc. failed to submit DMRs to the Division for Outfall 001A for the reporting periods of June 2013 through May 2014.

10. Alco Construction, Inc.'s failure to submit DMRs to the Division for each monitoring period constitutes violations of Part I.F.2. of the 2006 Permit and Part I.E.1. of the 2013 Permit.

NOTICE OF VIOLATION

11. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined Alco Construction, Inc. has violated the following sections of the Permit:

    Part I.F.2. of the 2006 Permit which states in part, "Monitoring results shall be for each calendar month and reported on the DMR forms (EPA forms 3320-1). DMR forms shall...be submitted on a monthly basis...The forms shall be mailed to the Division...so that they are received by the Division no later than the 28th day of the following month. If no discharge occurs during the reporting period, "No Discharge" shall be reported. The DMR forms shall be filled out accurately and completely in accordance with the requirements of this permit and the instructions on the forms."

Part I.E.1. of the 2013 Permit which states in part, "Reporting of the data gathered in compliance with Part I.B.2. shall be on a **monthly** basis...Monitoring results shall be summarized for each calendar month and reported on Division approved discharge monitoring report (DMR) forms (EPA form 3320-1). The permittee must submit these forms either by mail, or by using the Division's Net-DMR services (when available). DMRs **must be** received by the Division no later than the 28th day of the month following the monitoring period...If no discharge occurs during the reporting period, "No Discharge" shall be reported on the DMR...The Discharge Monitoring Report forms shall be filled out accurately and completely in accordance with requirements of this permit and the instructions on the forms."

REQUIRED CORRECTIVE ACTION

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

12. 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 Alco Construction, Inc. to comply with the following specific terms and conditions of this Order:

13. Within thirty (30) calendar days of receipt of this Order, Alco Construction, Inc. shall submit all delinquent DMRs as well as records of its discharge monitoring for the Project for all monitoring periods from July 2012 through the date of this Order. The records shall include all laboratory data reports, all field measurement reports, and all calibration and maintenance records, including all other information required to be retained by Part I.E.4. of the 2006 Permit and Part I.E.5. of the 2013 Permit. The records shall also include all discharge logs required to be maintained by Part I.C.1. of the 2013 Permit.

14. Within thirty (30) calendar days of receipt of this Order, Alco Construction, Inc. shall review the requirements of the 2013 Permit and the Certification with its staff responsible for ensuring compliance with the terms and conditions of the 2013 Permit. The review shall focus on, but not be limited to: 1) the effluent limitations imposed by the 2013 Permit; 2) the effluent monitoring requirements of the Permit; 3) the discharge log and record keeping requirements of the 2013 Permit; 4) the reporting requirements of the 2013 Permit, including the instruction for proper completion and submittal of DMRs required by the 2013 Permit; and 5) the noncompliance notification procedures required by the 2013 Permit. Within forty five (45) calendar days of receipt of this Order, Alco Construction, Inc. shall submit a written certification to the Division stating that it has completed the review of the 2013 Permit and the Certification with its responsible staff.

ORDER FOR CIVIL PENALTY

15. Pursuant to §25-8-608(1), C.R.S. any person who violates any provision of the Colorado Water Quality Control Act, or of any permit issued under the Act, or any control regulation promulgated pursuant to the Act, or any final cease and desist order or clean-up order shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs.

16. Based upon the Findings of Fact and Notice of Violation above, the Executive Director, through his designee (hereinafter the "Executive Director"), has determined that a civil penalty is appropriate and warranted in this matter. Therefore, the Executive Director hereby imposes a civil penalty in the amount of Six Thousand Dollars ($6,000.00) against Alco Construction, Inc. for the violations cited above. The civil penalty was determined in accordance with the procedures outlined in the Division's Civil Penalty Policy (May 1, 1993). A copy of the civil penalty calculation is attached hereto as Exhibit A and is incorporated herein by reference.

17. If Alco Construction, Inc. does not contest the findings and penalty assessment set out above, the civil penalty shall be paid within sixty (60) calendar days of the date of this Notice of Violation / Cease and Desist Order / Order for Civil Penalty. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

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

Alco Construction, Inc. shall include with the payment a cover letter referencing the number of this Order.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, Alco Construction, Inc. shall submit an original and an electronic copy to the Division at the following address:

Andrea Beebout
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: (303) 692-6498
Email: andrea.beebout@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.

APPEAL OF CIVIL PENALTY

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

FALSIFICATION AND TAMPERING

Be advised, in accord with §25-8-610, C.R.S., that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Colorado Water Quality Control Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

POTENTIAL CRIMINAL PENALTIES

You are also advised that 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 / Order for Civil Penalty, the State has not waived its right to bring an action for penalties under §25-8-609, 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/ Order for Civil Penalty 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 24th day of July, 2014.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Ron Falco, PE, Acting Director
WATER QUALITY CONTROL DIVISION

Exhibit A
WASTEWATER PENALTY COMPUTATION WORKSHEET

Entity Name: Alco Construction, Inc.	**Permit Number:** COG-070000 **Certification Number:** COG-074150

Part I – Administrative Violations Penalty Determination

	Violation Type	Adjustment	Amount in Dollars
Line 1	**Administrative Violations (Delinquent and/or Late DMRs)**	$500 + 0%	**$6,000.00**

Calculation: Alco Construction, Inc. failed to submit DMRs to the Division for Outfall 001A for the reporting periods from June 2013 through May 2014, for a total of 12 reporting periods and 12 delinquent DMRs:

In accordance with Part III.B.2.(a)(i) of the Water Quality Control Division's *Civil Penalty Policy (May 1, 1993)*, penalties for delinquent, late or improperly completed DMRs will be $250 per DMR if the correctly completed DMR is submitted prior to the issuance of the NOV and $500 per DMR thereafter. In cases where the permittee has been issued a previous NOV for late or incomplete DMRs, or where the Division has a long history of correspondence with the permittee regarding these types of violations, the penalty for each report may be increased by one hundred percent per occurrence. The amount of the increase will be based on the period during which these violations have occurred and the severity of the violations.

The Division issued the following Compliance Advisories to Seifert Enterprises, LLC citing failure to submit DMRs:

- Compliance Advisory dated January 18, 2013 for delinquent DMRs for the August 2012 reporting period for Outfall 001A.
- Compliance Advisory dated February 21, 2013 for delinquent DMRs for the September 2012 reporting period for Outfall 001A.
- Compliance Advisory dated April 3, 2013 for delinquent DMRs for the October and November 2012 reporting periods for Outfall 001A.
- Compliance Advisory dated May 14, 2013 for delinquent DMRs for the December 2012 and January 2013 reporting periods for Outfall 001A.
- Compliance Advisory dated June 13, 2013 for delinquent DMRs for the February 2013 reporting period for Outfall 001A.
- Compliance Advisory dated June 26, 2013 for delinquent DMRs for the March 2013 reporting period for Outfall 001A.
- Compliance Advisory dated July 25, 2013 for delinquent DMRs for the April 2013 reporting period for Outfall 001A.
- Compliance Advisory dated September 11, 2013 for delinquent DMRs for the May 2013 reporting period for Outfall 001A.
- Compliance Advisory dated October 28, 2013 for delinquent DMRs for the June 2013 reporting period for Outfall 001A.
- Compliance Advisory dated January 15, 2014 for delinquent DMRs for the July, August, and September 2013 reporting periods for Outfall 001A.
- Compliance Advisory dated February 14, 2014 for delinquent DMRs for the November 2013 reporting period for Outfall 001A.
- Compliance Advisory dated March 18, 2014 for delinquent DMRs for the December 2013 reporting period for Outfall 001A.

	• Compliance Advisory dated June 18, 2014 for delinquent DMRs for the March 2014 reporting period for Outfall 001A. In calculating the Administrative Penalty for the delinquent DMR violations, the Division assessed a $500 penalty per delinquent DMR. The Division conservatively chose not to increase the penalty by the allowed 100% per occurrence, despite the history of correspondence addressing missing DMRs. **12 Monitoring Periods x $500.00 = $6,000.00**	
Line 2	**Administrative Violation Total**	**$6,000.00**