

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 29, 2014

Certified Mail Number: 7012 1640 0000 0801 9588

Tim Lowell II, Vice President
T Lowell Construction, Inc.
3211 South I-25
Castle Rock, CO 80109

RE: Service of Notice of Violation/Cease and Desist Orders, Numbers: IO-140729-1 and SO-140729-1

Dear Mr. Lowell:

T Lowell Construction, Inc. is hereby served with the enclosed Notice of Violation / Cease and Desist Orders (the "NOV/CDOs"). These NOV/CDOs are 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 these NOV/CDOs upon findings that T Lowell Construction, Inc. has violated the Act and/or regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDOs.

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

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 these NOV/CDOs or the issuance of additional enforcement actions.

Should T Lowell Construction, Inc. desire to discuss the NOV/CDOs with the Division, or if you have any questions regarding the NOV/CDOs, please do not hesitate to contact Eric Mink at (303) 692-2312 or by electronic mail at eric.mink@state.co.us.

Sincerely,



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

Enclosure

cc: Enforcement File

cc: Natasha Davis, EPA Region VIII
Carmen Vandebark, Northeast Colorado Health Department
Tom Butts, Tri-County Health Department
Alice Nightengale, Denver Environmental Health
Jim Rada, Jefferson County Public Health
Brene Belew-LaDue, Grand County Public Health Agency
Nicole Rowan, Watershed Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Doug Camrud, Engineering Section, CDPHE
Amy Zimmerman, Engineering Section, CDPHE
Kelly Jacques, Field Services Section, CDPHE
Lillian Gonzalez, Permits Section, CDPHE
Mike Harris, Clean Water Compliance & Enforcement, 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

NUMBER: IO-140729-1

IN THE MATTER OF: T. LOWELL CONSTRUCTION, INC
CDPS PERMIT NO. COG-070000
CERTIFICATION NOS. COG-073796, COG-074063, COG-074059,
COG-074086, COG-074234, COG-074469, and COG-074471
LOGAN, ADAMS, ARAPAHOE, DENVER, JEFFERSON, GRAND,
and DOUGLAS COUNTIES, 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, T. Lowell Construction, Inc ("T Lowell") was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
2. T Lowell 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. T Lowell applied for Colorado Discharge Permit System ("CDPS") coverage for multiple projects, which include dewatering associated with construction activities. The dewatering included discharging wastewater from the construction activities associated with each project to the groundwater and/or surface water at multiple locations in Logan, Adams, Arapahoe, Denver, Jefferson, Grand, and Douglas Counties, Colorado, as further described in paragraph 5 below.
4. The Projects were subject to the CDPS General Permit, Number COG-070000, for Construction Dewatering Discharges (the "Permit"). During the times relevant to the alleged violations identified herein, 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 on November 30, 2011 but was administratively continued until Permit reissuance (the "2006 Permit"); and 2) the current version of

the Permit that became effective September 1, 2013 and is set to expire August 31, 2018 (the “2013 Permit”).

- The Division provided T Lowell the seven (7) certification numbers identified in the table below authorizing T Lowell to discharge wastewater from the construction dewatering activities associated with each project through defined outfalls and into the receiving water(s) specified in the table below, under the terms and conditions of the Permit. Each certification serves as page one (1) of the Permit. The certifications became effective on the date identified in the table below and remained in effect until the termination date listed in the table.

T. LOWELL CONSTRUCTION, INC PERMIT CERTIFICATIONS					
CERTIFICATION NUMBER	COUNTY	LATITUDE AND LONGITUDE	RECEIVING WATER	EFFECTIVE DATE	TERMINATION DATE*
COG073796	Logan	40° 37' 40.80" N 103° 10' 44.40" W	Smith Henderson Ditch to South Platte River	7/26/2011	2/1/2012
COG074063	Adams	39° 55' 13.80" N 104° 55' 18.84" W	Branter Gulch to South Platte River	4/13/2012	2/1/2013
COG074059	Arapahoe	39° 35' 34.80" N 104° 43' 33.60" W	Piney Creek	4/27/2012	8/1/2012
COG074086	Denver	39° 47' 53.88" N 104° 48' 34.92" W	Groundwater	4/30/2012	7/1/2014
COG074234	Jefferson	39° 39' 54.00" N 105° 4' 55.20" W	Bear Creek	9/12/2012	2/1/2013
COG074469	Grand	39° 53' 13.20" N 105° 45' 50.40" W	Fraser River	7/11/2013	7/1/2014
COG074471	Douglas	39° 33' 36.00" N 104° 53' 6.00" W	Cherry Creek to South Platte River	7/22/2013	7/1/2014

*Certifications that were terminated were done so at the request of T Lowell.

- The receiving waters identified in the table above 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).
- Pursuant to 5 CCR 1002-61, §61.8, T Lowell 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.

Failure to Properly Monitor and Report

- Pursuant to Part I.C.1. of the 2006 Permit and Part I.B.2. of the 2013 Permit, T Lowell was required to monitor defined effluent parameters at specified frequencies and report the results of such monitoring on a Discharge Monitoring Report (“DMR”) form.
- Pursuant to Part I.F.2. of the 2006 Permit and Part I.E.1. of the 2013 Permit, T Lowell was required to report all monitoring results on a monthly basis using Division approved DMRs. The 2006 Permit and

2013 Permit each specify that DMRs shall be filled out accurately and completely in accordance with requirements of the permit and the instructions on the forms. T Lowell was required to ensure the DMRs were mailed to the Division so that they were received no later than the 28th day of the month following the reporting period. If no discharge occurs during a reporting period, "No Discharge" shall be reported on the DMR.

10. Division records establish that T Lowell failed to submit DMRs to the Division for the following permit certifications, outfall numbers, and reporting periods:

T. LOWELL CONSTRUCTION, INC DELINQUENT DMRS		
CERTIFICATION NUMBER	DISCHARGE MONITORING REPORTING PERIOD	OUTFALL NUMBER(S)
COG073796	September 1-30, 2011	002A
COG073796	October 1-31, 2011	002A
COG073796	November 1-30, 2011	001A, 002A
COG073796	December 1-31, 2011	001A, 002A
COG073796	January 1-31, 2012	001A, 002A
COG074063	June 1-30, 2012	001A
COG074086	January 1-31, 2013	G001A
COG074086	February 1-28, 2013	G001A
COG074086	March 1-31, 2013	G001A
COG074086	April 1-30, 2013	G001A
COG074086	May 1-31, 2013	G001A
COG074086	June 1-30, 2013	G001A
COG074086	July 1-31, 2013	G001A
COG074086	August 1-31, 2013	G001A
COG074086	September 1-30, 2013	G001A
COG074086	October 1-31, 2013	G001A
COG074086	November 1-30, 2013	G001A
COG074086	December 1-31, 2013	G001A
COG074086	January 1-31, 2014	G001A
COG074086	February 1-28, 2014	G001A
COG074471	July 1-31, 2013	001A, 002A, 003A, 004A, 005A
COG074471	August 1-31, 2013	001A, 002A, 003A, 004A, 005A
COG074471	September 1-30, 2013	001A, 002A, 003A, 004A, 005A
COG074471	October 1-31, 2013	001A, 002A, 003A, 004A, 005A
COG074471	November 1-30, 2013	001A, 002A, 003A, 004A, 005A
COG074471	December 1-31, 2013	001A, 002A, 003A, 004A, 005A
COG074471	January 1-31, 2014	001A, 002A, 003A, 004A, 005A
COG074471	February 1-28, 2014	001A, 002A, 003A, 004A, 005A

11. Division records establish that T Lowell failed to submit DMRs to the Division by the 28th day of the month following the reporting periods identified below:

T. LOWELL CONSTRUCTION, INC LATE DMRS			
CERTIFICATION NUMBER	DISCHARGE MONITORING REPORTING PERIOD	OUTFALL NUMBER(S)	DMR RECEIPT DATE
COG074063	June 1-30, 2012	002A	January 10, 2013
COG074063	July 1-31, 2012	001A, 002A	January 10, 2013
COG074063	August 1-31, 2012	001A, 002A	January 10, 2013
COG074063	September 1-30, 2012	001A, 002A	January 10, 2013
COG074063	October 1-31, 2012	001A, 002A	January 10, 2013
COG074063	November 1-30, 2012	001A, 002A	January 10, 2013
COG074059	July 1-31, 2012	001A	January 10, 2013
COG074086	March 1-31, 2014	G001A	July 10, 2014
COG074469	July 1-31, 2013	001A	July 10, 2014
COG074469	August 1-31, 2013	001A	July 10, 2014
COG074469	September 1-30, 2013	001A	July 10, 2014
COG074469	October 1-31, 2013	001A	July 10, 2014
COG074469	November 1-30, 2013	001A	July 10, 2014
COG074469	December 1-31, 2013	001A	July 10, 2014
COG074469	January 1-31, 2014	001A	July 10, 2014
COG074469	February 1-28, 2014	001A	July 10, 2014
COG074469	March 1-31, 2014	001A	July 10, 2014
COG074471	March 1-31, 2014	001A, 002A, 003A, 004A, 005A	July 10, 2014

12. Division records establish that T Lowell failed to submit DMR data to the Division for the following reporting periods and associated effluent parameters:

T. LOWELL CONSTRUCTION, INC DEFICIENT DMRS			
CERTIFICATION NUMBER	DISCHARGE MONITORING REPORTING PERIOD(S)	OUTFALL NUMBER(S)	PARAMETER(S)
COG074059	May 1-31, 2012	001A	Toluene 30 Day Avg Toluene Daily Max Benzene 30 Day Avg Benzene Daily Max Ethylbenzene 30 Day Avg Ethylbenzene Daily Max Xylene 30 Day Avg Xylene Daily Max
COG074086	June 1-30, 2012 July 1-31, 2012 August 1-31, 2012 September 1-30, 2012 October 1-31, 2012	G001A	pH Maximum pH Minimum Oil and Grease Flow 30 Day Avg Flow Daily Max Total Dissolved Solids 30 Day Avg
COG074234	September 1-30, 2012 October 1-31, 2012	001A	pH Maximum pH Minimum Total Suspended Solids ("TSS") 30 Day Avg TSS 7 Day Avg Oil and Grease

**T. LOWELL CONSTRUCTION, INC
DEFICIENT DMRS**

			Toluene 30 Day Avg Toluene Daily Max Benzene 30 Day Avg Benzene Daily Max Ethylbenzene 30 Day Avg Ethylbenzene Daily Max Flow 30 Day Avg Flow Daily Max <i>E. coli</i> 30 Day Avg <i>E. coli</i> 7 Day Avg Xylene 30 Day Avg Xylene Daily Max
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13. T Lowell's failure to submit DMRs to the Division by the 28th day of the month following each reporting period constitutes violations of Part I.F.2. of the 2006 Permit and Part I.E.1. of the 2013 Permit.
14. T Lowell's failure to monitor and/or submit DMR data for each effluent parameter, for each reporting period, constitutes violations of Part I.C.1. and/or Part I.F.2. of the 2006 Permit, and I.B.2. and/or Part I.E.1. of the 2013 Permit.

NOTICE OF VIOLATION

15. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined T Lowell has violated the following sections of the Permit.

Part I.C.1. of the 2006 Permit, which states in part, "In order to obtain an indication of compliance or non-compliance with the effluent limitations specified in Part I, Section B.1, the permittee shall normally monitor the effluent parameters at the following required frequencies..."

Part I.B.2. of the 2013 Permit, which states in part, "The permittee must monitor the effluent for all listed parameters at the frequency and sample types specified in Table B.1 or B.2 below, as applicable to the outfall(s)."

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 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 service. If mailed, one form shall be mailed to the Water Quality Control Division, as indicated below, so that the DMR is received no later than the 28th day of the following month... 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., T Lowell is hereby ordered to:

16. 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 the T Lowell to comply with the following specific terms and conditions of this Order:

17. Within thirty (30) calendar days of receipt of this Order, T Lowell shall submit all delinquent DMRs and completed versions of deficient DMRs, as well as records of its effluent discharge monitoring for the periods corresponding to the delinquent and deficient DMRs. 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 be summarized in Excel format and shall be clear and understandable.
18. Within thirty (30) calendar days of receipt of this Order, T Lowell shall review the requirements of the 2013 Permit and any associated certifications 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 2013 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, T Lowell shall submit a written certification to the Division stating that it has completed the review of the 2013 Permit and associated certifications with its responsible staff.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation, T Lowell 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: Eric T. Mink
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: (303) 692-2312
Email: eric.mink@state.co.us

For any person submitting documents, plans, records and reports pursuant to this Notice of Violation/Cease and Desist Order, that person shall make the following certification with each submittal:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

OBLIGATION TO ANSWER AND REQUEST FOR HEARING

Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11 you are required to submit to the Division an answer affirming or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

Section 25-8-603, C.R.S. and 5 CCR 1002, §21.11 also provide that the recipient of a Notice of Violation may request the Division to conduct a public hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002, §21.4(B)(2). Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent Department proceeding. The request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

FALSIFICATION AND TAMPERING

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

POTENTIAL CIVIL AND CRIMINAL PENALTIES

You are also advised that any person who violates any provision of the Colorado Water Quality Control Act (the “Act”), §§25-8-101 to 803, C.R.S., or of any permit issued under the Act, or any control regulation promulgated pursuant to the Act, or any final cease and desist order or clean-up order issued by the Division shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution if such discharge is made without a permit, if a permit is required by the Act for such discharge, or if such

discharge is made in violation of any permit issued under the Act or in violation of any Cease and Desist Order or Clean-up Order issued by the Division. By virtue of issuing this Notice of Violation/Cease and Desist Order, the State has not waived its right to bring an action for penalties under §§25-8-608 and 609, C.R.S., and may bring such action in the future.

RELEASE OR DISCHARGE NOTIFICATION

Pursuant to §25-8-601, C.R.S., you are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

EFFECT OF ORDER

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters. Nothing herein contained shall be construed to preclude other individuals, cities, towns, counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances or to preclude any other lawful actions by such entities or the State.

For further clarification of your rights and obligations under this Notice of Violation/Cease and Desist Order you are advised to consult the Colorado Water Quality Control Act, §§25-8-101 to 803, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 29th day of July, 2014.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Ron Falco, P.E., Acting Director
WATER QUALITY CONTROL DIVISION



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

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: SO-140729-1

IN THE MATTER OF: T. LOWELL CONSTRUCTION, INC.
CDPS PERMIT NO. COR-030000
CERTIFICATION NO. COR-03K854
GRAND 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, T. Lowell Construction, Inc. ("T Lowell") was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
2. T Lowell 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 26, 2014, T Lowell initiated construction activities on the Moffat Tunnel Collection System Siphon #1 with a total project area of approximately 3.92 acres and a planned disturbance area of approximately 2.75 acres of land at or near the Winter Park Ski Area Base Village, in the Town of Winter Park, Grand County, Colorado (the "Project").
4. Construction activities at the Project include the removal and replacement of approximately 1,170 linear feet of 72 inch welded steel water conduit.
5. On July 5, 2013, the Division received an application from T Lowell 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 9, 2013, the Division provided T Lowell with Certification Number COR-03K854 authorizing T Lowell to discharge stormwater from the construction activities associated with the

Project to the Fraser River and other waters of the state under the terms and conditions of the Permit. Certification Number COR-03K854 became effective July 9, 2013 and has been administratively continued until a new Permit and associated certification is issued, or until T Lowell inactivates Permit coverage.

7. Pursuant to 5 CCR 1002-61, §61.8, T Lowell 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 Fraser River and the wetlands located within or near the Project 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).
9. On June 2, 2014, 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 T Lowell’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, T Lowell 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 June 2, 2014 inspection, the Inspector reviewed the Project's SWMP and identified that the SWMP did not clearly identify all items required by Part I.C.3. of the Permit. Section 1.9 of the SWMP stated that construction dewatering may be encountered at the Project and Division records indicate that T Lowell obtained coverage for the Project under the CDPS General Permit, Number COR-070000, for Construction Dewatering Discharges via Certification COG074469. However, the SWMP failed to describe and locate the practices at the site that would be implemented to control stormwater pollution from the construction dewatering activities.
 13. The Division has determined that T Lowell failed to prepare and maintain a complete and accurate SWMP for the Project.
 14. T Lowell'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, T Lowell 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. Pursuant to Part I.D.6.a(3) of the Permit (Winter Conditions Inspections Exclusion), inspections are not required at sites where construction activities are temporarily halted, snow cover exists over the entire site for an extended period, and melting conditions do not exist, provided the following information is documented in the inspection record: 1) the dates when snow cover occurred, 2) the date when construction activities ceased, and 3) the date melting conditions began.
17. During the June 2, 2014 inspection, the Inspector reviewed the available inspection records for the Project for the period from August 26, 2013 – May 29, 2014 and identified that T Lowell failed to perform inspections of the Project's stormwater management system between November 5, 2013 and May 29, 2014. In T Lowell's June 30, 2014 response to the inspection report, T Lowell stated that inspections were suspended from November 6, 2013 to May 29, 2014, but that T Lowell was unaware of the Permit requirement to document a winter conditions inspections exclusion.
18. T Lowell's failure to properly perform and document inspections of the Project's stormwater management system constitutes violation(s) of Part I.D.6.a. of the Permit.

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

19. Pursuant to Part I.C.3.c. of the Permit, T Lowell 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, T Lowell 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.
21. Pursuant to Part I.B.3. of the Permit, T Lowell 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 June 2, 2014 inspection, the Inspector identified the following deficiencies related to BMP installation and maintenance at the Project, as described in Paragraphs 21(a-f) below:

- a. The Inspector observed a disturbed area where the conduit was installed below grade, covering approximately 2.75 acres. Installation and implementation specifications were included in the SWMP for perimeter control BMPs that included construction fencing and silt fencing. However, the perimeter construction fencing and silt fencing identified for this area was not implemented. Stormwater from this area of the Project flows to wetlands and/or to the Winter Park storm sewer system and in to the Fraser River.
 - b. The Inspector observed surface roughening/tracking control measures along the lower portion of the disturbed area where the conduit was installed. The installation and implementation specifications for surface roughening/tracking control measures were stated in the SWMP. However, the surface roughening/tracking control measures were installed perpendicular to the contour of the land instead of parallel, facilitating erosive runoff and sediment discharge, instead of limiting it. Stormwater from this area of the Project flows to a wetlands and/or to the Winter Park storm sewer system and in to the Fraser River.
 - c. The Inspector observed rock sock and straw wattle control measures surrounding the drop inlet at the base of the disturbed area where the conduit was installed. However, the rock socks and straw wattles were inadequate, as they did not provide enough ponding capacity to allow for the settling of sediment or filtering of the expected runoff volumes. In addition, the straw wattles were not trenched, staked, or overlapped according to the SWMP specifications, and the straw wattles had rips and tears that required maintenance or replacement. Consequently, the rock sock and straw wattle control measures allowed sediment discharge to reach the drop inlet. Stormwater from this area of the Project flows to the Winter Park storm sewer system and in to the Fraser River.
 - d. The Inspector observed there were no control measures implemented to protect storm drains in the finished concrete area adjacent to the disturbed area where the conduit was installed. The SWMP stated that inlet protection control measures would be installed and implemented around storm drains. However, the inlet protection control measures were not installed. Stormwater from this area of the Project flows to the Winter Park storm sewer system and in to the Fraser River.
 - e. The Inspector observed disturbed areas at the staging area located at the entrance to the construction site. No control measures were implemented to stabilize the disturbed areas in the staging area. The SWMP stated that the staging area would be stabilized with gravel and surrounded by construction fencing. However, the stated control measures were not installed. Stormwater from this area of the Project flows to the Winter Park storm sewer system and in to the Fraser River.
23. The Division has determined that T Lowell 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. T Lowell'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 that T Lowell 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., T Lowell 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 T Lowell to comply with the following specific terms and conditions of this Order:

27. T Lowell 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, T Lowell 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. T Lowell 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, T Lowell 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. T Lowell 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, T Lowell 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, T Lowell shall submit photographs to the Division documenting the current conditions at the site and the associated BMPs implemented at the Project.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, T Lowell 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: Eric Mink
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: (303) 692-2312
Email: eric.mink@state.co.us

For any person submitting documents, plans, records and reports pursuant to this Notice of Violation / Cease and Desist Order, that person shall make the following certification with each submittal:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

OBLIGATION TO ANSWER AND REQUEST FOR HEARING

Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11 you are required to submit to the Division an answer affirming or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

Section 25-8-603, C.R.S. and 5 CCR 1002, §21.11 also provide that the recipient of a Notice of Violation may request the Division to conduct a public hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002, §21.4(B)(2). Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent Department proceeding. The request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

FALSIFICATION AND TAMPERING

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

POTENTIAL CIVIL AND CRIMINAL PENALTIES

You are also advised that any person who violates any provision of the Colorado Water Quality Control Act (the “Act”), §§25-8-101 to 803, C.R.S., or of any permit issued under the Act, or any control regulation promulgated pursuant to the Act, or any final cease and desist order or clean-up order issued by the Division shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution if such discharge is made without a permit, if a permit is required by the Act for such discharge, or if such discharge is made in violation of any permit issued under the Act or in violation of any Cease and Desist Order or Clean-up Order issued by the Division. By virtue of issuing this Notice of Violation / Cease and

Desist Order, the State has not waived its right to bring an action for penalties under §§25-8-608 and 609, C.R.S, and may bring such action in the future.

RELEASE OR DISCHARGE NOTIFICATION

Pursuant to §25-8-601, C.R.S., you are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

EFFECT OF ORDER

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters. Nothing herein contained shall be construed to preclude other individuals, cities, towns, counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances or to preclude any other lawful actions by such entities or the State.

For further clarification of your rights and obligations under this Notice of Violation/Cease and Desist Order you are advised to consult the Colorado Water Quality Control Act, §§25-8-101 to 803, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 29th day of July, 2014.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Ron Falco, P.E., Acting Director
WATER QUALITY CONTROL DIVISION