



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

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

**NUMBER: SO-140903-1**

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**IN THE MATTER OF: MREC CLASSIC PROMONTORY LLC**  
**CDPS PERMIT NO. COR-030000**  
**CERTIFICATION NOS. COR-03I205 AND COR-03L613**  
**EL PASO COUNTY, COLORADO**

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Pursuant to the authority vested in the Colorado Department of Public Health and Environment's ("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 ("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, MREC Classic Promontory LLC ("MREC Classic") was a Delaware limited liability company in good standing and registered to conduct business in the State of Colorado.
2. MREC Classic 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 November 14, 2011, MREC Classic initiated construction activities of a single family residential development at or near Baptist Road and Gleneagle Drive, in or near the city of Monument, El Paso County, Colorado ("Project").
4. On September 19, 2011, the Division received an application from MREC Classic for coverage under the Colorado Discharge Permit System ("CDPS") General Permit Number COR-030000, for Stormwater Discharges Associated with Construction Activity ("Permit") for a planned disturbance of 67.45 acres of land within the Project.

5. On September 20, 2011, the Division provided MREC Classic with Certification Number COR-03I205 authorizing MREC Classic to discharge stormwater from construction activities associated with the Project to Jackson Creek and Black Forest Creek under the terms and conditions of the Permit. Certification Number COR-03I205 became effective September 20, 2011 and has been administratively continued until a new Permit and associated certification is issued, or until MREC Classic inactivates Permit coverage.
6. On January 10, 2014, the Division received an application from MREC Classic for coverage under the Permit for an additional planned disturbance of 48.63 acres of land within the Project.
7. On January 14, 2014, the Division provided MREC Classic with Certification Number COR-03L613 authorizing MREC Classic to discharge stormwater from construction activities associated with the Project to waters of the State of Colorado, including Jackson Creek, under the terms and conditions of the Permit. Certification Number COR-03L613 became effective January 14, 2014 and has been administratively continued until a new Permit and associated certification is issued, or until MREC Classic inactivates Permit coverage.
8. Pursuant to 5 CCR 1002-61, §61.8, MREC Classic 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.
9. Jackson Creek and Black Forest Creek are “state waters” as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(102).
10. On December 18, 2013 and March 6, 2014, a representative from the Division (“Inspector”) conducted on-site inspections of the Project pursuant to the Division’s authority under §25-8-306, C.R.S., to determine MREC Classic’s compliance with the Water Quality Control Act and the Permit. During the inspections, 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**

11. Pursuant to Part I. B. of the Permit, MREC Classic is required to prepare and maintain a Stormwater Management Plan (“SWMP”) in accordance with good engineering, hydrologic, and pollution control practices. The SWMP shall identify all potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges associated with construction activity from the Project. In addition, the SWMP shall describe the Best Management Practices (“BMPs”) that will be used to reduce the pollutants in stormwater discharges associated with construction activity at the Project.
12. Pursuant to Part I. C. of the Permit, the 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 at the site.
    - ii. The proposed sequence for major activities.
    - iii. Estimates of the total area of the site, and the area and location expected to be disturbed by clearing, excavation, grading, or other construction activities.

- iv. A summary of any existing data used in the development of the site 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 disturbing activities, vehicle fueling, storage of fertilizers or chemicals, etc.
  - vii. The location and description of any anticipated allowable sources of non-stormwater discharge at the site, such as uncontaminated 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(s). If the stormwater discharge is to a municipal separate storm sewer system, 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 non-structural BMPs as applicable.
  - 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 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 Project 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, as applicable, 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 both structural and non-structural stormwater management controls. 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. Such procedures or significant materials could include: exposed storage of building materials; paints and solvents; fertilizers or chemicals; waste material; and equipment maintenance or fueling procedures.
  - (5) Dedicated Concrete or Asphalt Batch Plants – The SWMP shall clearly describe and locate all practices implemented at the site 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 identified in the SWMP, in good and effective operating condition.

13. Pursuant to Part I. D. 3. (c) of the Permit, discharges to the ground of concrete washout water from washing of tools and concrete mixer chutes may be authorized, provided that the source is identified in the SWMP, BMPs are included in the SWMP to ensure that the activities do not result in the contribution of pollutants associated with the washing activity to stormwater runoff, BMPs are included in the SWMP to prevent pollution of groundwater, and the discharges do not leave the site as surface runoff or to surface waters.
14. Pursuant to Part I. D. 5. (c) of the Permit, the permittee shall amend the SWMP when there is a change in design, construction, operation, or maintenance of the site, which would require the implementation of new or revised BMPs, or if the SWMP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activity, or when BMPs are no longer necessary and are removed.
15. During the December 18, 2013 inspection, the Inspector reviewed the Project's SWMP and identified the following deficiencies, as described in paragraphs 15(a-g) below:
  - a. The SWMP did not identify and describe all potential pollution sources. The SWMP stated that potential pollutants were to be added to the site map as needed, but no pollutants were identified on the site map.
  - b. The SWMP did not identify and describe all anticipated allowable sources of non-stormwater discharges. Specifically, the SWMP did not describe the concrete washout observed in the field.
  - c. The site map included with the SWMP did not identify the locations of all BMPs implemented at the Project to reduce the potential of pollutants in stormwater discharges. Specifically, the site map did not identify the locations of curb cuts, a detention basin, and surface roughening.
  - d. The SWMP did not identify and describe all BMPs implemented at the Project to reduce the potential of pollutants in stormwater discharges. Specifically, the SWMP did not describe curb cuts, straw wattle check dams, surface roughening, specific materials handling procedures, spill prevention and response procedures, waste management and disposal procedures, and concrete washouts observed in the field.
  - e. The SWMP did not describe the installation and implementation specifications for each BMP identified in the SWMP. Specifically, the SWMP did not describe specifications for curb cuts, straw wattles and inlet protections.
  - f. Certain installation and implementation specifications included in the SWMP were not designed according to good engineering, hydrologic and pollution control practices. First, specifications for portable sanitary facilities did not include directions for securing the facilities to the ground. Second, the dimensions of stockpile earthen berms, and the resulting capture areas surrounding the stockpiles, were incapable of preventing sediment transport from the stockpiles.

- g. Inspection procedures described in the SWMP did not comply with the required minimum inspection schedule. Specifically, a December 13, 2013 amendment to the SWMP stated that “post precipitation inspection will be accomplished when weather event produces a minimum of 0.5 inches of water.” However, the Permit mandates that post-storm inspections be conducted within twenty-four hours after the end of any precipitation or snowmelt event *that causes surface erosion*. Surface erosion may occur during storm events producing less than 0.5 inches of precipitation, therefore, the SWMP amendment did not comply with the required minimum inspection schedule in the Permit.
16. During the March 6, 2014 inspection, the Inspector reviewed the Project’s SWMP and identified the following deficiencies, as described in paragraphs 16(a-d) below:
- a. The SWMP did not identify and describe BMPs to reduce all potential pollutants sources. Specifically, the SWMP did not describe structural or non-structural practices to minimize erosion and sediment transport from large disturbed areas in Phases 4 and 5 of the Project.
  - b. The site map included with the SWMP did not identify the locations of all ground surface disturbance or waste storage. Specifically, the site map did not identify the locations of ground surface disturbance in the northeast portion of Phases 4 and 5 of the Project or the locations of dumpsters used to store waste materials.
  - c. The site map included with the SWMP was not revised to reflect the selection of appropriate BMPs for site conditions. Specifically, the site map depicted installation of silt fence continuously along the western border of Phases 4 and 5 of the Project. However, silt fence observed in the field did not extend along the entire boundary. The site map was not updated to reflect this installation pattern.
  - d. The SWMP did not describe installation and implementation specifications for each BMP identified in the SWMP. Specifically, the SWMP did not describe specifications for a detention basin located west of the intersection of Gleneagle Drive and Transcontinental Drive.
17. The Division has determined that MREC Classic failed to prepare and maintain a complete and accurate SWMP for the Project.
18. MREC Classic’s failure to prepare and maintain a complete and accurate SWMP for the Project constitutes violations of Part I. B., Part I. C., Part I. D. 3. (c) and Part I. D. 5. (c) of the Permit.

**Failure to Perform and/or Document Inspections of Stormwater Management System**

19. Pursuant to Part I. D. 6. (a) of the Permit, for active sites where construction has not been completed, MREC Classic is required to make a thorough inspection of the Project’s stormwater management system at least once every fourteen calendar days and within twenty-four hours after the end of any precipitation or snowmelt event that causes surface erosion.

20. During the December 18, 2013 inspection, the Inspector reviewed the available inspection records for the period from July 31, 2013 – December 4, 2013 and identified that MREC Classic failed to perform any post-storm inspections. Data from the National Climatic Data Center station “Gleneagle 0.4 WNW, CO US (GHCND:US1COEP0061)” indicates that forty-four days of measurable precipitation occurred between July 31, 2013 and December 4, 2013. Of those days, thirteen were recorded with rain and/or snow levels at or above 0.25 inches, as listed in the table below:

YEAR	MONTH	DAY	24-HOUR AMOUNTS ENDING AT OBSERVATION TIME	
			RAIN, MELTED SNOW, ETC. (IN)	SNOW, ICE PELLETS, HAIL (IN)
2013	8	14	0.32	0.00
2013	8	23	2.57	0.00
2013	9	2	0.25	0.00
2013	9	11	0.52	0.00
2013	9	12	0.72	0.00
2013	9	13	2.05	0.00
2013	9	14	0.44	0.00
2013	9	16	0.28	0.00
2013	9	17	0.48	0.00
2013	9	23	0.46	0.00
2013	10	18	0.11	2.20
2013	11	21	0.14	1.70
2013	11	25	0.04	0.60

Source: Record of Climatological Observations; National Oceanic & Atmospheric Administration

MREC Classic failed to perform and/or document inspections of the Project following these events.

21. MREC Classic’s failure to properly perform inspections constitutes a violation of Part I. D. 6. (a) of the Permit.

**Failure to Maintain Required Records and/or Documents**

22. Pursuant to Part I. D. 6. (b) of the Permit, MREC Classic is required to keep a record of inspections. The record must identify any incidents of non-compliance with the terms and conditions of the permit and must include the locations of BMPs that need to be maintained. The record must also include a signed statement indicating the site is in compliance to the best of the signer’s knowledge and belief.
23. During the December 18, 2013 inspection, the Inspector reviewed the available inspection records for the period from July 31, 2013 – December 4, 2013 and identified that the inspection records did not include the locations of BMPs requiring maintenance and did not contain a signed compliance statement.

24. MREC Classic's failure to properly maintain required inspection records constitutes a violation of Part I. D. 6. (b) of the Permit.

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

25. Pursuant to Part I. B. 3. of the Permit, MREC Classic must implement the provisions of the Project's SWMP as written and updated, from commencement of construction activity until final stabilization is complete.
26. Pursuant to Part I. D. 2. of the Permit, MREC Classic 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 at the Project.
27. Pursuant to Part I. D. 1. of the Permit, concrete washout water shall not be discharged to state surface waters or to storm sewer systems, and all site wastes must be properly managed to prevent potential pollution of state waters.
28. Pursuant to Part I. D. 7. of the Permit, all erosion and sediment control practices and other protective measures identified in the SWMP must be maintained in effective operating condition. BMPs that are not adequately maintained in accordance with good engineering, hydrologic and pollution control practices, including removal of collected sediment outside the acceptable tolerances of the BMPs, are considered to be no longer operating effectively and must be addressed.
29. During the December 18, 2013 inspection, the Inspector identified the following deficiencies related to BMP selection, design, installation, implementation and maintenance at the Project, as described in Paragraphs 29(a-n) below:
- a. Inlet protection measures in Phase 2 of the Project were not implemented and maintained according to good pollution control practices. Specifically, gravel bags installed at storm drain inlets on Old Post Drive were torn and crushed, and, therefore, could not prevent sediment-laden stormwater from bypassing the inlet protections and entering storm drains without treatment. In addition, installation and implementation specifications in the Project's SWMP designated the use of concrete blocks to prevent gravel bags from falling into inlets; however, wire fencing was used in the field. The more permeable nature of the wire fencing provided less sediment retention and contributed to the bypassing of sediment-laden stormwater. Stormwater runoff from this portion of the Project collected in a storm sewer system that discharges stormwater runoff to Jackson Creek.
  - b. Inlet protection measures in Phases 4 and 5 of the Project were not designed according to good pollution control practices. Specifically, inlet protection measures were designed with recessed concrete slots that served as open pathways into the storm drain. As a result, sediment-laden stormwater runoff bypassed the inlet protection and entered the storm drain. Stormwater runoff from this portion of the Project flowed through a storm sewer system to a detention basin that ultimately discharged stormwater runoff to Jackson Creek.

- c. Control measures installed at a stockpile located in Phase 3 of the Project were not implemented according to good pollution control practices. Specifically, an earthen berm control measure constructed at a stockpile on Reading Way Lots 22 and 23 did not extend completely around the downgradient side of the stockpile, despite specifications in the Project's SWMP describing a continuous stockpile perimeter. This deficiency created a pathway through which stormwater could carry sediment from the stockpile. Stormwater runoff from this portion of the Project collected in a storm sewer system that discharges stormwater runoff to Jackson Creek.
- d. No control measures were implemented to manage stormwater runoff from certain disturbed lots in Phase 3 of the Project. Specifically, no control measures were implemented to minimize erosion and sediment transport at Reading Way Lot 16 and Transcontinental Drive Lots 9, 10, 25 and 39, despite a variety of measures to control sediment from disturbed lots listed in the Project's SWMP. Stormwater runoff from the disturbed lots collected in a storm sewer system that discharges stormwater runoff to Jackson Creek.
- e. Control measures observed in certain disturbed lots in Phase 3 of the Project were not installed, implemented and maintained according to good pollution control practices. Specifically, straw wattle check dams installed in drainageways between Transcontinental Drive and Reading Way were not entrenched or staked in and were not the required length for the drainage area. In addition, the check dams were buried by sediment and, therefore, required maintenance. These deficiencies impaired the ability of the check dams to reduce stormwater flow velocity, and, therefore, minimize erosion in the drainageway. Stormwater runoff from the disturbed lots collected in a storm sewer system that discharges stormwater runoff to Jackson Creek.
- f. Control measures observed in certain disturbed lots in Phase 3 of the Project were not installed and implemented according to good pollution control practices. Specifically, straw wattle erosion logs at the perimeter of Reading Way Lots 18 and 19 were not entrenched or staked in. This deficiency impaired the ability of the straw wattles to intercept stormwater sheet flows from the upgradient disturbed lots, and, therefore, minimize the transportation of sediment. Stormwater runoff from the disturbed lots collected in a storm sewer system that discharges stormwater runoff to Jackson Creek.
- g. Control measures observed on a disturbed slope in Phase 3 of the Project were not implemented according to good pollution control practices. Specifically, surface roughening used to stabilize a slope south of Reading Way was not performed parallel to the slope contour. This deficiency impaired the ability of the surface roughening variations to minimize wind and water erosion on the slope. In addition, the Project's SWMP only identified the use of straw and crimp control measures in this area. Stormwater runoff from the disturbed slope collected in a storm sewer system on Gleneagle Drive that discharges stormwater runoff to Jackson Creek.

- h. Control measures observed downgradient of a disturbed slope on the west side of Phase 4 of the Project were not selected and implemented according to good pollution control practices. First, no control measures to minimize erosion on the slope were observed, despite slope stabilization techniques listed in the Project's SWMP. Sediment from the disturbed slope was transported downgradient to a series of rock check dams installed offsite at the access road behind lots on Split Creek Drive. However, rock check dams are not recognized in the industry for use as primary sediment trapping measures. Stormwater runoff from the disturbed slope collected in a storm sewer system that discharges stormwater runoff to Jackson Creek.
- i. No control measures were implemented to manage stormwater runoff from approximately ten acres of a disturbed slope in Phase 5 of the Project. Specifically, a silt fence originally identified in the Project's SWMP as a perimeter control was no longer in place and no other control measures to minimize erosion and sediment transport from the disturbed slope were observed. As a result, sediment was observed downgradient on a paved surface at Walters Creek Drive. The storm sewer system on Walters Creek Drive discharges stormwater runoff to Jackson Creek.
- j. Vehicle tracking control measures in Phases 2 and 3 of the Project were not implemented and maintained according to good pollution control practices. Specifically, sediment transported to roadways from disturbed lots was not removed, despite specifications in the Project's SWMP describing removal practices. Additionally, the scheduled frequency of street sweeping was insufficient to prevent discharges of sediment to roadways. Stormwater runoff from this portion of the Project collected in a storm sewer system that discharges stormwater runoff to Jackson Creek.
- k. Vehicle tracking control measures in Phase 4 of the Project were not implemented and maintained according to good pollution control practices. Specifically, a vehicle tracking control pad at the transition point between a disturbed area and the paved area at Gleneagle Drive was laden with sediment, despite specifications in the Project's SWMP describing removal practices. As a result, the pad's functionality was restricted and sediment was transported to the roadway. Stormwater runoff from this portion of the Project collected in a storm sewer system that discharges stormwater runoff to Jackson Creek.
- l. A concrete washout control measure west of the intersection of Gleneagle Drive and Transcontinental Drive in Phase 3 of the Project was not implemented and maintained according to good pollution control practices. Specifically, concrete washout waste exceeded the receiving capacity of the concrete washout structure and the waste was not removed from the structure. As a result, discharges of concrete washout water had the potential to flow off disturbed lots and collect in a storm sewer system that discharges stormwater runoff to Jackson Creek.
- m. No control measures were implemented to manage concrete and masonry waste exposed to stormwater runoff on lots north of Transcontinental Drive in Phase 3 of the Project. Stormwater runoff from this portion of the Project collected in a storm sewer system that discharges stormwater runoff to Jackson Creek. As a result, site wastes were not properly managed to prevent potential pollution of state waters.

- n. Sanitary waste control measures were not installed and implemented according to good pollution control practices. Specifically, numerous portable sanitary facilities located throughout Phases 3 and 4 of the Project were not secured to the ground and/or were not located more than ten feet from the flow line as recommended by industry publications. Stormwater runoff from these locations in the Project collected in a storm sewer system that discharges stormwater runoff to Jackson Creek. As a result, site wastes were not properly managed to prevent potential pollution of state waters.
30. During the March 6, 2014 inspection, the Inspector identified the following deficiencies related to BMP selection, installation, implementation and maintenance at the Project, as described in Paragraphs 30(a-k) below:
- a. Control measures installed at a stockpile located in Phase 4 of the Project were not implemented according to good pollution control practices. Specifically, an earthen berm installed at the toe of a stockpile on the southwestern side of Midland Valley Way was not compacted, despite specifications in the Project's SWMP directing earthen berms to be wheel rolled or compacted in order to avoid blowouts. As a result, the stockpile was not stabilized and was exposed to stormwater runoff. Stormwater runoff from this portion of the Project flowed to a storm sewer system connected to an adjacent subdivision with a storm sewer system that ultimately discharges stormwater runoff to Jackson Creek.
  - b. Control measures observed on Reading Way Lot 19 in Phase 3 of the Project were not implemented and maintained according to good pollution control practices. Specifically, surface roughening used to stabilize disturbed slopes on the lot was not performed in accordance with the Project's SWMP specifications. First, the surface roughening was not performed parallel to the slope contour. Next, groove cutting on slopes at gradients of 2:1 to 3:1 was not at least three inches deep and fifteen inches apart. Finally, the surface roughening was not repeated often enough to maintain the SWMP specifications. These deficiencies impaired the ability of the surface roughening variations to minimize wind and water erosion on the slopes. Furthermore, without stabilization, the disturbed slope exceeded the receiving capacity of a downgradient straw wattle perimeter control and violated the maximum tributary drainage area of 0.25 acre per 100 linear-feet of wattle that is recommended by industry publications. Stormwater runoff from this portion of the Project flowed to a storm sewer system connected to an adjacent subdivision with a storm sewer system that ultimately discharges stormwater runoff to Jackson Creek.
  - c. Control measures observed downgradient of a disturbed area extending southeast of Gleneagle Drive to approximately fifty to seventy-five yards south of Midland Valley Way, in Phase 4 of the Project, were not selected and implemented according to good pollution control practices. First, no control measures to minimize erosion on the disturbed area were observed. Stormwater runoff from the disturbed area was transported downgradient to three inlet protection measures. However, inlet protection measures are not recognized in the industry for use as primary sediment trapping measures. Furthermore, the thirteen-acre contributing area exceeded the receiving capacity of the three inlet protection measures. Stormwater runoff from this portion of the Project flowed through a storm sewer system to a detention basin that ultimately discharged stormwater runoff to Jackson Creek.

- d. Control measures observed downgradient of a disturbed area in Phase 5 of the Project were not selected, implemented and maintained according to good pollution control practices. First, no control measures to minimize erosion on the disturbed area were observed. A temporary berm and silt fence existed downgradient of the disturbed area at the northwestern perimeter of Phase 5 of the Project; however, the nineteen-acre contributing area exceeded the receiving capacity of the berm and silt fence. Furthermore, the berm was no longer fully compacted and the silt fence was loose from its stakes and/or slumping in numerous areas. Therefore, both control measures required maintenance. These deficiencies impaired the ability of the downgradient berm and silt fence to intercept stormwater runoff from the disturbed area. Stormwater runoff from this portion of the Project flowed through the northern boundary of Phase 5 to offsite swales leading to Jackson Creek and through the western boundary of Phase 5 to an adjacent subdivision with a storm sewer system that ultimately discharges stormwater runoff to Jackson Creek.
- e. No control measures were implemented to manage stormwater runoff from a disturbed area between Denver Pacific Drive and Kansas Pacific Drive in Phase 5 of the Project. A silt fence control measure was installed near the western boundary of this area; however, a section of surface disturbance existed between the silt fence and the offsite drainageway without additional control measures in place. Stormwater runoff from this portion of the Project flowed through the western boundary of Phase 5 to an adjacent subdivision with a storm sewer system that ultimately discharges stormwater runoff to Jackson Creek.
- f. Control measures observed along the western boundary of Phase 5 of the Project were not implemented and maintained according to good pollution control practices. Specifically, a silt fence existed downgradient of disturbed areas along the western boundary; however, the size of the upgradient contributing area exceeded the maximum tributary drainage area of 0.25 acre per 100 linear-feet of silt fence that is recommended by industry publications. In addition, the silt fence required maintenance. The fence was loose from its stakes and accumulated sediment above one-half its exposed height, the maximum allowable point authorized by the Project's SWMP. These deficiencies impaired the ability of the silt fence to intercept stormwater runoff from the upgradient disturbed areas, and, therefore, minimize the transportation of sediment. Stormwater runoff from this portion of the Project flowed through the western boundary of Phase 5 to an adjacent subdivision with a storm sewer system that ultimately discharges stormwater runoff to Jackson Creek.
- g. Control measures observed on the north side of Transcontinental Drive in Phase 3 of the Project were not were not maintained according to good pollution control practices. Specifically, a silt fence installed along a disturbed area behind the lots on Transcontinental Drive accumulated sediment above one-half its exposed height, the maximum allowable point authorized by the Project's SWMP. This deficiency impaired the ability of the silt fence to intercept stormwater runoff from the upgradient disturbed area, and, therefore, minimize the transportation of sediment. Stormwater runoff from this portion of the Project flowed to a storm sewer system connected to an adjacent subdivision with a storm sewer system that ultimately discharges stormwater runoff to Jackson Creek.

- h. Control measures observed along Gleneagle Drive and Reading Way in Phase 3 of the Project were not maintained according to good pollution control practices. Specifically, a straw wattle erosion log installed at the perimeter of the area was overtopped by sediment, and, therefore, required maintenance. This deficiency impaired the ability of the straw wattle to intercept stormwater sheet flows from upgradient disturbed areas, and, therefore, minimize the transportation of sediment. In addition, the condition of the straw wattle conflicted with the Project's SWMP specification requiring removal of sediment deposits reaching one-third of a straw wattle's functional freeboard height and impairing the filtration capability of the wattle. Stormwater runoff from this portion of the Project flowed to a storm sewer system connected to an adjacent subdivision with a storm sewer system that ultimately discharges stormwater runoff to Jackson Creek.
  - i. No control measures were implemented to manage discharges of concrete washout water and waste in Phase 4 of the Project. Concrete washout waste was discharged both to the ground and to a soil stockpile, and, therefore, was outside of a concrete washout control measure, despite the Project's SWMP designating a concrete washout area. As a result, discharges of concrete washout water and waste had the potential to collect in storm sewers that discharge to Jackson Creek. Stormwater runoff from the eastern two-thirds of Phase 4 flowed through a storm sewer system to a detention basin that ultimately discharged stormwater runoff to Jackson Creek. Stormwater runoff from the western one-third of Phase 4 flowed to an adjacent subdivision with a storm sewer system that ultimately discharges stormwater runoff to Jackson Creek.
  - j. No control measures were implemented to manage stormwater runoff from the materials storage area located near the water tower at the upper end of Phase 5 of the Project. Specifically, construction waste and broken asphalt were disposed of on the ground, despite a specification in the Project's SWMP directing all construction trash and debris (materials stockpiles) to be deposited in a dumpster. Stormwater runoff from this portion of the Project flowed through the northern boundary of Phase 5 to offsite swales leading to Jackson Creek. As a result, site wastes were not properly managed to prevent potential pollution of state waters.
  - k. Sanitary waste control measures in Phase 3 of the Project were not installed according to good pollution control practices. Specifically, a portable sanitary facility located at 15806 Transcontinental Drive was not secured to the ground, despite a specification in the Project's SWMP directing all portable sanitary facilities to be staked down. Stormwater runoff from this location in the Project collected in a storm sewer system that discharges stormwater runoff to Jackson Creek. As a result, site wastes were not properly managed to prevent potential pollution of state waters.
31. The Division has determined that MREC Classic failed to select, design, install, implement and/or maintain BMPs for all potential pollutant sources at the Project, following good engineering, hydrologic, and pollution control practices.
32. MREC Classic's failure to select, design, install, implement and/or maintain BMPs at the Project constitutes violations of Part I. B. 3., Part I. D. 1., Part I. D. 2., and Part I. D. 7. of the Permit.

## NOTICE OF VIOLATION

33. Based on the foregoing Findings of Fact and Conclusions of Law, MREC Classic is hereby notified that the Division has determined that MREC Classic violated the following sections of the Permit:

**Part I. B. 1. of the Permit**, which states in part, “A SWMP shall be developed for each facility covered by this permit. The SWMP shall be prepared in accordance with good engineering, hydrologic and pollution control practices.”

**Part I. B. 2. of the Permit**, which states, “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. 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.”

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

**Part I. C. 3. (c) of the Permit**, which states in part, “The SWMP shall identify and describe appropriate BMPs, including, but not limited to, those required by paragraphs 1 through 8 below, that will be implemented at the facility to reduce the potential of the sources identified in Part I.C.3.b to contribute pollutants to stormwater discharges. The SWMP shall clearly describe the installation and implementation specifications for each BMP identified in the SWMP to ensure proper implementation, operation and maintenance of the BMP.”

**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. D. 1. of the Permit**, which states in part, “(b) Concrete washout water shall not be discharged to state surface waters or to storm sewer systems. ... (f) All site wastes must be properly managed to prevent potential pollution of State waters. This permit does not authorize on-site waste disposal.”

**Part I. D. 3. (c) of the Permit**, which states, “Discharges to the ground of concrete washout water from washing of tools and concrete mixer chutes may be authorized by this permit, provided that: 1) the source is identified in the SWMP; 2) BMPs are included in the SWMP in accordance with Part I.C.3(c)(7) and to prevent pollution of groundwater in violation of Part I.D.1.a; and 3) these discharges do not leave the site as surface runoff or to surface waters.”

**Part I. D. 5. (c) of the Permit**, which states in part, “The permittee shall amend the SWMP: 1) when there is a change in design, construction, operation, or maintenance of the site, which would require the implementation of new or revised BMPs; or 2) if the SWMP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activity; or 3) when BMPs are no longer necessary and are removed. ... SWMP revisions may include, but are not limited to: potential pollutant source identification; selection of appropriate BMPs for site conditions; BMP maintenance procedures; and interim and final stabilization practices.”

**Part I. D. 7 of the Permit**, which states in part, “All erosion and sediment control practices and other protective measures identified in the SWMP must be maintained in effective operating condition.”

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

**Part I. D. 6. (b) (2) of the Permit**, which states in part, “The permittee shall keep a record of inspections. Inspection reports must identify any incidents of non-compliance with the terms and conditions of this permit. ... At a minimum, the inspection report must include: ... iv) Location(s) of BMPs that need to be maintained; ... viii) After adequate corrective action(s) has been taken, or where a report does not identify any incidents requiring corrective action, the report shall contain a signed statement indicating the site is in compliance with the permit to the best of the signer’s knowledge and belief.”

### **REQUIRED CORRECTIVE ACTION**

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

34. 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 MREC Classic to comply with the following specific terms and conditions of this Order:

35. MREC Classic 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, MREC Classic 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.

36. MREC Classic 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, MREC Classic 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.
37. MREC Classic shall immediately implement necessary measures to ensure that 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, designed, installed, implemented, and maintained following good engineering, hydrologic, and pollution control practices. Within thirty (30) calendar days of receipt of this Order, MREC Classic shall evaluate and modify all BMPs at the Project to ensure the BMPs meet the installation and implementation requirements specified in the Project's complete and up-to-date SWMP. Within forty-five (45) calendar days of receipt of this Order, MREC Classic 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, MREC Classic 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](mailto: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 MREC Classic is required to submit to the Division an answer responding to the Notice of Violation and affirming or denying each paragraph of the Findings of Fact. 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**

MREC Classic is also advised that any person who violates any provision of the Colorado Water Quality Control Act ("Act"), §§25-8-101 to 803, C.R.S., or any control regulation promulgated pursuant to the Act, or any provision of any permit issued under 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., MREC Classic is 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 MREC Classic's rights and obligations under this Notice of Violation / Cease and Desist Order, MREC Classic is 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 in Denver, Colorado, this 3rd day of September, 2014.

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

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