



**COLORADO**  
Department of Public  
Health & Environment

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

September 19, 2014

Fred A. Duckels  
Duckels Construction, Inc.  
3500 Duckels Court  
Steamboat Springs, CO 80487

Certified Mail Number: 7012 1640 0000 0801 9656

**RE: Service of Notice of Violation/Cease and Desist Order/Order for Civil Penalty,  
Number: IO-140919-1**

Dear Mr. Duckels:

Duckels Construction, Inc. is hereby served with the enclosed Notice of Violation / Cease and Desist Order / Order for Civil Penalty (the "NOV/CDO/OCP"). The NOV/CDO/OCP is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §§25-8-602, 25-8-605, and 25-8-608 C.R.S., of the *Colorado Water Quality Control Act*, (the "Act"). The Division bases the NOV/CDO/OCP upon findings that Duckels Construction, Inc. has violated the Act and a discharge permit, as described in the enclosed NOV/CDO/OCP.

Pursuant to §25-8-603, C.R.S., Duckels Construction, Inc. is required, within thirty (30) calendar days of receipt of this NOV/CDO/OCP, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. Additionally, pursuant to the authority given to the Division by §25-8-608, C.R.S., the Division has imposed a civil penalty as outlined in the attached NOV/CDO/OCP. Payment of the imposed civil penalty should be made in accordance with the methods referenced in the Order for Civil Penalty.

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

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

Sincerely,

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



*Enclosure(s)*

cc: Enforcement File

ec: Natasha Davis, EPA Region VIII  
Routt County Department of Environmental Health  
Nicole Rowan, Watershed Section, CDPHE  
Michael Beck, Grants and Loans Unit, CDPHE  
Doug Camrud, Engineering Section, CDPHE  
Heather Drissel, Field Services Section, CDPHE  
Erin Scott, Permits Section, CDPHE  
Tania Watson, Compliance Assurance, CDPHE  
Tony Waldron, Division of Reclamation Mining & Safety, DNR





**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 / ORDER FOR CIVIL PENALTY**

**NUMBER: IO-140919-1**

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**IN THE MATTER OF:     DUCKELS CONSTRUCTION, INC.**  
**CDPS PERMIT NO. COG500000**  
**CERTIFICATION NO. COG500243**  
**ROUTT COUNTY, COLORADO**

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Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority is implemented through the Department's Water Quality Control Division (the "Division"), and pursuant to §§25-8-602, 25-8-605 and 25-8-608, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order / Order for Civil Penalty:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. At all times relevant to the alleged violations identified herein, Duckels Construction, Inc. was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
2. Duckels Construction, Inc. is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
3. On April 12, 2007, the Division received an application from Duckels Construction, Inc. dba Yampa Aggregates ("Duckels Construction") for Colorado Discharge Permit System ("CDPS") coverage for discharges from the Hogue River Pit, an active sand and gravel mining, crushing, and washing operation located at or near 40° 29' 55" North and 106° 55' 25" West near the City of Steamboat Springs, Routt County, Colorado (the "Facility").
4. The Facility is subject to the CDPS General Permit, Number COG500000 for Sand and Gravel Mining and Processing (the "Permit"). The Permit became effective July 1, 2008 and was set to expire June 30, 2013, but was administratively continued and remains effective until Permit reissuance.
5. On June 17, 2008, the Division provided Duckels Construction with Certification Number COG500243 authorizing Duckels Construction to discharge process generated wastewater from the Facility through outfalls 001A (discharge from a settling pond to Duquette Ditch, a tributary to the

Yampa River) and 002A (discharge from a settling pond prior to entering the Yampa River) under the terms and conditions of the Permit (the “Certification”). The Certification became effective July 1, 2008, but was administratively continued and will remain in effect until Permit reissuance or until Duckels Construction inactivates Permit coverage.

- Pursuant to 5 CCR 1002-61, §61.8, Duckels Construction 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 Submit Discharge Monitoring Reports**

- Pursuant to Part I.B.1. of the Permit and Page 1a of the Certification, Duckels Construction is required to monitor defined effluent parameters at specified frequencies in order to provide an indication of compliance or non-compliance with the effluent limitations of the Permit and Certification as specified below:

<b>DISCHARGE LIMITATIONS</b>				
<b>EFFLUENT PARAMETER</b>	<b>30-DAY AVERAGE</b>	<b>7-DAY AVERAGE</b>	<b>DAILY MAXIMUM</b>	<b>MONITORING FREQUENCY</b>
Flow, MGD	Report	N/A	Report	Continuous/Instantaneous
pH, s.u.	N/A	N/A	6.5-9.0	Weekly
Oil & Grease, mg/l	N/A	N/A	10	Weekly
Total Suspended solids, mg/L	30	45	N/A	Weekly

- Pursuant to Part I.D.1. of the Permit, Duckels Construction is required to summarize and report the results of its effluent monitoring to the Division via quarterly discharge monitoring reports (“DMRs”). The DMRs are required to be mailed to the Division so that they are received by the Division no later than the 28<sup>th</sup> day of the month following the end of the quarterly reporting period. The Permit specifies that if no discharge occurs during the quarterly reporting period, “No Discharge” shall be reported.
- Division records establish that Duckels Construction failed to submit DMRs to the Division for Outfalls 001A and 002A for the reporting periods of the third quarter of 2012 (reporting period beginning July 1, 2013) through the second quarter of 2014 (reporting period ending June 30, 2014).
- Duckels Construction’s failure to submit DMRs to the Division by the 28<sup>th</sup> day of the month following each reporting period constitutes violations of Part I.D.1. of the Permit

**NOTICE OF VIOLATION**

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

**Part I.D.1. of Permit Number COG500000**, which states in part, "Reporting of the data gathered in compliance with part I.B.3. shall be on a quarterly basis...Monitoring results shall be summarized for each calendar quarter and reported on Division approved discharge monitoring report (DMR) forms (EPA form 3320-1). The form shall be mailed to the Division...so that they are received no later than the 28<sup>th</sup> day of the month following the end of the quarter...If no discharge occurs during the reporting period 'No Discharge' shall be reported." *(Note: Part I.D.1. of the Permit includes a typographical error incorrectly limiting the effluent limitations of the Permit to Part I.B.3. The effluent monitoring requirements for various facility types covered under the Permit are contained in Part I.B.1. through Part I.B.6. of the 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., Duckels Construction is hereby ordered to:

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

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

13. Within thirty (30) calendar days of receipt of the Order, Duckels Construction shall submit all delinquent DMRs as well as records of its discharge monitoring for the Facility for the reporting periods from September 2011 through the date of this Order. The records shall include all laboratory data reports, all field measurement reports, and all calibration and maintenance records, including all other information required to be retained by Part I.D.5. of the Permit.
14. Within thirty (30) calendar days of receipt of the Order, Duckels Construction shall review the requirements of the Permit and the Certification with its staff responsible for ensuring compliance with the terms and conditions of the Permit. The review shall focus on, but not be limited to: 1) the effluent limitations imposed by the Permit; 2) the effluent monitoring requirements of the Permit; 3) the discharge log and record keeping requirements of the Permit; 4) the reporting requirements of the Permit, including the instruction for proper completion and submittal of DMRs required by the Permit; and 5) the noncompliance notification procedures required by the Permit. Within forty five (45) calendar days of receipt of this Order, Duckels Construction shall submit a written certification to the Division stating that it has completed the review of the Permit and the Certification.

### **ORDER FOR CIVIL PENALTY**

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

16. Based upon the Findings of Fact and Notice of Violation above, the Executive Director, through his designee (hereinafter the "Executive Director"), has determined that a civil penalty is appropriate and warranted in this matter. Therefore, the Executive Director hereby imposes a civil penalty in the amount of Four Thousand Dollars (\$4,000.00) against Duckels Construction for the violations cited above. The civil penalty was determined in accordance with the procedures outlined in the Division's Civil Penalty Policy (May 1, 1993). A copy of the civil penalty calculation is attached hereto as Exhibit A and is incorporated herein by reference.
17. If Duckels Construction does not contest the findings and penalty assessment set out above, the civil penalty shall be paid within sixty (60) calendar days of the date of this Notice of Violation / Cease and Desist Order / Order for Civil Penalty. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

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

Duckels Construction shall include with the payment a cover letter referencing the number of this Order.

### **NOTICES AND SUBMITTALS**

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

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

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

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate,

and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

### **OBLIGATION TO ANSWER AND REQUEST FOR HEARING**

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

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

### **APPEAL OF CIVIL PENALTY**

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

### **FALSIFICATION AND TAMPERING**

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

### **POTENTIAL CRIMINAL PENALTIES**

You are also advised that any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution if such discharge is made without a permit, if a permit is required by the Act for such discharge, or if such discharge is made in violation of any permit issued under the Act or in violation of any Cease and Desist Order or Clean-up Order issued by the Division. By virtue of issuing this Notice of Violation / Cease and Desist Order / Order for Civil Penalty, the State has not waived its right to bring an action for penalties under §25-8-609, C.R.S., and may bring such action in the future.

**RELEASE OR DISCHARGE NOTIFICATION**

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

**EFFECT OF ORDER**

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

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

Issued at Denver, Colorado, this 19<sup>th</sup> day of September, 2014.

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

  
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Ron Falco, PE, Acting Director  
WATER QUALITY CONTROL DIVISION

# Exhibit A

## WASTEWATER PENALTY COMPUTATION WORKSHEET

Entity Name: Duckels Construction, Inc.	Permit Number: COG500000 Certification Number: COG500243
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### Part I – Administrative Violations Penalty Determination

	Violation Type	Adjustment	Amount in Dollars
<b>Line 1</b>	<b>Administrative Violations (Delinquent and/or Late DMRs)</b>	\$500 + 0%	<b>\$4,000.00</b>
	<p><i>Calculation:</i> Duckels Construction, Inc. (“Duckels Construction”) failed to submit quarterly DMRs to the Division for Outfalls 001A and 002A for the reporting periods from the third quarter 2013 (reporting period beginning July 2013) through the second quarter 2014 (reporting period ending June 2014), for a total of 4 quarterly reporting periods and 8 delinquent DMRs:</p> <p>In accordance with Part III.B.2.(a)(i) of the Water Quality Control Division’s <i>Civil Penalty Policy (May 1, 1993)</i>, penalties for delinquent, late or improperly completed DMRs will be \$250 per DMR if the correctly completed DMR is submitted prior to the issuance of the NOV and \$500 per DMR thereafter. In cases where the permittee has been issued a previous NOV for late or incomplete DMRs, or where the Division has a long history of correspondence with the permittee regarding these types of violations, the penalty for each report may be increased by one hundred percent per occurrence. The amount of the increase will be based on the period during which these violations have occurred and the severity of the violations.</p> <p>The Division issued the following Compliance Advisories to Duckels Construction citing failure to submit DMRs:</p> <ul style="list-style-type: none"> <li>• Compliance Advisory dated February 21, 2013 for delinquent DMRs for the 3<sup>rd</sup> Quarter 2012 reporting period for Outfalls 001A and 002A.</li> <li>• Compliance Advisory dated May 14, 2013 for delinquent DMRs for the 4<sup>th</sup> Quarter 2012 reporting period for Outfalls 001A and 002A.</li> <li>• Compliance Advisory dated June 26, 2013 for delinquent DMRs for the 1<sup>st</sup> Quarter 2013 reporting period for Outfalls 001A and 002A.</li> <li>• Compliance Advisory dated October 28, 2013 for delinquent DMRs for the 2<sup>nd</sup> Quarter 2013 reporting period for Outfalls 001A and 002A.</li> <li>• Compliance Advisory dated January 15, 2014 for delinquent DMRs for the 3<sup>rd</sup> Quarter 2013 reporting period for Outfalls 001A and 002A.</li> <li>• Compliance Advisory dated March 18, 2014 for delinquent DMRs for the 4<sup>th</sup> Quarter 2013 reporting period for Outfalls 001A and 002A.</li> <li>• Compliance Advisory dated June 18, 2014 for delinquent DMRs for the 1<sup>st</sup> Quarter 2014 reporting period for Outfalls 001A and 002A.</li> </ul> <p>In calculating the Administrative Penalty for the delinquent DMR violations, the Division assessed a \$500 penalty per delinquent DMR. The Division conservatively chose not to increase the penalty by the allowed 100% per occurrence, despite the history of correspondence addressing missing DMRs.</p> <p style="text-align: center;"><b>8 Delinquent DMRs x \$500.00 = \$4,000.00</b></p>		
<b>Line 2</b>	<b>Administrative Violation Total</b>		<b>\$4,000.00</b>

## Part II – Economic Benefit Consideration

		Amount in Dollars
<b>Line 3</b>	<b>Economic Benefit</b>	<b>\$0.00</b>
	<p><b>Delinquent and/or Late DMRs:</b> Duckels Construction avoided the cost of submitting several DMRs; however, the economic benefit of the avoided cost was conservatively determined to be relatively insignificant.</p> <p>Additionally, Duckels Construction likely avoided the cost of sampling and analyzing the Facility's discharge quality as required by the Permit and Certification. The Division conservatively estimates the cost of obtaining and processing a sample (including collection, paperwork, lab delivery, calculations, etc.) to be \$40/sample, and the cost of laboratory analysis for the missing parameters to typically range from \$15 to \$50 per parameter; however, the Division conservatively chose not to include an economic benefit for these avoided costs.</p>	

## Part III – Final Penalty

		Amount in Dollars
<b>Line 4</b>	<b>Total Civil Penalty: (Line 2 + Line 3)</b>	<b>\$4,000.00</b>