



COLORADO
Department of Public
Health & Environment

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

October 16, 2014

Jeff Hunter, Director of Operations
Black Diamond Minerals, LLC
c/o Memorial Resource Development LLC
1301 McKinney, Suite 2100
Houston, TX 77010

Certified Mail Number: 7002 2410 0001 0130 4247

RE: Service of Notice of Violation/Cease and Desist Order, Number: SO-141015-1

Dear Mr. Hunter:

Black Diamond Minerals, LLC is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). The NOV/CDO is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §§25-8-602 and 25-8-605, C.R.S., of the *Colorado Water Quality Control Act*, (the "Act"). The Division bases the NOV/CDO upon findings that Black Diamond Minerals, LLC has violated the Act and/or permit or control regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

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

This action could result in the imposition of civil penalties. The Division is authorized pursuant to §25-8-608, C.R.S., to impose a penalty of \$10,000 per day for each day during which such violation occurs.

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



Should you or representatives of Black Diamond Minerals, LLC desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO, please do not hesitate to contact Eric Mink of this office by phone at (303) 692-2312 or by electronic mail at eric.mink@state.co.us.

Sincerely,



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

Enclosure(s)

cc: Enforcement File

ec: Natasha Davis, EPA Region VIII
Joshua Williams, Garfield County Public Health
Nicole Rowan, Watershed Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Doug Camrud, Engineering Section, CDPHE
Heather Drissel, Field Services Section, CDPHE
Lillian Gonzalez, Permits Section, CDPHE
Mike Harris, Clean Water Enforcement Unit, CDPHE
Tania Watson, Data Management, CDPHE
Nathan Moore, Clean Water Compliance Unit, CDPHE
Matt Lepore, COGCC
Kent Kuster, CDPHE





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

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: SO-141015-1

IN THE MATTER OF: BLACK DIAMOND MINERALS, LLC
CDPS PERMIT NO. COR-030000
CERTIFICATION NO. COR-03D798
GARFIELD 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. Black Diamond Minerals, LLC ("Black Diamond") was a Delaware limited liability company in good standing and registered to conduct business in the State of Colorado.
2. Black Diamond 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 approximately November 5, 2008, Black Diamond initiated construction activities on the Tepee Park Ranch Exploration Project with a total project area of approximately 4,350 acres and a planned disturbance area of approximately 30 acres of land at 39°24'03" N and 107°50'16" W on USFS Road 824, in unincorporated Garfield County, Colorado (the "Project").
4. Construction activities at the Project include ground disturbing activities associated with the exploration and/or production of oil and gas.
5. On May 20, 2008, the Division received an application from Black Diamond 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 May 27, 2008, the Division provided Black Diamond with Certification Number COR-03D798 authorizing Black Diamond to discharge stormwater from the construction activities associated with the Project to the Beaver Creek and the Colorado River under the terms and conditions of the Permit.

Certification Number COR-03D798 became effective July 9, 2013 and is set to expire on June 30, 2018.

7. Beaver Creek and the Colorado River 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).
8. Pursuant to 5 CCR 1002-61, §61.8, Black Diamond 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. On April 16, 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 Black Diamond’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, Black Diamond 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 April 16, 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. of the Permit, as described in Paragraphs 12(a-g) below:
- a. The site description section of the SWMP failed to include an estimate of the disturbed area acreage.
 - b. The site description section of the SWMP failed to identify all potential pollutant sources, including but not limited to stored produced water.
 - c. The SWMP site map failed to identify the construction site boundaries.
 - d. The SWMP site map failed to identify all areas where surface disturbance was observed, including but not limited to the piles near the produced water pit.
 - e. The SWMP site map failed to identify the fuel and equipment storage site that was observed at the Project.
 - f. The stormwater management controls section of the SWMP failed to indicate where the structural and non-structural control measures would be used at the Project.
 - g. The stormwater management controls section of the SWMP failed to include installation and implementation specifications for the temporary slope drains and sediment traps used at the Project.
13. The Division has determined that Black Diamond failed to prepare and maintain a complete and accurate SWMP for the Project.

14. Black Diamond'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, Black Diamond is required to make a thorough inspection of the Project's stormwater management system at least every 14 calendar days; within 24 hours of any precipitation or snowmelt event that causes surface erosion; and within 72 hours of any precipitation or snowmelt event that causes surface erosion when the site is temporarily idle.
16. Pursuant to Part I.D.6.b.2. of the Permit, inspection reports must identify any incidents of non-compliance, a description of the corrective action, dates the corrective action(s) were taken, measures taken to prevent future violations, and a signed statement indicating the site is in compliance with the permit to the best of the signer's knowledge and belief.
17. During the April 16, 2014 inspection, the Inspector reviewed the available inspection records for the Project for the period from June 5, 2013 – October 29, 2013. The Inspector determined that Black Diamond failed to perform an inspection of the Project's stormwater management system at least once every 14 calendar days between: June 5, 2013 and July 3, 2013; July 3, 2013 and August 13, 2013; and August 27, 2013 and September 17, 2013.
18. During the April 16, 2014 inspection, the Inspector reviewed the available inspection records for the Project for the period from June 5, 2013 – October 29, 2013. The Inspector determined that Black Diamond failed to perform any post-storm inspections. National Oceanic & Atmospheric Administration records show that measurable precipitation in the Rifle area occurred 60 times during the time period noted above.
19. During the April 16, 2014 inspection, the Inspector reviewed the available inspection records and the July 3, 2013 inspection identified that culvert inlets needed to be cleaned out and check dams needed repairs. Available inspection records did not provide the dates these corrective actions were completed; what measures were taken to prevent future violations; or a signed statement indicating the site is in compliance with the permit to the best of the signer's knowledge and belief.
20. Black Diamond's failure to properly perform and document inspections of the Project's stormwater management system constitutes violation(s) of Parts I.D.6.a. and I.D.6.b.2. of the Permit.

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

21. Pursuant to Part I.C.3.c. of the Permit, Black Diamond 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.

22. Pursuant to Part I.D.2. of the Permit, Black Diamond 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.
23. Pursuant to Part I.B.3. of the Permit, Black Diamond 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.
24. During the April 16, 2014 inspection, the Inspector identified the following deficiencies related to BMP installation and maintenance at the Project, as described in Paragraphs 24(a-i) below:
 - a. The Inspector observed a diversion ditch control measure inadequately implemented along the north and west edge of the disturbed area located at Well Pad 36A to manage stormwater runoff. Installation and implementation specifications were included in the SWMP for perimeter control BMPs that included earth dikes and drainage swales. However, the diversion ditch identified for this area did not have: a bottom of at least 2 feet, side slopes of 2:1 or flatter, or a compacted fill slope, as specified in the SWMP. No additional control measures were implemented down gradient of the diversion ditch and stormwater from this area of the Project flows overland to Beaver Creek.
 - b. The Inspector observed that control measures were not implemented to manage stormwater runoff from disturbed areas located at the North corner of Well Pad 36A and Northeast side of Well Pad 25A. The SWMP site map identified a temporary slope drain control measure to manage stormwater runoff from each of these disturbed areas. However, the identified control measures were not installed. No additional control measures were implemented down gradient of where the temporary slope drains were indicated on the SWMP and stormwater from these areas of the Project flows overland to Beaver Creek.
 - c. The Inspector observed there were no control measures implemented to manage stormwater runoff from stockpiles located at the Northern corner of Well Pad 25A. The SWMP identified temporary stabilization (seed and mulch) for stockpiles that are inactive for 60 days or more to manage stormwater runoff. However, the identified control measures were not installed. No additional control measures were implemented down gradient of the stockpile and stormwater from this area of the Project flows overland to Beaver Creek.
 - d. The Inspector observed there were no control measures implemented to manage stormwater runoff from chemical waste from portable toilets located at Well Pad 25A. The SWMP specified that temporary sanitary facilities be secured to the ground to prevent overturning. However, the identified control measures were not installed. Stormwater from this area of the Project flows overland to Beaver Creek.
 - e. The Inspector observed that the sediment trap control measures implemented at Well Pads 25A and 36A were not large enough to manage stormwater runoff from the disturbed areas, defined as 4.24 acres and 4.42 acres respectively. Installation and implementation specifications for sediment traps were not included in the SWMP. The Environmental Protection Agency's Stormwater Best Management Practices design criteria include specifications for sediment traps of 1,800 ft³ of storage per disturbed acre. The sediment traps at each location were observed to

not meet the above design criteria. No additional control measures were implemented down gradient of the sediment traps and the stormwater from these areas of the Project flows overland to Beaver Creek.

- f. The Inspector observed an earthen berm control measure inadequately implemented downgradient of Well Pad 25A on the northeast side. Installation and implementation specifications were included in the SWMP for perimeter control BMPs that included earth dikes and drainage swales. However, the earthen berm identified for this area was not compacted, did not have positive drainage to an outlet, and did not convey runoff to a sediment trapping control measures. Additional inadequate control measures were implemented down gradient of the earthen berm (see paragraph 24(a)) and stormwater from this area of the Project flows overland to Beaver Creek.
 - g. The Inspector observed there were no control measures implemented to manage stormwater runoff from the disturbed area located at the fuel and equipment storage site, including down gradient of the fuel and equipment storage site. Stormwater from this area of the Project flows overland to Beaver Creek.
 - h. The Inspector observed there were no control measures implemented to manage stormwater runoff from the piles of sediment mixed with snow located near the produced water pit. Stormwater from this area of the Project flows overland to Beaver Creek.
 - i. The Inspector observed there were no control measures implemented to manage stormwater runoff adjacent to the road to the quarry, the road to the fuel and equipment storage site, and the main road between Well Pad 36A and Well Pad 25A. The SWMP site map identified check dam control measures to manage stormwater runoff adjacent to the roads described above. However, the identified control measures were not installed. No additional control measures were implemented and the stormwater from these areas of the Project flows to Beaver Creek.
25. The Division has determined that Black Diamond failed to implement and/or maintain functional BMPs for all potential pollutant sources at the Project, following good engineering, hydrologic, and pollution control practices.
26. Black Diamond'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

27. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that Black Diamond 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.D.6.b.2. of the Permit, which states in part, “At a minimum, the inspection report must include: vii) Description of corrective actions for items iii, iv, v, and vi, above, dates corrective action(s) taken, and measures taken to prevent future violations, including requisite changes to the SWMP, as necessary”

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., Black Diamond is hereby ordered to:

28. 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 Black Diamond to comply with the following specific terms and conditions of this Order:

29. Black Diamond 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, Black Diamond 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.
30. Black Diamond 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, Black Diamond 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.
31. Black Diamond 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, Black Diamond 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, Black Diamond 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, Black Diamond 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 15th day of October, 2014.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



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