



COLORADO
Department of Public
Health & Environment

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

March 31, 2016

Robert Foster, Registered Agent
CMS of Colorado Springs, Inc.
724 E. Washington Street
Colorado Springs, Colorado 80907

Certified Mail Number: 7005 1820 0000 3208 1180

**RE: Withdrawal of Notice of Violation/Cease and Desist Order, Number: SO-160330-1
Service of Notice of Violation/Cease and Desist Order, Number: SO-160331-1**

Dear Mr. Foster:

Please see the enclosed Withdrawal of Notice of Violation / Cease and Desist Order ("NOV/CDO") SO-160330-1 issued March 30, 2016 by the Colorado Department of Public Health and Environment's Water Quality Control Division ("Division"). NOV/CDO Number SO-160330-1 contained the clerical errors outlined below and is hereby withdrawn and re-issued as NOV/CDO Number SO-160331-1.

- The Permit Number listed in the document header and in paragraph 30 was changed from COR070000 to COG070000.
- The Certification Number listed in the document header, the sub-header on page 8, and paragraph 31 was changed from COR075007 to COG075007.

Accordingly, CMS of Colorado Springs, Inc. ("CMS") is hereby served with the enclosed NOV/CDO Number SO-160331-1. The NOV/CDO is issued by the Division pursuant to the authority given to the Division in §§25-8-602 and 25-8-605, C.R.S., of the Colorado Water Quality Control Act ("Act"). The Division bases the NOV/CDO upon findings that CMS violated the Act and permits issued pursuant to the Act, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., CMS is required, within thirty 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 CMS 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 me at (303) 692-2271 or lindsay.ellis@state.co.us.

Sincerely,



Lindsay Ellis, Enforcement Specialist
Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Michael Boeglin, EPA Region VIII
Tom Gonzales, El Paso County Public Health
Jeffrey Besse, City of Colorado Springs
Meg Parish, Colorado Attorney General's Office
Aimee Konowal, Watershed Section, CDPHE
Michael Beck, Grants and Loans, CDPHE
Amy Zimmerman, Engineering Section, CDPHE
Heather Drissel, Field Services Section, CDPHE
Lillian Gonzalez, Permits Section, CDPHE
Nathan Moore, Clean Water Compliance Unit, CDPHE
Megan Shirley, Clean water Compliance Unit, CDPHE
Mike Harris, Clean Water Enforcement Unit, CDPHE
Tania Watson, Data Management, CDPHE



COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: SO-160331-1

IN THE MATTER OF: CMS OF COLORADO SPRINGS, INC.
 CDPS PERMIT NO. COR030000
 CERTIFICATION NO. COR03N234
 CDPS PERMIT NO. COG070000
 CERTIFICATION NO. COG075007
 EL PASO COUNTY, COLORADO

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:

GENERAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the violations identified herein, CMS of Colorado Springs, Inc., doing business as CMS, Inc. ("CMS"), was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
2. CMS 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 February 18, 2015, CMS initiated construction activities involving the repair and stabilization of streambed and banks and the installation of a pedestrian bridge at Cottonwood Creek between Vincent Drive and Interstate 25, in or near the city of Colorado Springs, in El Paso County, Colorado ("Project").

FINDINGS OF FACT AND CONCLUSIONS OF LAW PERTAINING TO COR03N234

4. On January 08, 2015, the Division received an application from CMS for coverage under the Colorado Discharge Permit System ("CDPS") General Permit Number COR030000, for Stormwater Discharges Associated with Construction Activity ("Stormwater Permit") for a planned disturbance of 2 acres of land within the Project.

5. On January 13, 2015, the Division provided CMS with Certification Number COR03N234 authorizing CMS to discharge stormwater from construction activities associated with the Project to Cottonwood Creek and Fountain Creek under the terms and conditions of the Stormwater Permit. Certification Number COR03N234 took effect January 13, 2015 and is administratively continued until a new Stormwater Permit and certification are issued, or until CMS inactivates coverage.
6. Cottonwood Creek and Fountain 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).
7. Pursuant to 5 CCR 1002-61, §61.8, CMS must comply with all the terms and conditions of the Stormwater Permit, and violations of such terms and conditions may be subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.
8. On April 7, 2015, a representative from the Division ("Inspector") conducted an on-site inspection of the Project pursuant to the Division's authority under §25-8-306, C.R.S., to determine CMS's compliance with the Water Quality Control Act and the Stormwater 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 or Incomplete Stormwater Management Plan

9. Pursuant to Part I. B. of the Stormwater Permit, CMS must prepare and maintain a Stormwater Management Plan ("SWMP") in accordance with good engineering, hydrologic, and pollution control practices. The SWMP shall describe the practices used to reduce pollutants in stormwater discharges associated with construction activity at the Project.
10. Pursuant to Part I. C. of the Stormwater 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).
 - 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 control measures.
 - vii. Locations of non-structural control measures 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 sources with the potential to contribute pollutants to stormwater discharges.
 - iii. Practices for Stormwater Pollution Prevention - The SWMP shall identify and describe practices 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 practice.
 - (1) Structural Practices for Erosion and Sediment Control - The SWMP shall 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 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 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 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 describe and locate all practices implemented at the site to control stormwater pollution from dedicated concrete or asphalt batch plants.
 - (6) Vehicle Tracking Control - The SWMP shall describe and locate all practices implemented at the site to control potential sediment discharges from vehicle tracking. Practices can include: minimizing site access, street sweeping or scraping, tracking pads, graveled parking areas, requiring that vehicles stay on paved areas, wash racks, contractor education, and sediment controls.
 - (7) Waste Management and Disposal, Including Concrete Washout - The SWMP shall describe and locate 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 describe and locate 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 describe practices used to achieve final stabilization of all disturbed areas at the site, and any planned practices to control pollutants in stormwater discharges occurring after construction operations are completed at the site.
 - e. Inspection and Maintenance - The SWMP shall describe 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.
11. Pursuant to Part I. D. 5. (c) of the Stormwater Permit, CMS 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 control measures.
 12. During the April 7, 2015 inspection, the Inspector reviewed the Project's SWMP and identified the following deficiencies, as described in paragraphs 12(a-e) below:
 - a. The SWMP was not updated to reflect disturbed acreage based on actual construction. The SWMP listed two acres of planned land disturbance; however, 4 ½ acres were disturbed at the time of the inspection.
 - b. The SWMP did not identify and describe all allowable sources of non-stormwater discharges. Specifically, the SWMP did not describe in-stream construction dewatering occurring on the banks of the stream northeast of Vincent Drive Bridge.
 - c. The site map included with the SWMP did not locate all control measures used at the Project. Specifically, the site map did not identify the locations of a pond, sediment trap and orifice pipes used east of Vincent Drive Bridge and surface roughening observed on the south stream banks.

- d. The SWMP did not identify and describe all control measures used at the Project. Specifically, the SWMP did not describe: (i) an orifice pipe outlet structure used to control stormwater run-on from a storm drain entering the northeastern boundary of the Project, (ii) a combination sediment trap and orifice pipe outlet structure used to control in-stream construction dewatering wastewater flows and stormwater runoff from stream banks northeast of Vincent Drive Bridge, and (iii) surface roughening observed on the south stream banks.
 - e. The SWMP did not describe installation and implementation specifications for each control measure used at the Project. Specifically, the SWMP did not contain any design criteria, including the standard specifications recommended by industry publications, for: (i) orifice pipe outlet structures, including a calculation of the orifice flow rate, (ii) sediment traps, including the dimensions of the channel grade and freeboard height, and (iii) surface roughening, including the size and spacing of slope contours.
13. The Division has determined that CMS failed to prepare and maintain a complete and accurate SWMP for the Project.
14. CMS's failure to prepare and maintain a complete and accurate SWMP for the Project constitutes violations of Part I. B. 1., Parts I. B. 2. (b) and (c), Parts I. C. 1. (c) and (g), Parts I. C. 2. (f) and (g), Parts I. C. 3. (b) (1) and (c), and Part I. D. 5. (c) (1) of the Stormwater Permit.

Failure to Maintain Required Records or Documents

15. Pursuant to Part I. D. 6. (b) of the Stormwater Permit, CMS is required to keep a record of self-inspections. The record must include the name and title of personnel making the inspections and a signed statement indicating the site is in compliance to the best of the signer's knowledge and belief.
16. During the Division's April 7, 2015 inspection, the Inspector reviewed the available self-inspection records for the period from February 16, 2015 - April 2, 2015 and identified that the records did not include the title of the personnel making the inspections and did not contain signed compliance statements.
17. CMS's failure to properly maintain required inspection records constitutes a violation of Parts I. D. 6. (b) (2) (ii) and (viii) of the Stormwater Permit.

Failure to Properly Select, Design, Install, and Maintain Control Measures

18. Pursuant to Part I. B. 3. of the Stormwater Permit, CMS must implement the provisions of the Project's SWMP as written and updated, from commencement of construction activity until final stabilization is complete.
19. Pursuant to Part I. D. 2. of the Stormwater Permit, CMS must select, install, implement, and maintain appropriate control measures, following good engineering, hydrologic and pollution control practices. Control measures implemented at the site must be adequately designed to control all potential pollutant sources associated with construction activity at the Project.

20. Pursuant to Part I. D. 1. (f) of the Stormwater Permit, all site wastes must be properly managed to prevent potential pollution of state waters.
21. Pursuant to Part I. D. 7. of the Stormwater Permit, all erosion and sediment control practices and other protective measures identified in the SWMP must be maintained in effective operating condition. Control measures not adequately maintained in accordance with good engineering, hydrologic and pollution control practices, including removal of collected sediment outside the acceptable tolerances of the control measures, are considered to be no longer operating effectively and must be addressed.
22. During the April 7, 2015 inspection, the Inspector identified the following deficiencies related to control measure selection, design, installation, and maintenance at the Project, as described in Paragraphs 22(a-f) below:
 - a. Control measures used for a run-on diversion in the northeastern corner of the Project were not designed, installed and maintained according to good pollution control practices. First, plastic lining was used to channel stormwater run-on from an upgradient storm drain. However, the plastic lining was not properly staked down and had accumulated sediment. The plastic lining discharged sediment-laden stormwater to a high-density polyethylene pipe used to divert the run-on across the Project. An orifice pipe outlet structure collected the diverted run-on in the streambed of Cottonwood Creek. However, the orifice pipe was not constructed to facilitate the settling of sediment, because holes in the orifice pipe were drilled at the very base of the pipe. The orifice pipe housed a pump that discharged flows from the run-on diversion directly into a large corrugated pipe diverting Cottonwood Creek through the active work site. As a result, there was a discharge of sediment-laden stormwater to Cottonwood Creek.
 - b. No control measures were implemented along the north and south banks of the stream on the eastern half of the Project. Specifically, no control measures were implemented to minimize erosion and sediment transport along slopes that were cleared and graded, despite a variety of measures to control sediment from disturbed slopes listed in the Project's SWMP. As a result, sediment from the disturbed slopes had the potential to be discharged into Cottonwood Creek. Stormwater runoff from this portion of the Project flowed west into Cottonwood Creek, which ultimately discharges into Fountain Creek.
 - c. A control measure observed along the south stream bank, west of Vincent Drive Bridge, was not installed and maintained according to good pollution control practices. Specifically, an earthen berm control measure constructed in the cut-and-fill area was not installed at the far edge of the disturbed area and did not extend completely across the stream bank, despite the site map in the Project's SWMP depicting a continuous berm along the top of the slope. Additionally, the berm was not consistently compacted and was not one foot wide and one foot high, as required by specifications in the Project's SWMP. These deficiencies created pathways through which stormwater could carry sediment from the cut-and-fill area. In fact, deposited sediment was observed on the downgradient side of the berm and was not removed despite a maintenance requirement in the Project's SWMP. Stormwater runoff from this portion of the Project flowed northwest down the stream bank into Cottonwood Creek, which ultimately discharges into Fountain Creek.

- d. Control measures observed along material staging areas north and south of Vincent Drive Bridge were not installed and maintained according to good pollution control practices. Specifically, silt fence used to manage stormwater runoff from disturbed areas and soil stockpiles was inadequately installed and was not implemented according to specifications in the Project's SWMP. First, the silt fence was not entrenched and backfilled, its joints were not properly wrapped, and the fence was not continuously installed away from the toe of the slope and along the length of the drainage area. Additionally, maintenance was needed to repair holes and tears in the silt fence fabric and to remove sediment that accumulated more than six inches, 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 disturbed areas and soil stockpiles, and, therefore, minimize the transportation of sediment. Stormwater runoff from this portion of the Project flowed west down the stream banks into Cottonwood Creek, which ultimately discharges into Fountain Creek.
 - e. Inlet protection measures located along Vincent Drive were not selected and maintained according to good pollution control practices. Specifically, rock socks were placed over curb inlets designed with recessed concrete slots that served as open pathways into the storm drain. As a result, sediment-laden stormwater runoff had the potential to bypass the rock socks and enter the storm drain without treatment. Additionally, the rock socks were torn, despite the Project's SWMP requiring immediate repair or replacement of failed control measures. Stormwater runoff from this portion of the Project entered the curb inlets and flowed through a storm sewer system that discharges runoff to Fountain Creek.
 - f. No control measures were implemented to manage stormwater runoff from construction materials waste observed on the south side of the Project. Specifically, hydraulic fluid was spilled to the ground below a portable generator, despite a specification in the Project's SWMP prohibiting construction equipment residue from being left on-site. Stormwater runoff from this portion of the Project flowed northwest down the stream banks into Cottonwood Creek, which ultimately discharges into Fountain Creek. As a result, site wastes were not properly managed to prevent potential pollution of state waters.
23. The Division has determined that CMS failed to select, design, install, and maintain controls for all potential pollutant sources in stormwater runoff at the Project, following good engineering, hydrologic, and pollution control practices.
24. CMS's failure to select, design, install, and maintain control measures at the Project constitutes violations of Part I. B. 3., Part I. D. 1. (f), Part I. D. 2., and Part I. D. 7. of the Stormwater Permit.

Failure to Adequately Respond to Division Compliance Advisory

25. Pursuant to Part II. B. 2. of the Stormwater Permit, CMS must furnish to the Division, within the timeframe specified by the Division, any information which the Division may request to determine compliance with the Stormwater Permit.
26. On May 11, 2015, the Division issued CMS a compliance advisory for violations discovered during the Division's April 7, 2015 inspection. The compliance advisory required CMS to respond in writing to the Division with documentation of corrective actions taken to address the violations. The response was due to the Division June 1, 2015.

27. On June 11, 22, and 30, 2015, CMS and the Division exchanged correspondence regarding CMS's overdue compliance advisory response.
28. On July 10, 2015, the Division received CMS's compliance advisory response. The photographs and documentation contained in the response revealed a continued failure to properly implement control measures at the Project.
29. CMS's failure to adequately respond to the Division's compliance advisory constitutes a violation of Part II. B. 2. of the Stormwater Permit.

FINDINGS OF FACT AND CONCLUSIONS OF LAW PERTAINING TO COG075007

30. On January 12, 2015, the Division received an application from CMS for coverage under the CDPS General Permit Number COG070000, for Construction Dewatering Discharges ("Dewatering Permit") associated with the Project.
31. On January 15, 2015, the Division provided CMS with Certification Number COG075007 authorizing CMS to discharge treated wastewater from the in-stream construction dewatering activities associated with the Project through undefined outfalls to Cottonwood Creek under the terms and conditions of the Dewatering Permit. Certification Number COG075007 took effect January 15, 2015 and remains in effect until August 31, 2018 or until CMS inactivates coverage.
32. Cottonwood Creek is a "state water" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(102).
33. Pursuant to 5 CCR 1002-61, §61.8, CMS must comply with all the terms and conditions of the Dewatering 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.

Failure to Properly Design and Install Pollutant Control Practices

34. Pursuant to Part I. C. 2. (a) of the Dewatering Permit, CMS shall implement pollutant control practices to meet effluent limitations contained in the Dewatering Permit. The practices must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic, pollution control practices and manufacturer specifications.
35. Pursuant to Part II. A. 9. of the Dewatering Permit, CMS shall at all times properly operate and maintain all facilities and systems of treatment and control as necessary to achieve compliance with the conditions of the Dewatering Permit.
36. During the April 7, 2015 inspection, the Inspector observed active excavation of the stream bank northeast of Vincent Drive Bridge. Wastewater produced from the excavation flowed down the disturbed bank to the streambed of Cottonwood Creek. The Inspector identified the following deficiencies related to the design and installation of pollutant control practices in place in the streambed, as described in Paragraphs 36(a-b) below:

- a. A sediment trap used to collect commingled in-stream construction dewatering wastewater flows and stormwater runoff from the disturbed stream bank was not designed and installed according to good pollution control practices. Specifically, the sediment trap did not have a compacted embankment, as recommended by industry publications. This deficiency impaired the ability of the sediment trap to intercept channelized flows and to prevent overtopping. Additionally, the sediment trap was shallow; and, without stabilization, the disturbed stream bank exceeded the receiving capacity of the trap. As a result, the sediment trap did not provide a residence time for sediment carried by the wastewater flows and stormwater runoff to settle before being discharged in an orifice pipe outlet structure, contrary to industry publications requiring storage of collected sediment until it is removed.
 - b. An orifice pipe outlet structure used to collect the wastewater flows and stormwater runoff ponded in the sediment trap was not designed and installed according to good pollution control practices. Specifically, the orifice pipe was not constructed to further facilitate the settling of sediment, because holes in the orifice pipe were drilled at the very base of the pipe. The orifice pipe housed a pump that discharged the ponded wastewater flows and stormwater runoff directly into a large corrugated pipe diverting Cottonwood Creek through the active work site. As a result, there was a discharge of sediment-laden wastewater and stormwater to Cottonwood Creek.
37. The Division has determined that CMS failed to design and install pollutant control practices for wastewater discharges from in-stream construction dewatering activities following good engineering, hydrologic, and pollution control practices.
38. CMS's failure to design and install pollutant control practices at the Project constitutes violations of Part I. C. 2. (a) and Part II. A. 9. of the Dewatering Permit.

Failure to Properly Monitor and Report

39. Pursuant to Part I. B. 2. of the Dewatering Permit, CMS must monitor permitted discharges for defined effluent parameters at specified frequencies. All required monitoring must begin immediately and last for the life of the Dewatering Permit.
40. Pursuant to Part I. E. 1. of the Dewatering Permit, CMS must report all monitoring results on a monthly basis using Division approved Discharge Monitoring Report ("DMR") forms. CMS must ensure the DMR forms are mailed to the Division so that they are received no later than the 28th day of the month following the monitoring period.
41. Pursuant to Part I. E. 2. of the Dewatering Permit, CMS must submit monthly DMR forms for all outfalls as long as the certification is in effect, even if there was not a discharge from an outfall in a given month. For each outfall where no discharge occurs in a given month, CMS shall mark "No Discharge" on the DMR form.
42. During the Division's April 7, 2015 inspection, the Inspector interviewed Project representatives, who informed the Inspector that in-stream construction dewatering discharges had occurred. Project representatives also informed the Inspector that the discharges were not monitored.
43. Division records establish that CMS failed to submit DMR forms to the Division by the 28th day of the month following the monitoring periods identified in the table below:

DMR MONITORING PERIOD	DMR DUE DATE	DMR RECEIPT DATE
January 15, 2015 - January 31, 2015	02/28/2015	03/23/2015
March 1, 2015 - March 31, 2015	04/28/2015	06/27/2015
April 1, 2015 - April 30, 2015	05/28/2015	06/27/2015
June 1, 2015 - June 30, 2015	07/28/2015	01/05/2016
July 1, 2015 - July 31, 2015	08/28/2015	01/05/2016
August 1, 2015 - August 31, 2015	09/28/2015	01/05/2016
September 1, 2015 - September 30, 2015	10/28/2015	01/05/2016
October 1, 2015 - October 31, 2015	11/28/2015	01/05/2016
November 1, 2015 - November 30, 2015	12/28/2015	01/05/2016

44. On June 11, 2015, September 11, 2015, October 9, 2015, November 13, 2015, and December 11, 2015, the Division issued CMS compliance advisories for the failure to submit DMR forms. The compliance advisories informed CMS that the failure to submit completed DMR forms within the required timeframe constituted a violation of the Dewatering Permit and directed CMS to submit the delinquent DMR forms within 14 days of the compliance advisory.
45. Division records establish that CMS failed to submit DMR forms to the Division for the monitoring periods of January 1, 2016 to January 31, 2016 and February 1, 2016 to February 29, 2016.
46. CMS's failure to monitor the permitted discharges and to submit DMR forms to the Division by the 28th day of the month following each monitoring period constitutes violations of Part I. B. 2., Part I. E. 1., and Part I. E. 2. of the Dewatering Permit.

NOTICE OF VIOLATION

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

Part I. B. 1. of the Stormwater 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 Stormwater Permit, which states in part, "The SWMP shall: 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 Stormwater 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. 1. of the Stormwater Permit, which states in part, "The SWMP shall clearly describe the construction activity, to include: (c) 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 ... (g) The location and description of any anticipated allowable sources of non-stormwater discharge at the site, e.g., uncontaminated springs, landscape irrigation return flow, construction dewatering, and concrete washout."

Part I. C. 2. of the Stormwater Permit, which states in part, "The SWMP shall include a legible site map(s), showing the entire site, identifying: (f) locations of all structural [Best Management Practices (BMPs)]; (g) locations of non-structural BMPs as applicable ..."

Part I. C. 3. (b) of the Stormwater Permit, which states in part, "At a minimum, each of the following sources and activities shall be evaluated for the potential to contribute pollutants to stormwater discharges, and identified in the SWMP if found to have such potential: (1) all disturbed and stored soils ..."

Part I. C. 3. (c) of the Stormwater 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. 1. of the Stormwater Permit, which states in part, "(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. 2. of the Stormwater 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. 5. (c) of the Stormwater 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 ..."

Part I. D. 6. (b) (2) of the Stormwater Permit, which states in part, "The permittee shall keep a record of inspections ... At a minimum, the inspection report must include: ... ii) Name(s) and title(s) of personnel making the inspection; ... 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."

Part I. D. 7. of the Stormwater 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 II. B. 2. of the Stormwater Permit, which states in part, "The permittee shall furnish to the Division, within the time frame specified by the Division, any information which the Division may request to determine whether cause exists for modifying, revoking and reissuing, or inactivating coverage under this permit, or to determine compliance with this permit."

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

Part I. B. 2. of the Dewatering Permit, which states in part, "The permittee must monitor the effluent for all listed effluent parameters at the frequency and sample types specified in Table B.1 or B.2 below as applicable to the outfall(s) ... All required monitoring will begin immediately and last for the life of the permit unless otherwise noted ..."

Part I. C. 2. (a) of the Dewatering Permit, which states in part, "The permittee shall implement pollutant control practices to meet the effluent limitations contained in this permit. The pollutant control practices must be selected, designed, installed, implemented and maintained in accordance with good engineering, hydrologic, pollution control practices, and the manufacturer's specifications including installation and implementation specifications, where applicable ..."

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

Part I. E. 2. of the Dewatering Permit, which states in part, "DMRs for all outfalls must be submitted monthly as long as the certification is in effect. DMRs must be submitted for each outfall even if there was not a discharge from the outfall in a given month. For each outfall where no discharge occurs in a given month, the permittee shall mark 'No Discharge' on the DMR form(s) ..."

Part II. A. 9. of the Dewatering Permit, which states in part, "The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee as necessary to achieve compliance with the conditions 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., CMS is hereby ordered to:

49. 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, the Stormwater Permit, and the Dewatering Permit.

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

50. CMS must immediately evaluate the Project's SWMP and implement necessary measures to ensure the SWMP contains all elements required by the Stormwater Permit and is effective in managing pollutant discharges from the Project. Within thirty (30) calendar days of receipt of this Order, CMS must submit a written certification to the Division stating that a complete, effective, and up-to-date SWMP is fully developed and implemented at the Project.
51. CMS must immediately ensure control measures are in place to prevent pollutant discharges from the Project. This includes stabilizing or protecting all disturbed areas at the Project with a system of erosion and sediment control practices selected, designed, installed, and maintained following good engineering, hydrologic, and pollution control practices. Within thirty (30) calendar days of receipt of this Order, CMS must evaluate and modify all control measures at the Project to ensure they meet the installation and implementation requirements specified in the Project's complete and up-to-date SWMP. Within thirty (30) calendar days of receipt of this Order, CMS must submit photographs to the Division documenting current conditions at the site and the associated control measures implemented at the Project.
52. Within thirty (30) calendar days of receipt of this Order, CMS must submit all delinquent DMRs, as well as records of its effluent discharge monitoring for the periods April 1, 2015 to April 30, 2015 and June 1, 2015 to September 30, 2015. The records must include all laboratory data reports, all field measurement reports, and all calibration and maintenance records, including all other information required to be maintained by Part I. E. 5. of the Dewatering Permit. The records must also include all discharge logs for each permitted outfall required to be maintained by Part I. C. 1. of the Dewatering Permit. The records must be legible and understandable.

NOTICES AND SUBMITTALS

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

Lindsay Ellis
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) 692-2271
Email: lindsay.ellis@state.co.us

54. For any person submitting documents, plans, records, and reports pursuant to this Notice of Violation / Cease and Desist Order, that person must 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

55. Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11, CMS must 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 must be filed no later than thirty (30) calendar days after receipt of this action.
56. 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 must 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 must be deemed established in any subsequent Department proceeding. The request for hearing, if any, must 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

57. 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

58. CMS 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

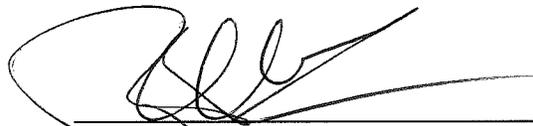
59. Pursuant to §25-8-601, C.R.S., CMS is further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, must notify the Division of the discharge. If said person fails to so notify,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

EFFECT OF ORDER

60. 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.
61. For further clarification of CMS's rights and obligations under this Notice of Violation / Cease and Desist Order, CMS 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 31st day of March, 2016.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Patrick J. Pfaltzgraff, Director
Water Quality Control Division



COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: SO-160330-1

IN THE MATTER OF: CMS OF COLORADO SPRINGS, INC.
CDPS PERMIT NO. COR030000
CERTIFICATION NO. COR03N234
CDPS PERMIT NO. COR070000
CERTIFICATION NO. COR075007
EL PASO COUNTY, COLORADO

This matter comes before the Executive Director of the Colorado Department of Public Health and Environment on behalf of the Water Quality Control Division ("Division") concerning a Notice of Violation / Cease and Desist Order ("NOV/CDO") issued to CMS of Colorado Springs, Inc. ("CMS"). The Executive Director, through his designee (hereinafter the "Executive Director"), issues the following Withdrawal of the NOV/CDO.

WITHDRAWAL OF NOTICE OF VIOLATION / CEASE AND DESIST ORDER

1. On March 30, 2016, the Division issued NOV/CDO Number SO-160330-1 to CMS for violations of the Colorado Water Quality Control Act and Colorado Discharge Permit System General Permit Numbers COR030000 for Stormwater Discharges Associated with Construction Activity and COG070000 for Construction Dewatering Discharges.
2. The Executive Director hereby withdraws NOV/CDO Number SO-160330-1.

Issued in Denver, Colorado, this 31st day of March, 2016.

Patrick J. Pfaltzgraf, Director
Water Quality Control Division
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT





COLORADO
Department of Public
Health & Environment

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

March 30, 2016

Robert Foster, Registered Agent
CMS of Colorado Springs, Inc.
724 E. Washington Street
Colorado Springs, Colorado 80907

Certified Mail Number: 7005 1820 0000 3208 1234

RE: Service of Notice of Violation/Cease and Desist Order, Number: SO-160330-1

Dear Mr. Foster:

CMS of Colorado Springs, Inc. ("CMS") is hereby served with the enclosed Notice of Violation / Cease and Desist Order ("NOV/CDO"). The NOV/CDO is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division ("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 ("Act"). The Division bases the NOV/CDO upon findings that CMS violated the Act and permits issued pursuant to the Act, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., CMS is required, within thirty 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 CMS 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 me at (303) 692-2271 or lindsay.ellis@state.co.us.

Sincerely,

Lindsay Ellis, Enforcement Specialist



Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Michael Boeglin, EPA Region VIII
Tom Gonzales, El Paso County Public Health
Jeffrey Besse, City of Colorado Springs
Meg Parish, Colorado Attorney General's Office
Aimee Konowal, Watershed Section, CDPHE
Michael Beck, Grants and Loans, CDPHE
Amy Zimmerman, Engineering Section, CDPHE
Heather Drissel, Field Services Section, CDPHE
Lillian Gonzalez, Permits Section, CDPHE
Nathan Moore, Clean Water Compliance Unit, CDPHE
Megan Shirley, Clean water Compliance Unit, CDPHE
Mike Harris, Clean Water Enforcement Unit, CDPHE
Tania Watson, Data Management, CDPHE





COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: SO-160330-1

IN THE MATTER OF: CMS OF COLORADO SPRINGS, INC.
 CDPS PERMIT NO. COR030000
 CERTIFICATION NO. COR03N234
 CDPS PERMIT NO. COR070000
 CERTIFICATION NO. COR075007
 EL PASO COUNTY, COLORADO

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:

GENERAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the violations identified herein, CMS of Colorado Springs, Inc., doing business as CMS, Inc. ("CMS"), was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
2. CMS 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 February 18, 2015, CMS initiated construction activities involving the repair and stabilization of streambed and banks and the installation of a pedestrian bridge at Cottonwood Creek between Vincent Drive and Interstate 25, in or near the city of Colorado Springs, in El Paso County, Colorado ("Project").

FINDINGS OF FACT AND CONCLUSIONS OF LAW PERTAINING TO COR03N234

4. On January 08, 2015, the Division received an application from CMS for coverage under the Colorado Discharge Permit System ("CDPS") General Permit Number COR030000, for Stormwater Discharges Associated with Construction Activity ("Stormwater Permit") for a planned disturbance of 2 acres of land within the Project.

5. On January 13, 2015, the Division provided CMS with Certification Number COR03N234 authorizing CMS to discharge stormwater from construction activities associated with the Project to Cottonwood Creek and Fountain Creek under the terms and conditions of the Stormwater Permit. Certification Number COR03N234 took effect January 13, 2015 and is administratively continued until a new Stormwater Permit and certification are issued, or until CMS inactivates coverage.
6. Cottonwood Creek and Fountain 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).
7. Pursuant to 5 CCR 1002-61, §61.8, CMS must comply with all the terms and conditions of the Stormwater Permit, and violations of such terms and conditions may be subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.
8. On April 7, 2015, a representative from the Division ("Inspector") conducted an on-site inspection of the Project pursuant to the Division's authority under §25-8-306, C.R.S., to determine CMS's compliance with the Water Quality Control Act and the Stormwater 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 or Incomplete Stormwater Management Plan

9. Pursuant to Part I. B. of the Stormwater Permit, CMS must prepare and maintain a Stormwater Management Plan ("SWMP") in accordance with good engineering, hydrologic, and pollution control practices. The SWMP shall describe the practices used to reduce pollutants in stormwater discharges associated with construction activity at the Project.
10. Pursuant to Part I. C. of the Stormwater 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).
 - 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 control measures.
 - vii. Locations of non-structural control measures 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 sources with the potential to contribute pollutants to stormwater discharges.
 - iii. Practices for Stormwater Pollution Prevention - The SWMP shall identify and describe practices 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 practice.
 - (1) Structural Practices for Erosion and Sediment Control - The SWMP shall 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 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 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 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 describe and locate all practices implemented at the site to control stormwater pollution from dedicated concrete or asphalt batch plants.
 - (6) Vehicle Tracking Control - The SWMP shall describe and locate all practices implemented at the site to control potential sediment discharges from vehicle tracking. Practices can include: minimizing site access, street sweeping or scraping, tracking pads, graveled parking areas, requiring that vehicles stay on paved areas, wash racks, contractor education, and sediment controls.
 - (7) Waste Management and Disposal, Including Concrete Washout - The SWMP shall describe and locate 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 describe and locate 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 describe practices used to achieve final stabilization of all disturbed areas at the site, and any planned practices to control pollutants in stormwater discharges occurring after construction operations are completed at the site.
 - e. Inspection and Maintenance - The SWMP shall describe 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.
11. Pursuant to Part I. D. 5. (c) of the Stormwater Permit, CMS 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 control measures.
 12. During the April 7, 2015 inspection, the Inspector reviewed the Project's SWMP and identified the following deficiencies, as described in paragraphs 12(a-e) below:
 - a. The SWMP was not updated to reflect disturbed acreage based on actual construction. The SWMP listed two acres of planned land disturbance; however, 4 ½ acres were disturbed at the time of the inspection.
 - b. The SWMP did not identify and describe all allowable sources of non-stormwater discharges. Specifically, the SWMP did not describe in-stream construction dewatering occurring on the banks of the stream northeast of Vincent Drive Bridge.
 - c. The site map included with the SWMP did not locate all control measures used at the Project. Specifically, the site map did not identify the locations of a pond, sediment trap and orifice pipes used east of Vincent Drive Bridge and surface roughening observed on the south stream banks.

- d. The SWMP did not identify and describe all control measures used at the Project. Specifically, the SWMP did not describe: (i) an orifice pipe outlet structure used to control stormwater run-on from a storm drain entering the northeastern boundary of the Project, (ii) a combination sediment trap and orifice pipe outlet structure used to control in-stream construction dewatering wastewater flows and stormwater runoff from stream banks northeast of Vincent Drive Bridge, and (iii) surface roughening observed on the south stream banks.
 - e. The SWMP did not describe installation and implementation specifications for each control measure used at the Project. Specifically, the SWMP did not contain any design criteria, including the standard specifications recommended by industry publications, for: (i) orifice pipe outlet structures, including a calculation of the orifice flow rate, (ii) sediment traps, including the dimensions of the channel grade and freeboard height, and (iii) surface roughening, including the size and spacing of slope contours.
13. The Division has determined that CMS failed to prepare and maintain a complete and accurate SWMP for the Project.
 14. CMS's failure to prepare and maintain a complete and accurate SWMP for the Project constitutes violations of Part I. B. 1., Parts I. B. 2. (b) and (c), Parts I. C. 1. (c) and (g), Parts I. C. 2. (f) and (g), Parts I. C. 3. (b) (1) and (c), and Part I. D. 5. (c) (1) of the Stormwater Permit.

Failure to Maintain Required Records or Documents

15. Pursuant to Part I. D. 6. (b) of the Stormwater Permit, CMS is required to keep a record of self-inspections. The record must include the name and title of personnel making the inspections and a signed statement indicating the site is in compliance to the best of the signer's knowledge and belief.
16. During the Division's April 7, 2015 inspection, the Inspector reviewed the available self-inspection records for the period from February 16, 2015 - April 2, 2015 and identified that the records did not include the title of the personnel making the inspections and did not contain signed compliance statements.
17. CMS's failure to properly maintain required inspection records constitutes a violation of Parts I. D. 6. (b) (2) (ii) and (viii) of the Stormwater Permit.

Failure to Properly Select, Design, Install, and Maintain Control Measures

18. Pursuant to Part I. B. 3. of the Stormwater Permit, CMS must implement the provisions of the Project's SWMP as written and updated, from commencement of construction activity until final stabilization is complete.
19. Pursuant to Part I. D. 2. of the Stormwater Permit, CMS must select, install, implement, and maintain appropriate control measures, following good engineering, hydrologic and pollution control practices. Control measures implemented at the site must be adequately designed to control all potential pollutant sources associated with construction activity at the Project.

20. Pursuant to Part I. D. 1. (f) of the Stormwater Permit, all site wastes must be properly managed to prevent potential pollution of state waters.
21. Pursuant to Part I. D. 7. of the Stormwater Permit, all erosion and sediment control practices and other protective measures identified in the SWMP must be maintained in effective operating condition. Control measures not adequately maintained in accordance with good engineering, hydrologic and pollution control practices, including removal of collected sediment outside the acceptable tolerances of the control measures, are considered to be no longer operating effectively and must be addressed.
22. During the April 7, 2015 inspection, the Inspector identified the following deficiencies related to control measure selection, design, installation, and maintenance at the Project, as described in Paragraphs 22(a-f) below:
 - a. Control measures used for a run-on diversion in the northeastern corner of the Project were not designed, installed and maintained according to good pollution control practices. First, plastic lining was used to channel stormwater run-on from an upgradient storm drain. However, the plastic lining was not properly staked down and had accumulated sediment. The plastic lining discharged sediment-laden stormwater to a high-density polyethylene pipe used to divert the run-on across the Project. An orifice pipe outlet structure collected the diverted run-on in the streambed of Cottonwood Creek. However, the orifice pipe was not constructed to facilitate the settling of sediment, because holes in the orifice pipe were drilled at the very base of the pipe. The orifice pipe housed a pump that discharged flows from the run-on diversion directly into a large corrugated pipe diverting Cottonwood Creek through the active work site. As a result, there was a discharge of sediment-laden stormwater to Cottonwood Creek.
 - b. No control measures were implemented along the north and south banks of the stream on the eastern half of the Project. Specifically, no control measures were implemented to minimize erosion and sediment transport along slopes that were cleared and graded, despite a variety of measures to control sediment from disturbed slopes listed in the Project's SWMP. As a result, sediment from the disturbed slopes had the potential to be discharged into Cottonwood Creek. Stormwater runoff from this portion of the Project flowed west into Cottonwood Creek, which ultimately discharges into Fountain Creek.
 - c. A control measure observed along the south stream bank, west of Vincent Drive Bridge, was not installed and maintained according to good pollution control practices. Specifically, an earthen berm control measure constructed in the cut-and-fill area was not installed at the far edge of the disturbed area and did not extend completely across the stream bank, despite the site map in the Project's SWMP depicting a continuous berm along the top of the slope. Additionally, the berm was not consistently compacted and was not one foot wide and one foot high, as required by specifications in the Project's SWMP. These deficiencies created pathways through which stormwater could carry sediment from the cut-and-fill area. In fact, deposited sediment was observed on the downgradient side of the berm and was not removed despite a maintenance requirement in the Project's SWMP. Stormwater runoff from this portion of the Project flowed northwest down the stream bank into Cottonwood Creek, which ultimately discharges into Fountain Creek.

- d. Control measures observed along material staging areas north and south of Vincent Drive Bridge were not installed and maintained according to good pollution control practices. Specifically, silt fence used to manage stormwater runoff from disturbed areas and soil stockpiles was inadequately installed and was not implemented according to specifications in the Project's SWMP. First, the silt fence was not entrenched and backfilled, its joints were not properly wrapped, and the fence was not continuously installed away from the toe of the slope and along the length of the drainage area. Additionally, maintenance was needed to repair holes and tears in the silt fence fabric and to remove sediment that accumulated more than six inches, 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 disturbed areas and soil stockpiles, and, therefore, minimize the transportation of sediment. Stormwater runoff from this portion of the Project flowed west down the stream banks into Cottonwood Creek, which ultimately discharges into Fountain Creek.
 - e. Inlet protection measures located along Vincent Drive were not selected and maintained according to good pollution control practices. Specifically, rock socks were placed over curb inlets designed with recessed concrete slots that served as open pathways into the storm drain. As a result, sediment-laden stormwater runoff had the potential to bypass the rock socks and enter the storm drain without treatment. Additionally, the rock socks were torn, despite the Project's SWMP requiring immediate repair or replacement of failed control measures. Stormwater runoff from this portion of the Project entered the curb inlets and flowed through a storm sewer system that discharges runoff to Fountain Creek.
 - f. No control measures were implemented to manage stormwater runoff from construction materials waste observed on the south side of the Project. Specifically, hydraulic fluid was spilled to the ground below a portable generator, despite a specification in the Project's SWMP prohibiting construction equipment residue from being left on-site. Stormwater runoff from this portion of the Project flowed northwest down the stream banks into Cottonwood Creek, which ultimately discharges into Fountain Creek. As a result, site wastes were not properly managed to prevent potential pollution of state waters.
23. The Division has determined that CMS failed to select, design, install, and maintain controls for all potential pollutant sources in stormwater runoff at the Project, following good engineering, hydrologic, and pollution control practices.
24. CMS's failure to select, design, install, and maintain control measures at the Project constitutes violations of Part I. B. 3., Part I. D. 1. (f), Part I. D. 2., and Part I. D. 7. of the Stormwater Permit.

Failure to Adequately Respond to Division Compliance Advisory

25. Pursuant to Part II. B. 2. of the Stormwater Permit, CMS must furnish to the Division, within the timeframe specified by the Division, any information which the Division may request to determine compliance with the Stormwater Permit.
26. On May 11, 2015, the Division issued CMS a compliance advisory for violations discovered during the Division's April 7, 2015 inspection. The compliance advisory required CMS to respond in writing to the Division with documentation of corrective actions taken to address the violations. The response was due to the Division June 1, 2015.

27. On June 11, 22, and 30, 2015, CMS and the Division exchanged correspondence regarding CMS's overdue compliance advisory response.
28. On July 10, 2015, the Division received CMS's compliance advisory response. The photographs and documentation contained in the response revealed a continued failure to properly implement control measures at the Project.
29. CMS's failure to adequately respond to the Division's compliance advisory constitutes a violation of Part II. B. 2. of the Stormwater Permit.

FINDINGS OF FACT AND CONCLUSIONS OF LAW PERTAINING TO COR075007

30. On January 12, 2015, the Division received an application from CMS for coverage under the CDPS General Permit Number COR070000, for Construction Dewatering Discharges ("Dewatering Permit") associated with the Project.
31. On January 15, 2015, the Division provided CMS with Certification Number COR075007 authorizing CMS to discharge treated wastewater from the in-stream construction dewatering activities associated with the Project through undefined outfalls to Cottonwood Creek under the terms and conditions of the Dewatering Permit. Certification Number COG075007 took effect January 15, 2015 and remains in effect until August 31, 2018 or until CMS inactivates coverage.
32. Cottonwood Creek is a "state water" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(102).
33. Pursuant to 5 CCR 1002-61, §61.8, CMS must comply with all the terms and conditions of the Dewatering 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.

Failure to Properly Design and Install Pollutant Control Practices

34. Pursuant to Part I. C. 2. (a) of the Dewatering Permit, CMS shall implement pollutant control practices to meet effluent limitations contained in the Dewatering Permit. The practices must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic, pollution control practices and manufacturer specifications.
35. Pursuant to Part II. A. 9. of the Dewatering Permit, CMS shall at all times properly operate and maintain all facilities and systems of treatment and control as necessary to achieve compliance with the conditions of the Dewatering Permit.
36. During the April 7, 2015 inspection, the Inspector observed active excavation of the stream bank northeast of Vincent Drive Bridge. Wastewater produced from the excavation flowed down the disturbed bank to the streambed of Cottonwood Creek. The Inspector identified the following deficiencies related to the design and installation of pollutant control practices in place in the streambed, as described in Paragraphs 36(a-b) below:

- a. A sediment trap used to collect commingled in-stream construction dewatering wastewater flows and stormwater runoff from the disturbed stream bank was not designed and installed according to good pollution control practices. Specifically, the sediment trap did not have a compacted embankment, as recommended by industry publications. This deficiency impaired the ability of the sediment trap to intercept channelized flows and to prevent overtopping. Additionally, the sediment trap was shallow; and, without stabilization, the disturbed stream bank exceeded the receiving capacity of the trap. As a result, the sediment trap did not provide a residence time for sediment carried by the wastewater flows and stormwater runoff to settle before being discharged in an orifice pipe outlet structure, contrary to industry publications requiring storage of collected sediment until it is removed.
 - b. An orifice pipe outlet structure used to collect the wastewater flows and stormwater runoff ponded in the sediment trap was not designed and installed according to good pollution control practices. Specifically, the orifice pipe was not constructed to further facilitate the settling of sediment, because holes in the orifice pipe were drilled at the very base of the pipe. The orifice pipe housed a pump that discharged the ponded wastewater flows and stormwater runoff directly into a large corrugated pipe diverting Cottonwood Creek through the active work site. As a result, there was a discharge of sediment-laden wastewater and stormwater to Cottonwood Creek.
37. The Division has determined that CMS failed to design and install pollutant control practices for wastewater discharges from in-stream construction dewatering activities following good engineering, hydrologic, and pollution control practices.
38. CMS's failure to design and install pollutant control practices at the Project constitutes violations of Part I. C. 2. (a) and Part II. A. 9. of the Dewatering Permit.

Failure to Properly Monitor and Report

39. Pursuant to Part I. B. 2. of the Dewatering Permit, CMS must monitor permitted discharges for defined effluent parameters at specified frequencies. All required monitoring must begin immediately and last for the life of the Dewatering Permit.
40. Pursuant to Part I. E. 1. of the Dewatering Permit, CMS must report all monitoring results on a monthly basis using Division approved Discharge Monitoring Report ("DMR") forms. CMS must ensure the DMR forms are mailed to the Division so that they are received no later than the 28th day of the month following the monitoring period.
41. Pursuant to Part I. E. 2. of the Dewatering Permit, CMS must submit monthly DMR forms for all outfalls as long as the certification is in effect, even if there was not a discharge from an outfall in a given month. For each outfall where no discharge occurs in a given month, CMS shall mark "No Discharge" on the DMR form.
42. During the Division's April 7, 2015 inspection, the Inspector interviewed Project representatives, who informed the Inspector that in-stream construction dewatering discharges had occurred. Project representatives also informed the Inspector that the discharges were not monitored.
43. Division records establish that CMS failed to submit DMR forms to the Division by the 28th day of the month following the monitoring periods identified in the table below:

DMR MONITORING PERIOD	DMR DUE DATE	DMR RECEIPT DATE
January 15, 2015 - January 31, 2015	02/28/2015	03/23/2015
March 1, 2015 - March 31, 2015	04/28/2015	06/27/2015
April 1, 2015 - April 30, 2015	05/28/2015	06/27/2015
June 1, 2015 - June 30, 2015	07/28/2015	01/05/2016
July 1, 2015 - July 31, 2015	08/28/2015	01/05/2016
August 1, 2015 - August 31, 2015	09/28/2015	01/05/2016
September 1, 2015 - September 30, 2015	10/28/2015	01/05/2016
October 1, 2015 - October 31, 2015	11/28/2015	01/05/2016
November 1, 2015 - November 30, 2015	12/28/2015	01/05/2016

44. On June 11, 2015, September 11, 2015, October 9, 2015, November 13, 2015, and December 11, 2015, the Division issued CMS compliance advisories for the failure to submit DMR forms. The compliance advisories informed CMS that the failure to submit completed DMR forms within the required timeframe constituted a violation of the Dewatering Permit and directed CMS to submit the delinquent DMR forms within 14 days of the compliance advisory.
45. Division records establish that CMS failed to submit DMR forms to the Division for the monitoring periods of January 1, 2016 to January 31, 2016 and February 1, 2016 to February 29, 2016.
46. CMS's failure to monitor the permitted discharges and to submit DMR forms to the Division by the 28th day of the month following each monitoring period constitutes violations of Part I. B. 2., Part I. E. 1., and Part I. E. 2. of the Dewatering Permit.

NOTICE OF VIOLATION

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

Part I. B. 1. of the Stormwater 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 Stormwater Permit, which states in part, "The SWMP shall: 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 Stormwater 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. 1. of the Stormwater Permit, which states in part, "The SWMP shall clearly describe the construction activity, to include: (c) 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 ... (g) The location and description of any anticipated allowable sources of non-stormwater discharge at the site, e.g., uncontaminated springs, landscape irrigation return flow, construction dewatering, and concrete washout."

Part I. C. 2. of the Stormwater Permit, which states in part, "The SWMP shall include a legible site map(s), showing the entire site, identifying: (f) locations of all structural [Best Management Practices (BMPs)]; (g) locations of non-structural BMPs as applicable ..."

Part I. C. 3. (b) of the Stormwater Permit, which states in part, "At a minimum, each of the following sources and activities shall be evaluated for the potential to contribute pollutants to stormwater discharges, and identified in the SWMP if found to have such potential: (1) all disturbed and stored soils ..."

Part I. C. 3. (c) of the Stormwater 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. 1. of the Stormwater Permit, which states in part, "(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. 2. of the Stormwater 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. 5. (c) of the Stormwater 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 ..."

Part I. D. 6. (b) (2) of the Stormwater Permit, which states in part, "The permittee shall keep a record of inspections ... At a minimum, the inspection report must include: ... ii) Name(s) and title(s) of personnel making the inspection; ... 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."

Part I. D. 7. of the Stormwater 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 II. B. 2. of the Stormwater Permit, which states in part, "The permittee shall furnish to the Division, within the time frame specified by the Division, any information which the Division may request to determine whether cause exists for modifying, revoking and reissuing, or inactivating coverage under this permit, or to determine compliance with this permit."

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

Part I. B. 2. of the Dewatering Permit, which states in part, "The permittee must monitor the effluent for all listed effluent parameters at the frequency and sample types specified in Table B.1 or B.2 below as applicable to the outfall(s) ... All required monitoring will begin immediately and last for the life of the permit unless otherwise noted ..."

Part I. C. 2. (a) of the Dewatering Permit, which states in part, "The permittee shall implement pollutant control practices to meet the effluent limitations contained in this permit. The pollutant control practices must be selected, designed, installed, implemented and maintained in accordance with good engineering, hydrologic, pollution control practices, and the manufacturer's specifications including installation and implementation specifications, where applicable ..."

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

Part I. E. 2. of the Dewatering Permit, which states in part, "DMRs for all outfalls must be submitted monthly as long as the certification is in effect. DMRs must be submitted for each outfall even if there was not a discharge from the outfall in a given month. For each outfall where no discharge occurs in a given month, the permittee shall mark 'No Discharge' on the DMR form(s) ..."

Part II. A. 9. of the Dewatering Permit, which states in part, "The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee as necessary to achieve compliance with the conditions 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., CMS is hereby ordered to:

49. 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, the Stormwater Permit, and the Dewatering Permit.

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

50. CMS must immediately evaluate the Project's SWMP and implement necessary measures to ensure the SWMP contains all elements required by the Stormwater Permit and is effective in managing pollutant discharges from the Project. Within thirty (30) calendar days of receipt of this Order, CMS must submit a written certification to the Division stating that a complete, effective, and up-to-date SWMP is fully developed and implemented at the Project.
51. CMS must immediately ensure control measures are in place to prevent pollutant discharges from the Project. This includes stabilizing or protecting all disturbed areas at the Project with a system of erosion and sediment control practices selected, designed, installed, and maintained following good engineering, hydrologic, and pollution control practices. Within thirty (30) calendar days of receipt of this Order, CMS must evaluate and modify all control measures at the Project to ensure they meet the installation and implementation requirements specified in the Project's complete and up-to-date SWMP. Within thirty (30) calendar days of receipt of this Order, CMS must submit photographs to the Division documenting current conditions at the site and the associated control measures implemented at the Project.
52. Within thirty (30) calendar days of receipt of this Order, CMS must submit all delinquent DMRs, as well as records of its effluent discharge monitoring for the periods April 1, 2015 to April 30, 2015 and June 1, 2015 to September 30, 2015. The records must include all laboratory data reports, all field measurement reports, and all calibration and maintenance records, including all other information required to be maintained by Part I. E. 5. of the Dewatering Permit. The records must also include all discharge logs for each permitted outfall required to be maintained by Part I. C. 1. of the Dewatering Permit. The records must be legible and understandable.

NOTICES AND SUBMITTALS

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

Lindsay Ellis
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) 692-2271
Email: lindsay.ellis@state.co.us

54. For any person submitting documents, plans, records, and reports pursuant to this Notice of Violation / Cease and Desist Order, that person must 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

55. Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11, CMS must 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 must be filed no later than thirty (30) calendar days after receipt of this action.
56. 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 must 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 must be deemed established in any subsequent Department proceeding. The request for hearing, if any, must 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

57. 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

58. CMS 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

59. Pursuant to §25-8-601, C.R.S., CMS 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, must 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

60. 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.
61. For further clarification of CMS's rights and obligations under this Notice of Violation / Cease and Desist Order, CMS 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 30th day of March, 2016.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Nicole Rowan, P.E.
Clean Water Program Manager
WATER QUALITY CONTROL DIVISION