



COLORADO

Department of Public
Health & Environment

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

July 1, 2016

The Corporation Company, Registered Agent
Clark Construction Group, LLC
1675 Broadway Suite 1200
Denver, Colorado 80202

Certified Mail Number: 7014 2870 0000 7699 5290

RE: Service of Notice of Violation/Cease and Desist Order, Number: IO-160701-1

Dear Sir or Madam:

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

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

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

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



Should you or representatives of Clark Construction Group, LLC desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO, please do not hesitate to contact me by phone at (303) 692-6498 or by electronic mail at andrea.beebout@state.co.us.

Sincerely,



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

Enclosure(s)

cc: Enforcement File

ec: Michael Boeglin, EPA Region VIII
Gregg Thomas, Denver Environmental Health
Aimee Konowal, Watershed Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Doug Camrud, Engineering Section, CDPHE
Kelly Jacques, Field Services Section, CDPHE
Lillian Gonzalez, Permits Section, CDPHE
Tania Watson, Compliance Assurance, CDPHE
Nathan Moore, Clean Water Compliance Unit, CDPHE
Megan Shirley, Clean Water Compliance Unit, CDPHE



COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST ORDER NUMBER: IO-160701-1

IN THE MATTER OF: CLARK CONSTRUCTION GROUP, LLC
 CDPS GENERAL PERMIT NUMBER: COG315000
 CERTIFICATION NUMBER: COG315339
 DENVER COUNTY, COLORADO

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the violations cited herein, Clark Construction Group, LLC ("Clark Construction") was a Maryland limited liability corporation in good standing and registered to conduct business in the state of Colorado.
2. Clark Construction 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 or about May 22, 2015, Clark Construction initiated construction dewatering activities from construction of the Confluence Park Apartments, a residential development with below-grade parking, located at approximately 39.7541 N, -105.0075 W within the City and County of Denver, Colorado (the "Project").
4. The Project is subject to Colorado Discharge Permit System ("CDPS") General Permit Number COG315000, for Remediation Activities Discharging to Surface Water (the "Permit"). The current version of the Permit became effective October 1, 2011 and is set to expire September 30, 2016.
5. On November 4, 2014, the Division received an application from Clark Construction for coverage under the Permit. The application was signed by a representative of Clark Construction. By signing the application, Clark Construction certified the information submitted was true, accurate, and complete.

6. The November 4, 2014 application stated that wastewater from construction dewatering activities associated with the Project would enter a storm sewer located at the corner of Little Raven Street west of 15th Avenue and subsequently discharge into Cherry Creek. No additional outfalls or receiving waters were identified in the application.
7. On January 29, 2015, the Division provided Clark Construction Certification Number COG315339 authorizing Clark Construction to discharge treated wastewater from the construction dewatering activities associated with the Project through Outfall 001A to Cherry Creek via a storm sewer located at the corner of Little Raven Street west of 15th Avenue under the terms and conditions of the Permit (the "Cherry Creek Certification"). The Cherry Creek Certification became effective under the Permit on January 29, 2015 and was set to expire September 30, 2016.
8. Pursuant to 5 CCR 1002-61, §61.8, Clark Construction must comply with all terms and conditions of the Permit, and violations of such terms and conditions as specified in the Permit may be subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.
9. On January 6, 2016, 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 Clark Construction's compliance with the Water Quality Control Act, the Permit, and the Cherry Creek Certification. During the inspection, the Inspector interviewed Project representatives, reviewed the Project's remediation activity and discharge records, and performed a physical inspection of the Project.

Unauthorized Discharge Location

10. Pursuant to §25-8-501(1), C.R.S. and 5 CCR 1002-61, §61.3(1)(a), no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article.
11. Pursuant to Part II.A.8. of the Permit, any discharge to waters of the State from a point source other than specifically authorized by the Permit and a certification is prohibited.
12. During the January 6, 2016 inspection, the Inspector observed the wastewater from construction dewatering activities associated with the Project flowed through the City of Denver's Municipal Separate Storm Sewer System (the "MS4") and ultimately discharged into the South Platte River, not Cherry Creek. Further review of MS4 records establish that the inlet on Little Raven Street and 15th Street connects to a portion of the MS4 that terminates into the South Platte River (the "Little Raven Inlet"), not Cherry Creek.
13. The Division has determined that between May 22, 2015 and January 21, 2016, Clark Construction discharged dewatering effluent from the Project to the South Platte River via the Little Raven Inlet without authorization to do so under the Permit and a certification.
14. The construction dewatering effluent contained, among other substances, the following: suspended solids, oil and grease, arsenic, iron, lead, manganese, selenium, benzene and chlorine, which are "pollutants" as defined by §25-8-103(15), C.R.S., and its implementing permit regulation 5 CCR 1002-61, §61.2 (76).
15. Division records establish that Clark Construction's dewatering effluent contained the following pollutant concentrations, which exceeded the water quality standards in 5 CCR 1002-31 and 5 CCR

1002-38 (South Platte River Basin):

CLARK CONSTRUCTION EFFLUENT SELF-MONITORING DATA		
Parameter/Monitoring Period	Sample Measurement	
Total Suspended Solids	30-DAY AVG. STANDARD=30mg/l	7-DAY AVG. LIMIT=45mg/l
June 1, 2015-June 30, 2015	74	168
July 1, 2015-July 31, 2015	44	78
August 1, 2015-August 30, 2015	34	70
October 1, 2015-October 31, 2015	--	79
Total Recoverable Arsenic	30-DAY AVG. STANDARD=3ug/l	--
June 1, 2015-June 30, 2015	7.45	--
July 1, 2015-July 31, 2015	6.5	--
August 1, 2015-August 31, 2015	3.98	--
October 1, 2015-October 31, 2015	10.68	--
December 1, 2015-December 31, 2015	5.97	--
January 1, 2016-January 22, 2016	15.07	--
Total Recoverable Iron	30-DAY AVG. STANDARD=1000ug/l	--
June 1, 2015-June 30, 2015	2300	--
Dissolved Manganese	30-DAY AVG. STANDARD=190ug/l	--
October 1, 2015-October 31, 2015	219	--
Potentially Dissolved Selenium	30-DAY AVG. STANDARD=4.6ug/l	--
January 1, 2016-January 22, 2016	5.95	--
Oil and Grease	INSTANTANEOUS MAX STANDARD=10mg/l	--
August 1, 2015-August 31, 2015	51.6	--
Benzene	30-DAY AVG STANDARD=2.2ug/l	--
January 1, 2016-January 22, 2016	2.68	--

16. The South Platte River is “state waters” as defined by §25-8-103(19), C.R.S., and its implementing permit regulation, 5 CCR 1002-61, §61.2(102).
17. The pipe, curb inlet, and storm sewer associated with the Project, as it relates to the discharge events identified in paragraph 12 above, is each a “point source” as defined by §25-8-103(14) C.R.S., and its implementing permit regulation, 5 CCR 1002-61, §61.2(75).
18. Clark Construction’s discharge of suspended solids, oil and grease, arsenic, iron, lead, manganese, and chlorine into the South Platte River constitutes a “discharge of pollutants” as defined by §25-8-103(3).
19. Clark Construction did not have any other permits authorizing the discharge of pollutants from the Project to the South Platte River between May 22, 2015 and January 21, 2016.

20. Clark Construction's discharge of pollutants into the South Platte River between May 22, 2015 and January 21, 2016 constitutes an unauthorized discharge of pollutants from a point source into state waters in violation of §25-8-501(1), C.R.S., 5 CCR 1002-61, §61.3(1)(a), and Part II.A.8. of the Permit.
21. On January 20, 2016, the Division received an application from Clark Construction to change the final discharge location authorized under the Permit from Cherry Creek to the South Platte River to correctly reflect the configuration of the MS4.
22. On January 22, 2016, the Division modified and reissued Certification Number COG315339 authorizing Clark Construction to discharge treated wastewater from the construction dewatering activities associated with the Project through Outfall 001A to the South Platte River via a storm sewer located at the corner of Little Raven Street west of 15th Avenue under the terms and conditions of the Permit (the "South Platte Certification"). The South Platte Certification became effective January 22, 2016 and remains in effect until September 30, 2016 or until Clark Construction inactivates Permit coverage.

Failure to Comply with Permit Effluent Limitations

23. Pursuant to Part I.B.2. of the Permit and the South Platte Certification, Clark Construction's permitted discharge at Outfall 001A shall not exceed, among others not subject of this action, the following effluent discharge limitations specified below:

CLARK CONSTRUCTION EFFLUENT DISCHARGE LIMITATIONS				
Parameter	Units	Discharge Limitations		
		30-day Average	7-day Average	Daily Max.
Total Recoverable Arsenic	µg/l	3	N/A	N/A
Potentially Dissolved Selenium	µg/l	4.6	N/A	18.4
Benzene	µg/l	2.2	N/A	5300

24. Pursuant to Part I.B.2. of the Permit and the South Platte Certification, Clark Construction is required to monitor defined effluent parameters at specified frequencies to provide an indication of compliance or non-compliance with the effluent limitations of the Permit and the South Platte Certification.
25. Pursuant to Part I.E.1. of the Permit, Clark Construction is required to summarize and report the analytical results of its effluent monitoring to the Division via monthly discharge monitoring reports ("DMRs"). Each DMR shall include a certification by Clark Construction that the information provided therein is true, accurate, and complete to the knowledge and belief of Clark Construction.
26. Clark Construction's DMRs include, among other information and data, the following effluent concentration data, which exceeded the effluent limitations in Part I.B.2. of the Permit and the South Platte Certification:

CLARK CONSTRUCTION EFFLUENT SELF-MONITORING DATA	
DISCHARGE MONITORING REPORTING PERIOD	SAMPLE MEASUREMENTS FOR OUTFALL 001A
Arsenic (Total Recoverable), ug/l	30-DAY AVERAGE LIMIT=3ug/l
January 23, 2016–January 31, 2016	15.07
February 1, 2016–February 29, 2016	10
March 1, 2016–March 31, 2016	5.8
Selenium (Potentially Dissolved), ug/l	30-DAY AVERAGE LIMIT=4.6ug/l
January 23, 2016–January 31, 2016	5.95
February 1, 2016–February 29, 2016	5.9
Benzene, ug/l	30-DAY AVERAGE LIMIT=2.2ug/l
January 23, 2016–January 31, 2016	2.68
February 1, 2016–February 29, 2016	3
March 1, 2016–March 31, 2016	2.6

27. Arsenic, selenium, and benzene are “pollutants, as defined by §25-8-103, C.R.S. and its implementing permit regulation 5 CCR 1002-61, §61.2(76).
28. The Permit and the South Platte Certification do not authorize the pollutant levels identified above in paragraph 26. Division records establish that Clark Construction does not have any other permit authorizing such discharges into State Waters.
29. Clark Construction’s failure to comply with the effluent limitations constitutes violations of Part I.B.2. of the Permit and the South Platte Certification.

Failure to Comply with Permit Reporting Requirement and Failure to Prevent Discharge

30. Pursuant to Part I.B.3. of the Permit, Clark Construction is required to monitor the influent for all listed parameters at the frequency and sample types identified in the Permit. In addition, Clark Construction must follow the procedures identified in Part I.C.6. of the Permit if there is a potential exceedance of a water quality standard at the permitted outfall, for a parameter not subject to an effluent limit.
31. Pursuant to Part I.C.6 of the Permit, if at any time Clark Construction becomes aware that, at the permitted outfall, pollutant concentrations for an effluent parameter not subject to an effluent limitation in the Permit or a certification exceeds any applicable water quality standard for the receiving water, Clark Construction shall halt or reduce activity to prevent discharge, notify the division within 24 hours, and mail a written report to the Division containing all relevant monitoring data.
32. Pursuant to Part II.A.2. of the Permit, for any pollutant for which monitoring requirements are not included in the permit certification, Clark Construction shall notify the Division as soon as it becomes aware the pollutant(s) are present in the source water, influent, or effluent in concentrations greater than originally identified in the application.

33. Clark Construction’s Influent Screening Data include, among other information and data, the following influent concentration data establishing pollutants present in the influent in concentrations greater than originally identified in Clark Construction’s permit application:

CLARK CONSTRUCTION INFLUENT SELF-MONITORING DATA		
Parameter/Date of Lab Results	Sample Measurement	Date Received by Division
Benzene	COSPUS14 WATER QUALITY STANDARD=2.2ug/l	
September 21, 2015	29ug/l	October 26, 2015
December 28, 2015	8.1ug/l	January 19, 2016
Naphthalene	COSPUS14 WATER QUALITY STANDARD=140ug/l	
September 21, 2015	220ug/l	October 26, 2015
Total Recoverable Arsenic	COSPUS14 WATER QUALITY STANDARD=3ug/l	
September 21, 2015	18.5ug/l	October 26, 2015
Dissolved Iron	COSPUS14 WATER QUALITY STANDARD=300ug/l	
September 21, 2015	828ug/l	October 26, 2015
December 28, 2015	1830ug/l	January 19, 2016

34. Division records, supplemented by the daily discharge logs provided by Clark Construction, establish that discharge flow rates at the Project were consistent from May 22, 2015 through December 31, 2015 and Clark Construction did not halt or reduce activity to prevent discharge subsequent to receiving the lab results outlined in Paragraph 33. In addition, Clark Construction failed to notify the Division within 24 hours subsequent to receiving the lab results outlined in Paragraph 33.
35. Clark Construction’s failure to halt or reduce activity and report exceedances of water quality standards within 24 hours, as identified above in paragraphs 33 and 34, constitutes a violation of Part I.C.6. of the Permit.
36. Clark Construction’s failure to notify the Division as soon as possible of pollutants present in the influent at concentrations greater than originally identified in the Permit application constitutes a violation of Part II.A.2. of the Permit.

Failure to Properly Monitor and Report

37. Pursuant to Part I.E.1. of the Permit, Clark Construction is required to summarize and report the analytical results of its effluent monitoring to the Division via monthly DMRs. The Permit specifies that the DMRs shall be filled out accurately and completely in accordance with the requirements of the permit. Clark Construction is required to ensure the DMRs are mailed to the Division so that they are received by the Division no later than the 28th day of the month following the reporting period. The Permit specifies that if no discharge occurs during the reporting period, “No Discharge” shall be reported on the DMR.
38. Pursuant to Part I.B.2. of the Permit, the Cherry Creek Certification and the South Platte Certification, Clark Construction is required to monitor effluent flow at Outfall 001A via a

continuous flow measuring device equipped with a chart recorder or totalizer and report the results of the monitoring to the Division via monthly DMRs.

39. Pursuant to Part I.E.2. of the Permit, samples and measurements taken shall be representative of the volume and nature of the monitored discharge.
40. Pursuant to Part I.E.6. of the Permit, within ninety (90) days after the effective date of the permit, a flow measuring device must be installed.
41. Division records, supplemented by discharge log and sampling records provided by Clark Construction, establish that Clark Construction failed to monitor effluent flow at Outfall 001A via a continuous flow measuring device equipped with a chart recorder or totalizer between April 29, 2015 and January 24, 2016. Rather, Clark Construction obtained instantaneous weekly flow values.
42. Division records establish that Clark Construction failed to submit DMRs to the Division by the 28th day of the month following the end of the reporting periods identified in the table below:

CLARK CONSTRUCTION LATE DISCHARGE MONITORING REPORTS			
DMR REPORTING PERIOD	OUTFALL NUMBER	DMR DUE DATE	DMR RECEIPT DATE
January 29, 2015–January 31, 2015	001A	2/28/2015	6/2/2015
February 1, 2015–February 28, 2015	001A	3/28/2015	6/2/2015
March 1, 2015–March 31, 2015	001A	4/28/2015	6/2/2015
April 1, 2015–April 30, 2015	001A	5/28/2015	6/2/2015
June 1, 2015–June 30, 2015	001A	7/28/2015	8/3/2015
December 1, 2015–December 31, 2015	001A	1/28/2016	2/3/2016
January 22, 2016–January 31, 2016	001A	2/28/2016	4/4/2016
February 1, 2016–February 29, 2016	001A	3/28/2016	4/4/2016

43. Clark Construction’s failure to properly monitor flow, as identified above in Paragraph 41, constitutes a violation of Part I.B.2., I.E.2. and I.E.6. of the Permit, the Cherry Creek Certification, and the South Platte Certification.
44. Clark Construction’s failure to submit DMRs to the Division so that they are received by no later than the 28th day of the month following the reporting period constitutes violations of Part I.E.1. of the Permit.

Deficient and/or Incomplete Remediation Activities Management

45. Pursuant to Part I.C.3. of the Permit, Clark Construction is required to develop and implement remediation activities at the Project in accordance with permit requirements. The remediation activities shall be documented in a Remediation Activities Management Plan (“Plan”). The activities shall include the following:
- a. **Pollutant Control Practices:** The permittee shall implement pollutant control practices to meet all numeric effluent limitations in accordance with good engineering, hydrologic, and pollution control practices. Specifically, the permittee must ensure all pollutant control practices are designed, implemented, and maintained with proper hydraulic and pollutant removal capacity to ensure consistent compliance with the permit effluent limits.
 - b. **Materials Handling and Spill Prevention:** The permittee shall implement practices for material handling and spill prevention to prevent discharges that contain effluent parameter concentrations which exceed the limitations specified in the Permit and the certification, as well as discharges not authorized by a CDPS discharge permit. The permittee shall implement secondary containment for all bulk storage structures for petroleum products and any other chemicals associated with the pollutant control practices (e.g., fuel for pumps, chemicals used in the treatment process), or provide equivalent adequate protection so as to contain all spills and prevent any spilled materials from entering the effluent stream or State waters.
46. Pursuant to Part I.C.4.a. of the Permit, the Plan shall document the following information:
- a. **Plan Administrator:** The Plan shall identify a specific individual(s), position or title who is responsible for developing, implementing, maintaining and revising the Plan.
 - b. **Facility Certified Operator:** The Plan shall identify a specific individual holding a certificate that meets the requirements of Regulation 100.
 - c. **Site Map:** The Plan shall include a legible site map(s), showing the entire site, identifying:
 - i. The source of the discharge or dewatering excavations (if applicable)—dewatering excavations can be described as locations where ground disturbing activities result in uncovering of groundwater
 - ii. Containment Location(s) if present
 - iii. Location of structural treatment practices, including but not limited to tanks, filter systems, etc.
 - iv. Sampling Locations
 - v. Discharge Point(s)/Outfall(s)
 - vi. Identification of conveyance into which the discharge point(s)/outfall(s) are directed (e.g. surface water, storm sewer, ditch, etc.)
 - d. **Description of Pollutant Control Practices:** The Plan shall describe the installation and implementation specifications for each practice implemented in accordance with Part I.C.3.a. The description shall address the proper implementation and operation of the practice. The description shall include general information related to hydraulic and pollutant removal capacity of the pollutant treatment system, with related monitoring practices used to document the capability of the treatment practices to remove pollutants, including residual solids treatment, handling and disposal practices. The Plan shall clearly describe the inspection and maintenance procedures implemented at the site to maintain all pollutant control practices in good and effective operating condition.
 - e. **Description of Materials Handling and Spill Prevention:** The Plan shall identify the practices implemented for Materials Handling and Spill Prevention in accordance with Part I.C.3.b.

The description shall identify the capacity and location of secondary containment implemented for all bulk storage structures. If equivalent adequate protection is implemented in lieu of secondary containment, the plan shall provide a description of the practices to be used.

47. Pursuant to Part I.C.4.b. of the Permit, the Plan shall be prepared prior to commencing the discharge. The Plan shall be implemented at the Project and updated as necessary to reflect current site conditions until expiration or inactivation of permit coverage.
48. During the January 6, 2016 inspection, the Inspector reviewed the Clark Construction's Plan and identified the following deficiencies, as described in paragraphs 48(a-d) below:
 - a. The site map included with the Plan did not identify the location of the source of the discharge or the dewatering excavations. Additionally, the site map did not identify the conveyance into which the discharge was directed.
 - b. The Plan did not specifically identify the hydraulic and pollutant removal capacity of the system. The wastewater treatment system implemented at the Project consisted of several filter units as well as chemical treatment within a frac tank as a pollution control practice. The Plan did not include quantities of chemicals added for treatment, the residence time obtained in the frac tank prior to discharge, or details on the underdrain sump area from which the source water was being pumped.
 - c. The Plan did not adequately describe the process used to manage and dispose of residual solids and waste chemicals. Specifically, the Plan directed Clark Construction to capture residual solids and waste chemicals resulting from wastewater treatment and store them on site, however it did not discuss how they will be disposed. Additionally, the Plan did not discuss how drums should be stored to prevent overflow, leaks, and spills.
 - d. The materials handling and spill prevention practices included with the Plan were inadequate and were not developed in accordance with good engineering, hydrologic, and pollution control practices. Specifically, the Plan did not identify the need for secondary containment for bulk storage of chemicals. In addition, the Plan identified rock socks as an adequate control measure for potential chemical spills. A specification for rock socks was not provided within the Plan. According to widely accepted industry standards and guidance, including the Urban Drainage and Flood Control District and Dandy Products, rock socks/ dandy bags are designed to control localized silt, sediment, and debris loading, not chemicals.
49. During the January 6, 2016 inspection, the Inspector identified the following deficiencies related to the implementation and maintenance of remediation practices at the Project, as described paragraphs 49(a-b) below:
 - a. Rock socks and rubber wattles were installed around the treatment system in an attempt to provide spill containment, however, neither of these control measures are designed to filter dissolved pollutants. Potential spills from the treatment system would contain dissolved pollutants from contaminated groundwater and/or from chemicals utilized for wastewater treatment. According to widely accepted industry standards and guidance, including the Urban Drainage and Flood Control District, rock socks are designed to control localized sediment loading, not chemicals. No additional control measures to remove dissolved pollutants were implemented around the treatment system.

- b. Three chemical storage containers and two 55 gallon drums containing residual sludge from wastewater treatment were observed at the Project without secondary containment. The Plan identified pools or tubs available on-site for secondary containment, however these were not observed at the Project at the time of inspection. No additional control measures to prevent spills from discharging offsite were implemented at the Project.
50. The Division has determined that Clark Construction failed to develop and implement adequate remediation practices for the Project in accordance with the requirements of the Permit.
51. The Division has determined that Clark Construction failed to develop and implement a complete Plan for the Project.
52. Clark Construction's failure to develop and implement adequate remediation practices and develop and implement a complete Plan for the Project constitutes violations of Parts I.C.3., I.C.4.a. and I.C.4.b. of the Permit.

Deficient and/or Incomplete Monitoring Records

53. Pursuant to Part I.C.5. of the Permit, Clark Construction shall maintain a weekly discharge log identifying for each week (Sunday through Saturday) the following information for each permitted outfall:
- a. The dates and times when a discharge commences and/or ends;
 - b. Monitoring Records as required in Part I.E.4.
54. Pursuant to Part I.E.4. of the Permit, Clark Construction shall establish and maintain records. These records shall include the following:
- a. The date, type, exact location, and time of sampling or measurements;
 - b. The individual(s) who performed the sampling or measurements;
 - c. The date(s) the analyses were performed;
 - d. The individual(s) who performed the analyses;
 - e. The analytical techniques or methods used;
 - f. The results of such analyses; and
 - g. Any other observations which may result in an impact on the quality or quantity of the discharge as indicated in 40 CFR 122.44(i)(1)(iii).
55. Pursuant to Part I.E.4. of the Permit, Clark Construction shall retain for a minimum of three years records of all monitoring information, all calibration and maintenance records, laboratory data sheets, copies of all reports required by the Permit and records of all data used to complete the application for the Permit. These records must be maintained at the Project during active treatment.
56. During the January 6, 2016 inspection, the Inspector reviewed Clark Construction's records and determined that all required records were not available and/or maintained at the Project, as described in paragraph 56(a-d) below:
- a. The records did not include the weekly discharge log with the dates and times when a discharge commenced and/or ended.

- b. The monitoring records did not include the type, exact location, and time of sampling.
 - c. The monitoring records did not include the date analyses were performed for samples.
 - d. The monitoring records did not identify who the individual was performing the analyses or the analytical techniques or methods used.
57. Following the January 6, 2016 inspection, Clark Construction submitted some of the missing records identified above in paragraph 56, however they contained the following deficiencies, as described in paragraphs 57(a-c) below:
- a. The monitoring records did not include the exact location of sampling.
 - b. The monitoring records did not include the date analyses were performed.
 - c. All sampling results and analytical data were not provided.
58. Clark Construction's failure to maintain a discharge log and establish and maintain complete and accurate records constitutes violations of Part I.C.5. and Part I.E.4. of the Permit.

NOTICE OF VIOLATION

59. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified the Division has determined Clark Construction has violated the following sections of the Colorado Water Quality Control Act's, its implementing permit regulations and the Permit.

Section 25-8-501(1), C.R.S., which states in part, "No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article..."

5 CCR 1002-61, §61.3(1)(a), which states in part, "No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge..."

Part II.A.8. of the Permit, which states, "Any discharge to waters of the State from a point source other than specifically authorized by this permit is prohibited."

Part I.C.6. of the Permit, which states in part, "If at any time the permittee becomes aware that at the permitted outfall, pollutant concentrations for an effluent parameter **not** subject to an effluent limitation in Part I.B. or the permit certification exceeds any applicable water quality standard for the receiving water, the permittee shall...halt or reduce any activity if necessary to prevent discharge...report the exceedance...orally within twenty-four (24) hours...mail a written report to the Division...within five (5) days after becoming aware of the exceedance..."

Part II.A.2. of the Permit, which states in part, "Notice is required when...For any pollutant for which monitoring requirements are not included in the permit certification, the permittee shall notify the Division as soon as it becomes aware that the pollutant(s) are present in the source water, influent, or effluent in concentrations greater than originally identified in the application..."

Part I.B.2. of the Permit and the South Platte Certification, which states in part, “In accordance with the Water Quality Control Commission Regulations for Effluent Limitations, Section 62.4, and the Colorado Discharge Permit System Regulations, Section 61.8(2), 5 CCR 1002-61, the permitted discharge shall not contain effluent parameter concentrations which exceed the limitations specified in Table B.1. or B.2. and the permit certification...The permittee must monitor the effluent for all listed parameters at the frequency and sample types specified in Table B.1. or B.2. below...”

Part I.E.1. of the 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...If no discharge occurs during the reporting period, “No Discharge” shall be reported on the DMR...”

Part I.E.2. of the Permit, which states in part, “Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge...”

Part I.E.6. of the Permit, which states in part, “... within ninety (90) days after the effective date of the permit, a flow measuring device shall be installed to give representative values of effluent quantities...”

Part I.C.3. of the Permit, which states in part, “The permittee shall develop and implement remediation activities practices for each facility covered by this permit in accordance with the requirements of this section. The remediation activities practices shall be documented in a Remediation Activities Management Plan in accordance with I.C.4. The practices shall include...”

Part I.C.4.a. of the Permit, which states in part, “Remediation Activities Management Plan (Plan) shall document the following information...”

Part I.C.4.b. of the Permit, which states in part, “... the Plan shall be completed and documented prior to commencement of the discharge. The Plan shall be maintained and implemented until expiration or inactivation of permit coverage.”

Part I.C.5. of the Permit, which states in part, “The permittee shall maintain a documented weekly Discharge Log identifying for each week (Sunday through Saturday) the following information for each permitted outfall...”

Part I.E.4. of the Permit, which states in part, “The permittee shall establish and maintain records. The records shall include the following...These records must be retained at the facility during active treatment...”

REQUIRED CORRECTIVE ACTION

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

60. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 through

25-8-803, C.R.S., its implementing regulations promulgated thereto and the Permit.

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

61. Within thirty (30) calendar days of receipt of this Order, Clark Construction shall review the requirements of the Permit and the South Platte Certification with its staff responsible for ensuring compliance with the terms and conditions of the Permit and the South Platte Certification. The review shall focus on, but not be limited to, 1) the effluent limitations imposed by the Permit and the South Platte Certification, 2) the influent and effluent monitoring requirements of the Permit and the South Platte Certification, 3) the record keeping requirements of the Permit, 4) the reporting requirements of the Permit, and 5) the noncompliance notification procedures required by the Permit. Within forty-five (45) calendar days of receipt of this Order, Clark Construction shall submit a written plan outlining Clark Construction's actions to ensure compliance with the terms and conditions of the Permit and the South Platte Certification. The plan shall include, but not be limited to: mechanisms to ensure influent and effluent monitoring is conducted in accordance with the Permit and the South Platte Certification and mechanisms to ensure accurate and complete DMRs are submitted to the Division by no later than the 28th day of the month following the end of the reporting period, with consideration being given to applying for approval for the electronic submission of DMRs through the Network Discharge Monitoring Report System (NetDMR).
62. Clark Construction shall immediately evaluate remediation activities management at the Project, specifically including the remediation practices themselves and the Project's Plan. Clark Construction shall immediately implement adequate remediation practices (see Part I.C.3. of the Permit). Clark Construction shall also take measures to ensure the Plan contains all of the elements required by the Permit (see Part I.C.4.a. of the Permit). Within thirty (30) calendar days of receipt of this Order, Clark Construction shall submit written certification to the Division stating that the remediation practices implemented at the Project are effective in managing pollutant discharges from the Project, and that a complete, effective, and up-to-date Plan has been fully developed and implemented at the Project.
63. Within thirty (30) calendar days of the date of this Order, Clark Construction shall retain a qualified individual or entity experienced in industrial wastewater treatment to evaluate the dewatering system at the Project and recommend measures to ensure compliance with the Permit and the South Platte Certification. The evaluation shall include, but not be limited to, an investigation of potential pollutant sources and associated wastewater treatment options, alternate wastewater handling strategies, and/or potential permit modifications, if applicable.
64. Within forty-five (45) calendar days of the date of this Order, Clark Construction shall provide documentation to the Division that it has retained the services of the qualified individual or entity described in paragraph 63. The documentation shall include, at a minimum, a copy of the individual or entity's qualifications and a copy of the written contract or agreement for such services, including a copy of the scope of services to be provided.
65. Within sixty (60) calendar days of the date of this Order, Clark Construction shall submit to the Division a final report on the findings of the evaluation required by paragraph 61. Along with the findings of the evaluation, the report must include a final plan and time schedule for the implementation of specific wastewater treatment and/or alternate wastewater handling strategies that Clark Construction will undertake to ensure that the subterranean dewatering system at the Project reliably and consistently produces effluent in compliance with the Permit and South Platte

Certification effluent limitations. The implementation and time schedule submitted must identify completion of all measures by no later than August 31, 2016. The measures and time schedule submitted shall become a condition of this Order, and Clark Construction shall implement the measures and time schedule as submitted unless notified by the Division, in writing, that alternate measures and/or time schedules are appropriate. If the Division imposes alternate measures and/or time schedules they shall also become a condition of this Order.

66. If Clark Construction becomes aware of any situation or circumstances that cause Clark Construction to become unable to comply with any condition or time schedules set forth by this Order, Clark Construction shall provide written notice to the Division within five (5) calendar days of Clark Construction becoming aware of such circumstances. Clark Construction's notice shall describe what, if any, impacts will occur on Clark Construction's ability to comply with the Colorado Water Quality Control Act and any impacts on the remaining conditions and/or time schedules specified by this Order, and what steps are being taken to mitigate the impacts.
67. All documents submitted under this Order shall use the same titles as stated in this Order, and shall reference both the number of this Order and the number of the paragraph pursuant to which the document is required. Within thirty (30) calendar days of receiving Division comments on submitted documents, Clark Construction shall revise the submitted document(s) to properly address the Division's comments and resubmit the document(s) for Division review.

NOTICES AND SUBMITTALS

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

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

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

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

OBLIGATION TO ANSWER AND REQUEST FOR HEARING

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

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

FALSIFICATION AND TAMPERING

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

POTENTIAL CIVIL AND CRIMINAL PENALTIES

You are also advised that any person who violates any provision of the Colorado Water Quality Control Act (the "Act"), §§25-8-101 to 803, C.R.S., or of any permit issued under the Act, or any control regulation promulgated pursuant to the Act, or any final cease and desist order or clean-up order issued by the Division shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution if such discharge is made without a permit, if a permit is required by the Act for such discharge, or if such discharge is made in violation of any permit issued under the Act or in violation of any Cease and Desist Order or Clean-up Order issued by the Division. By virtue of issuing this Notice of Violation / Cease and Desist Order, the State has not waived its right to bring an action for penalties under §§25-8-608 and 609, C.R.S, and may bring such action in the future.

RELEASE OR DISCHARGE NOTIFICATION

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

EFFECT OF ORDER

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

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

Issued at Denver, Colorado, this 10 day of ~~June~~^{July}, 2016.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



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

Remediation Discharging to Surface Water**Division Inspection Report****Report Date:** January 19, 2016

Cert. No.	COG315339	Permittee:	Clark Construction Group LLC
Facility:	Confluence Park Apartment	Address:	2166 15 St, Denver 80202
Legal Contact:	Marty Haaland, Const. Exec.	Facility Contact:	Matthew Lee, Proj. Engineer

Cert. Date:	January 29, 2015	Dewatering Start:	May 22, 2015
Receiving Water:	Cherry Creek	# of Outfalls:	1, 001-A
Permitted Outfall Description:	001-A: Discharge to storm sewer on Little Raven Street, west of 15 th Avenue which flows into Cherry Creek.		

Inspector(s): Megan Shirley/WQCD**Persons Present:** Mark Pollock, Andrea Beebout/WQCD; Brennen Rader, Matt Lee/Clark; Joseph Wiley/TerraFirma; James Weeks, Dusty Dahmer/BakerCorp**Inspection Findings**

The Water Quality Control Division inspector held a closing conference at the conclusion of the inspection, during which the inspector reviewed all alleged inspection findings with the facility representatives. The inspector communicated the division's expectation that the facility representative initiate corrective actions, immediately, for all alleged inspection findings, in accordance with the provisions of the CDPS General Permit for Remediation Activities Discharging to Surface Water.

Note 1: The division conducted an inspection of the remediation activities discharging to surface water at the Confluence Park Apartment development, certification number COG315339, on January 6, 2016. The inspection began at 12:30 PM and concluded at 2:30 PM.

Note 2: In a communication with the permittee prior to the inspection, the division inspector requested an additional copy of the Remediation Activities Management Plan, discharge log, monitoring records, sampling results, and supporting documents be provided to division personnel at the inspection. The copy of the above information was provided to the division inspector on January 6, 2016 at the time of the inspection.

Note 3: The permit certification effective date was January 29, 2015. The date that dewatering activities commenced was May 22, 2015 as provided by Joseph Wiley, TerraFirma.

Note 4: The permit certification for this facility identifies one outfall location discharging to surface waters, 001-A. The description for this outfall identifies that discharges are to a storm sewer inlet on Little Raven Street, west of 15th Avenue, which flows into Cherry Creek. This description was provided by the permittee in the application process. However, a schematic of the Denver municipal storm sewer system, provided by the City and County of Denver Public Works Department, identifies that the inlet into which the permittee is discharging heads northeast along Little Raven St, turning northwest along 15th St, and then generally north to the Confluence Park area where it outfalls to the South Platte River. Approximate coordinates of the outfall to the South Platte River are 39.755315, -105.007341. Appendix A provides a copy of the municipal storm sewer system map.

Note 5: The division notified the permittee at the time of the inspection (01/06/16) that they were not authorized to discharge to the South Platte River and therefore are required to submit a modification request to the division immediately. Until the modification is approved and effective, discharges are not authorized to the South Platte River. It is the division's expectation that the permittee cease all unauthorized point source discharges.

Note 6: The permittee is currently exempt from requiring a Facility Certified Operator (Part I.C.4 of the permit) as they have indicated to the division that remediation activities will be less than one year in duration. At the time of the inspection the facility was on the eighth month of dewatering and was advised that if remediation activities progress past 12 months, a certified operator will be required.

Note 7: Refer to Appendix B for photographs documenting the field observations during the inspection.

1. It was observed during the inspection that the permittee was actively discharging, however the discharge was not in accordance with the requirements of Part I.B.1 of the permit.

... the permittee identified on the permit certification is authorized to discharge from the outfall(s) listed on the permit certification, provided that all conditions of this permit are met (pg. 5).

The following observations were made by the division inspector:

- a. Discharges were occurring via pipe to a curb inlet along Little Raven St., southwest of 15th Ave.
- b. Discharges from this curb inlet flow through the Denver municipal storm sewer system, generally heading northwest from the project to the South Platte River outfall, north of 15th Avenue, west of Confluence Park.
- c. Discharges were observed flowing from the outfall into the South Platte River.
- d. No discharges from the remediation dewatering activities were observed to Cherry Creek, the state surface water identified on the permit certification.
- e. During discussion with the permittee at the beginning of the inspection, Clark Construction informed division staff that the dewatering activities outfall to the South Platte River, northwest of the project location.

The division expects the permittee to modify the current outfall in accordance with Part A.1.5 of the permit. The legal permit contact must submit a Modification Form to the division at least 45 days prior to implementing any modifications that result in a discharge to state waters. The permittee is not authorized to discharge under the modified conditions until the modified certification is issued and effective.

2. It was observed during the inspection that the permittee had not reported potential exceedances to the division as required by Part I.C.6 and Part II.A.2 of the permit.

If at any time the permittee becomes aware that at the permitted outfall, pollutant concentrations for an effluent parameter not subject to an effluent limitation in the permit certification exceeds any applicable water standard for the receiving water, the permittee shall halt or reduce any activity to prevent discharge of such effluent and report the exceedance to the division (pg. 12).

For any pollutant for which monitoring requirements are not included in the permit certification, the permittee shall notify the Division as soon as it becomes aware that the pollutant(s) are present in the source water, influent, or effluent in concentrations greater than originally identified in the application (pg. 28).

The following observations were made by the division inspector:

- a. The previous quarters of influent screening (submitted on 06/16/15 and 09/14/15) indicate the presence of volatile organic carbons in the source water. VOC limitations were not listed as parameters in the permit certification as they were identified as “non-detect” in the application and supporting data provided to the division by the permittee.
- b. The inspector and division representatives observed the discharge from the treatment system into the curb inlet on Little Raven Street. Qualitative assessment of the discharge identified a petroleum like odor that provides evidence that a potential exists for VOCs to be present in quantities exceeding a water quality standard of the receiving water.

The division expects the permittee to maintain compliance with the notification requirements in the permit and meet the requirements in Part I.C.6 to halt or reduce activities to prevent discharges in exceedance of applicable water quality standards. If the permittee becomes aware that pollutant concentrations exceed any applicable standards for the receiving water, it must be reported and managed as required in Part I.C.6 and Parts II.A.4, 10, and 14 of the permit.

3. It was observed during the inspection that the permittee had not reported noncompliance with the discharge limitations or standards specified in the permit to the division as required by Part I.C.6.b of the permit.

Report the exceedance of an acute effluent limitation and/or an exceedance of toxic substance listed in Part III of the permit orally within twenty-four (24) hours from the time the permittee becomes aware of the circumstances (pg. 12).

The following observations were made by the division inspector:

- a. The discharge monitoring report for the month of August 2015 indicated the visual presence of oil and grease (as reported by the permittee). A sample taken for oil and grease indicated 51.6 mg/L exceeding the 10 mg/L daily maximum limit in the permit certification. The 10mg/L daily maximum limit is an acute effluent limitation.
- b. Discussion with the dewatering contractor, Joseph Wiley (TerraFirma), indicated that the observation and concern for oil and grease presence in the source water and effluent was communicated to the contractor at the time of discovery. However, the contractor (Clark Construction) responded to TerraFirma that the site did not have enough room to expand the existing treatment system, and therefore modifications would not be taken. Wiley also identified that once the excavation was below 20-30 feet, a petroleum substance (consistently seen as dark, tarry soils) was regularly observed in a few locations onsite.

The division expects the permittee to maintain compliance with the notification requirements in the permit. The permittee must report the exceedance of an acute effluent limitation (i.e., all limitations listed as daily maximum in the Permit Limitations section of the permit certification) and/or an exceedance of toxic substance listed in Part III of the permit orally within twenty-four (24) hours from the time the permittee becomes aware of the circumstances.

4. It was observed during the inspection that the permittee had not developed or implemented adequate remediation activities practices in accordance with Part I.C.3.

The permittee shall develop and implement remediation activities practices for each facility covered by this permit (pg. 10).

The following observations were made by the division inspector:

- a. A series of Baker tanks and Poly tanks were used for treatment of the source water. However, adequate pollutant control practices were not implemented surrounding the treatment system.
 - i. Secondary containment or equivalent adequate protection was not implemented for the treatment system and associated facilities.
 - ii. Significant amounts of water and debris were observed surrounding the system.
 - iii. Rock socks and rubber wattles were installed around the treatment system to act as containment. However, these controls are not adequate for managing the materials within the system including contaminated groundwater and chemical additives. These materials contain dissolved pollutants that cannot be filtered by the above products. Both rock socks and rubber wattles are designed for removal of sediment from stormwater runoff.
- b. Secondary containment or equivalent adequate protection practices were not implemented for any of the bulk chemical storage areas observed onsite. Potential exists for a spill of these materials to enter the curb inlet adjacent to the treatment system and discharge to the Denver MS4.
 - i. Three chemical storage totes between 275 and 330 gallons (when full) were observed onsite at the time of the inspection without secondary containment. Chemicals used onsite include sodium hypochlorite (chemical precipitant) and sodium thiosulfate (dechlorination).
 - ii. Two 55 gallon drums were observed onsite containing residual sludge from the system (generated mostly from replacement of filters or general maintenance activities).
 - Both drums were observed to be over 2/3 full without covers to prevent stormwater from accumulating in the drums and overflowing the containers.
 - Neither drum had secondary containment.
- c. Control measures were observed at the discharge location at the South Platte River outfall. The permit requires that the discharge meet the effluent limitations contained within the permit certification prior to discharge to a state water or conveyance. Therefore the point of compliance for this project is located at the curb inlet along Little Raven Street.
 - i. The division inspector observed rock socks placed at the outfall to the South Platte River, significant sediment accumulation was observed behind the controls.
 - Brennen Rader (Clark Construction) indicated that their company had previously installed sediment control measures at this location, but from direction provided by the City and County of Denver Public Works Department, had removed them (refer to Appendix C for the letter provided from the MS4).
 - It is unknown who has placed and is responsible for the rock socks currently observed at the outfall.

- b. Waste management practices were described in the remediation management plan (see 4.b.ii below) however, the division inspector's observations indicate that practices being implemented at the facility are inadequate.
 - i. Drums containing residual sludge waste without cover or containment were observed. Joseph Wiley (TerraFirma) indicated that this sludge is a result of cleaning/replacing filters. The drums also contain any debris that is wet/dry vacuumed from around the treatment facility as needed.
 - ii. Joseph Wiley (TerraFirma) identified the valve used on the Baker tank to release sludge from the bottom of the tank. This sludge consists of metals, suspended solids, and residual chemical additives used during the treatment process. Wiley indicated to the division inspector that the sludge waste from this tank is disposed of by:
 - Discharging the sludge from the valve and placing it back into the active excavation onsite.
 - Capturing the sludge at the valve and placing it in 55 gallon drums for offsite disposal. The name of the disposal facility was not discussed.

The division expects the permittee to implement remediation practices, specifically pollution control practices and materials handling and spill prevention, in accordance with good engineering, hydrologic and pollution control practices as required by Part I.C.3 of the permit.

5. It was observed during the inspection that the permittee had not documented remediation activities management plan in accordance with Part I.C.4.

The permittee shall document the remediation activities practices in a Remediation Management Plan (pg. 10).

The Plan must reflect current field conditions. Any changes in the pollutant control practices implemented at the site must be reflected in the Plan and may trigger additional (pg. 11).

The following observations were made by the division inspector:

- a. The remediation management plan included a site map of the remediation activities. However, the site map was observed to be inadequate for the following reasons:
 - i. The map did not identify the source of the discharge or dewatering excavations.
 - At the time of the inspection, the source water was being generated from the building excavation exposing ground water.
 - The pump was located on the south side of the site.
 - ii. The map did not identify the location of the flow measuring device.
 - The flow measuring device was installed after the treatment system on the pipe used to convey the water to the discharge location.
 - The device was located approximately 75 feet from the discharge to the curb inlet.
 - iii. The map did not identify the conveyance into which the discharge point/outfall is directed.

- The curb inlet discharges to the City and County of Denver MS4. The system flows generally north of the site and outfalls to the South Platte River.
- b. The remediation management plan included a description of the pollutant control practices. However, the description was observed to be inadequate for the following reasons:
- i. The description provided discussed the treatment techniques used to meet the effluent limitations, however, information was not provided to specifically identify the hydraulic and pollutant removal capacity of the system.
 - Quantities of the chemicals added for treatment were not provided.
 - The residence time obtained in the frac tank for the water was not provided.
 - Details were not provided to discuss the underdrain sump area and system that the source water was being pulled from.
 - ii. The pollutant control practices description did not adequately discuss the process used to manage and dispose of residual solids and waste chemical additives.
 - The plan directs the permittee to capture these materials and store them onsite in drums or totes until the waste status and disposal method can be determined. However, details regarding the disposal methods were not included.
 - Adequate information was not included to discuss how drums should be stored (e.g. covered, in secondary containment, etc.).
- c. The remediation management plan included a materials handling and spill prevention plan. However, the plan was observed to be inadequate for the following reasons:
- i. The plan did not clearly identify the need for secondary containment or equivalent adequate protection for the bulk chemical tote storage.
 - ii. Rock socks and dandy bags were identified as adequate control measures to act as a barrier to potential chemical spills from entry to the gutter and storm drain. However, these control measures are designed to filter sediment laden water only and are not capable of filtering soluble chemical fluids.
 - iii. The management plan identifies that pools and tubs are available onsite for use as secondary containment per Clark Construction's approval. These containments were not observed located anywhere on the site during the inspection.

The division expects the permittee to develop and document remediation management practices in accordance with good engineering, hydrologic and pollution control practices as required by Parts I.C.3 and I.C.4 of the permit.

6. It was observed during the inspection that the permittee was not maintaining a weekly Discharge Log in accordance with Part I.C.5 of the permit.

The permittee shall maintain a documented weekly Discharge Log identifying for each week the dates and times when the discharge commences and ends for each permitted outfall (pg. 12).

The following observations were made by the division inspector:

- a. A spreadsheet containing the weekly samples and averages for each parameter was provided, however, the date and times when discharge commences and/or ends at the outfall was not included.

The division expects the permittee to document all information in the Discharge Log as required by Part I.C.5 of the permit.

7. It was observed during the inspection that the permittee was not maintaining the required monitoring records in accordance with Part I.E.4 of the permit.

The permittee shall establish and maintain records of monitoring (pg.25).

The following observations were made by the division inspector:

- a. Monitoring records did not include the type, exact location, and time of sampling.
- b. Monitoring records were not provided to identify the date analyses were performed for samples.
- c. Records did not identify who the individual was performing the analyses or the analytical techniques or methods used.
- d. The results of sampling for the facility were not provided.

The division expects the permittee to document and maintain all information in the Monitoring Records as required by Part I.E.4 of the permit.

8. It was observed during the inspection that the discharges from the site were not in accordance with the numeric effluent limitations required by Part I.B.2 of the permit.

The permitted discharge shall not contain effluent parameter concentrations which exceed the limitations specified in the permit certification (pg. 5).

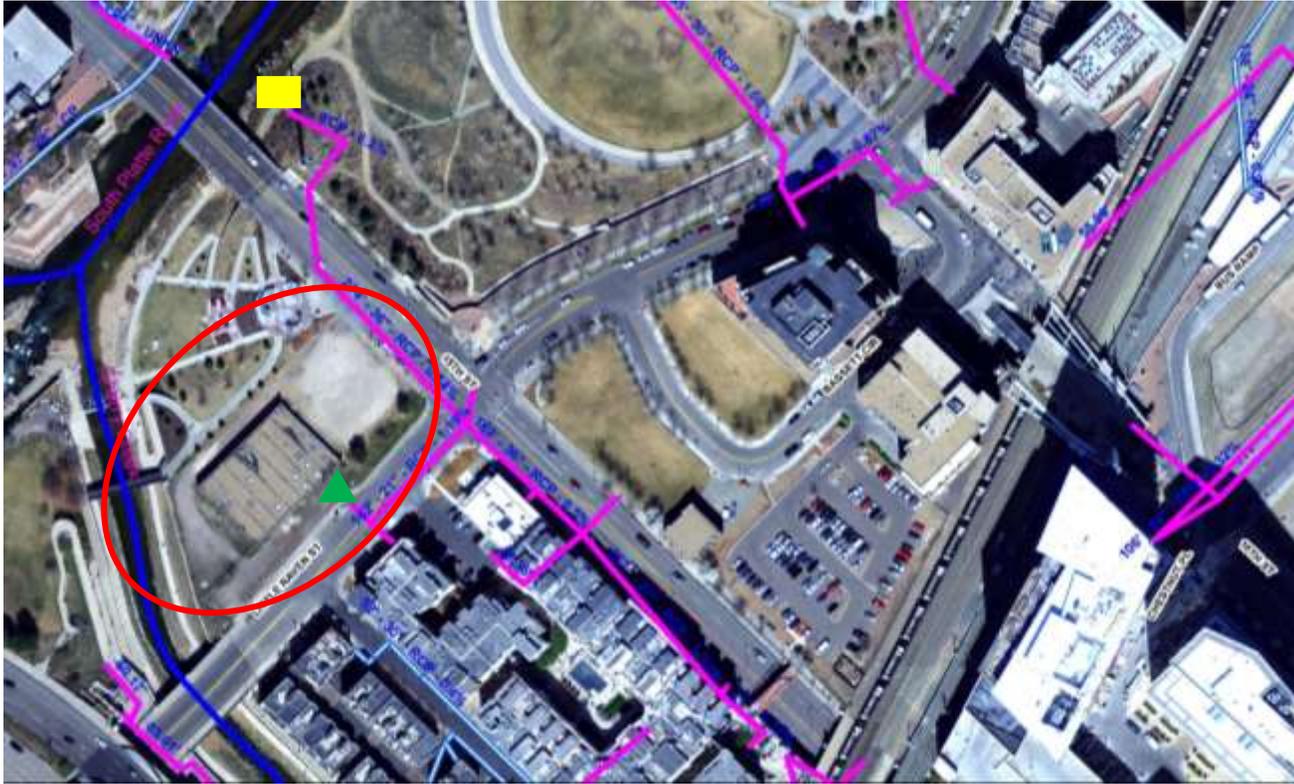
The following observations were made by the division inspector:

- a. Discharge monitoring reports for the below listed reporting periods identified exceedances of the effluent limitations provided in the permit certification.
 - i. June 2015
 - ii. July 2015
 - iii. August 2015
 - iv. October 2015
- b. Exceedances were identified during the above periods for the following parameters.
 - i. Total suspended solids
 - ii. Total recoverable iron
 - iii. Dissolved manganese
 - iv. Oil and grease
 - v. Total recoverable arsenic

The division expects that when effluent parameter concentrations exceed limitations, the permittee must meet the requirements in Part I.C.6. of the permit.

Appendix A

City and County of Denver Municipal Storm Sewer System Schematic



The red circle identifies the location of the site.

The green triangle identifies the curb inlet the discharge is going into.

The yellow square identifies the outfall to the South Platte River.

The pink lines identify the storm sewer system conveyances.



Photo included to provide additional view of the outfall to the South Platte River.

Appendix B
Inspection Field Observation Photograph Log

Clark Construction Group LLC - Inspection Photograph Log

Facility: Confluence Park Apartments

Permit: COG315339

Date: 01/06/2016



Photograph: 1 - Treatment system at the site, Baker tanks and Poly tanks. Exposed/open 55 gallon drum.



Photograph: 2 - Location of discharge after treatment and from the site, curb inlet on Little Raven St. Rubber wattle surrounding inlet. Discharge occurring in photo.

Clark Construction Group LLC - Inspection Photograph Log

Facility: Confluence Park Apartments

Permit: COG315339

Date: 01/06/2016



Photograph: 3 - Looking at the same inlet, netting over top of the inlet due to excavation and dirt haul activities that require the excavator to carry his bucket over top the inlet to the haul truck on the road.



Photograph: 4 - Looking at the inlet, discharge location. Presence of sediment and debris.

Clark Construction Group LLC - Inspection Photograph Log

Facility: Confluence Park Apartments

Permit: COG315339

Date: 01/06/2016



Photograph: 5 - Additional tanks for the treatment system.



Photograph: 6 - Additional tanks for the treatment system.

Clark Construction Group LLC - Inspection Photograph Log

Facility: Confluence Park Apartments

Permit: COG315339

Date: 01/06/2016



Photograph: 7 - Treatment system, Baker tank. Chemical totes and open drums shown. Secondary containment was not implemented.



Photograph: 8 - Open drums and buckets filled with sludge waste. Rubber wattles surrounding the treatment system area. Chemical totes without containment.

Clark Construction Group LLC - Inspection Photograph Log

Facility: Confluence Park Apartments

Permit: COG315339

Date: 01/06/2016



Photograph: 9 - Flow measuring device.



Photograph: 10 - Drums open and without containment. Rubber wattles used surrounding the treatment system.

Clark Construction Group LLC - Inspection Photograph Log

Facility: Confluence Park Apartments

Permit: COG315339

Date: 01/06/2016



Photograph: 11 - Valve where sludge/waste is removed from the Baker tank.



Photograph: 12 - Piping leading up from excavation to the treatment system.

Clark Construction Group LLC - Inspection Photograph Log

Facility: Confluence Park Apartments

Permit: COG315339

Date: 01/06/2016



Photograph: 13 - Pipes were heat traced to prevent freezing in recent weather.



Photograph: 14 - Rock socks at outfall to South Platte River. Sediment built up behind the rock socks.

Clark Construction Group LLC - Inspection Photograph Log

Facility: Confluence Park Apartments

Permit: COG315339

Date: 01/06/2016



Photograph: 15 - Pipe intended to convey water from the outfall under the sidewalk. Note that the sidewalk has eroded away underneath and the water is continuing to discharge over the bank.

Appendix C

Compliance Letter from the City and County of Denver



CITY AND COUNTY OF DENVER

DEPARTMENT OF PUBLIC WORKS

Wastewater Management Division

2000 W. 3rd Avenue
Denver, CO 80223
(303) 446-3400

DENVER
THE MILE HIGH CITY

November 13, 2015

Brennan Rader
Clark Construction
1660 Platte St
Denver, CO 80202

Dear Mr. Rader,

The outfall protection that you have installed at my request on October 2, 2015 may be removed effective immediately.

Respectfully,

A handwritten signature in cursive script that reads "Carol S. Becker".

Carol S. Becker
Water Quality Investigator