October 10, 2017

Gregory R. Ruhl
Clark Construction Group, LLC
2166 15th Street
Denver, Colorado 80202

RE: Compliance Order on Consent, Number: IC-171009-1

Dear Mr. Ruhl:

Enclosed for Clark Construction Group, LLC’s records is the Compliance Order on Consent ("Order") recently executed between the Water Quality Control Division and Clark Construction Group, LLC. Please remember that this Order is subject to a 30-day public comment period (Order, paragraph 65). The Division will contact your office to discuss any comments received during this period. Please be advised that the header on the first page of the Order was revised to reflect the assigned Order Number: IC-171009-1.

If you have any questions, please do not hesitate to contact me at (303) 692-6498 or 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
Robert McDonald, Denver Environmental Health
Aimee Konowal, Watershed Section, CDPHE
Brad Monson, Grants and Loans Unit, CDPHE
Doug Camrud, Engineering Section, CDPHE
Kelly Jacques, Field Services Section, CDPHE
Lillian Gonzalez, Permits Section, CDPHE
Tania Watson, Data Management Workgroup, CDPHE
Nathan Moore, Clean Water Compliance Unit, CDPHE
IN THE MATTER OF: CLARK CONSTRUCTION GROUP, LLC
CDPS GENERAL PERMIT NO. COG315000
CERTIFICATION NO. COG315339
DENVER COUNTY, COLORADO

The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under §§25-8-602 and 605, C.R.S. of the Colorado Water Quality Control Act ("the Act") §§25-8-101 to 803, C.R.S., and its implementing regulations, with the express consent of Clark Construction Group, LLC ("Clark Construction"). The Division and Clark Construction may be referred to collectively as "the Parties."

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order are to resolve, without litigation, the civil penalties associated with the alleged violations cited herein an in the Notice of Violation/ Cease and Desist Order, Number IO-160701-1 ("NOV/CDO"), that the Division issued to Clark Construction on July 1, 2016.

DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

2. At all times relevant to the violations identified herein, Clark Construction was a Maryland limited liability corporation in good standing and registered to conduct business in the state of Colorado.

3. 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).

4. 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").
5. The Project is subject to the 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 on October 1, 2011, and is currently Administratively Continued until Permit reissuance.

6. 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.

7. 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.

8. 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 is currently administratively continued until Permit reissuance.

9. 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.

10. 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 Constructions 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

11. 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.

12. 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.

13. 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.
14. 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.

15. 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).

16. 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):

<table>
<thead>
<tr>
<th>Parameter/Monitoring Period</th>
<th>Sample Measurement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Suspended Solids</td>
<td>30-DAY AVG. STANDARD=30mg/l</td>
</tr>
<tr>
<td>June 1, 2015-June 30, 2015</td>
<td>74</td>
</tr>
<tr>
<td>July 1, 2015-July 31, 2015</td>
<td>44</td>
</tr>
<tr>
<td>August 1, 2015-August 30, 2015</td>
<td>34</td>
</tr>
<tr>
<td>October 1, 2015-October 31, 2015</td>
<td>--</td>
</tr>
<tr>
<td>Total Recoverable Arsenic</td>
<td>30-DAY AVG. STANDARD=3ug/l</td>
</tr>
<tr>
<td>June 1, 2015-June 30, 2015</td>
<td>3.72*</td>
</tr>
<tr>
<td>July 1, 2015-July 31, 2015</td>
<td>6.5</td>
</tr>
<tr>
<td>August 1, 2015-August 31, 2015</td>
<td>3.344*</td>
</tr>
<tr>
<td>October 1, 2015-October 31, 2015</td>
<td>10.68</td>
</tr>
<tr>
<td>December 1, 2015-December 31, 2015</td>
<td>7.15*</td>
</tr>
<tr>
<td>January 1, 2016-January 22, 2016</td>
<td>10.112*</td>
</tr>
<tr>
<td>Total Recoverable Iron</td>
<td>30-DAY AVG. STANDARD=1000ug/l</td>
</tr>
<tr>
<td>June 1, 2015-June 30, 2015</td>
<td>2300</td>
</tr>
<tr>
<td>Dissolved Manganese</td>
<td>30-DAY AVG. STANDARD=190ug/l</td>
</tr>
<tr>
<td>October 1, 2015-October 31, 2015</td>
<td>219</td>
</tr>
<tr>
<td>Potentially Dissolved Selenium</td>
<td>30-DAY AVG. STANDARD=4.6ug/l</td>
</tr>
<tr>
<td>January 1, 2016-January 22, 2016</td>
<td>5.95</td>
</tr>
<tr>
<td>Oil and Grease</td>
<td>INSTANTANEOUS MAX STANDARD=10mg/l</td>
</tr>
<tr>
<td>August 1, 2015-August 31, 2015</td>
<td>51.6</td>
</tr>
</tbody>
</table>

* The Division received additional data from Clark Construction following issuance of the NOV/CDO. Values marked with an asterisk were corrected using this data and differ from the NOV/CDO.

17. 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).
18. The pipe, curb inlet, and storm sewer associated with the Project, as it relates to the discharge events identified in paragraph 13 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).

19. Clark Construction’s discharge of suspended solids, oil and grease, arsenic, iron, lead, manganese, and benzene into the South Platte River constitutes a “discharge of pollutants” as defined by §25-8-103(3).

20. 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.

21. 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.

22. 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.

23. 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 Clark Construction inactivates Permit coverage.

**Failure to Comply with Permit Effluent Limitations**

24. 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:

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Units</th>
<th>Discharge Limitations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>30-day Average</td>
</tr>
<tr>
<td>Total Recoverable Arsenic</td>
<td>µg/l</td>
<td>3</td>
</tr>
<tr>
<td>Potentially Dissolved Selenium</td>
<td>µg/l</td>
<td>4.6</td>
</tr>
<tr>
<td>Benzene</td>
<td>µg/l</td>
<td>2.2</td>
</tr>
</tbody>
</table>

25. 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.
26. 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.

27. 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:

<table>
<thead>
<tr>
<th>DISCHARGE MONITORING REPORTING PERIOD</th>
<th>SAMPLE MEASUREMENTS FOR OUTFALL 001A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arsenic (Total Recoverable), ug/l</td>
<td>30-DAY AVERAGE</td>
</tr>
<tr>
<td>February 1, 2016–February 29, 2016</td>
<td>10.112*</td>
</tr>
<tr>
<td>March 1, 2016–March 31, 2016</td>
<td>5.67*</td>
</tr>
<tr>
<td>Selenium (Potentially Dissolved), ug/l</td>
<td>30-DAY AVERAGE</td>
</tr>
<tr>
<td>January 23, 2016–January 31, 2016</td>
<td>LIMIT=4.6ug/l</td>
</tr>
<tr>
<td>February 1, 2016–February 29, 2016</td>
<td>5.9</td>
</tr>
<tr>
<td>Benzene, ug/l</td>
<td>30-DAY AVERAGE</td>
</tr>
<tr>
<td>February 1, 2016–February 29, 2016</td>
<td>LIMIT=2.2ug/l</td>
</tr>
<tr>
<td>March 1, 2016–March 31, 2016</td>
<td>2.49*</td>
</tr>
<tr>
<td></td>
<td>2.204*</td>
</tr>
</tbody>
</table>

* The Division received additional data from Clark Construction following issuance of the NOV/CDO. Values marked with an asterisk were corrected using this data and differ from the NOV/CDO.

28. 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).

29. The Permit and the South Platte Certification do not authorize the pollutant levels identified above in paragraph 27. Division records establish that Clark Construction does not have any other permit authorizing such discharges into State Waters.

30. 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**

31. 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.

32. 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.

33. 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.

34. 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:

<table>
<thead>
<tr>
<th>Parameter/Date of Lab Results</th>
<th>Sample Measurement</th>
<th>Date Received by Division</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benzene</td>
<td>COSPUS14 WATER QUALITY STANDARD=2.2ug/l</td>
<td></td>
</tr>
<tr>
<td>September 21, 2015</td>
<td>29ug/l</td>
<td>October 26, 2015</td>
</tr>
<tr>
<td>Naphthalene</td>
<td>COSPUS14 WATER QUALITY STANDARD=140ug/l</td>
<td></td>
</tr>
<tr>
<td>September 21, 2015</td>
<td>220ug/l</td>
<td>October 26, 2015</td>
</tr>
<tr>
<td>Total Recoverable Arsenic</td>
<td>COSPUS14 WATER QUALITY STANDARD=3ug/l</td>
<td></td>
</tr>
<tr>
<td>September 21, 2015</td>
<td>18.5ug/l</td>
<td>October 26, 2015</td>
</tr>
<tr>
<td>Dissolved Iron</td>
<td>COSPUS14 WATER QUALITY STANDARD=300ug/l</td>
<td></td>
</tr>
<tr>
<td>September 21, 2015</td>
<td>828ug/l</td>
<td>October 26, 2015</td>
</tr>
</tbody>
</table>

35. 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 34. In addition, Clark Construction failed to notify the Division within 24 hours subsequent to receiving the lab results outlined in Paragraph 34.

36. Clark Construction's failure to halt or reduce activity and report exceedances of water quality standards within 24 hours, as identified above in paragraphs 34 and 35, constitutes a violation of Part I.C.6. of the Permit.

37. 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

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

43. 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:

<table>
<thead>
<tr>
<th>DMR REPORTING PERIOD</th>
<th>OUTFALL NUMBER</th>
<th>DMR DUE DATE</th>
<th>DMR RECEIPT DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 1, 2015–April 30, 2015</td>
<td>001A</td>
<td>5/28/2015</td>
<td>6/2/2015</td>
</tr>
</tbody>
</table>
CLARK CONSTRUCTION
LATE DISCHARGE MONITORING REPORTS

<table>
<thead>
<tr>
<th>DMR REPORTING PERIOD</th>
<th>OUTFALL NUMBER</th>
<th>DMR DUE DATE</th>
<th>DMR RECEIPT DATE</th>
</tr>
</thead>
</table>

44. Clark Construction’s failure to properly monitor flow, as identified above in Paragraph 42, 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.

45. 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, as identified above in Paragraph 43, constitutes violations of Part I.E.1. of the Permit.

Deficient and/or Incomplete Remediation Activities Management

46. 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.

47. 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.

48. 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.

49. During the January 6, 2016 inspection, the Inspector reviewed the Clark Construction’s Plan and identified the following deficiencies, as described in paragraphs 49(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.

50. 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 50(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 tanks 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.

51. 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.

52. The Division has determined that Clark Construction failed to develop and implement a complete Plan for the Project.

53. 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
54. 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;

55. 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).

56. 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.

57. 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 57(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.

58. Following the January 6, 2016 inspection, Clark Construction submitted some of the missing records identified above in paragraph 57, however they contained the following deficiencies, as described in paragraphs 58(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.
59. 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.

ORDER AND AGREEMENT

60. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605, C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein and in the NOV/CDO, the Division orders Clark Construction to comply with all provisions of this Consent Order, including all requirements set forth below.

61. Clark Construction agrees to the terms and conditions of this Consent Order. Clark Construction agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. Clark Construction also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Clark Construction against the Division:

a. The issuance of this Consent Order;
b. The factual and legal determinations made by the Division herein; and
c. The Division’s authority to bring, or the court’s jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.

62. Notwithstanding the above, Clark Construction does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Clark Construction pursuant to this Consent Order shall not constitute evidence of fault and liability by Clark Construction with respect to the conditions of the Project. Clark Construction expressly reserves its rights to deny any of the Division’s factual or legal determinations or defend itself in any other third party proceeding relating to the information identified in this Consent Order.

CIVIL PENALTY

63. Based upon the factors set forth in §25-8-608(1), C.R.S., and consistent with Departmental policies for violations of the Act, Clark Construction shall pay $97,000.00 in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the $97,000.00 civil penalty for the above violation(s) and Clark Construction agrees to make the payment within 30 calendar days of the issuance of an Order for Civil Penalty by the Executive Director or his designee. Method of payment shall be by certified or cashier’s check drawn to the order of the “Colorado Department of Public Health and Environment,” and delivered to:

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

SCOPE AND EFFECT OF CONSENT ORDER
64. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations cited herein and in the NOV/CDO.

65. This Consent Order is subject to the Division's "Public Notification on Administrative Enforcement Actions Policy," which includes a thirty day public comment period. The Division and Clark Construction each reserve the right to withdraw consent to this Consent Order if comments received during the thirty day period result in any proposed modification to the Consent Order.

66. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or his designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by Clark Construction, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.

67. Notwithstanding paragraph 62 above, the violations described in this Consent Order will constitute part of Clark Construction’s compliance history, for purposes where such history is relevant.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

68. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to the specific instances of violations cited here and in the NOV/CDO. The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.

69. This Consent Order does not grant any release of liability for any violations not specifically cited herein.

70. Clark Construction reserves its rights and defenses regarding the Project other than proceedings to enforce this Consent Order.

71. Nothing in this Consent Order shall preclude the Division from imposing additional requirements necessary to protect human health or the environment and to effectuate the purposes of the Consent Order. Nor shall anything in this Consent Order preclude the Division from imposing additional requirements in the event that additional information is discovered that indicates such requirements are necessary to protect human health or the environment.

72. Clark Construction releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims or for any injuries or damages to persons or property resulting from acts or omissions of Clark Construction, or those acting for or on behalf of Clark Construction, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.
NOTICES

73. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

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  
E-mail: andrea.beebout@state.co.us

For Clark Construction Group, LLC:

Gregory R. Ruhl  
Project Executive  
Clark Construction Group, LLC  
2166 15th Street  
Denver, Colorado 80202  
Telephone: 303-606-1367  
E-mail: greg.ruhl@clarkconstruction.com

MODIFICATIONS

74. This Consent Order may be modified only upon mutual written agreement of the Parties.

NOTICE OF EFFECTIVE DATE

75. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or his designee imposes the civil penalty following closure of the public comment period referenced in paragraph 65. If the penalty as described in this Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

BINDING EFFECT AND AUTHORIZATION TO SIGN

76. This Consent Order is binding upon Clark Construction and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. In the event that a party does not sign this Consent Order within 30 calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.
FOR CLARK CONSTRUCTION GROUP, LLC:

[Signature]
Gregory R. Rahl, Project Executive

Date: September 25, 2017

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

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

Date: 10/9/17