COLORADO
Department of Public
Health & Environment

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

February 22, 2016

DFH Mandarin, LLC
c/o Corporation Service Company
1560 Broadway, Suite 2090
Denver, CO 80202

Certified Mail Number: 7014 2870 0000 7699 5900

RE: Service of Notice of Violation/Cease and Desist Orders, Numbers: SO-160218-1 & SO-160218-2

Dear Registered Agent:

DFH Mandarin, LLC is hereby served with the enclosed Notice of Violation / Cease and Desist Orders (the "NOV/CDOs"). The NOV/CDOs are 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/CDOs upon findings that DFH Mandarin, LLC has violated the Act and/or permit or control regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDOs.

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

These actions 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 these NOV/CDOs or the issuance of additional enforcement actions.

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

Sincerely,

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

Enclosure(s)

cc: Enforcement File

ec: Michael Boeglin, EPA Region VIII
Joe Malinowski, Boulder County Public 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
Mike Harris, Clean Water Enforcement Unit, 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 **NUMBER: SO-160218-1**

IN THE MATTER OF: **DFH MANDARIN, LLC**
CDPS PERMIT NO. COR-030000
CERTIFICATION NO. COR-03L417
BOULDER 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, DFH Mandarin, LLC ("DFH Mandarin") was a Florida corporation in good standing and registered to conduct business in the State of Colorado.

2. DFH Mandarin 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. DFH Mandarin initiated construction at the Silver Meadows Project with a planned disturbance area of approximately 12 acres of land at or near 40°09'01" N and 105°09'53" W, in Boulder County, Colorado (the "Project").

4. Construction activities at the Project include ground disturbing activities associated with multi-family residential development.

5. On November 8, 2013, the Division received an application from E-Z Excavating, Inc. ("E-Z Excavating") for Project coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit").

6. On November 13, 2013, the Division provided E-Z Excavating with Certification Number COR-03L417 authorizing E-Z Excavating to discharge stormwater from the construction activities associated with the Project to waters of the State of Colorado, including but not limited to Dry Creek and the Saint Vrain River, under the terms and conditions of the Permit. Certification Number COR-03L417

became effective January 29, 2013 and was set to expire on June 30, 2012, but has been administratively continued pending Permit reissuance.

7. On January 23, 2015, the Division received an application from E-Z Excavating to transfer ownership of Certification Number COR-03L417 Project coverage to DFH Mandarin.

8. On January 27, 2015, the Division approved the transfer and provided DFH Mandarin with Certification Number COR-03L417 authorizing DFH Mandarin to discharge stormwater from the construction activities associated with the Project to waters of the State of Colorado, including but not limited to Dry Creek and Saint Vrain River, under the terms and conditions of the Permit. The transfer became effective January 27, 2015 and Certification Number COR-03L417 was set to expire on June 30, 2012, but has been administratively continued pending Permit reissuance.

9. Dry creek and the Saint Vrain River are "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(102).

10. Pursuant to 5 CCR 1002-61, §61.8, DFH Mandarin must comply with all the terms and conditions of the Permit, and violations of such terms and conditions may be subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.

11. On July 21, 2015, a representative from the Division (the "Inspector") conducted an on-site inspection of the Project pursuant to the Division's authority under §25-8-306, C.R.S., to determine DFH Mandarin's compliance with the Water Quality Control Act and the Permit. During the inspection, the Inspector interviewed Project representatives, reviewed the Project's stormwater management system records and performed a physical inspection of the Project.

Deficient and/or Incomplete Stormwater Management Plan

12. Pursuant to Part I.B. of the Permit, DFH Mandarin is required to prepare and maintain a Stormwater Management Plan ("SWMP") in accordance with good engineering, hydrologic and pollution control practices. The SWMP is required to identify all potential sources of pollution, which may be reasonably expected to affect the quality of stormwater discharges associated with construction activity from the Project. In addition, the plan is required to describe and ensure the implementation of Best Management Practices ("BMPs") at the Project, which will be used to reduce the pollutants in stormwater discharges associated with construction activity.

13. Pursuant to Part I.C. of the Permit, the Project's SWMP shall include, at a minimum, the following items:

    a. Site Description - The SWMP shall clearly describe the construction activity, including:

        i. The nature of the construction activity.
        ii. The proposed sequence for major activities.
        iii. Estimates of the total area of the site and the area of the site that is expected to undergo clearing, excavation or grading.
        iv. A summary of any existing data used in the development of the construction plans or SWMP that describe the soil or existing potential for soil erosion.
        v. A description of the existing vegetation at the site and an estimate of the percent vegetative ground cover.
        vi. The location and description of all potential pollution sources, including ground

surface disturbance, vehicle fueling, storage of fertilizers or chemicals, etc.

vii. The location and description of any allowable sources of non-stormwater discharge, such as springs, landscape irrigation return flow, construction dewatering and concrete washout.

viii. The name of the receiving water(s) and the size, type and location of any outfall or, if the discharge is to a municipal separate storm sewer, the name of that system, the location of the storm sewer discharge, and the ultimate receiving water(s).

b. Site Map - The SWMP shall include a legible site map(s), showing the entire site, identifying:

i. Construction site boundaries.
ii. All areas of ground surface disturbance.
iii. Areas of cut and fill.
iv. Areas used for storage of building materials, equipment, soil or waste.
v. Locations of dedicated asphalt or concrete batch plants.
vi. Locations of all structural BMPs.
vii. Locations of all non-structural BMPs.
viii. Locations of springs, streams, wetlands and other surface waters.

c. Stormwater Management Controls - The SWMP must include a description of all stormwater management controls that will be implemented as part of the construction activity to control pollutants in stormwater discharges, including:

i. SWMP Administrator - The SWMP shall identify a specific individual(s), position or title that is responsible for developing, implementing, maintaining and revising the SWMP.

ii. Identification of Potential Pollutant Sources - The SWMP shall identify and describe those sources determined to have the potential to contribute pollutants to stormwater discharges.

iii. BMPs for Stormwater Pollution Prevention - The SWMP shall identify and describe appropriate BMPs that will be implemented at the facility to reduce the potential of pollution sources to contribute pollutants to stormwater discharges. The SWMP shall clearly describe the installation and implementation specifications for each BMP identified in the SWMP.

(1) Structural Practices for Erosion and Sediment Control - The SWMP shall clearly describe and locate all structural practices implemented at the site to minimize erosion and sediment transport. Practices may include, but are not limited to: straw bales, wattles/sediment control logs, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, pipe slope drains, inlet protection, outlet protection, gabions and temporary or permanent sediment basins.

(2) Non-Structural Practices for Erosion and Sediment Control - The SWMP shall clearly describe and locate all non-structural practices implemented at the site to minimize erosion and sediment transport. Description must include interim and permanent stabilization practices, and site-specific scheduling for implementation of the practices. Non-structural practices may include, but are not limited to: temporary vegetation, permanent vegetation, mulching, geotextiles, sod stabilization, slope roughening, vegetative buffer strips, protection of trees and preservation of mature vegetation.

(3) Phased BMP Implementation - The SWMP shall clearly describe the relationship between the phases of construction and the implementation and maintenance of BMPs. The SWMP must identify the stormwater management controls to be implemented during the project phases, which can include, but are not limited to, clearing and grubbing, road construction, utility and infrastructure installation, vertical construction, final grading and final stabilization.

(4) Materials Handling and Spill Prevention - The SWMP shall clearly describe and locate all practices implemented at the site to minimize impacts from procedures or significant materials that could contribute pollutants to runoff.

(5) Dedicated Concrete or Asphalt Batch Plants - The SWMP shall clearly describe and locate BMPs to control stormwater pollution from dedicated concrete batch plants or dedicated asphalt batch plants.

(6) Vehicle Tracking Control - The SWMP shall clearly describe and locate all practices implemented at the site to control potential sediment discharges from vehicle tracking.

(7) Waste Management and Disposal, Including Concrete Washout - The SWMP shall clearly describe and locate the practices implemented at the site to control stormwater pollution from all construction site wastes, including concrete washout activities.

(8) Groundwater and Stormwater Dewatering - The SWMP shall clearly describe and locate the practices implemented at the site to control stormwater pollution from the dewatering of groundwater or stormwater from excavations, wells, etc.

d. Final Stabilization and Long-Term Stormwater Management - The SWMP shall clearly describe the practices used to achieve final stabilization of all disturbed areas at the site, and any planned practices to control pollutants in stormwater discharges that will occur after construction operations have been completed at the site.

e. Inspection and Maintenance - The SWMP shall clearly describe the inspection and maintenance procedures implemented at the site to maintain all erosion and sediment control practices and other protective practices in good and effective operating condition.

14. During the July 21, 2015 inspection, the Inspector reviewed the Project's SWMP and identified that the SWMP did not clearly identify all items required by Part I.C. of the Permit, as described in Paragraphs 14(a-n) below:

a. The site description section of the SWMP failed to include the nature of the construction activity.
b. The site description section of the SWMP failed to include the proposed sequence of all major activities at the Project.
c. The site description section of the SWMP failed to include an estimate of disturbed acreage at the site and the location of the area expected to be disturbed.
d. The site description section of the SWMP failed to provide a summary of the soil data or existing erosion potential data used to develop the SWMP.
e. The site description section of the SWMP failed to identify the existing vegetation or the estimated percent of vegetative cover at the Project.
f. The site description section of the SWMP failed to identify all potential pollutant sources and their locations at the Project.
g. The site description section of the SWMP failed to identify all the anticipated sources and locations of allowable non-stormwater discharge at the Project.

h. The site description section of the SWMP failed to identify the receiving water(s) and MS4.
i. The SWMP site map failed to identify all areas of ground surface disturbance at the Project, including but not limited to all the residential lots.
j. The SWMP site map failed to identify the locations of stored materials, equipment, stockpiles or wastes at the Project, including but not limited to the location of material storage and portable toilets.
k. The SWMP site map failed to identify all the structural control measures being used at the Project, including but not limited to straw wattles and gator guards.
l. The SWMP did not include a stormwater management controls section and, therefore, the SWMP failed to include all the requirements outlined in Part I.C.3. of the Permit.
m. The SWMP failed to describe the practices to be used to achieve final stabilization and any long-term stormwater management to occur at the Project.
n. The SWMP did not include an inspection and maintenance section and, therefore, the SWMP failed to include all the requirements outlined in Part I.C.5. of the Permit.

15. The Division has determined that DFH Mandarin failed to prepare and maintain a complete and accurate SWMP for the Project.

16. DFH Mandarin's failure to prepare and maintain a complete and accurate SWMP for the Project constitutes violation(s) of Part I.B. and Part I.C. of the Permit.

Failure to Perform and/or Document Inspections of Stormwater Management System

17. Pursuant to Part I.D.6.a. of the Permit, for active sites where construction has not been completed, DFH Mandarin is required to make a thorough inspection of the Project's stormwater management system at least every 14 calendar days.

18. Pursuant to Part I.D.6.b. of the Permit, inspection reports must include:

i) The inspection date;
ii) Name(s) and title(s) of personnel making the inspection;
iii) Location(s) of discharges of sediment or other pollutants from site;
iv) Location(s) of BMPs that need to be maintained;
v) Location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location;
vi) Location(s) where additional BMPs are needed that were not in place at the time of inspection;
vii) Deviations from the minimum inspection schedule as provided in Part I.D.6.a. above;
viii) After adequate corrective action(s) has been taken, or where a report does not identify any incidents requiring corrective action, the report shall contain a signed statement indicating the site is in compliance with the permit to the best of the signer's knowledge and belief.

19. Pursuant to Part I.D.8. of the Permit, where site inspections note the need for BMP maintenance, the repair, replacement or installation of new BMPs must be addressed as soon as possible, immediately in most cases, to minimize the discharge of pollutants.

20. During the July 21, 2015 inspection, the Inspector reviewed the available inspection records for the Project for the period from January 27, 2015 - April 14, 2015. The Inspector determined that DFH Mandarin failed to perform an inspection of the stormwater management system at least once every 14 calendar days for timeframes listed in the table below.

Inspection Date	Previous Inspection Date	Days Between Inspections
3/20/2015	3/3/2015	17
7/21/2015	4/14/2015	98

21. During the July 21, 2015 inspection, the Inspector reviewed the available inspection records and determined that DFH Mandarin failed to meet the compliance statement requirements for each inspection by not completing compliance certifications, in accordance with Part I.D.6.b.2. of the Permit.

22. During the July 21, 2015 inspection, the Inspector reviewed the available inspection records and determined that DFH Mandarin failed to include the dates when all identified corrective actions were completed, in accordance with Part I.D.8. of the Permit.

23. DFH Mandarin's failure to properly perform and document inspections of the Project's stormwater management system constitutes violation(s) of Parts I.D.6.a., I.D.6.b.2. and I.D.8. of the Permit.

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

24. Pursuant to Part I.C.3.c. of the Permit, DFH Mandarin is required to implement BMPs to reduce the potential of pollution sources from contributing pollutants to stormwater discharges, including minimizing erosion and sediment transport from the Project. The Permit specifies that structural site management practices may include, but are not limited to: straw bales, wattles/sediment control logs, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, pipe slope drains, inlet protection, outlet protection, gabions and temporary or permanent sediment basins. The Permit specifies that non-structural site management practices may include, but are not limited to: temporary vegetation, permanent vegetation, mulching, geotextiles, sod stabilization, slope roughening, vegetative buffer strips, protection of trees and preservation of mature vegetation.

25. Pursuant to Part I.D.2. of the Permit, DFH Mandarin is required to select, design, install, implement and maintain appropriate BMPs, following good engineering, hydrologic and pollution control practices. The BMPs implemented at the site must be adequately designed to provide control for all potential pollutant sources associated with construction activity at the Project.

26. Pursuant to Part I.B.3. of the Permit, DFH Mandarin is required to implement the provisions of the Project's SWMP as written and updated, from commencement of construction activity until final stabilization is complete.

27. During the July 21, 2015 inspection, the Inspector identified the following deficiencies related to BMP installation and maintenance at the Project, as described in Paragraphs 27(a-kk) below:

    a. The Inspector observed a silt fence control measures along the northern perimeter of the site, along Nelson Road, that were not implemented and/or maintained according to good pollution control practices. Specifically:

        - Silt fence was not anchored to stakes per industry standard, which states that silt fence will be anchored to a stake with a one (1) inch staple or nail spaced every three (3) inches. This failure allows possible bypass of pollutants.

- Silt fence showed signs of wear, including sagging, which allows for possible bypass of pollutants.

Additional control measures were not implemented down gradient of this Project area. Stormwater from this Project area flows into curb inlets along Nelson Road, in to the City of Longmont's storm sewer, which discharges to Dry Creek.

b. The Inspector observed silt fence control measures along the eastern perimeter of the site, along Grandview Meadows Road, that were not implemented and/or maintained according to good pollution control practices. Specifically:

- Silt fence not anchored to stakes per industry standard, which states that a silt fence will be anchored to a stake with a one (1) inch staple or nail every three (3) inches. This failure allows possible bypass of pollutants.
- Silt fence showed signs of wear, including sagging, tearing and/or collapse, which allows for potential bypass of pollutants.
- Silt fence joints were not wrapped and/or spliced per industry standard, which states that two silt fence joints will be wrapped 180 degrees around two stakes prior to being staked to the ground. This failure allows possible bypass of pollutants.
- Silt fence not trenched per industry standard, which states that silt fence must be entrenched a minimum of four (4) by six (6) inches. This failure allows possible bypass of pollutants.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraph 27(cc). Stormwater from this Project area flows into curb inlets along Grandview Meadows Road, in to the City of Longmont's storm sewer, which discharges to Dry Creek.

c. The Inspector observed straw wattle and straw bale control measures at the permanent water quality pond on the southeast corner of the site that were not implemented and/or maintained according to good pollution control practices. Specifically:

- Straw wattle was deteriorated and/or overtopped with sediment, allowing for potential bypass of pollutants.
- Straw wattles were not staked to the ground, allowing for potential bypass of pollutants.
- Straw bales were not staked to the ground, allowing for potential bypass of pollutants.

Additional control measures were not implemented down gradient of this Project area. Stormwater from this area of the Project flows through the permanent water quality pond outfall directly to the City of Longmont's storm sewer, which discharges to Dry Creek.

d. The Inspector observed rip rap control measures at the inlet to the permanent water quality pond on the southeast corner of the site that were not implemented and/or maintained according to good pollution control practices. Specifically:

- Rip rap was buried and ineffective, resulting in potential bypass of pollutants.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraph 27(c). Stormwater from this Project area flows through the permanent water quality pond and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

e. The Inspector observed rock sock control measures at the inlet to the permanent water quality pond on the southeast corner of the site that were not implemented and/or maintained according to good pollution control practices. Specifically:

- Rock socks were covered by accumulated sediment, resulting in potential bypass of pollutants.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraphs 26(c&d). Stormwater from this Project area flows through the permanent water quality pond and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

f. The Inspector observed that control measures along all the perimeters of lots 1-10 and along Calvin Court were not implemented to manage stormwater runoff. Specifically:

- No control measures were implemented along the road, between the disturbed area and the flow line, resulting in potential bypass of pollutants.
- No control measures were implemented along the perimeter of the disturbed area.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraphs 27(b-d,n,&gg-ii). Stormwater from this Project area flows to the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

g. The Inspector observed that control measures along all the perimeters of lots 11-30 and along Hailey Circle were not implemented to manage stormwater runoff. Specifically:

- No control measures were implemented along the road, between the disturbed area and the flow line, resulting in potential bypass of pollutants.
- No control measures were implemented along the perimeter of the disturbed area.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraphs 27(b-d,n,&gg-ii). Stormwater from this Project area flows to the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

h. The Inspector observed that control measures along all the perimeters of lots 99-110 and along Robert Street and Redmond Drive were not implemented to manage stormwater runoff. Specifically:

- No control measures were implemented along the road, between the disturbed area and the flow line, resulting in potential bypass of pollutants.
- No control measures were implemented along the perimeter of the disturbed area.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraphs 27(b-d,n,&gg-ii). Stormwater from this Project area flows to the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

i. The Inspector observed that control measures along all the perimeters of lots 31-51 and along Oliver Circle were not implemented to manage stormwater runoff. Specifically:

- No control measures were implemented along the road, between the disturbed area and the flow line, resulting in potential bypass of pollutants.
- No control measures were implemented along the perimeter of the disturbed area.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraphs 27(b-d,n,&gg-ii). Stormwater from this Project area flows to the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

j. The Inspector observed that control measures along all the perimeters of lots 52-56 were not implemented to manage stormwater runoff. Specifically:

- No control measures were implemented along the road, between the disturbed area and the flow line, resulting in potential bypass of pollutants.
- No control measures were implemented along the perimeter of the disturbed area.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraphs 27(b-d,n,&gg-ii). Stormwater from this Project area flows to the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

k. The Inspector observed that control measures along the south, west, and north perimeters of lots 57-66 and along Jade Liz Circle were not implemented to manage stormwater runoff. Specifically:

- No control measures were implemented along the road, between the disturbed area and the flow line, resulting in potential bypass of pollutants.
- No control measures were implemented along the perimeter of the disturbed area.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraphs 27(b-d,n,&gg-ii). Stormwater from this Project area flows to the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

l. The Inspector observed that control measures along the west and south perimeters of lots 72-79 and along Brenda Gail Place were not implemented to manage stormwater runoff. Specifically:

- No control measures were implemented along the road, between the disturbed area and the flow line, resulting in potential bypass of pollutants.
- No control measures were implemented along the perimeter of the disturbed area.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraphs 27(b-d,n,&gg-ii). Stormwater from this Project area flows to the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

m. The Inspector observed that control measures along the perimeters of lots 89-93 and along Joel Place were not implemented to manage stormwater runoff. Specifically:

- No control measures were implemented along the road, between the disturbed area and the flow line, resulting in potential bypass of pollutants.
- No control measures were implemented along the perimeter of the disturbed area.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraphs 27(b-d,n,&gg-ii). Stormwater from this Project area flows to the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

n. The Inspector observed rubber wattle inlet protection control measures along the eastern perimeter of the site, along Grandview Meadows Road, that were not implemented and/or maintained according to good pollution control practices. Specifically:

- Rubber wattles were not installed to completely surround the inlets, allowing possible bypass of pollutants.
- Rubber wattles showed signs of wear, including tearing and/or holes, allowing for potential bypass of pollutants.
- Holes in the rubber wattles exposed shredded rubber, creating an additional pollutant source.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraphs 27(b-d&kk). Stormwater from this Project area flows into the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

o. The Inspector observed that control measures for the concrete washout area located near lot 110 were not implemented and/or maintained according to good pollution control practices. Specifically:

- The vehicle tracking pad was not a minimum of 25 feet long, in front of the concrete washout area.
- The earthen berm around the concrete washout area was not at least one (1) foot above the concrete materials and the berm was not consistently compacted.
- There were no signs around the concrete washout area to clearly designate the location.
- The accumulated concrete materials exceeded a depth of two (2) feet and had yet to be removed.

Additional control measures were not implemented down gradient of this Project area to specifically control pollutants associated with concrete washouts. Stormwater from this Project area flows into the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

p. The Inspector observed that control measures for the concrete washout area located near lot 11 were not implemented and/or maintained according to good pollution control practices. Specifically:

- No vehicle tracking pad was installed in front of the concrete washout area.
- A consistently compacted earthen berm at least one (1) foot above the concrete materials was not installed around the concrete washout area
- There were no signs around the concrete washout area to clearly designate the location.

Additional control measures were not implemented down gradient of this Project area to specifically control pollutants associated with concrete washouts. Stormwater from this Project area flows into the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

q. The Inspector observed heavy weight wattle control measures along Robert Street on the west perimeter of lots 89-98 that were not implemented and/or maintained according to good pollution control practices. Specifically:

- The heavy weight wattle was not installed securely to the ground, allowing for potential bypass of pollutants.
- The joints of the heavy weight wattles were not connected, leaving space between the wattles, and allowing for potential bypass of pollutants.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraphs 27(b-d,n,&gg-ii). Stormwater from this Project area flows to the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

r. The Inspector observed heavy weight wattle control measures along the south perimeter of lots 67-71 that were not implemented and/or maintained according to good pollution control practices. Specifically:

- The heavy weight wattle was not installed securely to the ground, allowing for potential bypass of pollutants.
- The joints of the heavy weight wattles were not connected, leaving space between the wattles, and allowing for potential bypass of pollutants.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraphs 27(b-d,n,&gg-ii). Stormwater from this Project area flows to the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

s. The Inspector observed heavy weight wattle control measures along the east perimeter of lots 66 and 57 were not implemented and/or maintained according to good pollution control practices. Specifically:

- The heavy weight wattle was not installed securely to the ground, allowing for potential bypass of pollutants.
- The joints of the heavy weight wattles were not connected, leaving space between the wattles, and allowing for potential bypass of pollutants.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraphs 27(b-d,n,&gg-ii). Stormwater from this Project area flows to the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

t. The Inspector observed that control measures were not implemented to manage pollutant contributions from the concrete waste located on Robert Street. Specifically:

- Residual concrete waste caused by saw cutting was not controlled and/or cleaned up

immediately after it was created, thereby creating an uncontrolled potential pollutant, which was observed on the street.
- Saw cutting slurry was not controlled and/or cleaned up immediately after it was created, thereby creating an uncontrolled potential pollutant, which was observed on the adjacent lot.

Additional control measures were not implemented down gradient of this Project area to specifically control pollutants associated with concrete cutting. Stormwater from this Project area flows into the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

u. The Inspector observed that control measures were not implemented to manage pollutant contributions from the stockpile located near lot 35.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraphs 27(b-d,n,&gg-ii). Stormwater from this Project area flows to the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

v. The Inspector observed that control measures were not implemented to manage pollutant contributions from the stockpile located in the area of lots 47-56.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraphs 27(b-d,n,&gg-ii). Stormwater from this Project area flows to the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

w. The Inspector observed that control measures were not implemented to manage pollutant contributions from the stockpile located north of Jade Liz Circle.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraphs 27(b-d,n,&gg-ii). Stormwater from this Project area flows to the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

x. The Inspector observed that control measures were not implemented to manage pollutant contributions from the stockpile located on Robert Street near the intersection of Brenda Gail Place.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraphs 27(b-d,n,&gg-ii). Stormwater from this Project area flows to the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

y. The Inspector observed that control measures were not implemented to manage pollutant contributions from the stockpile located in the area of lots 80-81.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraphs 27(b-d,n,&gg-ii). Stormwater from this Project area flows to the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

z. The Inspector observed that control measures were not implemented to manage pollutant contributions from asphalt waste located near lots 47-51.

Additional control measures were not implemented down gradient of this Project area to specifically control pollutants associated with asphalt fines. Stormwater from this Project area flows into the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

aa. The Inspector observed that control measures were not implemented to manage pollutant contributions from petroleum products spilled throughout the project. Specifically:

- No control measures were identified or implemented to control or prevent petroleum product spills.
- No clean-up or remediation was observed to be conducted on any of the observed petroleum product spills.

Additional control measures were not implemented down gradient of this Project area to specifically control pollutants associated with petroleum product spills. Stormwater from the Project generally flows into the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

bb. The Inspector observed a straw bale control measures at the outfall on the northwest corner of the site, behind the office trailer, that was not implemented and/or maintained according to good pollution control practices. Specifically:

- The straw bale was not replaced per industry standard, which states that a straw bale shall be replaced once the depth of the accumulated sediment reaches approximately half the height on the control measure. This failure allows potential bypass of pollutants.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraphs 27(b-d&q-s). Stormwater from this Project area flows to the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

cc. The Inspector observed rock sock control measures at or near the curb inlets along Grandview Meadows Drive that were not implemented and/or maintained according to good pollution control practices. Specifically:

- The rock checks were not implemented per industry standard, which states that rock socks shall be placed along the curb approximately 30 degrees from perpendicular in the opposite direction of flow. This failure results in rock sock checks that do not capture storm water or slow velocity, allowing potential bypass of pollutants.
- The inlet rock socks were not implemented per industry standard, which states that rock socks shall be placed flush with the curb and each inlet shall have at least two rock checks in series up gradient of the inlet. These failures allows potential bypass of pollutants.
- Rock socks were observed to be damaged and not repaired or replaced, allowing potential bypass of pollutants.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraphs 27(b-d,n,&kk). Stormwater from this Project area flows along

Grandview Meadows Drive, into curb inlets, and in to the City of Longmont's storm sewer, which discharges to Dry Creek.

dd. The Inspector observed straw wattle control measures on the east side of Robert Street near lots 80-88 that were not implemented and/or maintained according to good pollution control practices. Specifically:

- Straw wattles were not implemented per industry standard, which states that a straw wattle shall be entrenched up to 1/3 the height of the diameter of the wattle. This failure allows potential bypass of pollutants.
- Straw wattles were not staked to the ground, allowing for potential bypass of pollutants.
- Straw wattles were not overlapped, per industry standard, allowing for potential bypass of pollutants.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraphs 27(b-d,n,&kk). Stormwater from this Project area flows into the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

ee. The Inspector observed final stabilization control measures located on the west side of Grandview Meadows Drive that were not implemented and/or maintained according to good pollution control practices. Specifically:

- Sod used as a final stabilization control measure was torn up and in need of maintenance. This failure prevents final stabilization and allows for potential bypass of pollutants.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraphs 27(cc). Stormwater from this Project area flows along Grandview Meadows Drive, into curb inlets, and in to the City of Longmont's storm sewer, which discharges to Dry Creek.

ff. The Inspector observed that inlet control measures were not implemented to manage pollutant contributions from vehicle tracking located up gradient, on the south side of Nelson Road, as identified on the site map of the SWMP.

Additional control measures were not implemented down gradient of this Project area. Stormwater from this Project area flows into the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

gg. The Inspector observed that control measures were not implemented to manage pollutant contributions from concrete waste located on the south side of Robert Street near lots 94-104.

Additional control measures were not implemented down gradient of this Project area to specifically control pollutants associated with concrete waste. Stormwater from this Project area flows into the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

hh. The Inspector observed that control measures were not implemented to manage pollutant contributions from concrete waste located on at the intersection of Oliver Circle and Robert Street.

Additional control measures were not implemented down gradient of this Project area to specifically control pollutants associated with concrete waste. Stormwater from this Project area flows into the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

ii. The Inspector observed that control measures were not implemented to manage pollutant contributions from concrete waste located on the northwest side of Jade Liz Circle.

Additional control measures were not implemented down gradient of this Project area to specifically control pollutants associated with concrete waste. Stormwater from this Project area flows into the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

jj. The Inspector observed that control measures were not implemented to manage pollutant contributions from construction material waste located on the southwest side of Jade Liz Circle.

Additional control measures were not implemented down gradient of this Project area to specifically control pollutants associated with construction material waste. Stormwater from this Project area flows into the permanent water quality pond on the south side of the site and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

kk. The Inspector observed that the permanent water quality pond on the southeast corner of the site was not implemented and/or maintained according to good pollution control practices. Specifically:

- The permanent water quality pond storage did not appear to achieve industry standards, which require 3,600 cubic feet of storage per acre of drainage area. Design information on the permanent water quality pond storage was not provided to verify it was adequately sized.
- The inlets of the permanent water quality pond storage did not appear to be located at the furthest distance from the outlet, per industry standards. Design information on the permanent water quality pond storage was not provided to verify outlets were adequately located.

Additional inadequate control measures were implemented down gradient of this Project area, see paragraph 27(b). Stormwater from the permanent water quality pond discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

28. The Division has determined that DFH Mandarin failed to implement and/or maintain functional BMPs for all potential pollutant sources at the Project, following good engineering, hydrologic and pollution control practices.

29. DFH Mandarin's failure to implement and/or maintain functional BMPs to protect stormwater quality during construction activities at the Project constitutes violations of Part I.C.3.c., Part I.D.2. and Part I.B.3. of the Permit.

NOTICE OF VIOLATION

30. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that DFH Mandarin has violated the following sections of the Permit:

Part I.B. of the Permit, which states in part, "The SWMP shall be prepared in accordance with good engineering, hydrologic and pollution control practices. ... The SWMP shall: a) Identify all potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharges associated with construction activity from the facility; b) Describe the practices to be used to reduce the pollutants in stormwater discharges associated with construction activity at the facility; and ensure the practices are selected and described in accordance with good engineering practices, including the installation, implementation and maintenance requirements; and c) Be properly prepared and updated in accordance with Part I.D.5.c., to ensure compliance with the terms and conditions of this permit."

Part I.C. of the Permit, which states in part, "The SWMP shall include the following items, at a minimum."

Part I.D.6.a. of the Permit, which states in part, "The permittee shall, at a minimum, make a thorough inspection, in accordance with the requirements in I.D.6.b. below, at least once every 14 calendar days ... For sites or portions of sites that meet the following criteria, but final stabilization has not been achieved due to vegetation cover that has not become established, the permittee shall make a thorough inspection of their stormwater management system at least once every month."

Part I.D.6.b.2. of the Permit, "After adequate corrective actions(s) has been taken, ... the report shall contain a signed statement indicating the site is in compliance with the permit to the best of the signer's knowledge and belief."

Part I.D.8. of the Permit, which states in part, "Where BMPs have failed, resulting in noncompliance with Part I.D.2., they must be addressed as soon as possible, immediately in most cases, to minimize discharge of pollutants."

Part I.C.3.c. of the Permit, which outlines in part that BMPs for Stormwater Pollution Prevention shall address erosion and sediment control, including "structural practices implemented at the site to minimize erosion and sediment transport" and "non-structural practices implemented at the site to minimize erosion and sediment transport," as well as phased BMP implementation, materials handling and spill prevention, dedicated concrete or asphalt batch plants, vehicle tracking control, waste management and disposal, including concrete washout, and groundwater and stormwater dewatering.

Part I.D.2. of the Permit, which states, "Facilities must select, install, implement, and maintain appropriate BMPs, following good engineering, hydrologic and pollution control practices. BMPs implemented at the site must be adequately designed to provide control for all potential pollutant sources associated with construction activity to prevent pollution or degradation of State waters."

Part I.B.3. of the Permit, which states in part, "Facilities must implement the provisions of the SWMP as written and updated, form commencement of construction activity until final stabilization is complete, as a condition of this permit."

REQUIRED CORRECTIVE ACTION

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

31. 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 DFH Mandarin to comply with the following specific terms and conditions of this Order:

32. DFH Mandarin shall immediately evaluate the Project's SWMP and implement necessary measures to ensure the SWMP contains all of the elements required by the Permit and is effective in managing pollutant discharges from the Project. Within thirty (30) calendar days of receipt of this Order, DFH Mandarin shall submit a written certification to the Division stating that a complete, effective and up-to-date SWMP has been fully developed and implemented at the Project.

33. DFH Mandarin shall immediately begin conducting and documenting inspections of the Project's stormwater management system pursuant to the provisions outlined in the Permit. Within thirty (30) calendar days of receipt of this Order, DFH Mandarin shall submit a written certification to the Division stating that all such inspections are being conducted and documented in accordance with the terms and conditions of the Permit.

34. DFH Mandarin shall immediately implement necessary measures to ensure that adequate BMPs are in place to control pollutant discharges from the Project. This includes ensuring that all disturbed areas at the Project are stabilized and/or protected with a system/series of erosion and sediment control practices, and that all BMPs at the site are selected, installed, implemented and maintained following good engineering, hydrologic, and pollution control practices. Within thirty (30) calendar days of receipt of this Order, DFH Mandarin shall evaluate and modify all existing BMPs at the Project to ensure the BMPs meet the design requirements specified in the Project's complete and up-to-date SWMP. Within forty-five (45) calendar days of receipt of this Order, DFH Mandarin shall submit photographs to the Division documenting the current conditions at the site and the associated BMPs implemented at the Project.

NOTICES AND SUBMITTALS

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

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-CWE-B2
Attention: Eric Mink
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: (303) 692-2312
Email: eric.mink@state.co.us

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

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

OBLIGATION TO ANSWER AND REQUEST FOR HEARING

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

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

FALSIFICATION AND TAMPERING

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

POTENTIAL CIVIL AND CRIMINAL PENALTIES

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

RELEASE OR DISCHARGE NOTIFICATION

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

EFFECT OF ORDER

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

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

Issued at Denver, Colorado, this 18th day of February, 2016.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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

COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST **NUMBER: SO-160218-2**

IN THE MATTER OF: **DFH MANDARIN, LLC**
CDPS PERMIT NO. COR-030000
CERTIFICATION NO. COR-03N492
BOULDER 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, DFH Mandarin, LLC ("DFH Mandarin") was a Florida corporation in good standing and registered to conduct business in the State of Colorado.

2. DFH Mandarin 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. DFH Mandarin initiated construction at the Park Meadows Project with a planned disturbance area of approximately 17 acres of land at or near 40°09'02" N and 105°08'55" W, in Boulder County, Colorado (the "Project").

4. Construction activities at the Project include ground disturbing activities associated with single family residential development.

5. On March 13, 2015, the Division received an application from DFH Mandarin for Project coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit").

6. On March 18, 2015, the Division provided DFH Mandarin with Certification Number COR-03N492 authorizing DFH Mandarin to discharge stormwater from the construction activities associated with the Project to waters of the State of Colorado, including but not limited to Dry Creek and the Saint Vrain River, under the terms and conditions of the Permit. Certification Number COR-03N492

became effective January 29, 2013 and was set to expire on June 30, 2012, but has been administratively continued pending Permit reissuance.

7. Dry creek and the Saint Vrain River are a "state water" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(102).

8. Pursuant to 5 CCR 1002-61, §61.8, DFH Mandarin must comply with all the terms and conditions of the Permit, and violations of such terms and conditions may be subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.

9. On July 21, 2015, a representative from the Division (the "Inspector") conducted an on-site inspection of the Project pursuant to the Division's authority under §25-8-306, C.R.S., to determine DFH Mandarin's compliance with the Water Quality Control Act and the Permit. During the inspection, the Inspector interviewed Project representatives, reviewed the Project's stormwater management system records and performed a physical inspection of the Project.

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

10. Pursuant to Part I.C.3.c. of the Permit, DFH Mandarin is required to implement BMPs to reduce the potential of pollution sources from contributing pollutants to stormwater discharges, including minimizing erosion and sediment transport from the Project. The Permit specifies that structural site management practices may include, but are not limited to: straw bales, wattles/sediment control logs, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, pipe slope drains, inlet protection, outlet protection, gabions and temporary or permanent sediment basins. The Permit specifies that non-structural site management practices may include, but are not limited to: temporary vegetation, permanent vegetation, mulching, geotextiles, sod stabilization, slope roughening, vegetative buffer strips, protection of trees and preservation of mature vegetation.

11. Pursuant to Part I.D.2. of the Permit, DFH Mandarin is required to select, design, install, implement and maintain appropriate BMPs, following good engineering, hydrologic and pollution control practices. The BMPs implemented at the site must be adequately designed to provide control for all potential pollutant sources associated with construction activity at the Project.

12. During the July 21, 2015 inspection, the Inspector identified the following deficiencies related to BMP installation and maintenance at the Project, as described in Paragraphs 13(a-b) below:

    a. The Inspector observed a silt fence control measure around the excavated material stockpile that was not implemented and/or maintained according to good pollution control practices. Specifically:

        - Silt fence was not anchored to stakes per industry standard, which states that a silt fence will be anchored to a stake with one a (1) inch staple or nail spaced every three (3) inches. This failure allows possible bypass of pollutants.
        - Silt fence showed signs of wear, including sagging, tearing and/or collapse, which allows for potential bypass of pollutants.
        - Silt fence joints were not wrapped and/or spliced per industry standard, which states that two silt fence joints will be wrapped 180 degrees around two stakes prior to being staked to the ground. This failure allows possible bypass of pollutants.
        - Silt fence not trenched per industry standard, which states that silt fence must be entrenched a minimum of four (4) by six (6) inches. This failure allows possible bypass of

pollutants.

Additional control measures were not implemented down gradient of this Project area. Stormwater from this Project area flows generally south overland towards to Dry Creek.

b. The Inspector observed that vehicle control measures near the excavated material stockpile were not implemented and/or maintained according to good pollution control practices. Specifically:

- A non-woven geotextile farbic was not installed between the soil and and the rock of the vehicle tracking pad.
- The vehicle tracking pad was not refreshed (e.g. addition rock added and/or the surface scarified to remove sediment on the top of the rock) in order to maintain the effective sediment removal capacity.

Additional control measures were not implemented down gradient of this Project area. Stormwater from this area of the Project flows north to Nelson Soar and discharges to the City of Longmont's storm sewer, which discharges to Dry Creek.

13. The Division has determined that DFH Mandarin failed to implement and/or maintain functional BMPs for all potential pollutant sources at the Project, following good engineering, hydrologic and pollution control practices.

14. DFH Mandarin's failure to implement and/or maintain functional BMPs to protect stormwater quality during construction activities at the Project constitutes violations of Part I.C.3.c. and Part I.D.2. of the Permit.

NOTICE OF VIOLATION

15. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that DFH Mandarin has violated the following sections of the Permit:

Part I.C.3.c. of the Permit, which outlines in part that BMPs for Stormwater Pollution Prevention shall address erosion and sediment control, including "structural practices implemented at the site to minimize erosion and sediment transport" and "non-structural practices implemented at the site to minimize erosion and sediment transport," as well as phased BMP implementation, materials handling and spill prevention, dedicated concrete or asphalt batch plants, vehicle tracking control, waste management and disposal, including concrete washout, and groundwater and stormwater dewatering.

Part I.D.2. of the Permit, which states, "Facilities must select, install, implement, and maintain appropriate BMPs, following good engineering, hydrologic and pollution control practices. BMPs implemented at the site must be adequately designed to provide control for all potential pollutant sources associated with construction activity to prevent pollution or degradation of State waters."

REQUIRED CORRECTIVE ACTION

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

16. 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 DFH Mandarin to comply with the following specific terms and conditions of this Order:

17. DFH Mandarin shall immediately evaluate the Project's SWMP and implement necessary measures to ensure the SWMP contains all of the elements required by the Permit and is effective in managing pollutant discharges from the Project. Within thirty (30) calendar days of receipt of this Order, DFH Mandarin shall submit a written certification to the Division stating that a complete, effective and up-to-date SWMP has been fully developed and implemented at the Project.

18. DFH Mandarin shall immediately implement necessary measures to ensure that adequate BMPs are in place to control pollutant discharges from the Project. This includes ensuring that all disturbed areas at the Project are stabilized and/or protected with a system/series of erosion and sediment control practices, and that all BMPs at the site are selected, installed, implemented and maintained following good engineering, hydrologic, and pollution control practices. Within thirty (30) calendar days of receipt of this Order, DFH Mandarin shall evaluate and modify all existing BMPs at the Project to ensure the BMPs meet the design requirements specified in the Project's complete and up-to-date SWMP. Within forty-five (45) calendar days of receipt of this Order, DFH Mandarin shall submit photographs to the Division documenting the current conditions at the site and the associated BMPs implemented at the Project.

NOTICES AND SUBMITTALS

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

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-CWE-B2
Attention: Eric Mink
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: (303) 692-2312
Email: eric.mink@state.co.us

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

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

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

OBLIGATION TO ANSWER AND REQUEST FOR HEARING

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

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

FALSIFICATION AND TAMPERING

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

POTENTIAL CIVIL AND CRIMINAL PENALTIES

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

RELEASE OR DISCHARGE NOTIFICATION

Pursuant to §25-8-601, C.R.S., you are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the

waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

EFFECT OF ORDER

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

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

Issued at Denver, Colorado, this 18th day of February, 2016.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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