COLORADO
Department of Public
Health & Environment

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

September 29, 2015

Patricia Diane Fiore, Registered Agent
Fiore & Sons, Inc.
730 W. 62nd Ave.
Denver, Colorado 80216

Certified Mail Number: 7011 2000 0001 3463 7539

RE: Order for Civil Penalty, Number: SP-150928-1

Dear Ms. Fiore:

Fiore & Sons, Inc. is hereby served with the enclosed Order for Civil Penalty ("Penalty Order"). This Penalty Order is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §25-8-608(2) of the Colorado Revised Statutes. Payment of the imposed civil penalty should be made in accordance with the methods referenced in the Penalty Order.

If you have any questions regarding the Penalty Order or the payment method, please do not hesitate to contact Lindsay Ellis of this office at (303) 692-2271 or by electronic mail at lindsay.ellis@state.co.us.

Sincerely,

Kelly Morgan, Enforcement Specialist
Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Natasha Davis, EPA Region VIII
Jeremy Simmons, Rio Blanco County Department of Public Health and Environment
Nicole Rowan, Clean Water Program, CDPHE
Michael Beck, Community Development and Partnership Section, CDPHE
Bret Icenogle, Engineering Section, CDPHE
Kelly Jacques, Field Services Section, CDPHE
Lillian Gonzalez, Permits Unit 1, CDPHE
Nathan Moore, Clean Water Compliance Unit, CDPHE
Rik Gay, Clean Water Compliance Unit, CDPHE
Tania Watson, Compliance Assurance, CDPHE

COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

ORDER FOR CIVIL PENALTY **NUMBER: SP-150928-1**

IN THE MATTER OF: **FIORE & SONS, INC.**
CDPS PERMIT NO. COR-030000
CERTIFICATION NO. COR-03J343
RIO BLANCO COUNTY, COLORADO

This matter having come to my attention as the Designee of the Executive Director of the Colorado Department of Public Health and Environment, pursuant to §25-8-608 C.R.S, I hereby impose a civil penalty in the amount of Two Hundred Eighty-Four Thousand Nine Hundred Twenty-Nine Dollars ($284,929.00) against Fiore & Sons, Inc. for the violations cited in the August 13, 2015 Compliance Order on Consent (Number SC-150813-1). A copy of the Compliance Order on Consent is attached hereto as Exhibit A and is incorporated herein by reference. The penalty shall be paid through two (2) installment payments, with the first due within thirty (30) calendar days of the date of this Order for Civil Penalty, as set forth in the Compliance Order on Consent.

"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:

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

Dated this 28th day of September, 2015.

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

EXHIBIT A

COLORADO
Department of Public
Health & Environment

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

August 13, 2015

Larry Fiore, Jr., President
Fiore & Sons, Inc.
730 W. 62nd Avenue
Denver, CO 80216

RE: Compliance Order on Consent, Number: SC-150813-1

Dear Mr. Fiore:

Enclosed for Fiore & Sons, Inc.'s ("Fiore") records, is Fiore's copy of the Compliance Order on Consent ("Order") with original signatures. Please remember that this agreement is subject to a thirty-day public comment period (Order, paragraph 46). The division will contact your office to discuss any comments received during this period. Please be advised that the first page of the Order was revised to reflect the assigned Order Number.

If you have any questions, please do not hesitate to contact me at (303) 692-2271 or lindsay.ellis@state.co.us. We appreciate Fiore's time and efforts in resolving this matter.

Sincerely,

Lindsay Ellis

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

Enclosure(s)

cc: Enforcement File

ec: Natasha Davis, EPA Region VIII
Jeremy Simmons, Rio Blanco County Department of Public Health and Environment
Nicole Rowan, Watershed Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Bret Icenogle, Engineering Section, CDPHE
Kelly Jacques, Field Services Section, CDPHE
Lillian Gonzalez, Permits Unit 1, CDPHE
Nathan Moore, Clean Water Compliance Unit, CDPHE
Rik Gay, Clean Water Compliance Unit, CDPHE
Michael Harris, Clean Water Enforcement Unit, CDPHE
Tania Watson, Compliance Assurance, CDPHE

EXHIBIT A

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT **NUMBER: SC-150813-1**

IN THE MATTER OF: **FIORE & SONS, INC.**
CDPS PERMIT NO. COR-030000
CERTIFICATION NO. COR-03J343
RIO BLANCO 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 (Act) §§25-8-101 to 803, C.R.S., and its implementing regulations, with the express consent of Fiore & Sons, Inc. (Fiore). The Division and Fiore 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, alleged violations cited herein, cited in the Notice of Violation / Cease and Desist Order, Number SO-140117-1, that the Division issued to Fiore on January 17, 2014 (NOV/CDO), and cited in the Compliance Advisory that the Division issued to Fiore on July 2, 2014 (Compliance Advisory), and civil penalties associated with the alleged violations.

DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602 and 605, C.R.S., the Division makes the following determinations regarding Fiore and Fiore's compliance with the Act and a permit issued pursuant to the Act.

3. At all times relevant to the alleged violations identified herein, Fiore was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.

4. Fiore is a "person" as defined by the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).

5. On August 16, 2012, Fiore initiated reconstruction activities of an airport runway with a planned disturbance of 150 acres of land at or near State Highway 13, in or near the Town of Meeker, Rio Blanco County (County), Colorado (Project).

6. Construction activities at the Project included demolition of the existing runway pavement and base course, excavation and embankment construction to achieve new runway grades, and installation of sub-base course, base course, underground conduit and wiring, asphalt pavement, pavement edge drains, runway lights, signs, and navigation aids.

7. On July 13, 2012, the Division received an application from Fiore for Project coverage under the Colorado Discharge Permit System (CDPS) General Permit Number COR-030000, for Stormwater Discharges Associated with Construction Activity (Permit).

8. On July 18, 2012, the Division provided Fiore Certification Number COR-03J343 authorizing Fiore to discharge stormwater from construction activities associated with the Project to the White River under the terms and conditions of the Permit. Certification Number COR-03J343 took effect July 17, 2012.

9. On April 14, 2015, the Division received a Construction Stormwater Inactivation Notice from Fiore seeking to terminate coverage under COR-03J343. On June 2, 2015, the Division terminated Permit certification number COR-03J343 effective April 30, 2015.

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

11. The White River is a "state water" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(102).

12. On July 22, 2013 and June 3, 2014, a representative from the Division (Inspector) conducted on-site inspections of the Project pursuant to the Division's authority under §25-8-306, C.R.S., to determine Fiore's compliance with the Water Quality Control Act and the Permit. During the inspections, the Inspector interviewed Project representatives, reviewed the Project's stormwater management system records, and performed a physical inspection of the Project.

Deficient and/or Incomplete Stormwater Management Plan

13. Pursuant to Part I. B. of the Permit, Fiore was required to prepare and maintain a Stormwater Management Plan (SWMP) in accordance with good engineering, hydrologic, and pollution control practices. The SWMP was required to describe the Best Management Practices (BMPs) used to reduce pollutants in stormwater discharges associated with construction activity at the Project.

14. Pursuant to Part I. C. of the Permit, the SWMP was required to include, at a minimum, the following items:

    a. Site Description - The SWMP was required to clearly describe the construction activity, including:

        i. The nature of the construction activity at the site.
        ii. The proposed sequence for major activities.
        iii. Estimates of the total area of the site, and the area and location expected to be disturbed by clearing, excavation, grading, or other construction activities.
        iv. A summary of any data used in the development of the site construction plans or SWMP that describes the soil or potential for soil erosion.

v. A description of the vegetation at the site and an estimate of the percent vegetative ground cover.
vi. The location and description of all potential pollution sources, including ground surface disturbing activities, vehicle fueling, storage of fertilizers or chemicals, etc.
vii. The location and description of any anticipated allowable sources of non-stormwater discharge at the site, such as uncontaminated springs, landscape irrigation return flow, construction dewatering, and concrete washout.
viii. The name of the receiving water(s) and the size, type and location of any outfall(s). If the stormwater discharge was to a municipal separate storm sewer system, the name of that system, the location of the storm sewer discharge, and the ultimate receiving water(s).

b. Site Map - The SWMP was required to 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 non-structural BMPs as applicable.
viii. Locations of springs, streams, wetlands and other surface waters.

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

i. SWMP Administrator - The SWMP was required to identify a specific individual(s), position or title responsible for developing, implementing, maintaining, and revising the SWMP.
ii. Identification of Potential Pollutant Sources - The SWMP was required to identify and describe those sources determined to have the potential to contribute pollutants to stormwater discharges.
iii. BMPs for Stormwater Pollution Prevention - The SWMP was required to identify and describe appropriate BMPs implemented at the Project to reduce the potential of pollution sources to contribute pollutants to stormwater discharges. The SWMP was required to clearly describe the installation and implementation specifications for each BMP identified in the SWMP.

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

(2) Non-Structural Practices for Erosion and Sediment Control - The SWMP was required to clearly describe and locate, as applicable, all non-structural practices implemented at the site to minimize erosion and sediment transport. The description was required to include interim and permanent stabilization practices, and site-specific scheduling for implementation of the practices. Non-structural practices could include, but were 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 was required to clearly describe the relationship between the phases of construction, and the implementation and maintenance of both structural and non-structural stormwater management controls. The SWMP was required to identify the stormwater management controls implemented during the project phases, which could include, but were 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 was required to clearly describe and locate all practices implemented at the site to minimize impacts from procedures or significant materials that could contribute pollutants to runoff. Such procedures or significant materials could include: exposed storage of building materials; paints and solvents; fertilizers or chemicals; waste material; and equipment maintenance or fueling procedures.

(5) Dedicated Concrete or Asphalt Batch Plants - The SWMP was required to clearly describe and locate all practices implemented at the site to control stormwater pollution from dedicated concrete or asphalt batch plants.

(6) Vehicle Tracking Control - The SWMP was required to 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 was required to 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 was required to 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 identified in the SWMP, in good and effective operating condition.

15. Pursuant to Part I. D. 5. (c) of the Permit, Fiore was required to amend the SWMP when there was a change in design, construction, operation, or maintenance of the site, which would require the implementation of new or revised BMPs, or if the SWMP proved to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activity, or when BMPs were no longer necessary and were removed. SWMP changes could include a schedule for further BMP design and implementation, provided that, if any interim BMPs were needed to comply with the permit, they were also included in the SWMP and implemented during the interim period.

16. During the July 22, 2013 inspection, the Inspector reviewed the Project's SWMP and identified the following deficiencies, as described in paragraphs 16(a-d) below:

    a. The SWMP did not describe and locate all structural practices implemented at the site to minimize erosion and sediment transport. Section 3(c)(1) of the SWMP listed numerous structural BMPs to minimize sediment transport, including silt fences, straw check dams, and sediment logs, with "the actual location, number, and type of structural BMPs" dependent upon "the phasing of construction activities and/or the stage in the sequence of construction." However, the SWMP failed to:

        i. locate all of the sediment control practices listed in Section 3(c)(1) of the SWMP;
        ii. describe and locate riprap outlet protection implemented at the site; and
        iii. describe and locate any structural practices to minimize erosion transport.

    b. The SWMP did not describe and locate, as applicable, all non-structural practices implemented at the site to minimize erosion and sediment transport. Section 3(c)(2) of the SWMP listed numerous non-structural BMPs, including collection, storage and disposal of waste and debris, minimum fertilizer application, vehicle inspection, monitoring and maintenance, use of spill kits, and spill clean-up. However, the SWMP failed to:

        i. locate all of the practices listed in Section 3(c)(2) of the SWMP; and
        ii. describe and locate vegetative buffer strips implemented at the site.

    c. The site map included with the SWMP did not identify the locations of all BMPs observed in the field. Specifically, the site map did not identify the locations of the site's riprap outlet protection and vegetative buffer strips.

    d. The site map included with the SWMP did not identify the construction site boundaries.

17. During the June 3, 2014 inspection, the Inspector reviewed the Project's SWMP and identified the following deficiencies, as described in paragraphs 17(a-b) below:

    a. The SWMP did not describe all structural practices implemented at the site to minimize erosion and sediment transport. Section 3(c)(1) of the revised SWMP lists straw check dams for use in any disturbed or rerouted flow channels and mentions rip rap as a possible control measure in extreme situations. However, the SWMP failed to describe the rip rap and straw bale combination control measures and rip rap rundown control measures implemented at the site. Additionally, the SWMP did not describe a retention pond observed at the southwest portion of the Project.

b. Certain installation and implementation specifications included in the SWMP were not designed according to good engineering, hydrologic and pollution control practices. First, specifications for the silt fence and straw bale check dam combination control measure did not include material dimensions, installation instructions or maintenance requirements. Second, implementation practices for the vegetative buffer were not site-specific.

18. The Division has determined that Fiore failed to prepare and maintain a complete and accurate SWMP for the Project.

19. The Division has determined that Fiore's failure to prepare and maintain a complete and accurate SWMP for the Project constitutes violations of Part I. B. 1, Part I. B. 2 (b), Part I. B. 2 (c), Part I. B. 3, Part I. C. 2, Part I. C. 3 (c), Part I. C. 5, and Part I. D. 5. (c) of the Permit.

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

20. Pursuant to Part I. D. 6. (a) of the Permit, for active sites where construction has not been completed, Fiore was required to make a thorough inspection of the Project's stormwater management system at least every 14 calendar days and within 24 hours of any precipitation or snowmelt event that causes surface erosion.

21. During the July 22, 2013 inspection, the Inspector reviewed the available self-inspection records for the period April 10, 2013 - July 18, 2013 and identified that Fiore failed to self-inspect the Project's stormwater management system between April 10, 2013 and May 12, 2013, and between May 12, 2013 and July 28, 2013. These periods exceed the minimum 14-day interval required between inspections.

22. The Division has determined that Fiore's failure to perform self-inspections constitutes a violation of Part I. D. 6. (a) of the Permit.

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

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

24. Pursuant to Part I. D. 2. of the Permit, Fiore was required to select, install, implement, and maintain appropriate BMPs, following good engineering, hydrologic and pollution control practices. BMPs implemented at the site were required to be adequately designed to provide control for all potential pollutant sources associated with construction activity at the Project.

25. Pursuant to Part I. D. 7. of the Permit, all erosion and sediment control practices and other protective measures identified in the SWMP were required to be maintained in effective operating condition. BMPs not adequately maintained in accordance with good engineering, hydrologic and pollution control practices, including removal of collected sediment outside the acceptable tolerances of the BMPs, are considered to be no longer operating effectively and were required to be addressed.

26. On July 17, 2013, a precipitation event resulted in 0.97 inches of rainfall at the Project site. Private photographs and video footage captured a discharge of sediment-laden stormwater from the Project. The photographs and video footage depict concentrated and sheet flows of stormwater that breached silt fencing along the Project's southwest boundary and was subsequently discharged into unnamed tributaries flowing into Sulphur Creek and the White River.

27. During the July 22, 2013 inspection, the Inspector identified the following deficiencies related to BMP selection and implementation at the Project, as described in Paragraphs 27(a-d) below:

    a. Control measures observed downgradient of an approximately 140-acre disturbed area were not selected and implemented according to good pollution control practices. Specifically, silt fencing was the sole control measure observed at the southwest, southeast and the southern one-third of the northwest Project boundaries. The 140-acre drainage area exceeded the maximum tributary drainage area of 0.25 acre per 100 linear-feet of silt fence recommended by industry publications. The Project SWMP included Installation and implementation specifications for sediment control BMPs (straw check dams and sediment logs). However, no additional BMPs were observed to stabilize the disturbed area or to minimize the transportation of sediment. As a result, the silt fence failed to prevent sediment from discharging beyond Project boundaries. Stormwater runoff from these portions of the Project flows to Sulphur Creek and ultimately into the White River.

    b. No control measures were implemented at a culvert located in the southern portion of the Project. Specifically, a disturbed area north of the Project's midway point collected and subsequently discharged stormwater run-on through a southerly culvert. No outlet protection measures were implemented to reduce erosion or to minimize the transportation of sediment downstream of the culvert. As a result, sediment was discharged outside of the Project boundary. Stormwater runoff from this portion of the Project flows to Sulphur Creek and ultimately into the White River.

    c. No control measures were implemented at soil stockpiles located at or near the midway point and the northwest boundary of the Project. Specifically, no control measures were implemented to minimize erosion and sediment transport from the stockpiles. As a result, stockpiles were not stabilized and were exposed to stormwater runoff that flows to Sulphur Creek and ultimately into the White River.

    d. No control measures were implemented to manage construction wastes located at or near the midway point of the Project's southeast boundary. As a result, construction waste was exposed to stormwater runoff that flows to Sulphur Creek and ultimately into the White River.

28. On August 23, 2013, a precipitation event resulted in 0.60 inches of rainfall at the Project site. Private photographs captured a discharge of sediment-laden stormwater from the Project. The photographs depict concentrated and sheet flows of stormwater that breached silt fencing along the Project's southwest boundary and was subsequently discharged into unnamed tributaries flowing into Sulphur Creek and the White River.

29. On October 13 and 14, 2013, a precipitation event resulted in the discharge of asphalt emulsion from the Project boundaries. An estimated 1100 - 1500 gallons of the asphalt emulsion collected in a drainage ditch outside of the Project's southeast boundary. Section 3(b) of the SWMP lists "asphalt paving" as a potential pollutant source and asphalt "oil, petroleum distillates" as potential construction site stormwater pollutants. However, prior to the October 13 and 14, 2013 event, no control measures were implemented to prevent asphalt paving chemicals, applied in the normal course of construction activity, from discharging outside of Project boundaries and into Sulphur Creek and the White River.

30. On April 13, 2014, a precipitation event resulted in 0.81 inches of melted snow at the Project site. Private photographs and video footage captured a discharge of sediment-laden stormwater from the Project. The photographs and video footage depict concentrated flows of stormwater that discharged from the Project's southwest boundary and into unnamed tributaries flowing into Sulphur Creek and the White River.

31. On May 23, 2014, Fiore submitted photographs of current Project site conditions, as requested by the Division. The photographs reveal a failure to properly implement control measures.

32. During the June 3, 2014 inspection, the Inspector identified the following deficiencies related to BMP selection, design, installation, implementation, and maintenance at the Project, as described in Paragraphs 32(a-d) below:

    a. A vegetative buffer control measure located along the eastern boundary of the Project was not selected, designed, or implemented according to good pollution control practices. Specifically, native prairie grass was relied upon as a control measure downgradient of a disturbed area in a manner contrary to industry custom. Vegetative buffers are not recognized in the industry as: (1) a point source pollution control measure in areas of concentrated flows; (2) an effective control measure where the vegetative density is insufficient to reduce stormwater flow velocity; and (3) a downgradient sediment trapping device absent additional upgradient BMPs that first treat discharges from the area of earth disturbance. As a result, the vegetative buffer at the Project was not capable of preventing sediment transport and the contribution of pollutants to stormwater runoff that flows to Sulphur Creek and ultimately into the White River.

    b. Control measures observed adjacent to the airport runway and apron were not designed, installed, or implemented according to good pollution control practices. Specifically, straw bale check dams in drainage swales adjacent to both sides of the runway and southwest of the apron were: (1) not installed with the bottoms of the ends of the bales higher than the top of the middle of the bales, in order to encourage stormwater runoff to overtop, rather than flow around, the bales; and (2) spaced farther apart than the length prescribed in the Project's SWMP. These deficiencies impaired the ability of the check dams to reduce stormwater flow velocity, and, therefore, minimize erosion in the drainageway. As a result, rill erosion occurred beside the check dams. Stormwater runoff from these portions of the Project flows to Sulphur Creek and ultimately into the White River.

c. Control measures observed along the drainageway extending from the southern edge of the airport apron to the discharge point at the southwestern boundary of the Project were not designed, installed and implemented according to good pollution control practices. Specifically: (1) no erosion control measures were installed where the trickle channel crossing the apron discharged to the disturbed area downgradient of the apron; and (2) a retention pond observed downgradient of the apron did not have an outlet control measure. These deficiencies impaired the ability of the control measures to reduce stormwater flow velocity and intercept stormwater runoff from the upgradient disturbed areas. As a result, gully and rill erosion occurred in the drainageway extending from the apron to the discharge point at the southwestern boundary of the Project. Stormwater runoff from these portions of the Project flows to Sulphur Creek and ultimately into the White River.

d. A control measure observed at the Project boundaries was not installed and maintained according to good pollution control practices. Specifically, silt fence observed along the eastern and southwestern Project boundaries and downgradient of disturbed areas was: (1) installed in areas of concentrated flow, despite an industry prohibition against such use; (2) installed with gaps in the fabric; and (3) not installed along the contour of the slopes. Further, (4) the silt fence required maintenance. The fence was torn, detached from the stakes, and accumulated sediment above one-half its exposed height, the maximum threshold recommended in industry publications. These deficiencies impaired the ability of the silt fence to intercept stormwater runoff from the upgradient disturbed areas, and, therefore, minimize the transportation of sediment. Stormwater runoff from these portions of the Project flows to Sulphur Creek and ultimately into the White River.

33. The Division has determined that Fiore failed to select, design, install, implement and/or maintain BMPs for all potential pollutant sources at the Project, following good engineering, hydrologic, and pollution control practices.

34. The Division has determined that Fiore's failure to select, design, install, implement and/or maintain BMPs at the Project constitutes violations of Part I. B. 3, Part I. D. 2, and Part I. D. 7 of the Permit.'

COMPLIANCE REQUIREMENTS

35. Fiore shall immediately implement measures to maintain compliance with the Colorado Water Quality Control Act and the terms and conditions of the Permit, and all associated certifications issued to Fiore.

36. Within ninety (90) calendar days of the effective date of this Consent Order, Fiore shall submit to the Division, a description of the company's development and implementation of a construction stormwater training program. The program shall include:

a. A stormwater training course prepared and presented by a qualified third party not concentrated on transportation construction stormwater;

b. The following minimum topics: (1) principles of erosion and sediment control; (2) stormwater regulations and permit; (3) development and utilization of SWMPs; and (4) selection and implementation of erosion and sediment controls;

c. Attendance by all of Fiore's project managers, superintendents, and construction foremen involved in the design or construction of projects where stormwater management is within the scope of Fiore's work, as defined by the contract documents;

d. A requirement and schedule for an annual refresher course for all of Fiore's project managers, superintendents, and construction foremen involved in the design or construction of projects where stormwater management is within the scope of Fiore's work, as defined by the contract documents; and

e. A method for recording and tracking the training status of Fiore's project managers, superintendents, and construction foremen involved in the design or construction of projects where stormwater management is within the scope of Fiore's work, as defined by the contract documents.

37. Within ninety (90) calendar days of the effective date of this Consent Order, Fiore shall submit to the Division, a detailed written plan outlining the standard procedures Fiore will undertake to ensure that functional and effective stormwater management systems are fully implemented at its Colorado construction sites. The plan shall detail how Fiore will ensure that each of its stormwater management systems at each of its Colorado construction sites are adequately staffed and supervised.

38. All documents submitted pursuant to paragraphs 36 and 37 shall be under the signature of Fiore and shall reference both the number of this Consent Order and the number of the paragraph pursuant to which the document is required.

ORDER AND AGREEMENT

39. 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 Fiore to comply with all provisions of this Consent Order.

40. Fiore agrees to the terms and conditions of this Consent Order. Fiore 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. Fiore also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Fiore 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.

41. Notwithstanding the above, Fiore does not admit to any of the factual and legal determinations made by the Division herein, and any action undertaken by Fiore pursuant to this Consent Order, including the payment of civil penalties to resolve the alleged violations, shall not be an admission of liability or constitute evidence of fault and liability by Fiore with respect to the conditions of the Project.

EXHIBIT A

CIVIL PENALTY

42. Based upon the application of the Division's Stormwater Civil Penalty Policy (January 25, 2007), and consistent with Departmental policies for violations of the Act, Fiore shall pay Two Hundred Eighty-Four Thousand Nine Hundred Twenty-Nine Dollars ($284,929.00) in civil penalties. The Division intends to petition the Executive Director or his designee, to impose the Two Hundred Eighty-Four Thousand Nine Hundred Twenty-Nine Dollar ($284,929.00) civil penalty for the above alleged violations and Fiore agrees to make the payment through two installment payments as described in the table below:

Payment	Amount	Due Date
1	$142,465.00	Within thirty calendar days of the issuance of an Order for Civil Penalty by the Executive Director or his designee
2	$142,464.00	Within sixty 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:

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

43. Failure to submit full payment of any installment by the due date described in paragraph 42 above shall be deemed a violation of this order.

44. In the event Fiore fails to comply with any of the terms or provisions of this order relating to payment of the civil penalty described in paragraph 42 above, Fiore shall be liable for payment of the outstanding balance of the civil penalty within thirty calendar days of receipt of written demand by the Division. Method of payment shall be by certified cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to the address specified in paragraph 42.

SCOPE AND EFFECT OF CONSENT ORDER

45. 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, in the NOV/CDO, and in the Compliance Advisory.

46. 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 Fiore 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.

47. 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 Fiore, 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.

48. Notwithstanding paragraph 41 above, the violations described in this Consent Order will constitute part of Fiore's compliance history for purposes where such history is relevant.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

49. 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 civil penalties for the specific instances of violations cited herein, in the NOV/CDO, and in the Compliance Advisory. 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.

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

51. Fiore reserves its rights and defenses regarding the Project other than proceedings to enforce this Consent Order.

52. 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.

53. Fiore 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 Fiore, or those acting for or on behalf of Fiore, 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

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

EXHIBIT A

For the Division:

Colorado Department of Public Health and Environment
Water Quality Control Division
WQCD-CWE-B2
Attention: Lindsay Ellis
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303-692-2271
E-mail: lindsay.ellis@state.co.us

For Fiore:

Larry Fiore, Jr.
Fiore & Sons, Inc.
730 W. 62nd Avenue
Denver, CO 80216
Telephone: 303-996-4744
E-mail: butch@fioreandsons.com

MODIFICATIONS

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

NOTICE OF EFFECTIVE DATE

56. 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 46. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

BINDING EFFECT AND AUTHORIZATION TO SIGN

57. This Consent Order is binding upon Fiore 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 thirty 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.

EXHIBIT A

FOR FIORE & SONS, INC.:

_____ Date: 8/4/15
Larry Fiore, Jr., President

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

_____ for Date: 8/13/15
Patrick J. Pfaltzgraff, Director
WATER QUALITY CONTROL DIVISION