



COLORADO

Department of Public
Health & Environment

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

November 2, 2016

David C. Cripe, Registered Agent
IRG Bayaud, LLC
1801 California Street, Suite 3000
Denver, Colorado 80202

Certified Mail Number: 7014 2870 0000 7568 8087

RE: Service of Notice of Violation/Cease and Desist/Clean-up Order, No.: IO-161102-1

Dear Mr. Cripe:

IRG Bayaud, LLC is hereby served with the enclosed Notice of Violation / Cease and Desist / Clean-up Order (the "NOV/CDO/CUO"). This NOV/CDO/CUO is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §§25-8-602, 25-8-605 and 25-8-606, C.R.S., of the *Colorado Water Quality Control Act*, (the "Act"). The Division bases this NOV/CDO/CUO upon findings that IRG Bayaud, LLC has violated the Act and control regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO/CUO.

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

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

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

Should you or representatives of IRG Bayaud, LLC desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO/CUO, please do not hesitate to contact me by phone at (303) 692-3634 or by electronic mail at kelly.morgan@state.co.us

Sincerely,

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



Enclosure(s)

cc: Enforcement File

ec: Scott Clark, Burns Figa & Will, P.C.
Brent Anderson, IRG Bayaud, LLC
Jessica Brody, Denver City Attorney's Office
Michael Boeglin, EPA Region VIII
Gregg Thomas, Division Director Denver Environmental Quality
Ellen Kutzer, Colorado Office of the Attorney General
Kendall Griffin, Colorado Office of the Attorney General
Patrick Pfaltzgraff, WQCD Director, CDPHE
Nicole Rowan, Clean Water Program CDPHE
Andrew Ross, Watershed Section, CDPHE
Fonda Apostolopoulos, Hazardous Materials and Waste Management Division, CDPHE
Aimee Konowal, Watershed Section, CDPHE
Michael Beck, Community Development and Partnership Section, CDPHE
Amy Zimmerman, Engineering Section, CDPHE
Kelly Jacques, Field Services Section, CDPHE
Janet Kieler, Permits Section, CDPHE
Tania Watson, Data Management, CDPHE





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November 2, 2016

Michael Hancock, Mayor, City and County of Denver
c/o Jessica Brody, Asst City Attorney Sr.
201 W. Colfax Ave.
Denver, Colorado 80202

Certified Mail Number: 7014 2870 0000 7568 8094

RE: Service of Notice of Violation/Cease and Desist/Clean-up Order, No.: IO-161102-1

Dear Ms. Brody:

The City and County of Denver is hereby served with the enclosed Notice of Violation / Cease and Desist / Clean-up Order (the "NOV/CDO/CUO"). This NOV/CDO/CUO is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §§25-8-602, 25-8-605 and 25-8-606, C.R.S., of the *Colorado Water Quality Control Act*, (the "Act"). The Division bases this NOV/CDO/CUO upon findings that the City and County of Denver has violated the Act and control regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO/CUO.

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

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

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

Should you or representatives of the City and County of Denver desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO/CUO, please do not hesitate to contact me by phone at (303) 692-3634 or by electronic mail at kelly.morgan@state.co.us

Sincerely,

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



Enclosure(s)

cc: Enforcement File

ec: Jessica Brody, Denver City Attorney's Office
Scott Clark, Burns Figa & Will, P.C.
Michael Boeglin, EPA Region VIII
Gregg Thomas, Division Director Denver Environmental Quality
Ellen Kutzer, Colorado Office of the Attorney General
Kendall Griffin, Colorado Office of the Attorney General
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COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST / CLEAN-UP ORDER

NUMBER: IO-161102-1

IN THE MATTER OF: Former General Chemical Corporation-Denver Works Site
IRG BAYAUD, LLC
CITY AND COUNTY OF DENVER
CO-0046329
DENVER COUNTY, COLORADO

Pursuant to the authority vested in the Colorado Department of Public Health and Environment's 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, 25-8-605, and 25-8-606, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order/Clean-up Order ("Order"):

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the violations cited herein, IRG Bayaud, LLC ("IRG") was a Colorado limited liability company in good standing and registered to conduct business in the State of Colorado.
2. At all times relevant to the violations cited herein, the City and County of Denver ("Denver") was a municipality as defined by §25-8-103(11), C.R.S.
3. Both IRG and Denver meet the definition of a "person" under the Water Quality Control Act, §25-8-103(13), C.R.S., and its implementing permit regulation 5 CCR 1002-61, §61.2(73).
4. IRG was the former owner of real property located at 1271 W. Bayaud Avenue in Denver, Colorado, adjacent to the South Platte River (otherwise known as the General Chemical Corporation- Denver Works site ("Site")). Beginning 1986, General Chemical Corporation (GCC) owned and operated the Site, which consisted primarily of an aluminum sulfate (alum) manufacturing plant in the central portion of a 40-acre site. The Site was owned and operated by GCC until approximately 2008. Historic industrial operations at the Site caused low pH conditions and the deposition of heavy metals in soil and groundwater beneath the Site. Groundwater moves under and through the site, mobilizing arsenic and other pollutants and eventually emanating as a seep or seeps along the western bank of the South Platte River.

5. IRG assumed operational control over the Site on or around 2007 in order to conduct a brownfields cleanup. Ownership then transferred to Denver in approximately 2009. Denver remains the landowner of the Site. As the landowner, Denver maintains full operational control over most aspects of decision making about the Site.
6. IRG maintains operational control over some aspects of the Site in accordance with the post-closing agreement to the purchase and sale agreement between IRG and Denver. In addition, IRG applied for and was issued Colorado Discharge Permit System (CDPS) permit No. CO-0046329 (“the Permit”) authorizing the discharge of pollutants from the Site to the South Platte River as described in paragraph 4 above.

Unauthorized Discharge of Pollutants to State Waters

7. Groundwater beneath the Site is a “state waters” as defined by 5 CCR 1002-61 §61.2 (102).
8. In 2000, the Division first learned of water quality problems at the Site. A member of the public submitted a complaint after observing a milky white seep discharging from the river bank near the Site directly into the South Platte River.
9. On October 9, 2000 the Denver Department of Environmental Health, Environmental Protection Division (“Denver EPD”), an agency of Denver, sent a letter to the Division outlining its concerns about the water quality problems observed at the site. Denver EPD requested review of the Site for determination of an appropriate follow-up. This letter notes that “Groundwater sampling [performed at the site] indicates numerous exceedances of regulatory standards in groundwater.” Denver EPD further stated:

EPD has data indicating that the South Platte River has been and continues to be impacted by a discharge downgradient of the General Chemical site. A milky white substance has been observed being discharged from the bedding area around a storm water outfall and the riverbanks adjacent to our instream sampling site designated N4W. Samples collected at the mixing point of the discharge and from the downstream location at N4W have yielded elevated levels of aluminum, cadmium, copper, manganese, and zinc. Results from analyses for potentially dissolved aluminum have exceeded the chronic and acute standards for aquatic life listed in CDPHE Regulation 31. (*internal citations omitted*).

Finally, the letter concludes, “as the local health agency, EPD believes there is sufficient information and data to show that instream impacts warrant permitting of ongoing discharges from the General Chemical site.”

10. In 2006, the Division issued the Permit to GCC. The Permit put forth effluent limitations for pH, and monitoring requirements for aluminum, cadmium, arsenic, copper, manganese, zinc, and acute whole effluent toxicity. The Permit was issued in conjunction with a submission of a draft plan to conduct Site clean-up under the provisions of Colorado’s Voluntary Cleanup and Redevelopment Act’s voluntary clean-up program (VCUP) implemented by the Department’s Hazardous Materials and Waste Management Division (“HMWMD”).

11. As noted in paragraph 5 above, IRG assumed responsibility for the Site in 2007. On or about April 27, 2007, IRG submitted a revised VCUP application (dated April 27, 2007) outlining its plans for remediation of pollution on the Site (the "VCUP remedy"). The VCUP remedy was approved by the HMWMD and implemented in June 2009. Under its VCUP remedy, IRG performed limited sodium hydroxide injections to treat areas of low-pH groundwater, performed some soil removal, and also installed a low-permeability cap. This remedial approach aimed to alter the pH conditions in the groundwater and prevent the leaching of certain metals (specifically cadmium) into the ground water. However, IRG left the majority of the contaminated soils onsite.
12. Under the approved VCUP remedy, IRG agreed to perform groundwater cleanup to achieve the following standards at a series of "point of compliance" wells located primarily on the property boundary:
 - A. Dissolved arsenic: 10ug/l
 - B. Dissolved cadmium: 5 ug/l
 - C. Dissolved lead: 15 ug/l
 - D. pH between 6.0 and 8.0
13. In February 2008, IRG submitted an application to transfer ownership of the Permit from GCC to IRG. Upon Permit transfer (effective March 2008) IRG assumed responsibility for complying with the terms and conditions of the Permit and the Water Quality Control Act.
14. In 2010, groundwater monitoring data gathered at the Site established that arsenic concentrations in groundwater were increasing. Historically, dissolved arsenic was not present in high levels in groundwater beneath the Site and was not a pollutant of concern identified in IRG's VCUP remedy. In response to the change in Site conditions, staff from the HMWMD required IRG to submit a Supplemental Groundwater Investigation under its VCUP remedy to address increasing arsenic concentrations in the groundwater. IRG submitted a Supplemental Groundwater Plan (dated July 10, 2013), stating:

The arsenic that is currently increasing in the lower zones of the aquifer is a result of changes to the hydrogeochemistry caused by the CDPHE-approved remedy... Prior to the site cap, oxygenated acidic water entered the upper and lower flow zones of the hydrogeologic system. Subsequently, (after May 2009) the cap placed on the site cut off the oxygen supply in subsurface soil air and entering the system dissolved in meteoric waters. The lack of an oxygen supply combined with dissolved organic carbon entering the groundwater in recharge from the river and traces of organic matter in the subsurface soils have depleted the oxygen in the groundwater, creating reducing conditions in the middle and lower aquifers. These conditions have led to dissolution of the iron (III) oxides that had previously immobilized the arsenic, releasing the arsenic to groundwater and raising the pH.

15. Arsenic is a known carcinogen. The Water Quality Control Commission (WQCC) water quality standard for arsenic in groundwater is 10 ug/l, which is based on the human health standard. 5 CCR §1002-41. IRG's implementation of its VCUP remedy caused arsenic to be released to groundwater beneath the Site in excess of WQCC-established water quality standards for groundwater
16. The Permit does not authorize a discharge of arsenic or other pollutants to groundwater beneath the



Site.

17. IRG does not have any permits authorizing the discharge of pollutants from the Site to groundwater.
18. IRG's discharge of arsenic to groundwater constitutes a "discharge of pollutants" as defined by §§25-8-103(3) C.R.S.
19. IRG's discharge of arsenic to groundwater constitutes an unauthorized discharge of pollutants from a point source into state waters in violation of §25-8-501 C.R.S. and 5 CCR §61.3(1)(a).

Discharge and/or Threat of Discharge of Pollutants to Surface Waters

20. Division records establish that groundwater beneath the Site is hydrologically connected to Segment 14 of the South Platte River.
21. The South Platte River is a "surface water" as defined by 5 CCR 1002-61, §61.2(104).
22. Segment 14 of the South Platte River is impaired for arsenic. The WQCC standard for arsenic in surface water in this segment is 0.02 ug/l. 5 CCR §1002-38. Additional discharges of arsenic threaten to harm the beneficial uses of the river, including providing source water for the City of Thornton and other downstream municipal drinking water facilities.
23. A visible milky-white discharge is no longer visible at the site of the historic seep because of the implementation of IRG's VCUP remedy. However, overall groundwater migration patterns at the Site, including the overall flow pattern towards the South Platte River, were not significantly modified by the VCUP remedy.
24. The impact of contaminated groundwater at the Site to the South Platte River has been disputed by IRG and Denver. IRG and Denver both claim that in-stream water quality sampling proves that arsenic and other pollutants are not being discharged to the South Platte River. The Division reviewed this data but does not agree with IRG and Denver's conclusions. The Division determined that IRG and Denver have not performed a full investigative study of the impact from the Site to the South Platte River.
25. On September 2, 2015, representatives from the Division performed a limited reconnaissance sampling study of Segment 14 of the South Platte River. Division staff used a continuously recording water quality probe to look for changes in conductivity along the western bank of the South Platte River adjacent to the Site and in the vicinity of the historically visible seep. A change in conductivity was observed in the same location of the historic seep, which is indicative of the presence of metals. These results indicate that metals are still discharging to the South Platte River, even though the seep is not visually obvious. In-stream water quality sampling also showed that levels of aluminum, arsenic, iron, lead, manganese, uranium, and zinc were higher at the seep location than at locations upstream.
26. Pollutants have been deposited in groundwater beneath the Site, a water of the state. Groundwater beneath the site is hydrologically connected to Segment 14 of the South Platte River. The

presence of arsenic and/or other heavy metals in this groundwater may cause pollution the South Platte River. Pursuant to §25-8-606 C.R.S. the Division is authorized to order any person to conduct remedial action when material which may pollute state waters has been deposited in or near state waters.

Sufficiency of Water Quality Monitoring Information

27. IRG is required to submit water quality monitoring information to the HMWMD on a quarterly basis in accordance with the VCUP remedy Sampling and Analysis Plan. Under this plan, IRG collects water quality information at a series of groundwater monitoring wells including SR-1, MW-19S, MW-19M, MW-19D, MW-7SR, MW-7R, and OFF-4. Samples are analyzed for dissolved arsenic, lead, and cadmium. All of these monitoring wells, with the exception of OFF-4, are located within the property boundaries of the Site. None of these monitoring wells are located in the vicinity of the historic seep however in its permit application, IRG claimed that MW-19 was most representative of the pollutants being discharged via the seep.
28. IRG is also subject to ongoing water quality monitoring requirements in accordance with the the Permit. Under these requirements, IRG submits water quality monitoring information from a series of nested groundwater monitoring wells (MW-19S, MW-19M, MW-19D) on a monthly basis via discharge monitoring reports (DMRs) that are required by the Permit. The Permit requires that water quality samples must be analyzed for pH, total recoverable arsenic, and partially dissolved zinc, copper, aluminum, cadmium, and manganese and whole effluent toxicity.
29. IRG failed to submit timely, complete, and accurate DMRs for the reporting periods between January 2014 and September 2015. IRG resumed submission of timely DMRs beginning with the October 2015 DMR, however, IRG continues to submit incomplete and inaccurate DMRs. Specifically, IRG marks “No Discharge” on the DMRs even though sampling can be conducted at the point of compliance (MW-19). IRG failed to conduct whole effluent toxicity testing for the reporting periods between January 2011 and March 2012 and for the reporting periods January 2014- the date of this Order. Again, IRG improperly submits the whole effluent toxicity test DMRs marked “No Discharge” even though a sample can be collected to conduct the test.
30. Denver performs routine surface water quality monitoring at set locations in Segment 14 of the South Platte River. Historically, these water quality sampling points included location N1, N4A, N4B, and N14. Denver has also performed limited surface water quality monitoring at N7 near the historic seep.
31. Recent water quality information from the third quarter 2016 submitted as required by the VCUP remedy establish the following concentrations of dissolved arsenic and cadmium that are above the WQCC groundwater quality standards of 10 ug/l and 5 ug/l (respectively):

GROUNDWATER MONITORING RESULTS IN EXCESS OF WQCC STANDARDS		
WELL	ARSENIC CONCENTRATION (WQCC STANDARD= 10 UG/L)	CADMIUM CONCENTRATION (WQCC STANDARD= 5 UG/L)
MW-7R	101 ug/l	--

GROUNDWATER MONITORING RESULTS IN EXCESS OF WQCC STANDARDS		
WELL	ARSENIC CONCENTRATION (WQCC STANDARD= 10 UG/L)	CADMIUM CONCENTRATION (WQCC STANDARD= 5 UG/L)
MW-7SR	24.1 ug/l	--
MW-19S	--	28.5 ug/l
MW-19M	17.4 ug/l	61.0 ug/l

32. Recent water quality monitoring information submitted by IRG via DMRs also establish that arsenic levels in groundwater below the Site continue to exceed water quality standards. Monitoring information from September 2016 indicate an arsenic levels in groundwater monitoring well MW-19M of 20.9 ug/l and 281.0 ug/l in MW-19D.
33. Water quality monitoring data provided to the Department by IRG and Denver provides limited information about the fate of water quality as polluted groundwater migrates away from the Site. To address this concern, IRG provided the Division with modeling information to argue that arsenic, cadmium, and other pollutants will re-bind to soil particles as groundwater flows off-site. Modeling information provided by IRG is based on assumptions, and the conclusion of these models has not been confirmed with real-world data. To date, neither IRG nor Denver has presented robust empirical information to demonstrate that high levels of arsenic and cadmium in groundwater under the Site are not reaching the South Platte River.

NOTICE OF VIOLATION

34. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has hereby determined that IRG and Denver have violated the following sections of the Colorado Water Quality Control Act and its implementing control regulations.

§25-8-501(1), C.R.S., which states “No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge.”

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

REQUIRED CORRECTIVE ACTIONS

Based upon the foregoing factual determinations and pursuant to §25-8-602, §25-8-605, and §25-8-606, IRG and Denver are hereby ordered to:

35. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 through 25-8-803, C.R.S. and its implementing regulations promulgated thereto.

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

IRG Bayaud, LLC
City and County of Denver
Notice of Violation/ Cease and Desist Order/ Clean-up Order
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36. Within 30 calendar days of receipt of this Order, IRG and Denver shall initiate the following monitoring program (note, monitoring requirements under this Order shall supplement, but not replace, existing monitoring requirements of the VCUP remedy and CDPS permit):

A. IRG and Denver shall conduct monthly groundwater monitoring.

- 1) Groundwater monitoring shall occur at the following locations:
 - i. All groundwater wells included in the VCUP remedy;
 - ii. All groundwater wells included in the CDPS permit (MW-19S, MW-19M, MW-19D);
 - iii. A series of new wells to be installed along the City and County of Denver property boundary as shown on Exhibit A of this Order (MW-21, MW-22, and MW-23);
 - iv. A new groundwater monitoring well (MW-24) installed as close to the location of the historic seep as practical; and
 - v. The new wells (MW-21, MW-22, MW-23, and MW-24) shall be monitored at the shallow, medium and deep profiles as previously determined by the VCUP remedy.
- 2) Groundwater samples shall be collected and analyzed for the following: pH, dissolved arsenic, total recoverable arsenic, dissolved zinc, dissolved copper, dissolved aluminum, dissolved cadmium, dissolved manganese, oxidation reduction potential (ORP), specific conductance, dissolved oxygen, static water level and depth of sample. Sample collection and laboratory analysis shall be conducted in accordance with the methods specified in 40 C.F.R. Part 136. The practical quantification limits (PQLs) or reporting limits (RLs) shall be consistent with Division policy.
- 3) IRG and Denver shall submit the results of the monthly monitoring electronically to the Division within five (5) calendar days of receipt of the results.
- 4) Monitoring shall be conducted for a minimum of 12 consecutive months. Additional monitoring may be required.

B. IRG and Denver shall conduct monthly surface water monitoring.

- 1) Surface water monitoring shall occur at the following locations in the South Platte River: N1, N4A, N4B and N7. Monitoring at N7 shall be done as a transect composite sample.
- 2) Surface water samples shall be collected and analyzed for the following: pH, oxidation reduction potential (ORP), temperature, specific conductance, dissolved oxygen, dissolved arsenic, total arsenic and dissolved cadmium. A sample analysis plan (SAP) should be developed for this monitoring. Sample collection and laboratory analysis shall be conducted in accordance with the methods specified in 40 C.F.R. Part 136. The practical quantification limits (PQLs) or reporting limits (RLs) shall be consistent with Division policy.
- 3) IRG and Denver shall submit the results of the monthly monitoring electronically to the Division within five (5) calendar days of receipt of the results.
- 4) Monitoring shall be conducted for a minimum of 12 consecutive months. Additional monitoring may be required.

C. IRG and Denver shall conduct a onetime bore hole sampling event.

- 1) Two soil borings shall be constructed approximately 30 to 50 yards north of the former property boundary between the the GCC owned property and the Denver property. Bore holes shall be logged using standard borehole logging techniques.



- 2) The soil from the borings shall be analyzed as follows:
 - i. Samples shall be two feet above and below the top of groundwater table, and every two feet to the ground surface;
 - ii. Samples shall be analyzed for total arsenic, total cadmium, and total iron; and
 - iii. If groundwater is present in the boreholes, each borehole groundwater shall be analyzed in accordance with the groundwater monitoring requirements outlined in paragraph (36.A.2 and 36.A.3.).

37. Within 30 calendar days of receipt of this Order, IRG and Denver shall retain the services of an independent third party experienced in hydrogeochemistry to evaluate the fate and transport of pollutants of the Site to determine what, if any, ongoing and potential future impacts to groundwater and the South Platte River exist as a result of the contaminated material that remains on the Site. This evaluation shall, at a minimum, consider the following:
 - A. All data submitted by IRG in accordance with the VCUP remedy;
 - B. All surface water data that has been collected by IRG and Denver;
 - C. All data submitted by IRG under the terms of the Permit;
 - D. All data collected in accordance with the monitoring program outlined in paragraph 36;
 - E. Groundwater flow rate and direction; and
 - F. A report of the nearest upstream and downstream flow data from existing river gages, or flow measurements taken at N1 and N7 during sample collection.
 - G. Presence of geochemical barriers to arsenic migration and an evaluation of how the barrier could change over time.

38. Within 45 calendar days of receipt of this Order, IRG and Denver shall provide documentation to the Division that it has retained the services of the individual or entity described in paragraph 37. The documentation shall include, at a minimum, a copy of the individual or entity's qualifications and a copy of the written contract or agreement for services, including a copy of the scope of services to be provided. Within 30 days, the Division will approve or disapprove of this individual or entity and scope of services.

39. Within 450 days of receipt of this Order, IRG and Denver shall submit the results of the evaluation required by paragraph 36. The submission must include a conclusion regarding ongoing and potential future impacts to groundwater and the South Platte River.

NOTICES AND SUBMITTALS

This Order is being issued to IRG and Denver to direct a water quality monitoring program to determine the nature of pollution at the Site. At this time the Division is not ordering IRG and Denver to take remedial action to clean up polluted materials at the Site. Future clean-up orders to remediate these materials may be issued under authority of §25-8-606, C.R.S. based upon the monitoring results obtained under this Order.

For all documents, plans, records, reports and replies required to be submitted by this Order, IRG and Denver shall submit an original and an electronic copy to the Division at the following address:

Kelly Morgan
Colorado Department of Public Health and Environment

IRG Bayaud, LLC
City and County of Denver
Notice of Violation/ Cease and Desist Order/ Clean-up Order
Page 8 of 10



Water Quality Control Division
Mail Code: WQCD-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: (303) 692-3634
Email: kelly.morgan@state.co.us

For any person submitting documents, plans, records and reports pursuant to this 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 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 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 2nd day of November, 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

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

December 2, 2016

Diane DeLillio (and via email)
Denver Environmental Health Department
200 W. 14th Avenue, Suite 310
Denver, CO 80204

**RE: Compliance Schedule Extension Number One
Notice of Violation/Cease and Desist Order/ Clean-Up Order Number: IO-161102-1**

Dear Ms. DeLillio:

In a letter dated November 21, 2016, the Water Quality Control Division (the "Division") received a request from IRG Bayaud, LLC and City and County of Denver ("Respondents") requesting to extend the compliance date outlined in paragraph 36 of the Notice of Violation/Cease and Desist Order/ Clean-Up Order, Number: IO-161102-1 ("Order") that was issued to IRG Bayaud, LLC and City and County of Denver. Paragraph 36 of the Order requires IRG Bayaud, LLC and City and County of Denver to initiate a monitoring program by no later than December 4, 2016.

In the November 21, 2016 letter, the Respondents requested an extension until and including December 26, 2016 to begin the groundwater monitoring program, based in part on the anticipated difficulties associated with developing the monitoring wells. The Division recognizes these difficulties and is willing to grant an extension to the deadline required by Paragraph 36.A. of the Order to December 31, 2016.

Likewise, pursuant to further discussions between the Division, IRG Bayaud, LLC and City and County of Denver, the Division hereby grants an extension to the deadlines required by Paragraphs 36.B., 36.C., and 37 of the Order to December 31, 2016. The deadline required by paragraph 38 of the Order is extended to January 15, 2017.

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

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

ec: Ellen Howard-Kutzer
Kendall Griffin
Andrew Ross
Fonda Apostolopolous
Jessica Brody
Scott Clark





COLORADO

Department of Public
Health & Environment

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

December 23, 2016

Diane DeLillio (and via email)
Denver Environmental Health Department
200 W. 14th Avenue, Suite 310
Denver, Colorado 80204

**RE: Compliance Schedule Extension Number Two
Notice of Violation/Cease and Desist Order/ Clean-Up Order Number: IO-161102-1**

Dear Ms. DeLillio:

During a December 23, 2016 discussion between the Division, IRG Bayaud, LLC and City and County of Denver, IRG Bayaud, LLC and City and County of Denver requested a second extension to the compliance deadlines outlined in the Notice of Violation/Cease and Desist Order/ Clean-Up Order Number: IO-161102-1 ("Order"). The division hereby grants an extension to the deadlines required by Paragraphs 36.A., 36.B., 36.C., and 37 of the Order to January 31, 2017. The deadline required by paragraph 38 of the Order is extended to February 15, 2017.

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

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

ec: Ellen Howard-Kutzer
Meg Parish
Kendall Griffin
Fonda Apostolopolous
Jessica Brody
Scott Clark





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January 31, 2017

Diane DeLillio (and via email)
Denver Environmental Health Department
200 W. 14th Avenue, Suite 310
Denver, Colorado 80204

**RE: Compliance Schedule Extension Number Three
Notice of Violation/Cease and Desist Order/ Clean-Up Order Number: IO-161102-1**

Dear Ms.DeLillio:

In a January 27, 2017 letter the City and County of Denver requested a third extension to the compliance deadline outlined in paragraph 36 of the Notice of Violation/Cease and Desist Order/ Clean-Up Order Number: IO-161102-1 ("Order") based on the pending consent decree. The division hereby grants an extension to the deadlines required by Paragraphs 36.A., 36.B., 36.C., and 37 of the Order to February 20, 2017. The deadline required by paragraph 38 of the Order is also extended to March 6, 2017.

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

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

ec: Ellen Howard-Kutzer
Meg Parish
Kendall Griffin
Andrew Ross
Fonda Apostolopolous
Jessica Brody
Scott Clark





COLORADO
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February 21, 2017

Diane DeLillio (and via email)
Denver Environmental Health Department
200 W. 14th Avenue, Suite 310
Denver, Colorado 80204

RE: Compliance Schedule Extension Number Four
Notice of Violation/Cease and Desist Order/ Clean-Up Order Number: IO-161102-1

Dear Ms.DeLillio:

In a February 17, 2017 letter the City and County of Denver requested an extension to the compliance deadline outlined in paragraph 36 of the Notice of Violation/Cease and Desist Order/ Clean-Up Order Number: IO-161102-1 ("Order") based on the pending consent decree. The division hereby grants an extension to the deadlines required by Paragraphs 36.A., 36.B., 36.C., and 37 of the Order to March 20, 2017. The deadline required by paragraph 38 of the Order is also extended to April 6, 2017.

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

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

ec: Ellen Howard-Kutzer
Meg Parish
Kendall Griffin
Andrew Ross
Fonda Apostolopolous
Jessica Brody
Scott Clark

