



COLORADO
Department of Public
Health & Environment

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

November 9, 2016

Judy Devincentis, Registered Agent
Western Gravel, Inc.
3001 N Townsend
Montrose, CO 81401

Certified Mail Number: 7014 2870 0000 7699 6761

RE: Service of Notice of Violation/Cease and Desist Order, Number: IO-161109-2

Dear Ms. Devincentis:

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

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

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

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



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

Sincerely,



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

Enclosure(s): NOV/CDO Number IO-161109-2

cc: Enforcement File

ec: Michael Boeglin, EPA Region VIII
James Austin, Montrose County Department of Health and Human Services
Aimee Konowal, Watershed Section, CDPHE
Corrina Quintana, Grants and Loans Unit, CDPHE
Amy Zimmerman, Engineering Section, CDPHE
Heather Drissel, Field Services Section, CDPHE
Erin Scott, Permits Section, CDPHE
Tania Watson, Data Management, CDPHE
Maura McGovern, Clean Water Compliance Unit, CDPHE
Nathan Moore, Clean Water Compliance Unit, CDPHE



COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST ORDER NUMBER: IO-161109-2

**IN THE MATTER OF: WESTERN GRAVEL, INC.
GENERAL PERMIT NO.: COG500000/UNPERMITTED
CERTIFICATION NO.: COG500486/UNPERMITTED
MONTROSE 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, Western Gravel, Inc. ("Western Gravel") was a Colorado Corporation in good standing and registered to conduct business in the state of Colorado.
2. Western Gravel is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
3. On January 8, 2007, the Division received an application from Western Gravel for Colorado Discharge Permit System ("CDPS") coverage for dewatering discharges from sand and gravel mining at the North R-34 Pit located at or near 38.507, -107.918 within the City of Montrose, Montrose County, Colorado (the "Facility").
4. The Facility is subject to the CDPS General Permit, Number COG500000 for Sand and Gravel Mining and Processing (the "Permit"). The current version of the Permit became effective July 1, 2008 and was set to expire on June 30, 2013, but was administratively continued and remains effective until Permit reissuance.
5. On January 11, 2007, the Division provided Western Gravel with Certification Number COG500486 authorizing Western Gravel to discharge dewatering discharges generated from sand and gravel mining at the Facility through outfall 001A (discharge from alluvial groundwater to Uncompaghre River) under the terms and conditions of the Permit (the "Certification"). The current version of



the Certification was modified and reissued to add reporting requirements for selenium. The current version of the Certification became effective on January 1, 2012 and remains in effect until Permit reissuance or until Western Gravel inactivates Permit coverage.

6. On July 29, 2014, the division received a renewal application supplement for the Facility. The application was signed by a representative of Western Gravel. By signing the application, Western Gravel certified the information submitted was true, accurate, and complete.
7. The July 29, 2014 application described the activity at outfall 001A as mine dewatering process water. No other outfalls or activities were described in the application.
8. Pursuant to 5 CCR 1002-61, §61.8, Western Gravel must comply with all terms and conditions of the Permit, and violations of such terms and conditions as specified in the Permit may be subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.
9. On February 18, 2016, a representative from the Division (“Inspector”) conducted an on-site inspection of the Facility pursuant to the Division’s authority under §25-8-306, C.R.S. to determine Western Gravel’s compliance with the Water Quality Control Act, the Permit, and the Certification. During the inspection, the Inspector interviewed Project representatives, reviewed the stormwater management plan and discharge records, and performed a physical inspection of the Project.

Unauthorized Discharge

10. Pursuant to §25-8-501(1), C.R.S. and 5 CCR 1002-61, §61.3(1)(a), no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article.
11. Pursuant to Part II.A.8. of the Permit, any discharge to the waters of the State from a point source other than specifically authorized by the Permit is prohibited.
12. According to the Certification and Western Gravel’s renewal application referenced in paragraph 6, outfall 001A is located at approximately 38.507, -107.918. Outfall 001A is located at the open pit mine west of the Uncompahgre River.
13. On June 19, 2012, March 17, 2015, and July 29, 2015, satellite imagery of the Facility shows a discharge of sediment-laden waters from the boundary of the Facility into the Uncompahgre River. The discharge is from approximately 38.505, -107.911, a point that is not authorized by the Certification or the Permit. This unauthorized discharge point is located east of the Uncompahgre River along the industrial sand and gravel washing, crushing, and screening portion of the Facility.
14. During the month of January 2016, City of Montrose personnel observed consistent periods of turbidity in the Uncompahgre River between approximately 10:00am and 8:00pm, as documented in Attachment A.
15. During the February 18, 2016 Division inspection, the Inspector observed process waters from sand and gravel washing being directed through a pipe and into a ditch that flowed into the Uncompahgre River. The Inspector observed gully erosion from the ditch and down the bank of the Uncompahgre River. In addition, the Inspector observed sediment accumulation on the river bank and in the river substrate at the overflow location. The discharge is from approximately

38.505, -107.911, a point that is not authorized by the Certification or the Permit. This unauthorized discharge point is located east of the Uncompahgre River along the industrial sand and gravel washing, crushing, and screening portion of the Facility.

16. The Uncompahgre River is “state waters” as defined by §25-8-103(19), C.R.S., and its implementing permit regulation, 5 CCR 1002-61, §61.2(102).
17. The ditch from the Facility, as it relates to the discharge events described in paragraph 13 through 15 above, is a “point source” as defined by §25-8-103(14) C.R.S., and its implementing permit regulation, 5 CCR 1002-61, §61.2(75).
18. Western Gravel’s discharge of sediment into the Uncompahgre River constitutes a “discharge of pollutants” as defined by §25-8-103(3).
19. Western Gravel did not have any other permits authorizing the discharge of pollutants from the ditch to the Uncompahgre River between June 19, 2012 and the date of this Order.
20. Western Gravel’s discharge of pollutants into the Uncompahgre River, as described in paragraphs 13 through 19 of this Order, constitutes an unauthorized discharge of pollutants from a point source into state waters in violation of §25-8-501(1), C.R.S., 5 CCR 1002-61, §61.3(1)(a), and Part II.A.8. of the Permit.

Deficient and/or Incomplete Stormwater Management Plan

21. Because the Facility has a potential to discharge stormwater, the provisions of Part I.C. of the Permit apply. Pursuant to Part I.C.1 of the Permit, Western Gravel is required develop a Stormwater Management Plan (“SWMP”) in accordance with good engineering, hydrologic and pollution control practices. The plan shall identify potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges associated with the mining activity. In addition, the SWMP shall describe the practices to be used to reduce the pollutants in stormwater discharges associated with mining activity at the Facility. Western Gravel must implement the provisions of the SWMP as written and updated, from commencement of site activity until final reclamation is complete.
22. Pursuant to Part I.C.1. of the Permit, the SWMP shall include, in addition to items not subject to this Order, the following items:
 - a. Site Map: The plan shall provide a site map or maps, which indicate at a minimum:
 - i. Mining site boundaries;
 - ii. Access and haul roads;
 - iii. Stormwater outfalls and an outline of the drainage area of each stormwater outfall;
 - iv. An estimate of the direction of flow;
 - v. Each existing structural control measure to reduce pollutants in stormwater runoff;
 - vi. Non-structural BMPs, as applicable;
 - vii. Mine drainage or any other process water;
 - viii. Dedicated asphalt or concrete batch plants;
 - ix. Areas used for recycling of asphalt or concrete;
 - x. All areas of soil disturbance;
 - xi. The location and description of all potential stormwater pollution sources, including, but not limited to, the following:

- (a) Materials handling areas;
 - (b) Vehicle fueling areas;
 - (c) Fertilizer or chemical storage areas
 - (d) Areas used for storage or disposal of overburden, materials, soils or wastes; and
 - (e) Areas used for mineral milling and processing.
- xii. Boundary of tributary area that is subject to effluent limitations
- b. Description of Potential Pollutant Sources/Material Inventory: The SWMP shall identify potential sources of pollutants (activities and materials) at the site, and assess the potential of these sources to contribute pollutants to stormwater discharges associated with mining activities. The SWMP must also describe appropriate Best Management Practices (BMPs) to reduce the potential of these identified sources to contribute pollutants to stormwater discharges. At a minimum, each of the following, in addition to items not subject to this Order, shall be evaluated for the reasonable potential for contributing pollutants to runoff:
- i. Loading and unloading operations;
 - ii. Outdoor storage of chemicals or equipment;
 - iii. Crushing facilities or significant dust and particulate generating activities;
 - iv. On-site waste disposal practices;
 - v. Stockpiles of overburden, raw material, intermediate products, byproducts, finished products or waste products;
 - vi. Dedicated asphalt or concrete batch plants;
 - vii. Areas used for recycling of asphalt or concrete;
 - viii. Routine maintenance activities involving fertilizers, pesticides, detergents, fuels, solvents, oils, etc.;
 - ix. Haul roads; and
 - x. Disturbed areas.
- c. Stormwater Quality Controls: Western Gravel shall develop a description of stormwater quality controls appropriate for the site, and implement such controls. The appropriateness and priorities of controls in the plan shall reflect identified potential sources of pollutants at the site. The SWMP shall clearly describe the installation and implementation specifications for each BMP identified in the SWMP to ensure proper implementation, operation and maintenance of the BMP. The description of stormwater quality controls shall address the following, in addition to items not subject to this Order, including a schedule for implementing such controls:
- i. Erosion and Sediment Controls: Describe the BMPs that will be used to reduce erosion and prevent sediment delivery to State waters. These should include structural (such as silt fences, sediment ponds, drop structures, check dams) and non-structural (such as mulching and vegetation) practices.
 - ii. Other Pollution Prevention Measures: The plan shall identify any other structural or non-structural measures for stormwater quality control on-site.
 - iii. Identification of Discharges other than Stormwater: The stormwater conveyance system on the site shall be evaluated for the presence of discharges other than stormwater, such as mine drainage, spoil springs, sanitary waste, or process water of any kind. The SWMP shall include a description of the results of any evaluation for the presence of discharges other than stormwater, the method used, the date of the evaluation, and the on-site drainage points that were directly observed during the evaluation.

23. Pursuant to Part I.C.6.b of the Permit, Western Gravel is required retain a copy of the SWMP on site.
24. Pursuant to Part I.C.5. of the Permit, Western Gravel is required to submit a copy of the SWMP to the Division within the time frames specified in the request.
25. During the February 18, 2016 inspection, the Inspector requested a copy of the SWMP, supporting documentation, and inspection records. Western Gravel did not have these records at the Facility for the Inspector to review. On February 24, 2016, the Division sent an additional request for the SWMP, supporting documentation, and inspection records. Western Gravel submitted the requested documents on March 2, 2016, 13 days after the inspection.
26. Upon receiving the requested records referenced in paragraph 25 above, the Inspector reviewed Western Gravel's SWMP and identified the following deficiencies, as described in paragraphs 26(a-c) below:
 - a. The SWMP site map did not identify the following items observed by the Inspector at the Facility during the February 18, 2016 inspection:
 - i. The mining site boundaries, including the gravel processing areas;
 - ii. All access and haul roads located at the entire facility;
 - iii. Stormwater outfalls and an outline of the drainage area of each stormwater outfall;
 - iv. An estimate of the direction of flow;
 - v. Each existing structural control measure to reduce pollutants in stormwater runoff (including all swales, berms, sediment ponds, etc.);
 - vi. Non-structural control measures (including re-vegetated areas);
 - vii. Mine drainage or any other process water;
 - viii. The dedicated concrete batch plant;
 - ix. Areas used for recycling of asphalt or concrete;
 - x. All areas of soil disturbance;
 - xi. Material handling areas;
 - xii. Vehicle fueling areas;
 - xiii. Fertilizer or chemical storage areas;
 - xiv. Areas used for the storage or disposal of overburden, materials, soils, or wastes;
 - xv. Areas used for milling or processing; and,
 - xvi. Boundary of tributary areas subject to the effluent limitations of the Permit.
 - b. The SWMP did not identify and describe potential pollutant sources or materials inventory at the site. Specifically, the SWMP did not assess the potential of the following sources, observed at the Facility during the February 18, 2016 Inspection, to contribute pollutants to stormwater discharges:
 - i. Loading and unloading operations;
 - ii. Outdoor storage of chemicals and equipment;
 - iii. Crushing facilities;
 - iv. On-site waste disposal activities;
 - v. Stockpiles of overburden, raw material, intermediate products, byproducts, finished products, or waste products;
 - vi. Dedicated concrete plant;
 - vii. Areas used for recycling of concrete;
 - viii. Routine maintenance activities involving fertilizers, pesticides, detergents, fuels,

- solvents, oils, etc.;
- ix. Haul roads; and,
- x. Disturbed areas.

- c. The SWMP did not provide a description of stormwater quality control needed at the Facility to manage potential sources of pollution. Specifically, the SWMP did not address the following components required by the Permit:
 - i. The SWMP did not describe all erosion and sediment control measures used at the Facility to reduce erosion and prevent sediment transport to state waters. Specifically, the SWMP did not discuss the ponds observed by the Inspector on the southwest side of the washing facility nor the pipes and drainage ditches observed by the Inspector at the processing portion of the facility.
 - ii. The SWMP did not identify all discharges other than stormwater, such as mine drainage, spoil springs, sanitary waste, or process water of any kind. Specifically, the SWMP did not address the discharge observed as described in paragraphs 13 through 20 above.

- 27. The Division has determined Western Gravel failed to develop and implement a complete and accurate SWMP for the Facility.
- 28. Western Gravel's failure to develop and implement an adequate SWMP for the Facility constitutes violations of Parts I.C.1., I.C.6.b. and I.C.5. of the Permit.

Failure to Perform and/or Document Inspections

- 29. Pursuant to Part I.C.4. of Permit, Western Gravel is required to inspect the stormwater management system at the Facility twice a year, at least 120 days apart. In addition, Western Gravel is required to generate a report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, significant observations relating to the implementation of the SWMP, and actions taken in response to maintenance or repair needs. Western Gravel is required to retain the inspection reports as part of the SWMP for at least three years after the date of inspection.
- 30. Upon receiving the requested records referenced in paragraph 25 above, the Inspector reviewed Western Gravel's inspection records and identified the following deficiencies, as described below:
 - a. The bi-annual inspections conducted did not document all Permit requirements. Specifically, the inspections did not include a report summarizing the scope of inspections, significant observations relating to the implementation of the stormwater management plan, or actions taken in response to maintenance or repair needs. Between April 2012 and October 2015, no maintenance activities on stormwater control measures were recorded in the biannual Facility inspections. In every Facility inspection from April 2012 through October 2015, Western Gravel representatives stated "ditches are in good repair and still performing their designated functions", despite deficiencies observed by the Inspector during the Division's February 18, 2016 inspection (see paragraphs 15 and 34a). In addition, according to widely accepted industry standards and guidance, including the Urban Drainage and Flood Control District, earthen berms and ditches require continuous inspection and maintenance to ensure they maintain in effective operating condition.
- 31. The Division has determined Western Gravel failed to generate complete and accurate biannual inspection reports. Western Gravel's failure to develop complete and accurate inspection reports

constitutes a violation of Part I.C.4. of the Permit.

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

32. Pursuant to Part I.C.1. of the Permit, Western Gravel must implement the provisions of the SWMP as written and updated, from commencement of site activity until final reclamation is complete.
33. Pursuant to Part I.C.2. of the Permit, Western Gravel must select, install, implement, and maintain appropriate BMPs, following good engineering, hydrologic and pollution control practices. BMPs implemented at the Facility must be adequately designed to provide control for all potential pollutant sources associated with construction activity to prevent pollution or degradation of State waters.
34. During the February 18, 2016 inspection, the Inspector identified the following deficiencies related to BMP selection, design, installation, implementation and/or maintenance at the Facility, as described in Paragraph 34 (a-b) below:
 - a. Earthen berms implemented on the southwest corner and western border of the Facility were not implemented at a uniform length, width, or height and were not compacted. In addition, portions of the berm were constructed of gravel and debris. These deficiencies impaired the ability of the earthen berms to divert onsite runoff. In addition, these deficiencies resulted an additional, highly erosive pollutant source and/or further reduction of the capacity of the control measure. No additional control measures were implemented down gradient of these locations and stormwater runoff flowed west from both locations, down the river bank and directly into the Uncompahgre River.
 - b. A drum containing petroleum products was close to overtopping and was not being stored according to Facility SWMP specifications. Specifically, the petroleum products were not stored in the portable crushing and screening plant with secondary containment. In addition, unknown and potentially hazardous substances were spilled onto the ground around the drum. The Facility's SWMP required soil contaminated with unknown and potentially hazardous substances to be tested, stored, and properly disposed in a sanitary landfill in addition to being cleaned immediately after discovery. As a result of these deficiencies, there was a potential for the spilled material and petroleum products to come into contact with stormwater and be transported offsite. No additional control measures were implemented down gradient of this location and stormwater flowed west, down the river back and directly into the Uncompahgre River.
35. Western Gravel's failure to implement and/or maintain functional BMPs to protect stormwater quality at the Facility constitutes violations of Parts I.C.1. and I.C.2. of the Permit.

NOTICE OF VIOLATION

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

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

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

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

Part I.C.1 of the Permit, which states in part, “The SWMP shall include the following items, at a minimum...”

Part I.C.2. of the Permit, which states in part, “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.C.4. of the Permit, which states in part, “In addition to the inspections necessary to comply with the preventative maintenance program requirements...qualified personnel identified by the permittee shall make a comprehensive inspection of their stormwater management system at least twice per year...the inspections must be conducted in approximately the spring a fall; if this is not possible, the inspections must be conducted at least 120 days apart. These comprehensive inspections must be documented and summarized in the Annual Report.”

Part I.C.6.b. of the Permit, which states in part, “For active mining operations and sites undergoing reclamation, the [SWMP] plan shall be retained on site...”

Part I.C.5. of the Permit, which states in part, “Upon request, the permittee shall submit a copy of the SWMP to the Division...within the time frames specified in the request.”

REQUIRED CORRECTIVE ACTION

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

37. 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 thereto and the Permit.

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

38. Within 30 calendar days of receipt of this Order, Western Gravel shall review the requirements of the Permit and the Certification with its staff responsible for ensuring compliance with the terms and conditions of the Permit and the Certification. The review shall focus on, but not be limited to, 1) the effluent limitations imposed by the Permit and the Certification, 2) the effluent monitoring requirements of the Permit and the Certification, 3) the record keeping requirements of the Permit, 4) the reporting requirements of the Permit, and 5) the noncompliance notification procedures required by the Permit. Within 45 calendar days of receipt of this Order, Western Gravel shall submit a written plan outlining Western Gravel’s actions to ensure compliance with the terms and conditions of the Permit and the Certification. The plan shall include, but not be limited to: mechanisms to ensure effluent monitoring is conducted in accordance with the Permit and the Certification and mechanisms to ensure accurate and complete DMRs are submitted to the

Division by no later than the 28th day of the month following the end of the reporting period, with consideration being given to applying for approval for the electronic submission of DMRs through the Network Discharge Monitoring Report System (NetDMR).

Process Water Corrective Actions

39. Western Gravel shall immediately initiate efforts to ensure that no unauthorized discharge of process wastewater from the Facility to surface water will occur.
40. Within 30 calendar days of receipt of this Order, Western Gravel shall provide documentation of any discharges from the Facility that occurred between February 18, 2016 and the date of this Order. The documentation shall include the location of the discharge(s), date of the discharge(s), duration of the discharge(s), estimated volume of the discharge(s), quality/ type of discharge(s). Western Gravel shall indicate what mitigation efforts were implemented in response to these discharges.
41. Within 7 calendar days of receipt of this Order, Western Gravel shall develop and implement an inspection, record-keeping, and response program to visually monitor for and eliminate potential sources of unauthorized pollutant discharges to surface water from the Facility. The implementation of the inspection program shall be documented by maintaining a records log (“monitoring log”) that contains: 1) the date, time, and location of each visual monitoring event, 2) the name of the individual performing each visual monitoring event, 3) an indication of whether or not an unauthorized discharge was observed during each visual monitoring event, and 4) any other pertinent information regarding the object or event being inspected. This inspection and record-keeping shall be conducted for each other following objects/events and time schedules:
 - a. Perform weekly inspections of all stormwater run-on diversion devices, runoff diversion structures, and devices channeling process wastewater to impoundments or settling basins.
 - b. Perform weekly inspections of process wastewater impoundments or settling basins and record the process wastewater level in open surface impoundments or settling basins. If the process wastewater level/volume cannot be determined, the inspection report shall include an explanation of why this cannot be determined.
 - c. Perform inspections of objects identified in paragraphs 41a and b above after each measurable precipitation event.
 - d. Inspections shall include all applicable objects and events outlined in paragraphs 41a and b above, but are not limited to those objects and events. Any other objects or events that may contribute to pollutants from the Facility being released into surface water shall be included in the inspection process.
42. Western Gravel shall correct any deficiencies found as a result of the weekly inspections outlined in paragraph 41 in order to prevent the unauthorized discharge of pollutants from the Facility into surface water. The corrections shall be documented in the monitoring log outlined in paragraph 41. These corrections shall be implemented as soon as possible, but no later than 14 days after such a deficiency has been identified, unless factors preventing correction within 14 days have been documented.
43. Western Gravel shall sample and monitor any unauthorized discharges from the Facility. All sampling and monitoring results of unauthorized discharges and/or spills shall be recorded in a monthly discharge log (“discharge log”). All samples shall be analyzed for the following:

Parameter	Units	Sample Type
Flow	MGD	In-situ
pH	s.u.	Grab
Total Suspended Solids	mg/l	Grab
Oil and Grease	mg/l	Grab

The discharge log shall also include the following:

- a. The date, exact location, and time of discharge;
 - b. The date, type, exact location, and time of sampling or measurements;
 - c. The individual(s) who performed the sampling or measurements;
 - d. The date(s) the analyses were performed;
 - e. The individual(s) who performed the analyses;
 - f. The analytical techniques or methods used;
 - g. The results of such analyses; and
 - h. Any other observations, which may result in, an impact on the quality or quantity of the discharge.
44. The inspection and monitoring programs described in paragraphs 41, 42, and 43 shall be implemented and the discharge log and monitoring log maintained until Western Gravel and the Division complete the application process and the Facility is covered by a Colorado Discharge Permit System (“CDPS”) permit for all discharges.
45. In the event that an unauthorized discharge is no longer occurring at the Facility, Western Gravel shall, within 30 days of this Order, submit photographs and a written certification that the unauthorized discharge point discussed in paragraphs 10-20 of this Order no longer has the potential to discharge process water.

Stormwater Corrective Actions

46. Western Gravel shall immediately evaluate the Facility’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 Facility. Within 30 calendar days of receipt of this Order, Western Gravel 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 Facility as well as a copy of the SWMP.
47. Western Gravel shall immediately begin conducting and documenting inspections of the Facility’s stormwater management system pursuant to the provisions outlined in the Permit. Within 30 calendar days of receipt of this Order, Western Gravel shall submit a written certification to the Division stating that all inspections are being conducted and documented in accordance with the terms and conditions of the Permit.
48. Western Gravel shall immediately implement necessary measures to ensure that BMPs are in place to control pollutant discharges from the Facility. This includes ensuring that all disturbed areas at the Facility are stabilized and/or protected with a system/series of erosion and sediment control practices and that all BMPs at the site are selected designed, installed, implemented, and

maintained following good engineering, hydrologic and pollution control practices. Within 30 calendar days of receipt of this Order, Western Gravel shall evaluate and modify all BMPs at the Facility to ensure the BMPs meet the installation and implementation requirements specified in the Facility's complete and up-to-date SWMP. Within 45 calendar days of receipt of this Order, Western Gravel shall submit photographs to the Division documenting the current conditions at the site and associated BMPs implemented at the Facility. The photographs shall include photos of the following, at minimum, 1) all sediment ponds/basins implemented at the Facility, 2) all diversion ditches implemented at the Facility, 3) all berms or control measures implemented along the western perimeter of the Facility with the highest potential to discharge to the Uncompaghre River.

NOTICES AND SUBMITTALS

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

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

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

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

OBLIGATION TO ANSWER AND REQUEST FOR HEARING

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

Section 25-8-603, C.R.S. and 5 CCR 1002, §21.11 also provide that the recipient of a Notice of Violation may request the Division to conduct a public hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002, §21.4(B)(2). Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent

Department proceeding. The request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

FALSIFICATION AND TAMPERING

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

POTENTIAL CIVIL AND CRIMINAL PENALTIES

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

RELEASE OR DISCHARGE NOTIFICATION

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

EFFECT OF ORDER

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

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

Issued at Denver, Colorado, this 9th 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

February 8, 2016



Nathan Moore
Unit Manager – Clean Water Compliance Unit
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246-1530

CITY OF MONTROSE

PUBLIC WORKS
DEPARTMENT

1221 64.50 Road
P.O. Box 790
Montrose, Colorado
81402-0790

www.cityofmontrose.org
(970) 240-1498

Subject: Uncompahgre River Discharge Observations

Dear Mr. Moore:

During the month of January 2016, the City of Montrose completed a riverbank stabilization project within the Uncompahgre River immediately adjacent to the City's wastewater reclamation facility located at 3315 North Townsend Avenue. This project was permitted with the US Army Corps of Engineers (SPK-2015-00908) and included stabilization of approximately 900 feet of the Uncompahgre River using stacked rip-rap boulders.

Nearly every day throughout the course of construction, the construction crews and City of Montrose project personnel observed that the river would quickly change from clear to a muddy, high turbidity stream at around 10:00 to 11:00 am. The river would remain turbid until the end of the work shift (usually around 16:00 to 18:00) and, upon return the next morning, would be running clear again. Photographs of the stream in its clear and turbid state, taken at the upstream end of the stabilization project, are included as Photos 1 and 2, respectively.

It is suspected that the source of the turbidity is gravel-pit operations at the Western Gravel facility located immediately upstream of the project area. This is based on the following observations:

- While running turbid into the project site, the Uncompahgre River remains clear immediately upstream of Western Gravel property at LaSalle Road. A photograph looking downstream from the LaSalle Road bridge is included as Photo 3. This photograph was taken approximately 5 minutes following Photo 2.
- Historic Google Earth photographs show the impacts of what appears to be gravel-pit operations discharging into the Uncompahgre River from the Western Gravel site. A Google Earth aerial photograph taken on June 19, 2012 is included as Photo 4. The conditions captured in this aerial photograph are consistent with recent observations made on the ground within the project area.

In an attempt to estimate the amount of Total Suspended Solids (TSS) being introduced to the river as a result of this discharge, the City of Montrose collected water samples from the river on January 26, 2016. Samples were collected early in the morning with the river running clear (baseline) and compared to samples collected later in the day with the river running turbid. Loading was then calculated based on the net TSS increase and flow measured at the nearest river gauge. An overview of this calculation, assumptions made, chains of custody, and lab results are included as an attachment to this letter. These analyses indicate that approximately 20 tons of material are being dumped into the river each day.

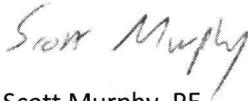
ATTACHMENT A

Mr. Nathan Moore
February 8, 2016
Page 2

It is my understanding that this type of discharge is regulated through CDPHE as it is associated with gravel pit operations and the site is located outside of the City's MS4 jurisdiction. Nonetheless, we are concerned with the impact this discharge may be having on the river's water quality, depositional behavior, erosional behavior, and impacts to aquatic habitat and are willing to provide any assistance necessary to help address this issue, if appropriate. Local representatives from Colorado Parks and Wildlife (Eric Gardunio, 970-250-5842) were also involved with the riverbank stabilization project, observed the discharge, share the same concerns, and have offered their assistance in resolving the issue if necessary.

Please let me know how we may be of assistance. Thank you.

Sincerely,



Scott Murphy, PE
City Engineer/Stormwater Program Manager
smurphy@ci.montrose.co.us

Attachment

cc:
Ben Wilson, *USACE*
Renzo DelPiccolo, *Colorado Parks and Wildlife*
Eric Gardunio, *Colorado Parks and Wildlife*
William Bell, *City of Montrose*
Stephen Alcorn, *City of Montrose*
John Harris, *City of Montrose*

ATTACHMENT A

Mr. Nathan Moore
February 8, 2016
Page 3



**Photo 1: Uncompahgre River at Upstream End of Stabilization Project with River Running Clear
01-20-2016, 08:00**

ATTACHMENT A

Mr. Nathan Moore
February 8, 2016
Page 4



**Photo 2: Uncompahgre River at Upstream End of Stabilization Project with River Running Turbid
01-20-2016, 13:00**

ATTACHMENT A

Mr. Nathan Moore
February 8, 2016
Page 5



Photo 3: Uncompahgre River at LaSalle Road Crossing Running Clear
01-20-2016, 13:05

ATTACHMENT A

Mr. Nathan Moore
February 8, 2016
Page 6

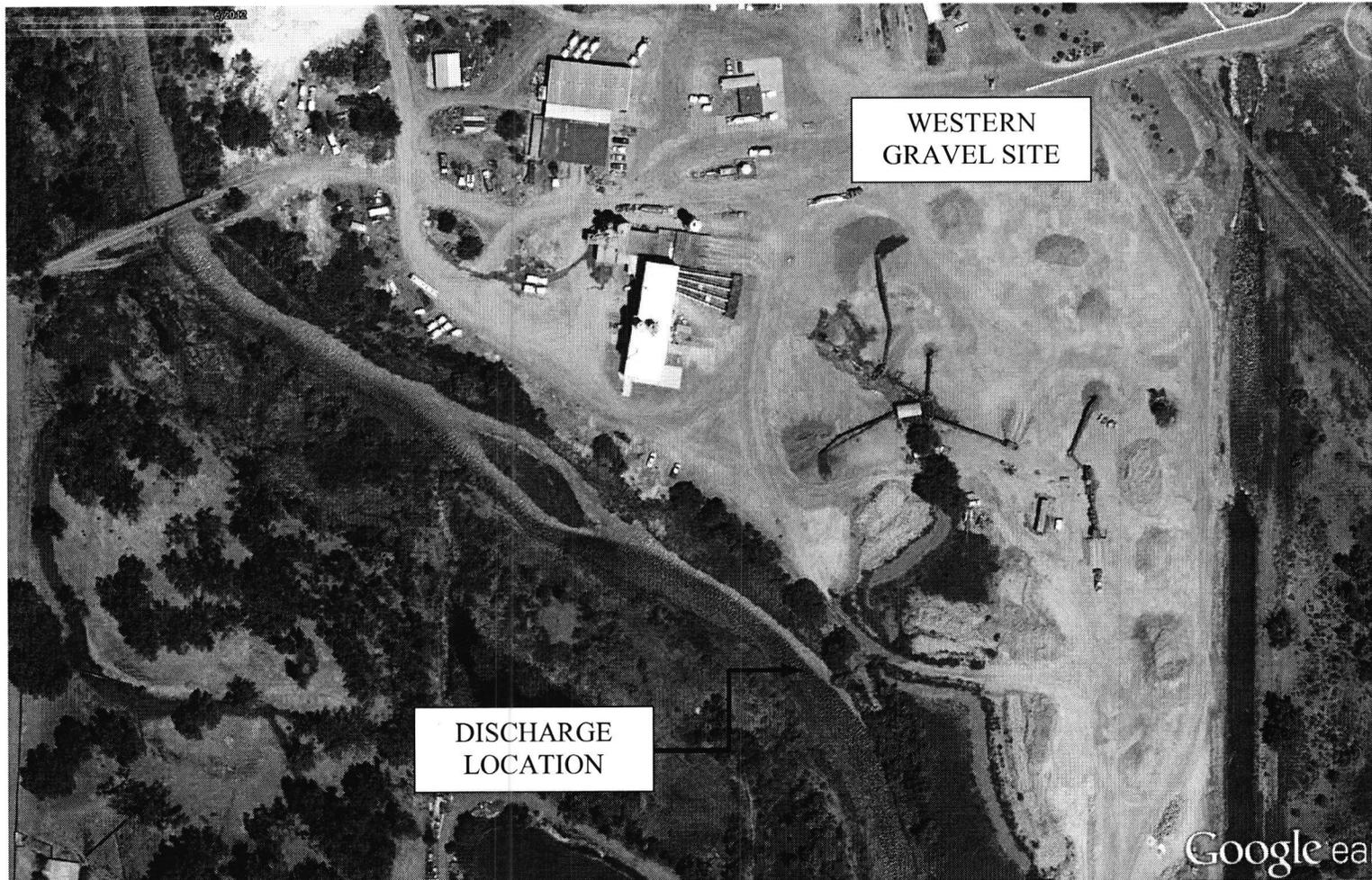


Photo 4: Google Earth Aerial Dated 6/19/2012

ATTACHMENT A

CITY OF MONTROSE WWTP

Total Suspended Solids & Total Dissolved Solids Analyses

Methods 2540C & 2540D---Standard Methods 20th Edition

YEAR: 2016

Sample I.D.	#3 Ditch	Cell 1	Cell 2	RAS 1	RAS 2	RAS 3	U. R. Baseline	U. R. Screen On
Sample Date	1/26	1/26	1/26	1/26	1/26	1/26	1/26	1/26
Analysis Date	"	"	"	"	"	"	"	"
Analysis Performed	MLSS						TSS	TSS
Analyst	RL						RL	RL
Container Number	D-3	C-1	C-2	R-1	R-2	R-3	URB	URS
Sample Volume (mL) (V)	4	1	1	1	1	1	100	100
Wt. Container + Dried Residue (W2)	0.1262	0.1194	0.1191	0.1237	0.1236	0.1204	0.1110	0.1460
Wt. Container (Tare) (W1)	0.1106	0.1101	0.1095	0.1116	0.1120	0.1108	0.1104	0.1106
Wt. Dry Solids (W3)	0.0156	0.0093	0.0096	0.0121	0.0116	0.0096	0.0006	0.0354
Residue (mg/L) (W3x1000)/(V/1000)	3900	9300	9600	12100	11600	9600	6	354
Filter + Ash (W4)	0.1132							
Vol. Susp. Solids, mg (W2-W4) x 1000 (W5)								
MLVSS, mg/L (W5 x 1000)/V	3250							

Comments:

ATTACHMENT A



CITY OF MONTROSE
PUBLIC WORKS & ENGINEERING

PROJECT _____	PAGE <u>1</u> OF <u>1</u>
COMPUTED <u>SM</u>	DATE <u>1/27/16</u>
CHECKED <u>RDC</u>	DATE <u>1/27/16</u>

- Given:
- Baseline (pre-wash operation) TSS = 6 mg/L
 - River TSS w/ wash operation active = 354 mg/L
 - Flow @ time wash operation sample was taken = 110 CFS (as taken @ Uncompahgre Road Bridge)
 - Typical duration of wash operation: 11a to 4p = 5 hours
 $5 \text{ hours} \times \frac{60 \text{ min}}{\text{hr}} \times \frac{60 \text{ sec}}{\text{min}} = 18,000 \text{ sec}$

Find: • Daily TSS Loading from wash operation

- Net TSS concentration from wash operation: $354 \frac{\text{mg}}{\text{L}} - 6 \frac{\text{mg}}{\text{L}} = 348 \frac{\text{mg}}{\text{L}}$

Daily Loading

$$348 \frac{\text{mg}}{\text{L}} \times \frac{1 \text{ lb}}{453,592 \text{ mg}} \times \frac{28,317 \text{ L}}{1 \text{ CF}} \times \frac{110 \text{ CF}}{5} \times \frac{18,000 \text{ s}}{\text{day}} \times \frac{1 \text{ ton}}{2000 \text{ lb}}$$

Daily Loading = 21.5 tons/day ←

(Daily Loading)

- Back-calculate TSS concentration @ source
- Assume 2 CFS discharge from wash operation

$$x \frac{\text{mg}}{\text{L}} \times \frac{1 \text{ lb}}{453,592 \text{ mg}} \times \frac{28,317 \text{ L}}{1 \text{ CF}} \times \frac{2 \text{ CF}}{5} \times \frac{18,000 \text{ s}}{\text{day}} \times \frac{1 \text{ ton}}{2000 \text{ lb}} = 21.5 \text{ ton}$$

Est. Concentration @ Source = x = 19,100 mg/L ←

(Conc @ Source)

**ATTACHMENT A
CITY OF MONTROSE WASTEWATER TREATMENT PLANT**

CHAIN OF CUSTODY / SAMPLING RECORD

DISCHARGING FACILITY: Uncompahgre River

ADDRESS: _____

REASON FOR SAMPLING: Illicit Discharge Invest.

SAMPLING PERSONNEL: Scott Murphy

SAMPLING LOCATION: Unc River @ Upstream End of WWTF Riverbank Stabilization Project

SAMPLE TYPE: GRAB DATE: 1/26/16 TIME: 08:23
1/26/16 12:05

COMPOSITE START DATE: _____ TIME: _____

END DATE: _____ TIME: _____

AUTOSAMPLER USED: HAND SAMPLED: FLOW PROPORTIONED:

SAMPLING INTERVAL: _____

SAMPLE SPLIT: YES WITH DISCHARGER OTHER (EXPLAIN): _____

NO

In House Analysis Required	Container Type (P or G)	Number of Containers	Volume of Sample	Preservation Method	In-House Laboratory Results
Unc River Baseline TSS	P	1	500mL	4°C	6 mg/L
Unc River Screen On TSS	P	1	500mL	4°C	354 mg/L

RELINQUISHED BY: (SIGNATURE) <u>Scott Murphy</u>	RECEIVED BY: (SIGNATURE) <u>Robin Risher</u>	DATE/TIME: 12:25 1/26/16
RELINQUISHED BY: (SIGNATURE)	RECEIVED BY: (SIGNATURE)	DATE/TIME:
RELINQUISHED BY: (SIGNATURE)	RECEIVED BY: (SIGNATURE)	
RELINQUISHED BY: (SIGNATURE)	RECEIVED BY: (SIGNATURE)	

**Unc River Screen On
1/26/16
12:05**

**Unc River Baseline
1/26/16
08:23 SM**

METHOD OF SHIPMENT: Hand Deliv.

PRESERVATION DURING SHIPMENT: 4°C

COMMENTS: _____
