

STATE OF COLORADO

Bill Ritter, Jr., Governor
James B. Martin, Executive Director

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

4300 Cherry Creek Dr. S. Laboratory Services Division
Denver, Colorado 80246-1530 8100 Lowry Blvd.
Phone (303) 692-2000 Denver, Colorado 80230-6928
TDD Line (303) 691-7700 (303) 692-3090
Located in Glendale, Colorado
<http://www.cdphe.state.co.us>



Colorado Department
of Public Health
and Environment

February 26, 2007

Ms. Karen Debenham, Registered Agent
Cedar Park Road Maintenance Corporation
PO Box 344
Drake, CO 80515

Certified Mail Number: 7005 1820 0000 3207 4465

RE: Service of Notice of Violation/Cease and Desist Order, Number: IO-070226-1

Dear Ms. Debenham:

Cedar Park Road Maintenance Corporation is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). This 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 this NOV/CDO upon findings that Cedar Park Road Maintenance Corporation has violated the Act, and/or control regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., Cedar Park Road Maintenance Corporation is required, within thirty (30) calendar days of issuance 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 Cedar Park Road Maintenance Corporation 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 Kelly Morgan of this office by phone at (303) 692-3634 or by electronic mail at kelly.morgan@state.co.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Tidwell', with a horizontal line drawn underneath.

Karen Tidwell, Legal Assistant
Compliance Assurance and Data Management Section
WATER QUALITY CONTROL DIVISION

cc: Larimer County Department of Health and Environment

ec: Lee Hanley, EPA Region VIII
Jennifer Miller, Engineering Section, CDPHE
Dick Parachini, Outreach and Assistance Unit, CDPHE

MS-3 File

Enclosure(s)

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Colorado Department
of Public Health
and Environment

February 26, 2007

Mr. James Egan, Registered Agent
Cedar Springs Improvement Association
PO Box 71
Drake, CO 80515

Certified Mail Number: 7005 1820 0000 3207 4540

RE: Service of Notice of Violation/Cease and Desist Order, Number: IO-070226-1

Dear Mr. Egan:

Cedar Springs Improvement Association is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). This 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 this NOV/CDO upon findings that Cedar Springs Improvement Association has violated the Act, and/or control regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., Cedar Springs Improvement Association is required, within thirty (30) calendar days of issuance 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 Cedar Springs Improvement Association 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 Kelly Morgan of this office by phone at (303) 692-3634 or by electronic mail at kelly.morgan@state.co.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Tidwell', with a long horizontal flourish extending to the right.

Karen Tidwell, Legal Assistant
Compliance Assurance and Data Management Section
WATER QUALITY CONTROL DIVISION

cc: Larimer County Department of Health and Environment

ec: Lee Hanley, EPA Region VIII
Jennifer Miller, Engineering Section, CDPHE
Dick Parachini, Outreach and Assistance Unit, CDPHE

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Colorado Department
of Public Health
and Environment

February 26, 2007

Shannon White, Registered Agent
White Trucking and Construction, LLC
8220 N County Road 27
Loveland, CO 80538

Certified Mail Number: 7005 1820 0000 3207 4472

RE: Service of Notice of Violation/Cease and Desist Order, Number: IO-070226-1

Dear Shannon White:

White Trucking and Construction, LLC is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). This 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 this NOV/CDO upon findings that White Trucking and Construction, LLC has violated the Act, and/or control regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.


Pursuant to §25-8-603, C.R.S., White Trucking and Construction, LLC is required, within thirty (30) calendar days of issuance 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 White Trucking and Construction, LLC 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 Kelly Morgan of this office by phone at (303) 692-3634 or by electronic mail at kelly.morgan@state.co.us.

Sincerely,

A handwritten signature in black ink, appearing to be 'KT', with a long horizontal line extending to the right.

Karen Tidwell, Legal Assistant
Compliance Assurance and Data Management Section
WATER QUALITY CONTROL DIVISION

cc: Larimer County Department of Health and Environment

ec: Lee Hanley, EPA Region VIII
Jennifer Miller, Engineering Section, CDPHE
Dick Parachini, Outreach and Assistance Unit, CDPHE

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Colorado Department
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February 26, 2007

Mr. Roger Knoph, Registered Agent
EnviroTech Services, Inc.
1140 38th Avenue, Suite 1
Greeley, CO 80634

Certified Mail Number: 7005 1820 0000 3207 4489

RE: Service of Notice of Violation/Cease and Desist Order, Number: IO-070226-1

Dear Mr. Knoph:

EnviroTech Services, Inc. is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). This 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 this NOV/CDO upon findings that EnviroTech Services, Inc. has violated the Act, and/or control regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., EnviroTech Services, Inc. is required, within thirty (30) calendar days of issuance 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 EnviroTech Services, 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 Kelly Morgan of this office by phone at (303) 692-3634 or by electronic mail at kelly.morgan@state.co.us.

Sincerely,



Karen Tidwell, Legal Assistant
Compliance Assurance and Data Management Section
WATER QUALITY CONTROL DIVISION

cc: Larimer County Department of Health and Environment

ec: Lee Hanley, EPA Region VIII
Jennifer Miller, Engineering Section, CDPHE
Dick Parachini, Outreach and Assistance Unit, CDPHE

MS-3 File

Enclosure(s)



COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
DIVISION OF ADMINISTRATION
WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: IO-070226-1

IN THE MATTER OF: CEDAR PARK ROAD MAINTENANCE CORPORATION
CEDAR SPRINGS IMPROVEMENT ASSOCIATION
WHITE TRUCKING AND CONSTRUCTION LLC
ENVIROTECH SERVICES, INC.
LARIMER 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 has been delegated to 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. Both the Cedar Park Road Maintenance Corporation ("CPRMC") and Cedar Springs Improvement Association ("CSIA") operate and/or are associated with housing/land developments within Larimer County, Colorado. CPRMC and CSIA contract with White Trucking and Construction, LLC ("White") for maintenance and dust suppression services for Larimer County Road 41H ("LCR41H"). White contracts with EnviroTech Services, Inc. ("EnviroTech") for the dust suppression supplies and services used on LCR41H.
2. CPRMC, CSIA, White and EnviroTech are each 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. LCR41H is a Larimer County access road, also referred to as FDR 128, Cedar Park Road, Cedar Park Springs Access Road, and Storm Mountain Road. For the purposes of this Notice of Violation /Cease and Desist Order, the road will be referred to as LCR41H.
4. In calendar years 2003 and 2004, the Division received complaints regarding dust suppressant application methods employed by CPRMC, CSIA and its contractors to roads within the developments. In response to the complaints, the Division met with representatives of the Larimer County Department

of Health and Environment (LCDHE), CPRMC, CSIA, White and EnviroTech on January 20, 2004 and agreed upon improvements to the best management practices utilized in maintaining LCR41H to prevent offsite discharges.

5. Subsequent to the January 20, 2004 meeting, the Division and LCDHE received multiple complaints of inappropriate application of dust suppressants on LCR41H, including a complaint regarding a September 12, 2006 application of dust suppressants.
6. In response to the September 12, 2006 complaint, a representative from the LCDHE conducted an onsite inspection of LCR41H on September 13, 2006.

DISCHARGE WITHOUT A PERMIT

7. Pursuant to §25-8-501(1) C.R.S., and its implementing permit regulation 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.
8. On or about September 12, 2006, CPRMC and CSIA contracted with White who contracted with EnviroTech to apply a dust suppressant (ET820) to LCR41H.
9. During the September 13, 2006 inspection, the LCDHE inspector observed that brown residual dust suppressant liquids (ET820) had run off LCR41H in several places and flowed into an unnamed creek that is a tributary to the North Fork of the Big Thompson River.
10. The magnesium chloride and lignosulfonate based dust suppressant (ET820) is a "pollutant" as defined by §25-8-103(15) C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(76).
11. The unnamed creek 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(101).
12. The truck that applied the dust suppressant is a "point source" as defined by §25-8-103(14) and its implementing permit regulation, 5 CCR 1002-61, §61.2(75).
13. CPRMC's, CSIA's, White's, and EnviroTech's discharge of dust suppressants (ET820) into the unnamed creek constitutes a "discharge of pollutants" as defined by §25-8-103(3) C.R.S.
14. Division records establish that CPRMC, CSIA, White and EnviroTech do not have any permits authorizing the discharge of pollutants into state waters as described in paragraphs 8-13 above. CPRMC's, CSIA's, White's, and EnviroTech's discharge of pollutants from the application of dust suppressants (ET820) onto LCR41H to state waters without a permit constitutes a violation of §25-8-501(1) C.R.S and 5 CCR 1002-61, §61.3(1)(a).

NOTICE OF VIOLATION

Based on the foregoing Findings of Fact, you are hereby notified that the Division has determined that CPRMC, CSIA, EnviroTech, and White have violated the following section of the Water Quality Control Act and its implementing permit regulation:

§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....”

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 for such discharge except that activities such as diversion, carriage, and exchange of water from or into streams, lakes, reservoirs, or conveyance structures, or storage of water in or release of water from lakes, reservoirs, or conveyance structures, in the exercise of water rights shall not be considered to be point source discharges of pollution under this article. However, nothing in this subsection shall exempt any point source discharger which generates wastewater effluent from the requirement of obtaining a permit pursuant to these regulations.”

CEASE AND DESIST ORDER

Based upon the foregoing factual and legal determinations and pursuant to §25-8-605, C.R.S., CPRMC, CSIA, White, and EnviroTech are hereby ordered to:

15. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 through 25-8-703, C.R.S., regulations promulgated thereto.

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

16. CPRMC and CSIA shall immediately cease all unauthorized discharges of dust suppressants to state waters from road application activities, specifically including activities on LCR41H.
17. Within sixty (60) calendar days of receipt of this Order, CPRMC and CSIA shall submit to the Division a detailed written statement outlining the standard procedures CPRMC and CSIA will undertake to ensure that all future applications of dust suppressants are applied appropriately to prevent run-off into State waters. The statement must address the following:
 - a. A description of the design, grading and drainage of LCR41H and associated roads maintained by CPRMC and CSIA.
 - b. A description of the specific BMPs that will be put in place prior to each future dust suppressant application event, as well as BMPs that will be followed during each application event.

- c. An explanation of all other actions that have been and will be taken to prevent future discharges of dust suppressants to state waters.
 - d. A procedure for providing notification to the Division district engineer and the LCDHE prior to each planned dust suppressant application event. These notifications must include specific dates and times for each event.
18. Within sixty (60) calendar days of receipt of this Order, CPRMC and CSIA shall perform an evaluation of alternative dust management methods that can be used for LCR41H and submit the results of the evaluation to the Division. The evaluation, at a minimum, should include cost analysis and performance comparisons of the effectiveness of each alternative method.

NOTICES AND SUBMITTALS

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

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-B2
Compliance Assurance and Data Management Section
Attention: Kelly Morgan
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

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(A) 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.

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.

Both the answer and 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 703, 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.

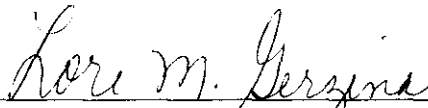
EFFECT OF ORDER

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 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 703, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 26th day of February 2007.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Lori M. Gerzina, Section Manager
Compliance Assurance and Data Management Section
WATER QUALITY CONTROL DIVISION