



STATE OF
COLORADO

Eschberger - DNR, Amy <amy.eschberger@state.co.us>

ORDER FOR CIVIL PENALTY - PROWERS AGGREGATE OPERATORS, LLC - IP-200116-1

1 message

Beebout - CDPHE, Andrea <andrea.beebout@state.co.us>

Thu, Jan 16, 2020 at 4:03 PM

To: Amy Eschberger - DNR <amy.eschberger@state.co.us>, Jim Ramsay - DNR <jim.ramsay@state.co.us>

FYI.

Thanks,
Andrea

Andrea Beebout
Environmental Protection Specialist
Clean Water Enforcement Unit



COLORADO
Water Quality Control Division
Department of Public Health & Environment

P 303.692.6498

4300 Cherry Creek Drive South, Denver, CO 80246

andrea.beebout@state.co.us | www.colorado.gov/cdphe/wqcd

24-Hour Environmental Release/Incident Reporting Line: 1.877.518.5608



WQ_Prowers-Aggregate_OCP_01-16-20.pdf
1662K



COLORADO

Department of Public
Health & Environment

January 16, 2020

Karl Nyquist, Principal
Prowers Aggregate Operators, LLC
7991 Shaffer Parkway, Suite 200
Littleton, Colorado 80127

Certified Mail Number: 7015 0640 0005 0389 5694

RE: Order for Civil Penalty, Number: IP-200116-1

Dear Mr. Nyquist:

Prowers Aggregate Operators, LLC is hereby served with the enclosed Order for Civil Penalty ("Penalty Order"). This Penalty Order is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division ("Division") pursuant to authority given to the Division by § 25-8-608(2), C.R.S., of the *Colorado Water Quality Control Act*. Payment of the imposed civil penalty should be made in accordance with the methods referenced in the Penalty Order.

If you have questions regarding the Penalty Order or the payment method, please do not hesitate to contact me at (303) 692-6498 or andrea.beebout@state.co.us.

Sincerely,

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

Enclosure(s)

cc: Enforcement File

ec: Michael Boeglin, EPA Region 8
Seth Odett, Prowers County Public Health & Environment
Aimee Konowal, Watershed Section, CDPHE
Nathan Moore, Compliance & Enforcement Section, CDPHE
Mark Henderson, Grants and Loans Unit, CDPHE
Amy Zimmerman, Engineering Section, CDPHE
Heather Young, Field Services Section, CDPHE
Erin Scott, Permits Section, CDPHE
Kelly Morgan, Clean Water Enforcement Unit, CDPHE
Tania Watson, Data Management Workgroup, CDPHE
Maura McGovern, Clean Water Compliance Unit, CDPHE
Joseph Campbell, Clean Water Compliance Unit, CDPHE
Michelle Hiigel, Prowers County Land Use
Amy Exchberger, Division of Reclamation, Mining, and Safety, DNR
Jim Ramsay, Colorado Parks and Wildlife, DNR





COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

ORDER FOR CIVIL PENALTY

NUMBER: IP-200116-1

IN THE MATTER OF: PROWERS AGGREGATE OPERATORS, LLC
CDPS PERMIT NO. COG500000
CERTIFICATION NO. COG501574 and UNPERMITTED
PROWERS COUNTY, COLORADO

This matter having come to my attention as the Designee of the Executive Director of the Colorado Department of Public Health and Environment, pursuant to §25-8-608 C.R.S, I hereby impose a civil penalty in the amount of \$141,204.00 against Prowers Aggregate Operators, LLC for the violations cited in the December 10, 2019 Compliance Order on Consent (Number: IC-191210-1). A copy of the Compliance Order on Consent is attached hereto as Exhibit A and is incorporated herein by reference. The civil penalty shall be paid through three installment payments, with the first due within 30 calendar days of the date of this Order for Civil Penalty, and as set forth in the Compliance Order on Consent.

"Method of payment shall be by certified or cashier's check drawn to the order of the 'Colorado Department of Public Health and Environment,' and delivered to:

*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"*

Dated this 16th day of January 2020.


Nicole Rowan, P.E.
Clean Water Program Manager
Water Quality Control Division
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT

NUMBER: IC-191210-1

IN THE MATTER OF: PROWERS AGGREGATE OPERATORS, LLC
CDPS GENERAL PERMIT NO. COG500000
CERTIFICATION NO. COG501574 and UNPERMITTED
PROWERS COUNTY, COLORADO

The Colorado Department of Public Health and Environment (“Department”), through the Water Quality Control Division (“Division”), issues this Compliance Order on Consent (“Consent Order”), pursuant to the Division’s authority under §§25-8-602 and 605, C.R.S. of the Colorado Water Quality Control Act (“Act”) §§25-8-101 to 803, C.R.S., and its implementing regulations, with the express consent of Prowers Aggregate Operators, LLC (“Prowers Aggregate”). The Division and Prowers Aggregate may be referred to collectively as the “Parties.”

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order are to resolve, without litigation, the civil penalties associated with alleged violations cited herein and in the Notice of Violation/Cease and Desist Order, Number: IO-190110-1 (“NOV/CDO”), that the Division issued to Prowers Aggregate on January 10, 2019.

DIVISION’S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

2. Based upon the Division’s investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602, C.R.S., the Division has made the following determinations regarding Prowers Aggregate and Prowers Aggregate’s compliance with the Act and its permit issued pursuant to the Act.
3. At all times relevant to the alleged violations identified herein, Prowers Aggregate was a Colorado limited liability company in good standing and registered to conduct business in the State of Colorado.
4. Prowers Aggregate 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).
5. On June 30, 2016, the Division received an application from Prowers Aggregate to transfer Colorado Discharge Permit System (“CDPS”) coverage for process water and stormwater discharges from sand

EXHIBIT A

and gravel mining and processing at the West Farm Pit located at or near 38.096 N, -102.586 W, near the City of Lamar, Prowers County, Colorado ("Facility") from Crossfire Aggregate Services LLC to Prowers Aggregate.

6. During times relevant to the violations cited herein, the Facility is subject to CDPS General Permit, Number COG500000 for Sand and Gravel Mining and Processing ("Permit"). The current version of the Permit was issued on October 13, 2016, became effective on January 1, 2017, and is set to expire on December 31, 2021.
7. On July 11, 2016, the Division provided Prowers Aggregate with Certification Number COG501574, authorizing Prowers Aggregate to discharge dewatering discharges associated with sand and gravel mining at the Facility through outfall 001A (discharge from dewatering pump to farm ditch to the Arkansas River) and to discharge stormwater discharges associated with sand and gravel mining and processing at the Facility through outfall 002A (stormwater discharge from sediment logs near CR HH 8/10 to the Arkansas River) under the terms and conditions of the Permit ("Certification"). The Certification was renewed and reissued under the Permit on December 22, 2016. The current version of the Certification became effective on January 1, 2017 and remains in effect until Permit expiration or until Prowers Aggregate inactivates Permit coverage.
8. Pursuant to 5 CCR 1002-61, §61.8, Prowers Aggregate 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 June 15, 2018, 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 Prowers Aggregate's compliance with the Water Quality Control Act and its implementing regulations, the Permit, and the Certification ("Inspection"). During the Inspection, the Inspector interviewed a Facility representative, reviewed the stormwater management plan and discharge records, reviewed process water discharge logs and Discharge Monitoring Reports ("DMRs"), and performed a physical inspection of the Facility.

Unauthorized Discharge / Unauthorized Discharge Location

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.
11. Pursuant to Part I.C.2.a.ix. of the Permit, Prowers Aggregate must eliminate non-stormwater discharges not authorized by the Permit, the Certification, or any other CDPS permit.
12. According to the Certification, outfall 001A is located at approximately 38.102489 N, -102.581011 W. Outfall 001A discharges to a farm ditch on the northern side of the Facility, which eventually discharges to the Arkansas River.
13. According to the Certification, outfall 002A is located at approximately 38.096614 N, -102.581383 W. Outfall 002A discharges from sediment logs near CR HH 8/10.
14. During the Inspection, the Inspector observed activities associated with pit dewatering at the Facility at approximately 38.099671 N, -102.576716 W, at the end of a dewatering pump pipe,

EXHIBIT A

which discharges to a farm ditch on the eastern perimeter of the Facility, eventually discharging to the Arkansas River. During the Inspection, representatives of Prowers Aggregated confirmed that sampling and analytical data for effluent discharged at this location was reported on DMRs for Outfall 001A.

15. On June 12, 2017, satellite imagery of the Facility shows an unauthorized discharge of sediment laden wastewater from a pond/impoundment in the western portion of the Facility into a stormwater drainage swale/roadside ditch (“Roadside Ditch”), which discharges directly to the Arkansas River.
16. On May 31, 2018, the Division received a complaint and photographs from the Colorado Department of Natural Resources (“DNR”) alleging a discharge of sediment-laden waters to the Arkansas River from the Facility. DNR’s complaint included photographs of the Arkansas River, upgradient and downgradient of the Facility.
17. Between June 7, 2018 and June 8, 2018, a well pump was left on at the Facility, causing a portion of a berm to wash out, causing an unauthorized discharge of process water and sediment, and potentially some stormwater, into the Roadside Ditch and eventually the Arkansas River.
18. During the Inspection, the Inspector observed process wastewater within the Roadside Ditch. The Inspector observed several large deposits of sediment within the Roadside Ditch, indicating the discharge of process water occurred or had been occurring more frequently than the one occasion acknowledged by representatives of Prowers Aggregate during the Inspection. The Inspector observed sediment deposits within the Roadside Ditch up to the point where the Roadside Ditch discharges into the Arkansas River, sediment deposition within the riparian zone of the Arkansas River, as well as sediment staining on vegetation at the point where the Roadside Ditch discharges into the Arkansas River. The Roadside Ditch was not actively discharging to the Arkansas River at the time of the Inspection, however the Inspector observed conditions indicating that an unauthorized discharge had occurred and that, in the event of additional process water discharges to the Roadside Ditch and/or a rain event, additional unauthorized discharges to the Arkansas River would likely occur.
19. The Roadside Ditch referenced in paragraphs 15, 17 and 18 discharges to the Arkansas River at approximately 38.105862 N, -102.584642 W, a point that is not authorized by the Certification or the Permit.
20. The Arkansas 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).
21. The well pump, as it relates to the discharge events described in paragraph 17 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).
22. The Roadside Ditch, as it relates to the discharge events described in paragraphs 15, 17, and 18 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).
23. Prowers Aggregate’s discharge of process water and/or stormwater containing sediment and potentially additional pollutants into the Arkansas River constitutes a “discharge of pollutants” as defined by §25-8-103(3).

EXHIBIT A

24. Prowers Aggregate has never had a permit and/or permit certification authorizing the discharge(s) of pollutants from the Roadside Ditch, as described in paragraphs 15, 16, 17, 18, or the dewatering pump pipe to the Arkansas River, as described in paragraph 14.
25. Prowers Aggregate's discharge(s) of pollutants into the Arkansas River, as described in paragraphs 14 through 18 of this Order, constitutes an unauthorized discharge(s) 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 I.C.2.a.ix. of the Permit.

Failure to Properly Monitor / Failure to Use Required Analytical Method

26. Pursuant to Part I.C. of the Permit and the Certification, Prowers Aggregate is required to monitor effluent discharged at Outfall 001A at the following specified frequencies:

PROWERS AGGREGATE REQUIRED MONITORING FREQUENCY - OUTFALL 001A	
Parameter	Monitoring Frequency
Flow	Continuous ¹ / Instantaneous Monthly ¹
pH	2x/month
Total Suspended Solids	2x/month
Oil and Grease Visual	2x/month
Oil and Grease	Contingent ²
Total Flow ³	Continuous ¹ / Instantaneous Monthly ¹
Electrical Conductivity	Quarterly
Dissolved Manganese	2x/month
Potentially Dissolved Selenium	2x/month
Total Recoverable Uranium	2x/month

1: Flow - If power is not available, flow may be measured on an instantaneous basis.

2: Oil and Grease - A visual observation of the discharge for each permitted outfall must be made 2 times per month. In the event an oil sheen or floating oil is observed, a grab sample shall be collected, analyzed, and reported on the DMR. In addition, corrective action shall be taken immediately to mitigate the discharge of oil.

3: Total Flow - Total Flow is the cumulative flow of the discharge for the quarter in million gallons. If continuous flow monitoring is not conducted, the permittee must calculate the total flow for the month or quarter using the 30-day average flow (measured) and the number of days the facility discharged within the month or quarter.

27. Pursuant to Part I.F.1. of the Permit, Prowers Aggregate is required to summarize and report the analytical results of its effluent monitoring to the Division via quarterly DMRs. The Permit specifies that the DMRs shall be filled out accurately and completely in accordance with the requirements of the Permit. Prowers Aggregate is required to ensure the DMRs are received by the Division no later than the 28th day of the month following the reporting period. The Permit specifies that if no discharge occurs during the reporting period, "No Discharge" shall be reported on the DMR.
28. Pursuant to Part I.E.4. of the Permit, Prowers Aggregate is required to install, calibrate, use and maintain monitoring methods and equipment in accordance with specified methods in 40 C.F.R. Part 136; methods approved by EPA pursuant to 40 C.F.R. 136; or methods approved by the Division in the absence of a method specified in or approved pursuant to 40 C.F.R. Part 136.
29. During the Inspection, the Inspector reviewed Prowers Aggregate's sampling and monitoring records from January 1, 2017 through March 31, 2018 and found them to be inadequate. Specifically,

EXHIBIT A

effluent samples for flow, total suspended solids, oil and grease, dissolved manganese, potentially dissolved selenium, and total recoverable uranium were only being collected one time per quarter.

30. Division records establish Prowers Aggregate failed to submit DMRs to the Division by the 28th day of the month following the end of the reporting periods identified in the table below:

PROWERS AGGREGATE LATE DISCHARGE MONITORING REPORTS			
DMR REPORTING PERIOD	OUTFALL NUMBER(S)	DMR DUE DATE	DMR RECEIPT DATE
4 th Quarter 2016 (10/1/2016–12/31/2016)	001A, 002A	1/28/2017	2/10/2017
1 st Quarter 2017 (1/1/2017–3/31/2017)	001A, 002A	4/28/2017	5/10/2017
2 nd Quarter 2017 (4/1/2017–6/30/2017)	001A, 002A	7/28/2017	8/8/2017
3 rd Quarter 2017 (7/1/2017–9/30/2017)	001A, 002A	10/28/2017	11/13/2017
4 th Quarter 2017 (10/1/2017–12/31/2017)	001A, 002A	1/28/2018	2/12/2018

31. During the Inspection, the Inspector reviewed Prowers Aggregate's sampling methods and found them to be inadequate. Specifically, a representative of Prowers Aggregate confirmed that pH is being analyzed at the laboratory and that the pH analysis is conducted more than 15 minutes after sample collection, which is outside the acceptable holding time.
32. Prowers Aggregate's failure to submit DMRs to the Division so that they are received by no later than the 28th day of the month following the end of the reporting period constitutes violations of Part I.F.1. of the Permit.
33. Prowers Aggregate's failure to properly monitor and analyze its effluent at outfall 001A, constitutes violations of Parts I.C. and I.E.4. of the Permit.

Failure to Comply with Permit Effluent Limitations

34. Pursuant to Part I.C.1. of the Permit and the Certification, Prowers Aggregate's permitted discharge at Outfall 001A shall not exceed, among others not subject of this action, the following effluent discharge limitations specified below:

PROWERS AGGREGATE EFFLUENT DISCHARGE LIMITATIONS - OUTFALL 001A			
Parameter	Units	Discharge Limitations	
		30-Day Average	7-Day Average
Total Suspended Solids	mg/L	30	45

35. Pursuant to Part I.C. of the Permit and the Certification, Prowers Aggregate is required to monitor defined effluent parameters at specified frequencies to provide an indication of compliance or non-compliance with the effluent limitations of the Permit and the Certification.

EXHIBIT A

36. Pursuant to Part I.F.1. of the Permit, Prowers Aggregate is required to summarize and report the analytical results of its effluent monitoring to the Division via monthly DMRs. Each DMR shall include a certification by Prowers Aggregate that the information provided therein is true, accurate, and complete to the knowledge and belief of Prowers Aggregate.
37. Prowers Aggregate's DMRs include, among other information and data, the following effluent concentration data, which exceeded the effluent limitations in Part I.C.1. of the Permit and the Certification:

PROWERS AGGREGATE EFFLUENT SELF-MONITORING DATA		
DISCHARGE MONITORING REPORTING PERIOD	SAMPLE MEASUREMENTS FOR OUTALL 001A	
Total Suspended Solids	30-DAY AVERAGE LIMIT = 30mg/L	7-DAY AVERAGE LIMIT = 45mg/L
2 nd Quarter 2017 (4/1/2017–6/30/2017)	58.7	58.7
3 rd Quarter 2017 (7/1/2017–9/30/2017)	44	--
1 st Quarter 2018 (1/1/2018–3/31/2018)	80.8	80.8
2 nd Quarter 2018 (4/1/2018–6/30/2018)	40.5	--

38. Total suspended solids is a "pollutant", as defined by §25-8-103, C.R.S. and its implementing permit regulation 5 CCR 1002-61, §61.2(76).
39. The Permit and the Certification do not authorize the pollutant levels identified above in paragraph 37. Division records establish that Prowers Aggregate does not have any other permit authorizing such discharges to State Waters.
40. Prowers Aggregate's failure to comply with the effluent limitations constitutes violations of Part I.C.1. of the Permit and the Certification.

Failure to Comply with Permit Reporting Requirement / Failure to Properly Notify Division of Discharge

41. Pursuant to §25-8-601(2) C.R.S., 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 contrary to the provision of this article, as soon as he has knowledge thereof, shall notify the Division of such discharge.
42. Pursuant to Part II.A.3. of the Permit, Prowers Aggregate is required to report circumstances leading to any noncompliance which may endanger health or the environment regardless of the cause of the incident orally within 24 hours from the time the permittee becomes aware of the circumstances and shall mail to the Division a written report within five days of the incident.
43. Department and Division records establish Prowers Aggregate failed to notify the Division of the unpermitted discharge(s) to state waters described in paragraphs 15, 17, and 18 above, within 24 hours of becoming aware of the incident(s).

EXHIBIT A

44. Prowers Aggregate's failure to notify the Division of the discharge(s) to state waters constitutes violations of §25-8-601(2) C.R.S. and Part II.A.3. of the Permit.

Deficient Facility Inspections and Records

45. Pursuant to Part I.J.1. of the Permit, Prowers Aggregate is required to conduct and document quarterly inspections of the Facility.
46. Pursuant to Part I.J.2. of the Permit, each of Prowers Aggregate's Facility inspections shall include, among others not subject to this action, the following:
- a. Observations of the presence of illicit discharges or other non-permitted discharges.
 - b. An assessment of all control measures used to comply with the effluent limits contained in this permit, noting all of the following:
 - i. Effectiveness of control measures inspected;
 - ii. Locations of control measures that need repair;
 - iii. Reason maintenance or repair is needed and a schedule for maintenance or repair;
 - iv. Locations where additional or different control measures are needed and the rationale for the additional or different control measures.
47. Pursuant to Part I.J.3. of the Permit, Prowers Aggregate is required to document the findings for each inspection in an inspection report or checklist. Prowers Aggregate is required to ensure each inspection report documents the observations, verifications and assessments required by Part I.J.2. of the Permit and to include, among others not subject to this action, the following:
- a. The inspection date and time;
 - b. Locations inspected;
 - c. Weather information and a description of any discharges occurring at the time of inspection;
 - d. A statement that, in the judgment of 1) the person conducting the Facility inspection, and 2) the person described in Part I.F.4. of the Permit, the Facility is either in compliance or out of compliance with the terms and conditions of the Permit, with respect to Part I.J.2. of the Permit.
 - e. A summary report and schedule of implementation of the corrective actions that Prowers Aggregate has taken or plans to take if the Facility inspection indicates that the Facility is out of compliance.
48. Pursuant to Part I.K.1. of the Permit, if any of the following conditions occur at the Facility, Prowers Aggregate must review and revise the selection, design, installation, and implementation of Facility control measures to ensure that the condition is eliminated and will not be repeated in the future:
- a. An unauthorized release or discharge (e.g. spill, leak, or discharge of non-stormwater not authorized by the Permit) occurs;
 - b. Facility control measures are not stringent enough for the discharge to meet applicable water quality standards;
 - c. Modifications to the Facility control measures are necessary to meet the practice-based effluent limits in the Permit; or

EXHIBIT A

- d. Prowers Aggregate finds in a Facility inspection that the Facility control measures are not properly selected, designed, installed, operated, or maintained.
49. Pursuant to Part I.K.2. of the Permit, if any of the following conditions occur, Prowers Aggregate must review the selection, design, installation, and implementation of Facility control measures to determine the appropriate modifications necessary to attain the effluent limits in the Permit:
- a. Construction or change in design, operation, or maintenance at the Facility significantly changes the nature of pollutants discharged into stormwater from the facility, or significantly increased the quantity of pollutants discharged; or
 - b. The average of quarterly sampling results exceeds an applicable benchmark.
50. During the Inspection, the Inspector reviewed Prowers Aggregate's inspection records from January 15, 2018 and June 1, 2018 and identified the following deficiencies:
- a. The inspection records did not include the inspection time, weather information, or a statement of whether or not the Facility was in compliance.
 - b. The inspection form listed specific control measures, some of which were not implemented at the Facility at the time of inspection. Additionally, the inspection form did not include all control measures implemented at the Facility at the time of inspection.
 - c. The inspection records did not include observations related to illicit discharges of process water into the Roadside Ditch (refer to paragraphs 15, 17 and 18) or the buildup of sediment within the roadside ditch observed by the Inspector (refer to paragraph 17).
51. During the Inspection, Prowers Aggregate had no record of corrective action reports, despite the Facility's inspection records identifying maintenance activities were required.
52. Prowers Aggregate's failure to generate complete and accurate inspection reports, as outlined in paragraph 50 above, constitutes violations of Parts I.J.2. and I.J.3. of the Permit.
53. Prowers Aggregate's failure to generate or maintain corrective action reports, as outlined in paragraph 51 above, constitutes a violation of Part I.K.3. of the Permit.

Deficient and/or Incomplete Stormwater Management Plan

54. Pursuant to Part I.L. of the Permit, following Permit reissuance, Prowers Aggregate was required to update the existing Facility SWMP to comply with the Permit within 180-days of the Certification effective date.
55. Pursuant to Part I.L.1. of the Permit, Prowers Aggregate is required to develop, implement, and maintain a SWMP for the Facility. The SWMP shall be prepared in accordance with good engineering, hydrologic, and pollution control practices. Prowers Aggregate must modify the SWMP to reflect current site conditions.
56. Pursuant to Part I.L.2. of the Permit, Prowers Aggregate is required to complete a SWMP prior to submitting the Permit application for authorization to discharge. Prowers Aggregate must

EXHIBIT A

implement the SWMP when the Facility begins industrial activities, which includes the installation of control measures.

57. Pursuant to Part I.M.2. of the Permit, Prowers Aggregate's Facility description associated with the SWMP must include, among others not subject of this action, the following:
- a. The general layout of the Facility including mining areas, re-vegetated areas, buildings, raw material storage areas, and the flow of goods and materials through the Facility.
58. Pursuant to Part I.M.3. of the Permit, Prowers Aggregate's Facility map(s) associated with the SWMP shall include, among others not subject of this action, the following:
- a. The locations of all facility stormwater conveyances including ditches, pipes, and swales.
 - b. The locations of stormwater inlets and outfalls, with a unique identification code for each outfall and indicating whether one or more outfalls are "substantially identical" under Part I.H. of the Permit; and an approximate outline of the areas draining to each outfall.
 - c. The directions of stormwater flow, indicated by arrows.
 - d. The areas where mining and processing activities are currently or have previously been conducted, where such activities are exposed to precipitation. This includes all areas of soil disturbance and reclamation/re-vegetation.
 - e. The locations of all actual or potential pollutant sources (including sediment) associated with mining and processing activities, including but not limited to those identified in the Facility Inventory and Assessment of Pollutant Sources and the following:
 - i. Vehicle fueling areas;
 - ii. Fertilizer or chemical storage areas;
 - iii. Areas used for storage or disposal of overburden, materials, soils, or wastes;
 - iv. Areas used for mineral milling and processing;
 - v. All access and haul roads, and;
 - vi. All asphalt or concrete batch plants, or areas used for recycling or asphalt or concrete.
 - f. The location of all structural and applicable non-structural control measures used to meet the effluent limits required by the Permit.
 - g. The locations where significant spills or leaks identified under Part I.L.4.b. of the Permit have occurred.
 - h. The locations of all stormwater monitoring points applicable to the Facility (visual monitoring, benchmark monitoring, water quality-based monitoring).
 - i. The date the Facility site map was prepared and/or amended.
59. Pursuant to Part I.M.4. of the Permit, Prowers Aggregate's Facility inventory and assessment of pollutant sources associated with the SWMP shall include, among others not subject of this action, the following:
- a. Inventory of Facility activities and equipment - The inventory shall identify all areas (except interior areas that are not exposed to precipitation) associated with industrial

EXHIBIT A

activities that have been, or may potentially be, sources of pollutants that contribute, or have the potential to contribute, any pollutants to stormwater, including but not limited to the following:

- i. Loading and unloading of materials, including soils and liquids;
 - ii. Outdoor storage of materials or products, including solids and liquids;
 - iii. Outdoor manufacturing and processing,
 - iv. On-site dust or particulate generating processes, including dust collection devices and vents;
 - v. On-site waste treatment, storage, or disposal, including waste ponds and solid waste management units;
 - vi. Vehicle and equipment fueling, maintenance and/or cleaning (includes washing);
 - vii. Immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste materials, or by-products used or created by the Facility;
 - viii. Roofs or other surfaces exposed to air emissions from a manufacturing building or process area;
 - ix. Roofs and associated surfaces composed of galvanized materials that may be mobilized by stormwater (e.g. roofs, ducts, heating/air conditioning equipment, gutters and down spouts).
- b. Inventory of materials - The inventory of materials shall list materials that contribute, or have the potential to contribute, pollutants to stormwater, including but not limited to the following:
- i. The types of materials handled at the Facility that may be exposed to precipitation or runoff and could result in stormwater pollution.
 - ii. The types of materials handled at the Facility that may leak or spill, and be exposed to precipitation or runoff and result in stormwater pollution.
 - iii. A narrative description of any potential sources of pollutants from past activities, materials and spills that could contribute pollutants to stormwater discharges, and the corresponding outfall(s) that would be affected by such spills and leaks. The description shall include the method and location of any on-site storage or disposal; and documentation of all significant spills and leaks of oil or toxic or hazardous pollutants that occurred at exposed areas, or that drained to a stormwater conveyance, in the 3 years prior to the SWMP preparation date.
- c. Assessment of potential pollutant sources - The assessment of potential pollutant sources shall provide a short narrative or tabulation describing the potential of a pollutant to be present in stormwater discharges for each facility activity, equipment and material identified above. The permittee shall update this narrative when data become available to verify the presence or absence of these pollutants. Potential pollutant sources include:
- 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,

EXHIBIT A

- vi. finished products, or waste products;
 - vii. Asphalt or concrete batch plants or areas used for recycling of asphalt or concrete;
 - viii. Routine maintenance activities involving fertilizers, pesticides, detergents, fuels, solvents, oils, etc.;
 - ix. Haul roads, and;
 - ix. Disturbed and re-vegetated areas
60. Pursuant to Part I.M.5. of the Permit, Prowers Aggregate shall document the location, installation date, type, and implementation specifications of each non-structural and structural control measure implemented at the Facility. Documentation must include those control measures implemented for stormwater run-on that commingles with any discharges covered under the Permit. The implementation specifications must be retained with the SWMP.
61. Pursuant to Part I.M.6. of the Permit, Prowers Aggregate is required to document the schedules, procedures, and evaluation results for the following subset of practice-based effluent limitations:
- a. Good housekeeping - A schedule for regular pickup and disposal of waste materials, along with routine inspections for leaks and conditions of drums, tanks, and containers.
 - b. Maintenance - Preventative maintenance schedules for industrial equipment and systems, control measures, and any back-up practices in place should a runoff event occur while a control measure is offline.
 - c. Spill Prevention and Response Procedures - Procedures for preventing, responding to, and reporting spills and leaks. The permittee may reference other plans (e.g. a Spill Prevention Control and Countermeasure plan) otherwise required by a permit for the Facility, provided that a copy of the other plan is kept onsite with the SWMP, and made available for review.
 - d. Employee Training - A schedule for all types of training required by the Permit, content of the training, and log of the dates on which specific employees received training.
 - e. Non-Stormwater Discharges - Documentation of the stormwater conveyance system evaluation for the presence of non-stormwater discharges not authorized by the Permit, or any other Permit, and elimination of all unauthorized discharges. Documentation must include the following:
 - i. The date of any evaluation;
 - ii. A description of the evaluation criteria used;
 - iii. A list of the outfalls or onsite drainage points that were directly observed during the evaluation;
 - iv. The different types of non-stormwater discharge(s) and source locations, and;
 - v. The action(s) taken, such as a list of control measures used to eliminate unauthorized discharge(s), if any were identified.
62. Pursuant to Part I.M.8. of the Permit, Prowers Aggregate is required to document monitoring procedures for Benchmark Monitoring, Water Quality Standards monitoring, and additional monitoring as required by the Permit. For each type of monitoring, Prowers Aggregate's procedures must identify the following:

EXHIBIT A

- a. Locations where samples are collected, and outfall identification by its unique identifying number;
 - b. Staff responsible for conducting stormwater sampling;
 - c. Procedures for sample collection and handling, including any deviations from sampling within the first 30 minutes of a measureable storm event;
 - d. For any parameters requiring analysis, the name of the parameter, the holding times and preservatives, the analytical methods used, and the laboratory quantitation levels;
 - e. Procedures for sending samples to a laboratory, as applicable;
 - f. Monitoring schedules, including any deviations from the monitoring schedule for alternate monitoring periods for climates with irregular stormwater runoff;
 - g. The numeric control values (benchmarks, TMDL-related requirements, or other requirements) applicable to discharges from each outfall.
63. Pursuant to Part I.M.8.d., if Prowers Aggregate invokes the Monitoring Exceptions for Inactive and Unstaffed Sites and for Completed and Finally Stabilized Areas, must include in the SWMP the signed and certified documentation to support this claim.
64. Pursuant to Part I.M.8.e., if Prowers Aggregate uses the substantially identical outfall monitoring exemption, Prowers Aggregate must document the following in the SWMP:
 - a. Location of each of the substantially identical outfalls, and the outfall sampled;
 - b. Description of the general industrial activities conducted in the drainage area of each outfall;
 - c. Description of the control measures implemented in the drainage area of each outfall;
 - d. Description of the exposed materials located in the drainage area of each outfall that are likely to be significant contributors of pollutants to stormwater discharges;
 - e. Impervious surfaces in the drainage area that could affect the percolation of stormwater runoff into the ground (e.g. asphalt, crushed rock, grass, etc.);
 - f. Why Prowers Aggregate expects the outfalls to discharge substantially identical effluents.
65. During the Inspection, the Inspector reviewed Prowers Aggregate's Facility SWMP and identified the following deficiencies, as described in paragraphs 65 (a-h) below:
 - a. The SWMP was dated April 2014 and had not been updated as required by the Permit.
 - b. The Facility description did not include the general layout of the Facility, including mining areas, re-vegetated areas, buildings, raw material storage areas, and the flow of goods and materials through the Facility.
 - c. The Facility map included with the SWMP did not identify the following required items:
 - i. The locations of all Facility stormwater conveyances including ditches, pipes and swales;
 - ii. The locations of stormwater inlets and outfalls, including the identification code for each outfall (e.g. Outfall 001A) and including identification of substantially identical outfalls;
 - iii. The directions of stormwater flow, indicated by arrows;

EXHIBIT A

- iv. The areas where mining and processing activities are currently or have previously been conducted, including all areas of soil disturbance and reclamation/re-vegetation;
 - v. The locations of all actual or potential pollutant sources;
 - vi. The location of all structural and applicable non-structural control measures used to meet the effluent limits required by the Permit;
 - vii. The location(s) where significant spills or leaks have occurred;
 - viii. The location(s) of Outfall 002A;
 - ix. The date that the Facility site map was prepared and/or maintained
- d. The in The inventory and assessment of pollutant sources included with the SWMP was deficient. Specifically, the SWMP narrative included a general description of activities and associated potential pollutant sources, but did not include the potential for a pollutant to be present in stormwater discharge for all activities, equipment, and materials, such as, but not limited to, the wash plant, fuel tanks, stockpiles, and fuel tank identified at the Facility during the Inspection.
- e. The SWMP did not include the location, installation date, and type of each nonstructural and structural control measure implemented at the Facility to meet the effluent limitations in the Permit and the Certification. Specifically, the SWMP only discussed the use of sediment basins and sediment control logs, however the sediment basins were not used as a structural control measure for stormwater and sediment control logs were not implemented at the Facility at the time of Inspection. In addition, the inspector observed earthen dikes, swales, and temporary stream crossings, however these control measures were not included in the narrative of the SWMP.
- f. The SWMP did not include installation and implementation specifications for each control measure implemented at the Facility. Specifically, the SWMP did not include specifications for earthen dikes, swales, and temporary stream crossings observed by the Inspector.
- g. The SWMP did not include all required schedules, procedures, and evaluation results. Specifically, the SWMP did not include the following:
- i. Preventative maintenance schedules for industrial equipment and systems, control measures, and any back-up practices in place should a runoff event occur while a control measure is offline;
 - ii. Spill prevention and response procedures, including procedures for preventing, responding to, and reporting spills and leaks;
 - iii. A schedule for all types of training required by the Permit, the content of the training, and a log of the dates on which specific employees received training;
 - iv. Documentation of the stormwater conveyance system evaluation for the presence of non-stormwater discharges not authorized by the Permit or the Certification and the elimination of all discharges.
- h. The SWMP did not include the following procedures for performing monitoring activities:
- i. Locations where samples are collected, and outfall identification;

EXHIBIT A

- ii. Staff responsible for conducting stormwater sampling;
 - iii. Procedures for sample collection and handling, including deviations from sampling within the first 30 minutes of a measureable storm event;
 - iv. The name of the parameter, the holding times, preservatives, the analytical methods used, and the laboratory quantitation levels;
 - v. Procedures for sending samples to a laboratory;
 - vi. Monitoring schedules, including any deviations from the monitoring schedule;
 - vii. The numeric control values applicable to the discharges;
 - viii. Signed and certified documentation to support claims of monitoring exceptions for inactive and unstaffed sites or for completed and finally stabilized areas; and,
 - ix. Documentation for substantially identical outfall monitoring exceptions.
66. Prowers Aggregate's failure to prepare and maintain a complete and accurate SWMP, as described in paragraph 65 above, constitutes violations of Parts I.L., I.L.1., I.L.2., I.M.2., I.M.3., I.M.4., I.M.5., I.M.6., and I.M.8. of the Permit.

Late and/or Incomplete Annual Reports

67. Pursuant to Part I.N.2. of the Permit, Prowers Aggregate is required to submit an annual report to the Division for the reporting period of January 1st through December 31st. The annual report shall be submitted so that it is received no later than February 28th of the following year. The annual report must include the following:
- a. Name of permittee, address, phone number
 - b. Permit certification number
 - c. Facility name and physical address
 - d. Contact person name, title and phone number
 - e. Summary of inspection dates
 - f. Summary of visual monitoring
 - g. Corrective action documentation
68. Division records establish Prowers Aggregate's 2017 annual report for the Facility, due on February 28, 2018, was received on April 30, 2018, 61 days late.
69. Prowers Aggregate's failure to submit a timely and complete annual report constitutes violations of Part I.N.2. of the Permit.

Failure to Install, Maintain, or Properly Select Control Measures and Failure to Properly Operate and Maintain Facility

70. Pursuant to Part I.C.2. of the Permit, Prowers Aggregate is required to adhere to all practice based effluent limitations included in the Permit.
71. Pursuant to Part I.G. of the Permit, all control measures used by the permittee to meet the effluent limitations contained the Permit must be selected, designed, installed, implemented, and maintained in accordance with good engineering, hydrologic, and pollution control practices, and the manufacturer's specifications, when applicable.

EXHIBIT A

72. Pursuant to Part I.B.1. of the Permit, Prowers Aggregate is required to properly operate and maintain all facilities and systems of treatment and control which are installed or used at the Facility to achieve compliance with the conditions of the Permit. Proper operation and maintenance includes effective performance.
73. During the Inspection, the Inspector identified the following deficiencies related to control measure selection, design, installation, implementation and/or maintenance at the Facility, as described in paragraph 73 (a-c) below:
- a. Temporary stream crossings implemented to cross an irrigation ditch in the center of the Facility were not installed in accordance with good engineering, hydrologic, or pollution control practices. Specifically, the sides of the crossings consisted of un-compacted soil without riprap armoring. In accordance with widely accepted industry standards and guidance, including the Urban Drainage and Flood Control District (“UDFCD”), riprap must be utilized on the banks of culvert-type stream crossings to prevent erosion of banks into the stream. As a result of this deficiency, there was an increased potential for pollutants to discharge offsite via outfall 002A to the Arkansas River. No additional control measures were implemented down gradient of these locations.
 - b. No control measures were implemented alongside or within the Roadside Ditch, despite Permit requirements to stabilize exposed areas and manage runoff using structural and/or nonstructural control measures to minimize onsite erosion and sedimentation and a resulting discharge of pollutants. As a result of these deficiencies, sedimentation alongside and within the roadside ditch was observed. As a result of these deficiencies, there was a high potential for polluted stormwater to discharge offsite. No additional control measures were implemented down gradient of the Roadside Ditch and stormwater flows within the Roadside Ditch discharged directly to the Arkansas River.
 - c. Three sediment ponds used to settle out sediment and recycle wash plant wastewater back to the wash plant portion of the Facility were completely full of sediment, causing them to overflow and discharge to the Roadside Ditch. No additional or back-up control measures or treatment processes were implemented down gradient of the sediment ponds and the wash plant wastewater discharged directly to the Roadside Ditch, eventually discharging to the Arkansas River.
74. Prowers Aggregate’s failure to properly install or implement control measures to protect stormwater quality at the Facility constitutes violations of Parts I.C.2. and I.G. of the Permit.
75. Prowers Aggregate’s failure to properly operate and maintain all facilities and systems of treatment and control to achieve compliance constitutes violations of Part I.B.1. of the Permit.

ORDER AND AGREEMENT

76. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605, C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein and in the NOV/CDO, the Division orders Prowers Aggregate to comply with all provisions of this Consent Order, including all requirements set forth below.

EXHIBIT A

77. Prowers Aggregate agrees to the terms and conditions of this Consent Order. Prowers Aggregate agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. Prowers Aggregate also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Prowers Aggregate against the Division:
- a. The issuance of this Consent Order;
 - b. The factual and legal determinations made by the Division herein; and
 - c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.
78. Notwithstanding the above, Prowers Aggregate does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Prowers Aggregate pursuant to this Consent Order shall not constitute evidence of fault and liability by Prowers Aggregate with respect to the conditions of the Facility. Prowers Aggregate expressly reserves its rights to deny any of the Division's factual or legal determinations or defend itself in any other third party proceeding relating to the information identified in this Consent Order.

CIVIL PENALTY

79. Based upon the factors set forth in §25-8-608(1), C.R.S., and consistent with Departmental policies for violations of the Act, Prowers Aggregate shall pay \$141,204.00 in civil penalties. The Division intends to petition the Executive Director, or her designee, to impose the \$141,204.00 civil penalty for the above violation(s) and Prowers Aggregate agrees to make the payment through three installment payments as described in the table below:

Payment	Amount	Due Date
1	\$47,068.00	Within 30 calendar days of issuance of an Order for Civil Penalty by the Executive Director or her designee
2	\$47,068.00	January 1, 2021
3	\$47,068.00	January 1, 2022

Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

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

80. Failure to submit full payment of any installment by the due date described in paragraph 79 above shall be deemed a violation of this Consent Order.
81. In the event that Prowers Aggregate fails to comply with any of the terms or provisions of this Consent Order relating to payment of the civil penalty, Prowers Aggregate shall be liable for payment of the outstanding balance of the civil penalty within 30 calendar days of receipt of written demand by the Division. Method of payment shall be by certified or cashier's check drawn

EXHIBIT A

to the order of the “Colorado Department of Public Health and Environment,” and delivered to the address specified in paragraph 79 above.

SCOPE AND EFFECT OF CONSENT ORDER

82. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations cited herein and in the NOV/CDO.
83. This Consent Order is subject to the Division’s “Public Notification on Administrative Enforcement Actions Policy,” which includes a 30 day public comment period. The Division and Prowers Aggregate each reserve the right to withdraw consent to this Consent Order if comments received during the thirty day period result in any proposed modification to the Consent Order.
84. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or her designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by Prowers Aggregate, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.
85. Notwithstanding paragraph 78 above, the violations described in this Consent Order will constitute part of Prowers Aggregate’s compliance history.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

86. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to the specific instances of violations cited herein with respect to civil penalties for the specific instances of violations cited herein and in the NOV/CDO. The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.
87. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
88. Prowers Aggregate reserves its rights and defenses regarding the Facility other than proceedings to enforce this Consent Order.
89. Nothing in this Consent Order shall preclude the Division from imposing additional requirements necessary to protect human health or the environment and to effectuate the purposes of the Consent Order. Nor shall anything in this Consent Order preclude the Division from imposing additional requirements in the event that additional information is discovered that indicates such requirements are necessary to protect human health or the environment.
90. Prowers Aggregate releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims or for any injuries or damages to persons or property resulting from acts or omissions of Prowers Aggregate, or those acting for or on behalf of Prowers Aggregate, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this

EXHIBIT A

Consent Order. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

NOTICES

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

For the Division:

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
E-mail: andrea.beebout@state.co.us

For Prowers Aggregate Operators, LLC:

Karl Nyquist, Principal
C&A Companies / Prowers Aggregate Operators, LLC
Telephone: 303-389-6777
E-mail: karl@cacompanies.com

MODIFICATIONS

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

NOTICE OF EFFECTIVE DATE

93. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or her designee imposes the civil penalty following closure of the public comment period referenced in paragraph 83. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

EXHIBIT A

BINDING EFFECT AND AUTHORIZATION TO SIGN

94. This Consent Order is binding upon Prowers Aggregate and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. In the event that a party does not sign this Consent Order within 30 calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

FOR PROWERS AGGREGATE OPERATORS, LLC:



Karl Nyquist, Manager

Date:

12/3/19

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:



Date:

12/10/19

Nathan Moore
Clean Water Compliance and Enforcement Section Manager
WATER QUALITY CONTROL DIVISION