

STATE OF  
COLORADO

Eschberger - DNR, Amy &lt;amy.eschberger@state.co.us&gt;

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## Grand Island Resources LLC Notice of Violation/ Cease and Desist Order Number IO-211105-1

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**Morgan - CDPHE, Kelly** <kelly.morgan@state.co.us>

Fri, Nov 5, 2021 at 2:35 PM

To: "Cunningham - DNR, Michael" &lt;michaela.cunningham@state.co.us&gt;, Amy Eschberger - DNR &lt;amy.eschberger@state.co.us&gt;

Cc: Jacob Dyste - CDPHE &lt;jacob.dyste@state.co.us&gt;

Please see the attached Notice of Violation/ Cease and Desist Order issued today to Grand Island Resources LLC for violations of the water quality control act and discharge permit associated with the Cross and Caribou Mines. Please contact Jacob Dyste with questions.

Kelly

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Kelly Morgan

Enforcement Unit Manager

Clean Water Compliance &amp; Enforcement Section

**COLORADO****Water Quality Control Division**

Department of Public Health &amp; Environment

P 303.692.3634 | Remote 720.213.8426

4300 Cherry Creek Drive South, Denver, CO 80246

kelly.morgan@state.co.us | [www.colorado.gov/cdphe/wqcd](http://www.colorado.gov/cdphe/wqcd)24-hr Environmental Release/Incident Report Line: [1.877.518.5608](tel:18775185608)**IMPORTANT COVID-19 INFORMATION:**

- COVID-19 Frequently Asked Questions (including instructions for necessary changes to DMR reporting) can be found [HERE](#).

- The Enforcement Unit is operating remotely. During regular business hours, please contact me by email. Voice mails will be returned within one business day.



November 5, 2021

Joseph NMI Thomas  
Grand Island Resources LLC  
60 Arthur Court  
Port Chester, NY 10573

Certified Mail Number: 7018 0360 0000 1227 8135

**RE: Service of Notice of Violation / Cease and Desist Order, Number: IO-211105-1**

Dear Sir or Madam:

Grand Island Resources LLC is hereby served with the enclosed Notice of Violation / Cease and Desist Order ("NOV/CDO"). The NOV/CDO 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 §§ 25-8-602 and 25-8-605, C.R.S., of the *Colorado Water Quality Control Act* ("Act"). The Division bases the NOV/CDO upon findings that Grand Island Resources LLC violated the Act and a discharge permit, as described in the enclosed NOV/CDO.

Pursuant to § 25-8-603, C.R.S., Grand Island Resources LLC is required, within 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 up to \$54,833 per day per violation (\$10,000 per day for each day during which such violation occurs, prior to July 2, 2020).

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 Grand Island Resources LLC desire to discuss this matter informally with the Division, or if you have questions regarding the NOV/CDO, please do not hesitate to contact Jacob Dyste at (303) 692-3290 or [jacob.dyste@state.co.us](mailto:jacob.dyste@state.co.us).

Sincerely,

Kelly Morgan  
Clean Water Enforcement Unit  
WATER QUALITY CONTROL DIVISION

*Enclosure(s)*

ec: Richard Mittasch, Grand Island Resources LLC ([rmittasch@nedmining.com](mailto:rmittasch@nedmining.com))  
Stephanie Meyers, EPA Region 8  
Joe Malinowski, Boulder County Public Health ([jmalinowski@bouldercounty.org](mailto:jmalinowski@bouldercounty.org))  
Aimee Konowal, Acting Clean Water Program Manager, CDPHE  
Nathan Moore, Compliance & Enforcement Section, CDPHE



Mark Henderson, Grants and Loans Unit, CDPHE  
Doug Camrud, Engineering Section, CDPHE  
Clayton Moores, Field Services Section, CDPHE  
Erin Scott, Permits Section, CDPHE  
Kelly Morgan, Clean Water Enforcement Unit, CDPHE  
Tania Watson, Data Management Workgroup, CDPHE  
Michael Cunningham, Colorado Division of Reclamation, Mining and Safety  
Amy Eschberger, Colorado Division of Reclamation, Mining and Safety





# COLORADO

## Department of Public Health & Environment

### WATER QUALITY CONTROL DIVISION

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NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: IO-211105-1

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IN THE MATTER OF:       GRAND ISLAND RESOURCES LLC  
                                  CDPS PERMIT NO. CO0032751  
                                  BOULDER COUNTY, COLORADO

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Pursuant to the authority vested in the Colorado Department of Public Health and Environment's ("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 ("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 ("Order"):

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the alleged violations identified herein, Grand Island Resources LLC ("Grand Island Resources") was a Wyoming foreign limited liability company in good standing and registered to conduct business in the State of Colorado.
2. Grand Island Resources 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. Grand Island Resources owns and/or operates the Cross and Caribou Mines, located at 4415 Caribou Road, near the Town of Nederland, Boulder County, Colorado ("Facility").
4. The Facility discharges treated wastewater associated with the Cross and Caribou Mines which have produced gold, silver, copper, zinc, and lead. Wastewater from the Cross and Caribou Mines is directed to a series of lined ponds. Discharge from the Cross Mine reports directly to Pond 1 where it is treated with lime addition and then directed to Pond 2. Discharge from the Caribou Mine is directed through a series of settling ponds and then directed to Pond 2. The combined mine water in Pond 2 is then discharged via pipeline to Coon Track Creek.
5. The Facility is the subject of the Colorado Discharge Permit System, Permit Number CO0032751 ("Permit"). The current version of the Permit became effective on April 1, 2014 and has been administratively continued pending Permit reissuance.
6. In January 2020, operational control of the Facility changed after the death of the longtime operator. On January 29, 2020, Calais Resources, Inc. submitted a change of contact to the Division. On October 30, 2020, Grand Island Resources submitted a change of contact to the Division. On

November 12, 2020, the Division transferred ownership of the Permit to Grand Island Resources. Based on Division and Colorado Division of Reclamation, Mining, and Safety records, Grand Island Resources has conducted significant rehabilitation efforts at both mines and intends to conduct additional prospecting and drilling in support of mine operations.

7. The Permit authorizes Grand Island Resources to discharge treated wastewater from the Facility through outfall 001A, located at 39.978056°, -105.572194°, into Coon Track Creek. This is the only outfall permitted to Grand Island Resources.
8. Pursuant to 5 CCR 1002-61, §61.8, Grand Island Resources must comply with all the terms and conditions of the Permit, and violations of such terms and conditions as specified in the Permit may make Grand Island Resources subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.

**Failure to Comply with Permit Effluent Limitations**

9. Pursuant to Part I.A.1. and I.A.2. of the Permit, Grand Island Resources’ effluent at Outfall 001A shall not exceed, among others not subject to this action, the effluent discharge limitations specified in the table below:

<b>GRAND ISLAND RESOURCES - CROSS &amp; CARIBOU MINES EFFLUENT DISCHARGE LIMITATIONS FOR OUTFALL 001A</b>				
Parameter	Limitation		Sampling	
	30-day Avg.	Daily Max	Frequency	Type
Lead, potentially dissolved (ug/L), January	3.8	85	2 Days/Month	Grab
Lead, potentially dissolved (ug/L), April	3.6	94	2 Days/Month	Grab
Lead, potentially dissolved (ug/L), June	5.4	140	2 Days/Month	Grab
Lead, potentially dissolved (ug/L), July	4.6	118	2 Days/Month	Grab
Lead, potentially dissolved (ug/L), December	3.8	85	2 Days/Month	Grab
Copper, potentially dissolved (ug/L), January	13	18	2 Days/Month	Grab
Copper, potentially dissolved (ug/L), March	13	19	2 Days/Month	Grab
Copper, potentially dissolved (ug/L), April	13	20	2 Days/Month	Grab
Silver, potentially dissolved (ug/L), January	0.12	2.9	2 Days/Month	Grab
Whole Effluent Toxicity (“WET”), Chronic (%), January - March	7-Day chronic <i>Ceriodaphnia dubia</i>	--	NOEC or IC25 ≥ IWC (73%)	Quarterly  3 Composites / Test
	7-Day chronic <i>Pimephales promelas</i>	--	NOEC or IC25 ≥ IWC (73%)	

10. Pursuant to Part I.D.5 of the Permit, Grand Island Resources’ monitoring results shall be summarized for each calendar month and reported on Division approved discharge monitoring reports (“DMRs”). The DMR forms shall be filled out accurately and complete in accordance with requirements of this Permit.

11. Grand Island Resources' DMRs include, among other information and data, the following effluent data, which exceeded the effluent limitations outlined in Part I.A.2. of the Permit:

GRAND ISLAND RESOURCES - CROSS & CARIBOU MINES EFFLUENT SELF-MONITORING DATA		
DISCHARGE MONITORING REPORTING PERIOD	SAMPLE MEASUREMENTS FOR OUTFALL 001A	
Lead, PD (ug/L), June 6/1/2021 - 6/30/2021	30-DAY AVG. LIMIT = 5.4 12.0	DAILY MAXIMUM = 140 --
Lead, PD (ug/L), December 12/1/2020 - 12/31/2020	30-DAY AVG. LIMIT = 3.8 4.4	DAILY MAXIMUM = 85 --
Lead, PD (ug/L), January 1/1/2021 - 1/31/2021	30-DAY AVG. LIMIT = 3.8 10.0	DAILY MAXIMUM = 85 --
Lead, PD (ug/L), April 4/1/2021 - 4/31/2021	30-DAY AVG. LIMIT = 3.6 6.2	DAILY MAXIMUM = 94 --
Lead, PD (ug/L), July 7/1/2021 - 7/31/2021	30-DAY AVG. LIMIT = 4.6 8.0	DAILY MAXIMUM = 118 --
Cadmium, PD (ug/L), August 8/1/2021 - 8/31/2021	30-DAY AVG. LIMIT = 0.82 1.5	DAILY MAXIMUM = 3.2 --
Zinc, PD (ug/L), August 8/1/2021 - 8/31/2021	30-DAY AVG. LIMIT = 241 --	DAILY MAXIMUM = 263 282
Silver, PD (ug/L), January 1/1/2021 - 1/31/2021	30-DAY AVG. LIMIT = 0.12 0.4	DAILY MAXIMUM = 2.9 --
Copper, PD (ug/L), January 1/1/2021 - 1/31/2021	30-DAY AVG. LIMIT = 13 34.5	DAILY MAXIMUM = 18 37.0
Copper, PD (ug/L), March 3/1/2021 - 3/31/2021	30-DAY AVG. LIMIT = 13 46.75	DAILY MAXIMUM = 19 85.0
Copper, PD (ug/L), April 4/1/2021 - 4/30/2021	30-DAY AVG. LIMIT = 13 --	DAILY MAXIMUM = 20 50.0
WET, Chronic (%), <i>Ceriodaphnia dubia</i> 1/1/2021 - 3/31/2021	30-DAY AVG. LIMIT = NA --	DAILY MAXIMUM = NOEC or IC25 ≥ IWC (73%) NOEC = 37.0 IC25 = 39.3

12. Lead, cadmium, zinc, silver, copper, and WET are "pollutants," or indicators thereof, as defined by §25-8-103, C.R.S. and its implementing permit regulation 5 CCR 1002-61, §61.2(76).
13. The Permit does not authorize the pollutant levels identified above in Paragraph 11 above. Division records establish that during the reporting periods identified above, Grand Island Resources did not have any other permit authorizing such discharge into State Waters.
14. Grand Island Resources' failure to comply with the Permit limitations constitutes violations of Part I.A.1. and I.A.2. of the Permit.

**Failure to Properly Monitor and Report**

15. Pursuant to Part I.A.2. of the Permit, in order to obtain an indication of probable compliance or noncompliance with the specified effluent limitations, Grand Island Resources shall monitor all effluent parameters at specified frequencies. Such monitoring is required for the life of the Permit unless otherwise specified. The results of such monitoring shall be reported on the DMR form.

16. Pursuant to Part I.D.5. of the Permit, Grand Island Resources' monitoring results shall be summarized for each calendar month and reported on Division approved DMRs. The DMR forms shall be filled out accurately and complete in accordance with requirements of this Permit.
17. Division records establish that Grand Island Resources failed to submit, monitor, and/or report the results of its monitoring to the Division for the reporting periods and associated effluent parameters and outfalls listed below:

GRAND ISLAND RESOURCES DEFICIENT DMRs FOR OUTFALL 001A	
DISCHARGE MONITORING REPORTING PERIOD	DEFICIENT PARAMETERS
3/1/2021 - 3/31/2021	Chromium (PD), 30-Day Average and Daily Maximum
4/1/2021 - 4/30/2021	Chromium (PD), 30-Day Average and Daily Maximum

18. Grand Island Resources' failure to submit, monitor, and/or report all effluent parameters, as identified in Paragraph 17, constitutes a violation of Part I.A.2. of the Permit.

**NOTICE OF VIOLATION**

19. Based on the foregoing Findings of Fact and Conclusions of Law, Grand Island Resources is hereby notified that the Division has determined that Grand Island Resources has violated the following sections of the Permit.

**Part I.A.1. of the Permit**, which states in part: "In accordance with the Water Quality Control Commission Regulations for Effluent Limitations, Section 62.4, and the Colorado Discharge Permit System Regulations, Section 61.8(2), 5 C.C.R. 1002-61, the permitted discharge shall not contain effluent parameter concentrations which exceed the limitations specified below or exceed the specified flow limitation."

**Part I.A.2. of the Permit**, which states in part: "In order to obtain an indication of the probable compliance or noncompliance with the effluent limitations specified in Part I.A, the permittee shall monitor all effluent parameters at the frequencies and sample types specified below. Such monitoring will begin immediately and last for the life of the permit unless otherwise noted. The results of such monitoring shall be reported on the Discharge Monitoring Report form (See Part I.D.)."

## REQUIRED CORRECTIVE ACTION

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

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

Furthermore, the Division hereby orders Grand Island Resources to comply with the following specific terms and conditions of this Order:

21. Within 30 calendar days of receipt of this Order, Grand Island Resources shall retain the services of an individual or entity experienced in metal mining wastewater treatment and management to perform an evaluation of the Facility and recommend improvements to be implemented by Grand Island Resources to ensure compliance with all the terms and conditions of the Permit, specifically the numeric limitations outlined in Part I.A.2. of the Permit. This evaluation shall consider all contributing pollutant sources and pollutant concentrations from all possible wastewater sources. In addition, the evaluation shall evaluate the Cross Mine and Caribou Mine independently and address historic, current, and planned operations at both mines. This evaluation shall include identification of the techniques or technologies that may be utilized at the Facility to comply with the Permit.
22. Within 45 calendar days of receipt of this Order, Grand Island Resources shall provide documentation to the Division that it has retained the services of the individual or entity described in Paragraph 21. The documentation shall include, at a minimum, a copy of the individual or entity's qualifications and a copy of the written contract or agreement for services, including a copy of the scope of services to be provided. The Division reserves the right to reject the individual or entity if it finds, after reasonable inquiry and evaluation, the individual or entity does not meet the expected qualifications. Should the Division deny the individual/entity, Grand Island Resources will have 14 calendar days from notification from the Division to submit documentation for an alternative individual/entity.
23. Within 90 calendar days of receipt of this Order, Grand Island Resources shall submit in writing to the Division a final report on the findings of the evaluation identified and outlined in Paragraph 21 above. Along with the findings of the evaluation, the report must identify, for each criterion, specific short-term and long-term measures that will be taken by Grand Island Resources to rectify deficiencies identified by the evaluation so that the Facility consistently produces effluent in compliance with all the numeric limitations outlined in Part I.A.2. of the Permit. For each short-term and long-term measure identified, Grand Island Resources shall also submit an aggressive time schedule for completion of each measure. Completion of each measure must occur within 180 days of the final report being submitted to the Division. The measures and time schedule submitted shall become a condition of this Order, and Grand Island Resources shall implement the measures and time schedule as submitted unless notified by the Division, in writing, that alternate measures and/or time schedules are appropriate. If the Division imposes alternate measures and/or time schedules, they shall also become a condition of this Order.
24. Beginning December 31, 2021, and at the end of every quarter thereafter, Grand Island Resources shall submit quarterly progress reports to the Division by the last day of each quarter (March 31, June 30, September 30, and December 31). At a minimum, each report shall outline activities undertaken during the current quarter and activities planned for the next quarter to remain in compliance with this Order. The quarterly progress reports shall be required until the issuance of written notice from the Division indicating that the reports are no longer necessary occurs.

25. If Grand Island Resources becomes aware of any situation or circumstances that cause Grand Island Resources to become unable to comply with any condition or time schedules set forth by this Order, Grand Island Resources shall provide written notice to the Division within five calendar days of becoming aware of such circumstances. Grand Island Resources' notice shall describe what, if any, impacts will occur on Grand Island Resources' ability to comply with the Colorado Water Quality Control Act or the Permit and any impacts on the remaining conditions and/or time schedules specified by this Order, and what steps are being taken to mitigate the impacts.
26. All documents submitted under this Order shall use the same titles as stated in this Order, and shall reference both the number of this Order and the number of the paragraph pursuant to which the document is required. Within 30 calendar days of receiving Division comments on submitted documents, Grand Island Resources shall revise the submitted document(s) to properly address the Division's comments and resubmit the document(s) for Division review.

### NOTICES AND SUBMITTALS

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

Jacob Dyste  
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) 692-3290  
Email: jacob.dyste@state.co.us

28. For any person submitting documents, plans, records and reports pursuant to this Order, that person shall make the following certification with each submittal:

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

### OBLIGATION TO ANSWER AND REQUEST FOR HEARING

29. Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11 Grand Island Resources is 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 30 calendar days after receipt of this action.

30. 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 30 calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

### **FALSIFICATION AND TAMPERING**

31. 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**

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

### **RELEASE OR DISCHARGE NOTIFICATION**

33. Pursuant to §25-8-601, C.R.S., Grand Island Resources is 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**

34. 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.

35. For further clarification of Grand Island Resources' rights and obligations under this Order Grand Island Resources is 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 5<sup>th</sup> day of November 2021.

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

**Nathan T. Moore**

Digitally signed by Nathan T. Moore  
Date: 2021.11.05 13:48:45 -06'00'

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