



**COLORADO**  
Department of Public  
Health & Environment

June 14, 2022

Arthur Corona  
750 W Paseo Del Mar, Unit 100  
San Pedro, CA  
90731

**Certified Mail Number: 7018 0360 0000 8479 8180**

**RE: Compliance Order on Consent, Number: IC-220614-1  
CDPS Permit Certification Number: CO0049041**

To Mr. Corona:

Enclosed for your records is Arthur Corona's copy of the recently executed Compliance Order on Consent (Order). Please remember that this Order is subject to a 30-day public comment period (Order, paragraph 30). The Division will contact your office to discuss any comments received during this period. Please be advised that the header on the first page of the Order was revised to reflect the assigned Order Number: IC-220614-1.

If you have any questions, please do not hesitate to contact Eric Mink at (303) 692-2312 or [eric.mink@state.co.us](mailto:eric.mink@state.co.us).

Sincerely,

Eric T. Mink, Enforcement Specialist  
Clean Water Enforcement Unit  
WATER QUALITY CONTROL DIVISION

*Enclosure(s)*

cc: Enforcement File

ec: Stephanie Meyers, EPA Region 8  
Jen Chavez, Gunnison County  
Aimee Konowal, Watershed Section, CDPHE  
Kelly Morgan, Compliance & Enforcement Section, CDPHE  
Mark Henderson, Grants and Loans Unit, CDPHE  
Michael Emming, Engineering Section, CDPHE  
Clayton Moores, Field Services Section, CDPHE  
Erin Scott, Permits Section, CDPHE  
Veronica Kenkel, Business Data Services Unit, CDPHE  
Dustin Czapla, Division of Reclamation, Mining & Safety, DNR





# COLORADO

## Department of Public Health & Environment

### WATER QUALITY CONTROL DIVISION

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#### COMPLIANCE ORDER ON CONSENT

NUMBER: IC-220614-1

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IN THE MATTER OF:      ARTHUR CORONA  
UNPERMITTED  
CDPS PERMIT NO. CO0049041  
GUNNISON COUNTY, COLORADO

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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 Arthur Corona. The Division and Arthur Corona 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:
  - a. To establish compliance requirements and criteria for the continued operation of Arthur Corona's inactive mine site, referred to as the Boullion King Mine, located at approximately 38.8823°N, -107.1191°W, near the Town of Crested Butte, Gunnison County, Colorado ("Facility").; and
  - b. To resolve, without litigation, the civil penalties associated with the alleged violations cited herein and in the Notice of Violation / Cease and Desist Order Number IO-180403-1 ("NOV/CDO") that the Division issued to Arthur Corona on April 3, 2018.

#### 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 and 605, C.R.S., the Division has made the following determinations regarding Arthur Corona, the Facility and Arthur Corona's compliance with the Act, its implementing permit regulations, and the permit.
3. At all times relevant to the violations cited herein, Arthur Corona was a sole proprietorship conducting business in the State of Colorado.

4. Arthur Corona is a “person” as defined by §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
5. Arthur Corona owns and operates the Facility, which consists of an underground inactive mine, a historic mining waste rock pile, and several small topsoil piles. Prior to 2018, stormwater and any mine water was routed to settling ponds prior to discharge. The facility is currently undergoing reclamation and stormwater is being diverted around the waste rock pile via diversion ditches with sediment traps prior to discharge through outfall 001A. Once reclamation is complete, outfall 001A and the Permit should no longer be necessary.
6. On October 25, 2016 and June 20, 2017, a representative from the Colorado Division of Reclamation, Mining, and Safety (“Inspector”) conducted on-site inspections of the Facility but was only able to perform a physical inspection of the Facility because Arthur Corona was not present and parts of the Facility were secured.
7. On July 31, 2017, the Inspector conducted a comprehensive on-site inspection of the Facility. During the inspection, the Inspector interviewed Arthur Corona and performed a physical inspection of the entire Facility.
8. During all three inspections, the Inspector identified two settling ponds at the Facility located below the Facility’s waste rock pile. The ponds were connected via a culvert that allows mine water to gravity flow from the upper pond to the lower pond. At the time of the inspections, the upper sedimentation pond covered a surface area of approximately 0.8 acres and the lower sedimentation pond covered approximately 0.18 acres and discharged via a constructed channel to Ruby Anthracite Creek.
9. The Facility is now the subject of the Colorado Discharge Permit System, Permit Number CO0049041 (“Permit”). The current version of the Permit became effective on August 1, 2019 and is set to expire July 31, 2024.

#### Discharging Without a Permit

10. Pursuant to §25-8-501(1), C.R.S., and 5 CCR 1002-61, §61.3(1)(a), no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article.
11. During the June 20, 2017 inspection, the Inspector identified that the two sedimentation ponds were at or near capacity and the lower sedimentation pond was discharging to Ruby Anthracite Creek via the constructed channel.
12. During the July 31, 2017 inspection, the Inspector identified that water from the underground workings was pumped into the upper sedimentation pond via a pipe and iron staining had formed around said pipe. The culvert that connected the upper sedimentation pond to the lower sedimentation pond also exhibited signs of iron staining.
13. Given the source of the water in the Facility’s sedimentation ponds (stormwater and underground mine workings), the iron staining, and the mineral-rich color of the water in settling ponds during the three inspections, the effluent being discharged into Ruby Anthracite Creek likely contained, among other things, suspended solids, dissolved solids, iron, copper, lead, zinc, and other metals.

14. Suspended solids, dissolved solids, iron, copper, lead, zinc, and other metals are "pollutants" as defined by §25-8-103(15), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(76).
15. The constructed channel from the Facility's lower sedimentation pond is a "point source" as defined by §25-8-103(14), C.R.S.
16. Ruby Anthracite Creek is "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(102).
17. Arthur Corona's discharge of suspended solids, dissolved solids, iron, copper, lead, zinc, and other metals into Ruby Anthracite Creek constitutes a "discharge of pollutants" as defined by §25-8-103(3), C.R.S.
18. Division records establish that, at the time of the inspections described herein, Arthur Corona did not have any permits authorizing the discharge of pollutants from the Facility into Ruby Anthracite Creek or any other Waters of the State.
19. Arthur Corona's discharge of stormwater and mine water into Ruby Anthracite Creek constitutes an unauthorized discharge of pollutants from a point source into state waters in violation of §25-8-501(1), C.R.S. and 5 CCR 1002-61, §61.3(1)(a).

**Failure to Properly Report**

20. Pursuant to Part I.I.1. of the Permit, Arthur Corona is required to summarize and report all monitoring results on a monthly basis using Division approved DMRs. The Permit specifies that the DMRs shall be filled out accurately and completely in accordance with the requirements of the Permit. Arthur Corona is required to ensure the DMRs are received by the Division no later than the 28<sup>th</sup> day of the month following the reporting period. The Permit specifies that if no discharge occurs during the monitoring period, "No Discharge" shall be reported on the DMR.
21. Division records establish that, Arthur Corona failed to submit DMRs to the Division by the 28<sup>th</sup> day of the month following the end of the reporting periods identified below:

Arthur Corona LATE DMRS		
DISCHARGE MONITORING PERIOD	OUTFALL	DMR RECEIPT DATE
7/1/2019 - 9/30/2019	001Q	12/26/2019
10/1/2019 - 10/31/2019	001A	1/25/2021
7/1/2021 - 7/31/2021	001A	10/25/2021

22. Arthur Corona's failure to submit complete DMRs to the Division by the 28<sup>th</sup> day of the month following each reporting period, as identified above in paragraph 21, constitutes violations of Part I.I.1. of the Permit.

## **ORDER AND AGREEMENT**

23. 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 alleged violations cited herein and in the NOV/CDO, the Division orders Arthur Corona comply with all provisions of this Consent Order, including all requirements set forth below.
24. Arthur Corona agrees to the terms and conditions of this Consent Order. Arthur Corona 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. Arthur Corona also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Arthur Corona 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.
25. Notwithstanding the above, Arthur Corona does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Arthur Corona pursuant to this Consent Order shall not constitute evidence of fault and liability by Arthur Corona with respect to the conditions of the Facility. Arthur Corona 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.

## **Compliance Requirements**

26. Arthur Corona shall submit a progress report to the Division outlining the results of the reclamation efforts taken at the Facility following the 2022 and 2023 growing seasons. The report shall be submitted to the Division on or before October 31 of each year. At a minimum, the report shall outline the results for previously conducted seeding; any other reclamation activities undertaken; photos of the current conditions at the Facility; and any planned reclamation activities for the following year.
27. All documents submitted under this Consent Order shall use the same titles as stated in this Consent Order, and shall reference both the number of this Consent Order and the number of the paragraph pursuant to which the document is required.

## **CIVIL PENALTY**

28. Based upon the factors set forth in §25-8-608(1), C.R.S., and consistent with Departmental policies for violations of the Act, Arthur Corona shall pay \$20,750 in civil penalties. The Division intends to petition the Executive Director, or her designee, to impose the \$20,750 civil penalty for the above violation(s) and Arthur Corona agrees to make the payment within 30 calendar days of the issuance of an Order for Civil Penalty by the Executive Director or her designee. 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:

Eric Mink  
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

### **SCOPE AND EFFECT OF CONSENT ORDER**

29. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the violations cited herein and in the NOV/CDO.
30. 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 Arthur Corona each reserve the right to withdraw consent to this Consent Order if comments received during the 30 day period result in any proposed modification to the Consent Order.
31. 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 Arthur Corona, 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 \$56,759 per day for each violation.
32. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order as of the date of approval by the Division.
33. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of the Act, or any subsequent violation of any requirement of this Consent Order or the Act.
34. Notwithstanding paragraph 25 above, the violations described in this Consent Order will constitute part of Arthur Corona's compliance history.
35. Arthur Corona shall comply with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Division makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

### **LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY**

36. 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 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.

37. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
38. Arthur Corona reserves its rights and defenses regarding the Facility other than proceedings to enforce this Consent Order.
39. 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.
40. Arthur Corona 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 Arthur Corona, or those acting for or on behalf of Arthur Corona, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. Arthur Corona shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by Arthur Corona in carrying out activities pursuant to this 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

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

For the Division:

Eric Mink  
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: 303-692-2312  
E-mail: eric.mink@state.co.us

For Arthur Corona:

Arthur Corona  
750 W Paseo Del mar, Unit 100  
San Pedro, CO 90731

With a copy to:  
Christopher Hayes  
The Hayes Law Firm LLC  
1600 Broadway Suite 1400  
Denver CO, 80202



### **OBLIGATIONS UNAFFECTED BY BANKRUPTCY**

42. The obligations set forth herein are based on the Division's police and regulatory authority. These obligations require specific performance by Arthur Corona of corrective actions carefully designed to prevent on-going or future harm to public health or the environment, or both. Enforcement of these obligations is not stayed by a petition in bankruptcy. Arthur Corona agrees that the penalties set forth in this Consent Order are not in compensation of actual pecuniary loss. Further, the obligations imposed by this Consent Order are necessary for Arthur Corona and the Facility to achieve and maintain compliance with State law.

### **MODIFICATIONS**

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

### **NOTICE OF EFFECTIVE DATE**

44. 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 30. 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.

### **BINDING EFFECT AND AUTHORIZATION TO SIGN**

45. This Consent Order is binding upon Arthur Corona 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. The Parties agree that this Consent Order may be electronically signed. The Parties agree that the electronic signatures appearing on this Consent Order are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.



FOR ARTHUR CORONA:

Arthur Corona  
Arthur Corona  
Owner/Operator  
BOULLION KING MINE

Date:

6/10/2022

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

Date:

Kelly Morgan  
Compliance and Enforcement Section Manager  
WATER QUALITY CONTROL DIVISION