



COLORADO
Department of Public
Health & Environment

October 3, 2023

Mark Zimmerman, Registered Agent
Zimmerman Metals, Inc.
201 E 58th Ave
Denver, Colorado 80216

Certified Mail Number: 7020 0640 0001 0179 4018

RE: Service of Notice of Violation / Cease and Desist Order / Order for Civil Penalty, Number: IO-231003-1

To Whom It May Concern:

Zimmerman Metals, Inc. is hereby served with the enclosed Notice of Violation / Cease and Desist Order / Order for Civil Penalty ("NOV/CDO/OCP"). The NOV/CDO/OCP 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, 25-8-605, and 25-8-608, C.R.S., of the *Colorado Water Quality Control Act* ("Act"). The Division bases the NOV/CDO/OCP upon findings that Zimmerman Metals, Inc. violated the Act, regulations promulgated pursuant to the Act, and/or a discharge permit, as described in the enclosed NOV/CDO/OCP.

Pursuant to § 25-8-603, C.R.S., Zimmerman Metals, Inc. is required, within 30 calendar days of receipt of this NOV/CDO/OCP, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. Additionally, pursuant to authority given to the Division by § 25-8-608, C.R.S., the Division imposes a civil penalty as outlined in the attached NOV/CDO/OCP. Payment of the civil penalty should be made in accordance with the methods referenced in the Order for Civil Penalty.

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/OCP or the issuance of additional enforcement actions.

Should you or representatives of Zimmerman Metals, Inc. desire to discuss this matter informally with the Division, or if you have questions regarding the NOV/CDO/OCP, please do not hesitate to contact me at (303) 692-2290 or william.everett@state.co.us.

Sincerely,

Everett,
William

Digitally signed by
Everett, William
Date: 2023.10.03
06:44:46 -06'00'

William Everett, Enforcement Specialist
Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Mark Zimmerman, Registered Agent
Stephanie Meyers, EPA Region 8
Kelly Weidenbach, Adams County Public Health



Aimee Konowal, Watershed Section, CDPHE
Kelly Morgan, Compliance & Enforcement Section, CDPHE
Mark Henderson, Grants and Loans Unit, CDPHE
Doug Camrud, Engineering Section, CDPHE
Clayton Moores, Field Services Section, CDPHE
Randi Johnson-Hufford, Permits Section, CDPHE
Eric Mink, Clean Water Enforcement Unit, CDPHE
Veronica Kenkel, Data Management Workgroup, CDPHE
Maura McGovern, Clean Water Compliance Unit, CDPHE





COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST ORDER / ORDER FOR CIVIL PENALTY

NUMBER: IO-231003-1

IN THE MATTER OF: **ZIMMERMAN METALS, INC.**
 CDPS GENERAL PERMIT NO. COR900000
 CERTIFICATION NO. COR900987
 ADAMS COUNTY, COLORADO

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, 25-8-605 and 25-8-608, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order / Order for Civil Penalty ("Order"):

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the alleged violations identified herein, Zimmerman Metals, Inc. ("Zimmerman Metals") was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
2. Zimmerman Metals is a "person" as defined by the Water Quality Control Act ("Act"), §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
3. Zimmerman Metals owns and/or operates the Zimmerman Metals facility, which performs industrial activities associated with the fabrication of structural steel ("Facility"). The Facility is located at approximately 39.8042, -104.9833, in or near the City of Denver, Adams County, Colorado.
4. Zimmerman Metals' discharges from the Facility are subject to CDPS General Permit Number COR900000 for Stormwater Discharges Associated with Non-Extractive Industrial Activity ("Permit"). The current version of the Permit became effective on October 1, 2012 and is currently administratively continued.
5. On June 29, 2012, the Division provided Zimmerman Metals with Certification Number COR900987 ("Certification"), authorizing Zimmerman Metals to discharge treated stormwater from industrial activities associated with the Facility through Outfall 001 to an unnamed ditch tributary to Clear Creek, which flows to the South Platte River. The Certification became effective on July 1, 2012 and is currently administratively continued.

6. Pursuant to 5 CCR 1002-61, §61.8, Zimmerman Metals 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 Zimmerman Metals subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.

Failure to Submit Discharge Monitoring Reports

7. Pursuant to Part I.K.1. of the Permit and the Certification, Zimmerman Metals shall report the data gathered in compliance with Parts I.I.2. through I.I.5. (Specific Monitoring Requirements) of the Permit on a quarterly basis. Zimmerman Metals shall summarize monitoring results for each calendar quarter and report on Division approved discharge monitoring report (“DMR”) forms (EPA form 3320-1). Zimmerman Metals must submit these forms either by mail, or by using the Division’s Net-DMR service. If mailed, one form shall be mailed to the Division so that the DMR is received no later than the 28th day of the following month. If no discharge occurs during the reporting period, “No Discharge” shall be reported on the DMR.
8. Division records establish that Zimmerman Metals failed to submit DMRs to the Division for the following reporting periods:

Zimmerman Metals Delinquent DMRs		
Reporting Period	Outfall	Due Date
3 rd Quarter 2021 7/1/21 - 9/30/21	001Q	10/28/21
4 th Quarter 2021 10/1/21 - 12/31/21	001Q	1/28/22
1 st Quarter 2022 1/1/22 - 3/31/22	001Q	4/28/22
2 nd Quarter 2022 4/1/22 - 6/30/22	001Q	7/28/22
3 rd Quarter 2022 7/1/22 - 9/30/22	001Q	10/28/22
4 th Quarter 2022 10/1/22 - 12/31/22	001Q	1/28/23
1 st Quarter 2023 1/1/23 - 3/31/23	001Q	4/28/23
2 nd Quarter 2023 4/1/23 - 6/30/23	001Q	7/28/23

9. Zimmerman Metals’ failure to submit DMRs to the Division by the 28th day of the month following each reporting period, as identified above in paragraph 8, constitutes violations of Part I.K.1. of the Permit.

Failure to Submit Annual Reports

10. Pursuant to Part I.K.2. of the Permit, Zimmerman Metals must submit an annual report to the Division for the reporting period January 1 through December 31. Annual reports must be received by the Division by no later than March 31 of the following year.

11. Division records establish that Zimmerman Metals failed to submit the following Annual Reports to the Division:

Zimmerman Metals Delinquent Annual Report	
Reporting Period	Due Date
January 1, 2021 - December 31, 2021	3/31/22
January 1, 2022 - December 31, 2022	3/31/23

12. Zimmerman Metals' failure to submit Annual Reports to the Division by March 31 of the following year, as identified above in paragraph 11, constitutes a violation of Part I.K.2. of the Permit.

NOTICE OF VIOLATION

13. Based on the foregoing Findings of Fact and Conclusions of Law, Zimmerman Metals is hereby notified that the Division has determined that Zimmerman Metals has violated the following sections of the Permit and the Certification:

Part I.K.1. of the Permit and the Certification which states in part, "The permittee shall report the data gathered in compliance with Parts I.I.1. through I.I.5. (Specific Monitoring Requirements) on a quarterly basis. Reporting of all data gathered shall comply with the requirements of Part I.H. (General Requirements) and Part I.K. (Reports and Recordkeeping) of this permit. The permittee shall summarize monitoring results for each calendar quarter and report on Division approved discharge monitoring report (DMR) forms (EPA form 3320-1). The permittee must submit these forms either by mail, or by using the Division's Net-DMR service. If mailed, one form shall be mailed to the Division, as indicated below, so that the DMR is received no later than the 28th day of the following month... If no discharge occurs during the reporting period, "No Discharge" shall be reported on the DMR."

Part I.K.2. of the Permit which states in part, "The permittee must submit an annual report to the Division for the reporting period January 1 through December 31. Annual reports must be received by the Division by March 31 of the following year. The Annual Report shall include... The signed copy of each annual report shall be submitted to the Division..."

REQUIRED CORRECTIVE ACTION

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

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

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

15. Within 30 calendar days of receipt of this Order, Zimmerman Metals shall submit all delinquent DMRs as well as records of its effluent discharge monitoring at the Facility for the period from July 1, 2021 through the date of this Order.
16. Within 30 calendar days of receipt of this Order, Zimmerman Metals shall submit the delinquent annual report at the Facility for years 2021 and 2022.
17. Within 30 calendar days of receipt of this Order, Zimmerman Metals shall review the requirements of the Permit and Certification with its staff responsible for ensuring compliance with the terms and conditions of the Permit. The review shall focus on, but not be limited to: 1) the effluent limitations imposed by the Permit; 2) the effluent monitoring requirements of the Permit; 3) the record keeping requirements of the Permit; 4) the reporting requirements of the Permit, including the instruction for proper completion and submittal of DMRs required by the Permit; and 5) the noncompliance notification procedures required by the Permit. Within 45 calendar days of receipt of this Order, Zimmerman Metals shall submit a written certification to the Division stating that it has completed the review of the Permit and Certification with its responsible staff.

ORDER FOR CIVIL PENALTY

18. Pursuant to §25-8-608(1), C.R.S. and 5 CCR 1002-101, any person who violates any provision of the Act, 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 shall be subject to a civil penalty of not more than \$61,427 per day for each violation that occurs.
19. Based upon the Findings of Fact and Notice of Violation above, the Executive Director, through her designee (hereinafter the “Executive Director”), has determined that a civil penalty is appropriate and warranted in this matter. Therefore, the Executive Director hereby imposes a civil penalty in the amount of \$6,500 against Zimmerman Metals for the violations cited above. The civil penalty was determined in accordance with the procedures outlined in the Division’s Clean Water Civil Penalty Policy (July 1, 2022). A copy of the civil penalty calculation is attached hereto as Exhibit A and is incorporated herein by reference.
20. If Zimmerman Metals does not contest the findings and penalty assessment set out above, the civil penalty shall be paid within 60 calendar days of the date of this Order. 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:

William Everett
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

Zimmerman Metals shall include with the payment a cover letter referencing the number of this Order.

NOTICES AND SUBMITTALS

29. For all documents, plans, records, reports and replies required to be submitted by this Order, Zimmerman Metals shall submit an original OR an electronic copy to the Division at the following address:

Original copies shall be mailed to:
William Everett
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) 692-2290

Electronic copies shall be emailed to:
william.everett@state.co.us

21. 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

22. Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11 Zimmerman Metals 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.
23. 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). An incomplete hearing request shall be considered invalid. 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.

APPEAL OF CIVIL PENALTY

24. Pursuant to 5 CCR 1002, §21.12(B) and 5CCR 1002, §21.4(A)(3)(b), an appeal of the determination of the civil penalty by the Executive Director shall be made in writing to the Division. Requests for such

an appeal should be made in accordance with 5 CCR 1002, §21.12(B), shall be filed no later than 30 calendar days after issuance of this action, and shall include the information specified in 5 CCR 1002, §21.4(B)(2).

FALSIFICATION AND TAMPERING

25. Be advised, in accord with §25-8-610, C.R.S., Any person who knowingly makes any material false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this article 8 or who falsifies, tampers with, or knowingly render inaccurate any monitoring device or method required to be maintained under this article 8 commits a class 2 misdemeanor.

POTENTIAL CIVIL AND CRIMINAL PENALTIES

26. Zimmerman Metals is also advised that any person who violates any provision of the Act, §§25-8-101 to 803, C.R.S., or of any permit issued under the Act, or any control regulation promulgated pursuant to the Act, or any final cease and desist order or clean-up order issued by the Division shall be subject to a civil penalty of not more than \$61,427 per day for each violation that occurs (violations that occurred prior to July 1, 2020 shall be subject to a civil penalty of not more than \$10,000 per day of violation). 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

27. Pursuant to §25-8-601, C.R.S., Zimmerman Metals 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

28. 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.
29. For further clarification of Zimmerman Metals' rights and obligations under this Order, Zimmerman Metals is advised to consult the Act, §§25-8-101 to 803, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 3rd day of October, 2023.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Nathan T. Moore Digitally signed by Nathan T. Moore
Date: 2023.10.03 08:18:37 -06'00'

Nathan Moore
Clean Water Program Manager
WATER QUALITY CONTROL DIVISION

EXHIBIT A

WASTEWATER PENALTY COMPUTATION WORKSHEET

Entity Name: Zimmerman Metals, Inc.	Permit Number: COR900987
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Part I - Administrative Violations Penalty Determination

	Violation Type	Adjustment	Amount in Dollars																		
Line 1	Administrative Violations (Delinquent DMRs)	N/A	\$5,000																		
	<p><i>Calculation:</i> Zimmerman Metals, Inc. ("Zimmerman Metals") failed to submit quarterly DMRs to the Division no later than the 28th day of the month following the reporting period for the following reporting periods:</p> <table border="1" style="margin: 10px auto; border-collapse: collapse;"> <thead> <tr> <th colspan="3" style="text-align: center;">ZIMMERMAN METALS DELINQUENT DMRs</th> </tr> <tr> <th style="text-align: center;">Reporting Period</th> <th style="text-align: center;">Outfall</th> <th style="text-align: center;">Due Date</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">3rd Quarter 2022 7/1/22 - 9/30/22</td> <td style="text-align: center;">001Q</td> <td style="text-align: center;">10/28/22</td> </tr> <tr> <td style="text-align: center;">4th Quarter 2022 10/1/22 - 12/31/22</td> <td style="text-align: center;">001Q</td> <td style="text-align: center;">1/28/23</td> </tr> <tr> <td style="text-align: center;">1st Quarter 2023 1/1/23 - 3/31/23</td> <td style="text-align: center;">001Q</td> <td style="text-align: center;">4/28/23</td> </tr> <tr> <td style="text-align: center;">2nd Quarter 2023 4/1/23 - 6/30/23</td> <td style="text-align: center;">001Q</td> <td style="text-align: center;">7/28/23</td> </tr> </tbody> </table> <p>In accordance with Part V.3. of the Water Quality Control Division's ("Division") Clean Water Civil Penalty Policy (July 1, 2022), penalties for delinquent or late DMRs shall be \$750 per DMR if the correctly completed DMR is submitted prior to the issuance of the NOV and \$1,250 per DMR thereafter. In cases where the permittee has been issued a previous enforcement action for delinquent or late DMRs, or where the Division has a history of correspondence with the permittee regarding these types of violations, the penalty may be increased by up to 100% per DMR.</p> <p>The Division has issued eight Compliance Advisories over the last two years citing Zimmerman Metals' failure to submit DMRs including the following Compliance Advisories listed below:</p> <ul style="list-style-type: none"> Compliance Advisory dated March 24, 2023 for delinquent DMRs for the 4th quarter of 2022 reporting period for Outfall 001Q. Compliance Advisory dated June 23, 2023 for delinquent DMRs for the 1st quarter of 2023 reporting period for Outfall 001Q. <p>In calculating the penalty for the delinquent DMR violations, the Division assessed a \$1,250 penalty per delinquent DMR. The Division conservatively chose not to increase the penalty by the 100% per occurrence, despite the history of correspondence addressing missing DMRs.</p> <p style="text-align: center;">(4 Monitoring Periods × \$1,250) = \$5,000</p>			ZIMMERMAN METALS DELINQUENT DMRs			Reporting Period	Outfall	Due Date	3 rd Quarter 2022 7/1/22 - 9/30/22	001Q	10/28/22	4 th Quarter 2022 10/1/22 - 12/31/22	001Q	1/28/23	1 st Quarter 2023 1/1/23 - 3/31/23	001Q	4/28/23	2 nd Quarter 2023 4/1/23 - 6/30/23	001Q	7/28/23
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2 nd Quarter 2023 4/1/23 - 6/30/23	001Q	7/28/23																			
Line 2	Administrative Violations (Delinquent Annual Report)	N/A	\$1,500																		
	<p><i>Calculation:</i> Zimmerman Metals failed to submit annual reports to the Division by no later than March 31 for the following reporting period:</p>																				

EXHIBIT A

ZIMMERMAN METALS DELINQUENT ANNUAL REPORT	
Reporting Period	Due Date
January 1, 2022 - December 31, 2022	3/31/23
<p>In accordance with Part V.3. of the Division's Clean Water Civil Penalty Policy (July 1, 2022). Penalties for delinquent, late, or improperly completed annual reports shall be \$1,500 per report. In any situation where the permittee has been issued a previous enforcement action for delinquent, late, or improperly completed annual reports, or where the division has a history of correspondence with the permittee regarding these types of violations, the penalty for each report may be increased by up to 100% per occurrence.</p> <p>In calculating the penalty for the delinquent Annual Report violations, the Division assessed a \$1,500 penalty per delinquent Annual Report. The Division conservatively chose not to increase the penalty by the 100% per occurrence, despite the history of correspondence addressing missing Annual Reports.</p> <p style="text-align: center;">(1 Reporting Period x \$1,500) = \$1,500</p>	
Line 3	Administrative Violation Total
	\$6,500

Part II- Economic Benefit Consideration

	Amount in Dollars
Line 4	Economic Benefit
	\$0
<p>Delinquent and/or Late DMRs: Zimmerman Metals avoided the cost of submitting several DMRs and annual reports; however, the economic benefit of the avoided cost was conservatively determined to be relatively insignificant.</p>	

Part III - Final Penalty

	Amount in Dollars
Line 5	Total Civil Penalty:
	\$6,500