



COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: IO-240606-1

IN THE MATTER OF: **THE TURQUOISE CONNECTION, INC.**
 CDPS PERMIT NO. CO0048939
 TELLER 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 302, C.R.S., which authority is implemented through the Department's Water Quality Control Division ("Division"), and pursuant to §§25-8-602 and 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, The Turquoise Connection, Inc. ("Turquoise Connection") was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
2. Turquoise Connection 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. Turquoise Connection owns and/or operates the Scott Blue II Mine, located at approximately 38.7542, -105.1722, near the Town of Cripple Creek, Teller County, Colorado ("Facility").
4. The Facility discharges wastewater associated with placer gold mining, specifically from the removal of raw materials from the Facility to be processed offsite. The entire surface of the Facility is disturbed by historic placer mining activities. The Facility discharges mine drainage and stormwater that contacts a placer mine excavation pit and raw material storage piles. In the northern half of the Facility, mine drainage and stormwater that contacts the placer mine excavation pit is treated in settling ponds, which passively discharged or pumped to Cripple Creek. In the southern half of the Facility, stormwater contacts raw materials storage piles and discharges directly to Cripple Creek.
5. The Facility is the subject of the Colorado Discharge Permit System, Permit Number CO0048939 ("Permit"). The current version of the Permit became effective on September 1, 2015 and is currently administratively continued.

6. The Permit authorizes Turquoise Connection to discharge treated wastewater from the Facility through Outfall 001 and Outfall 002 into Cripple Creek. Outfall 001 is physically located at approximately 38.7542, -105.1722 and discharges mine drainage water and stormwater from the Facility's settling ponds. Outfall 002 is physically located at 38.7532, -105.1723 and discharges untreated stormwater runoff from a raw material stockpile and areas disturbed by placer mining.
7. On June 28, 2021, a representative from the Division ("Inspector") conducted an on-site inspection of the Facility pursuant to Division's authority under §25-8-306, C.R.S., to determine Turquoise Connection's compliance with the Act and the Permit. During the Division's inspection, the Inspector interviewed Facility representatives, reviewed the Facility's records, and performed a physical inspection of the Facility.
8. Pursuant to 5 CCR 1002-61, §61.8, Turquoise Connection 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 Turquoise Connection subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S

Failure to Monitor

9. Pursuant to Part I.C.1. of the Permit, in order to obtain an indication of probable compliance or noncompliance with the specified effluent limitations, Turquoise Connection shall monitor all effluent parameters at specified frequencies at Outfall 001. Such monitoring is required for the life of the Permit unless otherwise specified. The results of such monitoring shall be reported on Division-approved Discharge Monitoring Report ("DMR") forms.
10. Pursuant to Part I.D.1. of the Permit, Turquoise Connection shall monitor for all benchmark parameters identified in the Permit at Outfall 002. The benchmark concentrations are not effluent limitations; a benchmark exceedance, therefore, is not a permit violation. When the discharge exceeds an applicable benchmark concentration, Turquoise Connection must conduct corrective actions consistent with the Permit.
11. Pursuant to Part I.J.1. of the Permit, Turquoise Connection shall report the data gathered in compliance with the permit on a monthly basis for Outfall 001; and quarterly for Outfall 002. The DMR forms shall be filled out accurately and completely in accordance with requirements of the Permit.
12. Pursuant to Part I.K.1 of the Permit, Turquoise Connection must follow specific DMR reporting conventions for stormwater discharges at Outfall 002. If no discharge occurs during the reporting period, "No Discharge" shall be reported on the DMR.
13. During the Division's June 28, 2021 inspection, representatives from Turquoise Connection confirmed that the Facility discharges regularly between spring and fall from Outfall 001 to Cripple Creek. At the time of the inspection, the Inspector observed stormwater discharging from Outfall 002.
14. Division records, as supplemented by Turquoise Connection's DMRs, establish that Turquoise Connection reported 'No Discharge' on every DMR submitted from January 1, 2019 until April 30, 2024 for Outfall 001 and Outfall 002, despite Turquoise Connection's statement that discharges occur regularly.
15. Turquoise Connection's failure to monitor all effluent parameters, as identified in Paragraph 14, constitutes violations of Parts I.C.1., I.D.1., I.J.1., and I.K.1. of the Permit.

Failure to Develop a Stormwater Management Plan

16. Pursuant to Part I.H.1. of the Permit, Turquoise Connection was required to complete a Stormwater Management Plan ("SWMP") to comply with the requirements of the permit by February 28, 2016.
17. During the Division's June 28, 2021 inspection, the Inspector determined that Turquoise Connection had not developed a SWMP Plan for the Facility. Specifically, the only stormwater documentation provided to the Inspector was a map of the Facility that noted berming to the north and east, and a western silt fence.
18. Turquoise Connection's failure to develop a SWMP that complies with the requirements of the Permit, as identified in Paragraph 17, constitutes violations of Part I.H.1. of the Permit.

Failure to Provide Requested Records / Information

19. Pursuant to Part II.B.3. of the Permit, Turquoise Connection shall furnish to the Division, within a reasonable time, any information which the Division may request to determine compliance with the Permit.
20. On August 12, 2021, the Division issued Turquoise Connection an inspection report that required a response by September 11, 2021. The response was to include an outline of the course of action that would be taken and the date by which Turquoise Connection would bring the Facility into compliance.
21. Turquoise Connection provided responses on August 26, 2021 and November 8, 2021 indicating that the Facility would be in compliance with the Permit by June 1, 2022. On December 29, 2021, the Division issued a Corrective Action Plan Documentation letter to Turquoise Connection that required all Major Findings from the Division's June 28, 2021 inspection to be resolved by June 1, 2022.
22. As of the date of issuance of this Order, Turquoise Connection has yet to provide documentation to the Division verifying that all Major Findings from the Division's June 28, 2021 inspection have been resolved, as required by the December 29, 2021 Corrective Action Plan Documentation letter and supported by Paragraphs 9 - 18 of this Order.
23. Turquoise Connection's failure to furnish the Division with the information requested to determine compliance with the Permit, within the time frame specified by the Division, constitutes a violation of Part II.B.3. of the Permit.

Failure to Perform Inspections

24. Pursuant to Part I.F.1. of the Permit, Turquoise Connection shall conduct and document at least four comprehensive stormwater inspections per year for all areas contributing runoff to Outfall 002. Inspections shall be conducted at least 20 days apart and a minimum of one inspection must occur during a runoff event. Turquoise Connection shall ensure that inspections are conducted by qualified personnel.
25. During the Division's June 28, 2021 inspection, the Inspector determined that Turquoise Connection did not have any records documenting that comprehensive stormwater inspections were conducted at the Facility.
26. Turquoise Connection's failure to conduct and/or document stormwater inspections, as identified in

Paragraph 25, constitutes violations of Part I.F.1. of the Permit.

Failure to Submit Annual Reports

- 27. Pursuant to Part I.K.2. of the Permit, Turquoise Connection shall submit an annual report to the Division for the reporting period January 1 through December 31 every year by March 1st.
- 28. Based on Division records, the following annual reports were either not submitted or submitted late:

Annual Report Period	Due Date	Date Received
January 1, 2019 - December 31, 2019	March 1, 2020	Not submitted
January 1, 2020 - December 31, 2020	March 1, 2021	July 27, 2021
January 1, 2021 - December 31, 2021	March 1, 2022	Not submitted
January 1, 2022 - December 31, 2022	March 1, 2023	Not submitted
January 1, 2023 - December 31, 2023	March 1, 2024	Not submitted

- 29. Turquoise Connection’s failure to submit stormwater annual reports by March 1st of each year, as identified in Paragraph 28, constitutes violations of Part I.K.2. of the Permit.

NOTICE OF VIOLATION

- 30. Based on the foregoing Findings of Fact and Conclusions of Law, Turquoise Connection is hereby notified that the Division has determined that Turquoise Connection have violated the following sections of the Permit.

Part I.C. 1. 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 this Part, 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 REPORTING AND RECORDKEEPING section).”

Part I.D. 1. of the Permit, which states in part, “The permittee shall monitor for each benchmark parameter identified in the table below. The table provides applicable pollutant benchmark concentrations. The benchmark concentrations are not effluent limitations; a benchmark exceedance, therefore, is not a permit violation. When the discharge exceeds an applicable benchmark concentration, the permittee must conduct corrective actions consistent with the CORRECTIVE ACTIONS section of this permit. Failure to respond to benchmark value exceedances is a violation of the permit.”

Part I.F.1. of the Permit, which states, “The permittee shall conduct and document field inspections of all drainage areas contributing runoff to the outfalls referred to in this Part, as follows:

- a. Conduct at least four comprehensive storm water inspections per year (i.e., one each calendar quarter). Inspections shall be conducted at least 20 days apart.
- b. Conduct a minimum of one (1) of the quarterly inspections during a runoff event, which for a rain event means during or within 24 hours after the end of a measureable storm event; and for a snowmelt event, means at a time when a measurable discharge occurs

from the facility.

c. The permittee shall ensure that inspections are conducted by qualified personnel.”

Part I.H. 1. of the Permit, which states in part, “The following administrative requirements apply to the SWMP written to address all drainage areas contributing runoff to the outfalls referred to in this Part. The permittee shall complete a SWMP to comply with the requirements of this permit within 180 days of the permit effective date... ”

Part I.J. 1. of the Permit, which states in part, “The permittee shall report the data gathered in compliance with this permit on a monthly basis for outfall 001; and quarterly for outfall 002. Reporting of all data gathered shall comply with the requirements of the GENERAL MONITORING AND SAMPLING REQUIREMENTS and REPORTING AND RECORDKEEPING sections of this permit. The permittee shall summarize monitoring results for each month and report on Division approved discharge monitoring report (DMR) forms (EPA form 3320-1).”

Part I.K. 1. of the Permit, which states, “In addition to the Reporting and Recordkeeping requirements of this permit, the required DMR reporting conventions for stormwater discharges are as follows:

- a. If no discharge occurs during the reporting period, “No Discharge” shall be reported on the DMR.
- b. If the permittee’s benchmark sampling frequency is reduced consistent with the Benchmark Monitoring Actions - Data not exceeding benchmarks section of this permit, the permittee must submit quarterly DMRs and indicate “Benchmark Met” in the result field on the DMR for each parameter that meets the sampling frequency reduction criteria.

Part I.K. 2. of the Permit, which states in part, “The permittee shall submit an annual report to the division for the reporting period January 1 through December 31... Due Date March 1... Frequency Annual”

Part II.B. 3. of the Permit, which states, “The permittee shall furnish to the Division, within the time frame specified by the Division, any information which the Division may request to determine whether cause exists for modifying, revoking and reissuing, or inactivating coverage under this permit, or to determine compliance with this permit. The permittee shall also furnish to the Division, upon request, copies of records required to be kept by this permit.”

REQUIRED CORRECTIVE ACTION

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

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

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

32. Within 30 calendar days of receipt of this Order, Turquoise Connection shall review the requirements of the Permit 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 SWMP requirements of the Permit; 2) the inspection scope, frequency, and documentation requirements of the Permit; and 3) the control measure requirements of the Permit. Within 45 calendar days of the receipt of this Order, Turquoise Connection shall submit a written certification to the Division stating that it has completed the review of the Permit with all responsible staff.

33. Within 30 calendar days of receipt of this Order, Turquoise Connection shall retain the services of a qualified individual or entity experienced in metal mining and stormwater management to perform a review of the SWMP and its implementation; develop the Standard Operating Procedures (“SOP”) referenced in Paragraph 37; and recommend any additional measures needed to ensure that Turquoise Connection achieves and maintains compliance with all provisions of the Permit.
34. Within 45 calendar days of receipt of this Order, Turquoise Connection shall provide documentation to the Division that it has retained the services of the qualified individual or entity described in Paragraph 33. 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, Turquoise Connection will have 14 calendar days from notification from the Division to submit documentation for an alternative individual/entity.
35. Within 60 calendar days of receipt of this Order, Turquoise Connection shall review all DMRs submitted to the Division since January 1, 2019. For any reporting period where a discharge occurred but ‘No Discharge’ was reported on the DMR(s), Turquoise Connection shall correct the DMR(s) and enter ‘NODI E - Analysis Not Conducted’.
36. Within 60 calendar days of receipt of this Order, Turquoise Connection shall submit a SWMP that is prepared in accordance with good engineering, hydrologic, and pollution control practices. The SWMP shall contain all elements required by the Permit and be effective in managing stormwater discharges from the Facility. The submission shall include a written certification that the SWMP is being implemented.
37. Within 90 calendar days of receipt of this Order, Turquoise Connection shall develop and implement a SOP for sampling effluent at Outfall 001 and Outfall 002. The SOP must be in compliance with Parts I.C.1. and I.D.1. of the Permit. Within 100 calendar days of receipt of this Order, Turquoise Connection shall submit a copy of the SOP for sampling effluent and a written certification that the SOP is being implemented.
38. Within 90 calendar days of receipt of this Order, Turquoise Connection shall submit any additional compliance measures recommended pursuant to Paragraph 33. Turquoise Connection shall submit a corrective action plan and time schedule for completion of all recommended remediation activities at the Facility. The corrective action plan shall include a timeline for initiation and completion of each action identified, with all actions completed within 180 days of receipt of this Order. Any corrective action plan submitted shall become a condition of this Order and Turquoise Connection shall comply with the plan and the completion dates unless notified by the Division, in writing, that alternate activities and/or time schedule(s) are appropriate. If the Division imposes alternate activities and/or time schedule(s), they shall also become a condition of this Order.
39. Within 90 calendar days of receipt of this Order, Turquoise Connection shall submit all delinquent stormwater annual reports.

40. Beginning September 30, 2024, and every calendar quarter thereafter, Turquoise Connection shall submit quarterly progress reports to the Division by the last day of each calendar quarter (March 31, June 30, September 30, and December 31). At a minimum, each report shall outline activities undertaken during the current month and activities planned for the next month to remain in compliance with this Order. The monthly progress reports shall be required until the issuance of written notice from the Division indicating that the reports are no longer necessary occurs.
41. If Turquoise Connection becomes aware of any situation or circumstances that cause Turquoise Connection to become unable to comply with any condition or time schedules set forth by this Order, Turquoise Connection shall provide written notice to the Division within five calendar days of becoming aware of such circumstances. Turquoise Connections' notice shall describe what, if any, impacts will occur on Turquoise Connection's 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.
42. 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, Turquoise Connection shall revise the submitted document(s) to properly address the Division's comments and resubmit the document(s) for Division review.

NOTICES AND SUBMITTALS

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

Original copies shall be mailed to
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: (720) 583-4562

Electronic copies shall be emailed to:
jacob.dyste@state.co.us

44. 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

45. Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11, Turquoise Connection 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.
46. 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.

FALSIFICATION AND TAMPERING

47. 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

48. Turquoise Connection 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 \$64,326 per day for each violation that 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

49. Pursuant to §25-8-601, C.R.S., Turquoise Connection 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

- 50. 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.
- 51. For further clarification of Turquoise Connection’s rights and obligations under this Order Turquoise Connection 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 6th day of June 2024.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Kelly Morgan
Digitally signed by Kelly Morgan
Date: 2024.06.06 09:35:52 -06'00'

Kelly Morgan
Clean Water Compliance and Enforcement Section Manager
WATER QUALITY CONTROL DIVISION