Message

From: Benevento, Douglas [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=93DBA0F4F0FC41C091499009A2676F89-BENEVENTO,]
Sent: 4/12/2018 5:15:03 PM
To: Bohan, Suzanne [bohan.suzanne@epa.gov]
Subject: RE: Town of Parker Dumping Oil soaked aggregate in Cherry Creek watershed

Perfect. Thank you very much.

From: Bohan, Suzanne
Sent: Thursday, April 12, 2018 10:46 AM
To: Benevento, Douglas <benevento.douglas@epa.gov>
Subject: FW: Town of Parker Dumping Oil soaked aggregate in Cherry Creek watershed

Doug –

CDPHE's response is below – it appears the state has found no permit violations and the state does not intend to increase oversight of the permit. I've asked Art and his group to review the response and let me know whether they have any concerns.

Suzanne
From: Pfaltzgraff - CDPHE, Patrick [mailto:patrick.j.pfaltzgraff@state.co.us]
Sent: Tuesday, April 10, 2018 2:39 PM
To: Privacy Info in Enforcement Records / Ex. 7(c)
Cc: larry.wolk@state.co.us
Subject: Re: Town of Parker Dumping Oil soaked aggregate in Cherry Creek watershed

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Thank you again for contacting the Department of Public Health and the Environment regarding your concerns, and also bringing this issue to the attention of the Town of Parker. As you are aware, my division, the Water Quality Control Division, has responded to this issue by making inquiries of the Town of Parker about the release of roadway materials to the stormwater collection system and the Cherry Creek watershed. The Town's response identified that the source of the releases were the failure of a chipseal roadway project resulting in the potential for stormwater events to transport materials to waterways. The town also provided information to the division on its ongoing response to this issue, including increased street sweeping, cleaning of inlets, removal of materials from a drop structure, and in a phone call the city has indicated it will be working to stabilize the roadway surfaces.

The Town does have a discharge permit issued by the division that authorizes the discharges of stormwater to Cherry Creek and requires controls to minimize the discharge of pollutants. The general permit is attached. Among other requirements, the permit requires the city to "implement a program for Pollution Prevention/Good Housekeeping for facilities and operations that they own, operate, or perform within the permit area. The program must prevent or reduce water quality impacts from pollutants being discharged to the MS4 from municipal facilities and operations." Part I.E.5. As part of this program requirement, the city must "implement control measures that prevent or reduce discharges for applicable municipal operations," including "operation and maintenance of streets, roads, highways." Part I.E.5.a.iii.

The city has responded to the division that it has, and continues to, implement measures to address this discharge and reduce the discharge of pollutants. The permit does not require that the city prevent all discharges of materials to Cherry Creek, nor would that be a reasonable requirement. The permit and implementing regulations recognizes that unanticipated circumstances will occur that result in the release of pollutants, such as failure of a roadway maintenance project. At this time, the division has not identified evidence that the city is not meeting the terms and conditions of its permit, or that additional division compliance oversight is necessary to drive continued implementation of measures by the city to control this pollutant source to prevent impairment of Cherry Creek or its tributaries.

Again, thank you for your concerns and your efforts to make sure this issue is being addressed. The department does take pollution of state waters and our obligation for implementing rules for protection very seriously. As has previously been discussed with you, the department currently believes that this difficult problem is being appropriately addressed by the

town and additional involvement is not necessary at this time. However, please contact Nathan Moore if you have additional information on impacts, or potential impacts, to the receiving waters that you would like the division to take into consideration. In addition, we have been in contact with US EPA Region 8 about this matter and will continue to keep them apprised of the situation.

Patrick J. Pfaltzgraff
Division Director

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4300 Cherry Creek Drive South, Denver, CO 80246
patrick.j.pfaltzgraff@state.co.us | www.colorado.gov/cdphe/wqcd

24-hr Environmental Release/Incident Report Line: 1.877.518.5608

---------- Forwarded message ----------
From: Privacy Info in Enforcement Records / Ex. 7(c)
Date: Thu, Apr 5, 2018 at 11:50 AM
Subject: Town of Parker Dumping Oil soaked aggregate in Cherry Creek watershed
To: benevento.douglas@epa.gov, larry.wolk@state.co.us

Doug, Larry,

Good afternoon.

This is to inform each of you about the Town of Parker(ToP) dumping hundreds of pounds of oil-soaked aggregate (OSA) into the Cherry Creek watershed and the response or lack of one from Patrick Pfaltzgraff and his staff. I have included in the correspondence photos showing violations and their location on a map. This is not an isolated illicit discharge as you can see on many of these photos across the ToP. A good partner would report these illicit discharges to the storm water system/Cherry Creek watershed to CDPHE. To the best of my knowledge NONE of these have been reported before the complaint to the EPA hotline.

As stated in the Clean Water Act Enforcement Action Plan October 15, 2009:

State enforcement response to serious violations, whether at large or smaller facilities, is not what it should be. Without complete and accurate data, it is hard to know how critical the noncompliance at smaller facilities is to water quality. It is likely that these smaller but more numerous sources are of critical concern,

After a cursory review on the MS4 permit, the ToP has violated too many section to list here. I am currently in the process of marking up a generic MS4 showing the violations by the ToP and will forward once this through review is complete.

The ToP and the CDPHE seem to fit in the above statement therefore my vigorous follow up on this incident.

Timeline:

This situation started in August of 2017 when the ToP engaged with a contractor to chip seal many streets in the town. Right after the job was complete abnormally high amounts of oil emulsion coated rocks were seen spalling off the road ending up in the curbs, sidewalks, adjacent planting/grass, and storm sewer system. The ToP was notified and their response was it was normal and not to worry we will talk to staff into and take care of it.

Many times I called the ToP to let them know the problem was getting worse with no response.

Fast Forward to March 22, 2018 we I reported this to the EPA hotline and sent a letter to the ToP and cc'd r8eisc@epa.gov and the local paper who reports on ToP activities. Later that day I did receive a response from the ToP saying they would look into the problem. It appears that the ToP only acted after the email from Nathan Moore with CDPHE, with the report from a citizen that went into the ToP's CDPHE official file!

The ToP did respond to Mr. Moore's email which I found on the Colorado Environmental Records page which Mr. Moore provide to me.

The initial report was this is a very isolated issue as reported by town ToP workers, the site was never inspected by the Storm Water manager to the best of my knowledge because a P.E. with more than 1 year of experience would understand that this is much larger issue, but someone with little or no training in these types of matters would report no problem, which is what happened in this case.

Once I was able to read what the ToP Storm Water Manager a P.E. reported and the email that was sent to me from the ToP Public Works Manager (attached) I came to understand that the ToP was trying to minimize this issue. Currently we have NO idea on the amount of OSA that has ended up in the Cherry Creek watershed and the adjacent landscaping. The report in your database indicates that 22 5-gallon buckets or approximately 1,430 pounds of OSA were found in storm water inlet boxes which is much more that the originally reported 1 5- gallon bucket per inlet box, I believe that there are 16+/- inlets boxes in the area of this illicit discharge, which would be 16 buckets or 1,040 pounds difference, this is major difference, 70% more was found after the ToP initial report. After the initial report the CDPHE Unit Manager stated in an email to the ToP the following:

"The division is just going to file this email chain in the Parker MS4 file and no additional follow up is planned at this time."

I then called the CDPHE Unit Manager in charge of this incident and he informed me that no further activities were planned and this was due in large part to the restraints in resources he has.

I then emailed the Director, Water Quality Control Division when would be a good to the talk on the phone, I received a reply from Patrick Pfaltzgraff to call at my convenience, which I did the next day

Mr. Pfaltzgraff and I talked for about 10 minutes and I asked him if any inspection by his department was going to happen, his response was no and in large part due to resources restrictions, which is code for not high enough priority! I then asked if we could meet at the site he said no. I told him that I had samples and many photos showing the extent of this incident, Mr. Pfaltzgraff response was: "we will note that" and then he said he must get off to go to a meeting.

This brings me to my request to both of you, as your positions are responsible to the public for keeping our environment safe and clean from this type of problem.

Items that need your attention/action:

1) EPA and CDPHE inspectors in conjunction make unannounced site visits to the ToP and preform full inspections and sampling at ALL locations where the storm sewers enter the Cherry Creek watershed for ANY signs of any of these materials used in this chip seal process.

2) ToP to complete remediation of any materials found.

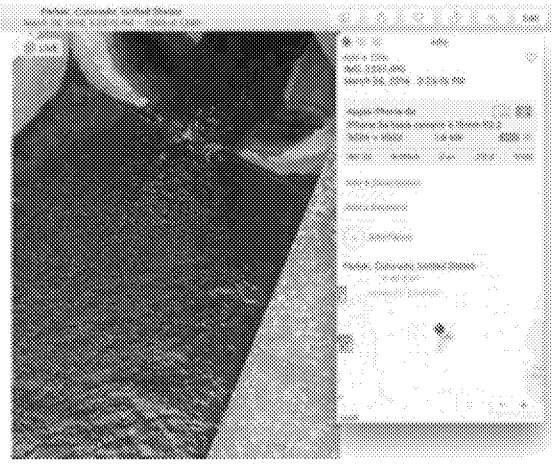
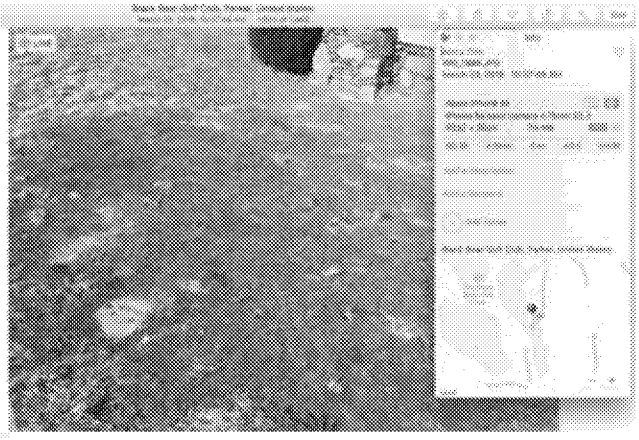
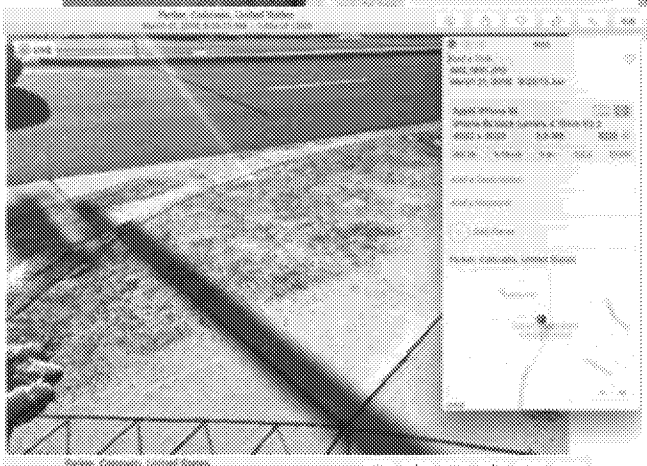
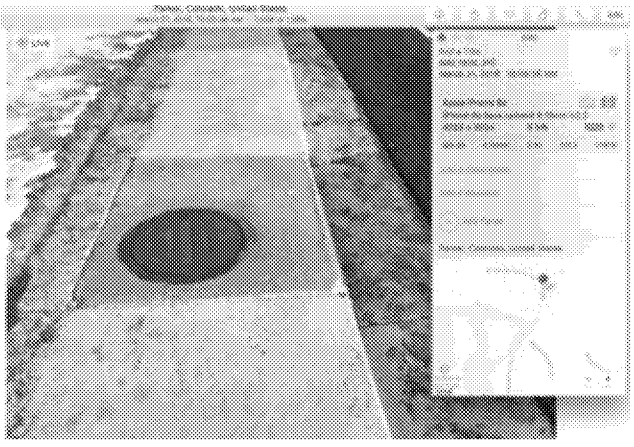
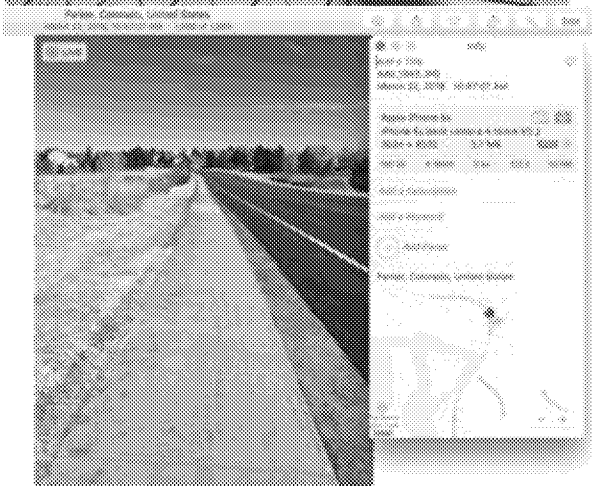
3) If any violations are found that fines will be levied against the party/ parties responsible.

4) Determine/request review of this chip seal process to ensure it is fit for purpose in EPA Region 8 and that DOT/CDOT issue requirements on this process if it is found fit for purpose.

5) Include findings in the ToP MS4 permit for future consideration.

Samples from various storm water areas and many photos including mapped locations on this area and others in the ToP on a thumb drive are being delivered to Doug's office.

I would like to visit with both of you about this matter as my professional opinion the ToP has not be forth coming with respect to their requirements on their MS4 permit.

Regards,

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