

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Senior Judge Walker D. Miller

Civil Action No. 05-cv-01994-WDM-BNB

SIERRA CLUB,

Plaintiff,

v.

CITY OF COLORADO SPRINGS,

Defendant.

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**ORDER**

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With regard to the 21 events for which Defendant claims an “upset” defense, most, if not all, of those events were covered by orders of the CDPHE. See December 29, 2005 Amendment Number One (Joint Exhibit 18), December 4, 2006 Amendment Number Two (Joint Exhibit 20), December 4, 2006 Compliance Order (Joint Exhibit 21) and Notice of Violation (Joint Exhibit 19). The CDPHE determined that these spills were in violation of the Colorado Water Quality Control Act and imposed civil penalties, which are final and not appealable. Neither party directly addresses the impact of these determinations upon the “upset” defense, and in particular, whether these determinations preclude the “upset” defense.

Accordingly, it is ordered that each party file with the court a statement of position concerning these issues, not exceeding 5 pages, no later than May 22, 2009.

DATED at Denver, Colorado, on May 13, 2009.

BY THE COURT:

s/ Walker D. Miller  
United States District Judge