



**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**  
**DIVISION OF ADMINISTRATION**  
**WATER QUALITY CONTROL DIVISION**

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**NOTICE OF VIOLATION / CEASE AND DESIST ORDER**

**NUMBER: MO-080121-1**

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**IN THE MATTER OF:     JOHNSON'S CORNER, INC**  
**CDPS PERMIT NO. COG-589000**  
**FACILITY NO. COG-589006**  
**LARIMER COUNTY, COLORADO**

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Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority has been delegated to the Department's Water Quality Control Division (the "Division"), and pursuant to §§25-8-602 and 25-8-605, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order. This Notice of Violation / Cease and Desist Order supersedes the Notice of Violation / Cease and Desist Order issued to Johnson's Corner, Inc. on November 30, 2006:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. At all times relevant to the alleged violations identified herein, Johnson's Corner, Inc. was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
2. Johnson's Corner, Inc. is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
3. Johnson's Corner, Inc. owns and/or operates a wastewater treatment facility, located in the Southeast ¼ of Section 27, Township 5 North, Range 68 West, 6<sup>th</sup> Principal Meridian at 2522 S.E. Frontage Road, in Loveland, Larimer County, Colorado [Longitude - 104°59'10", Latitude - 40°22'2"], (the "Facility").
4. The Facility is the subject of Colorado Discharge Permit System General Permit, Permit No. COG-589000 (the "Permit") which became effective November 1, 2005 and is due to expire October 31, 2010. Johnson's Corner, Inc. was authorized to discharge under the Permit via a certification which also became effective November 1, 2005 (the "Certification"). The Certification assigned an identification number of COG-589006 to the Facility.

5. The Certification identifies the rated organic capacity of the Facility as 89.4 lbs. BOD<sub>5</sub>/day and specifies that Johnson's Corner, Inc. is authorized to discharge effluent wastewater from the Facility into an unnamed drainage tributary to the Hillsboro Ditch. The discharge is subject to the specific effluent limitations and other conditions of the Permit.
6. Section 61.8, 5 CCR 1002-61, states in part that "A permittee must comply with all the terms and conditions of the permit."
7. Hillsboro Ditch is "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (101).

Quality of the Discharge/Organic Loading

8. Pursuant to the requirements of the Permit, to provide an indication of the quality of the wastewater discharged into the unnamed drainage, Johnson's Corner, Inc. collects specific samples of the effluent at the outfall line following final treatment but prior to entering the receiving stream. This sampling location is known as Outfall 001A. Johnson's Corner, Inc. also monitors the influent to the Facility.
9. Outfall 001A is a "point source" as defined by §25-8-103(14), C.R.S.
10. The analytical results of the influent and effluent samples are summarized and reported to the Division via monthly discharge monitoring reports ("DMRs") which include a certification by Johnson's Corner, Inc. that the information provided therein is true, accurate and complete, to the knowledge and belief of Johnson's Corner, Inc.
11. The DMRs for the months of November 2005 through October 2007 include, in addition to other data not subject of this action, the following effluent concentration data for 5-day biochemical oxygen demand ("BOD"), BOD removal and total suspended solids ("TSS") as well as the results of influent monitoring both in terms of concentration and calculated organic loading to the Facility:

<b>EFFLUENT SELF-MONITORING DATA</b>		
<b>DMR REPORTING PERIOD/PARAMETER</b>	<b>30-DAY AVERAGE</b>	<b>MAXIMUM 7-DAY AVERAGE</b>
<b>BOD (in mg/l)</b>	<b>LIMIT = 30 mg/l</b>	<b>LIMIT = 45 mg/l</b>
November 1-November 30, 2005	51	51
December 1-December 31, 2005	47	47
January 1-January 31, 2006	74	74
February 1-February 28, 2006	59	59
March 1-March 31, 2006	70	70
May 1-May 31, 2006	67	67
June 1-June 30, 2006	67	67

August 1-August 31, 2006	68	68
November 1-November 30, 2006	74	74
December 1-December 31, 2006	138	151
January 1-January 31, 2007	52	52
February 1-February 28, 2007	66	66
March 1-March 31, 2007	39	-
April 1-April 30, 2007	56	56
May 1-May 31, 2007	97	97
June 1-June 30, 2007	77	77
July 1-July 31, 2007	60	207
August 1-August 31, 2007	41	-
September 1-September 30, 2007	154	275
<b>BOD REMOVAL (in %)</b>	<b>LIMIT – 85%</b>	<b>N/A</b>
March 1-March 31, 2006	81	-
June 1-June 30, 2006	83	-
July 1-July 31, 2006	56	-
August 1-August 31, 2006	81.8	-
December 1-December 31, 2006	83.4	-
May 1-May 31, 2007	84	-
September 1-September 30, 2007	83	-
<b>TSS (in mg/l)</b>	<b>LIMIT = 75 mg/l</b>	<b>LIMIT = 110 mg/l</b>
January 1-January 31, 2006	170	170
February 1-February 28, 2006	161	161
March 1-March 31, 2006	310	310
May 1-May 31, 2006	160	160
November 1-November 30, 2006	127	129
December 1-December 31, 2006	95	100
February 1-February 28, 2007	104	104
April 1-April 30, 2007	89	89
May 1-May 31, 2007	200	200
June 1-June 30, 2007	122	122

12. BOD and TSS are “pollutants” as defined by §25-8-103(15), C.R.S.
13. Section 61.8, 5 CCR 1002-61, states in part that “A permittee must comply with all the terms and conditions of the permit.”
- 14.

Organic Loading

DMR REPORTING PERIOD	30-DAY AVERAGE LOADING (in lbs./day)
September 1-September 30, 2006	123.221
October 1-October 31, 2006	104.43
December 1-December 31, 2006	142.99
January 1-January 31, 2007	197.64
February 1-February 28, 2007	133.33
April 1-April 30, 2007	94
May 1-May 31, 2007	96
June 1-June 30, 2007	118
July 1-July 31, 2007	153
August 1-August 31, 2007	93
September 1-September 30, 2007	215
October 1-October 31, 2007	102
November 1-November 30, 2007	204

15. The Permit, in Part 1, Section B.3, states that the permittee is required to initiate engineering and financial planning for expansion of the domestic wastewater treatment works whenever throughput and treatment reaches eighty (80) percent of the 30-day average design capacity. Whenever ninety-five (95) percent of the 30-day average design capacity is met, the permittee shall commence construction of the necessary treatment expansion. If construction is not commenced, the permittee shall cease the issuance of building permits within the service area until construction is commenced. If the permittee’s domestic wastewater treatment works serves other municipalities or connector districts, the permittee shall have made provisions by contract or otherwise, for the municipalities within the service area to cease issuance of building permits within the service area until construction has commenced.
16. The results listed in paragraph 13 above demonstrate that Johnson’s Corner, Inc. has reached and exceeded eighty (80), ninety-five (95) and one hundred (100) percent of the 30-day average organic design capacity of the Facility.
17. As of the date of this Order, Johnson’s Corner, Inc. has not commenced construction of treatment expansion.

### **NOTICE OF VIOLATION**

18. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that Johnson's Corner, Inc. has violated the following sections of the Permit.
19. The 30-Day Average effluent BOD concentrations listed in paragraph 11 of the Findings of Fact and Conclusions of Law constitute violations of the 30-Day Average effluent concentration limit of 30 mg/l established by Part I, Section B.7.a. of the Permit.
20. The Maximum 7-Day Average effluent BOD concentrations listed in paragraph 11 of the Findings of Fact and Conclusions of Law constitute violations of the 7-Day Average effluent concentration limit of 45 mg/l established by Part I, Section B.7.a. of the Permit.
21. The 30-Day Average BOD removal percentages listed in paragraph 11 of the Findings of Fact and Conclusions of Law constitute violations of the minimum monthly removal requirement of 85 percent established by Part I, Section B.7.a. of the Permit.
22. The 30-Day Average effluent TSS concentrations listed in paragraph 11 of the Findings of Fact and Conclusions of Law constitute violation of the 30-Day Average effluent concentration limit of 75 mg/l established by Part I, Section B.7.a. of the Permit.
23. The Maximum 7-Day Average effluent TSS concentrations listed in paragraph 11 of the Findings of Fact and Conclusions of Law constitute violation of the 30-Day Average effluent concentration limit of 110 mg/l established Part I, Section B.7.a. of the Permit.
24. Failure to commence construction of treatment expansion when ninety-five (95) percent of the organic design capacity of the Facility was reached constitutes violation of Part I, Section B.3 of the Permit.

### **CEASE AND DESIST ORDER**

Based upon the foregoing factual and legal determinations and pursuant to §25-8-605, C.R.S., Johnson's Corner, Inc. is hereby ordered to:

25. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 through 25-8-703, C.R.S., permit regulations promulgated thereto and the Permit.

Furthermore, the Division hereby orders Johnson's Corner, Inc. to comply with the following specific terms and conditions of this Order:

26. Johnson's Corner, Inc. shall comply with one of the two schedules shown below depending on the option chosen. If connection to the Low Point Wastewater Treatment Facility is the alternative chosen by Johnson's Corner, Inc., it shall comply with the schedule listed under Option A. If Option B is the chosen alternative, Johnson's Corner, Inc. shall comply with the schedule listed under Option B.

Schedule for Option A (Connection to Low Point Wastewater Treatment Facility)

- a. By February 29, 2008 Johnson's Corner, Inc. shall submit to the Division an executed copy of a contract with a Professional Engineer registered with the State of Colorado for the design of a pipeline for conveyance of the wastewater currently treated by the Facility to the Low Point Wastewater Treatment Facility and take steps to secure the necessary funding for the project.
- b. If district formation is, in part or in whole a mechanism that will be utilized to secure funding, Johnson's Corner, Inc. shall submit to the Division by, February 29, 2008, a written discussion of the type of district that will be formed, the district formation process and a time schedule for formation of the district, including the anticipated date of any election required for such formation.
- c. By April 1, 2008, Johnson's Corner, Inc. shall provide the Division a copy of the connection/service agreement with the Town of Johnstown, evidence that the process of obtaining the easements necessary for the installation of the trunk sewer pipeline to the Low Point Wastewater Treatment Facility has begun and documentation of the steps that have been taken to secure the necessary funding.
- d. By August 1, 2008, Johnson's Corner, Inc. shall provide the Division a copy of a completed final design for the trunk sewer pipeline, a schedule for the project, and evidence that adequate funding has been secured.
- e. By December 31, 2008, Johnson's Corner, Inc. shall resolve all outstanding deficiencies and violations associated with the Facility by discontinuing operation of and discharge from the Facility by utilizing the trunk sewer pipeline to the Low Point Wastewater Treatment Facility and by beginning abandonment of the Facility in accordance with the Division's draft decommissioning procedures policy (draft procedures policy obtainable by contacting Cary Pilon of the Division's Engineering Section at (303) 692-3552).

Schedule for Option B (Construction of a New Wastewater Treatment Facility)

- a. By February 29, 2008, Johnson's Corner, Inc. shall submit to the Division an executed copy of a contract with a Professional Engineer registered with the State of Colorado to design a new wastewater treatment facility, apply for preliminary effluent limitations, take the steps necessary to secure the necessary funding, and prepare a facility plan and amendment to the North Front Range Water Quality Planning Association 208 plan.
- b. If district formation is, in part or in whole a mechanism that will be utilized to secure funding, Johnson's Corner, Inc. shall submit to the Division by, February 29, 2008, a written discussion of the district formation process and a time schedule for formation of the special district, including the anticipated date of any election required for such formation.
- c. By July 1, 2008, Johnson's Corner, Inc. shall submit to the Division evidence that a completed site application has been submitted to the local review agencies for review and recommendations.

- d. By September 1, 2008, Johnson's Corner, Inc. shall submit a completed site application package (which includes a site approval application with original signatures and one full copy, and the associated site application and design review fees) to the Division for review following Section 22.5 of "Site Location and Design Approval Regulations for Domestic Wastewater Treatment Works, Regulation #22 (5 CCR 1002-22)" ("Regulation 22") and document the steps have been taken to secure the necessary funding. If this involves the formation of a special district, the date of the election must be provided.
  - e. Within thirty (30) days following issuance of site approval by the Division, Johnson's Corner, Inc. shall submit to the Division a process design report ("PDR") that meets the requirements in specified in the "Design Criteria Considered in the Review of Wastewater Treatment Facilities Policy 96-1".
  - f. Within thirty (30) days following issuance of site approval by the Division, Johnson's Corner, Inc. shall submit to the Division a completed application for a CDPS discharge permit for the new wastewater treatment facility.
  - g. Within thirty (30) days of Division approval of the PDR, Johnson's Corner, Inc. shall submit final design documentation (final plans and specifications) that meet the requirements of "Design Criteria Considered in the Review of Wastewater Treatment Facilities Policy 96-1" to the Division for review.
  - h. By October 1, 2009, Johnson's Corner, Inc. shall resolve all outstanding deficiencies and violations associated with the Facility by completing construction and achieving operational status of a new facility in compliance with all applicable permit effluent limits.
27. Within ten (10) calendar days following a date identified in the compliance schedules set forth in paragraph 26, Johnson's Corner, Inc. shall submit to the Division a written notice of compliance or noncompliance with the deadline.
28. By February 15, 2008, Johnson's Corner, Inc. shall submit an evaluation of options for reducing loading to the Facility to the rated organic capacity of 89.4 lbs. BOD<sub>5</sub>/day, the costs associated with the options and the amount of time necessary to implement measures to reduce loading. A time schedule for implementation of the recommended alternative shall be provided with this submittal and Johnson's Corner, Inc. shall comply with the time schedule as submitted unless notified by the Division, in written form, that an alternate schedule is appropriate.
29. Beginning immediately and lasting until construction of Option A or Option B has been completed, Johnson's Corner, Inc. shall not allow any additional wastewater contributions into its wastewater collection system or directly to the Facility from domestic or commercial sources. This prohibition may be lifted by the Division, but only in written form, prior to completion of all actions outlined in Option A or Option B if Johnson's Corner, Inc.: 1) successfully demonstrates that reduced organic contributions from existing sources when combined with those from a potential new source(s) would not result in an organic loadings above 89.4 lbs. BOD<sub>5</sub>/day (via a minimum of three consecutive months of influent loading at or below 89.4 lbs. BOD<sub>5</sub>/day); 2) has complied with all interim deadlines and other

requirements of this Cease and Desist Order; 3) demonstrates that deadlines for remaining activities will be met; and, 4) demonstrates (via a minimum of three consecutive months of effluent data) that it can consistently achieve compliance with permit effluent limits.

30. Johnson's Corner, Inc. will provide the Division with written notification of initiation of organic load reduction mechanisms within ten (10) days of their completion. On the date of this written notification, Johnson's Corner, Inc. shall begin monitoring influent BOD<sub>5</sub> at the Permit designated influent monitoring point to the Facility on a weekly basis. Samples shall be collected as follows: 1) in accordance with standard monitoring practices; 2) flow-weighted, 24-hour composites representative of the loading contributed by residential and commercial users (and on representative production or occupancy dates); 3) analyzed according to EPA approved analytical techniques for wastewater; and, 4) taken on different days of the week including at least one weekend (Saturday/Sunday) per month. All individual sample results of this increased monitoring are to be attached to and used in calculations for the monthly DMRs. This increased monitoring shall continue until otherwise notified in written form by the Division.
31. Beginning March 1, 2008 and every ninety (90) days thereafter, until otherwise notified by the Division in written form, submit progress reports to the Division. Each report shall be in written form and, at a minimum, shall describe the activities undertaken in the previous ninety (90) days in the effort to achieve both short- and long-term compliance with the permit. Additionally, the report shall specify what activities will be undertaken within the next ninety (90) days.
32. If Johnson's Corner, Inc. becomes aware that it will be unable to comply with any time-frame set forth by this order or otherwise communicated by Johnson's Corner, Inc, Johnson's Corner, Inc. shall provide written notice to the Division within ten (10) days of the becoming aware of the circumstances. The notice shall describe what, if any, impacts will occur on remaining activities and time-frames and what steps are being taken to mitigate those impacts.

### **NOTICES AND SUBMITTALS**

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, Johnson's Corner, Inc. shall submit an original and one copy to the Division at the following address:

Colorado Department of Public Health and Environment  
Water Quality Control Division / WQCD-B2  
Compliance Assurance and Data Management Section  
Attention: Ginny Torrez  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

For any person submitting documents, plans, records and reports pursuant to this Notice of Violation / Cease and Desist 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**

Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11(A) you are 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.

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). 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.

Both the answer and the request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

### **FALSIFICATION AND TAMPERING**

Be advised, in accord with §25-8-610, C.R.S., that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Colorado Water Quality Control Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

### **POTENTIAL CIVIL AND CRIMINAL PENALTIES**

You are also advised that any person who violates any provision of the Colorado Water Quality Control Act (the “Act”), §§25-8-101 to 703, 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 ten thousand dollars per day for each day during which such violation 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 Notice of Violation / Cease and Desist 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**

Pursuant to §25-8-601, C.R.S., you are 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.

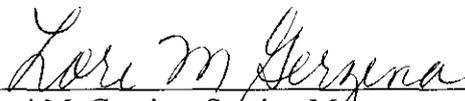
**EFFECT OF ORDER**

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 the State.

For further clarification of your rights and obligations under this Notice of Violation / Cease and Desist Order you are advised to consult the Colorado Water Quality Control Act, §§25-8-101 to 703, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 21<sup>st</sup> day of January, 2008.

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

  
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Lori M. Gerzina, Section Manager  
Compliance Assurance and Data Management Section  
WATER QUALITY CONTROL DIVISION