COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST ORDER **NUMBER: MO-080328-1**

IN THE MATTER OF: **TOWN OF DEL NORTE**
CDPS PERMIT NO. CO-0020281
RIO GRANDE COUNTY, COLORADO

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:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the violations cited herein, the Town of Del Norte ("Del Norte") was a municipality as defined by §31-1-101(6), C.R.S.

2. Del Norte 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. Del Norte owns and/or operates a wastewater treatment facility (the "Facility") located in the Southeast ¼ of Section 29 and the Southwest ¼ of the Southwest ¼ of Section 28, Township 40 North, Range 6 East of the New Mexico Principal Meridian, Rio Grande County, Colorado.

4. The Facility is the subject of the Colorado Discharge Permit System, Permit No. CO-0020281 (the "Permit"). The latest renewal of the Permit became effective January 1, 2007 and is due to expire December 31, 2011 (the "Permit").

5. The Permit authorizes Del Norte to discharge treated wastewater from the Facility through Outfall 001A into Oxbow Lake and the Rio Grande River. The discharge is subject to the specific effluent limitations and other conditions as reflected in the Permit.

6. Oxbow Lake and the Rio Grande River are "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (101).

7. Section 61.8, 5 CCR 1002-61, states in part that "A permittee must comply with all the terms and conditions of the permit."

8. In response to reported r effluent BOD_5 results similar to those cited below, the Division issued Del Norte a Notice of Violation / Cease and Desist Order on March 19, 2004 (Number: MO-040319-1). Division records establish that Del Norte has not fully complied with the requirements of the March 19, 2004 action.

Quality of the Discharge

9. Pursuant to the requirements of the Permit, Del Norte collects specific samples a point described in the Permit as Outfall 001A, following chlorine disinfection and prior to mixing with an unnamed slough, tributary to the Rio Grande River.

10. The analytical results of the samples collected at Outfall 001A are summarized and reported to the Division via monthly discharge monitoring reports ("DMRs") which include a certification by Del Norte that the information provided therein is true, accurate and complete, to the knowledge and belief of Del Norte.

11. The DMRs for the months of January 2007 through December 2007 include, in addition to other data not subject of this action, the following effluent concentration data for BOD_5 and fecal coliform.

EFFLUENT SELF-MONITORING DATA		
DMR REPORTING PERIOD AND PARAMETER	**REPORTED 30-DAY AVERAGE**	**REPORTED MAXIMUM 7-DAY AVERAGE**
BOD_5 (mg/l)	**LIMIT = 30 mg/l**	**LIMIT = 45mg/l**
January 1-January 31, 2007	62	62
February 1-February 28, 2007	53	53
March 1-March 31, 2007	36	-
April 1-April 31, 2007	33	-
July 1-July 31, 2007	31	-
October 1-October 31, 2007	44	-
November 1-November 30, 2007	42	-
December 1-December 31, 2007	37	-
February 1-February 29, 2008	35	-

FECAL COLIFORM (#/100ml)	LIMIT 2,000/100ml	LIMIT 4,000/100ml
February 1-February 28, 2007	> 240,000	> 240,000
January 1-January 29, 2008	2,600	-

12. BOD_5 and fecal coliform are "pollutants" as defined by §25-8-103(15), C.R.S.

Compliance Schedule

13. The Permit, in Part I.A.7.a, contains a compliance schedule for meeting a more restrictive pH limit that will become effective January 1, 2009. The pertinent part of the permit reads as follows:
"Due to a change to the pH limitation for this facility, the permittee will need to determine how to meet the pH limit of 6.5 to 9.0. The permittee is to submit a plan detailing how the pH limit will be met by January 1, 2008."

14. Division records establish that Del Norte has not submitted a plan detailing how the pH limit will be met.

15. The Permit, in Part I.A.7.b, contains a compliance schedule for meeting more restrictive effluent limitations for ammonia, total residual chlorine ("TRC") and fecal coliform that become effective December 1, 2011. The pertinent part of the permit reads as follows:

"Hire a professional engineer and submit a document that outlines the options available to the facility for meeting the ammonia, TRC and fecal coliform limitations, including cost analysis and treatment requirements by January 1, 2008."

16. Division records establish that Del Norte did not hire an engineer until February 21, 2008 and has failed to submit a document outlining the options, including a cost analysis and treatment requirements, for meeting the ammonia, TRC and fecal coliform effluent limitations.

17. The Permit, in Part I.A.7.c, contains a compliance schedule for determining the linear properties of the facility's treatment lagoons. The pertinent part of the permit reads as follows:

"The permittee is to hire a professional, certified engineer to perform testing on the seepage rate of the treatment lagoons by September 1, 2007."

18. Division records establish that Del Norte did not hire an engineer to perform the seepage rate testing until February 21, 2008.

19. The Permit, in Part I.A.7.d, contains a compliance schedule for determining inconsistencies between influent and effluent flow measurements. The pertinent part of the permit reads as follows:

"The permitee is to determine the source of the inconsistencies between the influent and effluent flow measurements. A likely cause is either a malfunction of the influent meter, or that there is not a recorder on the effluent flume. This may be tied to the infiltration study and linear properties to be investigated

in Part IA.7.b. The permittee is to determine the accuracy of the influent measurement device. The permittee is also to install a recording device for the effluent flow measurement. This should be completed by October 1, 2007."

20. Division records establish that Del Norte has not determined the inconsistencies between the influent and effluent flow measurement nor has it installed an effluent flow measurement and recording device.

21. The Permit, in Part I.A.7.e, contains a compliance schedule for determining the hydraulic capacity of the Facility. The pertinent part of the permit reads as follows:

    "The permitee is to determine the hydraulic capacity of the facility. This study is to include hydraulic capacity (MGD) and daily organic loading capacity (lbs/BOD_5/day). A progress report detailing the work completed on the hydraulic capacity study is due by October 1, 2007."

22. Division records establish that Del Norte has not submitted the progress report due by October 1, 2007.

NOTICE OF VIOLATION

Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that the Del Norte has violated the following sections of the Permit.

23. The 30-day average effluent BOD_5 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 A.5 of the Permit.

24. The maximum 7-day average effluent BOD_5 concentrations listed in paragraph 11 of the Findings of Fact and Conclusions of Law constitute violations of the maximum 7-day average effluent concentration limit of 45 mg/l established by Part I, Section A.5 of the Permit.

25. The 30-day average effluent fecal coliform 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 2,000/100ml established by Part I, Section A.5 of the Permit.

26. The maximum 7-day average effluent fecal coliform concentration listed in paragraph 11 of the Findings of Fact and Conclusions of Law constitutes violation of the maximum 7-day average effluent concentration limit of 4,000/100ml established by Part I, Section A.5 of the Permit.

27. Failure to submit, by January 1, 2008, a plan detailing how the pH limitations will met be as described in paragraphs 13 and 14 of the Findings of Fact and Conclusions of Law constitutes violation of Part I.A.7.a of the Permit.

28. Failure to hire a professional engineer and submit a document outlining options for meeting the ammonia, TRC and fecal coliform limitations by January 1, 2008 as described in paragraphs 15 and 16 of the Findings of Fact and Conclusions of Law constitutes violation of Part I.A.7.b of the Permit.

29. Failure to hire, by September 1, 2007, a professional certified engineer to perform testing on the seepage rate of the Facility's lagoons as described in paragraphs 17 and 18 of the Findings of Fact and Conclusions of Law constitutes violation of Part I.A.7.c of the Permit.

30. Failure to determine the source of the inconsistencies between the influent and effluent flow measurements and install an effluent flow measurement recording device by October 1, 2007 as described in paragraphs 19 and 20 of the Findings of Fact and Conclusions of Law constitutes violation of Part I.A.7.d of the Permit.

31. Failure to submit a progress report detailing the work completed on the hydraulic capacity study by October 1, 2007 as described in paragraphs 21 and 22 of the Findings of Fact and Conclusions of Law constitutes violation of Part I.A.7.e of the Permit.

REQUIRED CORRECTIVE ACTION

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

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

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

33. By May 31, 2008, submit a final report identifying the source/cause of the inconsistencies between the influent and effluent flow measurements.

34. Comply with the following schedule for installation of an effluent flow recording device. This effort shall include any work necessary to ensure that the flow measurement is accurate to within ten (10) percent of the actual flows exiting the facility.

    a. By May 1, 2008, submit equipment specifications and installation schematics to the Division for review.

    b. By July 15, 2008 complete installation.

35. Comply with the following schedule for complying with the more restrictive effluent limits contained in the Permit:

    a. By July 30, 2008, submit a plan outlining options and defining the chosen alternative achieving compliance with the more restrictive effluent pH limitations of 6.5 (daily minimum)-9.0 (daily maximum) s.u. which become effective January 1, 2009.

    b. By August 15, 2008, submit a plan prepared by a professional engineer outlining options and defining the chosen alternative for achieving compliance with the more restrictive effluent limits

of 1.1 mg/l to 6.3 mg/l (30-day average) and 5.4 to 12 mg/l (daily maximum) for ammonia, of 0.011 mg/l (30-day average) and 0.19 mg/l (daily maximum) for total residual chlorine and of 200/100ml (30-day average) and 400/100ml (7-day average) for fecal coliform which become effective December 1, 2011. The plan may be combined with the plan required by item 35.a above but must be submitted by the earlier deadline stated in paragraph 35.a. The plan must include a schedule for major milestones associated with enabling the compliance measure to be completed and fully functional prior to December 1, 2011. If the chosen alternative is construction of a facility upgrade or relocation of the outfall, major milestones shall include, but not necessarily be limited to, matters such as resolving any water rights issues or contractual arrangements regarding the use of the effluent, obtaining funding, securing site location approval from the Division, completing any necessary design work, securing design approval from the Division and for initiating and completing any necessary construction.

36. By September 30, 2008, complete all remaining work on the Facility upgrade project initiated in the fall of 2006; have all treatment components of the Facility fully functional; and, submit written notification to the Division advising that the project has been fully completed.

37. By September 1, 2008, submit a final report on testing to determine the linear properties of the Facility's treatment lagoons. The report must identify whether the linear permeability is less than $1x10^{-6}$ centimeters per second.

38. By June 1, 2009, complete and submit to the Division an evaluation that determines the hydraulic (in MGD) and organic (in lbs/BOD_5/day) capacities of the Facility. If the findings of this evaluation are that the actual capacity of the Facility is different that the rated capacities of 1.38 MGD and 414 lbs/BOD_5/day or if a reduction in the rated capacity is tied to any compliance recommendation submitted in response to any component of this Notice of Violation and Cease and Desist Order, the appropriately completed site approval application is to be filed with the Division by December 31, 2009.

39. Del Norte shall submit quarterly progress reports to the Division outlining efforts taken to achieve and maintain compliance with this Order. The first report shall be submitted to the Division on or before June 15, 2008. At a minimum, each report shall outline activities undertaken in the current reporting period and planned activities for the next three (3) months to remain in compliance with this Order. The quarterly progress reports shall be required until the issuance of written notice from the Division indicating that the reports are no longer necessary.

40. If Del Norte becomes aware of any situation or circumstances that cause Del Norte to become unable to comply with any condition or time schedules set forth by this Order, Del Norte shall provide written notice to the Division within five (5) calendar days of Del Norte becoming aware of such circumstances. Del Norte's notice shall describe what, if any, impacts will occur on Del Norte's ability to comply with the Colorado Water Quality Control Act 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.

41. 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 thirty (30) calendar days of receiving Division comments on submitted

documents, Del Norte shall revise the submitted document(s) to properly address the Division's comments and resubmit the document(s) for Division review.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, Del Norte 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 such entities or 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 28th day of March, 2008.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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