



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

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: MO-080331-1

IN THE MATTER OF: ASPEN CONSOLIDATED SANITATION DISTRICT
CDPS PERMIT NO. CO-0026387
PITKIN 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 Aspen Consolidated Sanitation District (the "District") was a "Special District" formed pursuant to §§32-1-101 to 32-1-1702 C.R.S. in Pitkin County, Colorado.
2. The District 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. The District owns and/or operates a wastewater treatment facility (the "Facility") located northwest of the City of Aspen off of Highway 82 and in the Northeast ¼, Southeast ¼, Section 34, Township 9 South, Range 85 West, 6th Principal Meridian, Pitkin County, Colorado.
4. The Facility is the subject of the Colorado Discharge Permit System, Permit No. CO-0026387 (the "Permit"). The latest renewal of the Permit became effective February 1, 2000 and was due to expire January 31, 2006 at which time it was administratively extended until a renewal is issued.
5. The Permit authorizes the District to discharge treated wastewater from the Facility through Outfall 001A into the Roaring Fork River. The discharge is subject to the specific effluent limitations and other conditions as reflected in the Permit.
6. The Roaring Fork River 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).

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.”

Quality of the Discharge

8. Pursuant to the Permit requirements, the District collects samples at a location described in the Permit as Outfall 001A, following the chlorine contact chamber but prior to entering the Roaring Fork River.
9. 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 the District that the information provided therein is true, accurate and complete, to the knowledge and belief of the District.
10. The DMRs for the months of April 2007 through February 2008 include, in addition to other data not subject of this action, the following effluent concentration data for BOD₅, total suspended solids (“TSS”), total ammonia and fecal coliform. BOD₅ and TSS removal percentages are also included.

EFFLUENT SELF-MONITORING DATA		
DMR REPORTING PERIOD AND PARAMETER	REPORTED 30-DAY AVERAGE	REPORTED MAXIMUM 7-DAY AVERAGE
BOD₅ (mg/l)	LIMIT = 20 mg/l	LIMIT = 30 mg/l
April 1-April 30, 2007	-	48
June 1-June 30, 2007	24	46
November 1-November 30, 2007	22	68
January 1-January 31, 2008	21	-
February 1-February 29, 2008	86	162
BOD₅ Removal (in %)	LIMIT = 85 % (minimum)	N/A
February 1-February 29, 2008	74	-
TSS (mg/l)	LIMIT = 20 mg/l	LIMIT = 30 mg/l
April 1-April 30, 2007	-	38
June 1-June 30, 2007	-	39
February 1-February 29, 2008	91	165
TSS Removal (in %)	LIMIT = 85 % (minimum)	N/A
February 1-February 29, 2008	72	-
FECAL COLIFORM (#/100ml)	LIMIT 2,900/100ml	LIMIT 5,800/100ml
December 1-December 31, 2007	-	15,199
January 1-January 31, 2008	-	82,462
February 1-February 29, 2008	5,712	50,646

EFFLUENT SELF-MONITORING DATA (Continued)		
DMR REPORTING PERIOD AND PARAMETER	REPORTED 30-DAY AVERAGE	REPORTED DAILY MAXIMUM
TOTAL AMMONIA AS N (mg/l)	LIMIT = 1.6 mg/l-14 mg/l (shown in parenthesis)	LIMIT = 8.6 mg/l-30 mg/l
March 1-March 31, 2007	2.5 (1.6)	-
September 1-September 30, 2007	9.6 (5.4)	-
October 1-October 31, 2007	3.8 (3.7)	-
November 1-November 30, 2007	4.4 (3.3)	-
December 1-December 31, 2007	9.9 (8.2)	-

11. BOD₅, fecal coliform, total suspended solids and total ammonia are “pollutants” as defined by §25-8-103(15), C.R.S.

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 District has violated the following sections of the Permit.

12. The 30-day average effluent BOD₅ concentrations listed in paragraph 10 of the Findings of Fact and Conclusions of Law constitute violations of the 30-day average effluent concentration limit of 20 mg/l established by Part I, Section A.5 of the Permit.
13. The maximum 7-day average effluent BOD₅ concentrations listed in paragraph 10 of the Findings of Fact and Conclusions of Law constitute violations of the maximum 7-day average effluent concentration limit of 30 mg/l established by Part I, Section A.5 of the Permit.
14. The 30-day average BOD removal percentage listed in paragraph 10 of the Findings of Fact and Conclusions of Law constitutes violation of the minimum monthly removal requirement of 85 percent established by Part I, Section A.6 of the Permit.
15. The 30-day average effluent TSS concentrations listed in paragraph 10 of the Findings of Fact and Conclusions of Law constitute violations of the 30-day average effluent concentration limit of 20 mg/l established by Part I, Section A.5 of the Permit.
16. The maximum 7-day average effluent TSS concentrations listed in paragraph 10 of the Findings of Fact and Conclusions of Law constitute violations of the maximum 7-day average effluent concentration limit of 30 mg/l established by Part I, Section A.5 of the Permit.

17. The 30-day average TSS removal percentage listed in paragraph 10 of the Findings of Fact and Conclusions of Law constitutes violation of the minimum monthly removal requirement of 85 percent established by Part I, Section A.6 of the Permit.
18. The 30-day average effluent fecal coliform concentration listed in paragraph 10 of the Findings of Fact and Conclusions of Law constitutes violation of the 30-day average effluent concentration limit of 2,900/100ml established by Part I, Section A.5 of the Permit.
19. The maximum 7-day average effluent fecal coliform concentrations listed in paragraph 10 of the Findings of Fact and Conclusions of Law constitute violations of the maximum 7-day average effluent concentration limit of 5,800/100ml established by Part I, Section A.5 of the Permit.
20. The 30-day average effluent total ammonia as nitrogen concentrations listed in paragraph 10 of the Findings of Fact constitute violations of the respective 30-day average effluent concentration limits of 1.6 mg/l (March), 5.4 mg/l (September), 3.7 mg/l (October), 3.3 mg/l (November), 1.6 (December) established by Part I.A.5 of the Permit and clarified on page 8 of the Permit's Summary of Rationale.

REQUIRED CORRECTIVE ACTION

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

21. 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 the District to comply with the following specific terms and conditions of this Order:

22. By May 1, 2008, submit an action plan to the Division outlining measures necessary to ensure that consistent compliance with permit effluent limits is achieved and maintained by the District in the interim period prior to completion of all treatment components of the Facility upgrade currently underway. In developing the action plan, the District should evaluate, in addition to other measures, process control enhancements, design modification, treatment train changes, general and specific facility operations and maintenance modifications, and professional consultation. The plan shall include a time schedule for initiation and completion of each identified measures and an estimate of time required for the action to result in improved effluent quality. The proposed activities and completion schedules submitted shall become a condition of this order and the District 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.
23. By May 15, 2008, submit a report to the Division explaining what measures the District undertook in advance of initiation of construction of the Facility upgrade to ensure effluent compliance was not compromised as a result of construction activities. The report shall include, but not necessarily be limited to discussion of measures such as construction phasing to minimize treatment impacts, advance

training for operations staff, contingencies for treatment emergencies, retention of additional staff, and alternate treatment options.

24. By May 31, 2008, submit to the Division a schedule for completing the Facility upgrade. The schedule shall include timelines for completion of each of the various components of the upgrade.
25. The District shall submit monthly 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 April 15, 2008. At a minimum, each report shall outline activities completed in the previous thirty (30) days and activities planned for the next thirty (30) days to remain in compliance with this Order. The monthly progress reports shall be required until the issuance of written notice by the Division indicating that the reports are no longer necessary.
26. If the District becomes aware of any situation or circumstances that cause the District to become unable to comply with any condition or time schedules set forth by this Order, the District shall provide written notice to the Division within five (5) calendar days of the District becoming aware of such circumstances. The District's notice shall describe what, if any, impacts will occur on the District'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.
27. 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, the District 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, The District 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.

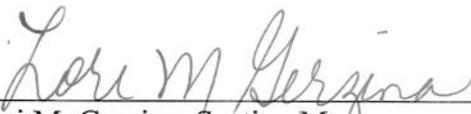
EFFECT OF ORDER

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 31st 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