

STATE OF COLORADO

Bill Ritter, Jr., Governor
James B. Martin, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department
of Public Health
and Environment

February 9, 2009

Mr. Kevin Petersen, General Manager
Cherokee Metropolitan District
6250 Palmer Park Blvd.
Colorado Springs, CO 80915

RE: Compliance Order on Consent, Number: MC-090209-5

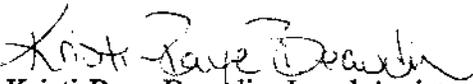
Dear Mr. Petersen:

Enclosed for Cherokee Metropolitan District's records you will find your copy, with original signatures, of the recently executed Compliance Order on Consent.

Please remember that this agreement is subject to a thirty-day public comment period (paragraph 26). Upon initiation, if the Division receives any comments during this period we will contact your office to discuss. Also, please be advised that the first page of the Order was changed in order to place the assigned Order Number on the final document.

If you have any questions, please don't hesitate to contact Ginny Torrez at (303) 692-3612 or by electronic mail at gabby.torrez@state.co.us.

Sincerely,


Kristi-Raye Beaudin, Legal Assistant
Water Quality Protection Section
WATER QUALITY CONTROL DIVISION

cc: El Paso County Department of Health and Environment
MS-3 File

cc: Aaron Urdiales, EPA Region VIII
Tim Vrudny, Engineering Section, CDPHE
Dave Knope, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Gary Beers, Permits Unit, CDPHE
Carolyn Schachterle, OPA

Enclosure(s)



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

COMPLIANCE ORDER ON CONSENT

NUMBER: MC-090209-5

**IN THE MATTER OF: CHEROKEE METROPOLITAN DISTRICT
 CDPS PERMIT NO. CO-0024457
 EL PASO COUNTY, COLORADO**

The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under §25-8-605, C.R.S. of the Colorado Water Quality Control Act ("the Act") §§ 25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of the Cherokee Metropolitan District ("Cherokee"). The Division and Cherokee may be referred to collectively as "the Parties."

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order are to resolve, without litigation, the alleged violations cited herein by the Division and the associated civil penalties.

DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §25-8-602 and 605, C.R.S., the Division has made the following determinations regarding Cherokee, the Facility and Cherokee's compliance with its CDPS Permit, the Act and its implementing regulations.
3. At all times relevant to the violations cited herein, the Cherokee Metropolitan District ("Cherokee") was a "Special District" formed pursuant to §§32-1-101 to 32-1-1702 C.R.S. in El Paso County, Colorado.
4. Cherokee is a "person" as defined by §25-8-103(13), C.R.S.
5. Cherokee owns and/or operates a wastewater treatment facility (the "Facility"), located in the West ½, Northeast ¼, Section 18, Township 14 South, Range 65 West, 6th Principal Meridian, El Paso County, Colorado.

6. The Facility is the subject of the Colorado Discharge Permit System, Permit No. CO-0024457 (the "Permit"). The latest renewal of the Permit became effective July 1, 2007 and is due to expire June 30, 2012 (the "Current Permit"). The prior renewal of the Permit was in effect during the period of March 1, 2003 through June 30, 2007 (the "Previous Permit").
7. The Previous Permit and the Current Permit authorize Cherokee to discharge treated wastewater from the Facility through Outfall 001A into the East Fork of Sand Creek. The discharge is subject to the specific effluent limitations and other conditions as reflected in the respective renewal of the Permit.
8. The East Fork of Sand Creek 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).
9. Section 61.8, 5 CCR 1002-61, states in part that "A permittee must comply with all the terms and conditions of the permit."

Failure to Comply with Permit Effluent Limitations

10. Pursuant to Part I, A.5. and Part I.A.6.b of the Previous Permit and Part I.A.5 and Part 1.A.6 of the Current Permit, the discharge from the Facility at outfall 001A should not have exceeded, among other parameters and limitations not listed herein, the effluent limitations specified below:

Effluent Parameters	Discharge Limitations			
	30-Day Average	7-Day Average	Monthly Minimum	Daily Maximum
5-Day Carbonaceous Biochemical Oxygen Demand ("CBOD ₅ ") (in mg/l)	25	40	-	-
CBOD ₅ Removal (in %)	-	-	85%	-
Fecal Coliform (in #/100ml)	2,000	4,000	-	-
Total Residual Chlorine (in mg/l)	-	-	-	0.5

11. Pursuant to the requirements of the Previous Permit and the Current Permit, to provide an indication of the quality of the wastewater discharged into the East Fork of Sand Creek, Cherokee collected specific samples of the effluent.
12. The analytical results of the effluent samples are summarized and reported to the Division via monthly discharge monitoring reports ("DMRs") which include a certification by Cherokee that the information provided therein is true, accurate and complete, to the knowledge and belief of Cherokee.
13. The DMRs for the months of May 2006 through February 2008 include, in addition to other data not subject of this action, the following data for CBOD, CBOD removal, fecal coliform and total residual

chlorine which exceeds the effluent limitations for outfall 001A imposed by the Current Permit and the Previous Permit.

EFFLUENT SELF-MONITORING DATA			
DMR REPORTING PERIOD	30-DAY AVERAGE	MAXIMUM 7-DAY AVERAGE	DAILY MAXIMUM
CBOD (in mg/l)	LIMIT = 25 mg/l	LIMIT = 40 mg/l	N/A
April 1-April 30, 2007	31	-	-
May 1-May 31, 2007	37	-	-
June 1-June 30, 2007	38	44	-
August 1-August 31, 2007	28	-	-
February 1-February 29, 2008	33	-	-
CBOD REMOVAL (in %)	LIMIT - 85%	N/A	N/A
May 1-May 31, 2007	82	-	-
June 1-June 30, 2007	82	-	-
FECAL COLIFORM (in #/100ml)	LIMIT = 2,000/100ml	LIMIT = 4,000/100ml	N/A
February 1-February 28, 2007	2,770	-	-
June 1-June 30, 2007	3,872	13,845	-
July 1-July 31, 2007	-	22,484	-
TOTAL RESIDUAL CHLORINE (in mg/l)	N/A	N/A	LIMIT - 0.5 mg/l
May 1-May 31, 2006	-	-	0.57
June 1-June 30, 2006	-	-	0.97

14. CBOD₅, CBOD₅ Removal, fecal coliform and total residual chlorine are "pollutants", or indicators thereof, as defined by §25-8-103(15), C.R.S. and its implementing permit regulation 5 CCR 1002-61, §61.2(76).
15. Outfall 001A is a "point source" as defined by §25-8-103(14), C.R.S. and its implementing permit regulation 5 CCR 1002-61, §61.2(75).
16. Cherokee's discharges identified above in paragraph 13 in excess of permit limitations constitute a "Discharge of Pollutants" as defined by section 25-8-103(3), C.R.S.

17. Division records establish that the Previous Permit and the Current Permit did not authorize the pollutant discharge levels identified above in paragraph 13 and Cherokee does not have any other permits authorizing such discharge into State Waters.
18. Cherokee's discharges in excess of permit limitations, as identified above in paragraph 13, constitute violations of Part I, A.5. and Part I.A.6.b of the Previous Permit and Part I.A.5 and Part 1.A.6 of the Current Permit.
19. On November 19, 2007 the Division issued a Notice of Violation / Cease and Desist Order citing Cherokee with violations of the effluent limits contained in the Previous Permit and the Current Permit.
20. The Division acknowledges that Cherokee satisfactorily performed all of the obligations and actions required under the November 19, 2007, Notice of Violation / Cease and Desist Order (Number: MC-071119-1).

ORDER AND AGREEMENT

21. Based on the foregoing factual and legal determinations, pursuant to its authority under §25-8-602 and 605, C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein and in the Notice of Violation / Cease and Desist (Number: MC-071119-1), the Division orders Cherokee to comply with all provisions of this Consent Order, including all requirements set forth below.
22. Cherokee agrees to the terms and conditions of this Consent Order. Cherokee agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§ 25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. Cherokee also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Cherokee against the Division:
 - a. The issuance of this Consent Order;
 - b. The factual and legal determinations made by the Division herein; and
 - c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.
23. Notwithstanding the above, Cherokee does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Cherokee pursuant to this Consent Order shall not constitute evidence of fault by Cherokee with respect to the conditions of the Facility.

CIVIL PENALTY

24. Based upon the application of the Division's Civil Penalty Policy (May 1, 1993), and consistent with Departmental policies for violations of the Act, Cherokee shall pay Eighty Thousand and Eighty Two

Dollars (\$80,082.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the Eighty Thousand and Eighty Two Dollar (\$80,082.00) civil penalty for the above violations. Cherokee further agrees to pay the penalty in three equal installments of Twenty Six Thousand Six Hundred Ninety Four Dollars (\$26,694.00) due April 15, 2009, April 15, 2010 and April 15, 2011. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

Ginny Torrez
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CADM-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

SCOPE AND EFFECT OF CONSENT ORDER

25. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the violations cited herein and a full and final settlement of the civil penalties associated with the violations alleged herein and in the November 19, 2007 Notice of Violation / Cease and Desist Order (Number: MC-071119-1).
26. This Consent Order is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and Cherokee each reserve the right to withdraw consent to this Consent Order if comments received during the thirty-day period result in any proposed modification to the Consent Order.
27. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or his designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by Cherokee, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.
28. Notwithstanding paragraph 23 above, the violations described in this Consent Order will constitute part of Cherokee's compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against Cherokee. Cherokee agrees not to challenge the use of the cited violations for any such purpose.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

29. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to the specific instances of violations cited herein and with respect to civil penalties for the specific instances of violations cited herein and in the November 19, 2007 Notice of Violation / Cease and Desist Order ((Number: MC-071119-1). The

Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.

30. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
31. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.
32. Upon the effective date of this Consent Order, Cherokee releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act specifically addressed herein.

NOTICES

33. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-CADM-B2
Attention: Ginny Torrez
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303.692.3612
E-mail: ginny.torrez@state.co.us

For Cherokee:

Mr. Kevin Petersen, General Manager
Cherokee Metropolitan District
6250 Palmer Park Blvd.
Colorado Springs, CO 80915

MODIFICATIONS

34. This Consent Order may be modified only upon mutual written agreement of the Parties.

NOTICE OF EFFECTIVE DATE

35. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or his designee imposes the civil penalty. If the penalty as described in

this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

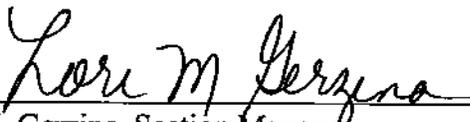
BINDING EFFECT AND AUTHORIZATION TO SIGN

36. This Consent Order is binding upon Cherokee and its elected officials, employees, agents, representatives, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. Cherokee agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

FOR THE CHEROKEE METROPOLITAN DISTRICT:


_____ Date: 1.12.09
Kevin Petersen, General Manager

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, WATER QUALITY CONTROL DIVISION:


_____ Date: 2/5/09
Lori M. Gerzina, Section Manager
Compliance Assurance and Data Management Section
WATER QUALITY CONTROL DIVISION