

# 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

March 18, 2009

Justin Clifton, Town Manager  
Town of Bayfield  
P.O. Box 80  
Bayfield, CO 81122

**RE: Compliance Order on Consent, Number: MC-090318-2**

Dear Mr. Clifton:

Enclosed for the Town of Bayfield 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 47). 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 [ginny.torrez@state.co.us](mailto:ginny.torrez@state.co.us).

Sincerely,

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

cc: San Juan Basin Health Department  
MS-3 File

ec: Aaron Urdiales, EPA Region VIII  
Greg Brand, 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**

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**COMPLIANCE ORDER ON CONSENT**

**NUMBER: MC-090318-2**

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**IN THE MATTER OF: TOWN OF BAYFIELD**  
**CDPS PERMIT NO. CO-0020273**  
**LA PLATA COUNTY, COLORADO**

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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 Town of Bayfield (the "Town"). The Division and the Town may be referred to collectively as "the Parties."

**STATEMENT OF PURPOSE**

1. The mutual objective of the Parties in entering into this Consent Order is to resolve, without litigation, the civil penalties associated with the alleged violations cited herein and in the Notice of Violation and Cease and Desist Order (Number MO-060328-1a) issued to the Bayfield Sanitation District (the "District") on March 28, 2006 (the "NOV/CDO").

**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 Bayfield Sanitation District, the Town of Bayfield, the Facility and the District and the Town's compliance with the Act and its implementing regulations.
3. At all times relevant to the violations cited herein for the period of January 1, 2005 through April 22, 2008 the Bayfield Sanitation District was a "Special District" formed pursuant to §§32-1-101 to 32-1-1702 C.R.S. in La Plata County, Colorado.
4. At all times relevant to the violations cited here in for the period of April 23 through June 30, 2008, the Town of Bayfield was a "municipality" as defined by §31-1-106(6) C.R.S.

5. Effective April 23, 2008, the La Plata County District Court approved a Plan for Dissolution Agreement between the District and the Town and dissolved the District. Pursuant to the Plan for Dissolution Agreement, the Town agreed to assume all responsibilities and liabilities of the District and continues to provide wastewater collection and treatment services previously carried out by the District.
6. The Town and the District (prior to its dissolution) are each a "person" as defined by the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
7. The District (prior to its dissolution) owned and operated a wastewater treatment facility located in the East ½ of the Northeast ¼ of Section 14, Township 34 North, Range 7 West, New Mexico Principal Meridian, La Plata County, Colorado (the "Facility"). Effective April 23, 2008, the Town assumed ownership and direct operation of the Facility.
8. The Facility is a "domestic wastewater treatment works" as defined by §25-8-103(5), C.R.S.
9. The Facility has been the subject of Colorado Discharge Permit System Permit, Permit No. CO-0020273 (the "Previous Permit") which became effective January 1, 2001 and was due to expire December 31, 2005 at which time it was extended until a renewal permit could be issued. The renewal permit became effective September 29, 2006 and is due to expire October 31, 2011 (the "Current Permit").
10. The Previous Permit and the Current Permit were held by the District until February 7, 2008 at which time the Current Permit was transferred, upon request, to the Town.
11. The treatment components of the Facility are aerated ponds, a polishing pond, a sand filter system, chlorination and dechlorination.
12. The Previous Permit and the Current Permit authorize the holder of the permit to discharge wastewater from Outfall 001A of the Facility into the Los Pinos River subject to the specific effluent limitations and other conditions specified therein.
13. All activities, reports, conditions, requirements, violations, etc., referenced herein apply to the District prior to its dissolution. The activities, reports, conditions, requirements, violations, etc., referenced herein subsequent to the District's dissolution apply to the Town.

Failure to Comply with Permit Effluent Limitations

14. Pursuant to Part I, Section A.5, Part I.A.6.b of the Previous Permit and Part I.B7.b 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 Biochemical Oxygen Demand ("BOD <sub>5</sub> ") (in mg/l)	30 mg/l	45 mg/l	-	-

BOD5 Removal (in %)	-	-	85%	-
Total Ammonia as N. (in mg/l)	15.5 (in effect until September 29, 2006)/10.9 (May 2008)	-	-	-
Total Suspended Solids ("TSS") Removal (in %)	-	-	85	-
Total Residual Chlorine (in mg/l)	0.15 (effective September 29, 2006)	-	-	0.15 (effective September 29, 2006)

15. 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 Los Pinos River, the District and the Town have collected specific samples of the effluent.
16. 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 the District or the Town that the information provided therein is true, accurate and complete, to the knowledge and belief of the District or the Town as appropriate.
17. The DMRs for the months of April 2005 through May 2008 include, in addition to other data not subject of this action, the following data for BOD, BOD removal, TSS Removal, Total Ammonia as N, and Total Residual Chlorine which exceed 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 OR DAILY MAXIMUM	MAXIMUM 7-DAY AVERAGE
<b>BOD (in mg/l)</b>	<b>30-DAY AVERAGE LIMIT = 30 mg/l</b>	<b>LIMIT = 45 mg/l</b>
August 1-August 31, 2005	37	56
December 1-December 31, 2006	40.44	59
January 1-January 31, 2007	45.9	60.45
May 1-May 31, 2007	31.5	55
<b>BOD REMOVAL (in %)</b>	<b>30-DAY AVERAGE LIMIT - 85%</b>	<b>N/A</b>
August 1-August 31, 2005	79.4	-
September 1-September 30, 2005	79	-

<b>TOTAL AMMONIA AS NITROGEN (in mg/l)</b>	<b>30-DAY AVERAGE LIMIT = 15.5 mg/l (2005-2006); 10.9 mg/l (May 2008)</b>	<b>N/A</b>
May 1-May 31, 2005	19.0	-
May 1-May 31, 2006	19.8	-
May 1-May 31, 2008	14.2	-
<b>TSS REMOVAL (in %)</b>	<b>30-DAY AVERAGE LIMIT – 85%</b>	<b>N/A</b>
April 1-April 30, 2005	75.1	-
July 1-July 31, 2005	82.2	-
December 1-December 31, 2005	83.1	-
March 1-March 31, 2006	70	-
May 1-May 31, 2006	81	-
June 1-June 30, 2006	68	-
<b>TOTAL RESIDUAL CHLORINE (in mg/l)</b>	<b>DAILY MAXIMUM LIMIT – 0.15 mg/l</b>	<b>N/A</b>
February 1-February 28, 2007	0.22	-

18. BOD<sub>5</sub>, BOD<sub>5</sub> Removal, TSS Removal, Total Ammonia as N 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).
19. 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).
20. The District’s and the Town’s discharges identified above in paragraph 17 in excess of permit limitations constitute a “Discharge of Pollutants” as defined by section 25-8-103(3), C.R.S.
21. Division records establish that the Previous Permit and the Current Permit did not authorize the pollutant discharge levels identified above in paragraph 17 and the District or the Town did not have any other permits authorizing such discharge into State Waters.
22. The District’s and the Town’s discharges in excess of permit limitations, as identified above in paragraph 17, constitute violations of Part I, Section A.5 and Part I, Section A.6 of the Previous Permit and Part I.A.5 of the Current Permit.

Failure to Comply with Expansion Requirements

26. Part I, Section A.2 of the Previous Permit specified an organic design capacity of 470 lbs. BOD<sub>5</sub>/day for the Facility is. The Current Permit specifies an organic design capacity of 600 lbs. BOD<sub>5</sub>/day reflecting the increased capacity obtained by the District on April 27, 2006.
27. The Previous Permit and the Current Permit, in Part I, Section A.3, state 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.
28. Pursuant to the requirements of the Previous Permit and the Current Permit, the District, and subsequently the Town, collected certain samples at the influent to the Facility. The analytical results of the influent samples are summarized and reported to the Division via the monthly DMRs. The analytical results of the influent BOD monitoring, as summarized on the DMRs for January 2005 through June 2008 are as follows:

<b>REPORTING PERIOD</b>	<b>30-DAY AVERAGE LOADING (in lbs./day)</b>
January 1-January 31, 2005	401
February 1-February 28, 2005	347
March 1-March 31, 2005	462
April 1-April 30, 2005	402.5
May 1-May 31, 2005	515.6
June 1-June 30, 2005	761
July 1-July 31, 2005	764
August 1-August 31, 2005	647
September 1-September 30, 2005	331
October 1-October 31, 2005	428.5
November 1-November 30, 2005	364.4

December 1-December 31, 2005	467
January 1-January 31, 2006	466.8
February 1-February 28, 2006	369
March 1-March 31, 2006	276
April 1-April 30, 2006	385
May 1-May 31, 2006	469.62
June 1-June 30, 2006	586.62
July 1-July 31, 2006	697
August 1-August 31, 2006	1,751
September 1-September 30, 2006	1,326.9
October 1-October 31, 2006	631
November 1-November 30, 2006	568
December 1-December 31, 2006	611
January 1-January 31, 2007	828
February 1-February 28, 2007	1,247
March 1-March 31, 2007	641
April 1-April 30, 2007	1,034
May 1-May 31, 2007	1,350
June 1-June 30, 2007	878
July 1-July 31, 2007	553
August 1-August 31, 2007	646
September 1-September 30, 2007	895
October 1-October 31, 2007	879
November 1-November 30, 2007	778
December 1-December 31, 2007	1,692
January 1-January 31, 2008	941
February 1-February 28, 2008	684

March 1-March 31, 2008	618
April 1-April 30, 2008	494
May 1-May 31, 2008	522
June 1-June 30, 2008	176

29. The results listed in paragraph 28 above demonstrate that the District, and subsequently the Town, have exceeded eighty (80), ninety-five (95) and one hundred (100) percent of the 30-day average organic design capacity of the Facility.
30. Prior to receipt of the Notice of Violation and Cease and Desist Order (Number MO-060328-1a), the District did not cease the issuance of building permits or sewer connection permits within its service area nor did it make provisions for the municipalities within the service area to cease issuance of building permits within the service area.
31. The Town awarded a contract for construction of a new expanded facility on June 14, 2008.
32. 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 A.3 of the Previous Permit and the Current Permit.
33. The District's failure to cease the issuance of building permits or sewer connections which have the effect of increasing the input of sewage to the wastewater treatment works when ninety-five (95) percent of the respective organic design capacity of the Facility was reached constitutes violation of Part I, Section A.3 of the Previous Permit and the Current Permit.

### **ORDER AND AGREEMENT**

34. 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 and Cease and Desist Order (Number MO-060328-1a) issued to the District on March 28, 2006, the Division orders the Town to comply with all provisions of this Consent Order, including all requirements set forth below.
35. The Town agrees to the terms and conditions of this Consent Order. The Town 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. The Town also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by the Town 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.
36. Notwithstanding the above, the Parties, acknowledge and agree that, although the Plan for Dissolution Agreement between the Town and the District establishes that the Town will accept all liability for the District, the Facility was actually owned, operated and maintained by the District at all times pertinent to the allegations stated herein. By necessity, the Town has undertaken the operation of the Facility, and does not admit to any factual, legal or other determination made by the Division herein. The Town specifically denies any fault related to the determinations made herein. The Town's decision to enter into this agreement is made as an economic decision in the best financial interests of the Town, and shall not in any way constitute an admission of any type of wrongdoing or omissions or other evidence of fault of any type by the Town or any of its elected officials, agents, employees or representatives.

### SUPPLEMENTAL ENVIRONMENTAL PROJECTS

37. Based upon the application of the Division's Civil Penalty Policy (May 1, 1993), and consistent with Departmental policies for violations of the Act, the Division has determined that a penalty of Eighty Two Thousand Seven Hundred Dollars (\$82,700.00) is appropriate for the violations cited herein and in the Notice of Violation and Cease and Desist Order (Number MO-060328-1a) issued to the District on March 28, 2006.
38. Through the application of the criteria set forth in the Colorado Department of Public Health and Environment's Final Agency-Wide Policy on Settling Administrative and/or Civil Penalties Against Eligible Governmental Entities, the Division has determined the entire penalty can be mitigated through the completion of a Supplemental Environmental Project ("SEP") identified by the Town and which is valued at Eighty Two Thousand Seven Hundred Dollars (\$82,700.00).
  - a. The Town shall construct and operate a staffed, central refuse recycling drop-off center for use by the citizenry of Bayfield and the surrounding area.
39. The Town shall not deduct the expenses associated with the implementation of the above-described SEP for any tax purpose or otherwise obtain any favorable tax treatment of such payment or project. Likewise the Town shall not charge fees to offset or recover the cost of construction of the central refuse recycling drop-off center. Provided however, nothing contained herein shall limit the Town's authority to impose any fee or charge for the use of the facility or to use revenues from any source deemed necessary or appropriate to support the operation, maintenance or improvement of the recycling drop off center.
40. The Town hereby certifies that, as of the date of this Consent Order, it is not under any existing legal obligation to perform or develop the SEP. The Town further certifies that it has not received, and will not receive, credit in any other enforcement action for the SEP. In the event that the Town has, or will receive credit under any other legal obligation for the SEP, the Town shall pay Eighty Two Thousand Seven Hundred Dollars (\$82,700.00) to the Division as a civil penalty within thirty (30) calendar days of receipt of a demand for payment by the Division. 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:

Ms. 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

41. The SEP must be completed to the satisfaction of the Division, no later than December 31, 2010 and must be operated for the useful life of the SEP. The Parties acknowledge that the provisions of this agreement shall be subject to the provisions of Article X, Section 20 of the Colorado Constitution commonly known as the Taxpayers Bill of Rights, and any obligation of the Town to expend funds under the terms of this agreement shall be subject to the legal appropriation of funds by the Town for such purpose for the year in which expenditures are to be made. Notwithstanding the above, the Parties agree that the terms of this agreement are fully binding. In the event that the Town fails to comply with any of the terms or provisions of this Consent Order relating to the performance of the SEP, shall be liable for penalties as follows:
  - a. Payment of a penalty in the amount of Eighty Two Thousand Seven Hundred Dollars (\$82,700.00). The Division, in its sole discretion, may elect to reduce this penalty for environmental benefits created by the partial performance of the SEP.
  - b. The Town shall pay this penalty within thirty (30) calendar days of receipt of written demand by the Division. Method of payment shall be as specified in paragraph 40 above.
42. The Town shall submit a SEP Completion Report to the Division within 45 days of completion of the SEP or February 15, 2011 whichever is first. The SEP Completion Report shall contain the following information:
  - a. a detailed description of the SEP as implemented;
  - b. A description of any operating problems encountered and the solutions thereto;
  - c. Itemized costs, documented by copies of purchase orders and receipts or canceled checks;
  - d. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Order; and
  - e. A description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible).
43. Failure to submit the SEP Completion Report with the required information, or any periodic report, shall be deemed a violation of this Consent Order.
44. The Town shall provide notice to the public that the recycling drop off center is being funded and constructed as a SEP under the terms of this agreement. That notice shall include a press release that includes language to notify the public that the project was undertaken in connection with the settlement of an enforcement action taken by the Division for violations of the Colorado Water Quality Control Act.

Additional notices may be provided at the time of the completion of the facility by signage at the facility or by notices in the Town newsletter or similar outlets.

### **SCOPE AND EFFECT OF CONSENT ORDER**

45. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations alleged herein and in the Notice of Violation and Cease and Desist Order (Number MO-060328-1a) issued to the District on March 28, 2006.
46. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the violations cited herein and the civil penalties associated therewith.
47. 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 the Town 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.
48. This Consent Order constitutes a final agency order or action upon a determination by the Division following the public comment period. Any violation of the provisions of this Consent Order by the Town, 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.
49. Notwithstanding paragraph 36 above, the violations described in this Consent Order will constitute part of the Town'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 the Town. The Town agrees not to challenge the use of the cited violations for any such purpose.
50. This Consent Order does not relieve the Town from complying with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Division makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

### **LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY**

51. 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 civil penalties for the specific instances of violations cited herein and in the Notice of Violation and Cease and Desist Order (Number MO-060328-1a) issued to the District on March 28, 2006. 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.

52. The Parties agree that the Division has delineated herein all alleged effluent violations at Facility covered by CDPS Permit CO-0020273 which were known at the time of this agreement and that the terms of this agreement are intended to be a resolution of all issues related to those alleged effluent violations. To the extent other violations become known after the date of this agreement, then the terms of this agreement shall not limit any authority of the Division to pursue future enforcement actions related to those incidents.
53. 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.
54. Upon the effective date of this Consent Order, the Town 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.
55. The Town shall not seek to hold the State of Colorado or its employees, agents or representatives liable for any injuries or damages to persons or property resulting from acts or omissions of the Town, or those acting for or on behalf of the Town, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. The Town shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by the Town in carrying out activities pursuant to this Consent Order. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, the District or the Town, or their elected officials, employees, agents or representatives.

#### **SITE ACCESS**

56. The Division shall be permitted to oversee any and all work being performed under this Consent Order. The Division shall be permitted access to the Facility property and the site of the SEP at any time work is being conducted pursuant to this Consent Order, and during reasonable business hours during any period work is not being conducted, for the purposes of determining the Town's compliance with the Act, the Regulations, and this Consent Order. The Division shall be permitted to inspect work sites, operating and field logs, contracts, purchasing/shipping records, and other relevant records and documents relating to this Consent Order or any requirement under this Consent Order and to interview the Town personnel and contractors performing work required by this Consent Order. Nothing in this paragraph limits or impairs the Division's statutory authorities to enter and inspect the Facility.

#### **FORCE MAJEURE**

57. The Town shall perform the requirements of this Consent Order within the schedules and time limits set forth herein and in any approved plan unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of the Town, and which cannot be overcome by due diligence.

58. Within seventy-two (72) hours of the time that the Town knows or has reason to know of the occurrence of any event which the Town has reason to believe may prevent the Town from timely compliance with any requirement under this Consent Order, the Town shall provide verbal notification to the Division. Within seven (7) calendar days of the time that the Town knows or has reason to know of the occurrence of such event, the Town shall submit to the Division a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.
59. The burden of proving that any delay was caused by a force majeure shall at all times rest with the Town. If the Division agrees that a force majeure has occurred, the Division will so notify the Town. The Division will also approve or disapprove of the Town's proposed actions for mitigating the delay. If the Division does not agree that a force majeure has occurred, or if the Division disapproves of the Town's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to the Town. Within fifteen (15) calendar days of receipt of the explanation, the Town may file an objection.
60. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Consent Order is found to have been delayed by a force majeure, the Town shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

### NOTICES

61. 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](mailto:ginny.torrez@state.co.us)

For the Town of Bayfield:

Justin Clifton, Town Manager  
Town of Bayfield  
P.O. Box 80  
Bayfield, CO 81122

## MODIFICATIONS

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

## COMPLETION OF REQUIRED ACTIONS

63. The Town shall submit a Notice of Completion to the Division upon satisfactory completion of all requirements of this Consent Order. The Division shall either accept or reject the Town's Notice of Completion in writing within thirty (30) calendar days of receipt. If the Division rejects the Town's Notice of Completion, it shall include in its notice a statement identifying the requirements that the Division considers incomplete or not satisfactorily performed and a schedule for completion. The Town shall, within fifteen (15) calendar days of receipt of the Division's rejection, either:
- a. Submit a notice of acceptance of the determination; or
  - b. Submit a notice of dispute.

If the Town fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

64. If the Town files any notice of dispute pursuant to paragraph 63 the notice shall specify the particular matters in the Division's determination that the Town seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by the Town. The Division and the Town shall have thirty (30) calendar days from the receipt by the Division of the notification of dispute to reach an agreement. If agreement cannot be reached on all issues within this thirty (30) calendar day period, the Division shall confirm or modify its decision within an additional fourteen (14) calendar days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act and the Colorado State Administrative Procedures Act, §§ 24-4-101 through 108, C.R.S.

## NOTICE OF EFFECTIVE DATE

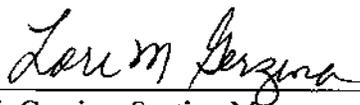
65. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon notice from the Division following the closure of the public comment period referenced in paragraph 47.

## BINDING EFFECT AND AUTHORIZATION TO SIGN

66. This Consent Order is binding upon the Town its assigns, or successors in interest. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. The Town 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 COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, WATER QUALITY CONTROL DIVISION:**



Date: 3/13/09

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

**FOR THE TOWN OF BAYFIELD**



Date: \_\_\_\_\_

Dr. Rick Smith, Mayor