

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

July 28, 2009

Alan Urban
City of Rocky Ford
203 South Main
Rocky Ford, Colorado 81067

RE: Compliance Order on Consent, Number: DC-090727-1

Dear Mr. Urban:

Enclosed for City of Rocky Ford'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 29). 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 Kelly Morgan at (303) 692-3634 or by electronic mail at kelly.morgan@state.co.us.

Sincerely,

Kelly Morgan
Compliance Assurance Section
Enforcement Unit
WATER QUALITY CONTROL DIVISION

cc: Otero County Department of Health
MS-3 File

ec: Aaron Urdiales, EPA Region VIII
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: DC-090727-1

**IN THE MATTER OF: CITY OF ROCK FORD
 CDPS PERMIT NO. CO-0023850
 OTERO 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 §25-8-602 and 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 City of Rocky Ford. The Division and the City of Rocky Ford 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 and in the Notice of Violation / Cease and Desist Order (Number: DO-061027-1) that the Division issued to the City of Rocky Ford on October 27, 2006 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 the City of Rocky Ford and the City of Rocky Ford's compliance with the Act and its implementing permit regulations.
3. At all times relevant to the violations cited herein, the City of Rocky Ford was a municipality as defined by §31-1-101(6), C.R.S.
4. The City of Rocky Ford is a "person" as defined by §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).

5. The City of Rocky Ford owns and operates a domestic wastewater treatment works located in the NE ¼, Section 8, T23S, R56W, 6th P.M., northeast of Rocky Ford on Road 20.5, Otero County, Colorado (the "Facility").
6. The Facility is the subject of Colorado Discharge Permit System Permit, Permit No. CO-0023850 (the "Permit") which became effective August 1, 2002 and has since been administratively extended until a renewal permit is issued. The Permit authorizes the City of Rocky Ford to discharge treated wastewater from the Facility through outfall 001A to an unnamed drainage ditch which is a tributary to the Arkansas River, in accordance with effluent limitations, monitoring requirements, and other conditions set forth in the Permit.
7. The Arkansas River is a "state water" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (101).
8. Pursuant to Part I.D.2. of the Permit, the City of Rocky Ford is required to report monthly monitoring results on Discharge Monitoring Reports ("DMRs"). The Division must receive these DMRs no later than the 28th day of the following month.
9. Division records, as provided by the City of Rocky Ford and supplemented by the discharge monitoring reports, establish that the City of Rocky Ford failed to submit DMRs on time for the following monitoring periods:

City of Rocky Ford EFFLUENT SELF MONITORING DATA		
DISCHARGE MONITORING REPORT END DATE	DISCHARGE MONITORING REPORT DUE	DISCHARGE MONITORING REPORT RECEIVED
December 31, 2004	January 28, 2005	February 7, 2005
February 28, 2005	March 28, 2005	May 24, 2005
March 31, 2005	April 28, 2005	June 6, 2005
April 30, 2005	May 28, 2005	July 11, 2005
May 31, 2005	June 28, 2005	August 15, 2005
June 30, 2005	July 28, 2005	August 26, 2005
September 30, 2005	October 28, 2005	November 21, 2005
October 31, 2005	November 28, 2005	December 19, 2005
November 30, 2005	December 28, 2005	January 17, 2006
December 31, 2005	January 28, 2006	April 3, 2006
January 31, 2006	February 28, 2006	April 10, 2006
February 28, 2006	March 28, 2006	May 15, 2006
March 31, 2006	April 28, 2006	June 1, 2006
April 30, 2006	May 28, 2006	August 22, 2006
May 31, 2006	June 28, 2006	August 30, 2006
June 30, 2006	July 28, 2006	September 25, 2006
July 31, 2006	August 28, 2006	Not Received

10. The City of Rocky Ford's failure to submit DMRs by the appropriate due date, as identified above in paragraph 9, constitute violations of Part I.D.2. of the Permit.

11. The Division acknowledges that the City of Rocky Ford satisfactorily performed all of the obligations and actions required under the October 27, 2006, Notice of Violation / Cease and Desist Order (Number: DO-061027-1).

ORDER AND AGREEMENT

12. 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 alleged violations cited herein and in the Notice of Violation / Cease and Desist Order (Number: DO-061027-1), the Division orders the City of Rocky Ford to comply with all provisions of this Consent Order, including all requirements set forth below.
13. The City of Rocky Ford agrees to the terms and conditions of this Consent Order. The City of Rocky Ford 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 City of Rocky Ford also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by the City of Rocky Ford 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.
14. Notwithstanding the above, the City of Rocky Ford does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by the City of Rocky Ford pursuant to this Consent Order shall not constitute evidence of fault by the City of Rocky Ford with respect to the conditions of the Facility.

Compliance Requirements

15. The City of Rocky Ford shall immediately implement measures to maintain compliance with the Colorado Water Quality Control Act and the terms and conditions of the Permit. (CDPS Permit No. CO-0023850)
16. Within thirty (30) calendar days of receipt of this Order, the City of Rocky Ford shall submit to the Division a detailed written statement outlining the standard procedures the City of Rocky Ford has and will undertake to ensure that adequate management and reporting systems that comply with the terms and conditions of the Permit are fully implemented at the Facility and appropriate staff is trained accordingly. The statement should also specifically include certification that the City of Rocky Ford has reviewed and understands the Reporting provision of Part I.D.2 of the Permit.

CIVIL PENALTY AND SUPPLEMENTAL ENVIRONMENTAL PROJECTS

17. 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 Eleven Thousand Dollars (\$11,000.00) is appropriate for the violations cited herein and in the Notice of Violation / Cease and Desist (Number: DO-061027-1).
18. 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 City of Rocky Ford and which is valued at Eleven Thousand Dollars (\$11,000.00).
19. In anticipation of this settlement and in order to achieve resolution of this matter, the City of Rocky Ford spent Eleven Thousand Dollars (\$11,000.00) in the form of expenditures on a SEP, as described below in paragraph 20, which the Parties agreed secured significant environmental or public health protection and improvements.
20. The City of Rocky Ford preformed a Household Hazardous Waste collection event, held on July 19, 2008. During the event, the City of Rocky Ford collected paints, thinners, solvents, fuels, cleaners, aerosols, pesticides, fertilizers, herbicides, poisons, automotive related fuels electronic waste, and batteries. The City of Rocky Ford properly disposed of and provided the signed off manifest from the designated disposal facility for the following items:
 - 1) Pesticides/ Herbicides liquids (one 20 gallon drum)
 - 2) Aerosols (one 20 gallon drum)
 - 3) Corrosives- Base (one five gallon pail)
 - 4) Corrosives-Acids (one five gallon pail)
 - 5) Batteries Wet Lead Acid (four hundred twenty {420} pounds)
 - 6) Batteries Alkaline mixed types (one five gallon pail)
 - 7) Latex based paints (three CYB)
 - 8) Oil based paints (one CYB)
 - 9) Caustic Alkali liquids (one five gallon pail)
 - 10) Computer Monitors (four total)
21. The City of Rocky Ford has not and will 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.
22. The City of Rocky Ford hereby certifies that, as of the date of this Consent Order, it was not under any existing legal obligation to perform or develop the SEP and did so solely in support of this settlement. The City of Rocky Ford further certifies that it did not receive, and will not receive, credit in any other enforcement action for the SEP. In the event that the City of Rocky Ford has, or will receive credit under any other legal obligation for the SEP, the City of Rocky Ford shall pay Eleven Thousand Dollars (\$11,000.00) 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:

Kelly Morgan
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

23. The City of Rocky Ford satisfactorily submitted a SEP Completion Report to the Division January 23, 2009. The SEP Completion Report included 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).
27. The City of Rocky Ford shall include the following language in any future public statement, oral or written, making reference to the SEP: "This project was undertaken in connection with the settlement of an enforcement action taken by the Colorado Department of Public Health and Environment for violations of the Colorado Water Quality Control Act."

SCOPE AND EFFECT OF CONSENT ORDER

28. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the violations alleged herein and in the October 27, 2006 Notice of Violation / Cease and Desist Order (Number: DO-061027-1), specifically including the associated civil penalties.
29. 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 City of Rocky Ford 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.
30. This Consent Order constitutes a final agency order or action upon execution by the City of Rocky Ford and the Division. Any violation of the provisions of this Consent Order by the City of Rocky Ford, 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.
31. Notwithstanding paragraph 14 above, the violations described in this Consent Order will constitute part of the City of Rocky Ford'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 City of Rocky Ford. The City of Rocky Ford agrees not to challenge the use of the cited violations for any such purpose.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

32. 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 in the October 27, 2006 Notice of Violation / Cease and Desist Order (Number: DO-061027-1). 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.
33. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
34. 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.
35. Upon the effective date of this Consent Order, the City of Rocky Ford 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.
36. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

NOTICES

37. 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: Kelly Morgan
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303.692.3634
E-mail: kelly.morgan@state.co.us

For The City of Rocky Ford:

Dan Hyatt, City Manager
203 South Main
Rocky Ford, Colorado
Telephone: 719.254.7414
E-mail: dhyatt@ci.rocky-ford.co.us

MODIFICATIONS

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

COMPLETION OF REQUIRED ACTIONS

39. The City of Rocky Ford 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 City of Rocky Ford's Notice of Completion in writing within thirty (30) calendar days of receipt. If the Division rejects the City of Rocky Ford'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 City of Rocky Ford 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 City of Rocky Ford fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

40. If the City of Rocky Ford files any notice of dispute pursuant to paragraph 39 the notice shall specify the particular matters in the Division's determination that the City of Rocky Ford seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by the City of Rocky Ford. The Division and the City of Rocky Ford 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

41. 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 29.

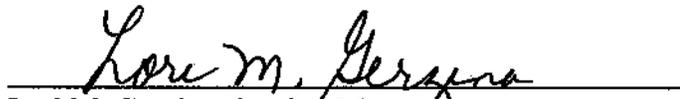
BINDING EFFECT AND AUTHORIZATION TO SIGN

42. This Consent Order is binding upon the City of Rocky Ford 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. The City of Rocky Ford 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 CITY OF ROCKY FORD:

 _____ Date: 7-14-09
Dan Hyatt, City Manager

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

 _____ Date: 7-27-09
Lori M. Gerzina, Section Manager
Compliance Assurance and Data Management Section
WATER QUALITY CONTROL DIVISION