

# 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 13, 2009

Town of Crowley  
Attention: Norene Aydelotte  
Box 36  
Crowley, CO 81033

Certified Mail Number: 7007 0220 0001 0160 5924

**RE: Service of Notice of Violation/Cease and Desist Order, Number: MO-090213-2**

Dear Norene Aydelotte:

The Town of Crowley is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). This NOV/CDO is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §§25-8-602 and 25-8-605, C.R.S. of the *Colorado Water Quality Control Act*, (the "Act"). The Division bases this NOV/CDO upon findings that the Town of Crowley has violated the Act, and/or [CO-0041599] regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

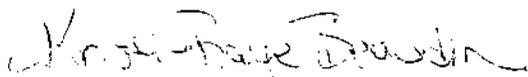
Pursuant to §25-8-603, C.R.S., the Town of Crowley is required, within thirty (30) calendar days of issuance of this NOV/CDO, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

This action could result in the imposition of civil penalties. The Division is authorized pursuant to §25-8-608, C.R.S. to impose a penalty of \$10,000 per day for each day during which such violation occurs.

Please be advised that the Division is continuing its investigation into this matter and the Division may identify supplementary violations that warrant amendments to this NOV/CDO or the issuance of additional enforcement actions.

Should you or representatives of the Town of Crowley desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO, please do not hesitate to contact Ginny Torrez of this office by phone 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  
Compliance Assurance and Data Management Section  
WATER QUALITY CONTROL DIVISION

cc: Otero County Health Department  
MS-3 File

cc: 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**  
**DIVISION OF ADMINISTRATION**  
**WATER QUALITY CONTROL DIVISION**

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**NOTICE OF VIOLATION / CEASE AND DESIST ORDER**

**NUMBER: MO-090213-2**

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**IN THE MATTER OF:     TOWN OF CROWLEY**  
**CDPS PERMIT NO. CO-0041599**  
**CROWLEY COUNTY, COLORADO**

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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 Crowley ("Crowley") was a municipality as defined by §31-1-101(6), C.R.S.
2. Crowley 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. Crowley owns and/or operates a wastewater treatment facility located in the Southwest ¼ of the Southeast ¼ of Section 25, Township 21 South, Range 58 West of the Sixth Principal Meridian, Crowley County, Colorado (the "Facility").
4. The Facility is the subject of Colorado Discharge Permit System Permit, Permit No. CO-0041599 (the "Permit"). The Permit became effective on March 1, 2005 and is due to expire February 28, 2010.
5. The Permit specifies that Crowley is authorized to discharge effluent wastewater from the Facility through outfall 001A into the Crowley Drain Canal. A discharge to groundwater is also authorized and is monitored at groundwater monitoring wells 005B and 005C. The discharge is subject to the specific effluent limitations and other conditions of the Permit.
6. The Crowley Drain Canal and groundwater are "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (102).

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 Part I.A.5 and Part I.A.6 of the Permit, Crowley’s discharge at outfall 001A and at groundwater monitoring wells 050B and 050C shall not exceed, among others not subject of this Order, the effluent limitations specified below.

OUTFALL NUMBER/ GROUNDWATER MONITORING WELL	EFFLUENT PARAMETER	DISCHARGE LIMITATION		
		30-Day Average	7-Day Average	Instantaneous Minimum
001A	Fecal Coliform (#/100ml)	6,000	12,000	-
	BOD <sub>5</sub> Removal (%)	85	-	-
050B & 050C	Total Coliform (#100ml)	1.0/2.2*	-	-
	pH (s.u.)	-	-	6.5

\*Per the Summary of Rationale for the Permit, a limit of 1.0/100ml applies if the analysis used is the Membrane Filter Technique; 2.2/100ml applies if the Multiple-Tube Fermentation Technique is used for the analysis.

9. Pursuant to the requirements of Part I.B.2 of the Permit, to provide an indication of the quality of the wastewater discharged into the Crowley Drain Canal, Crowley collects specific samples of the effluent at outfall 001A and from groundwater monitoring wells 050B and 050C.
10. The analytical results of the samples collected at outfall 001A and groundwater monitoring wells 050B and 050C are summarized and reported to the Division via monthly DMRs which include a certification by Crowley that the information provided therein is true, accurate and complete, to the knowledge and belief of Crowley.
11. The DMRs for the months of January 2007 through December 2008 include, in addition to other data not subject of this action, the following effluent concentration data for fecal coliform, total coliform, nitrate plus nitrite and pH. BOD<sub>5</sub> removal data are also included.

DMR Reporting Period and Parameter	30-Day Average	7-Day Average	Instantaneous Minimum
<b>OUTFALL 001A</b>			
<b>BOD<sub>5</sub> (in mg/l)</b>	<b>Limit= 30 mg/l</b>	<b>Limit= 45 mg/l</b>	<b>N/A</b>
March 1-March 31, 2008	31.6	-	-
<b>BOD<sub>5</sub> Removal (in %)</b>	<b>Limit = 85 % (minimum)</b>	<b>N/A</b>	<b>N/A</b>
March 1-March 31, 2008	65.61	-	-

DWR Reporting Period and Parameter	1 Day Average	7 Day Average	Instantaneous Minimum
<b>Fecal Coliform (#/100ml)</b>	<b>Limit = 6,000 mg/l</b>	<b>Limit = 12,000 mg/l</b>	<b>N/A</b>
August 1-August 31, 2008	TNTC*	TNTC*	-
September 1-September 30, 2008	11,500	-	-
October 1-October 31, 2008	-	127,000	-
<b>GROUNDWATER MONITORING WELL 050B</b>			
<b>Nitrite plus Nitrate as N (mg/l)</b>	<b>N/A</b>	<b>N/A</b>	<b>Limit = 10 mg/l</b>
July 1-July 31, 2007	-	-	22.8
<b>GROUNDWATER MONITORING WELL 050C</b>			
<b>Total Coliform (#/100ml)</b>	<b>Limit = 1.0/2.2** #/100ml</b>	<b>N/A</b>	<b>N/A</b>
June 1-June 30, 2007	1.20***	-	-
August 1-August 31, 2007	23.00	-	-
September 1-September 30, 2007	7.40	-	-
<b>Nitrite plus Nitrate as N (mg/l)</b>	<b>N/A</b>	<b>N/A</b>	<b>Limit = 10 mg/l</b>
January 1-January 31, 2007	-	-	13.8
February 1-February 28, 2007	-	-	12.6
March 1-March 31, 2007	-	-	13.7
April 1-April 30, 2007	-	-	15.0
May 1-May 31, 2007	-	-	14.5
June 1-June 30, 2007	-	-	14.4
July 1-July 31, 2007	-	-	13.9
August 1-August 31, 2007	-	-	14.4
September 1-September 31, 2007	-	-	14.0
October 1-October 31, 2007	-	-	13.8
November 1-November 30, 2007	-	-	15.0
December 1-December 31, 2007	-	-	16.8
January 1-January 31, 2008	-	-	17.3
February 1-February 28, 2008	-	-	17.6
March 1-March 31, 2008	-	-	19.3
April 1-April 30, 2008	-	-	18.4
May 1-May 31, 2008	-	-	18.9

DMR Reporting Period and Sampling Date	30-day Average	30-day Average	Installation Minimum
June 1-June 30, 2008	-	-	17.0
July 1-July 31, 2008	-	-	18.3
August 1-August 31, 2008	-	-	16.9
September 1-September 31, 2008	-	-	16.5
October 1-October 31, 2008	-	-	16.9
November 1-November 30, 2008	-	-	17.4
December 1-December 31, 2008	-	-	16.5
<b>pH (in s.u.)</b>	<b>N/A</b>	<b>N/A</b>	<b>Limit = 6.5</b>
April 1-April 30, 2008	-	-	6.10

\*Too numerous to count.

\*\*Per the Summary of Rationale for the Permit, 1.0/100ml applies as the limit if the analysis used is the Membrane Filter Technique; 2.2/100ml applies if the Multiple-Tube Fermentation Technique is used for the analysis.

\*\*\*Reported as Membrane Filter Technique

12. BOD<sub>5</sub>, BOD<sub>5</sub> removal, fecal coliform, total coliform, total nitrite plus nitrate and pH are "pollutants" as defined by §25-8-103(15), C.R.S, or indicators thereof.
13. Crowley's failure to comply with the effluent limitations set forth above constitutes violations of Part I.A.5 and Part I.A.6 of the Permit.

#### Expansion Requirements

14. Part I, Section A.2 of the Permit specifies an organic design capacity of 475 lbs. BOD<sub>5</sub>/day for the Facility.
15. The Permit, in Part 1, Section A.3, states that 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.
16. Pursuant to the requirements of the Part I.B.1 of the Permit, Crowley collects 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 reflect, among other data, the following data as summarized on the DMRs:

REPORTING PERIOD	30-DAY AVERAGE LOADING (in lbs./day)
May 1-May 31, 2008	583.2
June 1-June 30, 2008	477.3

17. The results listed in paragraph 16 above demonstrate that Crowley has exceeded ninety-five (95) percent of the 30-day average organic design capacity of the Facility.
18. Crowley has not ceased the issuance of building permits or sewer connection permits within its service area.
19. 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 Permit.
20. Crowley'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 Permit.

### NOTICE OF VIOLATION

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

**Part I.A.5 of Permit No. CO-0041599** which states in part: "In accordance with the Water Quality Control Commission Regulations for Effluent Limitations, Section 62.4, and the Colorado Discharge Permit System Regulations, Section 61.8(2), the permitted discharge shall comply with the following limitations."

**Part I.A.6 of Permit No. CO-0041599** which states in part: "In addition to the concentration limitations on BOD<sub>5</sub> indicated above, the arithmetic mean of the BOD<sub>5</sub> concentrations for effluent samples collected during the calendar month shall demonstrate a minimum of eighty-five percent (85%) removal of BOD<sub>5</sub>, as measured..."

**Part I, Section A.3 of Permit No. CO-0041599** which states in part: "Whenever throughput and treatment reaches ninety-five (95) percent of the design capacity, the permittee shall commence construction of the necessary treatment expansion."

In the case of a domestic wastewater treatment works, which treats wastewater from users under the permittee's jurisdiction, where construction is not commenced in accordance with the above paragraph, the permittee shall cease the issuance of building permits within the service area until construction has commenced."

## REQUIRED CORRECTIVE ACTION

Based upon the foregoing factual and legal determinations and pursuant to §25-8-602 and §25-8-605, C.R.S., Crowley 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 Crowley to comply with the following specific terms and conditions of this Order:

22. Within thirty (30) days of the date of this Order, commence an engineering evaluation by a professional engineer registered in the State of Colorado to determine what short-term measures are necessary to ensure adequate treatment is provided such that fecal coliform and BOD<sub>5</sub> limits are met at Outfall 001A until such time as a long-term solution to all of Crowley's wastewater needs are in place. The evaluation shall include, but not be limited to an evaluation of the aeration equipment and its effectiveness in achieving BOD<sub>5</sub> compliance, the impacts of dissolved oxygen levels on chlorine demand and elevated fecal coliform, the feasibility of adding continuous chlorine monitoring and automatic chlorine control equipment as a measure to achieve consistent coliform compliance. Additionally, a time schedule for implementing the short-term measures shall be provided in the evaluation.
23. By April 1, 2009, provide the findings of the engineering evaluation conducted in response to paragraph 22 above.
24. By February 28, 2009, provide a detailed written discussion of efforts Crowley has undertaken to resolve its wastewater treatment needs including efforts to implement a resolution to the violations of the Permit since the Preliminary Engineering Report (the "PER") was submitted to the Division in May 2007. The summary shall include a detailed discussion as to why Crowley has not implemented the recommended alternative outlined in the PER and for which funding was secured. The discussion shall also identify those issues which remain to be resolved to allow completion of a wastewater project to correct the ongoing noncompliance and shall detail how and when those issues will be addressed and resolved.
25. By March 15, 2009, provide one of the following: 1) evidence that Crowley has instituted a resolution to cease the issuance of building permits until facility expansion is commenced; 2) a flow and loading analysis prepared by a professional engineer registered in the State of Colorado demonstrating that the organic (and hydraulic) loading to the Facility can be maintained below ninety-five (95) percent of the design capacities stated in the Permit until expansion of the Facility commences (the population and loading from the Arkansas Valley Correctional Facility should be included), or 3) a analysis prepared by a professional engineer registered in the State of Colorado demonstrating that the organic loading reported in May and June 2008 was an anomaly is not expected to recur prior to initiation of construction of expansion of the Facility.
26. By May 15, 2009, submit a detailed, written action plan to the Division outlining actions necessary to ensure that the long-term options for achieving consistent compliance with permit effluent limits are expeditiously implemented by Crowley. The plan shall include a time schedule for the various

components of the action plan (e.g., completing planning/design, securing funding, submitting site location approval application, initiating construction, completing construction). The proposed activities and completion schedules submitted shall become a condition of this Order and Crowley 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.

27. Crowley shall submit progress reports every two (2) months to the Division outlining efforts taken to achieve and maintain compliance with this Order. The first report shall be submitted on or before March 15, 2009. At a minimum, each report shall outline activities completed in the previous two (2) months and planned activities for the two (2) months to remain in compliance with this Order. The progress reports shall be required until the issuance of written notice from the Division indicating that the reports are no longer necessary.
28. If Crowley becomes aware of any situation or circumstances that cause Crowley to become unable to comply with any condition or time schedule set forth by this Order, Crowley shall provide written notice to the Division within five (5) calendar days of Crowley becoming aware of such circumstances. Crowley's notice shall describe what, if any, impacts will occur on Crowley's ability to comply with the Colorado Water Quality Control Act, the effluent limitations of the Permit, 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.
29. 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, Crowley 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, Crowley 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 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.

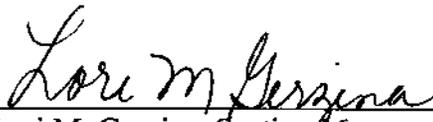
**EFFECT OF ORDER**

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 15<sup>th</sup> day of February, 2009.

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

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