

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

Attention: Steven Harrell, General Manager
Baca Grande Water and Sanitation District
PO Box 520
Crestone, CO 81131

Certified Mail Number: 7007 0220 0001 0160 5900

RE: Service of Notice of Violation/Cease and Desist Order, Number: MO-090209-4

Dear Mr. Harrell:

Baca Grande Water and Sanitation District 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 Baca Grande Water and Sanitation District has violated the Act, and/or [CO-0046914] regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

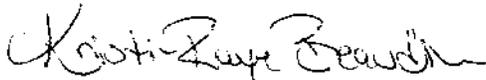
Pursuant to §25-8-603, C.R.S., Baca Grande Water and Sanitation District is required, within thirty (30) calendar days of issuance of this NOV/CDO, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

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 Baca Grande Water and Sanitation District 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.

Sincerely,



Kristi-Raye Beaudin, Legal Assistant
Compliance Assurance and Data Management Section
WATER QUALITY CONTROL DIVISION

- cc: Consumer Protection Division, CDPHE
MS-3 File
- ec: Aaron Urdiales, EPA Region VIII
Jocelyn Mullen, Engineering Section, CDPHE
Tim Vrudny, 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

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: MO-090209-4

IN THE MATTER OF: BACA GRANDE WATER AND SANITATION DISTRICT
ASPEN INSTITUTE WASTEWATER TREATMENT FACILITY
CDPS PERMIT NO. CO-0046914
SAGUACHE COUNTY, COLORADO

Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S.; which authority has been delegated to the Department's Water Quality Control Division (the "Division"), and pursuant to §§25-8-602 and 25-8-605, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the violations cited herein, the Baca Grande Water and Sanitation District ("the District") was a "Special District" formed in Saguache County, Colorado pursuant to the Special District Act, §§32-1-101 through 32-1-1702 C.R.S.
2. The District is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
3. The District owns and/or operates a wastewater treatment facility located in the Luis Maria Baca Grant #4, Township 43 North, Range 11 East, New Mexico Principal Meridian, Saguache County, Colorado (the "Facility").
4. The Facility is the subject of Colorado Discharge Permit System General Permit, Permit No. CO-0046914 (the "Permit"). The Permit became effective on March 1, 2005 and is due to expire February 28, 2010.
5. The Permit specifies that the District is authorized to discharge effluent wastewater from the Facility through Outfall 001A into an unnamed dry wash, tributary to South Crestone Creek. The discharge is subject to the specific effluent limitations and other conditions of the Permit.

6. The unnamed dry wash and South Crestone Creek are “state waters” as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (101).
7. Section 61.8, 5 CCR 1002-61, states in part that “A permittee must comply with all the terms and conditions of the permit.”

Quality of the Discharge

8. Pursuant to Part I.A.5 and Part I.A.6 of the Permit, the District’s discharge at outfall 001A shall not exceed the effluent limitations specified below.

EFFLUENT PARAMETER	DISCHARGE LIMITATION		
	30-Day Average	7-Day Average	Instantaneous Minimum
5-Day Biochemical Oxygen Demand (“BOD ₅ ”) (mg/l)	30	45	-
BOD ₅ Removal (%)	85	-	-
Fecal Coliform (#/100ml)	200	400	-
Total Suspended Solids (“TSS”) (mg/l)	30	45	-
TSS Removal (%)	85	-	-
Total Ammonia (mg/l)	3.4 (June)	-	-
	3.0 (July)	-	-
	2.2 (August)	-	-
	2.5 (October)	-	-
	3.8 (November)	-	-
pH (s.u.)	-	-	6.5

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 unnamed dry wash, tributary to South Crestone Creek, the District collects specific samples of the effluent.
10. The analytical results of the samples collected at Outfall 001A are summarized and reported to the Division via monthly DMRs which include a certification by the District that the information provided therein is true, accurate and complete, to the knowledge and belief of the District.
11. The DMRs for the months of February 2007 through November 2008 include, in addition to other data not subject of this action, the following effluent concentration data for BOD₅, TSS and fecal coliform, total ammonia and pH. BOD₅ and TSS removal data are also included.

BMR Reporting Period and Parameter	30-Day Average	7-Day Average	Instantaneous Minimum
BOD₅ (in mg/l)	Limit= 30 mg/l	Limit= 45 mg/l	N/A
July 1-July 31, 2007	77	77	-
June 1-June 30, 2008	52	52	-
October 1-October 31, 2008	31	-	-
BOD₅ Removal (in %)	Limit = 85 % (minimum)	N/A	N/A
July 1-July 31, 2007	63	-	-
June 1-June 30, 2008	74	-	-
October 1-October 31, 2008	75.2	-	-
TSS (in mg/l)	Limit = 30 mg/l	Limit = 45 mg/l	N/A
July 1-July 31, 2007	61	61	-
August 1-August 31, 2007	33	-	-
June 1-June 30, 2008	37	-	-
TSS Removal (in %)	Limit = 85 % (minimum)	N/A	N/A
February 1-February 28, 2007	70.8	-	-
July 1-July 31, 2007	66	-	-
June 1-June 30, 2008	83	-	-
FECAL COLIFORM (in #/100ml)	Limit = 200/100ml	Limit = 400/100ml	N/A
April 1-April 30, 2008	>200	>400	-
May 1-May 31, 2008	330	-	-
June 1-June 30, 2008	520	520	-
August 1-August 31, 2008	360	-	-
September 1-September 30, 2008	1,060	1,060	-
November 1-November 30, 2008	TNTC*	TNTC*	-

Total Ammonia (in mg/l)	Limit = 2.2 – 5.0 mg/l	N/A	N/A
June 1-June 30, 2008	6.5	-	-
July 1-July 31, 2008	11.4	-	-
August 1-August 31, 2008	5.0	-	-
October 1-October 31, 2008	20.2	-	-
November 1-November 30, 2008	7.4	-	-
pH (in s.u.)	N/A	N/A	Limit = 6.5
January 1-January 31, 2007	-	-	6.4
February 1-February 28, 2007	-	-	6.02
October 1-October 31, 2007	-	-	6.0
November 1-November 30, 2007	-	-	5.7
December 1-December 31, 2007	-	-	5.2
January 1-January 31, 2008	-	-	6.2
February 1-February 29, 2008	-	-	6.2
September 1-September 30, 2008	-	-	6.26
October 1-October 31, 2008	-	-	6.37

*Too numerous to count

12. BOD₅, fecal coliform, total suspended solids, total ammonia, pH, TSS Removal and BOD₅ Removal are “pollutants” as defined by §25-8-103(15), C.R.S., or indicators thereof.
13. The District’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.

Commencement of Construction Prior to Obtaining Site Location Approval

14. Pursuant to Section 22.8(2)(a) of Regulation No. 22, Site Location and Design Approval Regulations for Domestic Wastewater Treatment Works, an amendment to the site location approval is required for changes to the conditions reflected in an approved site application including the addition of a treatment process dealing with the liquid stream.
15. On September 20, 2002, the District submitted an application for site location approval for a new wastewater treatment system. The application listed the following processes for which approval was sought: grinder pump lift station followed by grit removal, influent flow metering sequencing batch reactor, post effluent equalization, ultraviolet radiation and effluent flow metering.
16. On July 23, 2003, the Division approved the District’s September 20, 2002 application for site location approval via the issuance Site Location Approval No. 4687 (the “Site Approval”).

17. No additional treatment processes beyond those described in the District's application for site location approval were included in the Site Approval issued by the Division.
18. Subsequent to the Site Approval, corresponding design approval was issued by the Division and the approved treatment system was constructed in 2004 and 2005.
19. No subsequent applications for site location approval, site location approval amendment (or design approval) have been filed by the District for this Facility nor has the Division issued any subsequent site location approvals or site location approval amendments.
20. In a letter dated May 30, 2008 responding to a Division issued Compliance Advisory regarding effluent violations, the District advised the Division that a system to apply magnesium hydroxide had been installed at the Facility.
21. The District did not obtain an amendment to the Site Approval prior installing the magnesium hydroxide treatment process.
22. The District's failure to obtain an amendment to the Site Approval for the magnesium hydroxide treatment process constitutes violation of the requirements Regulation No. 22, Site Location and Design Approval Regulations for Domestic Wastewater Treatment Works, Section 22.8(2)(a).

Commencement of Construction Prior to Obtaining Design Approval

23. Pursuant to Section 22.10(1), of Regulation No. 22, Site Location and Design Approval Regulations for Domestic Wastewater Treatment Works, approval of the design must also be obtained prior to beginning construction of a new system process.
24. The District did not seek or obtain design approval from the Division prior installing the magnesium hydroxide treatment process described in preceding paragraph 20.
25. The District's failure to obtain design approval for the magnesium hydroxide treatment process prior to construction constitutes violation of the requirements Regulation No. 22, Site Location and Design Approval Regulations for Domestic Wastewater Treatment Works, Section 22.10(1).

NOTICE OF VIOLATION

Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that the District has violated the following sections of the Permit and Regulation No. 22, Site Location and Design Approval Regulations for Domestic Wastewater Treatment Works.

Part I.A.5 of Permit No. CO-0046914 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 permit shall not contain effluent parameter concentrations which exceed the following limitations."

Part I.A.6 of Permit No. CO-0046914 which states in part: “In addition to the concentration limitations on BOD₅ and TSS indicated above, the arithmetic mean of the BOD₅ and TSS concentrations for effluent samples collected during the calendar month shall demonstrate a minimum of eighty-five percent (85%) removal as measured...”

Section 22.8(2) and Section 22.8(a) of Regulation No. 22, Site Location and Design Approval Regulations for Domestic Wastewater Treatment Works which state, “(2) An amendment to the site location approval shall be required for any one of the following changes from conditions reflected in an approved site application or from conditions at a domestic wastewater plant constructed prior to November 1967 and not expanded since that date: (a) The addition of a treatment process dealing with the liquid stream, that does not involve an expansion...”

Section 22.10(1) of Regulation No. 22, Site Location and Design Approval Regulations for Domestic Wastewater Treatment Works which states in part: “In addition to the approval of the site application or amendment, the applicant must obtain approval of the design of the treatment works from the Division prior to beginning construction.”

REQUIRED CORRECTIVE ACTION

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

26. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 through 25-8-703, C.R.S., its implementing regulations promulgated thereto and the Permit.

Furthermore, the Division hereby orders the District to comply with the following specific terms and conditions of this Order:

27. Immediately commence an engineering evaluation of the Facility design and the operations and maintenance protocol with the goal of identifying measures necessary to ensure that there are no further instances of noncompliance with effluent limitations. The measures shall include, but not necessarily be limited to those the areas of treatment train changes, process control enhancements, general and specific facility operations and maintenance modifications and an evaluation to determine proper location and feed rates for magnesium hydroxide.
28. By April 1, 2009 submit an action plan to the Division outlining actions necessary to ensure that consistent compliance with permit effluent limits is expeditiously achieved and maintained by the District. The plan shall include a time schedule for initiation and completion of each identified action identified as part of the evaluation conducted pursuant to paragraph 27 above and shall include an estimate of time required for the action to result in improved effluent quality. The proposed activities and completion schedules submitted shall become a condition of this Order and the District shall comply with the plan and the completion dates unless notified by the Division, in writing, that alternate activities and/or time schedule(s) are appropriate. If the Division imposes alternate activities and/or time schedule(s), they shall also become a condition of this Order.

29. By March 1, 2009 submit a written statement to the Division specifying the date that the magnesium hydroxide system subject of this Order was installed.
30. Comply with the following schedule for obtaining an amendment to the Site Location and Design Approval for the magnesium hydroxide system:
 - a. By March 15, 2009, submit a complete site approval amendment application accompanied by a preliminary engineering design for the magnesium hydroxide system.
 - b. Within thirty (30) calendar days of the Division issuing an amendment to the Site Approval, submit final plans and specifications to the Division for review and approval.
31. By April 15, 2009, submit an Operations & Maintenance Manual prepared by a qualified consultant. If an Operations & Maintenance Manual was prepared as part of the installation of the existing sequencing batch reactor facility, it may be submitted to satisfy this requirement but it must be revised/updated to include operational or maintenance changes identified subsequent to its completion and must include a section specific to the operation and maintenance of the magnesium hydroxide system.
32. The District shall submit monthly progress reports to the Division outlining efforts taken to achieve and maintain compliance with this Order. The first report shall be submitted to the Division on or before February 15, 2009. At a minimum, each report shall outline activities completed in the previous thirty (30) days and planned activities for the next thirty (30) days to remain in compliance with this Order. The monthly progress reports shall be required until the issuance of written notice from the Division indicating that the reports are no longer necessary.
33. If the District becomes aware of any situation or circumstances that cause the District to become unable to comply with any condition or time schedules set forth by this Order, the District shall provide written notice to the Division within five (5) calendar days of the District becoming aware of such circumstances. The District's notice shall describe what, if any, impacts will occur on the District's ability to comply with the Colorado Water Quality Control Act, the effluent limitations of the Permit and Certification, 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.
34. All documents submitted under this Order shall use the same titles as stated in this Order, and shall reference both the number of this Order and the number of the paragraph pursuant to which the document is required. Within thirty (30) calendar days of receiving Division comments on submitted documents, the District shall revise the submitted document(s) to properly address the Division's comments and resubmit the document(s) for Division review.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, the District shall submit an original and one copy to the Division at the following address:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-B2
Compliance Assurance and Data Management Section
Attention: Ginny Torrez
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

For any person submitting documents, plans, records and reports pursuant to this Notice of Violation / Cease and Desist Order, that person shall make the following certification with each submittal:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

OBLIGATION TO ANSWER AND REQUEST FOR HEARING

Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11(A) you are required to submit to the Division an answer affirming or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

Section 25-8-603, C.R.S. and 5 CCR 1002, §21.11 also provide that the recipient of a Notice of Violation may request the Division to conduct a public hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002, §21.4(B)(2). Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent Department proceeding.

Both the answer and the request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

FALSIFICATION AND TAMPERING

Be advised, in accord with §25-8-610, C.R.S., that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Colorado Water Quality Control Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

POTENTIAL CIVIL AND CRIMINAL PENALTIES

You are also advised that any person who violates any provision of the Colorado Water Quality Control Act (the "Act"), §§25-8-101 to 703, C.R.S., or of any permit issued under the Act, or any control regulation promulgated pursuant to the Act, or any final cease and desist order or clean-up order issued by the Division shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution if such discharge is made without a permit, if a permit is required by the Act for such discharge, or if such discharge is made in violation of any permit issued under the Act or in violation of any Cease and Desist Order or Clean-up Order issued by the Division. By virtue of issuing this Notice of Violation / Cease and Desist Order, the State has not waived its right to bring an action for penalties under §§25-8-608 and 609, C.R.S., and may bring such action in the future.

RELEASE OR DISCHARGE NOTIFICATION

Pursuant to §25-8-601, C.R.S., you are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

EFFECT OF ORDER

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters. Nothing herein contained shall be construed to preclude other individuals, cities, towns, counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances or to preclude any other lawful actions by such entities or the State.

For further clarification of your rights and obligations under this Notice of Violation / Cease and Desist Order you are advised to consult the Colorado Water Quality Control Act, §§25-8-101 to 703, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 9th 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