# STATE OF COLORADO

Bill Ritter, Jr., Governor
Martha E. Rudolph, 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

April 27, 2010

Mr. Daniel Hyatt
City of Rocky Ford
203 South Main Street
Rocky Ford, CO 81067

***Certified Mail Number: 7009 1680 0000 2094 4640***

**RE: Service of Notice of Violation/Cease and Desist Order, Number: MO-100427-1**

Dear Mr. Hyatt:

The City of Rocky Ford 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 City of Rocky Ford has violated the Act, and/or [CO-0023850] regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO. An identical NOV/CDO was issued on March 30, 2010, but was returned to the Division as unclaimed. The enclosed NOV/CDO supersedes the previously issued NOV/CDO in its entirety.

Pursuant to §25-8-603, C.R.S., the City of Rocky Ford 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 City of Rocky Ford 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,

Russell Zigler

Russell Zigler, Legal Assistant
Compliance Assurance Section
Enforcement Unit
WATER QUALITY CONTROL DIVISION

*Enclosure(s)*

cc: Otero County Health Department

ec: Aaron Urdiales, EPA Region VIII
Dave Knope, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Gary Beers, Permits Unit, CDPHE
Carolyn Schachterle, OPA
Barry Cress, DOLA

**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-100427-1**

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**IN THE MATTER OF:** **CITY OF ROCKY FORD**
**CDPS PERMIT NO. CO-0023850**
**OTERO 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 City of Rocky Ford ("Rocky Ford") was a municipality as defined by §31-1-101(6), C.R.S.

2. Rocky Ford 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. Rocky Ford owns and/or operates a wastewater treatment facility (the "Facility"), located in the Northeast ¼, Section 8, Township 23 South, Range 56 West, 6th Principal Meridian, Otero County, Colorado.

4. The Facility, whose treatment components consist of two aerated cells, a polishing cell and chlorine gas disinfection, is the subject of the Colorado Discharge Permit System, Permit No. CO-0023850 (the "Permit"). The Permit became effective on August 1, 2002 and was due to expire July 31, 2007 at which time it was administratively extended until a new permit is issued.

5. Section 61.8, 5 CCR 1002-61, states in part that "A permittee must comply with all the terms and conditions of the permit."

6. The Permit authorizes Rocky Ford to discharge treated wastewater from the Facility to the Arkansas River through Outfall 001A. The discharge is subject to the specific effluent limitations and other conditions of the Permit.

7. Outfall 001A is a "point source" as defined by §25-8-103(14), C.R.S.

8. The Arkansas River is "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (102).

Quality of the Discharge

9. Pursuant to Part I.A.2 of the Permit, Rocky Ford's effluent at Outfall 001A shall not exceed the limitations specified below:

| EFFLUENT PARAMETER | DISCHARGE LIMITATION |
|---|---|
| | **Daily Maximum** |
| Total Residual Chlorine (mg/l) | 0.31 |
| pH (s.u.) | 9.0 |

10. 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 Arkansas River, Rocky Ford collects specific samples of the effluent from the Facility.

11. The analytical results of the samples collected at Outfall 001A are summarized and reported to the Division via monthly Discharge Monitoring Reports ("DMRs) which include a certification by Rocky Ford that the information provided therein is true, accurate and complete, to the knowledge and belief of Rocky Ford.

12. The DMRs for the months of May through December 2009 include, in addition to other data not subject of this action, the following effluent data for total residual chlorine and pH.

| DMR REPORTING PERIOD | DAILY MAXIMUM |
|---|---|
| **TOTAL RESIDUAL CHLORINE (mg/l)** | **LIMIT = 0.31 mg/l** |
| November 1-November 30, 2009 | 0.56 |
| December 1-December 31, 2009 | 0.71 |
| **pH (in s.u.)** | **LIMIT = 9.0 s.u.** |
| May 1-May 31, 2009 | 9.11 |

13. Total residual chlorine and pH are "pollutants" as defined by §25-8-103(15), C.R.S.

14. Section 61.8, 5 CCR 1002-61, states in part that "A permittee must comply with all the terms and conditions of the permit."

15. Rocky Ford's failure to comply with the effluent limitations set forth above constitutes violations of Part I.A.5 and Part I.A.2 of the Permit.

Influent and Effluent $CBOD_5$ Monitoring

16. Pursuant to Part I.B.1 and I.B.2 of the Permit, Rocky Ford is required to monitor influent (Outfall 300I) and effluent (Outfall 001A) for five-day carbonaceous oxygen demand ("$CBOD_5$") twice weekly. The analytical results of the effluent samples are to be summarized and reported to the Division via monthly DMRs.

17. Information available to the Division establishes that during the period of August 1, 2008 through September 30, 2009, Rocky Ford has not conducted influent and effluent $CBOD_5$ analyses as required. Instead, Rocky Ford conducted five-day biochemical oxygen demand ("$BOD_5$") analyses and reported the results as $CBOD_5$ on the monthly DMRs.

18. Rocky Ford's failure to monitor influent and effluent $CBOD_5$ constitutes violations of Parts I.B.1 and I.B.2 of the Permit.

Sample Type

19. Part I.B.1 of the Permit requires collection of composite samples for influent $CBOD_5$ and total suspended solids. Footnote "f" in Part I.B of the Permit defines a "composite" sample as a minimum of four (4) grab samples collected at equally spaced two (2) hour intervals and proportioned according to flow.

20. Rocky Ford, in correspondence dated December 1, 2009, reported that influent samples are not flow proportioned.

21. Rocky Ford's failure to conduct flow proportioned sampling for influent $CBOD_5$ and total suspended solids constitutes violations of Part I.B.1 of the Permit.

Representative Sampling

22. Part I.C.1 of the Permit requires that samples collected be representative of the volume and nature of influent waste entering the Facility.

23. Rocky Ford, in correspondence dated December 1, 2009, reported that it collects influent samples using an automatic composite sampler and that often the sampler intake is obstructed by toilet paper and resulted in samples with extremely low total suspended solids.

24. A sample containing low total suspended solids as a result of obstruction of the sampler intake would not be representative of the influent pollutant concentrations

25. Rocky Ford's failure to perform representative sampling constitutes violations of Part I.C.1 of the Permit.

DMR Submittal

26. Pursuant to Part I.D.2. of the Permit, the City of Rocky Ford is required to report monthly monitoring results on DMRs. The Division must receive these DMRs no later than the 28th day of the following month.

27. In a Notice of Violation and Cease and Desist Order issued to Rocky Ford on October 27, 2006 ("the October 26, 2007 NOV/CDO"), the Division cited Rocky Ford for failing to submit DMRs in a timely manner as required by the Permit. The October 26, 2007 NOV/CDO required Rocky Ford to outline standard procedures that it would take to ensure that DMRs would be submitted properly, complete and on time.

28. Division records establish that the DMRs for Outfalls 001A, 050E and 300I for the month of September 2009 have not been received.

29. Failure to submit the DMRs for September 2009 is a violation of Part I.D.2 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 Rocky Ford has violated the following sections of the Permit.

**Part I.A.2 of Permit No. CO-0023850** 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.B.I of Permit No. CO-0023850** which states in part: "Regardless of whether or not an effluent discharge occurs and in order to obtain an indication of the current influent loading as compared to the approved capacity specified in Part I, Section A.2.: the permittee shall monitor influent parameters at the following required frequencies, the results to be reported on the Discharge Monitoring Report (See Part I, Section D.2.:

| Influent Parameter | Frequency | Sample Type f/ |
|---|---|---|
| Raw Water TDS, mg/l | Quarterly | Grab |
| Flow, MDG | Continuous | Recorder |
| $CBOD_5$ (lbs/day) | 2X/Week | Composite |
| Total Suspended Solids, TSS, mg/l | 2X/Week | Composite " |

**Part I.B.2 of Permit No. CO-0023850** which states in part: "In order to obtain an indication of the probable compliance or non-compliance with the effluent limitations specified in Part I, Section A.5. the permittee shall monitor effluent parameters at the following required frequencies, the results of which are to be reported on the Discharge Monitoring Report (See Part I, Section D.2.):

| Effluent Parameter | Frequency | Sample Type f/ |
|---|---|---|
| Flow, MGD | Daily | Instantaneous |
| $CBOD_5$, mg/l | 2X/Week | Grab…." |

**Part I.C.1 of Permit No. CO-0023850** which states in part: "Samples and measurements taken for the respective identified monitoring points as required herein shall be representative of the volume and nature of: 1) all influent wastes received at the facility, including septage, biosolids, etc.,…"

**Part I.B.2 of Permit No. CO-0023850** which states in part: "Monitoring results shall be summarized for each month and reported on the Discharge Monitoring Report forms (EPA forms 3320-1). One form shall be mailed to the Water Quality Control Division, as indicated below, so that the DMR is received no later than the 28th day of the following month."

## REQUIRED CORRECTIVE ACTION

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

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

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

31. Within thirty (30) calendar days of the date of this Order, submit a written statement to the Division describing specific measures that will be taken to ensure pH and total residual chlorine effluent violations cease. A time schedule for initiation and completion of each identified action and an estimate of time required for the action to result in improved effluent quality shall be included in the statement. The proposed activities and completion schedules submitted shall become a condition of this Order and the Rocky Ford 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.

32. Immediately, take measures to ensure that all sampling and analyses required by the permit are:

    1) conducted for the Permit specified parameters;
    2) collected in accordance with the sample type requirements of the Permit;
    3) collected at the required monitoring frequency stated in the Permit;
    4) collected using appropriate collection and preservation methodology;
    5) representative as defined by the Permit; and,
    6) correctly reported on the DMRs.

33. Within thirty (30) calendar days of the date of this Order, execute a contract for the services of a qualified independent contractor with experience in wastewater sampling and wastewater permit interpretation to perform an on-site training event in wastewater sampling; monitoring; and, analysis (for

analysis conducted in-house), and to develop a sampling/analysis manual for use by Rocky Ford personnel. The manual shall be completed within sixty (60) calendar days of the date of this Order and must include, but not be limited to, the following items and shall be made available to the Division upon request:

1) Sampling theory and practice
2) Sampling equipment identification and discussion
3) Flow proportioned composite sampling methodology
4) Sample preservation and handling techniques
5) Flow measurement methodology
6) Procedures for flow, total residual chlorine, dissolved oxygen and pH meter reading and calibration
7) Data interpretation
8) Data recording (recordkeeping)

34. Within thirty (30) calendar days of the date of this Order, submit the DMRs for September 2009 for Outfalls 001A, 050E and 300I.

35. Within thirty (30) calendar days of the date of this Order, submit a written statement regarding the reason for the delinquency of the September 2009 DMRs and include a detailed procedure as to the measures that will be taken to ensure DMRs are received by the Division in the timeframe specified by the Permit.

36. All documents submitted under this Order shall be under the signature of Rocky Ford and shall reference both the number of this Order and the number of the paragraph pursuant to which the document is required.

## NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, Rocky Ford 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 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 27th day of April, 2010.

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

Lori M. Gerzina

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