

STATE OF COLORADO

John W. Hickenlooper, Governor
Christopher E. Urbina, MD, MPH
Executive Director and Chief Medical Officer

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 21, 2012

Faith Property Management, Inc., Registered Agent
The Berthoud Estates Community Association
300 E. Boardwalk Drive 6B
Fort Collins, CO 80525

Certified Mail Number: 7010 2780 0002 8752 3772

RE: Service of Notice of Violation/Cease and Desist Order, Number: DO-120221-1

Dear Faith Property Management, Inc.:

The Berthoud Estates Community Association 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 Berthoud Estates Community Association has violated the Act, and/or Permit regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., The Berthoud Estates Community Association is required, within thirty (30) calendar days of receipt 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 Berthoud Estates Community Association 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 Michael Harris of this office by phone at (303) 692-3598 or by electronic mail at michael.harris@state.co.us.

Sincerely,



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

Enclosure(s)

cc: Larimer County Health Department
Enforcement File

cc: Natasha Davis, EPA Region VIII
Kelly Jacques, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Janet Kieler, Permits Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Michael Harris, Case Person
Tania Watson, Compliance Assurance, CDPHE



COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
DIVISION OF ADMINISTRATION
WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: DO-120221-1

IN THE MATTER OF: THE BERTHOUD ESTATES COMMUNITY ASSOCIATION
CDPS PERMIT NO. COG-589000
CERTIFICATION NO. COG-589097
LARIMER 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 is implemented through 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 alleged violations identified herein, The Berthoud Estates Community Association ("Berthoud Estates") was a Colorado nonprofit corporation in good standing and registered to conduct business in the State of Colorado.
2. Berthoud Estates 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. Berthoud Estates owns and/or operates a wastewater treatment plant located in the North ½ of Section 30, Township 4 North, Range 69 West, in Larimer County, Colorado, (the "Facility").
4. The Facility is subject to the Colorado Discharge Permit System General Permit Number: COG-598000 (the "Permit"). The Permit became effective October 1, 2008 and was set to expire on October 31, 2010, but is currently administratively extended until issuance of a renewal permit. Berthoud Estates is authorized to discharge under the Permit via Certification Number: COG-589097 (the "Certification").
5. The Permit and Certification authorize Berthoud Estates to discharge treated wastewater from the Facility through Outfall 001A to Dry Creek. The discharge is subject to the specific effluent limitations and other conditions of the Permit and Certification.

6. 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).
7. Dry Creek 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).
8. Pursuant to 5 CCR 1002-61, §61.8, Berthoud Estates must comply with all the terms and conditions of the Permit, and violations of such terms and conditions as specified in the Permit may be subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.

Failure to Comply with Permit Effluent Limitations

9. Pursuant to Part I. B. 7. b. of the Permit, Paragraph 2 of the Certification, and Section VI. A. 1. of the Rationale to the Certification, Berthoud Estates’ permitted discharges at Outfall 001A shall not exceed certain effluent limitations, including those specified below:

EFFLUENT PARAMETER	DISCHARGE LIMITATION		
	30-Day Average	7-Day Average	Daily Max
5-Day Biochemical Oxygen Demand (“BOD ₅ ”) (mg/l)	30	45	-
BOD ₅ Removal (%)	-	-	85% (minimum)
Total Residual Chlorine (mg/l)	0.011	-	0.019
<i>E. coli</i> (#/100 ml)	126	252	-
Total Suspended Solids (mg/l)	75	110	-

10. Pursuant to Part I. C. 2. b. of the Permit, Paragraph 4 of the Certification, and Section VI. B. 1. of the Rationale to the Certification, Berthoud Estates is required to monitor effluent parameters at specified frequencies in order to obtain an indication of the quality of the wastewater discharged from the Facility.
11. Pursuant to Part I. E. 1. of the Permit, Berthoud Estates is required to summarize and report, on a monthly basis, the results of its effluent monitoring on Division approved Discharge Monitoring Report (“DMR”) forms.
12. Berthoud Estates’ DMRs for the months of October 2009 through November 2011 include the following effluent data for BOD₅, BOD₅ Removal, Total Residual Chlorine, *E. coli*, and Total Suspended Solids, which exceeded the effluent limitations in the Permit:

REPORTED EFFLUENT SELF-MONITORING DATA (OUTFALL 001A)			
DMR Parameter and Reporting Period	30-Day Average	7-Day Average	Daily Max
BOD₅ (mg/l)	Limit = 30 mg/l	Limit = 45 mg/l	N/A
May 1-May 31, 2010	40	-	-
September 1-September 30, 2010	37	-	-
January 1-January 31, 2011	44	-	-
BOD₅ Removal (%)	N/A	N/A	Limit = 85% Minimum
May 1-May 31, 2010	-	-	78
January 1-January 31, 2011	-	-	77
Total Residual Chlorine (mg/l)	Limit = 0.011	N/A	Limit = 0.019
October 1-October 31, 2009	0.3	-	0.5
November 1-November 30, 2009	0.4	-	0.4
December 1-December 31, 2009	0.3	-	0.5
January 1-January 31, 2010	0.4	-	0.5
February 1-February 28, 2010	0.3	-	0.04
June 1-June 30, 2010	-	-	0.02
February 1-February 28, 2011	-	-	0.02
March 1-March 31, 2011	-	-	0.02
April 1-April 30, 2011	-	-	0.02
May 1-May 31, 2011	-	-	0.03
September 1-September 30, 2011	-	-	0.02
November 1-November 30, 2011	-	-	0.02
<i>E. coli</i> (#/100 ml)	Limit = 126	Limit = 252	N/A
May 1-May 31, 2010	1050	1050	-
January 1-January 31, 2011	1200	1200	-
June 1-June 30, 2011	5012	5012	-
November 1-November 30, 2011	291	291	-
December 1-December 31, 2011	1382	1382	-
Total Suspended Solids (mg/l)	Limit = 75	Limit = 110	N/A
April 1-April 30, 2011	78	-	-

13. BOD₅, BOD₅ Removal, Total Residual Chlorine, *E. coli*, and Total Suspended Solids 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).
14. Berthoud Estates’ failure to comply with the effluent limitations set forth above constitutes violations of Part I. B. 7. b. of the Permit.

Failure to Properly Monitor and Report

15. Pursuant to Part I. C. 1. b. of the Permit, Paragraph 3 of the Certification, and Section VI. B. 1. of the Rationale to the Certification, regardless of whether or not effluent discharge occurs at the Facility, Berthoud Estates is required to monitor influent BOD₅ on a monthly frequency and influent Flow on a continuous frequency and report the results on a DMR.
16. Pursuant to Part I. C. 2. b. of the Permit, Paragraph 4 of the Certification, and Section VI. B. 1. of the Rationale to the Certification, Berthoud Estates is required to monitor effluent Total Ammonia and *E. coli* on a monthly frequency and report the results on a DMR.
17. Pursuant to Part I. E. 1. of the Permit, Berthoud Estates is required to report influent and effluent monitoring results on a monthly basis using Division approved DMRs. The DMRs are required to be filled out accurately and completely, and Berthoud Estates is required to ensure the DMRs are mailed to the Division so that they are received no later than the 28th day of the following month.
18. Division records, as supplemented by Berthoud Estates’ DMRs, establish that Berthoud Estates failed to submit DMR data for the following reporting periods and influent parameters:

Reporting Period	Monitoring Point	Influent Parameter
December 1-December 31, 2009	300I	BOD ₅ , lbs/day (30 Day Average)
December 1-December 31, 2009	300I	BOD ₅ , lbs/day (7 Day Average)
January 1-January 31, 2010	300I	BOD ₅ , lbs/day (7 Day Average)
February 1-February 28, 2010	300I	BOD ₅ , lbs/day (30 Day Average)
February 1-February 28, 2010	300I	BOD ₅ , lbs/day (7 Day Average)
March 1-March 31, 2010	300I	BOD ₅ , lbs/day (30 Day Average)
March 1-March 31, 2010	300I	BOD ₅ , lbs/day (7 Day Average)
April 1-April 30, 2010	300I	BOD ₅ , lbs/day (30 Day Average)
April 1-April 30, 2010	300I	BOD ₅ , lbs/day (7 Day Average)
May 1-May 31, 2010	300I	BOD ₅ , lbs/day (30 Day Average)
May 1-May 31, 2010	300I	BOD ₅ , lbs/day (7 Day Average)
June 1-June 30, 2010	300I	BOD ₅ , lbs/day (30 Day Average)
June 1-June 30, 2010	300I	BOD ₅ , lbs/day (7 Day Average)
July 1-July 31, 2011	300I	BOD ₅ , lbs/day (30 Day Average)
July 1-July 31, 2011	300I	BOD ₅ , lbs/day (7 Day Average)
July 1-July 31, 2011	300I	BOD ₅ , mg/l (30 Day Average)
July 1-July 31, 2011	300I	BOD ₅ , mg/l (7 Day Average)

Reporting Period	Monitoring Point	Influent Parameter
July 1-July 31, 2011	300I	Flow (30 Day Average)
July 1-July 31, 2011	300I	Flow (Daily Max)
August 1-August 31, 2011	300I	BOD ₅ , lbs/day (30 Day Average)
August 1-August 31, 2011	300I	BOD ₅ , lbs/day (7 Day Average)
August 1-August 31, 2011	300I	BOD ₅ , mg/l (30 Day Average)
August 1-August 31, 2011	300I	BOD ₅ , mg/l (7 Day Average)
August 1-August 31, 2011	300I	Flow (30 Day Average)
August 1-August 31, 2011	300I	Flow (Daily Max)
October 1-October 31, 2011	300I	BOD ₅ , lbs/day (30 Day Average)
October 1-October 31, 2011	300I	BOD ₅ , lbs/day (7 Day Average)
October 1-October 31, 2011	300I	BOD ₅ , mg/l (30 Day Average)
October 1-October 31, 2011	300I	BOD ₅ , mg/l (7 Day Average)
October 1-October 31, 2011	300I	Flow (30 Day Average)
October 1-October 31, 2011	300I	Flow (Daily Max)

19. Division records, as supplemented by Berthoud Estates' DMRs, establish that Berthoud Estates failed to submit DMR data for the following reporting periods and effluent parameters:

Reporting Period	Monitoring Point	Effluent Parameter
September 1-September 30, 2010	001A	Total Ammonia, as N (30 Day Average)
September 1-September 30, 2010	001A	Total Ammonia, as N (Daily Max)
September 1-September 30, 2010	001A	<i>E. coli</i> (30 Day Average)
September 1-September 30, 2010	001A	<i>E. coli</i> (7 Day Average)

20. Division records, as supplemented by Berthoud Estates' DMRs, establish that Berthoud Estates failed to submit the following DMRs to the Division by the 28th day of the following month:

Reporting Period	Monitoring Point	DMR Receipt Date
August 1-August 31, 2011	001A	November 2, 2011
August 1-August 31, 2011	300I	November 2, 2011
September 1-September 30, 2011	001A	December 5, 2011
September 1-September 30, 2011	300I	December 5, 2011

21. Berthoud Estates' failure to monitor and/or submit DMR data for each influent parameter, for each reporting period, constitutes violations of Part I. C. 1. b. and/or Part I. E. 1. of the Permit.
22. Berthoud Estates' failure to monitor and/or submit DMR data for each effluent parameter, for each reporting period, constitutes violations of Part I. C. 2. b. and/or Part I. E. 1. of the Permit.
23. Berthoud Estates' failure to submit DMRs to the Division by the 28th day of the month following each reporting period constitutes violations of Part I. E. 1. of the Permit.

Failure to Adhere to Permit Compliance Schedule

24. Pursuant to Part I. B. 6. of the Permit and Section VI. B. 2. of the Rationale to the Certification, Berthoud Estates was required through a compliance schedule to submit a report or documentation to the Division by March 31, 2009 showing options available for upgrading the Facility to attain new ammonia effluent limitations. Additionally, Berthoud Estates was required to submit progress reports to the Division by March 31, 2010 and March 31, 2011.
25. Division records establish that Berthoud Estates failed to submit the required compliance schedule reports.
26. Berthoud Estates' failure to submit the required compliance schedule reports constitutes violations of Part I. B. 6. of the Permit.

Failure to Initiate Planning for Facility Expansion

27. Pursuant to Part I. B. 3. of the Permit, Berthoud Estates is required to initiate engineering and financial planning for expansion of the Facility 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, Berthoud Estates is required to commence construction of the necessary treatment expansion. The Permit requires that if, during a calendar year, the monthly hydraulic loading (in million gallons/day) or organic loading (in lbs. BOD₅/day) to the Facility in the maximum month is exceeded, Berthoud Estates is required to submit to the Division by the 31st day of the following month either a schedule for planning for a Facility expansion if 80% of capacity is exceeded, a schedule for construction of a Facility expansion if 95% of capacity is exceeded, or an analysis that indicates that the exceedance was an anomaly and is not expected to occur during the current year.
28. Pursuant to Part I. B. 2. of the Permit and Paragraph 1 of the Certification, the hydraulic and organic capacities of the Facility are 0.052 MGD and 193 lbs BOD₅/day, respectively.
29. Division records, as supplemented by Berthoud Estates' DMRs, establish that Berthoud Estates exceeded the 95% threshold and/or 80% threshold for hydraulic and/or organic loading at monitoring point 300I during the following months:

DMR Parameter and Reporting Period	80% Threshold	95% Threshold
BOD₅, lbs/day (30 Day Avg.)	Limit = 154	Limit = 183
October 1-October 31, 2009	168	-
January 1-January 31, 2010	207	207
Flow, MGD (30 Day Avg.)	Limit = 0.042	Limit = 0.049
January 1-January 31, 2010	0.053	0.053
February 1-February 28, 2010	0.048	-
March 1-March 31, 2010	0.043	-
April 1-April 30, 2010	0.05	0.05
May 1-May 31, 2010	0.05	0.05

DMR Parameter and Reporting Period	80% Threshold	95% Threshold
June 1-June 30, 2010	0.06	0.06
July 1-July 31, 2010	0.05	0.05
August 1-August 31, 2010	0.05	0.05
September 1-September 31, 2010	0.049	-
October 1-October 31, 2010	0.05	0.05
November 1-November 30, 2010	0.049	-
December 1-December 31, 2010	0.048	-
January 1-January 31, 2011	0.048	-
February 1-February 28, 2011	0.05	0.05
March 1-March 31, 2011	0.045	-
May 1-May 31, 2011	0.043	-
November 1-November 30, 2011	0.076	0.076

30. Division records establish that Berthoud Estates has not submitted to the Division a schedule for planning of a Facility expansion, a schedule for construction of a Facility expansion, nor an analysis that indicates the exceedances identified above were an anomaly.
31. Berthoud Estates' failure to submit to the Division by March 31, 2010 and March 31, 2011 either a schedule for construction of a Facility expansion, a schedule for planning of a Facility expansion, or an analysis indicating the exceedances identified above were an anomaly, constitutes violations of Part I. B. 3. of the Permit.

NOTICE OF VIOLATION

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

Part I. B. 7. b. of the Permit, 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 not contain effluent parameter concentrations, which exceed the following limitations:"

Part I. C. 1. b. of the Permit, 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 the certification ... the permittee shall monitor influent parameters at the following required frequencies, as identified in the certification of this permit, the results to be reported on the Discharge Monitoring Report..."

Part I. C. 2. b. of the Permit, which states in part, "...the permittee shall monitor effluent parameters at the following required frequencies, as identified in the certification of this permit, the results to be reported on the Discharge Monitoring Report..."

Part I. B. 6. of the Permit, which states, “If necessary, any compliance schedule items will be noted in the certification to discharge.”

Part I. E. 1. of the Permit, which states in part, “Reporting of the data gathered in compliance with Part I. B. 1. shall be on a **monthly** basis. ... Monitoring results shall be summarized for each calendar month and reported on Division approved discharge monitoring report (DMR) forms (EPA form 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 ... The Discharge Monitoring Report forms shall be filled out accurately and completely in accordance with requirements of this permit and the instructions on the forms.”

Part I. B. 3. of the Permit, which states in part, “Pursuant to Colorado Law, C.R.S. 25-8-501 (5 d & e), 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 as indentified in the certification. Whenever ninety five (95) percent of the 30-day average design capacity as identified in the certification for throughput and treatment is met, the permittee shall commence construction of the necessary treatment expansion. ... If, during the previous calendar year, the monthly hydraulic loading (MGD) or organic loading (lbs. BOD₅/day) to the facility in the maximum month exceeded either 80% or 95% of the hydraulic or organic capacity discussed in Part I. B. 2. of this permit and identified in the certification for this permit, the permittee shall submit a report by March 31 the following year that includes: a. A schedule for planning for facility expansion if 80% of the hydraulic or organic capacity was exceeded; or b. A schedule for construction of a facility expansion if 95% of the hydraulic or organic capacity was exceeded; or c. An analysis that indicates that the exceedance of the applicable percentage of the hydraulic or organic capacity (80% or 95%) was an anomaly and is not expected to occur during the current calendar year.”

REQUIRED CORRECTIVE ACTIONS

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

33. 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 Berthoud Estates to comply with the following specific terms and conditions of this Order:

34. Within thirty (30) calendar days of receipt of this Order, Berthoud Estates shall retain the services of a professional engineer registered in the State of Colorado and experienced in domestic wastewater treatment to perform an evaluation of the Facility and recommend measures to ensure adequate treatment is provided such that all Permit-required effluent limitations are consistently met at Outfall 001A and that the Facility complies with all other terms and conditions of the Permit. The evaluation shall include, but not be limited to:

- a. An evaluation of all lagoons and other treatment processes to identify any deficiencies in the current Facility design;
 - b. An evaluation of the Facility's current operation and maintenance practices to identify any deficiencies that impact the Facility's ability to comply with effluent limitations, and;
 - c. An evaluation, recommendation, and plan for upgrades and expansion of the domestic wastewater treatment works to address both the hydraulic and organic loading to the Facility and to ensure the Facility can attain future ammonia limitations.
35. Within forty five (45) calendar days of the receipt of this Order, Berthoud Estates shall provide documentation to the Division that it has retained the services of the qualified individual or entity described in paragraph 34. The documentation shall include at, a minimum, a copy of the individual or entity's qualifications and a copy of the written contract or agreement for such services, including a copy of the scope of services to be provided.
36. Within ninety (90) calendar days of receipt of this Order, Berthoud Estates shall submit to the Division a report summarizing the results of the engineering evaluation identified in paragraph 34 above. The report shall also include a plan and time schedule for the implementation of specific interim and long-term measures that Berthoud Estates will complete to address the deficiencies identified through the evaluation and to ensure the Facility consistently meets effluent limitations and other terms and conditions of the Permit. This includes a specific plan and time schedule for commencing and completing construction of a treatment expansion and/or upgrades. The submitted plan and time schedule shall become a condition of this Order and Berthoud Estates shall implement the plan and time schedule as submitted unless notified by the Division, in writing, that an alternate plan or time schedule is appropriate. If the Division imposes an alternate plan or time schedule, it shall also become a condition of this Order.
37. Within thirty (30) calendar days of receipt of this Order, Berthoud Estates shall review the requirements of the Permit and Certification with its staff responsible for ensuring compliance with the terms and conditions of the Permit. The review shall focus on, but not be limited to, 1) the effluent limitations imposed by the Permit, 2) the effluent and influent monitoring requirements of the Permit, 3) the record keeping requirements of the Permit, 4) the reporting requirements of the Permit, 5) the proper operation and maintenance requirements of the Permit, 6) the flow measurement requirements of the Permit, 7) the reduction, loss, or failure of treatment provisions of the Permit, and 8) the expansion requirements of the Permit. Within thirty (30) calendar days of receipt of this Order, Berthoud Estates shall submit a written certification to the Division stating that it has completed the review of the Permit and Certification with its responsible staff.
38. Berthoud Estates shall submit written bi-monthly progress reports to the Division outlining Berthoud Estates' activities and efforts taken to achieve and maintain compliance with this Order and the Permit. The first report shall be due by April 15, 2012, and subsequent reports shall be due every two months thereafter and on the 15th day of the associated month. At a minimum, each report shall describe the activities undertaken since the last report and shall specify what activities will be undertaken within the next bi-monthly reporting period. The progress reports shall be required until closure of this Order or until the issuance of written notice from the Division that the reports are no longer necessary.

39. If Berthoud Estates becomes aware of any situation or circumstance that causes Berthoud Estates to become unable to comply with any condition or time schedule set forth by this Order, Berthoud Estates shall provide written notice to the Division within seven (7) calendar days of Berthoud Estates becoming aware of such circumstances. Berthoud Estates' notice shall describe what, if any, impacts will occur related to Berthoud Estates' ability to comply with the Colorado Water Quality Control Act, the effluent limitations of the Permit, and the remaining conditions and/or time schedules specified by this Order, and what steps Berthoud Estates will take to mitigate the impacts.
40. 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, Berthoud Estates shall submit an original and an electronic copy to the Division at the following address:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-B2-CAS
Compliance Assurance Section
Attention: Michael Harris
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Email: michael.harris@state.co.us

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 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. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

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. 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.

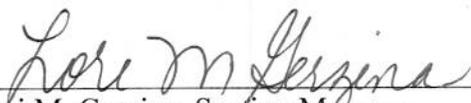
EFFECT OF ORDER

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 21st day of February 2012.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



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