

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

April 9, 2012

Certified Mail Number: 7010 2780 0002 8752 3819

PWSID# CO-0238006

Mr. Duane Kuskie

Kuskies Interstate Service & Cafe

P.O. Box 207

Crook, CO 80726-0207

RE: Service of Operator Certification Notice of Violation, Number: OD-120409-3

Dear Mr. Kuskie:

You are hereby served with the enclosed Operator Certification Notice of Violation (the "NOV"). This NOV is issued by the Colorado Department of Public Health and Environment's (the "Department") Water Quality Control Division (the "Division") pursuant to the authority given to the Division by § 25-9-110(3) of the Colorado Revised Statutes ("C.R.S."). The Division bases this NOV upon findings that you have violated the 5 CCR 1003-2, § 100 ("Regulation 100") *Water and Wastewater Facility Operators Certification Requirements* as described in the enclosed NOV.

Pursuant to § 25-9-110(3), C.R.S., you are required, within thirty (30) calendar days of receipt of this NOV, to submit to the Division an answer to each alleged violation.

As a recipient of an NOV, you may request a formal hearing to contest the NOV in accordance with § 25-9-110(4), C.R.S., and 5 CCR 1003-2, § 100.24.2. Requests for such a hearing shall be filed in writing with the Division no later than thirty (30) days after service of the NOV. Such requests, at a minimum, shall contain the information specified in 5 CCR 1003-2, § 100.24.2(a-c). Hearings on NOV's shall be conducted before the Colorado Water and Wastewater Facility Operators Certification Board in accordance with § 24-4-105, C.R.S. The filing of an answer does not constitute a request for hearing.

This violation could result in the imposition of civil penalties. The Department is authorized pursuant to § 25-9-110(5), C.R.S., to impose a penalty of up to \$300 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 or the issuance of additional enforcement actions.

Should you desire to informally discuss this matter with the Department or if you have any questions regarding Regulation 100 or the violations contained in this NOV, please don't hesitate to contact Lori Moore at (303) 692-6263 or by electronic mail at lori.moore@state.co.us.

Sincerely,



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

Enclosure

cc: Enforcement File
Public Water System File (CO-0238006)

cc: Northeast Colorado Health Department
Paul Kosik, Engineering Section, CDPHE
Lori Moore, Facility Operators Program, CDPHE
Nicole Grisham, Division of Environmental Health and Sustainability, CDPHE
Erica Kannelly, Case Lead, CDPHE



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

OPERATOR CERTIFICATION NOTICE OF VIOLATION

NUMBER: OD-120409-3

IN THE MATTER OF: DUANE KUSKIE

d/b/a KUSKIES INTERSTATE SERVICE & CAFE

PUBLIC WATER SYSTEM IDENTIFICATION NUMBER: CO-0238006

LOGAN COUNTY, COLORADO

Pursuant to the authority vested in the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") by §25-9-110(3) of the Colorado Revised Statutes ("C.R.S."), the Division hereby makes the following findings and issues this Operator Certification Notice of Violation:

GENERAL FINDINGS

1. Duane Kuskie owns and operates a drinking water system, known as Kuskies Cafe, located in the vicinity of Interstate 76 and Highway 55, near the Town of Crook, Logan County, Colorado (the "System").
2. The System is a public water system as defined by Colorado's drinking water statute, §25-1.5-201(1), C.R.S., and its implementing regulation, 5 CCR 1003-1, §1.5.2(107).
3. The Public Water System Identification Number ("PWSID") assigned to the System by the Division is PWSID #: CO-0238006.
4. The System's source of water is groundwater, as defined by 5 CCR 1003-1, §1.5.2(63).
5. The System includes a water treatment facility as defined by the Colorado Water and Wastewater Treatment Facility Operators Act (the "Act") at § 25-9-102(7), C.R.S., and its implementing regulation, 5 CCR 1003-2, §100.2(32).
6. The System includes a water distribution system as defined by the Act at § 25-9-102(6), C.R.S., and its implementing regulation, 5 CCR 1003-2, §100.2(31).
7. Division records establish that the System serves fewer than 3,300 persons.
8. Pursuant to 5 CCR 1003-2, §100.4.2(a), the System's water treatment facility is classified as "D."

9. Pursuant to 5 CCR 1003-2, §100.7.2, the System's distribution system is classified as "Class 1."
10. The System is considered a small system as defined in 5 CCR 1003-2, §100.2(23).

Failure to Have a Certified Operator in Responsible Charge

11. Pursuant to the Act at § 25-9-110(2)(a), C.R.S., and 5 CCR 1003-2, § 100.21.1, no owner of a water treatment facility or a water distribution system shall allow the facility to be operated without the direct supervision of an operator-in-responsible-charge certified in a classification equivalent to or higher than the classification of the facility as specified in 5 CCR 1003-2.
12. In accordance with 5 CCR 1003-2, § 100.19.1 and § 100.21.5, the System shall have an operator-in-responsible-charge certified at or above the Small Water System classification, or the Water Treatment Class D and Water Distribution Class 1 certifications.
13. Pursuant to 5 CCR 1003-2, § 100.21.4, each owner of a water or wastewater facility shall submit in writing to the Colorado Water and Wastewater Facility Operators Certification Board (the "Board") or its designee, within sixty (60) days of January 30, 2001, and shall keep current with the Board or its designee the following information:
 - a. Name, address and phone number of the facility representative providing the information;
 - b. Name, address, phone number and level of certification of all operator(s)-in-responsible-charge employed by the owner;
 - c. Identification of the facility or facilities for which each operator-in-responsible-charge employed by the owner has responsibility;
 - d. The Public Water System Identification number and permit number for all facilities listed.
14. In a letter dated July 15, 2008, the Division notified Duane Kuskie that it had no records of the System's being under the supervision of a certified operator-in-responsible-charge. The Division further requested that Duane Kuskie provide a response to the letter by August 1, 2008.
15. Division records establish that Duane Kuskie did not respond to the July 15, 2008 letter from the Division.
16. On September 21, 2011, a Division representative conducted a sanitary survey of the System, pursuant to the Division's authority under § 25-1.5-204, C.R.S. and 5 CCR 1003-1, § 1.7 and Article 11, to determine the System's compliance with the *Colorado Primary Drinking Water Regulations* (5 CCR 1003-1) and with the *Water and Wastewater Facility Operators Certification Requirements* (5 CCR 1003-2).
17. During the September 21, 2011 sanitary survey, Duane Kuskie told the Division representative that he did not have a certified operator-in-responsible-charge of the System.

18. In a letter dated September 26, 2011, a Division representative further notified Duane Kuskie of the requirement to have the System under the supervision of a certified operator-in-responsible-charge. In the September 26, 2011 letter, the Division representative requested that Duane Kuskie provide a written response by November 11, 2011, outlining the course of action that has or will be taken and the date by which the System proposes to correct the significant deficiencies and/or violations identified during the sanitary survey, including the certified operator requirement.
19. Division records establish that Duane Kuskie did not respond to the September 26, 2011 letter from the Division representative.
20. Division records to-date establish that Duane Kuskie has failed to provide the Board or the Division with information or documents demonstrating that the System is operated under the direct supervision of an operator-in-responsible-charge, certified in a classification equivalent to or higher than a Class D Water Treatment and Class 1 Distribution certifications or a Small Water System certification.
21. Duane Kuskie's failure to operate his water treatment facility under the supervision of a certified operator with the proper classification constitutes violation(s) of § 25-9-110(2)(a), C.R.S., and 5 CCR 1003-2, § 100.21.1 and § 100.21.5.
22. Duane Kuskie's failure to operate his water distribution system under the supervision of a certified operator with the proper classification constitutes violation(s) of § 25-9-110(2)(a), C.R.S., and 5 CCR 1003-2, § 100.21.1 and § 100.21.5.

REQUIRED ACTION

The Division hereby orders Duane Kuskie to comply with the following specific terms and conditions of this Operator Certification Notice of Violation.

23. Within twenty (20) calendar days from the date of this notice of violation, Duane Kuskie shall retain an operator-in-responsible-charge certified in a classification equivalent to or higher than the classification of the System as specified in the *Water and Wastewater Facility Operators Certification Requirements*, 5 CCR 1003-2.
24. Within thirty (30) calendar days from the date of this notice of violation, Duane Kuskie shall submit to the Division the information specified in 5 CCR 1003-2, § 100.21.4(a-d), documenting that the System is being operated under the supervision of an operator with the proper certification(s). The attached Operator in Responsible Charge Report form may be used to report the required information. *(Please note that the System's classification may change upon completion of System improvements.)*

NOTICES AND SUBMITTALS

25. For all documents, plans, records, reports and replies required to be submitted by this Operator Certification Notice of Violation, Duane Kuskie shall submit an original and one copy (electronic is preferred) to the Division at the following address:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-B2-CAS
Compliance Assurance Section / DW Enforcement Unit
Attention: Erica Kannely
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Email: erica.kannely@state.co.us
Fax: (303) 758-1398

(For any facsimile transmittals, please include a cover sheet addressed to Ms. Kannely.)

26. For any person submitting documents, pursuant to this Operator Certification Notice of Violation, 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.”

POTENTIAL CIVIL PENALTIES

27. You are also advised that any owner of a water treatment facility, a domestic or industrial wastewater treatment facility, a wastewater collection system, or a water distribution system in the state of Colorado who violates the Act at § 25-9-110(2), C.R.S., shall be subject to a civil penalty of not more than three hundred dollars (\$300) per day for each day during which such violation occurs. By virtue of issuing this Operator Certification Notice of Violation, the Department has not waived its right to bring an action for civil penalties under the Act at § 25-9-110(5), C.R.S., and may bring such action in the future.

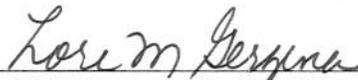
OBLIGATION TO ANSWER AND REQUEST FOR HEARING

28. Pursuant to the Act at § 25-9-110(3), C.R.S., you are required to submit to the Division an answer to each alleged violation. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

29. Pursuant to the Act at § 25-9-110(4), C.R.S., and 5 CCR 1003-2, § 100.24.2, an alleged violator of the Act at § 25-9-110(2)(a), C.R.S., may request a public hearing to contest the contents of this Notice of Violation. Such request shall be filed in writing with the Division no later than thirty (30) days after service of this action, and shall contain, at a minimum, the information specified in 5 CCR 1003-2, §100.24.2(a-c). Hearings held pursuant to the Act at § 25-9-110(4), C.R.S., shall be conducted before the Colorado Water and Wastewater Facility Operators Certification Board in accordance with § 24-4-105, C.R.S. The filing of an answer does not constitute a request for hearing.

Issued at Denver, Colorado, this 9th day of April, 2012.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Lori M. Gerzina, Section Manager
Compliance Assurance Section
Water Quality Control Division



COLORADO WATER QUALITY CONTROL DIVISION

FACILITY-OPERATOR PROGRAM

4300 Cherry Creek Drive South – B2

Denver, Colorado 80246-1530

Web Site for Program Information:

<http://www.cdphe.state.co.us/op/ocb/opassist/orc/ORCreportForm.pdf>

Colorado Department
of Public Health
and Environment

OPERATOR IN RESPONSIBLE CHARGE REPORT

Update this form as necessary

Return Form To: Lori Moore, WQCD

4300 Cherry Creek Drive South - B2

Denver, CO 80246-1530

Telephone: 303-692-3510/ 303-758-1398 (fax)

Office use: db _____

USE A SEPARATE FORM FOR EACH FACILITY OR SYSTEM – PLEASE PRINT

<i>Check all that apply</i>	Water Treatment	Water Distribution	Wastewater Treatment	Wastewater Collection
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Classification(s) of System: _____ (see Regulation 100, sections 100.4-100.8)

PWSID# _____ and/or Discharge Permit #: _____

System Name: _____	Name of Person Reporting: _____
System Contact Person: _____	Position: _____
System Address: _____	Signature: _____
System Telephone: _____	Date: _____
System e-mail: _____	

Operator in Responsible Charge (1):	Operator ID#: _____
Name: _____	Cert #: _____ Type: _____ Level: _____ Exp.Date: _____
Address: _____	Cert #: _____ Type: _____ Level: _____ Exp.Date: _____
	Cert #: _____ Type: _____ Level: _____ Exp.Date: _____
	Cert #: _____ Type: _____ Level: _____ Exp.Date: _____
Telephone: _____	Operator (1) Signature: _____
e-mail: _____	Date: _____

Operator in Responsible Charge (2):	Operator ID#: _____
Name: _____	Cert #: _____ Type: _____ Level: _____ Exp.Date: _____
Address: _____	Cert #: _____ Type: _____ Level: _____ Exp.Date: _____
	Cert #: _____ Type: _____ Level: _____ Exp.Date: _____
	Cert #: _____ Type: _____ Level: _____ Exp.Date: _____
Telephone: _____	e-mail: _____