STATE OF COLORADO

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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 26, 2010

Mr. Hershal Deputy, Mayor
Town of Hot Sulphur Springs
PO Box 116
Hot Sulphur Springs, CO 80451

Certified Mail Number: 7009 1680 0000 2094 4633

RE: Service of Notice of Violation/Cease and Desist Order, Number: MO-100426-1

Dear Mr. Deputy:

The Town of Hot Sulphur Springs is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). This NOV/CDO is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §§25-8-602 and 25-8-605, C.R.S. of the *Colorado Water Quality Control Act*, (the "Act"). The Division bases this NOV/CDO upon findings that the Town of Hot Sulphur Springs has violated the Act, and/or [COG-588000] regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

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

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

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

Should you or representatives of the Town of Hot Sulphur Springs 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: Grand County Public Health

ec: Aaron Urdiales, EPA Region VIII
Andy Poirot, 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

NOTICE OF VIOLATION / CEASE AND DESIST ORDER **NUMBER: MO-100426-1**

IN THE MATTER OF: **TOWN OF HOT SULPHUR SPRINGS**
CDPS PERMIT NO. COG-588000
PERMIT CERTIFICATION NO. COG-588084
GRAND 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 Town of Hot Sulphur Springs ("Hot Sulphur Springs") was a municipality as defined by §31-1-101(6), C.R.S.

2. Hot Sulphur Springs 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. Hot Sulphur Springs owns and/or operates a wastewater treatment facility, located in the Northeast ¼ of the Southeast 1/4, Section 3, Township 1 North, Range 78 West, in Grand County, Colorado (the "Facility").

4. The Facility is the subject of Colorado Discharge Permit System General Permit, Permit No. COG-588000 (the "Permit"). The Permit became effective on June 1, 2005 and is due to expire at midnight May 31, 2010. A discharge from the Facility was authorized under the Permit via Permit Certification No. COG-588084 which became effective July 5, 2005 (the "Certification"). The Certification will expire May 31, 2010.

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 Hot Sulphur Springs to discharge treated wastewater from the Facility to the Colorado 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 Colorado 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.B.7.b. of the Permit, Hot Sulphur Springs' effluent at Outfall 001A shall not exceed, among others not subject of this action, the effluent discharge limitations specified below:

EFFLUENT PARAMETER	DISCHARGE LIMITATION	
	30-Day Average	7-Day Average
5-Day Biochemical Oxygen Demand ("BOD_5") (mg/l)	30	45
BOD_5 Removal (%)	85	-
Total Suspended Solids (mg/l)	75	110

10. Pursuant to the requirements of Part I.C.2.a. of the Permit, to provide an indication of the quality of the wastewater discharged into the Colorado River, Hot Sulphur Springs 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 Hot Sulphur Springs that the information provided therein is true, accurate and complete, to the knowledge and belief of Hot Sulphur Springs.

12. The DMRs for the months of June 2008 through January 2010 include, in addition to other data not subject of this action, the following effluent data for BOD_5, BOD_5 Removal, and Total Suspended Solids.

REPORTED EFFLUENT [illegible] DATA OUT [illegible]		
DMR Reporting Period and Parameter	30-Day Average	7-Day Average
BOD_5 (in mg/l)	**Limit = 30 mg/l**	**Limit = 45mg/l**
June 1-June 30, 2008	42.5	-
September 1-September 30, 2008	54.1	92.8
October 1-October 31, 2008	39	50
November 1-November 30, 2008	40	-
December 1-December 31, 2008	55	65
January 1-January 31, 2009	47	67
February 1-February 28, 2009	34	-
August 1-August 31, 2009	55.3	84
September 1-September 30, 2009	43.5	57
January 1-January 31, 2010	65	109
BOD_5 Removal (in %)	**Limit = 85 % (min.)**	**N/A**
June 1-June 30, 2008	74.7	-
September 1-September 30, 2008	66.4	-
December 1-December 31, 2008	82.5	-
January 1-January 31, 2009	81.3	-
February 1-February 28, 2009	82.4	-
April 1-April 30, 2009	80	-
May 1-May 31, 2009	81.6	-
August 1-August 31, 2009	74.2	-
November 1-November 30, 2009	82.5	-
December 1-December 31, 2009	84.1	-
January 1-January 31, 2010	82.8	-
Total Suspended Solids (mg//l)	**Limit = 75 mg/l**	**Limit = 110 mg/l**
September 1-September 30, 2008	76	112

13. BOD_5, BOD_5 Removal, and Total Suspended Solids are "pollutants" as defined by §25-8-103(15), C.R.S., or indicators thereof.

14. Hot Sulphur Springs' failure to comply with the effluent limitations set forth above constitutes violations of Part I.B.7.b.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 Hot Sulphur Springs has violated the following sections of the Permit.

> **Part I.B.7.b. of Permit No. COG-588000** 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:"

REQUIRED CORRECTIVE ACTION

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

15. 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 Hot Sulphur Springs to comply with the following specific terms and conditions of this Order:

16. By June 15, 2010, retain a qualified, licensed professional engineer to perform a Comprehensive Performance Evaluation ("CPE") of the Facility and develop a Composite Correction Program ("CCP"). The Division's CCP expectations are specifically identified below in paragraph 18. The CPE shall identify and document any and all performance limiting factors affecting the Facility's ability to consistently comply with the Permit in the short- and long term. The CPE shall include, but not be limited to, analysis/evaluation of the following:

    - system design capacity
    - influent hydraulic and organic loading
    - individual unit processes
    - adequacy of aeration/back-up equipment
    - adequacy of mixing capability
    - biosolids buildup in all cells
    - process reliability
    - chemical feed system reliability
    - process control systems adequacy and functionality
    - algae and duckweed control systems effectiveness
    - spare parts inventory
    - operations and maintenance staffing
    - operator expertise needs

- operational flexibility
- managerial and financial systems

Further, by June 30, 2010, Hot Sulphur Springs shall provide the Division with a copy of the executed contract retaining a licensed professional engineer to perform the activities specified above.

17. By August 15, 2010, submit the completed CPE report to the Division.

18. By October 15, 2010, submit the completed CCP report to the Division. The CCP report shall, at a minimum, include the following:

    - A plan for systematically addressing the facility-specific areas for improvement, repair and/or maintenance as identified in the CPE.
    - A plan for systematically obtaining any necessary training.
    - Recommendations for other measures to optimize treatment or for addressing other deficiencies.
    - A time schedule for addressing, implementing, or completing correction of, each performance limiting factor or other recommendation identified in the CPE. This time schedule shall be based on a noncompliance risk based priority system.

19. In addition to the CCP, by October 15, 2010, Hot Sulphur Springs shall submit to the Division a written commitment to a specific corrective action plan, including but not limited to CPE/CCP identified actions, outlining all actions necessary to ensure that consistent and year-round compliance with current permit effluent limits is expeditiously achieved and maintained by Hot Sulphur Springs for the long-term. The plan shall include a time schedule for initiation and completion of each identified action and shall include an estimate of time required for the action to result in improved effluent quality.

20. If any of the corrective measures require Division site location and design approval, Hot Sulphur Springs shall file a completed site location and/or design approval request, in accordance with "Site Location and Design Approval Regulations for Domestic Wastewater Treatment Works, Regulation #22 (5 CCR 1002-22)" by January 15, 2011. Hot Sulphur Springs shall not initiate construction until such time as it has obtained the necessary site location and design approval as required by Section 25-8-702, C.R.S. or unless otherwise specifically authorized, in writing, by the Division.

21. The submitted CCP and corrective action plan, specifically including the activities and identified completion schedules, shall become a condition of this Order and Hot Sulphur Springs 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.

22. Hot Sulphur Springs shall submit quarterly progress reports to the Division outlining efforts taken to achieve and maintain compliance with this Order and the Permit. The first report shall be submitted to the Division on or before September 30, 2010. At a minimum, each report shall outline activities completed in the previous ninety calendar (90) days and planned activities for the next ninety calendar (90) days to remain in compliance with this Order. The quarterly progress reports shall be required until the issuance of written notice from the Division indicating that the reports are no longer necessary.

23. All documents submitted under this Order shall be under the signature of Hot Sulphur Springs 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

24. For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, Hot Sulphur Springs 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

25. 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

17. 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.

18. 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.

19. 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

20. 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

21. 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

22. 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

23. 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.

24. 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 26 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