

# 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

September 9, 2010

Honorable Keith Lambert, Mayor  
City of Rifle  
P.O. Box 1908  
Rifle, CO 81650

Certified Mail Number: 7009 1680 0000 2094 4916

**RE: Service of Notice of Violation/Cease and Desist Order, Number: MO-100909-2**

Dear Mr. Lambert:

The City of Rifle 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 Rifle 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 City of Rifle 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 Rifle 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 Jackie Whelan of this office by phone at (303) 692-3617 or by electronic mail at [jackie.whelan@state.co.us](mailto:jackie.whelan@state.co.us).

Sincerely,



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

*Enclosure(s)*

cc: Garfield County Public Health Service  
John Hier, City Manager, City of Rifle, P.O. Box 1908, Rifle, CO 81650  
Jim Neu, Karp Neu Hanlon, P.C., 201 14<sup>th</sup> St., Suite 200, Glenwood Springs, CO 81601

ec: Aaron Urdiales, EPA Region VIII  
Mark Kadnuck, Engineering Section, CDPHE  
Dick Parachini, Watershed Program, CDPHE  
Gary Beers, Permits Unit, CDPHE  
Michael Beck, OPA  
Barry Cress, DOLA  
Jackie Whelan, Case Person



**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-100909-2**

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**IN THE MATTER OF:      CITY OF RIFLE  
RIFLE REGIONAL WASTEWATER RECLAMATION FACILITY  
CDPS PERMIT NO. CO0048151  
GARFIELD 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 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 violations cited herein, the City of Rifle was a municipality as defined by §31-1-101(6), C.R.S.
2. The City of Rifle 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 City of Rifle owns and/or operates the Rifle Regional Wastewater Reclamation Facility in the Northeast ¼ of the Southeast ¼, Section 18, Township 6 South, Range 93 West (39° 31' 33.486" N, 107° 48' 42.973" W), in Garfield County, Colorado (the "Facility").
4. The Facility is the subject of Colorado Discharge Permit System, Permit No. CO-0048151 (the "Permit"). The Permit became effective on November 1, 2009, and is due to expire at midnight October 31, 2014.
5. Pursuant to 5 CCR 1002-61, §61.8, the City of Rifle 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.

6. The Permit authorizes the City of Rifle to discharge treated wastewater from the Facility through Outfall 001A to the Colorado River. The discharge is subject to the specific effluent limitations and other conditions of the Permit.
7. The 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).

**Failure to Comply with Permit Effluent Limitations**

9. Pursuant to Part I.A.1. of the Permit, among other parameters, the City of Rifle’s permitted discharge at Outfall 001A shall not exceed the effluent limitations specified below:

<b>DISCHARGE LIMITATIONS AT OUTFALL 001A</b>		
<b>EFFLUENT PARAMETER</b>	<b>30-Day Average</b>	<b>7-Day Average</b>
Potentially Dissolved Arsenic (in µg/L)	N/A	Limit = 340 µg/L
Total Recoverable Arsenic (in µg/L)	Limit = 0.02 µg/L	N/A
Potentially Dissolved Copper (in µg/L)	Limit = 17 µg/L	Limit = 28 µg/L
Potentially Dissolved Lead (in µg/L)	Limit = 5.76 µg/L	Limit = 50.00 µg/L
Total Mercury (as Hg) (in µg/L)	Limit = 0.01 µg/L	N/A
Potentially Dissolved Silver (in µg/L)	Limit = 0.28 µg/L	Limit = 7.63 µg/L
Total Suspended Solids (“TSS”) (in mg/L)	Limit = 30 mg/L	Limit = 45 mg/L
Potentially Dissolved Zinc (in µg/L)	Limit = 240 µg/L	Limit = 276 µg/L

10. Pursuant to the requirements of Part I.A.1. of the Permit, to obtain an indication of the quality of the wastewater discharged into the Colorado River, the City of Rifle collects specific samples of the effluent from the Facility.
11. Pursuant to Part I.D.1 of the Permit, the analytical results of the samples collected at Outfall 001A are summarized and reported to the Division via monthly and quarterly Discharge Monitoring Reports (“DMRs”) which include a certification by the City of Rifle that the information provided therein is true, accurate and complete, to the knowledge and belief of the City of Rifle.

12. The City of Rifle's DMRs submitted to the Division, for the months of November 2009 through June 2010, include, among other information and data, the following effluent concentration summary data for potentially dissolved arsenic, total recoverable arsenic, potentially dissolved copper, potentially dissolved lead, total mercury (as Hg), potentially dissolved silver, and potentially dissolved zinc metals and total suspended solids (TSS) which exceeded the effluent limitations imposed by Part I.A.1. of the permit:

<b>SELF-REPORTED EFFLUENT MONITORING DATA (OUTFALL 001A)</b>		
<b>DMR Reporting Period and Parameter</b>	<b>30-Day Average</b>	<b>7-Day Average</b>
<b>Potentially Dissolved Arsenic (in µg/L)</b>	<b>N/A</b>	<b>Limit = 340 µg/L</b>
March 1-30, 2010	N/A	353.60
<b>Total Recoverable Arsenic (in µg/L)</b>	<b>Limit = 0.02 µg/L</b>	<b>N/A</b>
December 1-31, 2009	139.84	N/A
January 1-31, 2010	86.4	N/A
February 1-28, 2010	34.1	N/A
March 1-30, 2010	671.3	N/A
April 1-30, 2010	315	N/A
<b>Potentially Dissolved Copper (in µg/L)</b>	<b>Limit = 17 µg/L</b>	<b>Limit = 28 µg/L</b>
December 1-31, 2009	56.0	56.00
January 1-31, 2010	72.0	72.00
February 1-28, 2010	46.0	46.00
March 1-30, 2010	18.0	18.00
April 1-30, 2010	38.0	38.00
June 1-30, 2010	126	126.00
<b>Potentially Dissolved Lead (in µg/L)</b>	<b>Limit = 5.76 µg/L</b>	<b>Limit = 50.00 µg/L</b>
December 1-31, 2009	20.0	-
January 1-31, 2010	70.0	70.00
February 1-28, 2010	50.0	-
March 1-30, 2010	10.0	-
April 1-30, 2010	30	-
June 1-30, 2010	17.7	-
<b>Total Mercury (as Hg) (in µg/L)</b>	<b>Limit = 0.01 µg/L</b>	<b>N/A</b>

<b>SELF-REPORTED EFFLUENT MONITORING DATA (OUTFALL 001A)</b>		
<b>DMR Reporting Period and Parameter</b>	<b>30-Day Average</b>	<b>7-Day Average</b>
January 1, 2010 – March 31, 2010	0.10	-
<b>Potentially Dissolved Silver (in µg/L)</b>	<b>Limit = 0.28 µg/L</b>	<b>Limit = 7.63 µg/L</b>
December 1-31, 2009	12.0	12.00
January 1-31, 2010	14.0	14.00
February 1-28, 2010	24.0	24.00
March 1-30, 2010	4.00	4.00
April 1-30, 2010	1.00	1.00
<b>Total Suspended Solids (TSS) (in mg/L)</b>	<b>Limit = 30 mg/L</b>	<b>Limit = 45 mg/L</b>
February 1-28, 2010	-	59
March 1-30, 2010	36	-
April 1-30, 2010	-	63
<b>Potentially Dissolved Zinc (in µg/L)</b>	<b>Limit = 240 µg/L</b>	<b>Limit = 276 µg/L</b>
June 1-30, 2010	406	406

13. Arsenic, copper, lead, mercury, silver, TSS and zinc are “pollutants” as defined by §25-8-103(15), C.R.S.
14. The City of Rifle’s discharge of arsenic, copper, lead, mercury, silver, TSS and zinc into the Colorado River constitutes a “discharge of pollutants” as defined by §25-8-103(3), C.R.S.
15. The City of Rifle’s failure to comply with the effluent limitations set forth in the Permit constitutes violations of Part I.A.1 of the Permit.

**NOTICE OF VIOLATION**

16. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that the City of Rifle has violated the following section of the Permit:

**Part I.A.1. of Permit No. CO-0048151**, 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), 5 CCR 1002-61 the permitted discharge shall not contain effluent parameter concentrations, which exceed the following limitations specified below or exceed the specified flow limitation.”

## 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 City of Rifle is hereby ordered to:

17. 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 City of Rifle to comply with the following specific terms and conditions of this Order:

18. Within thirty (30) calendar days of receipt of this Order, the City of Rifle shall retain the services of a qualified individual or entity (such as a Professional Engineer specifically experienced in wastewater treatment) to evaluate and recommend Facility improvements, and/or processes and procedures to ensure reliable and consistent compliance with the terms and conditions of the Permit. The evaluation and recommendations for improvement, at a minimum, must consider in detail the following:
  - a. The sample collection, preservation and shipment techniques utilized by the City of Rifle. The City of Rifle's utilized laboratory methodologies for arsenic, copper, lead, mercury, silver, and zinc metals to ensure adequate protocols for low level detection and analysis are in place to ensure consistently accurate analytical results.
  - b. The techniques, operational practices, or technologies that may be utilized to produce effluent that is reliably and consistently in compliance with the Permit effluent limits for arsenic, copper, lead, mercury, silver, and zinc metals.
  - c. The protocol for the identification of all non-domestic sources of arsenic, copper, lead, mercury, silver and zinc metals within the City of Rifle's service area and from any trucked or hauled sewage and waste.
  - d. The City of Rifle's pretreatment or industrial waste management program; to include all, practices, procedures, monitoring requirements, and local limits for metals designed to protect the wastewater treatment works from the introduction of pollutants.
  - e. The City of Rifle's policies and practices to control access, monitor activities, and characterize trucked or hauled sewage and wastes.
  - f. The operating parameters for the treatment process necessary to maximize the arsenic, copper, lead, mercury, silver, and zinc metals removal efficiency of the wastewater treatment works.
  - g. An evaluation of operations staff training as it relates to maintaining identified operating parameters.

*{Guidance for developing and implementing industrial pretreatment programs is available on-line at <http://www.epa.gov/region8/water/pretreatment/download.html>. For additional assistance please contact Nathan Moore, Pretreatment Coordinator, WQCD at 303-692-3555 or [nathan.moore@state.co.us](mailto:nathan.moore@state.co.us); or Al Garcia, EPA Region 8 Pretreatment Coordinator at 303-312-6382 or [garcia.al@epa.gov](mailto:garcia.al@epa.gov).}*

19. Within forty five (45) calendar days of receipt of this Order, the City of Rifle shall provide documentation to the Division that it has retained the services of the qualified individual or entity required in paragraph 18. This 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.
20. Within ninety (90) calendar days of receipt of this Order, the City of Rifle shall submit in writing to the Division a final report on the findings of the evaluation required and outlined in paragraph 18 above. Along with the findings of the evaluation, the report must identify, for each criterion:
  - a. Specific short-term and long-term measures that will be taken by the City of Rifle to rectify deficiencies identified by the evaluation so that the wastewater treatment works reliably and consistently produces effluent in compliance with the limitations identified in the Permit.
  - b. For each short-term and long-term measure identified, the City of Rifle shall also submit a time schedule for completion of each measure. The implementation time schedule submitted must identify completion of all measures with due diligence.
  - c. The report should include a written time schedule that outlines operations staff training in maintaining identified operating parameters or a written statement outlining that operations staff has received adequate training in maintaining identified operating parameters.
  - d. The measures and time schedule submitted shall become a condition of this Order, and the City of Rifle shall implement the measures and time schedule as submitted unless notified by the Division, in writing, that alternate measures and/or time schedules are appropriate. If the Division imposes alternate measures and/or time schedules, they shall also become a condition of this Order.
21. Beginning September 30, 2010, and every calendar quarter thereafter, until such time as this Order is closed or the Division decrees so in writing, the City of Rifle shall submit written quarterly progress reports to the Division outlining efforts taken to achieve and maintain compliance with this Order and the Permit. At a minimum, each report shall describe the activities completed in the previous calendar quarter and shall specify what activities will be undertaken within the next calendar quarter to comply with this Order and the Permit.

22. If the City of Rifle becomes aware of any situation or circumstances that cause the City of Rifle to become unable to comply with any condition or time schedules set forth by this Order, the City of Rifle shall provide written notice to the Division within five (5) calendar days of the City of Rifle becoming aware of such circumstances. The City of Rifle's notice shall describe what, if any, impacts will occur on the City of Rifle's ability to comply with the Colorado Water Quality Control Act, the Permit and any impacts on the remaining conditions and/or time schedules specified by this Order and what steps the City of Rifle is taking to mitigate such impacts.
23. 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 City of Rifle shall revise the submitted document(s) to properly address the Division's comments and resubmit the document(s) for Division review.

### **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, the City of Rifle 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  
Compliance Assurance Section  
Attention: Jackie Whelan  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

Email: [jackie.whelan@state.co.us](mailto:jackie.whelan@state.co.us)  
Phone: 303-692-3617  
Fax: 303-782-0390

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

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**

26. 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.
27. 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**

28. 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**

29. 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**

30. 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**

31. 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.
32. 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 9<sup>th</sup> day of September, 2010.

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

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