

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

4300 Cherry Creek Dr. S. Laboratory Services Division
Denver, Colorado 80246-1530 8100 Lowry Blvd.
Phone (303) 692-2000 Denver, Colorado 80230-6928
Located in Glendale, Colorado (303) 692-3090

<http://www.cdphe.state.co.us>



Colorado Department
of Public Health
and Environment

November 2, 2012

Pacific Registered Agents, Inc.
Rocky Mountain Vista Limited Partnership
44 Cook St., Suite 100
Denver, CO 80206

Certified Mail Number: 7012 1010 0002 1774 3637

Mr. Gary C. Moschetti, Registered Agent
M. Shapiro Development Company LLC
4704 Harlan St., Suite 340
Denver, CO 80212

Certified Mail Number: 7012 1010 0002 1774 3644

RE: Service of Notice of Violation/Cease and Desist/Clean-up Order, No.: DO-121102-1

Dear Pacific Registered Agents, Inc. and Mr. Moschetti:

Rocky Mountain Vista Limited Partnership ("RMVLP") and M. Shapiro Development Company LLC ("MSDCLLC") are hereby served with the enclosed Notice of Violation / Cease and Desist / Clean-up Order (the "NOV/CDO/CUO"). This NOV/CDO/CUO 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, 25-8-605 and 25-8-606, C.R.S., of the *Colorado Water Quality Control Act*, (the "Act"). The Division bases this NOV/CDO/CUO upon findings that RMVLP and MSDLLC have violated the Act, and/or regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO/CUO.

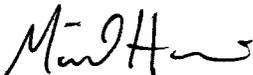
Pursuant to §25-8-603, C.R.S., RMVLP and MSDLLC are required, within thirty (30) calendar days of receipt of this NOV/CDO/CUO, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

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/CUO or the issuance of additional enforcement actions.

Should you or representatives of RMVLP and/or MSDLLC desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO/CUO, please do not hesitate to contact Joe Campbell of this office by phone at (303) 692-2356 or by electronic mail at joseph.campbell@state.co.us.

Sincerely,



Michael Harris, Interim Unit Manager
Clean Water Compliance & Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Trevor Jiricek, Weld County Dept. of Public Health and Environment
Natasha Davis, EPA Region VIII
Gary Halbersleben, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Janet Kieler, Permits Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Joe Campbell, Case Person
Tania Watson, Clean Water Compliance & Enforcement Unit, CDPHE



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

NOTICE OF VIOLATION / CEASE AND DESIST ORDER / CLEAN-UP ORDER
NUMBER: DO-121102-1

IN THE MATTER OF: ROCKY MOUNTAIN VISTA LIMITED PARTNERSHIP and
M. SHAPIRO DEVELOPMENT COMPANY LLC
ROCKY MOUNTAIN VISTA MOBILE HOME PARK
UNPERMITTED
WELD 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, the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order / Clean-up Order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the alleged violations identified herein, Rocky Mountain Vista Limited Partnership ("RMV") was an Arizona limited partnership in good standing and registered to conduct business in the State of Colorado.
2. At all times relevant to the alleged violations identified herein, M. Shapiro Development Company LLC ("Shapiro") was a Michigan limited liability company in good standing and registered to conduct business in the State of Colorado.
3. RMV and Shapiro are "persons" 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).
4. RMV owns and/or operates Rocky Mountain Vista Mobile Home Park and its wastewater treatment system, located at 12623 County Road 6, near the Town of Brighton, Weld County, Colorado, (the "Facility").
5. On August 24, 2012, Shapiro was appointed as receiver for the Facility pursuant to an Order of the Weld County District Court in its Case Number 2012CV671, and thereby took physical possession, management, and operation of the Facility.

Unauthorized Discharge and Land Application without a Permit

6. Wastewater (raw, untreated sewage) is collected and conveyed at the Facility through service/collection lines from the various buildings associated with the mobile home park to numerous septic tanks that are located throughout the property where solids separation and limited biological treatment occurs. These septic tanks are connected to a dispersal field with infiltration/absorption beds located to the south of the mobile home park where the effluent is applied directly to the ground and discharged to groundwater.
7. The Facility's wastewater treatment system is a "domestic wastewater treatment works" as defined by §25-8-103(5), C.R.S.
8. The Facility's domestic wastewater treatment works 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).
9. Groundwater 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).
10. Sewage, including partially treated sewage, is a "pollutant" as defined by §25-8-103(15), C. R. S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (76).
11. The Facility's application of its effluent directly to the ground constitutes "land application" as defined by 5 CCR 1002-61, section 61.2(48).
12. Pursuant to §25-8-501(1), C.R.S. and 5 CCR 1002-61, §61.3(1)(a), no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article.
13. Pursuant to 5 CCR 1002-61, §61.14(1)(a), a permit shall be required for all land application unless:
 - a. The discharge is exempted under 5 CCR 1002-61, §61.14(1)(b);
 - b. The discharge is subject to regulation by one of the implementing agencies described in 5 CCR 1002-61, §61.14(2);
 - c. The owner of a land application system can demonstrate that: (i) the design and operation of the system will result in complete evapotranspiration of the effluent; (ii) there is adequate storage provided for the effluent during periods of inclement weather or where the ground has been frozen unless the provisions of (i) above can be met during the entire year; and, (iii) any augmentation plan or substitute supply plan for the land application site does not provide a credit for return of the effluent to ground water.
14. On December 13, 2011, representatives of the Division (the "Division Inspectors") conducted an on-site inspection of the Facility. During the inspection, the Division Inspectors noted that partially treated sewage had discharged to a ditch connected to two makeshift, tarp-lined lagoons that had been constructed in the area of a portion of the Facility's dispersal field. It was noted by the Division

Inspectors that broken PVC infiltrator pipe was evident throughout the area and that the existing infiltration/absorption beds had been damaged and, therefore, were not able to treat sewage as designed.

15. On December 14, 2011, the Division sent RMV a Compliance Advisory detailing the findings of the December 13, 2011 on-site inspection. In the letter, the Division advised RMV that the discharge constituted an unauthorized discharge of pollutants from a point source in violation of §25-8-501(1) of the Colorado Water Quality Control Act.
16. On December 15, 2011, the Division Inspectors conducted another on-site inspection of the Facility. The Division Inspectors noted that partially treated sewage, also evident during the December 13, 2011 inspection, had discharged to a ditch in the same area at the Facility. During this inspection, the Division Inspectors collected water samples from the ditch and both makeshift lagoons and had the samples analyzed for numerous analytes that would typically be found in sewage, including *E.coli* and Total Coliform. Analytical results of the collected samples are listed in the following table:

Rocky Mountain Vista Mobile Home Park December 15, 2011 Sample Results			
Analyte	Small Lagoon	Large Lagoon	Ditch
BOD	130 mg/L	73 mg/L	130 mg/L
Nitrogen, Nitrate/Nitrite	0.052 mg/L	0.12 mg/L	0.14 mg/L
Total Nitrogen	55 mg/L	36 mg/L	47 mg/L
Total Suspended Solids	27 mg/L	48 mg/L	44 mg/L
<i>E. coli</i>	>241.92 mg/L	198.63 mg/L	>241.92 mg/L
Total Coliform	>241.92 mg/L	>241.92 mg/L	>241.92 mg/L

17. In response to the Division inspections and Compliance Advisory, RMV cleaned up the discharged sewage and informed the Division that a redesign of Facility’s domestic wastewater treatment works was in the engineering stages and would be submitted to the Division for approval.
18. On February 28, 2012, the Division issued site location approval to RMV for a new domestic wastewater treatment works at the Facility. The Division understood that construction would likely occur during the spring and summer of 2012.
19. On October 12, 2012, representatives of Weld County (the “Weld County Inspectors”) conducted an on-site inspection of the Facility. During the inspection, the Weld County Inspectors noted that partially treated sewage was again collecting on the ground to the south of the mobile home park in the area observed during the December 2011 Division inspections. However, during this inspection it was noted that the ditch and makeshift lagoons observed during the December 2011 site visits were no longer evident and in their place was an underground storage tank that appeared to have been recently installed.
20. On October 19, 2012, a Division Inspector conducted another on-site inspection of the Facility. The Division Inspector observed that RMV had not initiated construction of a new domestic wastewater treatment works at the Facility. The Division Inspector observed partially treated sewage on the

ground to the south of the mobile home park in the area observed during the October 12, 2012 Weld County inspection. In addition, the Division Inspector observed partially treated sewage percolating up from the subsurface near the underground storage tank and then flowing on the surface of ground toward, into and around the storage tank. The storage tank was observed to be full of partially treated sewage. The area where the Division Inspectors observed the partially treated sewage percolating up from the subsurface was in the area of the Facility's dispersal field, thus indicating that the dispersal field, or a portion of the dispersal field, had failed and was not performing as designed/constructed.

21. Division records establish that neither RMV nor Shapiro have a permit authorizing the discharge of domestic sewage or partially treated sewage from the Facility to groundwater.
22. Division records establish that neither RMV nor Shapiro have a permit authorizing the land application of domestic sewage or partially treated sewage at the Facility.
23. RMV's and/or Shapiro's land application of partially treated sewage at the Facility, as described in paragraphs 6 and 11, does not meet any of the exemption criteria of 5 CCR 1002-61, §61.14(1)(a), and therefore is subject to the land application discharge permit requirements.
24. RMV's and/or Shapiro's discharge of domestic wastewater from the Facility onto the ground, as described above, constitutes an unauthorized land application in violation of 5 CCR 1002-61.14(1)(a).
25. RMV's and/or Shapiro's ongoing discharge of domestic sewage from the Facility into groundwater constitutes a "discharge of pollutants" as defined by §25-8-103(3), C. R. S.
26. RMV's and/or Shapiro's ongoing discharge of partially treated sewage into groundwater constitutes an unauthorized discharge of pollutants from a point source into state waters in violation of §25-8-501(1), C.R.S.

NOTICE OF VIOLATION

27. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined RMV and Shapiro have violated the following sections of the Colorado Water Quality Control Act and its implementing permit regulations:

Section 25-8-501(1), C.R.S., which states in part, "No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article."

5 CCR 1002-61 §61.3(1)(a), which states in part, "No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge..."

5 CCR 1002-61 §61.14(1)(a), which states in part, "Pursuant to this section a permit shall be required for all land application discharges..."

REQUIRED CORRECTIVE ACTION

Based upon the foregoing factual and legal determinations and pursuant to §§25-8-602, 25-8-605 and 25-8-606, C.R.S., RMV and Shapiro are hereby ordered to:

28. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 through 25-8-803, C.R.S., and its implementing regulations promulgated thereto.

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

29. RMV and/or Shapiro shall immediately initiate measures to stop any ongoing surface releases of sewage or other pollutants from the Facility's wastewater treatment system to the ground. This includes stopping partially treated sewage from percolating up from the subsurface and collecting in the Facility's dispersal field (as observed on October 19, 2012) or any other areas of the Facility.
30. Within two (2) calendar days of receipt of this Order, in order to prevent human exposure to the surface release of sanitary waste, RMV and/or Shapiro shall post warning signs and install and maintain a barrier fence around each area impacted by the release of sewage at the Facility.
31. RMV and/or Shapiro shall immediately initiate measures to collect and properly dispose of any ongoing surface releases of sewage or other pollutants from the Facility's wastewater treatment system. Within seven (7) calendar days of receipt of this Order, RMV and/or Shapiro shall submit to the Division a written description of how RMV and/or Shapiro is managing the collection and disposal of surface releases of sewage and how RMV and/or Shapiro intends to stop any ongoing surface releases of sewage from the Facility.
32. RMV and/or Shapiro shall notify the Division, as soon as RMV and/or Shapiro has knowledge thereof, of any spills or discharges from the Facility that may cause pollution of waters of the state in accordance with §25-8-601(2), C.R.S. RMV and/or Shapiro shall also mitigate the effects of such spills or discharges by any means reasonably available to the Facility. RMV and/or Shapiro shall indicate what mitigation efforts they will implement or plan to implement when notifying the Division of such spills or discharges.
33. Within thirty (30) calendar days of receipt of this Order, RMV and/or Shapiro shall prepare and submit for Division review and approval a written plan to evaluate, characterize and remediate (if necessary) sewage contaminated soils at the Facility. The plan shall include, at a minimum, the following:
 - a. A map, to scale, showing the location of all equipment and structures (both above ground and below ground) related to the Facility's use, handling and disposal of sewage;
 - b. A detailed description of the methodology to be used to evaluate, characterize and remediate sewage contaminated soils at the Facility; and
 - c. An implementation schedule for the proposed assessment, characterization and remediation activities at the Facility.

The submitted plan and implementation schedule shall become a condition of this Order and RMV and/or Shapiro shall implement the plan and implantation 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

34. Within seven (7) calendar days of receipt of this order, RMV and/or Shapiro shall retain a qualified individual or entity (*such as a professional engineer, specifically experienced in sanitary sewer treatment and design*) to evaluate and recommend interim measures and improvements to the Facility's domestic wastewater collection and treatment systems to ensure ongoing compliance with applicable Federal, State, and Local laws and regulations. The evaluation shall consider, but not be limited to, the following:
 - a. An evaluation of the applicability of the Colorado Water Quality Control Act, §§25-8-101 to 703, C.R.S. (specifically including the site approval/design approval and permitting requirements) and/or the Colorado Individual Sewage Disposal Systems Act, §25-10-101 through 113, C. R. S., as they relate to any proposed wastewater treatment improvements;
 - b. An evaluation and recommendation of specific short-term and long-term improvements for the Facility's wastewater collection, treatment and disposal methods, including development of a detailed description of the proposed improvements; and
 - c. An evaluation of the interim measures that may be employed to mitigate the effects of sewage releases to the surface of the ground until such time that the surface releases have ceased.
35. Within ten (10) calendar days of receipt of this order, RMV and/or Shapiro shall provide documentation to the Division that it has retained the services of the qualified individual or entity identified in paragraph 34 above. 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.
36. Within forty-five (45) calendar days of receipt of this order, RMV and/or Shapiro shall submit in writing to the Division a final report on the findings of the evaluation identified and outlined in paragraph 34 above. Along with the findings of the evaluation, the report must identify, for each criterion, specific interim, short-term, and long-term measures that will be taken by RMV and/or Shapiro to rectify deficiencies identified in the Facility's wastewater collection, treatment and disposal systems. For each interim, short-term and long-term measure identified, RMV and/or Shapiro shall also submit a time schedule for completion of each measure. **The implementation time schedule submitted must identify completion of all measures by no later than August 31, 2013.** The measures and time schedule submitted shall become a condition of this Order, and RMV and/or Shapiro 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.
37. RMV and/or Shapiro shall submit "Progress Reports" to the Division every thirty (30) calendar days. The first report shall be submitted to the Division by November 30, 2012. At a minimum, each report shall indicate the status of the activities undertaken to comply with this Order at the time the report is filed, and outline the activities to be undertaken within in the next thirty (30) calendar days.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation / Cease and Desist Order / Clean-up Order, RMV and/or Shapiro 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-CWE-B2
Compliance Assurance Section
Attention: Joe Campbell
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: (303) 692-2356
Email: joseph.campbell@state.co.us
Fax: (303) 782-0390

(For any facsimile transmittals, please include a cover sheet addressed to Mr. Joseph Campbell.)

For any person submitting documents, plans, records and reports pursuant to this Notice of Violation / Cease and Desist Order / Clean-up 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 803, 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.

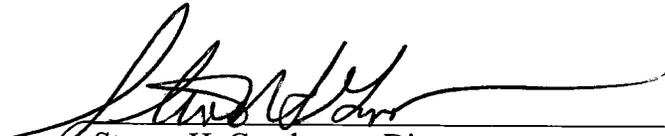
EFFECT OF ORDER

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 / Clean-up Order you are advised to consult the Colorado Water Quality Control Act, §§25-8-101 to 803, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 2nd day of November, 2012.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Steven H. Gunderson, Director
WATER QUALITY CONTROL DIVISION