



COLORADO
Department of Public
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

November 26, 2014

Mr. Ed Smith, Superintendent
Pueblo County School District 70
24951 Highway 50 East
Pueblo, CO 81006

Certified Mail Number: 7012 1640 0000 0801 9281

RE: Service of Notice of Violation / Cease and Desist Order, Number: DO-141124-1

Dear Mr. Smith:

Pueblo County School District 70 is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). The 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 the NOV/CDO upon findings that Pueblo County School District 70 has violated the Act and/or permit or control regulations promulgated pursuant to the Act and/or a permit, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., Pueblo County School District 70 is required, within thirty (30) calendar days of receipt of this NOV/CDO, to submit to the Division an answer affirming 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. Pursuant to §25-8-608, C.R.S., the Division is authorized 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 your representatives 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 me by phone at (303) 692-2283 or by electronic mail at mandy.mercer@state.co.us.



Ed Smith, Superintendent
Pueblo County School District 70
November 26, 2014

Sincerely,



Mandy Mercer, Enforcement Specialist
Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Natasha Davis, EPA Region VIII
Ken Williams, Pueblo County Health Department
Nicole Rowan, Watershed Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Amy Zimmerman, Engineering Section, CDPHE
Heather Drissel, Field Services Section, CDPHE
Lillian Gonzales, Permits Section, CDPHE
Mike Harris, Clean Water Enforcement Unit, CDPHE
Tania Watson, Data Management, CDPHE





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

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: DO-141124-1

IN THE MATTER OF: PUEBLO COUNTY SCHOOL DISTRICT 70
UNPERMITTED
PUEBLO 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, Pueblo County School District 70 ("District 70") was a school district as defined by §22-30-103, C.R.S. and Colorado Constitution Article IX, Section 15.
2. District 70 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. District 70 owns and/or operates a wastewater treatment facility that treats domestic wastewater (sewage) from Pueblo County High School ("PCHS"), located near Latitude 38°14'48" and Longitude 104°27'38, near the City of Pueblo, Pueblo County, Colorado, (the "Facility").
4. The Facility consists of a lift station, two aeration basins, a secondary clarifier, and an absorption system (leach field). The Facility receives domestic wastewater from PCHS, which serves approximately 1,000 students and faculty. The domestic wastewater is conveyed from PCHS to the Facility where it undergoes treatment in the aeration basins and secondary clarifier. The wastewater is then conveyed to a single absorption system where passive biological treatment of the wastewater occurs as it seeps through the ground, eventually discharging into the underlying groundwater.
5. Division records establish that District 70 received Site Approval (Number 1931) for a 40,000 gallon per day ("gpd") mechanical wastewater treatment facility and leach field on September 16, 1975, and received design approval on March 8, 1976.

6. The Facility is a “domestic wastewater treatment works” as defined by §25-8-103(5), C.R.S., 5 CCR 1002-22, §22.2(11), and 5 CCR 1002-43, §43.3(29).
7. The Facility is an “on-site wastewater treatment system” (“OWTS”) as defined by 5 CCR 1002-43, §43.3(83).

Discharge and Land Application Without a Permit

8. Pursuant to §25-8-501(1), C.R.S. and its implementing permit regulation 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.
9. Pursuant to 5 CCR 1002-43, §43.4(A)(1)(b), an OWTS with design capacity equal to or greater than 2,000 gpd must comply with the site location and design approval requirements of §25-8-702, C.R.S. and the discharge permit requirements in the Water Quality Control Act, 25-8-501, *et seq.* C.R.S., including the applicable Water Quality Control Commission regulations at 5 CCR 1002-22 (Site Location and Design Approval Regulations) and 5 CCR 1002-61 (Colorado Discharge Permits System (“CDPS”) Regulations).
10. Pursuant to 5 CCR 1002-61, §61.14(1)(a), a permit is required for all land application discharges 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); or
 - 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.
11. Domestic wastewater, including sewage and 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).
12. Groundwater beneath the Facility 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).
13. The Facility’s domestic wastewater treatment works/OWTS, including the leach field, are 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).
14. District 70’s discharge of domestic wastewater from the Facility into state waters constitutes a “discharge of pollutants” as defined by §25-8-103(3), C.R.S.

15. District 70's discharge of domestic sewage directly to the ground constitutes "land application" as defined by 5 CCR 1002-61, §61.2(48).
16. District 70's land application of domestic sewage from the Facility 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.
17. Division records establish that District 70 does not have any permits authorizing the discharge of pollutants from the Facility into state waters or to the ground through land application.
18. District 70's discharges of domestic wastewater into state waters via the Facility's leach field constitutes an unauthorized discharge of pollutants into state waters from a point source in violation of §25-8-501(1), C.R.S. and its implementing permit regulation 5 CCR 1002-61, §61.3(1)(a).
19. District 70's discharge of domestic sewage from the Facility to the ground constitutes unauthorized land application in violation of 5 CCR 1002-61, §61.14(1)(a).

NOTICE OF VIOLATION

20. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that District 70 has 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 "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, §61.3(1)(a), which states "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 and §25-8-605, C.R.S., District 70 is hereby ordered to:

21. 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 District 70 to comply with the following specific terms and conditions of this Order:

22. District 70 shall immediately initiate measures to evaluate the design and operation of the Facility's domestic wastewater treatment works/OWTS and to seek coverage for the Facility under a Colorado Discharge Permit System ("CDPS") permit, including but not limited to the corrective actions identified below.
23. Within thirty (30) calendar days of receipt of this Order, District 70 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/or a review of any existing or ongoing engineering evaluations, and recommend measures to ensure that a fully functioning, permitted, and approved wastewater treatment system is in place that complies with the Water Quality Control Act and its implementing regulations. The evaluation shall include, but not be limited to:
 - a. An evaluation of the Facility's treatment processes to identify any deficiencies in the current design of the Facility. This should include, but not be limited to, an evaluation of the capacity of the current system, and the use and acceptability of the current treatment processes;
 - b. An evaluation of the Facility's current operation and maintenance practices to identify any deficiencies that may impact the Facility's ability to reliably and consistently treat wastewater; and,
 - c. An evaluation, recommendation, and plan for upgrades or expansion of the Facility that will ensure the Facility has adequate hydraulic and organic loading capacity, can meet the Preliminary Effluent Limitations that were provided for the Facility on May 19, 2014, and can obtain any necessary site location and design approval from the Division in accordance with §25-8-702, C.R.S. and 5 CCR 1002-22.
24. Within forty-five (45) calendar days of the receipt of this Order, District 70 shall provide documentation to the Division that it has retained the services of the qualified individual or entity described in paragraph 23. 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 services, including a copy of the scope of services to be provided.
25. Within sixty (60) calendar days of receipt of this Order, District 70 shall submit to the Division a report summarizing the results of the engineering evaluation/review identified in paragraph 23 above. The report shall include an aggressive plan and time schedule for the implementation of specific interim and long-term measures that District 70 will complete to address the deficiencies identified in the evaluation and to obtain a CDPS permit. This includes a specific plan and time schedule for commencing and completing construction of Facility expansion and/or upgrades, and for submitting an application for a CDPS permit. If any of the corrective measures require Division site location and design approval, District 70 shall timely file a completed site location and/or design approval request in accordance with §25-8-702, C.R.S. and 5 CCR 1002-22. District 70 shall not initiate construction until such time that the necessary site location and design approval(s) have been obtained, as required by §25-8-702, C.R.S. and 5 CCR 1002-22, or unless otherwise specifically authorized in writing by the Division. The submitted plan and time schedule shall become a condition of this Order and District 70 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.

26. Beginning January 31, 2015, and every calendar month thereafter, District 70 shall submit monthly progress reports to the Division by the last day of each calendar month. At a minimum, each report shall outline activities undertaken during the current month and activities planned for the next month to remain in compliance with this Order. The monthly progress reports shall be required until the issuance of written notice from the Division indicating that the reports are no longer necessary occurs.
27. 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, District 70 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, District 70 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
Attention: Mandy Mercer
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: (303) 692-2283
Email: mandy.mercer@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 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 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 24th day of November, 2014.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Ron Falco, P.E., Acting Director
WATER QUALITY CONTROL DIVISION