

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



Colorado Department  
of Public Health  
and Environment

December 17, 2012

Andrew R. Klein, Registered Agent  
Wayward Wind MHP LLC  
7100 East Belleview Ave., Suite 350  
Greenwood Village, CO 80111

**Certified Mail Number: 7012 1010 0002 1774 3798**

Otis C. Moore III  
Wayward Wind MHP LLC  
7100 East Belleview Ave., Suite 350  
Greenwood Village, CO 80111

**Certified Mail Number: 7012 1010 0002 1774 3811**

Michael Honc, Receiver  
Colorado Commercial Real Estate Professionals  
8361 South Sangre De Cristo Rd., Suite 100  
Littleton, CO 80127

**Certified Mail Number: 7012 1010 0002 1774 3804**

## **RE: Service of Operator Certification Notice of Violation, Number: OD-121217-1**

Dear Mr. Klein, Mr. Moore III, and Mr. Honc:

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, §100.21.1. 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, §100.21.1(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 me at (303) 692-3540 or by electronic mail at [margaret.talbott@state.co.us](mailto:margaret.talbott@state.co.us).

Sincerely,



Margaret E. Talbott, P.E.  
Unit Manager  
Drinking Water Enforcement Unit  
Compliance Assurance Section  
WATER QUALITY CONTROL DIVISION

Enclosure

cc: Enforcement File

ec: Carmen Vandembark, Northeast Colorado Health Department ([carmenv@nchd.org](mailto:carmenv@nchd.org))  
Christine Lukasik, Engineering Section, CDPHE  
Dick Parachini, Watershed Program, CDPHE  
Jackie Whelan, Facility Operators Program, CDPHE  
Olive Hofstader, EPA Region VIII  
Natasha Davis, EPA Region VIII  
Nicole Grisham, Division of Environmental Health and Sustainability, CDPHE  
Michael Beck, Grants and Loans Unit, CDPHE



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

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**OPERATOR CERTIFICATION NOTICE OF VIOLATION**

**NUMBER: OD-121217-1**

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**IN THE MATTER OF: WAYWARD WIND MHP LLC;  
OTIS C. MOORE, III individually, and  
MICHAEL S. HONC, as Receiver  
WAYWARD WIND MOBILE HOME PARK  
PUBLIC WATER SYSTEM IDENTIFICATION NUMBER: CO-0144032  
CDPS PERMIT NO. COX-631044  
MORGAN COUNTY, COLORADO**

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

**GENERAL FINDINGS**

*Drinking Water Treatment Facility/Distribution System*

1. At all times relevant to the violations cited herein, Wayward Wind MHP LLC was a limited liability company in good standing and registered to conduct business in the State of Colorado (Colorado Secretary of State ID Number: 20001206020).
2. Wayward Wind MHP LLC and Otis C. Moore, III (jointly referred to hereinafter as "Wayward Wind MHP LLC") own a drinking water system, known as Wayward Wind Mobile Home Park, located at or near the intersection of US Highway 34 and Interstate 76 approximately five (5) miles east of the City of Fort Morgan, Morgan County, Colorado (the "System").
3. Michael S. Honc was appointed as Receiver of the Wayward Wind mobile home park located at 14390 U.S. Highway 34, Fort Morgan, Colorado 80701, including the System pursuant to "Order Appointing Receiver" filed June 4, 2012 in Larimer County District Court (Case No.: 12CV917).
4. 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).
5. The Public Water System Identification Number ("PWSID") assigned to the System by the Division is PWSID #: CO-0144032.

6. The System's source of water is groundwater, as defined by 5 CCR 1003-1, §1.5.2(63).
7. Division records establish that the System serves fewer than 3,300 persons.
8. 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).
9. 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).
10. Pursuant to 5 CCR 1003-2, §100.4.2, the System's water treatment facility is classified as "Class D."
11. Pursuant to 5 CCR 1003-2, §100.7.2, the System's distribution system is classified as "Class 1."

*Domestic Wastewater Treatment Facility/Collection System*

12. Wayward Wind MHP LLC owns a domestic wastewater treatment and collection system infrastructure located in the NE ¼ of the SW ¼ of Section 4, Township 3 North, Range 58 West; Sixth Principal Meridian, Morgan County, Colorado (the "Facility").
13. Michael S. Honc (hereinafter "Receiver") was appointed as Receiver of the Wayward Wind mobile home park located at 14390 U.S. Highway 34, Fort Morgan, Colorado 80701, including the Facility pursuant to "Order Appointing Receiver" filed June 4, 2012 in Larimer County District Court (Case No.: 12CV917).
14. The Facility is subject to the Colorado Discharge Permit System, Permit Certification No. COX-631044 (the "Permit"). The current version of the Permit became effective on April 21, 2011 and was set to expire on April 30, 2012. The Division has administratively extended the Permit until issuance of a renewal permit.
15. The Facility includes a domestic wastewater treatment facility as defined by the Act at § 25-9-102(4.5), C.R.S., and its implementing regulation, 5 CCR 1003-2, §100.2(11).
16. The Facility includes a wastewater collection system as defined by the Act at §25-9-102(4.9), C.R.S., and its implementing regulation, 5 CCR 1003-2, §100.2(28).
17. Pursuant to 5 CCR 1003-2, §100.5.2, the Facility's wastewater treatment facility is classified as "Class D."
18. Pursuant to 5 CCR 1003-2, §100.8.2, the Facility's wastewater collection facility is classified as "Class 1."

### **Failure to Have a Certified Operator in Responsible Charge**

19. Pursuant to the Act at §25-9-110(2)(a), C.R.S., and 5 CCR 1003-2, §100.18.1(a), no owner of a water treatment facility, water distribution system, wastewater collection system, and/or domestic or industrial wastewater treatment facility 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, §§100.4 through 100.8.
20. In accordance with 5 CCR 1003-2, §100.18.5, the System shall have an operator-in-responsible-charge certified at or above the Class S Water classification, or the Class D Water Treatment and Class 1 Water Distribution certifications.
21. In accordance with 5 CCR 1003-2, §100.18.5, the Facility shall have an operator-in-responsible-charge certified at or above the Class D Wastewater Treatment and Class 1 Wastewater Collection certifications.
22. Pursuant to 5 CCR 1003-2, §100.18.4(a), each owner of a water or wastewater facility shall submit in writing to the Division, no later than thirty (30) days following the date the facility is initially placed on-line and thereafter, no later than thirty (30) days after changes to any of the following information:
  - a. Name, mailing address, phone number, and email address (if available) of the facility representative providing the information;
  - b. Name, mailing address, phone number, email address (if available) and the classification and expiration 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 or contracted by the owner has responsibility;
  - d. The Public Water System Identification (PWSID) number and the Colorado Discharge Permit system (CDPHS) permit or certification number for all facilities listed.
23. In a letter dated November 14, 2011, the Department notified Wayward Wind MHP LLC, c/o Westside Investment Properties, LLC that the System and the Facility, respectively, were no longer under the direct supervision of a certified operator-in responsible-charge. The Department further notified Wayward Wind MHP LLC that the System must be under the supervision of a certified operator or operators holding a level “D” for water treatment and a level “1” for water distribution (or higher) and that the Facility must be under the direct supervision of a certified operator or operators holding a level “D” for wastewater treatment (or higher).
24. In a letter dated October 10, 2012, the Receiver notified the Department that Albert’s Water resigned as the operator-in-responsible-charge for the System and the Facility, respectively, and that neither the System nor the Facility were under the direct supervision of an operator-in-responsible-charge.

25. Division records to-date establish that Wayward Wind MHP LLC and the Receiver have failed to provide 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 S Water classification, or the Class D Water Treatment and Class 1 Water Distribution certifications.
26. Division records to-date establish that Wayward Wind MHP LLC and the Receiver have failed to provide the Division with information or documents demonstrating that the Facility is operated under the direct supervision of an operator-in-responsible-charge, certified in a classification equivalent to or higher than a Class D Wastewater Treatment and Class 1 Wastewater Collection certifications.
27. Wayward Wind MHP LLC and the Receiver's failure to operate its 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, §100.18.1(a) and §100.18.5.
28. Wayward Wind MHP LLC and the Receiver's failure to operate its 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, §100.18.1(a) and §100.18.5.
29. Wayward Wind MHP LLC and the Receiver's failure to operate its wastewater 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, §100.18.1(a) and §100.18.5.
30. Wayward Wind MHP LLC and the Receiver's failure to operate its wastewater collection 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, §100.18.1(a) and §100.18.5

### **REQUIRED ACTION**

The Division hereby orders Wayward Wind MHP LLC and/or the Receiver to comply with the following specific terms and conditions of this Operator Certification Notice of Violation.

31. Within fifteen (15) calendar days from the date of this Notice of Violation, Wayward Wind MHP LLC and/or the Receiver shall retain an operator-in-responsible-charge certified in classifications equivalent to or higher than the classifications of the System and an operator-in-responsible-charge certified in classifications equivalent to or higher than the classifications of the Facility as specified in the *Water and Wastewater Facility Operators Certification Requirements*, 5 CCR 1003-2.
32. Within fifteen (15) calendar days from the date of this Notice of Violation, Wayward Wind MHP LLC and/or the Receiver shall submit to the Department the information specified in 5 CCR 1003-2, §100.18.4(a), documenting that the System and the Facility, respectively, are being operated under the supervision of an operator with the proper certification(s). The attached Contact Information form (for the drinking water System's operator-in-responsible-charge) and Wastewater Operator in Responsible Charge Report form (for the wastewater Facilities' operator-in-responsible-charge)

may be used to report the required information. *(Please note that the System's and/or the Facilities' classification(s) may change upon completion of System improvements.)*

### **NOTICES AND SUBMITTALS**

33. For all documents, plans, records, reports and replies required to be submitted by this Operator Certification Notice of Violation, Wayward Wind MHP LLC and/or the Receiver 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: Margaret Talbott  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

Email: [margaret.talbott@state.co.us](mailto:margaret.talbott@state.co.us)  
Fax: (303) 758-1398

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

34. 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**

35. 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**

36. 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.
  
37. Pursuant to the Act at §25-9-110(4), C.R.S., and 5 CCR 1003-2, §100.21.1, 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, §100.21.1(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 17 day of December, 2012.

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



Jennifer Miller, Section Manager  
Compliance Assurance Section  
Water Quality Control Division



# Colorado Department of Public Health and Environment

## WASTEWATER OPERATOR IN RESPONSIBLE CHARGE REPORT

Return Form To:

Facility Operator Certification - WQCD

Colorado Department of Public Health and Environment

4300 Cherry Creek Drive South

Denver, CO 80246-1530

PLEASE Use Ink or Type

Classification of Treatment Facility:  A  B  C  D

Classification of Collection System:  1  2  3  4

Customers Served (Population): \_\_\_\_\_

Discharge Permit or Certification #: \_\_\_\_\_

Permit Name: \_\_\_\_\_

Permittee Name: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail: \_\_\_\_\_

### ORC Wastewater Treatment

Operator ID#: \_\_\_\_\_ WW Cert #: \_\_\_\_\_ Level: \_\_\_\_\_ Exp.Date: \_\_\_\_\_

Name: \_\_\_\_\_ WW Cert #: \_\_\_\_\_ Level: \_\_\_\_\_ Exp.Date: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State Zip Code: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail: \_\_\_\_\_

ORC Signature (Treatment): \_\_\_\_\_

### ORC Wastewater Collection

Operator ID#: \_\_\_\_\_ WW Cert #: \_\_\_\_\_ Level: \_\_\_\_\_ Exp.Date: \_\_\_\_\_

Name: \_\_\_\_\_ WW Cert #: \_\_\_\_\_ Level: \_\_\_\_\_ Exp.Date: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State Zip Code: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail: \_\_\_\_\_

ORC Signature (Collection System): \_\_\_\_\_

"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."

Name (please print): \_\_\_\_\_

Position: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## **PERMITTEE RESPONSIBILITIES**

Article 9 of Title 25, C.R.S., requires that every domestic or industrial wastewater treatment facility and collection system be under the supervision of a certified operator, holding a certificate in a class equal to or higher than the class of the facility or system. A permittee who fails to comply with this requirement is subject to a penalty of \$300 per day per violation.

“Direct supervision” means that the operator in responsible charge has supervisory responsibility and authority with respect to the operation of the wastewater facility and for the activities and functions of other facility operators.

The operator in responsible charge (ORC) is the person designated by the permittee of a wastewater facility to be the certified operator(s) who has ultimate responsibility for decisions regarding the daily operational activities of the facility that will directly impact the quality and/or quantity of treated wastewater or treated effluent.”

There must be a designated operator in responsible charge or another designated operator certified at or above the level of the facility available for all operating shifts. “Available” means that the designated certified operator must either be on-site or must be able to be contacted as needed to make decisions and to initiate appropriate actions in a timely manner.

Section 100.18.4, Regulation 100, requires the owner(s) of each facility or system to formally designate the Operator in Responsible Charge and to report to the Division any changes no later than thirty days following any changes.

## Contact Information

Contact information completed by \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Revision?  Actual date of changes described in this revision \_\_\_\_\_

**System Mailing Address:** \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**System Physical Address:** \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**System Phone:** \_\_\_\_\_ Ext: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

**Administrative Contact Name:** \_\_\_\_\_

(The administrative contact is the primary contact person for all Department mail or other communications regarding drinking water compliance.)

**Mailing Address:** \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Ext: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

**Owner/Legal Entity Contact Name:** \_\_\_\_\_

(The legal owner is an individual, corporation, partnership, association, state or political subdivision thereof, municipality, or other legal entity.)

**Mailing Address:** \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Ext: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

**Emergency Contact Name:** \_\_\_\_\_

(The emergency contact should be someone that the Department can contact in an emergency if the administrative contact is unavailable.)

**Mailing Address:** \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Ext: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

**Operator in Responsible Charge Name:** \_\_\_\_\_

Certification Type: \_\_\_\_\_ Certification Level: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Ext: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_