



# MEMORANDUM

**TO:** Honorable Mayor Grossman and Board of Trustees  
**FROM:** Eric J. Heil, Town Attorney  
**RE:** Creede Waste Water Discharge Permit Modifications  
**DATE:** February 13, 2015

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**SUMMARY:** The Colorado Department of Public Health and Environment ("CDPHE") issued a new Colorado Discharge Permit ("Permit") for Creede's wastewater treatment plant ("WWTP") on January 30, 2015 [attached to this memorandum]. The Permit imposes new and more stringent standards for removal of zinc and cadmium and imposes requirements to reduce ammonia. According to the City's Engineer, the Permit will likely trigger the need to construct a mechanical treatment plant by August, 2019 to reduce ammonia with a rough estimated cost of \$2 Million (or approximately \$5,600 per current waste water tap holder). The process and costs to reduce zinc and cadmium is not estimated but is anticipated to be very expensive. In addition to the capital costs, mechanical plants for reduction of zinc, cadmium and ammonia levels are expected to significantly increase annual operating and maintenance expenses.

The CDPHE Notice of the renewed and modified Permit states that the applicant (City of Creede) may demand an adjudicatory hearing within 30 days. The 30th day is Sunday, March 1, meaning the absolute deadline to file a demand for an adjudicatory hearing is the next business day on March 2, 2015.

**CONFERENCE CALL WITH CDPHE:** Ron McLaughlin, Clyde Dooley and Eric Grossman have a conference call scheduled with CDPHE today and may have more information to provide on this matter. They will request a modification of the Permit to propose to agree to the proposed increased monitoring of various constituents, but will oppose the mandate for Inflow/Infiltration repairs (4.c.), mandate to reduce Dissolved Cadmium and Zinc (5.b), mandate to reduce ammonia levels (5.c). The Permit sets forth a mandated schedule under which the City of Creede must retain professional consultants by September, 2015 to begin design of system improvements to meet the mandates set forth in the Permit.

**RIGHT TO APPEAL - ADJUDICATORY HEARING:** The City has the right to file a demand for an adjudicatory hearing. An adjudicatory hearing is an administrative appeals process (like mini-court) which has many of the same rules for submitting evidence and which is presided over by a hearing officer or an administrative law judge. The proceedings are recorded and a record is made. Both CDPHE and the City have the right to appeal the results of an adjudicatory hearing to regular court.

The City has the right to request a "Stay" of the Permit mandates during any adjudicatory hearing process. If the City files a demand for an adjudicatory hearing the City should request a Stay. I believe a Stay should be granted because there is no showing of potential immediate harm to the public in granting a Stay of the Permit during an administrative appeals process. The Permit does not take effect until the administrative appeals process is completed if a Stay is granted.

**OPTIONS:** The City's options include: (1) accept the Permit as is and begin the process of retaining consultants, applying for grants, applying for public infrastructure financing, and informing waste water users of anticipated increased costs; (2) accept the Permit and work with CDPHE to approve further

modifications on reduced effluent mandates to reduce community costs; or (3) approve filing a demand for an adjudicatory hearing. A rough estimate of costs to file the demand for an adjudicatory hearing and prepare for such hearing is \$10,000 to \$15,000 (including legal, engineering and other costs). The ruling of an adjudicatory hearing can be appealed by either the City or CDPHE and could result in additional similar costs.

**RECOMMENDATION:** I believe that there is opportunity for the City to pursue technical assistance grants funds for engineering and design as well as the potential to obtain grant funds for waste water treatment plant upgrades which could lower the total costs to waste water users. However, this will require considerable additional administrative work for the City (similar to the flume project but with more stringent deadlines). Even if the City files a demand for an adjudicatory hearing, the City should expect that the wastewater treatment plant will require some improvements in the future. I also appreciate the desire to avoid costs associated with an adjudicatory hearing. That said, the new Permit does create a mandate that is expected to impose significant additional cost on all wastewater users in the near future and the only legal option available for the City to challenge the Permit at this time is to file a demand for an adjudicatory hearing. I am hesitant to recommend challenging CDPHE; however, considering the circumstances, I believe demanding an adjudicatory hearing is a very reasonable course of action and would demonstrate local advocacy on behalf of your affected waste water users. Regardless of the course of action, I strongly recommend that the City prepare an informational notice to all wastewater users to inform them of the implications of the new Permit.

**PROPOSED MOTION:** "I move to direct the Town Attorney to file a demand for an adjudicatory hearing on the City of Creede Wastewater Treatment Facility Permit Number CO0040533."

**ATTACHMENTS:**

- CDPHE Permit issued on January 30, 2015
- CDPHE Discharge Permit Regulation 61.7 concerning right to Adjudicatory Hearing

*Thank you, Eric*