

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



Colorado Department
of Public Health
and Environment

April 15, 2013

Ms. Debbie Turner, Registered Agent
Village at East Fork, LLC
55 Meadows Drive
Pagosa Springs, Colorado 81147

Certified Mail Number: 7007 0220 0001 0162 1979

RE: Service of Notice of Violation/Cease and Desist Order, Number: DO-130411-1

Dear Ms. Turner:

The Village at East Fork, LLC. ("East Fork") 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 East Fork has violated the Act, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., East Fork is required, within thirty (30) calendar days of receipt 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 East Fork 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) 692-2356 or by electronic mail at joseph.campbell@state.co.us.

Sincerely,



Joe Campbell, Enforcement Specialist
Clean Water Compliance & Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File
Ms. Debbie Turner, 9316 East Olive Lane N, Sun Lakes, AZ 85248
Ms. Debbie Turner, 749 Highway 91 #4, Leadville, CO 80461

ec: Natasha Davis, EPA Region VIII
Local Health Department
Dick Parachini, Watershed Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Brett Icenogle, Engineering Section, CDPHE
Kelly Jacques, Field Services Section, CDPHE
Janet Keiler, Permits Section, CDPHE
Joe Campbell, Compliance & Enforcement Unit, CDPHE
Tania Watson, Compliance & Enforcement Unit, CDPHE
Jackie Whelan, Facility Operators Program, CDPHE
Chris Bell, chbell37@yahoo.com
Adam Summers, adam@aquaworksdbo.com



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

NOTICE OF VIOLATION / CEASE AND DESIST

NUMBER: DO-130411-1

IN THE MATTER OF: VILLAGE AT EAST FORK, LLC
UNPERMITTED
LAKE 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, Village at East Fork, LLC ("East Fork") was a Colorado limited liability company in good standing and registered to conduct business in the State of Colorado.
2. East Fork 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. East Fork owns and/or operates a wastewater treatment facility located at the Village at East Fork Mobile Home Park, near the Town of Leadville, Lake County, Colorado, (the "Facility").
4. On July 7, 2012, representatives from the Division (the "Inspectors") conducted an on-site inspection of the Facility pursuant to the Division's authority under §25-8-306, C.R.S., to determine the East Fork's compliance with the Water Quality Control Act. During the inspection, the Inspectors interviewed the operator of the mobile home park and performed a physical inspection of the Facility.
5. During the July 7, 2012 inspection, the Inspectors identified that the Facility consists of approximately seventy-two (72) sewer service taps that are connected to a collection system. The collection system conveys wastewater (raw, untreated sewage) from these taps via gravity flow to a single unlined lagoon located west of the mobile home park where passive biological treatment occurs prior to seepage/discharge into the underlying groundwater.

6. The Facility's wastewater treatment system is a "domestic wastewater treatment works" as defined by §25-8-103(5), C.R.S.

Unauthorized Discharge

7. 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.
8. Pursuant to 5 CCR 1002-61, §61.14(1)(a), a permit is required for all discharges from impoundments 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 impoundment has received a waiver from the Division pursuant to §61.14(9)(a).
9. Groundwater beneath the Facility's unlined lagoon 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. The lagoon associated with the Facility 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).
11. The lagoon associated with the Facility is an "impoundment" as defined by 5 CCR 1002-61, §61.2(43).
12. Sewage that is seeping from the unlined lagoon at the Facility 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).
13. East Fork's ongoing discharge of sewage from the Facility's lagoon into state waters constitutes a "discharge of pollutants" as defined by §25-8-103(3), C.R.S.
14. East Fork's ongoing discharge of sewage from the Facility's lagoon does not meet any of the exemption criteria of 5 CCR 1002-61, §61.14(1)(a), and therefore is subject to the groundwater discharge permit requirements.
15. Division records establish that East Fork does not have any permits authorizing the discharge of pollutants from the Facility's unlined lagoon into state waters.
16. East Fork's discharge of sewage from the Facility's unlined lagoon into state waters constitutes an unauthorized discharge of pollutants from a point source into state waters in violation of §25-8-501(1), C.R.S., 5 CCR 1002-61, §61.3(1)(a), and 5 CCR 1002-61, §61.14(1)(a).

NOTICE OF VIOLATION

17. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that East Fork 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 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 §61.3(1)(a), which state 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 and for all discharges from impoundments...”*

REQUIRED CORRECTIVE ACTION

Based upon the foregoing factual and legal determinations and pursuant to §25-8-602 and §25-8-605, C.R.S., East Fork is hereby ordered to:

18. 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 East Fork to comply with the following specific terms and conditions of this Order:

19. East Fork shall immediately initiate measures to evaluate the design and operation of the Facility's domestic wastewater treatment works 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.
20. Within thirty (30) calendar days from the receipt of this Order, East Fork shall submit to the Division the information specified in 5 CCR 1003-2, §100.18.4(a), documenting that the Facility and any drinking water system at the site is being operated under the supervision of an operator with the proper certification(s). The attached Wastewater Operator in Responsible Charge Report form may be used to report the required information (Attachment A).
21. Within thirty (30) calendar days of the receipt of this Order, East Fork shall submit to the Division an application for Preliminary Effluent Limits for the Facility's discharge.
22. Within six (6) months of the receipt of this Order, East Fork shall submit to the Division a Site Application for the Facility.

23. Within thirty (30) calendar days of the receipt of Site Approval from the Division, East Fork shall submit an application for coverage under a CDPS permit to the Division.
24. Within twelve (12) months of the receipt of this Order, East Fork shall submit to the Division a Preliminary Design Report for the Facility.
25. Within eighteen (18) months of the receipt of this Order, East Fork shall start construction of the Division approved design for the Facility.
26. Once construction of the Division approved design for the Facility has begun, East Fork shall submit quarterly "Progress Reports" to the Division. The first report shall be submitted to the Division within eighteen (18) months of the receipt of this order, with each consecutive report due every three (3) months. 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 three (3) month period until construction of the new Facility is completed.
27. Within thirty (30) months of the receipt of this Order, East Fork shall complete construction of the Division approved design for the Facility.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, East Fork 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: 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 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.

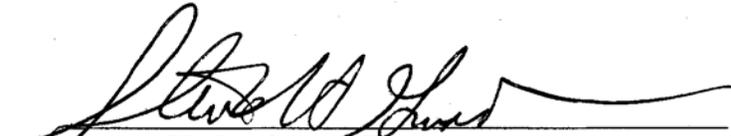
EFFECT OF ORDER

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 11th day of April, 2013.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT


Steven H. Gunderson, Director
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.