

# STATE OF COLORADO

John W. Hickenlooper, Governor  
Karin McGowan  
Interim Executive Director

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

August 29, 2013

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

**Certified Mail Number: 70070220000101630636**

**RE: Order for Civil Penalty, Number: DP-130827-1**

Dear Pacific Registered Agents:

Rocky Mountain Vista Limited Partnership ("RMV") hereby served with the enclosed Order for Civil Penalty ("Penalty Order"). This Penalty Order 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 §25-8-608(2) of the *Colorado Revised Statutes*. Payment of the imposed civil penalty should be made in accordance with the methods referenced in the Penalty Order.

If you have any questions regarding the Penalty Order or the payment method, please do not hesitate to contact me at (303) 692-2356 or by electronic mail at [joseph.campbell@state.co.us](mailto:joseph.campbell@state.co.us).

Sincerely,

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

*Enclosure(s)*

cc: Enforcement File

ec: Natasha Davis, EPA Region VIII  
Trevor Jiricek Weld County Department of Public Health and Environment  
Michael Beck, Grants and Loans Unit, CDPHE  
Brett Icenogle, Engineering Section, CDPHE  
Kelly Jacques, Field Services Section, CDPHE  
Nathan Moore, Permits Section, CDPHE  
Tania Watson, Compliance & Enforcement Unit, CDPHE



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

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**ORDER FOR CIVIL PENALTY**

**NUMBER: DP-130827-1**

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**IN THE MATTER OF:   ROCKY MOUNTAIN VISTA LIMITED PARTNERSHIP**  
**UNPERMITTED**  
**WELD COUNTY, COLORADO**

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This matter comes before the Executive Director of the Colorado Department of Public Health & Environment on petition by the Water Quality Control Division for a civil penalty against Rocky Mountain Vista Limited Partnership (“RMV”). The Executive Director, through her designee (hereinafter the “Executive Director”), having considered this petition, makes the following findings and issues the following Order for Civil Penalty in accordance with §25-8-608, C.R.S. and 5 CCR 1002-21, §21.12.

**GENERAL FINDINGS**

1. Pursuant to §25-8-608(1), C.R.S., any person who violates the Colorado Water Quality Control Act (the “Act”), or any permit issued under the Act, shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs.
2. On November 2, 2012, the Division issued RMV a Notice of Violation/Cease and Desist/Clean-up Order (the “NOV/CDO/CUO”) which included findings that RMV violated the Act and it’s implementing permit regulations. A copy of the NOV/CDO is attached hereto as Exhibit A and is incorporated herein by reference.
3. Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11, RMV was required to submit an answer to each alleged violation contained in the NOV/CDO/CUO and was allowed thirty (30) calendar days to file a request for a public hearing to determine the validity of the NOV/CDO/CUO. As further outlined in the NOV/CDO/CUO, absent a request for a hearing, the validity of the factual allegations and the NOV/CDO/CUO shall be deemed established in any subsequent Department proceeding.
4. The Division did not receive a request for a hearing from RMV nor the required answer to the NOV/CDO/CUO.
5. RMV’s forfeiture of a hearing request constitutes a waiver of its right to a hearing, including a waiver of its right to contest the findings and conclusions set forth in the NOV/CDO/CUO. Since RMV has so waived its right to contest those findings and conclusions, the Director hereby accepts those findings and conclusions as true and enters the following order.

**ORDER FOR CIVIL PENALTY**

6. Based upon the facts described in the NOV/CDO/CUO, the Executive Director has determined that a civil penalty is appropriate and warranted in this matter. Therefore, the Executive Director hereby imposes a civil penalty in the amount of Forty-five Thousand Seven Hundred Seventy-one Dollars and Sixty Cents (\$45,771.60) against RMV for the violations cited in the NOV/CDO/CUO. The civil penalty was determined in accordance with the procedures outlined in the Division's Civil Penalty Policy (May 1, 1993). A copy of the civil penalty calculation is attached hereto as Exhibit B and is incorporated herein by reference. The civil penalty shall be paid within thirty (30) calendar days of the date of this Order for Civil Penalty. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

Joe Campbell  
Colorado Department of Public Health and Environment  
Water Quality Control Division  
Mail Code: WQCD-CWE-B2  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

**REQUEST FOR APPEAL**

7. Pursuant to 5 CCR 1002, §21.12(B) and 5 CCR 1002, §21.4(A)(2)(b), an appeal of the determination of the civil penalty by the Executive Director shall be made in writing to the Division. Requests for such an appeal should be made in accordance with 5 CCR 1002, §21.12(B), shall be filed no later than thirty (30) calendar days after issuance of this action, and shall include the information specified in 5 CCR 1002, §21.4(B)(2).

Issued at Denver, Colorado, this 27<sup>th</sup> day of August, 2013.



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Steven H. Gunderson, Director  
Water Quality Control Division  
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



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

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**PETITION FOR THE IMPOSITION OF A CIVIL PENALTY**

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

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**TO: STEVEN H. GUNDERSON, DIRECTOR – WATER QUALITY CONTROL DIVISION**

**IN THE MATTER OF:   ROCKY MOUNTAIN VISTA LIMITED PARTNERSHIP  
UNPERMITTED  
WELD COUNTY, COLORADO**

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This petition for imposition of a civil penalty is addressed to you pursuant to §25-8-608(2), C.R.S., in your capacity as Designee of the Executive Director of the Colorado Department of Public Health and Environment (the “Department”). You are authorized thereby to determine civil penalties on behalf of the Department’s Water Quality Control Division.

1. Rocky Mountain Vista Limited Partnership (“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”).
2. Division records establish that unpermitted land application and groundwater discharges occurred from at the Facility from at least August 2006 until the date of the current NOV.
3. Division records establish that RMV does not have a permit authorizing the discharge of domestic sewage or partially treated sewage from the Facility to groundwater.
4. Division records establish that RMV does not have a permit authorizing the land application of domestic sewage or partially treated sewage at the Facility.
5. On November 2, 2012, the Division issued RMV a Notice of Violation/Cease and Desist/Clean-up Order (the “NOV/CDO/CUO”) which included findings that RMV violated the Act and its implementing permit regulations. A copy of the NOV/CDO is attached hereto as Exhibit A and is incorporated herein by reference.
6. Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11, RMV was required to submit an answer to each alleged violation contained in the NOV/CDO/CUO and was allowed thirty (30) calendar days to file a request for a public hearing to determine the validity of the NOV/CDO/CUO. As

further outlined in the NOV/CDO/CUO, absent a request for a hearing, the validity of the factual allegations and the NOV/CDO/CUO shall be deemed established in any subsequent Department proceeding.

7. The Division did not receive a request for a hearing from RMV nor the required answer to the NOV/CDO/CUO.
8. Due to RMV's unresponsiveness and failure to comply with the NOV/CDO/CUO, the Division believes attempts to settle the case would not be warranted or productive. Therefore, the assessment of a penalty is appropriate at this time.
9. As of February 2013 RMV is no longer the owner/operator of Rocky Mountain Vista Mobile Home Park. Additionally, RMV filed for bankruptcy in the State of California on March 15, 2013.
10. Pursuant to the Division's *Public Notice of Administrative Enforcement Actions Policy*, the Division will publish public notification of the civil penalty in the Denver Post, a newspaper of statewide circulation, at the time this penalty petition and an Order for Civil Penalty are signed.

#### **PENALTY RECOMMENDATION**

11. Based upon the application of the Division's Civil Penalty Policy (May 1, 1993), and consistent with Departmental policies for violations of the Act, the Division has calculated a civil penalty of Forty-five Thousand Seven Hundred Seventy-one Dollars and Sixty Cents (\$45,771.60) for the violations. A copy of the civil penalty calculation is attached hereto as Exhibit B and is incorporated herein by reference.
12. The Division recommends that a civil penalty be assessed against RMV in the amount of Forty-five Thousand Seven Hundred Seventy-one Dollars and Sixty Cents (\$45,771.60), payable to the State's Water Quality Improvement Fund in accordance with §25-8-608, C.R.S.

Submitted this 26<sup>th</sup> day of August, 2013.

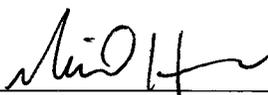
  
\_\_\_\_\_  
Michael Harris, Manager  
Clean Water Compliance & Enforcement Unit  
WATER QUALITY CONTROL DIVISION

EXHIBIT A

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.cdph.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.

EXHIBIT A



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

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

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**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**

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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.

EXHIBIT A

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:

<b>Rocky Mountain Vista Mobile Home Park December 15, 2011 Sample Results</b>			
<b>Analyte</b>	<b>Small Lagoon</b>	<b>Large Lagoon</b>	<b>Ditch</b>
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

## EXHIBIT A

### **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.

## EXHIBIT A

### **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.

EXHIBIT A

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 2<sup>nd</sup> day of November, 2012.

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



Steven H. Gunderson, Director  
WATER QUALITY CONTROL DIVISION

## EXHIBIT B

# Rocky Mountain Vista Limited Partnership CIVIL PENALTIES CALCULATION METHODOLOGY

Civil penalty calculations for each unauthorized discharge were performed in accordance with the Water Quality Control Division's Civil Penalty Policy (May 1, 1993). The penalty calculation described in the Civil Penalty Policy can be illustrated by the following equation:

$$\text{Civil Penalty} = [(\text{Potential Damage} + \text{Fault} + \text{History}) \times \text{Days of Violation}] \pm \text{Aggravating/Mitigating Factors} \\ + \text{Economic Benefit}$$

The Civil Penalty Policy allows various inputs to the penalty calculation depending upon determinations of the potential damage, violator's degree of fault, and non-compliance history. The calculation methodology and basis for input selections for each component of the penalty calculation are detailed below.

### Potential Damage Component

This component is calculated based on the receiving water beneficial uses, type of pollutants, and percentage exceedance of effluent limitations. The Civil Penalty Policy is oriented toward violations of effluent limitations at a wastewater treatment facility. Thus, the penalty calculation methodology for unpermitted land application and groundwater discharges with undefined effluent limitations requires some adaptation.

#### Receiving Water Uses and Pollutants

The discharge events were unpermitted land application and groundwater discharges. In the absence of comprehensive analytical data for the discharge events, assumptions were made regarding possible exceedances of water quality standards. Fecal Coliform bacteria is the primary pollutant of concern for domestic sewage discharges and was used to select the potential damage multiplier from the Beneficial Use Table (Figure 1) of the Civil Penalty Policy. The Civil Penalty Policy does not currently identify multipliers for land application and groundwater discharges. Thus, the Division conservatively determined that these discharges pose comparable risks to groundwater as discharges to segments with recreation class 2 beneficial use (i.e., primary contact does not exist and cannot be reasonably expected to exist in the future.) **Therefore, a point value of 2 was determined.**

#### Percent Exceedance

The actual flow rate for each discharge event was not measured. The most current engineering evaluation determined an average daily flow of 12,960 gallons/day, or 0.013 million gallons/day. However, the Division conservatively selected 0.05 to 0.10 million gallons/day as the flow from the facility. Given that the chemical composition of partially treated sewage would significantly exceed any authorized discharge effluent limitation imposed in a permit, and that Rocky Mountain Vista Limited Partnership ("Rocky Mountain Vista") did not have a permit authorizing any level of pollutant discharges, the Division selected a greater than 200 percent exceedance value for each discharge event. **Therefore, a percent exceedance multiplier of 1.33 was determined.**

## EXHIBIT B

### Unauthorized Discharges

Pursuant to the Civil Penalty Policy, in order to account for the fact that the discharges were unauthorized, the Division may increase the potential damage portion of the calculation by up to 50%. The Division's practice is to utilize the following scale to determine the multiplier for the potential damage component. The potential damage component is normally increased by the following designated percentages based on the volume of each unauthorized discharge.

<u>Discharge Volume</u>	<u>Increase</u>
0 – 1,000 gallons	10%
1,001 – 10,000 gallons	20%
10,001 – 50,000 gallons	30%
50,001 – 100,000 gallons	40%
Over 100,000 gallons	50%

The most current engineering evaluation of the facility determined an average daily flow of 12,960 gallons/day. **Therefore, the Division determined a 30% increase to the potential damage component was warranted.**

The potential damage component of the penalty was calculated as follows:

Potential Damage Penalty = Beneficial Use Point Value × Percent Exceedance Multiplier × \$200 × Unauthorized Discharge Percent Increase

$$\text{Potential Damage Penalty} = 2 \times 1.33 \times \$200 \times (30\%) = \mathbf{\$691.60}$$

### **Fault Component**

This component is calculated based on the degree of fault that can be attributed to the violator. Rocky Mountain Vista was aware of the deficient wastewater system and ongoing unpermitted discharges and failed to address staffing, equipment and design deficiencies associated with its operation of the wastewater system. According to Division records Rocky Mountain Vista was issued compliance advisories for the failure to obtain a discharge permit and site location and design approval on November 26, 2007, August 13, 2009, and December 14, 2011. Rocky Mountain Vista did end up receiving site approval in February 2012; however, Rocky Mountain Vista never continued to seek design approval or a discharge permit through the Division. Therefore, each discharge was assigned a Category 3 Fault – situations where the violator was aware of the circumstances that led to the discharge. The Division chose the midpoint of Category 3 range, as the Division has no additional information to support adjustments from this value.

$$\text{Fault Penalty} = \mathbf{\$2,500.00}$$

### **History Component**

Penalties under the History component are classified into five categories ranging from \$0 to \$1,000/day of violation. Rocky Mountain Vista has no recent violation history with the Division, other

## EXHIBIT B

than those violations cited in the current Notice of Violation/Cease and Desist/Clean Up Order (“NOV/CDO/CUO”). Therefore, the daily penalty amount for the history component was set at \$0.

### Days of Violation Component

The duration of the unpermitted land application and groundwater discharges occurred from at least August 2006 until the date of the current NOV/CDO/CUO. During a meeting that took place in August 2006, the Division discussed with Rocky Mountain Vista their need to obtain site location and design approval and a discharge permit from the Division. Due to the extensive number of days of violation, the standard approach in the Civil Penalty Policy for calculating daily penalties would have led to a penalty of several million dollars. The Division deemed a penalty of this magnitude would not be appropriate for the violations cited in the NOV/CDO/CUO. Therefore, the Division conservatively limited the days of violation, for the purpose of this penalty calculation, to the days that posed the most significant threat to both public health and the environment – the days that sewage was observed surfacing from Rocky Mountain Vista’s wastewater treatment system. This included the period from at least December 13, 2011 to December 15, 2011, and October 12, 2012 to October 19, 2012, or a total of 11 days.

With the days of violation determined, the initial penalty amount was calculated as follows:

$$\begin{aligned} \text{Initial Penalty} &= (\text{Potential Damage} + \text{Fault} + \text{History}) \times \text{Days of Violation} \\ &= (\$691.60 + \$2500 + \$0) \times 11 \text{ days} = \mathbf{\$35,107.60} \end{aligned}$$

### Economic Benefit Component

The Economic Benefit considerations used EPA's BEN Model and focused on the costs associated with design approval and permitting requirements. The costs used to run the BEN Model were considered as avoided. The BEN Model is a tool used by the Division during penalty calculations to help calculate the time cost of money for engineering and permitting costs that were required to be paid by the entity but were avoided.

The following information was utilized:

1. Corporate Status: Corporation
2. Penalty Payment Date: 11/1/13 – estimated.
3. Non-compliance Date: 11/26/07 (date of the first compliance advisory).
4. Note: BEN standard variables/data utilized unless otherwise indicated above.
5. The costs considered for BEN were:
  - a. \$4,900 one-time, non-depreciable, cost for the engineering design review.
  - b. \$455 yearly reoccurring cost for permitting fees.
6. Compliance Date: 1/1/13 – approximate date of sale of the mobile home park from Rocky Mountain Vista to the new ownership.
7. Replacement Cycle: Not applied because all costs for corrective measures borne by Rocky Mountain Vista would have been one-time expenditures.

Rocky Mountain Vista avoided engineering design review costs and permit fees for approximately 6 years from November 2007 until January 2013. The economic benefit of avoiding these costs utilizing

## EXHIBIT B

EPA's BEN method, as described above, was calculated to be **\$3,034**. Additionally, the cost of avoiding the required engineering design review fees and yearly permitting fees was **\$7,630**. Therefore, the total economic benefit realized by Rocky Mountain Vista is **\$10,664**.

### Aggravating or Mitigating Circumstances

The Division currently has no additional information to support adjustments for aggravating or mitigating circumstances.

### Civil Penalty Total

Civil Penalty = [(Potential Damage + Fault + History) x Days of Violation] +/- Aggravating/Mitigating Factors  
+ Economic Benefit

Civil Penalty = [(\$691.60 + \$2,500 + \$0) x 11] +/- \$0 + \$10,664

**Civil Penalty Total = \$45,771.60**