

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.
Denver, Colorado 80246-1530
Phone (303) 692-2000
Located in Glendale, Colorado

Laboratory Services Division
8100 Lowry Blvd.
Denver, Colorado 80230-6928
(303) 692-3090

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



Colorado Department
of Public Health
and Environment

September 12, 2013

Mr. John Baranway
d/b/a Galamb's Mobile Home Park
35500 East Colfax Avenue
Watkins, Colorado 80137

Certified Mail Number: 7007 0220 0001 0163 0643

RE: Service of Notice of Violation/Cease and Desist/Clean-up Order, No.: DO-130912-1

Dear Mr. Baranway:

John Baranway is 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 John Baranway has violated the Act and permit regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO/CUO.

Pursuant to §25-8-603, C.R.S., John Baranway is 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.

Mr. John Baranway
d/b/a Galambs Mobile Home Park
Notice of Violation / Cease and Desist / Clean-up Order
Page 2 of 2

Should you or desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO/CUO, 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
Clean Water Compliance & Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Natasha Davis, EPA Region VIII
Tri-County Health Department
Michael Beck, Grants and Loans Unit, CDPHE
Bret Icenogle, Engineering Section, CDPHE
Kelly Jacques, Field Services Section, CDPHE
Nathan Moore, Permits Section, CDPHE
Tania Watson, Compliance Assurance, CDPHE
Tripp Minges, CDOT, tripp.minges@state.co.us



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

NOTICE OF VIOLATION / CEASE AND DESIST ORDER / CLEAN-UP ORDER
NUMBER: DO-130912-1

IN THE MATTER OF: JOHN BARANWAY
d/b/a GALAMBS MOBILE HOME AND RV PARK
UNPERMITTED
ADAMS 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, 25-8-605 and 25-8-606, C.R.S., 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, John Baranway was an individual conducting business in the State of Colorado as a sole proprietorship.
2. John Baranway 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. On July 13, 2012, John Baranway registered the trade name "Galambs Mobile Home and RV Park" with the Colorado Secretary of State.
4. John Baranway is the owner of Galambs Mobile Home and RV Park which is located at 35500 East Colfax Avenue near the Town of Watkins, Adams County, Colorado. Improvements include permanent mobile home and long-term RV pads, a wastewater treatment system, roads, parking lots and utility service lines (the "Facility").
5. The Facility's wastewater treatment system consists of a collection system that is connected to the permanent mobile home and RV pads, a lift station, and an approximately 44,180 square foot evaporative lagoon.

6. Domestic wastewater (raw, untreated sewage) is collected and conveyed via gravity through service/collection lines to a lift station where the wastewater is then pumped to the southeast corner of the property to the lagoon.
7. The Facility's wastewater treatment system is a "domestic wastewater treatment works" as defined by §25-8-103(5), C.R.S.
8. The Facility's domestic wastewater treatment works 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).
9. In 1975, the Colorado Water Quality Control Commission approved a wastewater treatment system for the Facility that was to be constructed as an evaporation lagoon with the hydraulic capacity to receive 10,750 gallons of domestic wastewater per day.
10. Based on the approximate surface area of the Facility's lagoon (44,180 square feet) and the annual precipitation and evaporation rates for the region, the Facility's current domestic wastewater treatment works has the hydraulic capacity to receive less than 3,000 gallons of domestic wastewater per day.

Unauthorized Discharge and Land Application

11. 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.
12. Pursuant to 5 CCR 1002-61, §61.14(1)(a), a permit is required for all land application discharges and 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);
 - c. The impoundment has received a waiver from the Division pursuant to 5 CCR 1002-61, §61.14(9)(a); or
 - d. 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.
13. The lagoon associated with the Facility is an "impoundment" as defined by 5 CCR 1002-61, §61.2(43).

14. October 6, 2011, a representative of the Tri-County Health Department (“TCHD”) conducted an inspection of the Facility. The TCHD representative reported to the Division that a pump and hoses were located at the lagoon and that the hoses were laid out in a manner that one end was within the fence of the lagoon and the other end stretched out to a slight depression located to the south of the lagoon. The TCHD representative also noted bright green vegetation in the immediate area of the depression neighboring dormant brown vegetation in the surrounding area. It was also noted that in subsequent discussions between Facility staff and TCHD representatives, Facility staff indicated that discharges from the lagoon to the land south of the lagoon had historically been performed approximately three to four times per year.
15. On December 23, 2011, the Division sent a Compliance Advisory to John Baranway concerning the TCHD inspection described above and a review of Division records associated with the Facility.
16. In response to the December 23, 2011 Compliance Advisory, on March 2, 2012, the Division spoke by telephone with John Baranway’s contracted operator for the Facility. During the telephone call, the Facility’s contracted operator stated that the wastewater level in the lagoon was close to the top of the lagoon’s liner and wastewater was likely leaking from the lagoon to groundwater.
17. 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).
18. On August 28, 2012 the Division was made aware of a release of wastewater from the Facility that had been collecting in a roadside ditch since August 25, 2012. The roadside ditch is located offsite the Facility, to the north, on Colorado Department of Transportation (“CDOT”) property.
19. On August 30, 2012, representatives of the Division (the “Division Inspectors”) conducted an on-site inspection of the Facility pursuant to the Division’s authority under §25-8-306, C.R.S., to determine John Baranway’s compliance with the Water Quality Control Act and its implementing regulations. During the inspection, the Division Inspectors observed two ponds of wastewater located within the roadside ditch along East Colfax Avenue on CDOT property.
20. On September 4, 2012, a representative of CDOT performed a site visit of the roadside ditch along East Colfax Avenue to investigate another potential release of wastewater from the Facility. The CDOT representative observed an active wastewater discharge flowing into the roadside ditch near the Facility. The CDOT representative estimated the discharge was occurring at approximately twenty (20) gallons per minute at the time of the site visit.
21. On September 7, 2012, Division Inspectors conducted an on-site inspection of the Facility pursuant to the Division’s authority under §25-8-306, C.R.S. During the inspection, the Division Inspectors observed the active discharge of wastewater from the Facility flowing into the roadside ditch. It was estimated that the discharge was occurring at approximately ten (10) to twenty (20) gallons per minute. Additionally, the Division Inspectors collected water samples from the ditch and had the samples analyzed for analytes that would typically be found in domestic sewage, *E.coli* and Total Coliform. Analytical results of the collected samples are listed in the following table:

Galambs Mobile Home and RV Park September 7, 2012 Sample Results	
Analyte	Roadside Ditch
<i>E. coli</i>	>2419.2 colonies/100mL
Total Coliform	>2419.2 colonies/100mL

22. On September 10, 2012, a representative of the TCHD conducted an on-site inspection of the Facility. The TCHD representative reported to the Division that the wastewater discharge discussed above was still ongoing and noted that the wastewater collected in the roadside ditch had not been cleaned up.
23. On September 10, 2012, a representative of the Division contacted John Baranway about the ongoing discharge and advised him that the discharge needed to be eliminated and the site cleaned up.
24. In response to the Division's communications and inspections, John Baranway notified the Division on September 12, 2012 that the discharge had ceased and the wastewater in the roadside ditch was cleaned up. John Baranway stated that approximately 5,550 gallons of wastewater was removed and the roadside ditch was treated with lime.
25. On September 10, 2012, John Baranway's contracted engineer for the Facility submitted a spill reporting form to the Division. In the September 10, 2012 spill reporting form, the Facility's contracted engineer certified that partially treated wastewater from the Facility had been pumped and discharged an estimated four times per year over a twelve year period for the purpose of relieving excess wastewater in the Facility's lagoon.
26. 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).
27. John Baranway's land application discharges and discharges from the Facility's lagoon, as described above, do not meet any of the exemption criteria of 5 CCR 1002-61, §61.14(1)(a), and, therefore, are required to be permitted.
28. Division records establish that John Baranway does not have any permits authorizing the land application of wastewater from the Facility's domestic wastewater treatment works, nor discharges of wastewater from the Facility's lagoon.
29. John Baranway's discharges of domestic wastewater directly to the land constitute unauthorized land application in violation of 5 CCR 1002-61, §61.14(1)(a).
30. John Baranway's discharges of wastewater to groundwater and/or the roadside ditch of Colfax Avenue constitute unauthorized discharges of pollutants from a point source into state waters and/or a ditch or man-made conveyance 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).

Failure to Report Spills and/or Discharges

31. Pursuant to §25-8-601(2), C.R.S., any person engaged in an operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of waters of the state contrary to the provisions of this article, as soon as he has knowledge thereof, shall notify the Division of such discharge.
32. The unpermitted land application discharges described above in paragraphs 18 through 22 were not reported to the Division by the Facility.
33. The unpermitted land application discharges described above in paragraphs 20 through 24 began on or before September 4, 2012; however, were not reported to the Division by the Facility until September 10, 2012.
34. John Baranway's failures to report the spills or discharges described above, as soon as he had knowledge thereof, constitute violations of §25-8-601(2), C.R.S.

NOTICE OF VIOLATION

35. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that John Baranway 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, 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.*"

Section 25-8-601(2), C.R.S., which states in part, "*Any person engaged in an operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of waters of the state contrary to the provisions of this article, as soon as he has knowledge thereof, shall notify the division of such discharge.*"

5 CCR 1002-61 §61.3(1)(a), 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, §61.14(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, §25-8-605 and §25-8-606, C.R.S., John Baranway is hereby ordered to:

36. 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 John Baranway to comply with the following specific terms and conditions of this Order:

37. John Baranway shall immediately evaluate the source(s) of the surface releases/discharges of domestic sewage and initiate measures to cease any ongoing or future releases of wastewater or other pollutants from the Facility's wastewater treatment system to the ground.
38. John Baranway shall immediately initiate measures to collect and properly dispose of any ongoing surface releases of wastewater or other pollutants from the Facility. Within seven (7) calendar days of receipt of this Order, John Baranway shall submit to the Division a written description of how the collection and disposal of surface releases of wastewater will be managed and how John Baranway intends to prevent any future surface releases of wastewater from the Facility.
39. John Baranway shall notify the Division, as soon as John Baranway 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. John Baranway shall also mitigate the effects of such spills or discharges by any means reasonably available to the Facility and report those mitigation efforts to the Division.
40. Within thirty (30) calendar days of receipt of this Order, John Baranway shall prepare and submit for Division review and approval a written plan to evaluate, characterize and remediate (if necessary) wastewater contaminated soils at 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 treatment of wastewater;
 - b. A detailed description of the methodology to be used to evaluate, characterize and remediate wastewater contaminated soils at the Facility; and
 - c. An implementation schedule for the proposed assessment, characterization and remediation activities.

The submitted plan and implementation schedule shall become a condition of this Order and John Baranway shall implement the plan and schedule as submitted unless notified by the Division, in writing, that alternate measures and/or time schedules are appropriate. If the Division imposes alternate measures and/or time schedules, they shall also become a condition of this Order. Any evaluation and remediation activities that will occur on property not owned by John Baranway, including within CDOT right-of-ways, shall be conducted in cooperation and agreement with the applicable property owner(s).

41. Within seven (7) calendar days of receipt of this Order, John Baranway 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 design and operation of the Facility's domestic wastewater treatment works and recommend measures to ensure a fully functioning and approved wastewater treatment system is in place that complies with all requirements of the Colorado Water Quality Control Act and its implementing regulations. The evaluation shall consider, but not be limited to:
 - a. An evaluation of the Facility's lagoon and other treatment processes to identify any deficiencies in the current design, operation, and/or maintenance of the wastewater treatment system. This shall include, but not be limited to, an evaluation of the capacity of the current system, the hydraulic and organic loading to the Facility, the seepage rate from the lagoon, and the use and acceptability of the current aeration processes and any other treatment processes.
 - b. An evaluation of the Facility's lift station, collection system and other conveyance appurtenances (if applicable) to identify any deficiencies in the current design, operation, and/or maintenance of the sewage collection and conveyance system. This shall include, but not be limited to, an evaluation and identification of any piping and/or overflow mechanisms that are causing or contributing to spills and unauthorized wastewater discharges from the Facility.
42. Within ten (10) calendar days of receipt of this Order, John Baranway shall provide documentation to the Division that it has retained the services of the qualified individual or entity identified in paragraph 41 above. This 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 such services, including a copy of the scope of services to be provided.
43. Within forty-five (45) calendar days of receipt of this order, John Baranway shall submit in writing to the Division a final report on the findings of the evaluation identified and outlined in paragraph 41 above. Along with the findings of the evaluation, the report must identify specific interim and long-term measures that will be taken by John Baranway to rectify deficiencies identified in the Facility's wastewater collection and treatment systems. For each interim and long-term measure identified, John Baranway shall submit an aggressive time schedule for completion of each measure. The measures and time schedule submitted shall become a condition of this Order, and John Baranway shall implement the measures and time schedule as submitted unless notified by the Division, in writing, that alternate measures and/or time schedules are appropriate. If the Division imposes alternate measures and/or time schedules, they shall also become a condition of this Order.
44. John Baranway shall submit progress reports to the Division every thirty (30) calendar days. The first report shall be submitted to the Division by December 31, 2013. 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 thirty (30) calendar days.

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, John Baranway 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 facsimile transmittals, please include a cover sheet addressed to Mr. Joe 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.

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 12th day of September, 2013.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Steven H. Gunderson, Director
WATER QUALITY CONTROL DIVISION