



COLORADO
Department of Public
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

September 15, 2014

Sheila Dole, President
Grand Mesa Metropolitan District #2
PO Box 485
Mesa, Colorado 81643

Certified Mail Number: 7012 1640 0000 0801 9632

RE: Service of Notice of Violation/Cease and Desist Order, Number: DO-140912-1

Dear Ms. Dole:

Grand Mesa Metropolitan District #2 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 Grand Mesa Metropolitan District #2 has violated the Act and/or permit or control regulations promulgated pursuant to the Act and/or a permit, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., Grand Mesa Metropolitan District #2 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 Grand Mesa Metropolitan District #2 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 Eric Mink of this office by phone at (303) 692-2312 or by electronic mail at eric.mink@state.co.us.

Sincerely,



Eric T. Mink, Enforcement Specialist
Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Natasha Davis, EPA Region VIII
Monique Mull, Mesa County Health Department
Nicole Rowan, Watershed Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Amy Zimmerman, Engineering Section, CDPHE
Heather Drissel, Field Services Section, CDPHE
Kenan Diker, Permits Section, CDPHE
Mike Harris, Clean Water Enforcement Unit, CDPHE
Tania Watson, Business Data Services Unit, CDPHE
Barry Cress, DOLA





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

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: DO-140912-1

**IN THE MATTER OF: GRAND MESA METROPOLITAN DISTRICT #2
CDPS PERMIT NO. CO0023485
MESA 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 violations cited herein, Grand Mesa Metropolitan District #2, f/k/a Powderhorn Metropolitan District, ("Grand Mesa") was a "Special District" formed in Mesa County, Colorado pursuant to the Special District Act, §§32-1-101 *et seq* and 32-4-501 *et seq*, C.R.S.
2. Grand Mesa 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. Grand Mesa owns and/or operates the Grand Mesa wastewater treatment facility, located at 39° 4.17' N and 108° 9.25' W, near the Town of Mesa, Mesa County, Colorado (the "Facility").
4. The Facility consists of two aerated lagoons, a polishing pond, and a chlorine contact chamber. The Facility was designed with the capacity to accept and treat an average flow of 0.052 million gallons per day (MGD) and organic loading of 141 pounds 5-day biological oxygen demand (BOD₅) per day.
5. The Facility is the subject of the Colorado Discharge Permit System, Permit Number CO0023485 (the "Permit"). The current Permit became effective on June 1, 2007 and was set to expire on May 31, 2012, but has been administratively continued pending Permit reissuance.
6. The Permit authorizes Grand Mesa to discharge treated wastewater from the Facility through Outfall 001A, following the chlorine contact chamber, into Big Beaver Creek. Outfall 001A is physically located at approximately 39° 4.194' N and 108° 9.198' W, and is the only discharge outfall authorized by the Permit. The discharge is subject to the specific effluent limitations and other conditions of the

Permit. The Permit includes requirements to monitor influent loading to the Facility at a representative point prior to lagoon number one, which is designated in the Permit as Outfall 300I.

7. Pursuant to 5 CCR 1002-61, §61.8, Grand Mesa must comply with all the terms and conditions of the Permit, and violations of such terms and conditions as specified in the Permit may be subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.

Failure to Comply with Permit Effluent Limitations

8. Pursuant to Part I.A.5. of the Permit, Grand Mesa’s effluent at Outfall 001A shall not exceed, among others not subject of this action, the effluent discharge limitations specified below:

| GRAND MESA METROPOLITAN DISTRICT #2 DISCHARGE LIMITATIONS | | | |
|--|----------------------------|--------------------------|--------------------------|
| EFFLUENT PARAMETER | 30- DAY AVERAGE | 7-DAY AVERAGE | DAILY MAXIMUM |
| Flow, MGD | 0.052 | NA | Report |
| Total Ammonia as N, mg/l | | | |
| Through June 30, 2010 | Report | NA | Report |
| Beginning July 1, 2010 | | | |
| January | 18 | NA | 34 |
| February | 9.6 | NA | 22 |
| March | 10.5 | NA | 25 |
| April | 7.7 | NA | 22 |
| May | 5.8 | NA | 20 |
| June | 13.9 | NA | 35 |
| July | 27 | NA | 48 |
| August | 24 | NA | 46 |
| September | 26 | NA | 48 |
| October | Report | NA | Report |
| November | 28 | NA | 44 |
| December | 39 | NA | 48 |

9. Pursuant to Part I.B.2. of the Permit, Grand Mesa is required to monitor defined effluent parameters at specified frequencies in order to provide an indication of compliance or non-compliance with the effluent limitations of the Permit.
10. Pursuant to Part I.D.2. of the Permit, Grand Mesa is required to summarize and report the analytical results of its effluent monitoring to the Division via monthly Discharge Monitoring Report forms (“DMRs”). Each DMR is to include a certification by Grand Mesa that the information provided therein is true, accurate and complete to the knowledge and belief of Grand Mesa.
11. Grand Mesa’s DMRs submitted for Outfall 001A for the monitoring periods between October 2009 and March 2013 include, among other information and data, the following effluent concentration summary data which exceeded the limitations listed in Part I.A.5. of the permit:

| GRAND MESA METROPOLITAN DISTRICT #2 EFFLUENT SELF-MONITORING DATA | | |
|--|---|--|
| DISCHARGE MONITORING REPORTING PERIOD | SAMPLE MEASUREMENTS FOR OUTFALL 001A | |
| FLOW | 30 DAY AVG. LIMIT= 0.052 MGD | DAILY MAX LIMIT= Report MGD |
| October 1 – October 31, 2009 | 0.1 | -- |
| May 1 – May 31, 2011 | 0.057 | -- |
| TOTAL AMMONIA as N | | |
| | 30 DAY AVG. LIMIT= 7.7 mg/l | DAILY MAX LIMIT= 22 mg/l |
| April 1 – April 30, 2011 | 28 | 28 |
| | 30 DAY AVG. LIMIT= 9.6 mg/l | DAILY MAX LIMIT= 22 mg/l |
| February 1 – February 28, 2013 | 43 | 43 |
| | 30 DAY AVG. LIMIT= 10.5 mg/l | DAILY MAX LIMIT= 25 mg/l |
| March 1 – March 31, 2013 | 47 | 60 |

12. Total ammonia as nitrogen is considered a “pollutant,” or indicator thereof, as defined by §25-8-103(15), C.R.S., and its implementing permit regulation 5 CCR 1002-61, §61.2(76).
13. The Permit does not authorize the pollutant levels identified above in paragraph 11. Division records establish that Grand Mesa does not have any other permit authorizing such discharge into State Waters.
14. Grand Mesa’s failure to comply with the Permit effluent limitations constitutes violations of Part I.A.5. of the Permit.

Failure to Meet Minimum Percent Removal Requirements

15. Pursuant to Part I.A.6. of the Permit, the arithmetic mean of the BOD₅ concentration for effluent samples collected during the calendar month shall demonstrate a minimum of 85 percent (85%) removal for BOD₅. Pursuant to Part I.D.2. of the Permit, Grand Mesa is required to summarize and report the monthly average BOD₅ percent removal to the Division via monthly DMRs. Each DMR is to include a certification by Grand Mesa that the information provided therein is true, accurate, and complete to the knowledge and belief of Grand Mesa.
16. Grand Mesa’s DMRs for the October 2009 through May 2013 monitoring periods include, among other information and data, the following monthly average percent removal summary data, which does not demonstrate a minimum of 85% removal for BOD₅ as required by Part I.A.6. of the Permit:

| GRAND MESA METROPOLITAN DISTRICT #2 REPORTED SELF-MONITORING DATA | | |
|--|-------------------|--|
| DISCHARGE MONITORING REPORTING PERIOD | OUTFALL NUMBER | SAMPLE MEASUREMENT |
| BOD₅, % REMOVAL | | MONTHLY AVG. MINIMUM REMOVAL REQUIREMENT= 85% |
| October 1 – October 31, 2009 | 001A | 79 |
| May 1 – May 31, 2010 | 001A | 33 |
| June 1 – June 30, 2010 | 001A | 55 |
| May 1 – May 31, 2011 | 001A | 0 |
| May 1 – May 31, 2012 | 001A | 75 |
| April 1 – April 30, 2013 | 001A | 80 |
| May 1 – May 31, 2013 | 001A | 80 |

17. Grand Mesa's failure to demonstrate a monthly average minimum of 85% removal for BOD₅, as identified in above in paragraph 16, constitutes violations of Part I.A.6. of the Permit.

Failure to Properly Monitor and Report

18. Pursuant to Part I.D.2. of the Permit, Grand Mesa is required to report all monitoring results on a monthly basis using Division approved DMRs. The Permit specifies that DMRs shall be filled out accurately and completely in accordance with requirements of the Permit and the instructions on the forms.
19. Division records establish that Grand Mesa failed to submit DMR data to the Division for the following reporting period and associated effluent parameter:

| GRAND MESA METROPOLITAN DISTRICT #2 DEFICIENT DMR | | |
|--|-------------------|----------------------------|
| DISCHARGE MONITORING REPORTING PERIOD | OUTFALL NUMBER | PARAMETER |
| June 1-30, 2011 | 001A | BOD ₅ % Removal |

20. Grand Mesa's failure to monitor and/or submit DMR data for each effluent parameter, for each reporting period, constitutes violations of Part I.D.2. of the Permit.

Failure to Adhere to Permit Compliance Schedule

21. Pursuant to Part I.A.7.a. of the Permit, by September 30, 2008, Grand Mesa was required to conduct a mixing zone analysis consisting of collection of site-specific data and performance of threshold tests based on the Mixing Zone Exclusion Tables and submit the results of the study to the Division.

22. Pursuant to Part I.A.7.b. of the Permit, Grand Mesa was required to comply with the following compliance schedules for completing construction to upgrade the Facility's treatment in order to meet the final total ammonia and total residual chlorine (TRC) Permit effluent limitations:

| GRAND MESA METROPOLITAN DISTRICT #2 COMPLIANCE SCHEDULE: ACTIVITIES TO MEET TOTAL AMMONIA AND TRC LIMITATIONS | |
|---|-----------------------|
| ACTIVITY | MILESTONE DATE |
| 1) The permittee shall complete plans and specifications for construction of facilities or activities determined to be necessary to meet the final total ammonia and TRC limitations, and submit them. | June 30, 2008 |
| 2) The permittee shall begin implementing the approved plan for construction or other activities such that compliance with the final total ammonia and TRC limitations may be attained. | March 30, 2009 |
| 3) The permittee shall submit a construction progress report summarizing the progress in construction or other activities such that compliance with the final total ammonia and TRC limitations may be attained. | March 30, 2009 |
| 4) The permittee shall submit a second construction progress report summarizing the progress in construction or other activities such that compliance with the final total ammonia and TRC limitations may be attained. | March 30, 2010 |
| 5) The permittee shall submit a third construction progress report summarizing the progress in construction or other activities such that compliance with the final total ammonia and TRC limitations may be attained. | March 30, 2011 |
| 6) The permittee shall complete construction of facilities or other appropriate actions, which will allow the permittee to meet the final total ammonia and TRC limitations. | February 28, 2012 |

23. On September 8, 2011, a representative of the Division (the "Inspector") conducted an on-site inspection of the Facility pursuant to the Division's authority under §25-8-306, C.R.S., to determine Grand Mesa's compliance with the Water Quality Control Act and the Permit. During the inspection, the Inspector interviewed Facility representatives, reviewed the Facility's records, and performed a physical inspection of the Facility.
24. The Inspector identified, per Division records and the inspection on September 8, 2011, that Grand Mesa had not completed or submitted a mixing zone analysis and, therefore, Grand Mesa had failed to comply with the compliance schedule activities in Part I.A.7.a. of the Permit.
25. The Inspector identified, per Division records and the inspection on September 8, 2011, that Grand Mesa had not initiated construction to meet the final total ammonia and TRC limitations; submitted documentation on any activities completed to meet the final total ammonia and TRC limitations; or submitted documentation proving that the final total ammonia and TRC limitations could be met without any facility improvements. Therefore, Grand Mesa had failed to comply with the compliance schedule activities in Part I.A.7.a of the Permit.

26. Pursuant to Part I.A.7. and Part I.D.4.d. of the Permit, Grand Mesa was required to submit the information required by the compliance schedule, reports of progress, and/or written notice of compliance or noncompliance with the compliance schedule requirements by no later than fourteen (14) calendar days following each scheduled date.
27. Division records establish that Grand Mesa failed to submit the information and written reports required by the compliance schedule activities, specifically including: mixing zone analysis; plans and specifications for construction; notice that the approved plan for construction or other activities had been initiated; the progress reports; notice that construction was completed; and/or the compliance or noncompliance notification required by Part I.A.7. and Part I.D.4.d. of the Permit.
28. Grand Mesa's failure to comply with the compliance schedule to conduct a mixing zone analysis, as identified above in paragraph 24, constitutes violations of Part I.A.7.a. of the Permit.
29. Grand Mesa's failure to comply with the compliance schedule to meet the total ammonia and TRC limitations, as identified above in paragraph 25, constitutes violations of Part I.A.7.b. of the Permit.
30. Grand Mesa's failure to submit the information and written reports required by the compliance schedule, as identified above in paragraph 27, constitutes violations of Part I.A.7. and Part I.D.4.d. of the Permit.

Failure to Properly Monitor

31. Pursuant to Parts I.B.1. and I.B.2. of the Permit, Grand Mesa is required to monitor influent flow at Outfall 300I and effluent flow at Outfall 001A via a continuous flow measuring device equipped with a recorder or totalizer. Pursuant to Part I.C.1. of the Permit, samples and measurements taken for the respective identified monitoring points shall be representative of the volume and nature of all influent wastes received at the facility and the monitored effluent discharged from the facility. Pursuant to Part I.C.6. of the Permit, the flow measuring device must provide representative measurement of Grand Mesa's influent and effluent flows, and must be capable of indicating values within ten (10) percent of actual flow being measured.
32. During the inspection on September 8, 2011, the Inspector identified that the influent Cutthroat Flume was not level and rusted pieces of metal were observed in the flume and, therefore, the ultrasonic flow meter could not continuously measure influent flow accurately.
33. During the inspection on September 8, 2011, the Inspector identified noted that the effluent Parshall Flume was installed in a truncated manner allowing discharge to flow around the flume during high flows. Therefore, the ultrasonic flow meter could not measure effluent flow accurately. Further, the flow meter was not equipped with a chart recorder or totalizer.
34. Grand Mesa's failure to properly monitor influent and effluent flow constitutes violations of Parts I.B.1., I.B.2., I.C.1., and I.C.6. of the Permit.

Failure to Maintain Records

35. Pursuant to Part I.C.4.b. of the Permit, Grand Mesa is required to establish and retain records for a minimum of three (3) years. The records shall include, but are not limited to: the date, type, exact

place, and time of sampling or measurements; the individual(s) who performed the sampling or measurements; the date(s) the analysis were performed; the individual(s) who performed the analysis; the analytical techniques or methods used; the results of such analysis; all monitoring information, including all original strip chart recordings for continuous monitoring instrumentation, all calibration and maintenance records; and copies of all reports required by the Permit.

- 36. During the inspection on September 8, 2011, the Inspector identified that Grand Mesa did not have calibration or verification records for the influent and effluent flow-measuring devices.
- 37. Grand Mesa's failure to maintain records constitutes violations of Part I.C.4.b. of the Permit.

NOTICE OF VIOLATION

- 38. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that Grand Mesa has violated the following sections of the Permit.

Part I.A.5. of the Permit, which states in part: "In accordance with the Water Quality Control Commission Regulations for Effluent Limitations, Section 62.4, and the Colorado Discharge Permit System Regulations, Section 61.8(2), the permitted discharge shall comply with the following limitations."

Part I.A.6. of the Permit, which states in part: "In addition to the concentration limitations on BOD₅... the arithmetic mean of the BOD₅ concentrations for effluent samples collected during the calendar month shall demonstrate a minimum of eighty-five percent (85%) removal of BOD₅..."

Part I.A.7. of the Permit, which states in part: "No later than 14 calendar days following each date identified in the...schedules of compliance, the permittee shall submit either a report of progress or, in the case of specific actions being required by identified dates, a written notice of compliance or noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement."

Part I.A.7.a. of the Permit, the compliance schedule to complete a mixing zone analysis:

| GRAND MESA METROPOLITAN DISTRICT #2 COMPLIANCE SCHEDULE: MIXING ZONE ANALYSIS | |
|--|-----------------------|
| ACTIVITY | MILESTONE DATE |
| The permittee shall collect site-specific data, perform threshold tests based on Mixing Zone Exclusion Tables, and submit study results. | September 30, 2008 |

Part I.A.7.b. of the Permit, the compliance schedule to meet the total ammonia and TRC effluent limitations:

| GRAND MESA METROPOLITAN DISTRICT #2 COMPLIANCE SCHEDULE: ACTIVITIES TO MEET TOTAL AMMONIA AND TRC LIMITATIONS | |
|---|-----------------------|
| ACTIVITY | MILESTONE DATE |
| 1) The permittee shall complete plans and specifications for construction of facilities or activities determined to be necessary to meet the final total ammonia and TRC limitations, and submit them. | June 30, 2008 |
| 2) The permittee shall begin implementing the approved plan for construction or other activities such that compliance with the final total ammonia and TRC limitations may be attained. | March 30, 2009 |
| 3) The permittee shall submit a construction progress report summarizing the progress in construction or other activities such that compliance with the final total ammonia and TRC limitations may be attained. | March 30, 2009 |
| 4) The permittee shall submit a second construction progress report summarizing the progress in construction or other activities such that compliance with the final total ammonia and TRC limitations may be attained. | March 30, 2010 |
| 5) The permittee shall submit a third construction progress report summarizing the progress in construction or other activities such that compliance with the final total ammonia and TRC limitations may be attained. | March 30, 2011 |
| 6) The permittee shall complete construction of facilities or other appropriate actions, which will allow the permittee to meet the final total ammonia and TRC limitations. | February 28, 2012 |

Part I.B.1. of the Permit, which states in part: “In order to obtain an indication of the current influent loading as compared to the approved capacity specified in Part I, Section A.2., the permittee shall monitor influent parameters at the following required frequencies, the results to be reported on the Discharge Monitoring Report:”

| | | |
|---------------------------|------------------|--------------------|
| <u>Influent Parameter</u> | <u>Frequency</u> | <u>Sample Type</u> |
| Flow, MGD | Continuous | Recorder |

Part I.B.2. of the Permit, which states in part: “In order to obtain an indication of the probable compliance or non-compliance with the effluent limitations specified in Part I, Section A.5., the permittee shall monitor effluent parameters at the following required frequencies, the results to be reported on the Discharge Monitoring Report:”

| | | |
|---------------------------|------------------|--------------------|
| <u>Effluent Parameter</u> | <u>Frequency</u> | <u>Sample Type</u> |
| Flow, MGD | Continuous | Recorder |

Part I.C.1. of the Permit, which states in part: “Samples and measurements taken for the respective identified monitoring points as required herein shall be representative of the volume and nature of: 1) all influent wastes received at the facility... 2) the monitored effluent discharged from the facility...”

Part I.C.4.b. of the Permit, which states in part: “The permittee shall retain for a minimum of three (3) years records of all monitoring information, including all original strip chart recordings for continuous monitoring instrumentation, all calibration and maintenance records, copies of all reports required by this permit and records of all data used to complete the application for this permit.”

Part I.C.6. of the Permit, which states in part: “The metering device shall be equipped with a local flow indication instrument and a flow indication-recording-totalization device suitable for providing permanent flow records... The flow-measuring device must indicate values within ten (10) percent of the actual flow entering the facility.”

Part I.D.2. of the Permit, which states in part: “Monitoring results shall be summarized for each month and reported on the Discharge Monitoring Report forms. One form shall be mailed to the Water Quality Control Division... so that the DMR is received no later than the 28th day of the following month. The Discharge Monitoring Report forms shall be filled out accurately and completely in accordance with the requirements of this permit and the instructions on the forms.”

Part I.D.4.d. of the Permit, which states in part: “No later than 14 calendar days following each date identified in the compliance schedules in this permit, the permittee shall submit either a report of progress or, in the case of specific actions being required by identified dates, a written notice of compliance or noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.”

REQUIRED CORRECTIVE ACTION

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

39. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 through 25-8-803, C.R.S., its implementing regulations promulgated thereto and the Permit.

Furthermore, the Division hereby orders Grand Mesa to comply with the following specific terms and conditions of this Order:

40. Within thirty (30) calendar days of receipt of this Order, Grand Mesa 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 Facility and recommend measures to ensure adequate treatment is provided such that the Facility complies with the terms and conditions of the Permit and the Colorado Water Quality Control Act. The evaluation shall include, but not be limited to:
 - a. An evaluation of the Facility’s treatment processes to identify deficiencies in the current design of the Facility. This should include, but not be limited to; an evaluation of historic

- monitoring data, an evaluation of the capacity of the current system, and the use and acceptability of the current aeration lagoons, polishing pond, and chlorine contact chamber;
- b. A determination of the seepage rate from the aeration lagoons and polishing pond;
 - c. Results gained from the completion of a mixing zone study;
 - d. Quantification of the amount of infiltration/inflow (I/I) to the collection system and the Facility;
 - e. An evaluation of the Facility's current operation and maintenance practices to identify any deficiencies that impact the Facility's ability to comply with effluent limitations and percent removal requirements and;
 - f. An evaluation, recommendation, and plan for upgrades, improvements, and/or expansion of the Facility, if determined necessary, that will ensure the Facility will reliably and consistently comply with effluent limitations, including but not limited to total ammonia and TRC, and all other Permit requirements.
41. Within forty five (45) calendar days of the receipt of this Order, Grand Mesa shall provide documentation to the Division that it has retained the services of the qualified individual or entity described in paragraph 40. The 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.
42. Within forty five (45) calendar days of receipt of this Order, Grand Mesa shall provide documentation that a continuous flow measuring device with recorder has been installed correctly and operating within Permit requirement at Outfalls 300I and 001A (the influent and effluent monitoring locations). This documentation shall include calibration records, proof of accuracy of the flow measuring device indicating that the device is capable of measuring values within ten percent (10%) of the actual flow rates, and schedules and procedures for the ongoing calibration and maintenance of the flow measuring device. If replacement and/or repairs are necessary, the documentation shall include a specific plan and time schedule for replacing and/or repairing the continuous flow measuring device.
43. Within ninety (90) calendar days of receipt of this Order, Grand Mesa shall submit to the Division a report summarizing the results of the engineering evaluation identified above in paragraph 40. The report shall also include a plan and an aggressive time schedule for the implementation of specific interim and long-term measures that Grand Mesa will complete to address the deficiencies identified through the evaluation and to ensure the Facility consistently meets effluent limitations and other terms and conditions of the Permit. This includes a specific plan and time schedule for commencing and completing construction of a treatment expansion and/or upgrades and obtaining planning and construction funding, if deemed necessary. If any of the corrective measures require Division site location and design approval, Grand Mesa shall timely file a completed site location and/or design approval request in accordance with §25-8-702, C.R.S. and 5 CCR 1002-22. Grand Mesa shall not initiate construction until such time as it has obtained the necessary site location and design approval(s) as required by §25-8-702, C.R.S. and 5 CCR 1002-22, or unless otherwise specifically authorized, in writing, by the Division. The submitted plan and time schedule shall become a condition of this Order and Grand Mesa shall implement the plan and time schedule as submitted unless notified by the Division, in writing, that an alternate plan or time schedule is appropriate. If the Division imposes an alternate plan or time schedule, it shall also become a condition of this Order.
44. Grand Mesa shall submit written monthly progress reports to the Division outlining efforts taken to achieve compliance with this Order. The first report shall be submitted to the Division on or before

November 30, 2014 and subsequent reports shall be due at the end of every month thereafter. At a minimum, each report shall outline activities completed in the previous month and activities planned for the next month to remain in compliance with this Order. The progress reports shall be required until the issuance of written notice from the Division that the reports are no longer necessary.

45. If Grand Mesa becomes aware of any situation or circumstances that cause Grand Mesa to become unable to comply with any condition or time schedules set forth by this Order, Grand Mesa shall provide written notice to the Division within five (5) calendar days of Grand Mesa becoming aware of such circumstances. Grand Mesa's notice shall describe what, if any, impacts will occur on Grand Mesa's ability to comply with the Colorado Water Quality Control Act and any impacts on the remaining conditions and/or time schedules specified by this Order, and what steps are being taken to mitigate the impacts.
46. All documents submitted under this Order shall be under the signature of Grand Mesa, shall use the same titles as stated in this Order, and shall reference both the number of this Order and the number of the paragraph pursuant to which the document is required. Within thirty (30) calendar days of receiving Division comments on submitted documents, Grand Mesa shall revise the submitted document(s) to properly address the Division's comments and resubmit the document(s) for Division review.

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.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, Grand Mesa 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: Eric Mink
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: (303) 692-2312
Email: eric.mink@state.co.us

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.”

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 (\$10,000), or by imprisonment in the county jail for not more than six (6) 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 (\$10,000) 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 2014.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Ron Falco, P.E., Acting Director
WATER QUALITY CONTROL DIVISION