



COLORADO
Department of Public
Health & Environment

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

September 19, 2014

Terry Mabrey, Mayor
Town of Rye
PO Box 236
Rye, CO 81069

Certified Mail Number: 7012 1640 0000 0801 9663

RE: Service of Notice of Violation/Cease and Desist Order, Number: IO-140919-2

Dear Mr. Mabrey:

The Town of Rye 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 the Town of Rye has violated the Act and/or regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., the Town of Rye 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 the Town of Rye 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 Andrea Beebout of this office by phone at (303) 692-3598 or by electronic mail at andrea.beebout@state.co.us.

Sincerely,



Andrea Beebout, Enforcement Specialist
Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Susanna Anderson, Town Clerk, Town of Rye
Natasha Davis, EPA Region VIII
Pueblo City-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
Lillian Gonzalez, Permits Section, CDPHE
Tania Watson, Data Management, 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: IO-140919-2

IN THE MATTER OF: TOWN OF RYE
CDPS PERMIT NO. COG641000
CERTIFICATION NO. COG641125
PUEBLO 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, the Town of Rye (the "Town") was a municipality as defined by §31-1-101(6), C.R.S.
2. The Town 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. The Town owns and/or operates the Rye water treatment plant, located at 37°55'20" N and 104°56'14" E, near the Town of Rye, Pueblo County, Colorado (the "Facility").
4. The Facility uses a membrane filtration system in the process of generating potable water for municipal use. The membrane filtration system requires routine cleaning, which is accomplished via a backwashing process. The backwash waste stream is sent to a settling tank prior to discharge.
5. The Facility is subject to the Colorado Discharge Permit System General Permit, Number COG641000, for Water Treatment Plants (the "Permit"). The Permit became effective November 1, 2005 and was set to expire October 31, 2010, but is currently administratively continued until issuance of a renewal permit. The Town is authorized to discharge under the Permit via Certification Number COG641125 (the "Certification"), which became effective on January 26, 2009 and is currently administratively continued until Permit reissuance.

6. The Permit and Certification authorize the Town to discharge filter backwash water from the Facility through Outfall 001A to Greenhorn Creek in accordance with specific effluent limitations and other terms and conditions of the Permit and Certification.
7. Pursuant to 5 CCR 1002-61, §61.8, the Town 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 Parts I.B.1. of the Permit, the Town’s effluent at Outfall 001A shall be shall not exceed the total residual chlorine (“TRC”) effluent discharge limitations specified below:

| TOWN OF RYE EFFLUENT LIMITATIONS | | | |
|---|----------------------------|--------------------------|--------------------------|
| EFFLUENT PARAMETER | 30- DAY AVERAGE | 7-DAY AVERAGE | DAILY MAXIMUM |
| Total residual chlorine (“TRC”), mg/l | 0.011 | NA | 0.019 |

9. Pursuant to Part I.C.1. of the Permit, in order to provide an indication of compliance or non-compliance with the effluent limitations of the Permit, the Town is required to monitor defined effluent parameters at specified frequencies and report the results on the DMR.
10. Pursuant to Part I.F.2. of the Permit, the Town is required to summarize and report the analytical results of its effluent monitoring to the Division via monthly Discharge Monitoring Report (“DMR”) forms. Each DMR is to include a certification by the Town that the information provided therein is true, accurate and complete to the knowledge and belief of the Town.
11. The Town’s DMRs for the 1st Quarter 2014 (1/1/2014- 3/31/2014) and 2nd Quarter 2014 (4/1/2014 – 6/30/2014) establish that the Town monitored its effluent for free chlorine instead of monitoring for total residual chlorine, as required by the Permit. The Town’s DMRs reported the following effluent data for free chlorine:

| TOWN OF RYE EFFLUENT SELF-MONITORING DATA | | | | |
|--|---|--|---|--|
| DISCHARGE MONITORING REPORTING PERIOD | SAMPLE MEASUREMENTS FOR OUTFALL 001A | | | |
| | 30 DAY AVG. FREE CHLORINE REPORTED, mg/l | 30 DAY AVG. TRC LIMIT, mg/l | DAILY MAX FREE CHLORINE REPORTED, mg/l | DAILY MAX TRC LIMIT, mg/l |
| 1 st Quarter 2014 (1/1/2014-3/31/2014) | 0.2 | 0.011 | 0.25 | 0.019 |
| 2 nd Quarter 2014 (4/1/2014-6/30/2014) | 0.134 | 0.011 | 0.18 | 0.019 |

Total residual chlorine is the sum of the combined chlorine and free chlorine concentrations in water that has been treated with chlorine. Therefore, the total residual chlorine concentration in treated water will always be greater than the free chlorine concentration of the water. The free chlorine concentrations reported by the Town for the 1st quarter 2014 and 2nd quarter 2014 were greater than the total residual chlorine limitations of the Permit and therefore establish total residual chlorine concentrations which exceeded the limitations listed in Part I.B.1. of the Permit.

12. TRC and free chlorine are “pollutants,” or indicators thereof, as defined by §25-8-103, 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 10. Division records establish that the Town does not have any other permit authorizing such discharge into State Waters.
14. The Town’s failure to comply with the Permit effluent limitations constitutes violations of Part I.B.1. of the Permit.

Failure to Properly Monitor and Report

15. Pursuant to Part I.C.1. of the Permit, in order to provide an indication of compliance or non-compliance with the effluent limitations of the Permit, the Town is required to monitor defined effluent parameters at specified frequencies, including weekly for flow, oil and grease, and pH.
16. Pursuant to Part I.F.2. of the Permit, the Town is required to summarize and report all monitoring results on a monthly basis using Division approved DMRs. The Town is required to ensure the DMRs are mailed to the Division so that they are received by the Division no later than the 28th day of the month following the reporting period. The Permit specifies that if no discharge occurs during the reporting period, “No Discharge” shall be reported on the DMR.
17. Division records establish that the Town failed to monitor the Facility’s effluent at the frequency required by Part I.C.1. of the Permit for the reporting periods listed below:

| TOWN OF RYE | | | |
|---|--------------------------|--------------------------------------|--------------------------------------|
| FAILURE TO MONITOR AT REQUIRED FREQUENCIES | | | |
| DMR REPORTING PERIOD | PARAMETER | REQUIRED MONITORING FREQUENCY | REPORTED MONITORING FREQUENCY |
| 1 st Quarter 2014 (1/1/2014-3/31/2014) | Flow, Oil and Grease, pH | Weekly | Monthly |
| 2 nd Quarter 2014 (4/1/2014-6/30/2014*) | Flow, Oil and Grease, pH | Weekly | Monthly |

*Weekly monitoring resumed in June, 2014.

18. Division records establishes that the Town failed to monitor the following effluent parameters during the reporting periods listed below:

| TOWN OF RYE FAILURE TO MONITOR | | |
|--|---|----------------|
| DMR REPORTING PERIOD | PARAMETER | OUTFALL |
| 3 rd Quarter 2013 (7/1/2013-9/30/2013) | Flow, Oil and Grease, pH, TRC, Total Suspended Solids ("TSS") | 001A |
| 4 th Quarter 2013 (10/1/2013-12/31/2013**) | Flow Oil and Grease, pH, TRC, TSS | 001A |
| 1 st Quarter 2014 (1/1/2014-3/31/2014) | TRC | 001A |
| 2 nd Quarter 2014 (4/1/2014-6/30/2014) | TRC | 001A |

** According to correspondence with the Division, monitoring resumed in December, 2013.

19. Division records establish that the Town failed to submit DMRs to the Division for the reporting periods listed below:

| TOWN OF RYE DELINQUENT DMRS | |
|--|----------------|
| DMR REPORTING PERIOD | OUTFALL |
| 2 nd Quarter 2013 (4/1/2013-6/30/2013) | 001A |
| 4 th Quarter 2013 (12/1/2013-12/31/2013) | 001A |

20. Division records establish that the Town failed to submit DMRs to the Division by the 28th day of the month following the end of the reporting periods identified in the table below:

| TOWN OF RYE LATE DISCHARGE MONITORING REPORTS | | | |
|--|-----------------------|---------------------|-------------------------|
| DMR REPORTING PERIOD | OUTFALL NUMBER | DMR DUE DATE | DMR RECEIPT DATE |
| Reporting Periods for 2009 | | | |
| 3 rd Quarter 2009 (7/1/2009-9/30/2009) | 001A | 10/28/2009 | 2/10/2010 |
| 4 th Quarter 2009 (10/1/2009-12/31/2009) | 001A | 1/28/2010 | 2/10/2010 |
| Reporting Periods for 2010 | | | |
| 1 st Quarter 2010 (1/1/2010-3/31/2010) | 001A | 4/28/2010 | 3/15/2011 |
| 2 nd Quarter 2010 (4/1/2010-6/30/2010) | 001A | 7/28/2010 | 3/15/2011 |
| 3 rd Quarter 2010 (7/1/2010-9/30/2010) | 001A | 10/28/2010 | 3/15/2011 |
| 4 th Quarter 2010 (10/1/2010-12/31/2010) | 001A | 1/28/2011 | 3/15/2011 |

| TOWN OF RYE LATE DISCHARGE MONITORING REPORTS | | | |
|--|----------------|--------------|------------------|
| DMR REPORTING PERIOD | OUTFALL NUMBER | DMR DUE DATE | DMR RECEIPT DATE |
| Reporting Periods for 2011 | | | |
| 1 st Quarter 2011 (1/1/2011-3/31/2011) | 001A | 4/28/2011 | 2/13/2012 |
| 2 nd Quarter 2011 (4/1/2011-6/30/2011) | 001A | 7/28/2011 | 2/13/2012 |
| 3 rd Quarter 2011 (7/1/2011-9/30/2011) | 001A | 10/28/2011 | 2/13/2012 |
| 4 th Quarter 2011 (10/1/2011-12/31/2011) | 001A | 1/28/2012 | 2/29/2012 |
| Reporting Periods for 2012 | | | |
| 1 st Quarter 2012 (1/1/2012-3/31/2012) | 001A | 4/28/2012 | 4/15/2013 |
| 2 nd Quarter 2012 (4/1/2012-6/30/2012) | 001A | 7/28/2012 | 4/15/2013 |
| 3 rd Quarter 2012 (7/1/2012-9/30/2012) | 001A | 10/28/2012 | 4/15/2013 |
| 4 th Quarter 2012 (10/1/2012-12/31/2012) | 001A | 1/28/2013 | 4/15/2013 |
| Reporting Periods for 2014 | | | |
| 1 st Quarter 2014 (1/1/2014-3/31/2014) | 001A | 4/28/2014 | 7/15/2014 |

21. The Town's failure to monitor defined effluent parameters at specified frequencies, as identified above in paragraphs 17 and 18, constitutes violations of Part I.C.1. of the Permit.
22. The Town's failure to submit DMRs to the Division by the 28th day of the month following each reporting period, as identified above in paragraphs 19 and 20, constitutes violations of Part I.F.2. of the Permit.

NOTICE OF VIOLATION

23. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined the Town has violated the following sections of the Colorado Water Quality Control Act's implementing permit regulations.

Part I.B.1. 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 not contain effluent parameter concentrations, which exceed the following limitations..."

Part I.C.1. of the Permit, which states in part: "In order to obtain an indication of the probable compliance or noncompliance with the effluent limitations specified in Part I, Section B.1, the permittee shall monitor effluent parameters at the following required frequencies, as identified in the certification on page one of this permit, the results to be reported on the Discharge Monitoring

Report...”

Part I.F.2. of the Permit, which states in part: “Monitoring results shall be summarized for each calendar quarter and reported on the DMR forms (EPA forms 3320-1). The forms shall be mailed...so that they are received by the agencies no later than the 28th day of the following month. If no discharge occurs during the reporting period, “No Discharge” shall be reported. The DMR forms shall be filled out accurately and completely in accordance with the requirements of this permit and the instructions on the forms, and shall be signed by an authorized person...”

REQUIRED CORRECTIVE ACTION

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

24. 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 the Town to comply with the following specific terms and conditions of this Order:

25. Within thirty (30) calendar days of receipt of this Order, the Town shall submit all delinquent DMRs as well as records of its effluent discharge monitoring at the Facility for the period from July 1, 2009 through the date of this Order. The records shall include all laboratory data reports, all field measurement reports, and all calibration and maintenance records, including all other information required to be retained by Part I.E.4. of the Permit. In addition, the Town shall provide a detailed explanation and description of current backwashing procedures and clean in place procedures.
26. Within thirty (30) calendar days of receipt of this Order, the Town shall review the requirements of the Permit with its staff responsible for ensuring compliance with the terms and conditions of the Permit. The review shall focus on, but not be limited to, 1) the effluent limitations imposed by the Permit, 2) the effluent monitoring requirements of the Permit, 3) the record keeping requirements of the Permit, 4) the reporting requirements of the Permit, and 5) the noncompliance notification procedures required by the Permit. Within forty-five (45) calendar days of receipt of this Order, the Town shall submit a written certification to the Division stating that it has completed the review of the Permit with its responsible staff.
27. The Town shall immediately initiate measures to ensure complete DMRs are submitted to the Division pursuant to the terms and conditions of the Permit. Within thirty (30) calendar days of receipt of this Order, the Town shall submit a written plan and certification to the Division outlining the Town’s actions to ensure that accurate and complete DMRs are submitted so that they are received by the Division by no later than the 28th day of the month following the end of the reporting period, with consideration being given to applying for approval for the electronic submission of DMRs through the Network Discharge Monitoring Report System (NetDMR).

28. The Town shall immediately initiate measures to monitor its effluent in accordance with the terms and conditions of the Permit, specifically including the defined parameters and monitoring frequencies outlined in Parts I.B.1. and I.C.1. of the Permit. The Town shall ensure that the effluent is monitored in accordance with the approved analytical and sampling methods outlined in 40 C.F.R. Part 136 and using the Division approved practical quantification limits.
29. Within thirty (30) calendar days of the receipt of this Order, the Town shall perform an evaluation of the cause of the TRC violations at the Facility and an assessment of the Facility's overall ability to reliably and consistently meet all Permit-required effluent limitations at Outfall 001A. The evaluation shall include, but not be limited to:
 - a. A review of the current operation and maintenance practices to identify any deficiencies that impact the Facility's ability to comply with effluent limitations; and
 - b. An evaluation of process modifications and/or treatment upgrades and improvements to ensure the Facility will reliably and consistently achieve compliance with all effluent limitations of the Permit.
30. Within forty five (45) calendar days of performing the evaluation described in paragraph 29 above, the Town shall submit to the Division a report summarizing the results of the evaluation. The report shall also include a plan and schedule for the implementation of specific measures that the Town 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. The submitted plan and time schedule shall become a condition of this Order and the Town 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.
31. If the Town becomes aware of any situation or circumstances that cause the Town to become unable to comply with any condition or time schedules set forth by this Order, the Town shall provide written notice to the Division within five (5) calendar days of the Town becoming aware of such circumstances. The Town's notice shall describe what, if any, impacts on the remaining conditions and/or time schedules specified by this Order, and what steps are being taken to mitigate the impacts.
32. All documents submitted under this Order 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. All documents submitted under this Order shall be under the signature of the Town. Within thirty (30) calendar days of receiving Division comments on submitted documents, the Town shall revise the submitted document(s) to properly address the Division's comments and resubmit the document(s) for Division review.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, the Town of Rye shall submit an original and an electronic copy to the Division at the following address:

Andrea Beebout
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
Telephone: (303) 692-6498
Email: andrea.beebout@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.”

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.

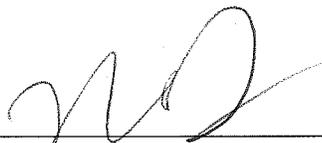
EFFECT OF ORDER

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 19th day of September, 2014.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Ron Falco, PE, Acting Director
WATER QUALITY CONTROL DIVISION

