

# STATE OF COLORADO

John W. Hickenlooper, Governor  
Larry Wolk, MD, MSPH  
Executive Director and Chief Medical Officer

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

4300 Cherry Creek Dr. S.  
Denver, Colorado 80246-1530  
Phone (303) 692-2000  
Located in Glendale, Colorado  
[www.colorado.gov/cdphe](http://www.colorado.gov/cdphe)



Colorado Department  
of Public Health  
and Environment

December 23, 2013

Corporation Service Company, Registered Agent  
Elk Mountain Resort L.L.C.  
1560 Broadway, Suite 2090  
Denver, CO 80202

**Certified Mail Number: 7007 0220 0001 0156 9417**

**RE: Service of Notice of Violation/Cease and Desist Order/Order for Civil Penalty,  
Number: DO-131220-1**

Dear Corporation Service Company:

Corporation Service Company is hereby served with the enclosed Notice of Violation / Cease and Desist Order/ Order for Civil Penalty (the "NOV/CDO/OCP"). The NOV/CDO/OCP 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 25-8-608 C.R.S., of the *Colorado Water Quality Control Act*, (the "Act"). The Division bases the NOV/CDO/OCP upon findings that Corporation Service Company has violated the Act and/or permit regulations promulgated pursuant to the Act and/or a permit, as described in the enclosed NOV/CDO/OCP.

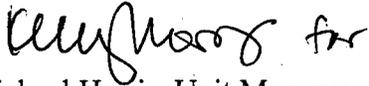
Pursuant to §25-8-603, C.R.S., Corporation Service Company is required, within thirty (30) calendar days of receipt of this NOV/CDO/OCP, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

Additionally, pursuant to the authority given to the Division by §25-8-608, C.R.S. the Division hereby imposes the civil penalty as outlined in the attached NOV/CDO/OCP. Payment of the imposed civil penalty should be made in accordance with the methods referenced in the Order for Civil Penalty.

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 enforcement action or the issuance of additional enforcement actions.

Should you or representatives of Corporation Service Company desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO/OCP, please do not hesitate to contact Mandy Mercer of this office by phone at (303) 692-2283 or by electronic mail at [mandy.mercer@state.co.us](mailto:mandy.mercer@state.co.us).

Sincerely,



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

*Enclosure(s)*

- cc: Enforcement File  
Elk Mountain Resort, L.L.C.
- ec: Natasha Davis, EPA Region VIII  
Elizabeth Lawaczeck, Ouray County Public Health Agency  
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  
Mandy Mercer, Compliance & Enforcement Unit, CDPHE  
Tania Watson, Compliance & Enforcement Unit, CDPHE



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

---

**NOTICE OF VIOLATION / CEASE AND DESIST ORDER / ORDER FOR CIVIL PENALTY**

**NUMBER: DO-131220-1**

---

**IN THE MATTER OF: ELK MOUNTAIN RESORT, L.L.C.**  
**CDPS PERMIT NO. COG-589000**  
**CERTIFICATION NO. COG-589125**  
**OURAY 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 25-8-608, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order / Order for Civil Penalty:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. At all times relevant to the alleged violations identified herein, Elk Mountain Resort, L.L.C. was a Colorado limited liability company in good standing and registered to conduct business in the State of Colorado.
2. Elk Mountain Resort, L.L.C. 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. Elk Mountain Resort, L.L.C. owns and/or operates the Elk Mountain Resort and the associated aerated lagoon wastewater treatment system, located at Latitude 38.2516°, Longitude -107.9712°, approximately 16 miles southwest of the City of Montrose, Ouray County, Colorado (the "Facility").
4. The Facility is subject to the Colorado Discharge Permit System General Permit Number COG589000. During the times relevant to the alleged violations identified herein, a version of the the General Permit was in place that was effective from October 1, 2008 through September 30, 2013 (the "2008 Permit"). The current version of the General Permit became effective on October 1, 2013 and remains in effect until September 30, 2018 (the "2013 Permit"). Elk Mountain Resort, L.L.C. obtained authorization to discharge under the 2008 Permit and 2013 Permit via Certification Number: COG589125 (the "Certification"), which became effective on November 1, 2012, was reissued, effective October 1, 2013, and remains in effect until September 30, 2018.

5. The 2008 Permit and associated Certification and the 2013 Permit and associated Certification authorize Elk Mountain Resort, L.L.C. to discharge treated wastewater from the Facility through Outfall 001A into Happy Canyon Creek. Outfall 001A is at a point following disinfection and prior to entering Happy Canyon Creek and is physically located at Latitude 38.2520°, Longitude -107.9708°. Outfall 001A is the only external outfall permitted to Elk Mountain Resort, L.L.C. The 2008 Permit and 2013 Permit include requirements to monitor influent loading to the Facility at a representative point prior to biological treatment, which is designated in the Permits as Outfall 300I.
6. Outfall 001A 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).
7. Happy Canyon Creek 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).
8. Pursuant to 5 CCR 1002-61, §61.8, Elk Mountain Resort, L.L.C. 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 Submit Discharge Monitoring Reports**

9. Pursuant to Part I.C.1. of the 2008 Permit and Part I.B.5. of the 2013 Permit, regardless of whether or not effluent discharge occurs at the Facility, Elk Mountain Resort, L.L.C. is required to monitor influent parameters at specified frequencies and report the results on a Discharge Monitoring Report (“DMR”).
10. Pursuant to Part I.C.2. of the 2008 Permit and Part I.B.1. of the 2013 Permit, Elk Mountain Resort, L.L.C. is required to monitor effluent parameters at specified frequencies and report the results on a DMR.
11. Pursuant to Part I.E.1. of the 2008 Permit and Part I.D.1. of the 2013 Permit, Elk Mountain Resort, L.L.C. is required to report all monitoring results on a monthly basis using Division approved DMRs. Elk Mountain Resort, L.L.C. is required to ensure the DMRs are mailed to the Division so that they are received no later than the 28<sup>th</sup> day of the month following the reporting period. The Permit specifies that if no discharge occurs during the monthly reporting period, “No Discharge” shall be reported.
12. Division records establish that Elk Mountain Resort, L.L.C. failed to submit influent DMRs to the Division for monitoring point 300I at the Facility for the reporting periods of November 2012 through October 2013.
13. Division records establish that Elk Mountain Resort, L.L.C. failed to submit effluent DMRs to the Division for Outfall 001A at the Facility for the reporting periods of November 2012 through October 2013.

14. Elk Mountain Resort, L.L.C.'s failure to submit DMRs to the Division by the 28<sup>th</sup> day of the month following each reporting period constitutes violations of Part I.E.1. of the 2008 Permit and Part I.D.1. of the 2013 Permit.

### NOTICE OF VIOLATION

15. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that Elk Mountain Resort, L.L.C. has violated the following sections of the 2008 Permit.

**Part I.E.1. of the 2008 Permit** which states in part, "Reporting of the data in compliance with Part I.B.1 shall be on a **monthly** basis. ... Monitoring results shall be summarized for each calendar month and reported on Division approved discharge monitoring report (DMR) forms (EPA form 3320-1). One form shall be mailed to the Water Quality Control Division, as indicated below, so that the DMR is received no later than the 28<sup>th</sup> day of the following month. ... If no discharge occurs during the reporting period, "No Discharge" shall be reported. ... The Discharge Monitoring Report forms shall be filled out accurately and completely in accordance with requirements of this permit and the instructions on the forms."

Additionally, based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that Elk Mountain Resort, L.L.C. has violated the following sections of the 2013 Permit.

**Part I.D.1. of the 2013 Permit** which states in part, "Reporting of the data gathered in compliance with Part I.A or Part I.B shall be on a **monthly** basis. ... Monitoring Results shall be summarized for each calendar month and reported on Division approved discharge monitoring report (DMR) forms (EPA form 3320-1). ... The permittee must submit these forms either by mail, or by using the Division's Net-DMR service (when available). If mailed, one form shall be mailed to the Division, as indicated below, so that the DMR is received no later than the 28<sup>th</sup> day of the following month ... If no discharge occurs during the reporting period, "No Discharge" shall be reported. ... The Discharge Monitoring Report forms shall be filled out accurately and completely in accordance with requirements of the permit and the instructions on the forms."

### REQUIRED CORRECTIVE ACTION

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

16. 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 2013 Permit.

Furthermore, the Division hereby orders Elk Mountain Resort, L.L.C. to comply with the following specific terms and conditions of this Order:

17. Within thirty (30) calendar days of receipt of this Order, Elk Mountain Resort, L.L.C. shall submit all

delinquent DMRs as well as records of its influent and effluent discharge monitoring at the Facility for all monitoring periods in which DMRs have not been submitted to the Division 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.6. of the 2008 Permit and Part I.D.6. of the 2013 Permit.

18. Within thirty (30) calendar days of receipt of this Order, Elk Mountain Resort, L.L.C. shall review the requirements of the 2013 Permit and Certification with its staff responsible for ensuring compliance with the terms and conditions of the 2013 Permit and Certification. The review shall focus on, but not be limited to, 1) the effluent limitations imposed by the 2013 Permit, 2) the effluent and influent monitoring requirements of the 2013 Permit, 3) the record keeping requirements of the 2013 Permit, 4) the reporting requirements of the 2013 Permit, including the instruction for proper completion and submittal of DMRs required by the 2013 Permit, and 5) the noncompliance notification procedures required by the 2013 Permit. Within forty five (45) calendar days of receipt of this Order, Elk Mountain Resort, L.L.C. shall submit a written certification to the Division stating that it has completed the review of the 2013 Permit and Certification with its responsible staff.

#### **ORDER FOR CIVIL PENALTY**

19. Pursuant to §25-8-608(1), C.R.S. any person who violates any provision of the Colorado Water Quality Control Act, 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 shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs.
20. Based upon the Findings of Fact and Notice of Violation above, the Executive Director, through his designee (hereinafter 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 Six Thousand Dollars (\$6,000.00) against Elk Mountain Resort, L.L.C. for the violations cited above. 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 A and is incorporated herein by reference.
21. If Elk Mountain Resort, L.L.C. does not contest the findings and penalty assessment set out above, the civil penalty shall be paid within sixty (60) calendar days of the date of this Notice of Violation / Cease and Desist Order / 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:

Colorado Department of Public Health and Environment  
Water Quality Control Division / WQCD-CWE-B2  
Attention: Mandy Mercer  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

## **NOTICES AND SUBMITTALS**

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation / Cease and Desist Order, Elk Mountain Resort, L.L.C. 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: Mandy Mercer  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530  
Telephone: (303) 692-2283  
Email: mandy.mercer@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.

## **APPEAL OF CIVIL PENALTY**

Pursuant to 5 CCR 1002, §21.12(B) and 5CCR 1002, §21.4(A)(3)(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).

### **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 CRIMINAL PENALTIES**

You are also advised that 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 / Order for Civil Penalty, the State has not waived its right to bring an action for penalties under §25-8-609, 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.

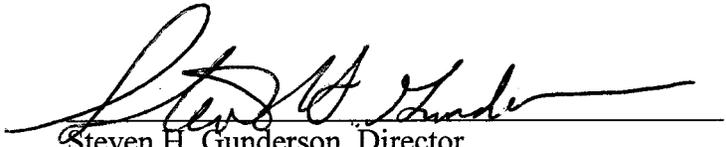
### **EFFECT OF ORDER**

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/ Order for Civil Penalty 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 20<sup>th</sup> day of December, 2013.

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



Steven H. Gunderson, Director  
WATER QUALITY CONTROL DIVISION

# Exhibit A

## WASTEWATER PENALTY COMPUTATION WORKSHEET

Entity Name: Elk Mountain Resort, L.L.C.	Permit Number: COG589000 Certification Number: COG589125
--	---

### Part I – Administrative Violations Penalty Determination

	Violation Type	Adjustment	Amount in Dollars
<b>Line 1</b>	<b>Administrative Violations (Delinquent and/or Late DMRs)</b>	\$500 + 0%	<b>\$6,000.00</b>
	<p><i>Calculation:</i> Elk Mountain Resort, L.L.C. failed to submit DMRs for monitoring location 300I and Outfall 001A by the due date described in the permit for the monitoring periods of November 2012 thru October 2013, for a total of 12 monitoring periods and 24 delinquent DMRs.</p> <p>In accordance with Part III.B.2.(a)(i) of the Water Quality Control Division's <i>Civil Penalty Policy (May 1, 1993)</i>, penalties for delinquent, late or improperly completed DMRs will be \$250 per DMR if the correctly completed DMR is submitted prior to the issuance of the NOV and \$500 per DMR thereafter. In cases where the permittee has been issued a previous NOV for late or incomplete DMRs, or where the Division has a long history of correspondence with the permittee regarding these types of violations, the penalty for each report may be increased by one hundred percent per occurrence. The amount of the increase will be based on the period during which these violations have occurred and the severity of the violations.</p> <p>The Division has issued the following Compliance Advisories to Elk Mountain Resort, L.L.C. citing delinquent DMRs:</p> <ul style="list-style-type: none"> <li>• April 3, 2013 for violations occurring during the November 2012 monitoring period</li> <li>• May 14, 2013 for violations occurring during the December 2012 and January 2013 monitoring periods</li> <li>• June 13, 2013 for violations occurring during the February 2013 monitoring period</li> <li>• June 26, 2013 for violations occurring during the March 2013 monitoring period</li> <li>• July 25, 2013 for violations occurring during the April 2013 monitoring period</li> <li>• September 11, 2013 for violations occurring during the May 2013 monitoring period</li> <li>• October 28, 2013 for violations occurring during the June 2013 monitoring period</li> </ul> <p>Due to Elk Mountain Resort L.L.C.'s extensive history of delinquent DMR reporting, the Division is assessing a \$500 penalty per violation. In a conservative effort to calculate the Administrative Penalty for the delinquent DMR violations, the Division has chosen not to apply an adjustment to the penalty. Additionally, the Division has conservatively chosen to assess a single \$500 penalty per monitoring period (12) as opposed to a \$500 penalty per delinquent DMR (24).</p> <p style="text-align: center;"><b>12 Monitoring Periods x \$500.00 = \$6,000.00</b></p>		
<b>Line 2</b>	<b>Administrative Violation Total</b>		<b>\$6,000.00</b>

## Part II– Economic Benefit Consideration

		Amount in Dollars
Line 3	<b>Economic Benefit</b>	<b>\$0.00</b>
	<p><b>Delinquent and/or Late DMRs:</b> Elk Mountain Resort, L.L.C. avoided the cost of submitting several DMRs; however, the economic benefit of the avoided cost was conservatively determined to be relatively insignificant.</p> <p>Additionally, Elk Mountain Resort, L.L.C. likely avoided the cost of sampling and analyzing its permit-required influent and effluent parameters. The Division conservatively estimates the cost of obtaining and processing a sample (including collection, paperwork, lab delivery, calculations, etc.) to be \$40/sample, and the cost of laboratory analysis for the missing parameters to typically range from \$15 to \$50 per parameter; however, the Division has conservatively chosen not to include an economic benefit for these avoided costs.</p>	

## Part III – Final Penalty

		Amount in Dollars
Line 4	<b>Total Civil Penalty: (Line 2 + Line 3)</b>	<b>\$6,000.00</b>