

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



Colorado Department
of Public Health
and Environment

December 23, 2013

Marty Prater, President
Will-O-Wisp Metropolitan District
956 Wisp Creek Drive
Bailey, Colorado 80421

Certified Mail Number: 70062760000342623051

**RE: Service of Notice of Violation/Cease and Desist Order/Order for Civil Penalty,
Number: DO-131220-2**

Dear Mr. Prater:

Will-O-Wisp Metropolitan District 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 Will-O-Wisp Metropolitan District 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., Will-O-Wisp Metropolitan District 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 Will-O-Wisp Metropolitan District 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 Eric T. Mink of this office by phone at (303) 692-2312 or by electronic mail at eric.mink@state.co.us.

Sincerely,



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

Enclosure(s)

cc: Enforcement File

ec: Natasha Davis, EPA Region VIII
Tom Eisenman, Park County Environmental Health Department
Nicole Rowan, Watershed Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Amy Zimmerman, Engineering Section, CDPHE
Kelly Jacques, Field Services Section, CDPHE
Kenan Diker, Permits Section, CDPHE
Eric T. Mink, Compliance & Enforcement Unit, CDPHE
Tania Watson, Compliance & Enforcement 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 / ORDER FOR CIVIL PENALTY

NUMBER: DO-131220-2

**IN THE MATTER OF: WILL-O-WISP METROPOLITAN DISTRICT
CDPS PERMIT NO. CO-0041521
PARK 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 violations cited herein, Will-O-Wisp Metropolitan District was a "Special District" formed in Park County, Colorado pursuant to the Special District Act, §§32-1-101 through 32-1-1807 C.R.S.
2. Will-O-Wisp Metropolitan District 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. Will-O-Wisp Metropolitan District owns and/or operates the Will-O-Wisp Metropolitan District wastewater treatment plant, located at 39.44° latitude North and 105.41° longitude West, approximately 5 to 6 miles north/northeast of the Town of Bailey, Park County, Colorado (the "Facility").
4. The Facility is subject to the Colorado Discharge Permit System Permit Number CO-0041521 (the "Permit"). The current Permit became effective on April 1, 2012 and is due to expire March 31, 2017.
5. The Permit authorizes Will-O-Wisp Metropolitan District to discharge treated wastewater from the Facility through Outfall 001A, into Wisp Creek. Outfall 001A is located at 39.4493 North, 105.4108 West and is the only outfall permitted to Will-O-Wisp Metropolitan District. The Permit includes requirements to monitor influent loading to the Facility at a representative point prior to biological treatment, which is designated in the Permit 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. Wisp 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, Will-O-Wisp Metropolitan District 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.A.3. of the Permit, regardless of whether or not effluent discharge occurs at the Facility, Will-O-Wisp Metropolitan District is required to monitor influent parameters at specified frequencies and report the results on a Discharge Monitoring Report (“DMR”).
10. Pursuant to Part I.A.2. of the Permit, Will-O-Wisp Metropolitan District is required to monitor effluent parameters at specified frequencies and report the results on a DMR.
11. Pursuant to Part I.D.1. of the Permit, Will-O-Wisp Metropolitan District is required to report all monitoring results on a monthly basis using Division approved DMRs. Will-O-Wisp Metropolitan District is required to ensure the DMRs are mailed to the Division so that they are received no later than the 28th day of the month following the reporting period. The Permit specifies that if no discharge occurs during a reporting period, “No Discharge” shall be reported on the DMR. *(Note: Part I.D.1. of the Permit references compliance with Part I.A. of the Permit, which outlines the quarterly monitoring requirements for Outfall 001A and 300I that are in addition to any monthly monitoring requirements.)*
12. Division records establish that Will-O-Wisp Metropolitan District failed to submit DMRs to the Division for the following reporting periods:

<i>Reporting Period</i>	<i>Monitoring Point</i>
11/1/2012 – 11/30/2012	001A
10/1/2012 – 12/31/2012	001A (quarterly)
2/1/2013 – 2/28/2013	001A
3/1/2013 – 3/31/2013	001A
1/1/2013 – 3/31/2013	001A (quarterly)
1/1/2013 – 3/31/2013	300I
4/1/2013 – 4/30/2013	001A
5/1/2013 – 5/31/2013	001A
6/1/2013 – 6/30/2013	001A
4/1/2013 – 6/30/2013	001A (quarterly)
4/1/2013 – 6/30/2013	300I
8/1/2013 – 8/31/2013	001A

13. Will-O-Wisp Metropolitan District’s failure to submit DMRs to the Division by the 28th day of the month following each reporting period constitutes violations of Part I.D.1. of the Permit.

NOTICE OF VIOLATION

14. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that Will-O-Wisp Metropolitan District has violated the following sections of the Permit.

*Part I.D.1. of Permit No. CO0041521, which states in part, "Reporting of the data gathered in compliance with Part I.A. 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 28th day of the following month ... 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."*

REQUIRED CORRECTIVE ACTION

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

15. 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 Will-O-Wisp Metropolitan District to comply with the following specific terms and conditions of this Order:

16. Within thirty (30) calendar days of receipt of this Order, Will-O-Wisp Metropolitan District shall submit all delinquent DMRs, as well as all records of its influent and effluent discharge monitoring at the Facility for the period from October 1, 2012 through August 31, 2013. 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.D.6. of the Permit.
17. Within thirty (30) calendar days of receipt of this Order, Will-O-Wisp Metropolitan District 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 and influent monitoring requirements of the Permit, 3) the record keeping requirements of the Permit, 4) the reporting requirements of the Permit, including the instruction for proper completion and submittal of DMRs required by the Permit, and 5) the noncompliance notification procedures required by the Permit. Within forty five (45) calendar days of receipt of this Order, Will-O-Wisp Metropolitan District shall submit a written certification to the Division stating that it has completed the review of the Permit with its responsible staff.

ORDER FOR CIVIL PENALTY

18. 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.
19. 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 Five Thousand Dollars (\$5,000.00) against Will-O-Wisp Metropolitan District 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.
20. If Will-O-Wisp Metropolitan District 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: Eric T. Mink
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, the Will-O-Wisp Metropolitan District 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 T. 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.”

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 20th day of December, 2013.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

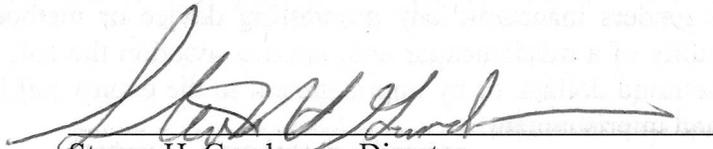

Steven H. Gunderson, Director
WATER QUALITY CONTROL DIVISION

Exhibit A

WASTEWATER PENALTY COMPUTATION WORKSHEET

Entity Name: Will-O-Wisp Metropolitan District	Permit Number: CO-0041521
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Part I – Administrative Violations Penalty Determination

	Violation Type	Adjustment	Amount in Dollars																										
Line 1	Delinquent and/or Late DMRs	+/- 0%	\$5,000.00																										
	<p><i>Calculation:</i> Will-O-Wisp Metropolitan District failed to submit DMRs by the due date described in the permit for the following reporting periods:</p> <table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse;"> <thead> <tr> <th style="width: 70%;">Reporting Period</th> <th style="width: 30%;">Outfall</th> </tr> </thead> <tbody> <tr><td>11/1/2012 – 11/30/2012</td><td>001A</td></tr> <tr><td>10/1/2012 – 12/31/2012</td><td>001A</td></tr> <tr><td>2/1/2013 – 2/28/2013</td><td>001A</td></tr> <tr><td>3/1/2013 – 3/31/2013</td><td>001A</td></tr> <tr><td>1/1/2013 – 3/31/2013</td><td>001A</td></tr> <tr><td>1/1/2013 – 3/31/2013</td><td>300I</td></tr> <tr><td>4/1/2013 – 4/30/2013</td><td>001A</td></tr> <tr><td>5/1/2013 – 5/31/2013</td><td>001A</td></tr> <tr><td>6/1/2013 – 6/30/2013</td><td>001A</td></tr> <tr><td>4/1/2013 – 6/30/2013</td><td>001A</td></tr> <tr><td>4/1/2013 – 6/30/2013</td><td>300I</td></tr> <tr><td>8/1/2013 – 8/31/2013</td><td>001A</td></tr> </tbody> </table> <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>In a conservative effort to calculate the Administrative Penalty for the delinquent DMR violations, the Division has chosen to assess a single \$500 penalty per monitoring period, as opposed to a \$500 penalty for each DMR. Additionally, while a long history of correspondence addressing late and missing DMRs exists, the Division has conservatively decided not to increase the penalty by the allowed 100% per occurrence.</p> <p>10 Delinquent Monitoring Periods x \$500 = \$5,000</p>			Reporting Period	Outfall	11/1/2012 – 11/30/2012	001A	10/1/2012 – 12/31/2012	001A	2/1/2013 – 2/28/2013	001A	3/1/2013 – 3/31/2013	001A	1/1/2013 – 3/31/2013	001A	1/1/2013 – 3/31/2013	300I	4/1/2013 – 4/30/2013	001A	5/1/2013 – 5/31/2013	001A	6/1/2013 – 6/30/2013	001A	4/1/2013 – 6/30/2013	001A	4/1/2013 – 6/30/2013	300I	8/1/2013 – 8/31/2013	001A
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8/1/2013 – 8/31/2013	001A																												
Line 2	Administrative Violation Total		\$5,000.00																										

Part II – Economic Benefit Consideration

		Amount in Dollars
Line 3	Economic Benefit	\$0.00
	<p>Delinquent and/or Late DMRs: Will-O-Wisp Metropolitan District 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, Will-O-Wisp Metropolitan District 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, laboratory 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	Total Civil Penalty: (Line 2 + Line 3)	\$5,000.00