



# COLORADO

Department of Public  
Health & Environment

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

May 20, 2016

Dayton Orsburn and Leah Orsburn  
d/b/a Arrowhead Mobile Home Park  
PO Box 154  
Chino Hills, CA 91709-0006

Certified Mail Number: 7014 2870 0000 7568 7769

## **RE: Service of Notice of Violation / Cease and Desist Order, Number: DO-160518-1**

Dear Dayton Orsburn and Leah Orsburn:

You are 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 you have 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., you are 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. Pursuant to §25-8-608, C.R.S., the Division is authorized 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 your representatives 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 me at (303) 692-2283 or [mandy.mercer@state.co.us](mailto:mandy.mercer@state.co.us).

Sincerely,

Mandy Mercer, Enforcement Specialist  
Clean Water Enforcement Unit  
WATER QUALITY CONTROL DIVISION



*Enclosure*

cc: Enforcement File

ec: Michael Boeglin, EPA Region VIII  
Tom Gonzales, El Paso County Public Health Agency  
Nicole Rowan, Clean Water Program, CDPHE  
Michael Beck, Grants and Loans Unit, CDPHE  
Amy Zimmerman, Engineering Section, CDPHE  
Heather Drissel, Field Services Section, CDPHE  
Lillian Gonzales, Permits Section, CDPHE  
Mike Harris, Clean Water Enforcement Unit, CDPHE  
Tania Watson, Data Management, CDPHE





# COLORADO

## Department of Public Health & Environment

### WATER QUALITY CONTROL DIVISION

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NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: DO-160518-1

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IN THE MATTER OF:      DAYTON ORSBURN  
                                 LEAH ORSBURN  
                                 UNPERMITTED  
                                 EL PASO COUNTY, COLORADO

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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 alleged violations identified herein, Dayton Orsburn and Leah Orsburn were each an individual owning certain real property in the State of Colorado.
2. Dayton Orsburn and Leah Orsburn own the parcel of land at 75 N Curtis Road in Colorado Springs that contains the Arrowhead Mobile Home Park, and its associated sewage collection system and the wastewater treatment plant.
3. Dayton Orsburn and Leah Orsburn are each 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).
4. Dayton Orsburn and Leah Orsburn own and/or operate the Arrowhead Mobile Home Park ("Arrowhead MHP") wastewater treatment plant, located near Latitude 38° 49' 54.4" and Longitude 104° 33' 1.5", east of the City of Colorado Springs, El Paso County, Colorado (the "Facility").
5. The Facility consists of an activated sludge mechanical wastewater treatment plant that discharges treated domestic wastewater to an unlined lagoon. The Facility receives wastewater from 54 mobile home units housing approximately 135 residents at the Arrowhead MHP. The Facility is located in the southeastern portion of the property.



6. Based on a population of 135 residents and 54 mobile home units, the average wastewater flow loading to the Facility is estimated to be between 10,125 and 16,200 gallons per day (see Table 6-2 of 5 CCR 1002-43, §43.6, *On-Site Wastewater Treatment System Regulation*).
7. The Facility is a “domestic wastewater treatment works” as defined by §25-8-103(5), C.R.S.

### Unauthorized Discharge of Pollutants

8. Pursuant to §25-8-501(1), C.R.S. and its implementing permit regulation 5 CCR 1002-61, §61.3(1)(a), no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article.
9. The lagoon associated with the Facility is an “impoundment” as defined by 5 CCR 1002-61, §61.2(43).
10. Pursuant to 5 CCR 1002-61, §61.14(1)(a), a permit is required for all discharges from impoundments unless:
  - a. The discharge is exempted under 5 CCR 1002-61, §61.14(1)(b);
  - b. The discharge is subject to regulation by one of the implementing agencies described in 5 CCR 1002-61, §61.14(2); or
  - c. The impoundment has received a waiver from the Division pursuant to §61.14(9)(a).
11. On March 14, 2012, the Division received notification from El Paso County Public Health that sewage (domestic wastewater) was being pumped to an impoundment on the Arrowhead MHP property. That same day, an El Paso County Public Health representative visited Arrowhead MHP and photographed the sewage and wastewater lagoon at the southeastern edge of the property. A low level of sewage covered part of the lagoon bottom and there was an excessive amount of vegetative growth within the lagoon and on the lagoon berms, suggesting that sewage (domestic wastewater) had been allowed to seep into the ground and groundwater.
12. On October 12, 2012, the Division issued a Compliance Advisory to Arrowhead MHP for an unpermitted discharge to groundwater. The Compliance Advisory advised of necessary actions to be taken to bring the Facility into compliance with the Colorado Water Quality Control Act and its implementing permit and control regulations. These actions included: providing a written strategy and timeline for compliance, obtaining preliminary effluent limits (“PELs”) for a groundwater discharge permit, submitting an application for site location approval of the Facility, and applying for a groundwater discharge permit. Arrowhead MHP did not submit these documents as requested.
13. The lagoon does not have an impermeable liner that meets the allowable seepage rate of  $1 \times 10^{-6}$  centimeters per second thereby preventing exfiltration and discharge of treated wastewater into groundwater.
14. Dayton Orsburn and Leah Orsburn do not have any effective permits authorizing the discharge of pollutants from the Facility into state waters.
15. Domestic wastewater, including sewage and partially treated sewage, is a “pollutant” as defined by §25-8-103(15), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (76).



16. The Facility's domestic wastewater treatment works, including its lagoon, 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).
17. Groundwater beneath Arrowhead MHP and the Facility is "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (102).
18. Dayton Orsburn's and Leah Orsburn's discharge of domestic wastewater from the Facility into state waters constitutes a "discharge of pollutants" as defined by §25-8-103(3), C.R.S.
19. Dayton Orsburn's and Leah Orsburn's discharge of domestic wastewater from the Facility's lagoon does not meet any of the exemption criteria of 5 CCR 1002-61, §61.14(1)(a), and is therefore subject to the groundwater discharge permit requirements.
20. Dayton Orsburn's and Leah Orsburn's discharge of domestic wastewater into state waters from the Facility without an appropriate discharge permit constitutes an unauthorized discharge of pollutants into state waters from a point source in violation of §25-8-501(1), C.R.S., 5 CCR 1002-61, §61.3(1)(a), and 5 CCR 1002-61, §61.14(1)(a).

### NOTICE OF VIOLATION

21. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that Dayton Orsburn and Leah Orsburn have violated the following sections of the Colorado Water Quality Control Act and its implementing permit regulations.

**Section 25-8-501(1), C.R.S.**, which states "No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the division for such discharge..."

**5 CCR 1002-61, §61.3(1)(a)**, which states "No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the division for such discharge..."

**5 CCR 1002-61, §61.14(1)(a)**, which states in part, "Pursuant to this section a permit shall be required for ... all discharges from impoundments..."

### REQUIRED CORRECTIVE ACTION

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

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

Furthermore, the Division hereby orders Dayton Orsburn and Leah Orsburn to comply with the following specific terms and conditions of this Order:

23. Dayton Orsburn and Leah Orsburn shall immediately initiate measures to evaluate the design and operation of the Facility's domestic wastewater treatment works and to seek coverage for the Facility under a Colorado Discharge Permit System ("CDPS") Permit for discharge to groundwater,



including but not limited to the corrective actions identified below.

24. Within thirty (30) calendar days of receipt of this Order, Dayton Orsburn and Leah Orsburn 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 that a fully functioning, permitted, and approved wastewater treatment system is in place that complies with the Water Quality Control Act and its implementing regulations. The evaluation shall include, but not be limited to:
  - a. An evaluation of the Facility's treatment processes to identify any deficiencies in the current design of the Facility. This should include, but not be limited to, an evaluation of the capacity of the current system, the seepage rate from the lagoon, and the use and acceptability of the current treatment processes;
  - b. An evaluation of the Facility's current operation and maintenance practices to identify any deficiencies that may impact the Facility's ability to reliably and consistently treat wastewater; and,
  - c. An evaluation, recommendation, and plan for upgrades or expansion of the Facility that will ensure the Facility has adequate hydraulic and organic loading capacity, can meet groundwater Preliminary Effluent Limitations, and can obtain any necessary site location and design approval from the Division in accordance with §25-8-702, C.R.S. and 5 CCR 1002-22.
25. Within forty-five (45) calendar days of the receipt of this Order, Dayton Orsburn and Leah Orsburn shall provide documentation to the Division that they have retained the services of the qualified individual or entity described in paragraph 24. 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 services, including a copy of the scope of services to be provided.
26. Within sixty (60) calendar days of receipt of this Order, Dayton Orsburn and Leah Orsburn shall submit to the Division a report summarizing the results of the engineering evaluation identified in paragraph 24. The report shall include an aggressive plan and time schedule for the implementation of specific interim and long-term measures that Dayton Orsburn and Leah Orsburn will complete to address the deficiencies identified in the evaluation, to obtain a CDPS Permit for discharge to groundwater, and complete construction or improvements to the wastewater treatment facility to bring the facility into compliance with the Water Quality Control Act. The submitted plan and time schedule shall become a condition of this Order and Dayton Orsburn and Leah Orsburn 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.
27. Within ninety (90) calendar days of receipt of this Order, Dayton Orsburn and Leah Orsburn shall submit an Application for Preliminary Effluent Limitations for a Domestic Groundwater Discharge.
28. Within one hundred twenty (120) calendar days of receipt of this Order, Dayton Orsburn and Leah Orsburn shall submit a completed site location and/or design approval request, in accordance with §25-8-702, C.R.S. and 5 CCR 1002-22 ("Regulation 22"). Dayton Orsburn and Leah Orsburn shall not initiate any necessary construction until such time that the necessary site location and design approval(s) have been obtained, as required by §25-8-702, C.R.S. and 5 CCR 1002-22, or unless otherwise specifically authorized in writing by the Division.
29. Within two hundred forty (240) calendar days of receipt of this Order, Dayton Orsburn and Leah



Orsburn shall submit a Colorado Discharge Permit System Application for discharge to groundwater.

30. Beginning June 30, 2016, and every calendar month thereafter, Dayton Orsburn and Leah Orsburn shall submit monthly progress reports to the Division by the last day of each calendar month. At a minimum, each report shall outline activities undertaken during the current month and activities planned for the next month to remain in compliance with this Order. The monthly progress reports shall be required until the issuance of written notice from the Division indicating that the reports are no longer necessary occurs.
31. If Dayton Orsburn and Leah Orsburn become aware of any situation or circumstances that cause Dayton Orsburn and Leah Orsburn to become unable to comply with any condition or time schedules set forth by this Order, Dayton Orsburn and Leah Orsburn shall provide written notice to the Division within five (5) calendar days of becoming aware of such circumstances. Dayton Orsburn's and Leah Orsburn's notice shall describe what, if any, impacts will occur on Dayton Orsburn's and Leah Orsburn'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.
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. Within thirty (30) calendar days of receiving Division comments on submitted documents, Dayton Orsburn and Leah Orsburn 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, Dayton Orsburn and Leah Orsburn 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](mailto: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.

### **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.

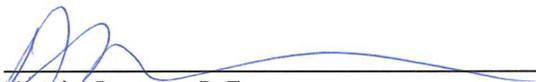
**EFFECT OF ORDER**

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 18<sup>th</sup> day of May, 2016.

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

  
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Nicole Rowan, P.E.  
Clean Water Program Manager  
WATER QUALITY CONTROL DIVISION