



COLORADO
Department of Public
Health & Environment

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

November 17, 2015

James Eccher, Mayor
City of Walsenburg
525 South Albert Avenue
Walsenburg, Colorado 81089

Certified Mail Number: 7014 2870 0000 7699 6488

RE: Compliance Order on Consent, Number: MC-151115-1

Dear Mr. Eccher:

Enclosed for the City of Walsenburg's records is a copy, with original signatures, of the recently executed Compliance Order on Consent, Number MC-151115-1 (the "Order"). Please note that the Order number at the top right of the first page was changed to coincide with the date the Order was signed by the Water Quality Control Division Director. The Order and all terms and conditions of the Order became effective on November 15, 2015. Please refer to paragraphs 25 through 31 of the Order for specific compliance requirements and due dates.

If you have any questions, please don't hesitate to contact me at (303) 692-2283 or mandy.mercer@state.co.us.

Sincerely,

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

Enclosure

cc: Enforcement File, COG589038

ec: Natasha Davis, EPA Region VIII
John Martinez, Las Animas-Huerfano Counties Environmental Health Department
Nicole Rowan, Program Manager, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Amy Zimmerman, Engineering Section, CDPHE
Heather Drissel, Field Services Section, CDPHE
Kenan Diker, Permits Section, CDPHE
Mike Harris, Clean Water Enforcement Unit, CDPHE
Tania Watson, Data Management, CDPHE





COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT

NUMBER: MC-151115-1

IN THE MATTER OF: CITY OF WALSENBURG
 HUERFANO COUNTY, COLORADO

The Colorado Department of Public Health and Environment (the “Department”), through the Water Quality Control Division (the “Division”), issues this Compliance Order on Consent (“Consent Order”), pursuant to the Division’s authority under §§25-8-602 and 605, C.R.S. of the Colorado Water Quality Control Act (the “Act”) §§25-8-101 to 803, C.R.S., and its implementing regulations, with the express consent of the City of Walsenburg (the “City”). The Division and the City may be referred to collectively as “the Parties.”

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order are to:
 - a. Establish a schedule for decommissioning and eliminating the discharge from the wastewater lagoons at the Country Host Motel facility located near Latitude 37°39’2” North and Longitude 104°47’33” West near the City of Walsenburg, Huerfano County, Colorado (the “Country Host Facility”).
 - b. Establish a schedule for decommissioning and eliminating the discharge from the wastewater lagoon at the Dakota Campground facility located near Latitude 37°38’53” North and Longitude 104°47’61” West near the City of Walsenburg, Huerfano County, Colorado (the “Dakota Campground Facility”).
 - c. Establish requirements for commencing and completing construction of the Northlands Sanitary Sewer Lift Station and Force Main, specifically as it pertains to the decommissioning of all wastewater lagoons in the developed area north of the City known as Northlands.

DIVISION’S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

2. Based upon the Division’s investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602 and 605, C.R.S., the Division has made the following determinations regarding the City, the Country Host Facility, the Dakota Campground Facility, and the City’s compliance with the Act and its implementing permit regulations.

3. The City is a municipality as defined by §31-1-101(6), C.R.S.
4. The City is a “person” as defined by §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61 §61.2(73).
5. Pursuant to §25-8-501(1), C.R.S. and 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.
6. Pursuant to 5 CCR 1002-61, §61.4(1)(b), when a facility is owned by one person but operated by another person, both the owner and the operator shall apply for a permit and the permit may be issued to both parties as co-permittees.
7. Pursuant to 5 CCR 1002-61, §61.8(4), the owner or operator of any facility, process, or activity from which a discharge of pollutants is made into state waters or into any domestic wastewater treatment works shall, according to standard procedures and methods prescribed by the Division in a permit: a) establish and maintain records; b) make reports; c) install, calibrate, use, and maintain monitoring methods and equipment, including biological and indicator pollutant monitoring methods; d) sample discharges; and, e) provide additional reasonably available information relating to discharges into domestic wastewater treatment works.
8. Pursuant to 5 CCR 1002-61, §61.14(9)(a), the owner of any impoundment who can demonstrate, using a method which has been approved by the Division, that the seepage from the impoundment does not exceed the allowable seepage rate of 1×10^{-6} centimeters per second (“cm/sec”) will be considered not to have a discharge to waters of the state, by virtue of the insignificant nature of the seepage, and a waiver of the requirement to obtain a permit will be granted by the Division.
9. Pursuant to 5 CCR 1002-61, §61.14(9)(b), the owner of an impoundment who fails to demonstrate that the seepage from the impoundment is less than or equal to 1×10^{-6} cm/sec shall be required to submit an application and obtain a permit as required in section 61.14(10).

THE COUNTRY HOST FACILITY

10. The Country Host Facility consists of a two-lagoon system located on the west side of Highway 85/87 and north of Pictou Arroyo. At a minimum, the lagoons receive discharge from Country Host Motel and RV Park and the neighboring Acorn Travel Plaza, a service station that includes restrooms and a restaurant.
11. The Country Host Facility is the subject of Notice of Violation / Cease and Desist Order Number DO-141002-1 (the “NOV/CDO”), issued to Stener Carlson III on October 2, 2014.
12. The Country Host Facility is subject to the Colorado Discharge Permit System General Permit Number COG-589000. The current version of the General Permit became effective on October 1, 2013 and remains in effect until September 30, 2018 (the “2013 Permit”). Stener Carlson III obtained authorization to discharge under the 2013 Permit via Certification Number COG-589038 (the “Certification”). The Certification became effective on October 1, 2013 and remains in effect until September 30, 2018, or until Stener Carlson III inactivates Permit coverage.
13. The 2013 Permit and Certification authorize Stener Carlson III to discharge treated wastewater

from the Facility through Outfall 001A into Pictou Arroyo. Outfall 001A is authorized at a point following chlorination and prior to entering Pictou Arroyo and is physically located near Latitude 37°38'59" North and Longitude 104°47'24" West. Outfall 001A is the only outfall permitted for the Country Host Facility.

14. Pursuant to Part I.C.6. of the 2013 Permit, facilities that use a lagoon are required to have evidence that the lagoon liner meets the allowable seepage rate of 1×10^{-6} cm/sec, and a compliance schedule may be included in the certification to show that a liner is in place and is functioning properly.
15. A quit claim deed between the City and Stener Carlson III was recorded in Huerfano County on August 3, 2015. The deed agreement applies to the parcel of land described in Exhibit A of the Quit Claim Deed, which includes the existing private sewer lagoons at the Country Host Motel. Upon the date that the Quit Claim Deed was recorded in Huerfano County, the City became the owner of the lagoons and is therefore responsible for compliance with the terms and conditions of the Act and its implementing permit regulations.

THE DAKOTA CAMPGROUND FACILITY

16. The Dakota Campground Facility consists of one wastewater lagoon on the west side of Highway 85/87 and south of Pictou Arroyo. At a minimum, the lagoon receives discharge from the campground's 31 RV sites, 10 tent sites, and washing machines. According to George Birrer, operator and former owner of the Dakota Campground Facility, the lagoon either formerly or currently services a restaurant.
17. Division records dating to 1977 indicate that the Dakota Campground Facility was intended to operate as a non-discharging system; however, George Birrer was required to submit documentation that the lagoon meets the allowable seepage rate in order to obtain a waiver from the discharge permit requirements.
18. Division records establish that the necessary documentation demonstrating that the lagoon meets the allowable seepage rate was not submitted; therefore, a waiver from the requirement of a discharge permit was not granted.
19. A quit claim deed between the City and George Birrer was recorded in Huerfano County on August 3, 2015. The deed agreement applies to the parcel of land described in Exhibit A of the Quit Claim Deed, which includes the existing private sewer lagoon at the Dakota Campground. Upon the date that the Quit Claim Deed was recorded in Huerfano County, the City became the owner of the lagoon and is therefore responsible for compliance with the terms and conditions of the Act and its implementing permit regulation.
20. The City received Site Location Approval for the Northlands Sanitary Sewer Lift Station and Force Main from the Division on June 30, 2015. The lift station will collect wastewater from residences and businesses in the Northlands area and convey it to the City's wastewater treatment facility. Following construction of the approved lift station and force main, wastewater from the Country Host Motel, Acorn Travel Plaza, and Dakota Campground will be conveyed to the new lift station and force main, and all existing wastewater treatment lagoons in the Northlands area will be decommissioned and the land reclaimed.
21. The Parties agree that the accepted long-term compliance solution for the ongoing violations at the Country Host and Dakota Campground Facilities is to consolidate with the City's wastewater

treatment facility and decommission the existing lagoons.

ORDER AND AGREEMENT

22. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605, C.R.S., the Division orders the City to comply with all provisions of this Consent Order, including all requirements set forth below.
23. The City agrees to the terms and conditions of this Consent Order. The City agrees that this Consent Order constitutes an order issued pursuant to §§25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. The City also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by the City against the Division:
 - a. The issuance of this Consent Order;
 - b. The factual and legal determinations made by the Division herein; and
 - c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.
24. Notwithstanding the above, the City does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by the City pursuant to this Consent Order shall not constitute evidence of fault and liability by the City with respect to the conditions of the Country Host and Dakota Campground Facilities. The City expressly reserves its rights to deny any of the Division's factual or legal determinations or defend itself in any other third party proceeding relating to the information identified in this Consent Order.

Compliance Requirements

25. By November 30, 2015, the City shall provide written confirmation to the Division indicating that the Northlands Sanitary Sewer Lift Station and Force Main project has been awarded to the City's selected contractor(s).
26. By December 31, 2015, the City shall provide written confirmation to the Division indicating that construction of the Northlands Sanitary Sewer Lift Station and Force Main project has begun.
27. By February 28, 2016, the City shall provide written confirmation to the Division indicating that construction of the approved force main has been completed.
28. By July 31, 2016, the City shall provide written confirmation to the Division indicating that:
 - a. Construction of the Northlands Sanitary Sewer Lift Station and Force Main project has been completed;
 - b. All wastewater flow into the Country Host and Dakota Campground Facilities has ceased; and,
 - c. The process to properly decommission all wastewater lagoons in the Northlands area has commenced. Note that decommissioning of the lagoons shall be completed in accordance with the guidance set forth in the Division's "Information Regarding Domestic Treatment

Works Closure at Wastewater Treatment Facilities.”

29. By October 31, 2016, the City shall provide written confirmation and photographs to the Division indicating that all wastewater lagoons in the Northlands area have been properly decommissioned, and that all earthwork associated with decommissioning the lagoons has been completed; including, removal and disposal of vegetation across each site, stripping and re-installation of topsoil, excavation, placement of fill, compaction, and final site grading.
30. By November 30, 2015, and every 30 days thereafter, the City shall submit a monthly progress report to the Division outlining efforts taken to achieve compliance with this Consent Order. At a minimum, each report shall outline activities undertaken during the current reporting period and activities planned for the next reporting period to remain in compliance with this Consent Order.
31. All documents submitted under this Consent Order shall use the same titles as stated in this Consent Order, and shall reference both the number of this Consent Order and the number of the paragraph pursuant to which the document is required.

SCOPE AND EFFECT OF CONSENT ORDER

32. This Consent Order constitutes a final agency order or action upon execution by the City and the Division. Any violation of the provisions of this Consent Order by the City, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.
33. The Parties’ obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order as of the date of approval by the Division.
34. The Division’s approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of the Act, or any subsequent violation of any requirement of this Consent Order or the Act.
35. The City shall comply with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Division makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

36. The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.
37. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
38. The City reserves its rights and defenses regarding the Country Host Facility and the Dakota

Campground Facility other than proceedings to enforce this Consent Order.

39. Nothing in this Consent Order shall preclude the Division from imposing additional requirements necessary to protect human health or the environment and to effectuate the purposes of the Consent Order. Nor shall anything in this Consent Order preclude the Division from imposing additional requirements in the event that additional information is discovered that indicates such requirements are necessary to protect human health or the environment.
40. The City releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims or for any injuries or damages to persons or property resulting from acts or omissions of the City, or those acting for or on behalf of the City, including its officers, employees, agents, successors, representatives, contractors, consultants, or attorneys in carrying out activities pursuant to this Consent Order. The City shall not hold out the State of Colorado or its employees, agents, or representatives as a party to any contract entered into by the City in carrying out activities pursuant to this Consent Order. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents, or representatives.

OFFSITE ACCESS

41. To the extent any plan submitted by the City requires access to property not owned or controlled by the City, the City shall use its best efforts to obtain site access from the present owners of such property to conduct required activities, and to allow Division access to such property to oversee such activities. In the event that site access is not obtained when necessary, the City shall notify the Division in writing regarding its best efforts and its failure to obtain such access.

SITE ACCESS AND SAMPLING

42. The Division shall be permitted to oversee any and all work being performed under this Consent Order. The Division shall be permitted access to all areas affected by the Northlands Sanitary Sewer Lift Station and Force Main project at any time work is being conducted pursuant to this Consent Order, and during reasonable business hours during any period work is not being conducted, for the purposes of determining the City's compliance with the Act, the Regulations, and this Consent Order. The Division shall be permitted to inspect work sites, operating and field logs, contracts, manifests, shipping records, and other relevant records and documents relating to this Consent Order or any requirement under this Consent Order and to interview City personnel and contractors performing work required by this Consent Order. Nothing in this paragraph limits or impairs the Division's statutory authorities to enter and inspect the aforementioned areas.
43. The Division may conduct any tests necessary to ensure compliance with this Consent Order and to verify the data submitted by the City. The City shall notify the Division in writing of any sampling activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of seventy-two (72) hours prior to the sampling being conducted, and shall provide split samples to the Division upon request.
44. The City shall permit the operators of the Country Host Facility and the Dakota Campground Facility access as necessary in order ensure each facility is properly operated and maintained during the duration of the Northlands Sanitary Sewer Lift Station and Force Main construction

project.

45. The City shall notify the Division in writing of any excavation, construction (including the construction of monitoring wells) or other investigatory or remedial activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of seventy-two (72) hours prior to beginning the excavation, construction, or required activity. The City shall provide the Division any blue print, diagram, construction or other permits for any construction activity undertaken pursuant to this Consent Order upon request.

FORCE MAJEURE

46. The City shall perform the requirements of this Consent Order within the schedules and time limits set forth herein and in any approved plan unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of the City, and which cannot be overcome by due diligence.
47. Within seventy-two (72) hours of the time that the City knows or has reason to know of the occurrence of any event which the City has reason to believe may prevent the City from timely compliance with any requirement under this Consent Order, the City shall provide verbal notification to the Division. Within seven (7) calendar days of the time that the City knows or has reason to know of the occurrence of such event, the City shall submit to the Division a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.
48. The burden of proving that any delay was caused by a force majeure shall at all times rest with the City. If the Division agrees that a force majeure has occurred, the Division will so notify the City. The Division will also approve or disapprove of the City's proposed actions for mitigating the delay. If the Division does not agree that a force majeure has occurred, or if the Division disapproves of the City's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to the City. Pursuant to the Dispute Resolution section, within fifteen (15) calendar days of receipt of the explanation, the City may file an objection.
49. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Consent Order is found to have been delayed by a force majeure, the City shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

DISPUTE RESOLUTION

50. If the Division determines that a violation of this Consent Order has occurred, that a force majeure has not occurred, or that the actions taken by the City to mitigate the delay caused by a force majeure are inadequate, then the Division shall provide a written explanation of its determination to the City. Within fifteen (15) calendar days of receipt of the Division's determination, the City shall:
 - a. Submit a notice of acceptance of the determination; or
 - b. Submit a notice of dispute of the determination.

If the City fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

51. If the Division disapproves or approves with modifications any original or revised plan submitted by the City pursuant to this Consent Order, the Division shall provide a written explanation of the disapproval or approval with modifications. Within fifteen (15) calendar days of receipt of the Division's approval with modifications or disapproval of the plan, the City shall:
- a. In the case of an approval with modifications only, submit a notice of acceptance of the plan as modified and begin to implement the modified plan;
 - b. In the case of a disapproval only, submit a revised plan for Division review and approval. The City may not select this option if the Division has included in its disapproval an alternate plan that shall be implemented by the City; or
 - c. Submit a notice of dispute of the disapproval or approval with modifications.

If the City fails to do any of the above within the specified time, the City shall be deemed to have failed to comply with the Consent Order, and the Division may bring an enforcement action, including an assessment of penalties.

52. If the City submits a revised plan, the plan shall respond adequately to each of the issues raised in the Division's written explanation of the disapproval or approval with modifications. The Division may determine that failure to respond adequately to each of the issues raised in the Division's written explanation constitutes a violation of this Consent Order. The Division shall notify the City in writing of its approval, approval with modifications, or disapproval of the revised plan. If the Division disapproves the revised plan, it may include in its disapproval a plan for implementation by the City. Such disapproval and plan shall be deemed effective and subject to appeal in accordance with the Act and the Colorado State Administrative Procedures Act, §§ 24-4-101 through 108, C.R.S. (the "APA"), unless the City submits a notice of dispute, pursuant to paragraph 48 above, of the Division's disapproval and plan for implementation. All requirements and schedules of the Division's plan shall not become effective pending resolution of the dispute.

NOTICES

53. Unless otherwise specified, any report, notice, or other communication required under the Consent Order shall be sent to:

For the Division:

Mandy Mercer
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: 303-692-2283
E-mail: mandy.mercer@state.co.us

For the City:

James Eccher, Mayor
City of Walsenburg
525 South Albert Avenue

Walsenburg, CO 81089
Telephone: 719-738-1048
E-mail: mayor@cityofwalsenburg.com

With a Copy to:
David Johnston, City Administrator
City of Walsenburg
525 South Albert Avenue
Walsenburg, CO 81089
Telephone: 719-738-1048, Ext 243
E-mail: djohnston@cityofwalsenburg.com

MODIFICATIONS

54. This Consent Order may be modified only upon mutual written agreement of the Parties.

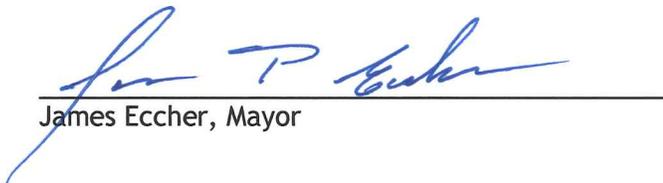
NOTICE OF EFFECTIVE DATE

55. This Consent Order shall be fully effective, enforceable and constitute a final agency action on the date signed by the authorized representative of the last party.

BINDING EFFECT AND AUTHORIZATION TO SIGN

56. This Consent Order is binding upon the City and its elected officials, employees, agents, representatives, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. The City agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

FOR THE CITY OF WALSENBURG:



James Eccher, Mayor

Date: 11/4/15

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:



Patrick J. Pfaltzgraff, Director
WATER QUALITY CONTROL DIVISION

Date: 11/15/15