



**COLORADO**  
Department of Public  
Health & Environment

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

October 7, 2016

Henry Schnabel  
23903 CR KK.5  
Bristol, CO 81047

Certified Mail Number: 7014 2870 0000 7568 7639

**RE: Compliance Order on Consent, Number: DC-161006-1**

Dear Mr. Schnabel:

Enclosed for your records, you will find your copy, with original signatures, of the recently executed Compliance Order on Consent. Please be advised that the first page of the Compliance Order on Consent was changed to place the assigned Order Number on the final document.

If you have any questions, please don't hesitate to contact me at (303) 692-3598 or by electronic mail at [michael.harris@state.co.us](mailto:michael.harris@state.co.us).

Sincerely,

Michael Harris, Enforcement Specialist  
Clean Water Enforcement Unit  
WATER QUALITY CONTROL DIVISION

*Enclosure(s)*

ec: Michael Boeglin, EPA Region VIII  
Keith Siemsen, Prowers County Public Health and Environment  
Aimee Konowal, Watershed Section, CDPHE  
Chuck Cousino, OWTS Coordinator, CDPHE  
Tania Watson, Data Management, CDPHE







# COLORADO

## Department of Public Health & Environment

### WATER QUALITY CONTROL DIVISION

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COMPLIANCE ORDER ON CONSENT

NUMBER: DC-161006-1

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IN THE MATTER OF:      HENRY SCHNABEL  
                                 UNPERMITTED  
                                 PROWERS COUNTY, COLORADO

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The Colorado Department of Public Health and Environment (“Department”), through the Water Quality Control Division (“Division”), issues this Compliance Order on Consent (“Consent Order”), pursuant to the Division’s authority under §§25-10-106(1)(k)(l) and 25-10-110, C.R.S. of the Colorado On-Site Wastewater Treatment Systems Act (“OWTS Act”) §§25-10-101 to 113, C.R.S., and its implementing regulations, with the express consent of Henry Schnabel. The Division and Mr. Schnabel 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:
  - a. To establish compliance requirements and criteria for ensuring Mr. Schnabel’s wastewater treatment system located at 23903 CR KK.5, in or near the Town of Bristol, Prowers County, Colorado is properly designed, installed and permitted in accordance with Prowers County’s On-Site Wastewater Treatment System Regulations (“Prowers County OWTS Regulations); and
  - b. To resolve the violations of the OWTS Act, its implementing regulations, and the Prowers County regulations cited herein by the Division.

#### DIVISION’S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

2. Henry Schnabel is a “person” as defined under the OWTS Act, §25-10-103(15), C.R.S. and its implementing control regulation, 5 CCR 1002-43, §43.3(89).
3. Mr. Schnabel owns and/or occupies property located at 23903 CR KK.5, in or near the Town of Bristol, Prowers County, Colorado (the “Property”).
4. The Prowers County OWTS Regulations were adopted by the Prowers Board of County Commissioners acting as the Prowers County Board of Health (“BOH”) pursuant to and under authority contained in the OWTS Act, 25-10-101, et seq. C.R.S.



5. From June 1, 1997 until October 10, 2014, on-site wastewater treatment systems in Prowers County were subject to regulation under the Prowers County Individual Sewage Disposal System Regulations (“Prowers County ISDS Regulations”). From October 10, 2014 until the present day, on-site wastewater treatment systems in Prowers County are subject to the Prowers County OWTS Regulations.
6. The Prowers County OWTS Regulations have included by reference the requirements of the Water Quality Control Commission’s On-Site Wastewater Treatment System Regulations, 5 CCR 1002-43 (“Regulation 43”).
7. Regulation 43 grants a local public health agency authority to “issue an order to cease and desist from the use of any OWTS or sewage treatment works which is found by the health officer not to be functioning in compliance with the OWTS Act or with applicable regulations or is found to constitute a hazard to public health, or has not otherwise received timely repairs under the provisions of section 25-10-106 (1) (j), C.R.S.”
8. On March 12, 2014 and April 21, 2014, a representative from Prowers County Public Health and Environment (“PCPHE”) conducted an on-site inspection of the Property and determined that Mr. Schnabel had installed or repaired, or was in the process of installing or repairing, a wastewater treatment system on the Property.
9. Mr. Schnabel’s wastewater treatment system at the Property has a design capacity of less than 2,000 gallons per day (“gpd”).
10. Mr. Schnabel’s wastewater treatment system at the Property is an “on-site wastewater treatment system” as defined by §25-10-103(12) and 5 CCR 1002-43, §43.3(83).
11. Mr. Schnabel’s wastewater treatment system at the Property is an “individual sewage disposal system” as defined by 5 CCR 1002-43, §43.3(64), which has the same meaning as “on-site wastewater treatment system.”
12. Mr. Schnabel had not obtained a permit in accordance with Section III.D.1. of the Prowers County ISDS Regulations.
13. Pursuant to §25-10-113(1)(a), C.R.S., any person who constructs, alters, installs, or permits the use of any on-site wastewater treatment system (“OWTS”) without first applying for and receiving a permit commits a class 1 petty offense and shall be punished as provided in §18-1.3-503, C.R.S.
14. Pursuant to 5 CCR 1002-43, §43.4(A)(1)(a), an OWTS with a design capacity less than 2,000 gpd must comply with regulations adopted by local boards of health.
15. Pursuant to 5 CCR 1002-43, §43.4(B)(1), prior to installing, altering, or repairing an OWTS, a permit must be obtained from the local public health agency.
16. In Prowers County, PCPHE is the “local public health agency” as defined by §25-10-103(11) and 5 CCR 1002-43, §43.3(74).
17. Prowers County regulations in place at the time of March 12, 2014 and April 21, 2014 inspections of the Property required that any person who wishes to install, alter or repair an individual sewage disposal system (“ISDS”) in Prowers County first obtain a permit from PCPHE.

18. PCPHE records establish that Mr. Schnabel failed to obtain a permit from PCPHE prior to installing or repairing the OWTS on the Property.
19. Mr. Schnabel's failure to obtain a permit from PCPHE prior to installing or repairing the OWTS on the Property constitutes violations of Section III.D.1. of the Prowers County ISDS Regulations, Section IV.A.1. of the Prowers County OWTS Regulations, §25-10-113(1)(a), C.R.S., and 5 CCR 1002-43, §43.4(B)(1).

### ORDER AND AGREEMENT

20. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-10-106(1)(k)(l) and 110, C.R.S., the Division orders Henry Schnabel to comply with all provisions of this Consent Order, including all requirements set forth below.
21. Mr. Schnabel agrees to the terms and conditions of this Consent Order. Mr. Schnabel agrees that this Consent Order constitutes a notice of alleged violation and a cease and desist order issued pursuant to §§25-10-106(1)(k)(l) and 110, C.R.S., and is an enforceable requirement of the OWTS Act. Mr. Schnabel also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Mr. Schnabel 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 OWTS Act.
22. Notwithstanding the above, Mr. Schnabel does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Mr. Schnabel pursuant to this Consent Order shall not constitute evidence of fault and liability by Mr. Schnabel.

### Compliance Requirements

23. Within 30 calendar days of the effective date of this Consent Order, Henry Schnabel shall obtain the services of a "competent technician," as defined by Regulation 43, or a professional engineer and complete a site and soil evaluation of the Property in accordance with 5 CCR 1002-43, §43.5 and the Prowers County OWTS Regulations.
24. Within 45 calendar days of the effective date of this Consent Order, Henry Schnabel shall submit to PCPHE and the Division a complete permit application for the installation or repair of the OWTS on the Property that includes, at a minimum:
  - a. Owner name and contact information;
  - b. Property address;
  - c. Property legal description;
  - d. Type of permit;
  - e. Report from site and soil evaluation described in paragraph 23 above;
  - f. OWTS design with a legible, accurate site plan which shows pertinent physical features on subject property, and on adjacent properties, as noted in Table 7-1 of Regulation 43; and
  - g. Other information, data, plans, specifications and tests as required by PCPHE.

25. Within 90 calendar days of the effective date of this Consent Order, Henry Schnabel shall complete installation or repair of the OWTS and receive final inspection approval from PCPHE in accordance with 5 CCR 1002-43, §43.4(E) and (F) and Sections V.A.-C. of the Prowers County OWTS Regulations.

#### SCOPE AND EFFECT OF CONSENT ORDER

26. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the violations cited herein.
27. This Consent Order constitutes a final agency order or action upon execution by Mr. Schnabel and the Division. Any violation of the provisions of this Consent Order by Mr. Schnabel, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-10-113, C.R.S., and may result in the assessment of civil penalties of up to \$50 per day for each day during which such violation occurs.
28. 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.
29. 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 OWTS Act, or any subsequent violation of any requirement of this Consent Order or the OWTS Act.
30. Notwithstanding paragraph 22 above, the violations described in this Consent Order will constitute part of Mr. Schnabel's compliance history.
31. Mr. Schnabel 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

32. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to the specific instances of violations cited herein. 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.
33. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
34. Mr. Schnabel reserves his rights and defenses regarding the Property other than proceedings to enforce this Consent Order.

35. 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.
36. Mr. Schnabel 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 Mr. Schnabel, or those acting for or on behalf of Mr. Schnabel, including his employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. Mr. Schnabel shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by Mr. Schnabel 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

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

#### SITE ACCESS AND SAMPLING

38. The Division and PCPHE shall be permitted to oversee any and all work being performed under this Consent Order. The Division and PCPHE shall be permitted access to the Property 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 Mr. Schnabel's compliance with the OWTS Act, the Regulations, and this Consent Order. The Division and PCPHE 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 Mr. Schnabel's 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 Facility.
39. The Division and PCPHE may conduct any tests necessary to ensure compliance with this Consent Order and to verify the data submitted by Mr. Schnabel. Mr. Schnabel shall notify the Division and PCPHE in writing of any sampling activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of 48 hours prior to the sampling being conducted, and shall provide split samples to the Division and/or PCPHE upon request.

## FORCE MAJEURE

40. Mr. Schnabel 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 Mr. Schnabel, and which cannot be overcome by due diligence.
41. Within 48 hours of the time that Mr. Schnabel knows or has reason to know of the occurrence of any event which Mr. Schnabel has reason to believe may prevent Mr. Schnabel from timely compliance with any requirement under this Consent Order, Mr. Schnabel shall provide verbal notification to the Division and PCPHE. Within seven calendar days of the time that Mr. Schnabel knows or has reason to know of the occurrence of such event, Mr. Schnabel shall submit to the Division and PCPHE 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.
42. The burden of proving that any delay was caused by a force majeure shall at all times rest with Mr. Schnabel. If the Division agrees that a force majeure has occurred, the Division will so notify Mr. Schnabel. The Division will also approve or disapprove of Mr. Schnabel'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 Mr. Schnabel's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to Mr. Schnabel. Pursuant to the Dispute Resolution section, within seven calendar days of receipt of the explanation, Mr. Schnabel may file an objection.
43. 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, Mr. Schnabel shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

## DISPUTE RESOLUTION

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

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

45. If Mr. Schnabel files any notice of dispute pursuant to paragraph 42 or 44, the notice shall specify the particular matters in the Division's determination that Mr. Schnabel seeks to dispute and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by Mr. Schnabel. The Division and Mr. Schnabel shall have seven calendar days from the receipt by the Division of the notification of dispute to reach an agreement. If agreement cannot be reached

on all issues within this seven calendar day period, the Division shall confirm or modify its decision within an additional five calendar days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act and Colorado State Administrative Procedures Act, §§ 24-4-101 through 108, C.R.S.

### NOTICES

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

For the Division:

Michael Harris  
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: 303-692-3598  
E-mail: michael.harris@state.co.us

For PCPHE:

Keith Siemsen  
Prowers County Public Health & Environment  
1001 S. Main Street  
Lamar, Colorado 81052  
Telephone: (719) 336-9763  
Email: ksiemsen@prowerscounty.net

For Henry Schnabel:

Henry Schnabel  
23903 CR KK.5  
Bristol, CO 81047  
Telephone: (719) 688-0408  
Email: henry.schnabel@yahoo.com

### OBLIGATIONS UNAFFECTED BY BANKRUPTCY

47. The obligations set forth herein are based on the Division's police and regulatory authority. These obligations require specific performance by Mr. Schnabel of corrective actions carefully designed to prevent ongoing or future harm to public health or the environment, or both. Enforcement of these obligations is not stayed by a petition in bankruptcy. Further, the obligations imposed by this Consent Order are necessary for Mr. Schnabel and the Property to achieve and maintain compliance with State law.

**MODIFICATIONS**

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

**NOTICE OF EFFECTIVE DATE**

49. 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.

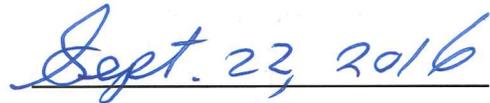
**BINDING EFFECT AND AUTHORIZATION TO SIGN**

50. This Consent Order is binding upon Mr. Schnabel and his employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. In the event that a party does not sign this Consent Order within 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 HENRY SCHNABEL:**

  
Henry Schnabel

Date:



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



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

Date:

