



COLORADO

Department of Public
Health & Environment

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

February 22, 2016

Darlene Mann, Registered Agent
Lightner Creek Mobile Home Park, LLC
P.O. Box 232
Bayfield, CO 81122

Certified Mail Number: 7014 2870 0000 7699 6570

Darlene Mann, Registered Agent
Lightner Creek Mobile Home Park, LLC
907 CR 207, Trailer 35
Durango, CO 81301

Certified Mail Number: 7014 2870 0000 7699 6563

RE: Service of Notice of Violation / Cease and Desist Order, Number: DO-160218-1

Dear Ms. Mann:

Lightner Creek Mobile Home Park, LLC is 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 Lightner Creek Mobile Home Park, LLC has 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., Lightner Creek Mobile Home Park, LLC is 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.



Sincerely,



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

Enclosure(s)

cc: Enforcement File

ec: Michael Boeglin, EPA Region VIII
Chad Engelhardt, San Juan Basin Health Department
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
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

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: DO-160218-1

IN THE MATTER OF: LIGHTNER CREEK MOBILE HOME PARK, LLC
UNPERMITTED
LA PLATA 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 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, Lightner Creek Mobile Home Park, LLC ("LCMHP") was a Colorado limited liability company.
2. LCMHP 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. LCMHP owns and/or operates the Lightner Creek Mobile Home Park wastewater treatment facility, located near Latitude 37.288 and Longitude 107.937, near the City of Durango, La Plata County, Colorado (the "Facility").
4. The Facility consists of an unlined single cell wastewater lagoon with surface aeration that collects domestic wastewater from LCMHP. The Facility receives wastewater from approximately 40 mobile home units, one house, and one duplex. The Facility is located in the southern portion of the property and discharges treated domestic wastewater to the alluvium of Lightner Creek.
5. The Facility is a "domestic wastewater treatment works" as defined by §25-8-103(5), C.R.S.

Unauthorized Discharge of Pollutants

6. 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.

7. 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).
8. The Facility was the subject of the Colorado Discharge Permit System (“CDPS”) Groundwater Discharge Permit Number COX029904, which became effective on December 1, 2004 and expired on November 30, 2009 (the “Permit”).
9. The Permit authorized LCMHP to discharge treated domestic wastewater from the Facility into groundwater. The Permit included requirements to monitor groundwater at one (1) upgradient compliance monitoring well (designated in the Permit as Outfall 050A) and two (2) downgradient compliance monitoring wells (designated in the Permit as Outfalls 050B and 050C). The Permit also included a requirement to measure influent flow into the Facility at an influent flume measurement device located above the lift station to the lagoon (designated in the Permit as Outfall 300I).
10. On May 6, 2005, the Division issued a Notice of Violation/Cease and Desist Order, Number MO-050506-1, to LCMHP (the “2005 Order”). The 2005 Order cited LCMHP for violations of the Permit and included a number of corrective actions that LCMHP was required to implement at the Facility in order to ensure permit compliance, including the development of a Preliminary Engineering Report aimed at identifying upgrades and/or modifications to the Facility and a determination of the hydrologic connection between the lagoon, groundwater, and surface water (Lightner Creek). A Preliminary Engineering Report was submitted by LCMHP on September 30, 2005.
11. Based upon information provided in the September 30, 2005 Preliminary Engineering Report and subsequent correspondence between LCMHP and the Division, and, given the proximity of the Facility to Lightner Creek, the Division determined that there is a clear and distinct hydrologic connection between the Facility’s unlined lagoon, groundwater in the alluvium of Lightner Creek, and surface water (Lightner Creek). As a result, the Division determined that the Facility discharges domestic wastewater to groundwater in the alluvium of Lightner Creek and subsequently to Lightner Creek itself.
12. The Division received an application for a new general groundwater permit from LCMHP on August 2, 2010. In a response letter to LCMHP dated November 17, 2010, the Division stated, “after reviewing the application, we have determined that the discharge should be considered a discharge to surface water and not a discharge to groundwater. Because of the proximity of Lightner Creek to the WWTF’s unlined lagoon...the Division believes that there is a clear and distinct hydrologic connection between the unlined lagoon and Lightner Creek. The depth to groundwater measured in Lightner Creek’s two down-gradient groundwater monitoring and compliance wells is approximately eight (8) feet below ground surface, and the distance from the unlined lagoon to Lightner Creek is approximately one hundred (100) feet. Lightner Creek Mobile

Home Park is requested to submit a surface water discharge permit application to the Division.”

13. Division records establish that LCMHP failed to submit an application for CDPS permit authorization to discharge to surface water.
14. 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).
15. The lagoon associated with the Facility is an “impoundment” as defined by 5 CCR 1002-61, §61.2(43).
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 in the alluvium of Lightner Creek and Lightner Creek itself are “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. LCMHP’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. Division records establish that LCMHP does not have any effective permits authorizing the discharge of pollutants from the Facility into state waters. Additionally, LCMHP has not received a waiver for the impoundment from the requirement to obtain a discharge permit.
20. LCMHP’s discharge of domestic wastewater into state waters from the Facility without a 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 LCMHP has 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., LCMHP is 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 LCMHP to comply with the following specific terms and conditions of this Order:

23. LCMHP 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 CDPS Permit for discharge to surface water, including but not limited to the corrective actions identified below.
24. Within thirty (30) calendar days of receipt of this Order, LCMHP 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/or review of any existing or ongoing engineering evaluations, 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, 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 surface water 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, LCMHP shall provide documentation to the Division that it has 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, LCMHP shall submit to the Division a report summarizing the results of the engineering evaluation/review 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 LCMHP will complete to address the deficiencies identified in the evaluation and to obtain a CDPS Permit for discharge to surface water. The submitted plan and time schedule shall become a condition of this Order and LCMHP 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, LCMHP shall submit an Application for Preliminary Effluent Limitations for a Domestic Surface Water Discharge.
28. Within one hundred twenty (120) calendar days of receipt of this Order, LCMHP 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”). LCMHP shall not initiate 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. If LCMHP receives any comments or requests for information from the Division on the submitted site location or design approval request(s), LCMHP shall respond and provide the requested information within fourteen (14) calendar days of the date of the request(s).
29. Beginning May 31, 2016, and every calendar month thereafter, LCMHP 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.
30. If LCMHP becomes aware of any situation or circumstances that cause LCMHP to become unable to comply with any condition or time schedules set forth by this Order, LCMHP shall provide written notice to the Division within five (5) calendar days of becoming aware of such circumstances. LCMHP’s notice shall describe what, if any, impacts will occur on LCMHP’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.
31. 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, LCMHP 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, LCMHP shall submit an original and an electronic copy to the Division at the following address:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-CWE-B2
Attention: Mandy Mercer
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: (303) 692-2283
Email: mandy.mercer@state.co.us

For any person submitting documents, plans, records and reports pursuant to this Notice of Violation /

Cease and Desist Order, that person shall make the following certification with each submittal:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

OBLIGATION TO ANSWER AND REQUEST FOR HEARING

Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11 you are required to submit to the Division an answer affirming or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

Section 25-8-603, C.R.S. and 5 CCR 1002, §21.11 also provide that the recipient of a Notice of Violation may request the Division to conduct a public hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002, §21.4(B)(2). Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent Department proceeding. The request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

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 18th day of February, 2016.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



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

