COLORADO
Department of Public
Health & Environment

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

August 5, 2016

Robert Owen, Owner
MacArthur Apartments LLC
1567 CR 207
Durango, Colorado 81301

Certified Mail Number: 7012 1010 0002 1774 4870

RE: Service of Notice of Violation/Cease and Desist Order/Order for Civil Penalty, Number: DO-160804-1

Dear Mr. Owen:

MacArthur Apartments LLC is hereby served with the enclosed Notice of Violation / Cease and Desist Order / Order for Civil Penalty (the "NOV/CDO/OCP"). The NOV/CDO/OCP is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §§25-8-602, 25-8-605, and 25-8-608 C.R.S., of the *Colorado Water Quality Control Act*, (the "Act"). The Division bases the NOV/CDO/OCP upon findings that MacArthur Apartments LLC has violated the Act and/or permit regulations promulgated pursuant to the Act and/or a discharge permit, as described in the enclosed NOV/CDO/OCP.

Pursuant to §25-8-603, C.R.S., MacArthur Apartments LLC is required, within thirty (30) calendar days of receipt of this NOV/CDO/OCP, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. Additionally, pursuant to the authority given to the Division by §25-8-608, C.R.S., the Division has imposed a civil penalty as outlined in the attached NOV/CDO/OCP. Payment of the imposed civil penalty should be made in accordance with the methods referenced in the Order for Civil Penalty.

Please be advised that the Division is continuing its investigation into this matter and the Division may identify supplementary violations that warrant amendments to this enforcement action or the issuance of additional enforcement actions.

Should you or representatives of MacArthur Apartments LLC desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO/OCP, please do not hesitate to contact Aly Ulibarri by phone at (303) 692-3163 or by electronic mail at aly.ulibarri@state.co.us

Sincerely,

Aly Ulibarri

Aly Ulibarri, 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
Aimee Konowal, Watershed Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Amy Zimmerman, Engineering Section, CDPHE
Heather Drissel, Field Services Section, CDPHE
Janet Kieler, 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 / ORDER FOR CIVIL PENALTY

NUMBER: DO-160804-1

IN THE MATTER OF: **MACARTHUR APARTMENTS, LLC**
CDPS PERMIT NO. CO0026468
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, 25-8-605 and 25-8-608, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order / Order for Civil Penalty:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the violations cited herein, Macarthur Apartments, LLC was a Texas limited liability company in good standing.

2. Macarthur Apartments, LLC 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. Macarthur Apartments, LLC owns and/or operates Lightner Creek Campground wastewater treatment facility, located at 37.2933° N, -107.9469° W, near the City of Durango, La Plata County, Colorado, (the "Facility").

4. The Facility is subject to the Colorado Discharge Permit System Permit Number: CO0026468 (the "Permit"). The current Permit became effective on October 1, 2013 and is due to expire September 30, 2018.

5. The Permit authorizes Macarthur Apartments, LLC to discharge treated wastewater from the Facility through Permitted Feature 001A, following disinfection and prior to mixing with the receiving stream, into Lightner Creek. The Permit includes requirements to monitor influent loading to the Facility at a representative point prior to biological treatment, which is designated in the Permit as Permitted Feature 300I.

6. The Permit includes quarterly monitoring requirements of some effluent parameters. Quarterly effluent parameters are reported on the Discharge Monitoring Report ("DMR") for Permitted Feature 001Q where 'Q' represents quarterly monitoring of Permitted Feature 001A.

7. Pursuant to 5 CCR 1002-61, §61.8, Macarthur Apartments, LLC must comply with all the terms and conditions of the Permit, and violations of such terms and conditions as specified in the Permit may be subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.

Failure to Submit Discharge Monitoring Reports

8. Pursuant to Part I.A.3. of the Permit, regardless of whether or not effluent discharge occurs at the Facility, Macarthur Apartments, LLC is required to monitor influent parameters at specified frequencies and report the results on a DMR.

9. Pursuant to Part I.A.2. of the Permit, Macarthur Apartments, LLC is required to monitor effluent parameters at specified frequencies and report the results on a DMR.

10. Pursuant to Part I.D.1. of the Permit, Macarthur Apartments, LLC is required to report all monitoring results on a monthly basis (or quarterly where applicable) using Division approved DMRs. The DMRs shall be filled out accurately and completely in accordance with the requirements of the Permit. Macarthur Apartments, LLC is required to ensure the DMRs are submitted to the Division so they are received by no later than the 28th day of the month following the reporting period. The Permit specifies that if no discharge occurs during the monthly reporting period, "No Discharge" shall be reported on the DMR.

11. Division records establish that Macarthur Apartments, LLC failed to submit DMRs to the Division for the following reporting periods:

Reporting Period	Permitted Feature(s)
July 1 - September 30, 2015	001Q
September 1 - September 30, 2015	001A & 300I
October 1 - October 31, 2015	001A & 300I
November 1 - November 30, 2016	001A & 300I
October 1 - December 31, 2015	001Q
February 1 - February 29, 2016	001A & 300I
March 1 - March 31, 2016	001A & 300I
January 1 - March 31, 2016	001Q
April 1 - April 30, 2016	001A & 300I
May 1 - May 30, 2016	001A & 300I
June 1 - June 30, 2016	001A & 300I
April 1 - June 30, 2016	001Q

12. Division records establish that Macarthur Apartments, LLC failed to submit DMRs to the Division by the 28th day of the month following the end of reporting periods identified in the table below:

Reporting Period	Permitted Feature(s)	DMR Receipt Date
July 1 - July 31, 2015	001A & 300I	10/06/2015
August 1 - August 31, 2015	001A & 300I	10/15/2015
December 1 - December 31, 2015	001A & 300I	02/03/2016

13. Macarthur Apartments, LLC's failure to submit complete and accurate DMRs to the Division by the 28th day of the month following each monitoring period constitutes violations of Part I.D.1. of the Permit.

NOTICE OF VIOLATION

14. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined Macarthur Apartments, LLC has violated the following sections of the Permit:

    Part I.D.1. of the Permit which states in part, "Reporting of the data gathered in compliance with Part I. A or Part I.B shall be on a **monthly** basis. ... Monitoring results shall be summarized for each calendar month and reported on Division approved discharge monitoring report (DMR) forms (EPA form 3320-1). The permittee must submit these forms either by mail, or by using the Division's Net-DMR service (when available). If mailed, one form shall be mailed to the Division, as indicated below, so that the DMR is received no later than the 28th day of the following month ... If no discharge occurs during the reporting period, "No Discharge" shall be reported.The Discharge Monitoring Report forms shall be filled out accurately and completely in accordance with requirements of this permit and the instructions on the forms.They shall be signed by an authorized person as identified in Part I.D.8."

REQUIRED CORRECTIVE ACTION

Based upon the foregoing factual and legal determinations and pursuant to §25-8-602 and §25-8-605, C.R.S., Macarthur Apartments, LLC is hereby ordered to:

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

Furthermore, the Division hereby orders Macarthur Apartments, LLC to comply with the following specific terms and conditions of this Order:

16. Within thirty (30) calendar days of receipt of this Order, Macarthur Apartments, LLC shall submit all delinquent DMRs as well as records of its influent and effluent discharge monitoring at the Facility for the period from May 1, 2015 through the date of this Order. The records shall include all laboratory data reports, all field measurement reports, and all calibration and maintenance records, including all other information required to be retained by Part I.D.6. of the Permit.

17. Within thirty (30) calendar days of receipt of this Order, Macarthur Apartments, LLC shall review the requirements of the Permit with its staff responsible for ensuring compliance with the terms and conditions of the Permit. The review shall focus on, but not be limited to: 1) the effluent limitations imposed by the Permit; 2) the effluent and influent monitoring requirements of the Permit; 3) the record keeping requirements of the Permit; 4) the reporting requirements of the Permit, including the instruction for proper completion and submittal of DMRs required by the Permit; and 5) the noncompliance notification procedures required by the Permit. Within forty five (45) calendar days of receipt of this Order, Macarthur Apartments, LLC shall submit a written certification to the Division stating that it has completed the review of the Permit with its responsible staff.

ORDER FOR CIVIL PENALTY

18. Pursuant to §25-8-608(1), C.R.S., any person who violates any provision of the Colorado Water Quality Control Act, or of any permit issued under the Act, or any control regulation promulgated pursuant to the Act, or any final cease and desist order or clean-up order shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs.

19. Based upon the Findings of Fact and Notice of Violation above, the Executive Director, through his designee (hereinafter the "Executive Director"), has determined that a civil penalty is appropriate and warranted in this matter. Therefore, the Executive Director hereby imposes a civil penalty in the amount of Five Thousand Dollars ($5,000.00) against Macarthur Apartments, LLC for the violations cited above. The civil penalty was determined in accordance with the procedures outlined in the Division's Civil Penalty Policy (May 1, 1993). A copy of the civil penalty calculation is attached hereto as Exhibit A and is incorporated herein by reference.

20. If Macarthur Apartments, LLC does not contest the findings and penalty assessment set out above, the civil penalty shall be paid within sixty (60) calendar days of the date of this Notice of Violation / Cease and Desist Order / Order for Civil Penalty. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

    Aly Ulibarri
    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

Macarthur Apartments, LLC shall include with the payment a cover letter referencing the number of this Order.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, the Macarthur Apartments, LLC shall submit an original and an electronic copy to the Division at the following address:

Aly Ulibarri
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) 692-3163
Email: aly.ulibarri@state.co.us

For any person submitting documents, plans, records and reports pursuant to this Notice of Violation / Cease and Desist Order, that person shall make the following certification with each submittal:

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

OBLIGATION TO ANSWER AND REQUEST FOR HEARING

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

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

APPEAL OF CIVIL PENALTY

Pursuant to 5 CCR 1002, §21.12(B) and 5CCR 1002, §21.4(A)(3)(b), an appeal of the determination of the civil penalty by the Executive Director shall be made in writing to the Division. Requests for such an appeal should be made in accordance with 5 CCR 1002, §21.12(B), shall be filed no later than thirty (30) calendar days after issuance of this action, and shall include the information specified in 5 CCR 1002, §21.4(B)(2).

FALSIFICATION AND TAMPERING

Be advised, in accord with §25-8-610, C.R.S., that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Colorado Water Quality Control Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

POTENTIAL CRIMINAL PENALTIES

You are also advised that any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution if such discharge is made without a permit, if a permit is required by the Act for such discharge, or if such discharge is made in violation of any permit issued under the Act or in violation of any Cease and Desist Order or Clean-up Order issued by the Division. By virtue of issuing this Notice of Violation / Cease and Desist

Order / Order for Civil Penalty, the State has not waived its right to bring an action for penalties under §25-8-609, C.R.S, and may bring such action in the future.

RELEASE OR DISCHARGE NOTIFICATION

Pursuant to §25-8-601, C.R.S., you are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

EFFECT OF ORDER

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters. Nothing herein contained shall be construed to preclude other individuals, cities, towns, counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances or to preclude any other lawful actions by such entities or the State.

For further clarification of your rights and obligations under this Notice of Violation / Cease and Desist Order/ Order for Civil Penalty you are advised to consult the Colorado Water Quality Control Act, §§25-8-101 to 803, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 4th day of August 2016.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Patrick J. Pfaltzgraff, Director
WATER QUALITY CONTROL DIVISION

WASTEWATER PENALTY COMPUTATION WORKSHEET

Entity Name: Macarthur Appartments, LLC	**Permit Number:** CO0026468

Part I - Administrative Violations Penalty Determination

	Violation Type	Adjustment	Amount in Dollars
Line 1	**Administrative Violations (Delinquent and/or Late DMRs)**	$500 or $250 + 0%	**$5,000.00**

Calculation:

In accordance with Part III.B.2.a.i. of the Water Quality Control Division's *Civil Penalty Policy (May 1, 1993)*, penalties for delinquent, late or improperly completed DMRs will be $250 per DMR if the correctly completed DMR is submitted prior to the issuance of the NOV and $500 per DMR thereafter. In cases where the permittee has been issued a previous NOV for late or incomplete DMRs, or where the Division has a long history of correspondence with the permittee regarding these types of violations, the penalty for each report may be increased by one hundred percent per occurrence. The amount of the increase will be based on the period during which these violations have occurred and the severity of the violations.

The Division has issued the following Compliance Advisories to Macarthur Apartments, LLC citing failure to submit complete DMRs:

- Compliance Advisory dated October 28, 2013 for delinquent DMRs for the June 2013 reporting period for Permitted Feature 300I.
- Compliance Advisory dated January 14, 2014 for an incomplete DMR for the August 2014 reporting period for Permitted Feature 001A.
- Compliance Advisory dated September 10, 2014 for an incomplete DMR for the June 2014 reporting period for Permitted Feature 001A.
- Compliance Advisory dated December 11, 2014 for an incomplete DMR for the September 2014 reporting period for Permitted Feature 001A.
- Compliance Advisory dated June 12, 2015 for delinquent DMRs for the March 2015 reporting period for Permitted Features 001A, 001Q, and 300I.
- Compliance Advisory dated August 14, 2015 for an incomplete DMR for the May 2015 reporting period for Permitted Features 001A.
- Compliance Advisory dated September 11, 2015 for an incomplete DMR for the June 2015 reporting period for Permitted Features 001A.
- Compliance Advisory dated October 9, 2015 for delinquent DMRs for the July 2015 reporting period for Permitted Features 001A and 300I.
- Compliance Advisory dated December 11, 2015 for delinquent DMRs for the September 2015 reporting period for Permitted Features 001A, 001Q, and 300I.
- Compliance Advisory dated February 12, 2016 for delinquent DMRs for the November 2015 reporting period for Permitted Features 001A and 300I.
- Compliance Advisory dated March 11, 2016 for the delinquent DMR for the fourth quarter 2015 reporting period for Permitted Feature 001Q.
- Compliance Advisory dated May13, 2016 for delinquent DMRs for the February 2016 reporting period for Permitted Features 001A and 300I.
- Compliance Advisory dated June 10, 2016 for delinquent DMRs for the March 2016 reporting period for Permitted Features 001A, 001Q, and 300I.

The Division conservatively only calculated a penalty for DMR reporting violations which occurred in the last twelve calendar months and are listed in the following tables:

Delinquent DMRs:

Reporting Period	Permitted Feature(s)
July 1 - September 30, 2015	001Q
September 1 - September 30, 2015	001A & 300I
October 1 - October 31, 2015	001A & 300I
November 1 - November 30, 2016	001A & 300I
October 1 - December 31, 2015	001Q
February 1 - February 29, 2016	001A & 300I
March 1 - March 31, 2016	001A & 300I
January 1 - March 31, 2016	001Q
April 1 - April 30, 2016	001A & 300I
May 1 - May 30, 2016	001A & 300I
June 1 - June 30, 2016	001A & 300I
April 1 - April 30, 2016	001Q

DMRs Submitted Late:

Reporting Period	Permitted Feature(s)	DMR Receipt Date
July 1 - July 31, 2015	001A & 300I	10/06/2015
August 1 - August 31, 2015	001A & 300I	10/15/2015
December 1 - December 31, 2015	001A & 300I	02/03/2016

In calculating the Administrative Penalty for the delinquent, and/or improperly completed DMR violations, the Division conservatively assessed a $500 penalty per monitoring period as opposed to per DMR. The Division conservatively assessed $250 to DMRs which were submitted but were late. The Division conservatively chose not to increase the penalty by the allowed 100% per occurrence, despite the history of correspondence addressing delinquent, late, and/or improperly completed DMRs.

(9 Monitoring Periods × $500.00) + (2 Monitoring Periods × $250.00) = $5,000.00

Line 2	**Administrative Violation Total**	**$5,000.00**

Part II- Economic Benefit Consideration

		Amount in Dollars
Line 3	Economic Benefit	$0.00
	Delinquent and/or Late DMRs: Macarthur Apartments, LLC avoided the cost of submitting several DMRs; however, the economic benefit of the avoided cost was conservatively determined to be relatively insignificant. Additionally, Macarthur Apartments, LLC possibly avoided the cost of sampling and analyzing the Lightner Creek Campground discharge quality as required by the Permit. The Division conservatively estimates the cost of obtaining and processing a sample (including collection, paperwork, lab delivery, calculations, etc.) to be $40/sample, and the cost of laboratory analysis for the missing parameters to typically range from $15 to $50 per parameter; however, the Division conservatively chose not to include an economic benefit for these avoided costs.	

Part III - Final Penalty

		Amount in Dollars
Line 4	Total Civil Penalty:	$5,000.00

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