



**COLORADO**  
Department of Public  
Health & Environment

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

June 12, 2015

Lars Grahn, Mayor  
Town of Vilas  
C/O Mildred Norton, Town Clerk  
PO Box 637  
Vilas, Colorado 81087

Certified Mail Number: 7002 2410 0001 0130 4421

**RE: Service of Notice of Violation/Cease and Desist Order, Number: MO-150611-1**

Dear Mr. Grahn:

The Town of Vilas 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 the Town of Vilas has violated the Act and/or permit or control regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., the Town of Vilas 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. The Division is authorized pursuant to §25-8-608, C.R.S., 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 representatives of the Town of Vilas 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 by phone at (303) 692-2312 or by electronic mail at [christy.pickens@state.co.us](mailto:christy.pickens@state.co.us).

Sincerely,



Christy Pickens, Enforcement Specialist  
Clean Water Enforcement Unit  
WATER QUALITY CONTROL DIVISION

*Enclosure(s)*

cc: Enforcement File

ec: Natasha Davis, EPA Region VIII  
Robin Trujillo, Baca County Public Health  
Nicole Rowan, Watershed Section, CDPHE  
Michael Beck, Grants and Loans Unit, CDPHE  
Bret Icenogle, Engineering Section, CDPHE  
Kelly Jacques, Field Services Section, CDPHE  
Janet Keiler, Permits Section, CDPHE  
Christy Pickens, Compliance & Enforcement Unit, CDPHE  
Tania Watson, Compliance Assurance, CDPHE



# COLORADO

## Department of Public Health & Environment

### WATER QUALITY CONTROL DIVISION

---

NOTICE OF VIOLATION / CEASE AND DESIST

NUMBER: MO-150611-1

---

IN THE MATTER OF:            TOWN OF VILAS  
   UNPERMITTED  
   BACA 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 violations cited herein, The Town of Vilas (the "Town") was a municipality as defined by §31-1-101(6), C.R.S.
2. The Town 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. The Town owns and/or operates a wastewater treatment facility located at 37° 22' 28.90" North and 102° 26' 08.74" West, in or near the Town of Vilas, Baca County, Colorado, (the "Facility").
4. The Facility includes two wastewater lagoons that receive sewage (domestic wastewater) from the Town's sanitary sewer collection system. Discharge from the wastewater treatment facility is by evaporation and seepage.
5. The Facility's wastewater treatment system is a "domestic wastewater treatment works" as defined by §25-8-103(5), C.R.S.

#### Unauthorized Discharge

6. 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.



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. In February 2014, a representative from the Division (the "Engineer") conducted a file review of the Town's public water and wastewater systems. The Engineer reviewed a Preliminary Engineering Report ("PER") prepared by GMS Inc., a consultant hired by the Town, dated May 2012. The PER identified that the condition of the Facility was questionable and that the Facility's lagoons experience a high level of sewage seepage.
9. On August 19, 2014, a representative from the Division (the "Inspector") conducted an on-site inspection of the Facility pursuant to the Division's authority under §25-8-306, C.R.S., to determine the Town's compliance with the Water Quality Control Act and its implementing regulations. During the inspection, the Inspector met with representatives of the Town and performed a physical inspection of the Facility.
10. During the August 19, 2014 inspection, the Inspector identified trees and shrubs growing in the bottom of the lagoons that had compromised the integrity of an existing liner(s), thus providing a pathway for seepage of sewage into the ground and underlying groundwater.
11. Groundwater beneath the Facility's lagoons is "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (102).
12. The lagoons associated with the Facility are 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).
13. The lagoons associated with the Facility are "impoundments" as defined by 5 CCR 1002-61, §61.2(43).
14. Sewage that is seeping from the unlined lagoon at the Facility 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 Town's ongoing discharge of sewage from the Facility's lagoon into state waters constitutes a "discharge of pollutants" as defined by §25-8-103(3), C.R.S.
16. The Town's ongoing discharge of sewage from the Facility's lagoon does not meet any of the exemption criteria of 5 CCR 1002-61, §61.14(1)(a), and therefore is subject to the groundwater discharge permit requirements.
17. Division records establish that the Town does not have any permits authorizing the discharge of pollutants from the Facility's lagoons into state waters.
18. The Town's discharge of sewage from the Facility's lagoons into state waters constitutes an unauthorized discharge of pollutants from a point source into state waters 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

19. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that the Town 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 in part “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 in part “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 land application discharges and 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., the Town is hereby ordered to:

20. 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 the Town to comply with the following specific terms and conditions of this Order:

21. The Town shall immediately initiate measures to evaluate the design and operation of the Facility’s domestic wastewater treatment works and to seek coverage for the Facility under a Colorado Discharge Permit System (“CDPS”) permit, including but not limited to the corrective actions identified below.
22. Within thirty (30) calendar days of receipt of this Order, the Town 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 a 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:
- An evaluation of the Facility’s lagoons and other treatment processes to identify any deficiencies in the current design of the Facility. This should include, but not be limited to, an evaluation of the capacity of the current system, the seepage rate from the lagoons, and the use and acceptability of the current treatment processes, if installed;
  - 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,
  - 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

Preliminary Effluent Limitations and the requirements of a CDPS permit, 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.

23. Within forty-five (45) calendar days of the receipt of this Order, the Town shall provide documentation to the Division that it has retained the services of the qualified individual or entity described in paragraph 22. 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.
24. Within sixty (60) calendar days of receipt of this Order, the Town shall submit to the Division a report summarizing the results of the engineering evaluation identified in paragraph 22 above. The report shall include an aggressive plan and time schedule for the implementation of specific interim and long-term measures that the Town will complete to address the deficiencies identified in the evaluation and to obtain a CDPS permit. This includes a specific plan and time schedule for commencing and completing construction of Facility expansion and/or upgrades, and for submitting an application for a CDPS permit. If any of the corrective measures require Division site location and design approval, the Town shall timely file a completed site location and/or design approval request in accordance with §25-8-702, C.R.S. and 5 CCR 1002-22. The Town 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. The submitted plan and time schedule shall become a condition of this Order and the Town 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.
25. Beginning August 1, 2015, and every calendar month thereafter, the Town 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 closure of this Order or until the issuance of written notice from the Division indicating that the reports are no longer necessary.
26. Within ninety (90) calendar days from the receipt of this Order, the Town shall submit to the Division the information specified in 5 CCR 1003-2, §100.18.4(a), documenting that the Facility and wastewater system at the site is being operated under the supervision of an operator with the proper certification(s).

#### 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 Town shall submit an original and an electronic copy to the Division at the following address:

Christy Pickens  
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) 692-3584  
Email: christy.pickens@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 11<sup>th</sup> day of June, 2015.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Patrick J. Pfaltzgraf, Director  
WATER QUALITY CONTROL DIVISION