



COLORADO

Department of Public
Health & Environment

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

September 14, 2016

Bill Meyers
Ute Pass LLC
14378 US Hwy 34
Fort Morgan, CO 80701

Certified Mail Number: 7014 2870 0000 7568 7844

RE: Service of Notice of Violation / Cease and Desist Order, Number: DO-160914-1

Dear Mr. Meyers:

You are 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 you have 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., you are 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

cc: Enforcement File

ec: Michael Boeglin, EPA Region VIII
Bill Helms, Northeast Colorado Health Department
Nicole Rowan, Clean Water Program, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Doug Camrud, Engineering Section, CDPHE
Kelly Jacques, Field Services Section, CDPHE
Lillian Gonzales, Permits Section, CDPHE
Kelly Morgan, 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-160914-1

IN THE MATTER OF: UTE PASS LLC
 CDPS PERMIT NO. COX631000
 CERTIFICATION NO. COX631044
 MORGAN 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, Ute Pass, LLC was a Colorado limited liability company.
2. Ute Pass, 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. Ute Pass, LLC owns and/or operates the Wayward Wind Mobile Home Park wastewater treatment facility, located at 40° 15'03" North and 103° 52'46" West, west of the City of Fort Morgan, Morgan County, Colorado (the "Facility").
4. The Facility is comprised of an extended air activated sludge process with a discharge to groundwater via three (3) groundwater infiltration ponds. Based on Site Approval Number 4704, the Facility's approved hydraulic and organic loading capacities are 0.053 million gallons per day ("MGD") and 111 pounds ("lbs") biochemical oxygen demand ("BOD₅") per day, respectively.
5. The contributing service area to the Facility includes a hotel, several commercial businesses and houses, and a former mobile home park.
6. The Facility is subject to the Colorado Discharge Permit System General Permit Number COX-631000 (the "Permit"). The current version of the Permit became effective on March 1, 2008. The Permit was set to expire on April 30, 2012, but has been administratively extended by the Division. Ute Pass, LLC obtained authorization to discharge under the Permit via Certification Number COX-

631044 (the "Certification") effective on May 29, 2014 upon transfer to Ute Pass, LLC from the previous property owner.

7. The Permit and Certification authorize Ute Pass, LLC to discharge treated wastewater from the Facility through Outfall 001A into groundwater. Outfall 001A is physically located at the effluent valve vault subsequent to treatment and prior to the first (southern) infiltration lagoon. The Permit and Certification also include requirements to monitor influent loading to the Facility at a representative point prior to any treatment, which is designated as Permitted Feature 300I. Permitted Feature 300I is physically located prior to the oxidation ditch.
8. Pursuant to 5 CCR 1002-61, §61.8, Ute Pass, 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 Properly Monitor and Report

9. Pursuant to Section VI.A. of the Permit, the required parameters shall be monitored in accordance with the monitoring frequencies and sample types specified in Table 3 of the Permit (and as specified in the Certification). The permit further specifies that the parameters included in Table 1 of the Permit (and as specified in the Certification) are to be monitored, regardless of whether or not effluent discharge occurs at the Facility.
10. In accordance with Table 3 of the Permit and Table 3 of the Certification, the required monitoring parameters, monitoring frequency, and sample type for Permitted Feature 300I are:

UTE PASS, LLC PERMITTED FEATURE 300I MONITORING REQUIREMENTS		
Parameter	Monitoring Frequency	Sample Type
Flow, MGD	Continuous	Recorder
BOD5, milligrams per liter ("mg/L")	Monthly	Composite
BOD5, lbs/day	Monthly	Calculated
Total Suspended Solids ("TSS"), mg/L	Monthly	Composite

11. In accordance with Table 3 of the Permit and Table 3 of the Certification, the required monitoring parameters, monitoring frequency, and sample type for Outfall 001A are:

UTE PASS, LLC OUTFALL 001A MONITORING REQUIREMENTS		
Parameter	Monitoring Frequency	Sample Type
Flow, MGD	Continuous	Recorder
BOD5, mg/L	Monthly	Composite
BOD5, Percent Removal	Monthly	Calculated
TSS, mg/L	Monthly	Composite
TSS, Percent Removal	Monthly	Calculated
Total Dissolved Solids ("TDS"), mg/L	Monthly	Grab
pH, standard units	Monthly	Grab
Oil & Grease, mg/L	Monthly	Visual and Grab
Chloride, mg/L	Monthly	Grab
Nitrate plus Nitrite, mg/L as N	Monthly	Grab
Total Inorganic Nitrogen ("TIN"), mg/L	Monthly	Grab

UTE PASS, LLC OUTFALL 001A MONITORING REQUIREMENTS		
Parameter	Monitoring Frequency	Sample Type
Sulfate, mg/L	Monthly	Grab
Total Coliform, org/100 mL, monthly max	Monthly	Grab
Total Coliform, org/100 mL, monthly average	Monthly	Grab

12. Pursuant to Section VIII.A. of the Permit and Section F of the Certification, Ute Pass, LLC is required to summarize and report the analytical results of its influent and effluent monitoring to the Division via monthly Discharge Monitoring Report (“DMR”) forms. The forms shall be mailed to the Division so that they are received by the Division no later than the 28th day of the month following the reporting period.
13. Division records, including DMRs, establish that Ute Pass, LLC failed to monitor and/or report the analytical results of influent and/or effluent parameters for the monitoring periods identified below:

UTE PASS, LLC INCOMPLETE DMRS				
MONITORING PERIOD	MONITORING POINT NUMBER	DEFICIENT PARAMETERS		
		Parameter	Parameter Type	Value Type
June 1-30, 2014	001A	Total Coliform	30-day max	Quality or Concentration
December 1-31, 2014	001A	BOD ₅	30-day average	Quality or Concentration
		BOD ₅	7-day average	Quality or Concentration
		pH	Minimum	Quality or Concentration
		pH	Maximum	Quality or Concentration
		TSS	30-day average	Quality or Concentration
		TSS	7-day average	Quality or Concentration
		Nitrate plus Nitrite	Daily max	Quality or Concentration
		TIN	Daily max	Quality or Concentration
		Chloride	30-day average	Quality or Concentration
		Sulfate	30-day average	Quality or Concentration
		Oil & Grease	Instant max	Quality or Concentration
		TDS	30-day average	Quality or Concentration
		Total Coliform	30-day average	Quality or Concentration
		Total Coliform	30-day max	Quality or Concentration
	BOD ₅ , percent removal	Monthly average minimum	Quality or Concentration	
	TSS, percent removal	Monthly average minimum	Quality or Concentration	
	Oil & Grease visual	Instant max	Quantity or Loading	
	300I	BOD ₅	30-day average	Quantity or Loading
		BOD ₅	7-day average	Quantity or Loading
		BOD ₅	30-day average	Quality or Concentration
BOD ₅		7-day average	Quality or Concentration	
TSS		30-day average	Quality or Concentration	
TSS		7-day average	Quality or Concentration	

14. Division records, including DMRs, establish that Ute Pass, LLC failed to submit DMRs to the Division by the 28th day of the month following the monitoring periods identified below:

UTE PASS, LLC DELINQUENT and LATE DMRS		
MONITORING PERIOD	MONITORING POINT NUMBER	DMR RECEIPT DATE
June 1-30, 2014	001A, 300I	September 15, 2014
July 1-31, 2014	001A, 300I	September 15, 2014
August 1-31, 2014	001A, 300I	October 28, 2014
September 1-30, 2014	001A, 300I	December 1, 2014
October 1-31, 2014	001A, 300I	January 6, 2015
November 1-30, 2014	001A, 300I	January 23, 2015
December 1-31, 2014	001A, 300I	February 11, 2015
January 1-31, 2015	001A, 300I	April 7, 2015
February 1-28, 2015	001A, 300I	April 27, 2015
March 1-31, 2015	001A, 300I	June 9, 2015
April 1-30, 2015	001A, 300I	July 6, 2015
May 1-31, 2015	001A, 300I	July 21, 2015
June 1-30, 2015	001A, 300I	August 14, 2015
July 1-31, 2015	001A, 300I	October 9, 2015
August 1-31, 2015	001A, 300I	November 3, 2015
September 1-30, 2015	001A, 300I	January 13, 2016
October 1-31, 2015	001A, 300I	March 8, 2016
November 1-30, 2015	001A, 300I	April 11, 2016
December 1-31, 2015	001A, 300I	Not Received
January 1-31, 2016	001A, 300I	Not Received
February 1-29, 2016	001A, 300I	Not Received
March 1-31, 2016	001A, 300I	Not Received
April 1-30, 2016	001A, 300I	Not Received
May 1-31, 2016	001A, 300I	Not Received
June 1-30, 2016	001A, 300I	Not Received

15. Ute Pass, LLC’s failure to monitor all required influent and/or effluent parameters at the specified frequencies and/or report the results of such monitoring on a DMR constitutes a violation of Section VI.A. of the Permit.

16. Ute Pass, LLC’s failure to submit complete DMRs to the Division by the 28th day of the month following each reporting period constitutes violations of Section VIII.A. of the Permit and Section F of the Certification.

Failure to Comply with Permit Effluent Limitations

17. Pursuant to Section V.A.1. of the Permit and Section D of the Certification, Ute Pass, LLC is authorized to discharge to groundwater subject to the following limitations (among others not subject to this action):

UTE PASS, LLC EFFLUENT LIMITATIONS			
EFFLUENT PARAMETER	LIMITATION		
	30-day average	7-day average	Daily Max
BOD ₅ , percent removal	85	--	--
TSS, mg/L	30	45	--

UTE PASS, LLC EFFLUENT LIMITATIONS			
EFFLUENT PARAMETER	LIMITATION		
	30-day average	7-day average	Daily Max
TSS, percent removal	85	--	--
Nitrate plus Nitrite, mg/L as N	--	--	10
TIN, mg/L	--	--	10
Total Coliform, org/100 mL	2.2	--	23

18. Division records, including DMRs, establish that Ute Pass, LLC's permitted discharge exceeded the effluent limitations for the following parameters during the monitoring periods identified below:

UTE PASS, LLC EFFLUENT SELF-MONITORING DATA				
MONITORING PERIOD	OUTFALL NUMBER	PARAMETER	REPORTED VALUE	PERMIT LIMIT
June 1-30, 2014	001A	Total Coliform, 30-day average	113	2.2
	001A	TIN, daily max	19.9	10
	001A	TSS, percent removal, monthly average minimum	73	85
July 1-31, 2014	001A	Total Coliform, 30-day average	4838	2.2
	001A	Total Coliform, 30-day max	4838	23
	001A	Nitrate plus Nitrite, daily max	33.6	10
	001A	TIN, daily max	34.4	10
	001A	TSS, percent removal, monthly average minimum	78	85
August 1-31, 2014	001A	Total Coliform, 30-day average	78	2.2
	001A	Total Coliform, 30-day max	78	23
	001A	TSS, percent removal, monthly average minimum	82	85
September 1-30, 2014	001A	Total Coliform, 30-day average	1095	2.2
	001A	Total Coliform, 30-day max	1095	23
	001A	Nitrate plus Nitrite, daily max	15.5	10
	001A	TIN, daily max	16	10
	001A	TSS, percent removal, monthly average minimum	78	85
October 1-31, 2014	001A	Total Coliform, 30-day average	35	2.2
	001A	Total Coliform, 30-day max	35	23
	001A	Nitrate plus Nitrite, daily max	43.91	10
	001A	TIN, daily max	43.9	10
	001A	TSS, percent removal, monthly average minimum	69	85
November 1-30, 2014	001A	Nitrate plus Nitrite, daily max	43.89	10
	001A	TIN, daily max	44.5	10
January 1-31, 2015	001A	Nitrate plus Nitrite, daily max	32.06	10
	001A	TIN, daily max	32.2	10
	001A	TSS, percent removal, monthly average minimum	83	85
February 1-28, 2015	001A	Nitrate plus Nitrite, daily max	2784	10
	001A	TIN, daily max	28.1	10
March 1-31, 2015	001A	TIN, daily max	15.01	10
April 1-30, 2015	001A	BOD ₅ , percent removal, monthly average minimum	84.8	85
	001A	Total Coliform, 30-day average	997	2.2
	001A	Total Coliform, 30-day max	997	23
May 1-31, 2015	001A	TSS, percent removal, monthly average minimum	80	85
June 1-30, 2015	001A	Total Coliform, 30-day average	6570	2.2
	001A	Total Coliform, 30-day max	6570	23
July 1-31, 2015	001A	Total Coliform, 30-day average	255	2.2
	001A	Total Coliform, 30-day max	255	23

UTE PASS, LLC EFFLUENT SELF-MONITORING DATA				
MONITORING PERIOD	OUTFALL NUMBER	PARAMETER	REPORTED VALUE	PERMIT LIMIT
August 1-31, 2015	001A	TSS, 30-day average	54	30
	001A	TSS, 7-day average	54	45
	001A	TIN, daily max	15.14	10
	001A	TSS, percent removal, monthly average minimum	77	85
September 1-30, 2015	001A	Nitrate plus Nitrite, daily max	31.48	10
	001A	TIN, daily max	31.51	10
October 1-31, 2015	001A	BOD ₅ , percent removal, monthly average minimum	73.7	85
	001A	Nitrate plus Nitrite, daily max	24.35	10
	001A	TIN, daily max	24.45	10
October 1-31, 2015 cont.	001A	TSS, percent removal, monthly average minimum	80	85
	001A	TSS, 30-day average	61	30
	001A	TSS, 7-day average	61	45
November 1-30, 2015	001A	Nitrate plus Nitrite, daily max	20.09	10
	001A	TIN, daily max	20.23	10
December 1-31, 2015	001A	Nitrate plus Nitrite, daily max	23.8	10
		TIN, daily max	25.7	10

19. Total coliform, total inorganic nitrogen, nitrate plus nitrite, and total suspended solids are “pollutants”, as defined by §25-8-103, C.R.S. and its implementing permit regulation 5 CCR 1002-61, §61.2(76).
20. The Permit and the Certification do not authorize the pollutant levels identified in paragraph 18. Division records establish that Ute Pass, LLC does not have any other permit authorizing such discharges into State Waters.
21. Ute Pass, LLC’s failure to comply with the effluent limitations constitutes violations of Section V.A.1. of the Permit and Section D of the Certification.

Failure to Comply with Flow Monitoring Requirements

22. Pursuant to Section VI.E.1. of the Permit, Ute Pass, LLC shall install continuous flow measuring devices to determine the throughput and treatment of the wastewater system.
23. Pursuant to Section VI.E.1.a. of the Permit, influent flow monitoring and recording is continuous. The influent flow monitoring equipment shall be comprised of the following:
 - i. Primary device (flume, weir, or similar) with staff gauge.
 - ii. Secondary device (ultrasonic, pressure transducer, or similar) for measurement of liquid level within the primary device.
 - iii. Local flow-indication/recording/totalization device that is suitable for recording flow data from the primary and secondary devices, 24 hours per day and 7 days per week that can be maintained as permanent flow records.
24. Pursuant to Section VI.E.1.b. of the Permit, effluent flow monitoring is continuous with instantaneous flow recording. The effluent flow monitoring equipment shall be comprised of the following:
 - i. Primary device (flume, weir, or similar) with staff gauge.

- ii. Secondary device (ultrasonic, pressure transducer, or similar) for measurement of liquid level within the primary device.
 - iii. A means for reading and recording local flow indication for obtaining instantaneous flow readings.
25. Pursuant to Section VI.E.2. of the Permit, any Division-approved modifications to the flow measuring requirements will be delineated in the Certification.
26. Pursuant to Section E.4. of the Certification, Ute Pass, LLC is subject to the following flow monitoring requirements and specifications:
- i. Continuous influent flow monitoring and recording shall be conducted using a magnetic flow meter on the pipe from the influent lift station shredder submersible pumps and will include both instantaneous and totalized flow measurements.
 - ii. Continuous effluent flow monitoring and recording shall be conducted using a batch counter in the programmable logic controller.
27. Pursuant to Section VI.E.3. of the Permit, at a minimum, the flow measuring devices must be accurate to within \pm ten percent (10%) of the actual flows undergoing measurement. Accuracy of the flow meter is to be determined annually.
28. On September 10, 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 Ute Pass, LLC's compliance with the Water Quality Control Act, the Permit, and the Certification. During the inspection, the Inspector interviewed Facility representatives, reviewed the Facility's records, and performed a physical inspection of the Facility. The Inspector observed that the mobile home park was closed at the time of the inspection.
29. During the September 10, 2014 inspection, the Inspector evaluated the influent and effluent flow measuring devices at the Facility. At the time of the inspection, the Inspector noted that the facility contained a 3-inch Parshall flume designed to measure influent flow and a large 60° trapezoidal flume located after the contact basin designed to measure effluent flow. The inspector noted that, despite the presence of the influent and effluent flume structures, Ute Pass, LLC improperly calculated influent flow rates based on influent lift station pump run time and maximum pump capacity. Ute Pass, LLC also improperly used these influent flow rates to report the effluent flow rate. The Inspector noted that Ute Pass, LLC did not believe the 3-inch Parshall flume could accurately measure influent flow following closure of the mobile home park because the influent flow rates were significantly lower than historical rates. The Inspector noted that Ute Pass, LLC was not using the 60° trapezoidal flume to measure effluent flow because the flume was not equipped with an ultrasonic transducer to measure the instantaneous flow rate and totalized flow.
30. Estimating flow rates to report influent and effluent flow is not consistent with the requirements of the Permit and the Certification. This, combined with the absence of a secondary flow measuring device, makes it impossible to determine actual flow rates within \pm ten percent (10%) accuracy.
31. Ute Pass, LLC's failure to install continuous flow measuring devices constitutes a violation of Section VI.E.1. of the Permit.

- 32. Ute Pass, LLC’s failure to properly monitor influent and effluent flow constitutes violations of Sections VI.E.1.a. and VI.E.1.b. of the Permit and Section E.4. of the Certification.
- 33. Ute Pass, LLC’s failure to ensure that the reported flows are accurate to within ± ten percent (10%) of the actual flows constitutes a violation of Section VI.E.3. of the Permit.

Failure to Comply with Composite Sampling Requirements

- 34. Pursuant to Section VI.A. of the Permit, Ute Pass, LLC is required to monitor required parameters in accordance with the monitoring frequencies and sample types specified in Table 3 of the Permit (and as specified in the Certification).
- 35. In accordance with Table 3 of the Permit and Table 3 of the Certification, composite samples of BOD₅ (mg/L) and TSS (mg/L) shall be collected from Outfall 001A and Permitted Feature 300I on a monthly basis.
- 36. In accordance with Table 3 of the Permit, Footnote ii, a composite sample is defined as a minimum of four (4) grab samples collected at equally spaced two (2) hour intervals and proportioned according to flow.
- 37. During the September 10, 2014 inspection, the Inspector evaluated Ute Pass, LLC’s sampling methods, including the composite sampling procedures used to monitor BOD₅ (mg/L) and TSS (mg/L) at Outfall 001A and Permitted Feature 300I. At the time of the inspection, the Inspector noted that Ute Pass, LLC collected four equal sample aliquots every two hours at Outfall 001A and Permitted Feature 300I, but did not proportion the sample aliquots according to flow and therefore was not properly collecting composite samples.
- 38. Ute Pass, LLC’s failure to collect composite samples constitutes a violation of Section VI.A. of the Permit.

NOTICE OF VIOLATION

- 39. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined Ute Pass, LLC has violated the following sections of the Permit and Certification:

Section VI.A. of the Permit, which states in part: “At a minimum, the parameters provided in Table 1 and 2 (and as specified in the Certification) are to be monitored beginning the date of certification under this permit, regardless of whether or not an effluent discharge occurs. The required parameters shall be monitored in accordance with the requirements specified in Table 3 (and as specified in the Certification).”

**Table 1 of the Permit:
COMPLIANCE LIMITATIONS - POINT 300I**

Parameter	Parameter Limitation		
	30-Day Average	7-Day Average	Daily Maximum
Point 300I (Influent)			
Flow, GPD	Equal to facility’s approved design capacity	--	Report
BOD ₅ , mg/L	Report	--	--
BOD ₅ , lbs/day	Equal to facility’s approved design capacity	--	--
TSS, mg/L	Report	--	--

**Table 2 of the Permit:
COMPLIANCE LIMITATIONS - POINT 001A**

Parameter	Parameter Limitation		
	30-Day Average	7-Day Average	Daily Maximum
Point 001A (Prior to Discharge to Unlined Pond and/or Land Disposal Site)			
Flow, GPD	Equal to facility's approved design capacity	--	Report
BOD ₅ , mg/L	30	45	--
BOD ₅ , Percent Removal, %	85	--	--
TSS, mg/L	30	45	--
TSS, Percent Removal, %	85	--	--
pH, s.u.	--	--	6.5 - 8.5
Oil and Grease	--	--	10
Chloride, mg/L	250	--	--
Nitrate plus Nitrite (NO ₃ + NO ₂), mg/L as N	--	--	10
Sulfate (SO ₄), mg/L	250	--	--
Total Coliform, org/100 mL, Monthly	Report	--	--
Total Coliform, org/100 mL, Annual Average	1 or <2.2	--	--
TDS, mg/L	--	--	Report

**Table 3 of the Permit:
MONITORING FREQUENCIES**

Parameter	Monitoring Frequency	Sample Type
Point 300I (Influent)		
Flow, GPD	Provided in Certification	Recorder
BOD ₅ , mg/L	Provided in Certification	Composite
BOD ₅ , lbs/day	Provided in Certification	Calculated
TSS, mg/L	Provided in Certification	Composite
Point 001A (Prior to Discharge to Unlined Pond and/or Land Disposal Site)		
Flow, GPD	Provided in Certification	Calculation or Recorder
BOD ₅ , mg/L	Provided in Certification	Composite
BOD ₅ , Percent Removal, %	Provided in Certification	Calculated
TSS, mg/L	Provided in Certification	Composite
TSS, Percent Removal, %	Provided in Certification	Calculated
pH, s.u.	Provided in Certification	Grab
Oil and Grease, mg/L	Provided in Certification	Visual and Grab
Chloride, mg/L	Provided in Certification	Grab
Nitrate plus Nitrite (NO ₃ + NO ₂), mg/L as N	Provided in Certification	Grab
Sulfate (SO ₄), mg/L	Provided in Certification	Grab
Total Coliform, org/100 mL, Monthly	Provided in Certification	Grab
Total Coliform, org/100 mL, Annual Average	Provided in Certification	Calculated

Section VIII.A. of the Permit, which states in part: "Monitoring results shall be summarized and reported on the Discharge Monitoring Report forms on a monthly, quarterly, or other schedule consistent with the monitoring frequency delineated in the Certification. The forms shall be mailed to the Division so that they are received no later than the 28th day of the following month that the monitoring occurred."

Section F of the Certification, which states in part: "...The Permittee is required to submit pre-printed DMRs on a monthly basis for the parameters described in Section VIII.A. of the permit, Table 3...DMRs are due at the Division on the twenty-eighth day of the month following the end of the reporting period." *Note the Certification incorrectly references Section VIII.A. of the permit. The correct reference is Section VI.A.*

Section V.A.1. of the Permit, which states in part: “the Permittee is authorized to discharge to groundwater subject to the limitations provided in Table 1 and 2, and as specified in the Certification.”

Section D of the Certification, which states in part: “The Wayward Wind MHP WWTW is subject to all compliance limitations provided in Section V of General Permit COX-631000 except as specifically provided in this Section. Effluent limitations are shown in Table 2, the monitoring frequency is shown in Table 3.”

**Table 2 of the Certification:
COMPLIANCE LIMITATIONS**

Parameter	Parameter Limitation		
	30-Day Average	7-Day Average	Daily Maximum
Compliance Point 300I (Influent)			
Flow, MGD	Report	--	Report
BOD ₅ , mg/L	Report	--	--
BOD ₅ , lbs/day	111	--	--
TSS, mg/L	Report	--	--
Compliance Point 001A - Subsequent to Treatment and Prior to Discharge to Groundwater			
Flow, MGD	0.053	--	Report
BOD ₅ , mg/L	30	45	--
BOD ₅ , Percent Removal, %	85	--	--
Oil and Grease, mg/L	--	--	10
pH, s.u.	--	--	6.5 - 8.5
TSS, mg/L	30	45	--
TSS, Percent Removal, %	85	--	--
Nitrate plus Nitrite (NO ₃ + NO ₂), mg/L as N	--	--	10
TIN, mg/L	--	--	10
Sulfate (SO ₄), mg/L	Report	--	--
Chloride, mg/L	250	--	--
Total Coliforms, org/100 mL, Max in 30 days	23	--	--
Total Coliforms, org/100 mL, 30-day average	2.2	--	--
TDS, mg/L, effective July 1, 2014	2,280	--	--

**Table 3 of the Certification:
MONITORING FREQUENCIES**

Parameter	Monitoring Frequency	Sample Type
Point 300I (Influent)		
Flow, GPD	Continuous	Recorder
BOD ₅ , mg/L	Monthly	Composite
BOD ₅ , lbs/day	Monthly	Calculated
TSS, mg/L	Monthly	Composite
Point 001A (Prior to Discharge to Groundwater)		
Flow, GPD	Continuous	Calculation or Recorder
BOD ₅ , mg/L	Monthly	Composite
BOD ₅ , Percent Removal, %	Monthly	Calculated
Parameter	Monitoring Frequency	Sample Type
Point 001A (Prior to Discharge to Groundwater) (continued from previous page)		
TSS, mg/L	Monthly	Composite
TSS, Percent Removal, %	Monthly	Calculated
TDS, mg/L	Monthly	Grab

pH, s.u.	Monthly	Grab
Oil and Grease, mg/L	Monthly	Visual and Grab
Chloride, mg/L	Monthly	Grab
Nitrate plus Nitrite (NO ₃ + NO ₂), mg/L as N	Monthly	Grab
TIN, mg/L	Monthly	Grab
Sulfate (SO ₄), mg/L	Monthly	Grab
Total Coliform, org/100 mL, Max Monthly	Monthly	Grab
Total Coliform, org/100 mL, Monthly Average	Monthly	Calculated

Section VI.E.1. of the Permit, which states in part: “The Permittee shall install continuous flow measuring devices to determine the throughput and treatment of the wastewater system...” as provided in Section VI.E.1. of the Permit.

Section VI.E.1.a. of the Permit, which states: “Influent flow monitoring and recording is continuous. The influent flow monitoring equipment shall be comprised of the following:

- i. Primary device (flume, weir, or similar) with staff gauge.
- ii. Secondary device (ultrasonic, pressure transducer, or similar) for measurement of liquid level within the primary device.
- iii. Local flow-indication/recording/totalization device that is suitable for recording flow data from the primary and secondary devices, 24 hours per day and 7 days per week that can be maintained as permanent flow records.”

Section VI.E.1.b. of the Permit, which states: “Effluent flow monitoring is continuous with instantaneous flow recording. The effluent flow monitoring equipment shall be comprised of the following:

- i. Primary device (flume, weir, or similar) with staff gauge.
- ii. Secondary device (ultrasonic, pressure transducer, or similar) for measurement of liquid level within the primary device.
- iii. A means for reading and recording local flow indication for obtaining instantaneous flow readings.

Section E.4. of the Certification, which states in part, the Permittee: “...is subject to the flow monitoring requirements provided in Section VI.E. of General Permit COX-631000, with the following specifications and modifications:

- i. Continuous influent flow monitoring and recording shall be conducted using a magnetic flow meter on the pipe from the influent lift station shredder submersible pumps and will include both instantaneous and totalized flow measurements.
- ii. Continuous effluent flow monitoring and recording shall be conducted using a batch counter in the programmable logic controller.
- iii. For the purposes of DMR reporting, Ute Pass, LLC shall calculate and report the average daily influent and effluent flow through the treatment system (in MGD) based on monthly monitoring periods.”

Section VI.E.3. of the Permit, which states in part: “At a minimum, the flow measuring devices must be accurate to within ± ten percent (10%) of the actual flows undergoing measurement. Accuracy of the flow meter is to be determined annually.”

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 Ute Pass, LLC is hereby ordered to:

40. 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 Ute Pass, LLC to comply with the following specific terms and conditions of this Order:

41. Ute Pass, LLC shall immediately initiate measures to ensure that all terms and conditions of the Permit and Certification are met, including all monitoring, reporting, operational, and maintenance requirements. Ute Pass, LLC is expected to review the requirements of the Permit and Certification with its staff responsible for ensuring compliance with the terms and conditions of the Permit and Certification. The review shall focus on, but not be limited to:
- a. The influent and effluent reporting requirements of the Permit and Certification;
 - b. The permit limitations imposed by the Permit and Certification;
 - c. The composite sampling procedures for BOD₅ and TSS; and,
 - d. The equipment and methods used to determine influent and effluent flow;
 - e. The equipment and methods used to determine the accuracy of the flow measuring devices and methods;
 - f. The reporting requirements of the Permit and Certification, including the instruction for proper completion and submittal of DMRs required by the Permit and Certification. In addition to information contained in the Permit, detailed instructions on how to properly calculate daily maximum flow, hydraulic and organic loading, and facility capacity values are discussed in the Division's Discharge Monitoring Report Guidance Document, which can be found on the Division's webpage.

Within thirty (30) calendar days of receipt of this Order, Ute Pass, LLC shall submit a written plan to the Division outlining the actions it will take to ensure that complete and accurate DMRs are submitted to the Division by no later than the 28th day of the month following the end of a monitoring period. In addition, Ute Pass, LLC shall submit a written certification that the above-described terms, conditions, and guidance have been reviewed.

42. Within thirty (30) calendar days of receipt of this Order, Ute Pass, LLC 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 recommend measures that ensure proper operation and maintenance of the Facility take place, and that adequate treatment is provided such that the Facility complies with the terms and conditions of the Permit and Certification. At a minimum, the engineering evaluation should include, but not be limited to, the following items:
- a. An evaluation of the Facility and its treatment processes to identify any deficiencies in the current design of the Facility that may prevent the Facility from meeting permit limitations;
 - b. An evaluation of the Facility's current operation and maintenance practices to identify and correct any deficiencies that may impact the Facility's ability to comply with the Permit and Certification.

- c. An evaluation of the current influent and effluent flow measuring devices and methods. This evaluation should include a comparison of current flow measuring devices and methods compared to the Permit and Certification requirements;
 - d. An evaluation of the contributing service area, including a discussion of previous, current, and proposed land uses (if applicable);
 - e. An evaluation and plan for upgrades or expansion of the Facility, if determined necessary, which will ensure the Facility has adequate treatment capacity and can reliably and consistently comply with the Permit and Certification; and,
 - f. An evaluation of the current Certification for any recommended modifications, taking into consideration the results of the engineering evaluation as well as the current and future contributing service area and land uses.
43. Within forty-five (45) calendar days of receipt of this Order, Ute Pass, LLC shall provide documentation to the Division that it has retained the services of the qualified individual or entity described in paragraph 42. 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.
44. Within sixty (60) calendar days of receipt of this Order, Ute Pass, LLC shall submit all DMRs that were noted as "Not Received" in paragraph 14 of this Order.
45. Within ninety (90) calendar days of receipt of this Order, Ute Pass, LLC shall submit to the Division a report summarizing the results of the engineering evaluation identified in paragraph 42. At a minimum, the report shall include a detailed narrative of each component described in paragraph 42, and an aggressive plan and schedule for the implementation of specific interim and long-term measures that Ute Pass, LLC will complete to address the deficiencies identified through the engineering evaluation and to ensure the Facility consistently meets the terms and conditions of the Permit and Certification. This includes a specific plan and schedule for commencing and completing construction of Facility upgrades and/or expansion, if necessary. If any of the corrective measures require Division site location and design approval, Ute Pass, LLC 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. Ute Pass, LLC shall not initiate construction until such time as it has obtained the necessary site location and design approval(s) 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 Ute Pass, LLC 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.
46. Beginning October 1, 2016, and every ninety (90) days thereafter until the Division deems it no longer necessary, Ute Pass, LLC shall submit a quarterly progress report to the Division summarizing the efforts it has taken to achieve compliance with this Order and the Permit and Certification. At a minimum, each progress report shall include a description of activities completed during the current quarter and a description and time schedule for activities planned for the next quarter.
47. Ute Pass, LLC becomes aware of any situation or circumstance that causes it to become unable to comply with any condition or time schedules set forth by this Order, Ute Pass, LLC shall provide written notice to the Division within five (5) calendar days of becoming aware of such circumstances. Ute Pass, LLC's notice shall describe what, if any, impacts will occur on its 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.

48. 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, Ute Pass, LLC 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, Ute Pass, LLC 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 14th day of September, 2016.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



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