

STATE OF COLORADO

Bill Ritter, Jr., Governor
James B. Martin, Executive Director

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

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Colorado Department
of Public Health
and Environment

September 12, 2008

PWSID# CO-0161010

Town of Otis
102 S. Washington
PO Box 95
Otis, CO 80743

Certified Mail Number: 7007 0220 0001 0156 8939

RE: Service of Amendment to Enforcement Order Number: DC-080829-2

Dear Sir or Madam:

The Town of Otis is hereby issued the enclosed amendment to the Enforcement Order (Number: DC-080829-2) that was issued to The Town of Otis on August 29, 2008. This order amendment 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 §25-1.5-203 of the Colorado Revised Statutes.

Should you desire to discuss this matter with the Division or if you have any questions regarding the order amendment(s), please don't hesitate to contact Ms. Cathy Heald of this office at (303) 692-3254 or by electronic mail at catherine.heald@state.co.us.

Sincerely,

Kristi Raye Beaudin, Legal Assistant
Compliance Assurance and Data Management Section
WATER QUALITY CONTROL DIVISION

cc: North East Colorado Health Department
Compliance Monitor / Drinking Water File

ec: Bret Icenogle, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Betsy Beaver, Facility Operators Program, CDPHE
Shawn McCaffrey, EPA Region VIII
Patricia Klocker, Assistant Division Director, Consumer Protection Division, CDPHE
Carolyn Schachterle, OPA



COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

WATER QUALITY CONTROL DIVISION

AMENDMENT NUMBER ONE TO ENFORCEMENT ORDER NUMBER: DC-080829-2

IN THE MATTER OF: TOWN OF OTIS

**PUBLIC WATER SYSTEM IDENTIFICATION NUMBER: CO-0161010
WASHINGTON COUNTY, COLORADO**

Pursuant to the authority vested in the Colorado Department of Public Health and Environment (the "Department") by §25-1-109 and §25-1.5-203 of the Colorado Revised Statutes ("C.R.S."), which authority has been delegated to the Department's Water Quality Control Division (the "Division"), the Division hereby amends Enforcement Order Number: DC-080829-2 issued to the Town of Otis.

GENERAL FINDINGS

1. On August 29, 2008, the Division issued an Enforcement Order to the Town of Otis citing violations of the *Colorado Primary Drinking Water Regulations* for Failure to Monitor and/or Report for Volatile and Synthetic Organic Chemicals, Nitrate, Inorganic Chemicals, Reduced Tap Water Monitoring for Lead and Copper Contaminants, Combined Radium-226 + 228 and Residual Disinfection Concentration. The Enforcement Order is attached hereto as Attachment A and is incorporated herein by reference.
2. After re-evaluating the facts and administrative penalties methodology/calculations associated with the "Third Violation (Failure to Monitor and/or Report Nitrate)" included in Enforcement Order Number: DC-080829-2, the Division has determined that the following amendments to the enforcement order and the associated administrative penalty assessment are appropriate.

AMENDMENT NUMBER ONE

3. Effective as of the issued date of this amendment, Enforcement Order Number: DC-080829-2 is hereby amended as follows:
 - a. The Order for Administrative Penalty Section, paragraphs 74 through 76 are superseded and replaced with the following:
 74. Pursuant to §25-1-114.1(2.5)(a), C.R.S. any person who violates the *Colorado Primary Drinking Water Regulations* or any final Enforcement Order issued by the Division, shall be subject to an administrative penalty as follows:

- a. For systems that serve a population of more than ten thousand people, an amount not to exceed one thousand dollars per violation per day; or
 - b. For systems that serve a population of ten thousand people or less, an amount not to exceed one thousand dollars per violation per day, but only in an amount, as determined by the division, that is necessary to ensure compliance.
75. Based upon the facts described in this action the Department has determined that an administrative penalty is appropriate in this matter and therefore assesses an administrative penalty of Seven Thousand Six Hundred Ninety-Eight dollars and twenty-five cents (\$7,698.25) for the specific violations identified in this action. The reasoning behind this penalty amount is detailed in the administrative penalty methodology/calculation worksheet, which is incorporated herein by reference and enclosed as Revised Exhibit A.

Terms of Administrative Penalty Payment

76. If the Town of Otis does not contest the findings and penalty assessment set out above, payment of the administrative penalty for the violations shall be forwarded to the Colorado Department of Public Health and Environment within sixty (60) calendar days of the date of issue of this action. 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:

Ms. Catherine Heald, Drinking Water Enforcement Specialist
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CADM-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

(To facilitate payment processing, please ensure that Ms. Heald's name is on the outside of the envelope.)

Payment or appeal of the administrative penalty in this manner does not relieve the Town of Otis of its obligation to perform the activities required by this action.

- b. Based upon the Division's recalculation of the penalty associated with the Third Violation of Enforcement Order Number: DC-080829-2, Penalty Calculation – Violation Number 3 of the Administrative Penalty Computation Worksheets, Exhibit A is superseded and replaced with the attached "Revised Exhibit A".

SCOPE OF AMENDMENT NUMBER ONE

4. The scope of this Amendment Number One to Enforcement Order Number: DC-080829-2 is limited to the provisions outlined above. All other terms and conditions of the Enforcement Order (DC-080829-2) shall remain unchanged and in effect.

Issued at Denver, Colorado, this 12th day of September, 2008.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Lori M. Gerzina, Section Manager
Compliance Assurance and Data Management Section
Water Quality Control Division

Revised Exhibit A

Town of Otis

PUBLIC WATER SYSTEM IDENTIFICATION NUMBER: CO-0161010

WASHINGTON COUNTY, COLORADO

ADMINISTRATIVE PENALTY COMPUTATION WORKSHEET

(September 10, 2008)

Penalty Summary

Penalty Calculation -Violation Number 1(Count 1 Sample Point 004) **\$315.00**
(Count 2 Sample Point 005)..... **\$315.00**

Violation: Failure to Monitor for Volatile Organic Chemicals

Regulation Violated: 5 CCR 1003-1, §6.2.5

Penalty Calculation -Violation Number 2

(2002-2005)Count 1..... **\$1,365.00**

(2005-2007 Count 2 Sample Point 004)..... **\$1,325.00**

(2005-2007)Count 3 Sample Point 005)..... **\$1,356.25**

Violation: Failure to Monitor for Synthetic Organic Chemicals

Regulation Violated: 5 CCR 1003-1, §6.2.6

Penalty Calculation -Violation Number 3 (2006 Count 1 Sample Point 004) **\$195.00**
(2006 Count 2 Sample Point 005)..... **\$195.00**

(2007 Count 1 Sample Point 004) **\$226.25**

(2007 Count 2 Sample Point 005)..... **\$226.25**

Violation: Failure to Monitor for Nitrate

Regulation Violated: 5 CCR 1003-1, §6.1.5

Penalty Calculation -Violation Number 4(Count 1 Sample Point 004) **\$390.00**
(Count 2 Sample Point 005)..... **\$390.00**

Violation: Failure to Monitor for Inorganic Chemicals

Regulation Violated: 5 CCR 1003-1, §6.1.5

Penalty Calculation -Violation Number 5..... **\$203.00**

Violation: Failure to Monitor for Lead and Copper

Regulation Violated: 5 CCR 1003-1, §8.7

Penalty Calculation -Violation Number 6 (2007 Count 1 Sample Point 004) **\$203.00**
(2007 Count 2 Sample Point 005)..... **\$203.00**

(2008 Count 1 Sample Point 004) **\$356.25**

(2008 Count 2 Sample Point 005)..... **\$356.25**

Violation: Failure to Monitor for Combined Radium-226 + 228

Regulation Violated: 5 CCR 1003-1, §6.3.2

Revised Exhibit A

Penalty Calculation -Violation Number 7.....\$78.00

Violation: Failure to Report Residual Disinfection Concentration

Regulation Violated: 5 CCR 1003-1, §7.9.1

TOTAL PENALTY.....\$7,698.25

Revised Exhibit A

ADMINISTRATIVE PENALTY COMPUTATION WORKSHEET

VIOLATION NUMBER: 3 (Count 1 Sample Point 004)

System Name: Town of Otis	PWSID Number: CO-0161010
Date of Enforcement Order: August 29, 2008	Number: DC-080829-2
Regulation Violated: Failure to Monitor for Nitrate, 5 CCR 1003-1, §6.1.5	Population Served: 685

Part I – Base Penalty Calculation

	Violation Type	Population Range	Amount in Dollars
Line 1	Failure to Monitor for Nitrate – Calendar Year 2006	>500	\$125.00

Part II – Application of Aggravating or Mitigating Factors

	Aggravating / Mitigating Factors	% Base Penalty Increase or Decrease	Amount in Dollars
Line 2	Factor A: Threat to Public Health and Welfare <i>Justification: n/a</i>		\$0.00
Line 3	Factor B: Intentional, Reckless, or Negligent Actions <i>Justification: n/a</i>		\$0.00
Line 4	Factor C: Recalcitrance or Recidivism <i>Justification: n/a</i>		\$0.00
Line 5	Factor D: Voluntary and Complete Disclosure of Violations <i>Justification: n/a</i>		\$0.00
Line 6	Factor E: Full and Prompt Cooperation <i>Justification: n/a</i>		\$0.00
Line 7	Factor F: Environmental Compliance Program <i>Justification: n/a</i>		\$0.00
Line 8	Factor G: Other Aggravating or Mitigating Circumstances <i>Justification: n/a</i>		\$0.00
Line 9	Sum of Lines 2 through Line 8		\$0.00
Line 10	Adjusted Base Penalty (Sum of Line 1 + Line 9)		\$125.00

Revised Exhibit A

Part III – Determination of Days of Violation

		Days of Violation
Line 11	Total Days of Violation	1
	<i>Justification: The Division has chosen to consider the 2006 failure to monitor for Nitrate violation as a single day violation.</i>	

Part IV – Determination of Multi-Day Penalty Amount

		Amount in Dollars
Line 12	Multi-Day Penalty Amount	\$125.00
	<i>Calculations: Day 1 (\$125.00) = \$125.00</i>	

Part V – Economic Benefit Consideration

		Amount in Dollars
Line 13	Economic Benefit:	\$70.00
	<i>Justification: The Division believes that the Town of Otis realized an economic benefit by failing to monitor since the Town avoided the cost of the test itself as well as the cost of the labor involved in obtaining sample bottles, conducting the testing, and transporting the samples to a lab.</i>	

Part VI – Violation Penalty Total

		Amount in Dollars
Line 14	Total Administrative Penalty: (Line 12 + Line 13)	\$195.00

Revised Exhibit A

Part VII – Ability to Pay Adjustment

		Amount in Dollars
Line 15	Ability to Pay Reduction:	\$0.00
	<i>Justification: Not Applicable. The Division does not have any information suggesting that the Town of Otis has an inability to pay the assessed penalty amount.</i>	

Part VIII – Final Adjusted Penalty

		Amount in Dollars
Line 16	Total Administrative Penalty: (Line 14 - Line 15)	\$195.00

Revised Exhibit A

ADMINISTRATIVE PENALTY COMPUTATION WORKSHEET

VIOLATION NUMBER: 3 (Count 2 Sample Point 005)

System Name: Town of Otis	PWSID Number: CO-0161010
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Date of Enforcement Order: August 29, 2008	Number: DC-080829-2
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Regulation Violated: Failure to Monitor for Nitrate, 5 CCR 1003-1, §6.1.5	Population Served: 685
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Part I – Base Penalty Calculation

	Violation Type	Population Range	Amount in Dollars
Line 1	Failure to Monitor for Nitrate -- Calendar Year 2006	>500	\$125.00

Part II – Application of Aggravating or Mitigating Factors

	Aggravating / Mitigating Factors	% Base Penalty Increase or Decrease	Amount in Dollars
Line 2	Factor A: Threat to Public Health and Welfare <i>Justification: n/a</i>		\$0.00
Line 3	Factor B: Intentional, Reckless, or Negligent Actions <i>Justification: n/a</i>		\$0.00
Line 4	Factor C: Recalcitrance or Recidivism <i>Justification: n/a</i>		\$0.00
Line 5	Factor D: Voluntary and Complete Disclosure of Violations <i>Justification: n/a</i>		\$0.00
Line 6	Factor E: Full and Prompt Cooperation <i>Justification: n/a</i>		\$0.00
Line 7	Factor F: Environmental Compliance Program <i>Justification: n/a</i>		\$0.00
Line 8	Factor G: Other Aggravating or Mitigating Circumstances <i>Justification: n/a</i>		\$0.00
Line 9	Sum of Lines 2 through Line 8		\$0.00
Line 10	Adjusted Base Penalty (Sum of Line 1 + Line 9)		\$125.00

Revised Exhibit A

Part III – Determination of Days of Violation

		Days of Violation
Line 11	Total Days of Violation	1
	<i>Justification: The Division has chosen to consider the 2006 failure to monitor for Nitrate violation as a single day violation.</i>	

Part IV – Determination of Multi-Day Penalty Amount

		Amount in Dollars
Line 12	Multi-Day Penalty Amount	\$125.00
	<i>Calculations: Day 1 (\$125.00) = \$125.00</i>	

Part V – Economic Benefit Consideration

		Amount in Dollars
Line 13	Economic Benefit:	\$70.00
	<i>Justification: The Division believes that the Town of Otis realized an economic benefit by failing to monitor since the Town avoided the cost of the test itself as well as the cost of the labor involved in obtaining sample bottles, conducting the testing, and transporting the samples to a lab.</i>	

Part VI – Violation Penalty Total

		Amount in Dollars
Line 14	Total Administrative Penalty: (Line 12 + Line 13)	\$195.00

Revised Exhibit A

Part VII – Ability to Pay Adjustment

		Amount in Dollars
Line 15	Ability to Pay Reduction:	\$0.00
	<i>Justification: Not Applicable. The Division does not have any information suggesting that the Town of Otis has an inability to pay the assessed penalty amount.</i>	

Part VIII – Final Adjusted Penalty

		Amount in Dollars
Line 16	Total Administrative Penalty: (Line 14 - Line 15)	\$195.00

Revised Exhibit A

ADMINISTRATIVE PENALTY COMPUTATION WORKSHEET

VIOLATION NUMBER: 3 (Count 1 Sample Point 004)

System Name: Town of Otis	PWSID Number: CO-0161010
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Date of Enforcement Order: August 29, 2008	Number: DC-080829-2
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Regulation Violated: Failure to Monitor for Nitrate, 5 CCR 1003-1, §6.1.5	Population Served: 685
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Part I – Base Penalty Calculation

	Violation Type	Population Range	Amount in Dollars
Line 1	Failure to Monitor for Nitrate – Calendar Year 2007	>500	\$125.00

Part II – Application of Aggravating or Mitigating Factors

	Aggravating / Mitigating Factors	% Base Penalty Increase or Decrease	Amount in Dollars
Line 2	Factor A: Threat to Public Health and Welfare <i>Justification: n/a</i>		\$0.00
Line 3	Factor B: Intentional, Reckless, or Negligent Actions <i>Justification: n/a</i>		\$0.00
Line 4	Factor C: Recalcitrance or Recidivism <i>Justification: Town of Otis failed to monitor for Nitrate in 2006. Therefore, the Town of Otis has demonstrated a history/pattern of not obeying or complying with their regulatory obligations, thereby revealing a level of disregard for regulatory programs. The Town of Otis's continued noncompliance with the same violation supports an upward adjustment of 25%.</i>	25%	\$31.25
Line 5	Factor D: Voluntary and Complete Disclosure of Violations <i>Justification: n/a</i>		\$0.00
Line 6	Factor E: Full and Prompt Cooperation <i>Justification: n/a</i>		\$0.00
Line 7	Factor F: Environmental Compliance Program <i>Justification: n/a</i>		\$0.00
Line 8	Factor G: Other Aggravating or Mitigating Circumstances <i>Justification: n/a</i>		\$0.00
Line 9	Sum of Lines 2 through Line 8		\$0.00
Line 10	Adjusted Base Penalty (Sum of Line 1 + Line 9)		\$156.25

Revised Exhibit A

Part III – Determination of Days of Violation

		Days of Violation
Line 11	Total Days of Violation	1
	<i>Justification: The Division has chosen to consider the 2007 failure to monitor for Nitrate violation as a single day violation.</i>	

Part IV – Determination of Multi-Day Penalty Amount

		Amount in Dollars
Line 12	Multi-Day Penalty Amount	\$156.25
	<i>Calculations: Day 1 (\$156.25) = \$156.25</i>	

Part V – Economic Benefit Consideration

		Amount in Dollars
Line 13	Economic Benefit:	\$70.00
	<i>Justification: The Division believes that the Town of Otis realized an economic benefit by failing to monitor since the Town avoided the cost of the test itself as well as the cost of the labor involved in obtaining sample bottles, conducting the testing, and transporting the samples to a lab.</i>	

Part VI – Violation Penalty Total

		Amount in Dollars
Line 14	Total Administrative Penalty: (Line 12 + Line 13)	\$226.25

Revised Exhibit A

Part VII – Ability to Pay Adjustment

		Amount in Dollars
Line 15	Ability to Pay Reduction:	\$0.00
	<i>Justification: Not Applicable. The Division does not have any information suggesting that the Town of Otis has an inability to pay the assessed penalty amount.</i>	

Part VIII – Final Adjusted Penalty

		Amount in Dollars
Line 16	Total Administrative Penalty: (Line 14 - Line 15)	\$226.25

Revised Exhibit A

ADMINISTRATIVE PENALTY COMPUTATION WORKSHEET

VIOLATION NUMBER: 3 (Count 2 Sample Point 005)

System Name: Town of Otis	PWSID Number: CO-0161010
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Date of Enforcement Order: August 29, 2008	Number: DC-080829-2
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Regulation Violated: Failure to Monitor for Nitrate, 5 CCR 1003-1, §6.1.5	Population Served: 685
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Part I – Base Penalty Calculation

	Violation Type	Population Range	Amount in Dollars
Line 1	Failure to Monitor for Nitrate – Calendar Year 2007	>500	\$125.00

Part II – Application of Aggravating or Mitigating Factors

	Aggravating / Mitigating Factors	% Base Penalty Increase or Decrease	Amount in Dollars
Line 2	Factor A: Threat to Public Health and Welfare <i>Justification: n/a</i>		\$0.00
Line 3	Factor B: Intentional, Reckless, or Negligent Actions <i>Justification: n/a</i>		\$0.00
Line 4	Factor C: Recalcitrance or Recidivism <i>Justification: Town of Otis failed to monitor for Nitrate in 2006. Therefore, the Town of Otis has demonstrated a history/pattern of not obeying or complying with their regulatory obligations, thereby revealing a level of disregard for regulatory programs. The Town of Otis's continued noncompliance with the same violation supports an upward adjustment of 25%.</i>	25%	\$31.25
Line 5	Factor D: Voluntary and Complete Disclosure of Violations <i>Justification: n/a</i>		\$0.00
Line 6	Factor E: Full and Prompt Cooperation <i>Justification: n/a</i>		\$0.00
Line 7	Factor F: Environmental Compliance Program <i>Justification: n/a</i>		\$0.00
Line 8	Factor G: Other Aggravating or Mitigating Circumstances <i>Justification: n/a</i>		\$0.00
Line 9	Sum of Lines 2 through Line 8		\$0.00

Revised Exhibit A

	Aggravating / Mitigating Factors	% Base Penalty Increase or Decrease	Amount in Dollars
Line 10	Adjusted Base Penalty (Sum of Line 1 + Line 9)		\$156.25

Part III – Determination of Days of Violation

		Days of Violation
Line 11	Total Days of Violation	1
	<i>Justification: The Division has chosen to consider the 2007 failure to monitor for Nitrate violation as a single day violation.</i>	

Part IV – Determination of Multi-Day Penalty Amount

		Amount in Dollars
Line 12	Multi-Day Penalty Amount	\$156.25
	<i>Calculations: Day 1 (\$156.25) = \$156.25</i>	

Part V – Economic Benefit Consideration

		Amount in Dollars
Line 13	Economic Benefit:	\$70.00
	<i>Justification: The Division believes that the Town of Otis realized an economic benefit by failing to monitor since the Town avoided the cost of the test itself as well as the cost of the labor involved in obtaining sample bottles, conducting the testing, and transporting the samples to a lab.</i>	

Part VI – Violation Penalty Total

		Amount in Dollars
Line 14	Total Administrative Penalty: (Line 12 + Line 13)	\$226.25

Revised Exhibit A

Part VII – Ability to Pay Adjustment

			Amount in Dollars
Line 15	Ability to Pay Reduction:		\$0.00
	<i>Justification: Not Applicable. The Division does not have any information suggesting that the Town of Otis has an inability to pay the assessed penalty amount.</i>		

Part VIII – Final Adjusted Penalty

			Amount in Dollars
Line 16	Total Administrative Penalty: (Line 14 - Line 15)		\$226.25