

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

February 27, 2009

PWSID# CO-0128300
Barbara Colistro
Town of Gardner
PO Box 136
Gardner, CO 81040

Certified Mail Number: 7007 0220 0001 0160 5993

RE: Service of Amendment to Enforcement Order Number: DC-080826-2

Dear Ms. Colistro:

The Town of Gardner is hereby issued the enclosed amendment to the Enforcement Order (Number: DC-080826-2) that was issued to the Town of Gardner on August 26, 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 Scott Klarich at (303) 692-3564 or by electronic mail at scott.klarich@state.co.us.

Sincerely,

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

- cc: Las Animas – Huerfano Counties Health Department
Compliance Monitor / Drinking Water File
- ec: Dave Knope, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Betsy Beaver, Facility Operators Program, CDPHE
Shawn McCaffrey, EPA Region VIII
Jeff Lawrence, Director Consumer Protection Division, CDPHE
Carolyn Schachterle, OPA

Enclosures



**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
WATER QUALITY CONTROL DIVISION**

**ENFORCEMENT ORDER NUMBER: DC-080826-2
AMENDMENT NUMBER ONE, FEBRUARY 27, 2009**

**IN THE MATTER OF: TOWN OF GARDNER
PUBLIC WATER SYSTEM IDENTIFICATION NUMBER: CO-0128300
HUERFANO 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 makes the following findings and issues the following Enforcement Order Amendment:

GENERAL FINDINGS

1. On August 26, 2008, the Division issued Enforcement Order Number: DC-080826-2 to the Town of Gardner citing multiple violations of the Colorado Primary Drinking Water Regulations. The August 26, 2008 Enforcement Order (DC-080826-2) is attached hereto as Attachment A and is incorporated herein by reference.
2. Enforcement Order Number DC-080826-2 required the Town of Gardner to monitor for Total Trihalomethanes and Haloacetic Acids (five), report residual disinfection concentration, monitor and/or report for volatile and synthetic organic chemicals, monitor and/or report for nitrate, monitor and/or report for inorganic chemicals and comply with the formal Enforcement Order. Division records establish that the Town of Gardner did not monitor, report, or comply as required by the aforementioned Enforcement Order.
3. The Town of Gardner's on-going failures to monitor, report or comply has produced new violations after the issuance of Enforcement Order Number: DC-080826-2. The Division has determined that the following amendments to the Enforcement Order and the associated administrative penalty assessment are appropriate.

AMENDMENT NUMBER ONE

4. The First Violation, paragraphs 11 and 13 are superseded and replaced with the following revised paragraphs:

Paragraph 11: The Official 2007 and 2008 Drinking Water Monitoring Schedule provided to the System by the Department outlines that the System was required to monitor for TTHM and HAA5 during the third quarter of calendar year 2007 and 2008.

Paragraph 13: Department records to date establish that the System failed to submit results to the Department of its annual TTHM and HAA5 monitoring for calendar year 2007 and 2008.

5. The Second Violation, paragraphs 22 and 24 is superseded and replaced with the following revised paragraphs:

Paragraph 22: Review of the Division's records establishes that the System has not reported residual disinfection concentrations in the 2nd, 3rd, or 4th quarters of calendar year 2007 and the 1st and 2nd and 4th quarters of calendar year 2008.

Paragraph 24: The Town of Gardner's failure to report for residual disinfectant concentrations in the distribution system constitutes violations of 5 CCR 1003-1, §7.6.5. Additionally, if the Town of Gardner failed to measure its residual disinfectant concentration in the distribution system, such failure to perform the monitoring constitutes ongoing violations of 5 CCR 1003-1, §7.6.3(c)(1) and 7.9.1(c)(2)

6. The Fifth Violation, paragraphs 33, 35 and 36 are superseded and replaced with the following revised paragraphs:

Paragraph 33: The Official 2007 and 2008 Drinking Water Monitoring Schedule provided to the System by the Department outlines that the System was required to monitor for Nitrate at each entry point to the distribution system (after treatment) during calendar year 2007 and 2008.

Paragraph 35: Department records establish that the System failed to submit results of its annual Nitrate monitoring to the Department for calendar year 2007 and 2008.

Paragraph 36: The Town of Gardner's failure to submit the results of its 2007 and 2008 annual Nitrate analysis to the Department constitutes violation(s) of 5 CCR 1003-1, §1.6.4(a). Additionally, if the Town of Gardner failed to perform its annual Nitrate analysis during the identified period, such failure to perform the monitoring constitutes violations of 5 CCR 1003-1, §§6.1.5(e), 6.1.5(e)(1) and 6.1.5(b)(1).

7. Effective as of the issued date of this Amendment, Enforcement Order Number: DC-080826-2 is therefore amended to add the following new violation:

Eighth Violation
(Failure to Monitor and/or Report for Gross Alpha Particle Activity,
Uranium and Radium 226)

- a. Pursuant to 5 CCR 1003-1, §6.3.2(a)(1), all existing community water systems using groundwater, surface water or both ground and surface water must sample at every point to the distribution system

that is representative of all sources being used under normal operating conditions. The system must take each sample at the same sampling point unless conditions make another sampling point more representative of each source.

- b. The Official 2007 and 2008 Drinking Water Monitoring Schedule provided to the System by the Department outlines that the System was required to monitor for gross alpha particle activity, uranium and radium 226 at the entry point to the distribution system (005) once per calendar year during both calendar years 2007 and 2008.
 - c. Division records show that the System has not provided the Department with the results of any gross alpha particle activity, uranium and radium 226 monitoring.
 - d. The Town of Gardner's failure to conduct gross alpha particle activity, uranium and radium 226 monitoring of the System's supplied water constitutes violation(s) of 5 CCR 1003-1, §§6.3.2(a)(1) and 6.3.2(b)(1).
8. The Compliance Order Section, paragraphs 51 and 52 are superseded and replaced with the following revised paragraphs:

Paragraph 51: Within fourteen (14) calendar days after receipt of this Order Amendment, the Town of Gardner shall submit the results of any TTHM and HAA5 monitoring performed for calendar years 2007 and 2008.

Paragraph 52: The Town of Gardner shall perform TTHM and HAA5 monitoring in calendar year 2009, during the month of warmest water temperature. The TTHM and HAA5 samples must be collected properly and analyzed by a Department certified laboratory in accordance with approved methods. The Town of Gardner shall provide the Department with the results of the TTHM and HAA5 monitoring within ten (10) calendar days of receipt of the results from the laboratory.

9. The Compliance Order Section, paragraphs 58 and 59 are superseded and replaced with the following revised paragraphs:

Paragraph 57: Within fourteen (14) calendar days after receipt of this Order Amendment, the Town of Gardner shall submit the results of any Nitrate monitoring performed for calendar years 2007 and 2008.

Paragraph 58: If the system has not performed the Nitrate monitoring for calendar year 2009, the Town of Gardner shall perform Nitrate analyses on a representative water sample, taken from each entry point to the distribution system, within thirty (30) calendar days of receipt of this Order Amendment. The Nitrate sample(s) must be collected properly and analyzed by a Department certified laboratory in accordance with approved methods and cited detection limits. The Town of Gardner shall provide the Department with the results of the Nitrate analyses within ten (10) calendar days of receipt of the results from the laboratory.

10. The Compliance Order Section, paragraph 63 is superseded and replaced with the following revised paragraph:

Paragraph 63: Within thirty (30) calendar days after receipt of this Order Amendment, if it has not already done so, the Town of Gardner shall issue a public notice in accordance with 5 CCR 1003-1, §9.2 for each violation identified in Enforcement Order Number: DC-080826-2 and this Order Amendment. Within ten (10) calendar days of completion of the required public notification, the Town of Gardner shall submit to the Department, along with the mandatory certification, a representative copy of each type of notice distributed, published, posted, and/or made available to the persons served by the system and/or to the media.

*Additional guidance for proper public notification can be viewed at the following Internet location:
http://www.cdphe.state.co.us/wq/drinkingwater/pdf/PublicNotice/PN_Guidance_Mar2003.pdf*

11. Effective as of the issued date of this Amendment, the Compliance Order Section of Enforcement Order Number: DC-080826-2 is therefore amended to add the following new terms and conditions:

- a. Immediately initiate efforts to comply with the gross alpha particle activity, uranium, and radium 226 monitoring/reporting obligations as required by 5 CCR 1003-1, §6.3.2.
- b. Within fourteen (14) calendar days after receipt of this Order, the Town of Gardner shall submit the results of any gross alpha particle activity, uranium, and radium 226 monitoring performed on the system's source water during calendar years 2007 and 2008.
- c. If the gross alpha particle activity, uranium, and radium 226 monitoring of the System's source water has not been conducted, the Town of Gardner shall initiate gross alpha particle activity, uranium, and radium 226 monitoring in conformance with 5 CCR 1003-1, §6.3.2 within thirty (30) calendar days of receipt of this Order.

12. The Order for Administrative Penalty Section, paragraphs 65 and 66 are superseded and replaced with the following revised paragraphs:

Paragraph 65: 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 five thousand eight hundred seventy nine dollars (\$5,879.00) for the specific violations identified in Enforcement Order Number: DC-080826-2 and this Order Amendment. 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.

Paragraph 66: If the Town of Gardner 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 Enforcement Order Amendment. 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:

Mr. Scott Klarich, 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 Mr. Klarich's name is on the outside of the envelope.)

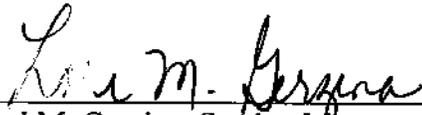
Payment or appeal of the administrative penalty in this manner does not relieve the Town of Gardner of its obligation to perform the activities required by this action.

SCOPE OF AMENDMENT NUMBER ONE

The scope of this Amendment Number One to Enforcement Order Number DC-080826-2 is limited to the revisions outlined above. All other terms and conditions of the Enforcement Order shall remain unchanged and in effect.

Issued at Denver, Colorado, this 27th day of February, 2009.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



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