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

August 25, 2009

Certified Mail Number: 7007 0220 0001 0162 1481

PWSID #: CO-0260975
Mr. James Barber, Owner
Wishing Well Motel
3780 E. Boulder Street
Colorado Springs, Colorado 80909

RE: Service of Drinking Water Enforcement Order, Number: DT-090825-1

Dear Mr. Barber:

You are hereby issued the enclosed Enforcement Order (the "Order"). This Order is issued by the Colorado Department of Public Health and Environment, Water Quality Control Division (the "Department") pursuant to the authority given to the Department by §25-1.5-203 of the Colorado Revised Statutes ("C.R.S."). The Department bases this Order upon findings that you have violated the *Colorado Primary Drinking Water Regulations* (the "Regulations") as described in the enclosed Order.

As a recipient of an Order you may request a formal hearing to contest the Order in accordance with the Regulations, 5 CCR 1003-1, §1.6.7(g). Requests for such a hearing shall be filed in writing with the Department within thirty (30) calendar days after service of the Order. Such requests, at a minimum shall contain the information specified in 5 CCR 1003-1, §1.6.7(g), and 5CCR 1002-21, §21.4(B)(2). Hearings on Orders shall be held in accordance with applicable provisions of the State Administrative Procedure Act, Article 4 of Title 24, C.R.S. and the procedural rules promulgated in 5 CCR 1002-21.

This action could result in the imposition of further administrative or civil penalties. The Department or a State District Court is authorized pursuant to §25-1-114.1, C.R.S. to impose a penalty of up to $1,000 per violation per day. Please be advised that the Department is continuing its investigation into this matter and the Department may identify supplementary violations that warrant amendments to this Order or the issuance of additional enforcement actions.

Should you desire to informally discuss this matter with the Department or if you have any questions regarding the Order, please don't hesitate to contact Sean Scott at (303) 692-3308 or by electronic mail at sean.scott@state.co.us.

Sincerely,

Scott F. Klarich, Unit Manager
Enforcement Unit
Compliance Assurance Section
WATER QUALITY CONTROL DIVISION

Enclosure

cc: Teller County Public Health Department
Drinking Water Enforcement File

ec: Gary Soldano, 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

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

WATER QUALITY CONTROL DIVISION

ENFORCEMENT ORDER &
ADMINISTRATIVE PENALTY ASSESSMENT

NUMBER: DT-090825-1

IN THE MATTER OF: JAMES BARBER
WISHING WELL MOTEL
PUBLIC WATER SYSTEM IDENTIFICATION NUMBER: CO-0260975
TELLER 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 is implemented through the Department's Water Quality Control Division (the "Division"), the Division hereby makes the following findings and issues the following Enforcement Order:

GENERAL FINDINGS

1. James Barber owns and/or operates a drinking water system, known as Wishing Well Motel, located in the vicinity of 425 County Road 21, Woodland Park, in Teller County, Colorado (the "System").

2. James Barber is a person as defined by 5 CCR 1003-1, §1.5.2(98).

3. James Barber is a supplier of water within the meaning of §25-1.5-201(2), C.R.S. and its implementing regulation, 5 CCR 1003-1, §1.5.2(128).

4. The System is a public water system as defined by §25-1.5-201(1), C.R.S. and its implementing regulation, 5 CCR 1003-1, §1.5.2(107).

5. The Public Water System Identification Number ("PWSID") assigned to the System by the Department is PWSID #: CO0260975.

6. Pursuant to 5 CCR 1003-1, §1.2, the System is subject to the *Colorado Primary Drinking Water Regulations* (the "Regulations"), which were adopted pursuant to §25-1.5-203, C.R.S.

7. James Barber provides piped water for human consumption from the System to at least twenty-five (25) people, but the System does not serve twenty-five (25) or more of the same people, for sixty (60) or more days per year. The System is therefore classified as a "transient, non-community water system" as defined by 5 CCR 1003-1, §1.5.2(137).

8. The System's source of water is groundwater as defined by 5 CCR 1003-1, §1.5.2(63).

First Violation
(Failure to Monitor and/or Report for Nitrate)

9. Pursuant to 5 CCR 1003-1, §6.1.5(e), all public water systems shall monitor to determine compliance with the maximum contaminant level for Nitrate.

10. Pursuant to 5 CCR 1003-1, §6.1.5(e)(4), the System is required to monitor for Nitrate annually.

11. Pursuant to 5 CCR 1003-1, §6.1.5(b)(1), the System is required to collect a minimum of one Nitrate sample at every entry point to the distribution system which is representative of each groundwater source after treatment.

12. The Official 2007 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.

13. The Official 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 2008.

14. Pursuant to 5 CCR 1003-1, §1.6.4(a), the System shall report to the Department the results of the System's annual Nitrate analysis within (1) the first ten calendar days following the month in which the result is received, or (2) the first ten calendar days following the end of the required monitoring period, as stipulated by the Department, whichever of these is shorter.

15. Department records establish that the System failed to submit results of its annual Nitrate monitoring to the Department for calendar years 2007 and 2008.

16. James Barber's failure to submit the results of its annual Nitrate analysis to the Department constitutes violation(s) of 5 CCR 1003-1, §1.6.4(a). Additionally, if James Barber failed to perform its annual Nitrate analysis during the identified periods, such failure to perform the monitoring constitutes violations of 5 CCR 1003-1, §§6.1.5(e), 6.1.5(e)(4) and 6.1.5(b)(1).

COMPLIANCE REQUIREMENTS

Based upon the foregoing factual and legal determinations and pursuant to 5 CCR 1003-1, §1.6.7, James Barber is hereby ordered to:

17. Immediately comply with the *Colorado Primary Drinking Water Regulations*, 5 CCR 1003-1, Articles 1 through 13.

Further, the Division hereby orders James Barber to comply with the following specific terms and conditions of this Enforcement Order.

18. Immediately initiate efforts to comply with the Nitrate monitoring/reporting obligations as required by 5 CCR 1003-1, Article 6.

19. Within fourteen (14) calendar days after receipt of this Order, James Barber shall submit the results of any Nitrate monitoring performed for calendar years 2007 and 2008. If the monitoring has not been performed, James Barber shall provide a written explanation indicating the reason(s) why the System did not perform the required monitoring.

20. If the annual Nitrate analysis has not been conducted for calendar year 2009, James Barber shall perform a Nitrate analysis on a representative water sample, taken from each entry point to the distribution system, within thirty (30) calendar days of receipt of this Order. The Nitrate sample(s) must be collected properly and analyzed by a Department certified laboratory in accordance with approved methods and cited detection limits. James Barber shall provide the Department with the results of the Nitrate analysis within ten (10) calendar days of receipt of the results from the laboratory.

21. Within thirty (30) calendar days after receipt of this Order, if it has not already done so, James Barber shall issue a public notice in accordance with 5 CCR 1003-1, §9.2 for each violation identified in this Order. Within ten (10) calendar days of completion of each required public notification, James Barber shall submit to the Division, 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

ORDER FOR ADMINISTRATIVE PENALTY

22. 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 Department, 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.

23. 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 ninety dollars ($590.00) 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 Exhibit A.

Terms of Administrative Penalty Payment

24. If James Barber 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:

    Mr. Sean Scott, Work Group Leader
    Drinking Water Compliance Assurance Unit
    Compliance Assurance Section
    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. Scott's name is on the outside of the envelope.)

25. Payment or appeal of the administrative penalty in this manner does not relieve James Barber of its obligation to perform the activities required by this enforcement action.

NOTICES AND SUBMITTALS

26. For all documents, plans, records, reports and replies required to be submitted by this order, James Barber shall submit an original and one copy (electronic is preferred) to the Division at the following address:

    Colorado Department of Public Health and Environment
    Water Quality Control Division / WQCD-WQP-B2
    Compliance Assurance Section
    Attention: Sean Scott
    4300 Cherry Creek Drive South
    Denver, Colorado 80246-1530
    Email: sean.scott@state.co.us
    Telephone: (303)692-3308
    Fax: (303) 782-0390

    (For any facsimile transmittals, please include a cover sheet addressed to Sean Scott.)

27. Pursuant to 5 CCR 1003-1, §1.6.4(e), all reports, notices, summaries, and certifications required to be submitted to the Department by the public water system must bear the original signature of the owner or the owner's authorized representative.

NOTICE OF COMPLETION

28. James L. Barber, shall submit a Notice of Completion to the Division upon satisfactory completion of all requirements of this Enforcement Order. The Division shall either accept or reject the Notice of Completion in writing. If the Division rejects the Notice of Completion, it shall include in its notice a statement identifying the requirements that the Division considers incomplete or not satisfactorily performed and a schedule for completion. If James Barber wishes to dispute the Division's rejection of its Notice of Completion, it shall, within fifteen (15) calendar days of receipt of the Division's rejection, submit a written statement as to its belief of full compliance, addressing in detail all concerns the Division raised in the rejection letter to the System's Notice of Completion.

PRIOR APPROVAL REQUIRED

29. Pursuant to 5 CCR 1003-1, §1.11.2, no person shall commence construction of any new waterworks, or make improvements to or modify the treatment process of an existing waterworks, or initiate use of a new source, until plans and specifications for such construction, improvements, modifications or use have been submitted to, and approved by the Department. The Department shall grant such approval when it finds that the proposed facilities are capable of complying, on a continuous basis, with all applicable laws, standards, rules and regulations.

POTENTIAL ADMINISTRATIVE/CIVIL AND CRIMINAL PENALTIES

30. You are also advised, pursuant to §25-1-114(4), C.R.S., any person, association, or corporation, or the officers thereof, who violates, disobeys, or disregards any provision of the Regulations or an Enforcement Order is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars ($1,000), or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment and, in addition to such fine and imprisonment, shall be liable for any expense incurred by health authorities in removing any nuisance, source of filth, or cause of sickness. In the event that James Barber does not achieve complete and timely compliance with all of the terms and conditions outlined herein, including full and timely payment of administrative penalties, the Department reserves, in addition to any other remedies allowed by law, its right under §25-1-114(4), C.R.S., to pursue an action for additional penalties.

REQUEST FOR HEARING OR APPEAL

31. You are further advised, pursuant to 5 CCR 1003-1, §1.6.7(g), that a recipient of an Enforcement Order may request a hearing contesting such order. Requests for such a hearing shall be filed in writing with the Department within thirty (30) calendar days after service of the order. Such requests, at a minimum shall contain the information specified in 5 CCR 1003-1, §1.6.7(g), and 5CCR 1002-21, §21.4(B)(2). Hearings on Enforcement Orders shall be held in accordance with applicable provisions of the State Administrative Procedure Act, Article 4 of Title 24, C.R.S. and the procedural rules promulgated in 5 CCR 1002-21.

32. Pursuant to §25-1-114.1(2.5)(b) C.R.S. an Administrative Penalty Assessment may be appealed to the Water Quality Control Commission. Requests for such an appeal should be filed in writing with the Water Quality Control Commission within thirty (30) calendar days after service of the penalty assessment. Such requests, at a minimum, shall contain the information specified in 5 CCR 1002-21, §21.4(B)(2). Hearings on Administrative Penalty Assessments shall be held in accordance with applicable provisions of the State Administrative Procedure Act, Article 4 of Title 24, C.R.S. and the procedural rules promulgated in 5 CCR 1002-21.

ADDITIONAL ACTION

33. You are further advised that under §25-1-114.1(1), C.R.S., the Department may institute a civil action against any person who violates a final Enforcement Order of the Department issued for violation of any minimum general sanitary standard or regulation adopted pursuant to §25-1.5-203, C.R.S.

34. Additionally, the Department may request the Attorney General to seek a temporary restraining order or permanent injunction to prevent or abate any violation of a minimum general sanitary standard or regulation adopted pursuant to §25-1.5-203, C.R.S. Further information concerning the aforementioned action is contained in §25-1-114.1(3), C.R.S.

Issued at Denver, Colorado, this 25th day of August, 2009.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Lori M. Gerzina

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

JAMES BARBER / WISHING WELL MOTEL
PUBLIC WATER SYSTEM IDENTIFICATION NUMBER: CO-0260975
TELLER COUNTY, COLORADO

ADMINISTRATIVE PENALTY COMPUTATION WORKSHEET
(August 25, 2009)

Penalty Summary

Penalty Calculation -Violation Number 1 **(Count 1-2007)** **$270.00**
(Count 2-2008) **$320.00**

Violation Failure to Monitor and/or Report for Nitrate
Regulation Violated: 5 CCR 1003-1, §§6.1.5(e), 6.1.5(e)(4) and 6.1.5(b)(1).

TOTAL PENALTY.....**$590.00**

ADMINISTRATIVE PENALTY COMPUTATION WORKSHEET
VIOLATION NUMBER: 1 (Count 1-2007)

System Name: Wishing Well Motel	**PWSID Number: CO-0260975**
Date of Enforcement Order: August 25, 2009	**Number:** DT-090825-1
Regulation Violated: Failure to Monitor for Nitrate 5 CCR 1003-1, §§6.1.5(e), 6.1.5(e)(4) and 6.1.5(b)(1).	**Population Served:** 29

Part I – Base Penalty Calculation

	Violation Type	Population Range	Amount in Dollars
Line 1	Failure to Monitor for Nitrate– Calendar Year 2007	< 500 Served	**$200.00**

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		$0.00
	Justification: n/a		
Line 3	Factor B: Intentional, Reckless, or Negligent Actions		$0.00
	Justification: n/a		
Line 4	Factor C: Recalcitrance or Recidivism		$0.00
	Justification: n/a		
Line 5	Factor D: Voluntary and Complete Disclosure of Violations		$0.00
	Justification: n/a		
Line 6	Factor E: Full and Prompt Cooperation		$0.00
	Justification: n/a		
Line 7	Factor F: Environmental Compliance Program		$0.00
	Justification: n/a		
Line 8	Factor G: Other Aggravating or Mitigating Circumstances		$0.00
	Justification: n/a		
Line 9	Sum of Lines 2 through Line 8		$0.00
Line 10	**Adjusted Base Penalty** (Sum of Line 1 + Line 9)		**$200.00**

Part III – Determination of Days of Violation

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

Part IV – Determination of Multi-Day Penalty Amount

			Amount in Dollars
Line 12	Multi-Day Penalty Amount		$200.00
	Calculations: ***Day 1 ($200.00) = $200.00***		

Part V – Economic Benefit Consideration

			Amount in Dollars
Line 13	Economic Benefit:		$70.00
	Justification: The Division believes that the System realized an economic benefit by failing to monitor since it has avoided its cost for the tests itself as well as the cost of the labor involved in obtaining sample bottles, conducting the testing, and transporting the samples to a lab.		

Part VI – Violation Penalty Total

			Amount in Dollars
Line 14	Total Administrative Penalty: (Line 12 + Line 13)		$270.00

Part VII – Ability to Pay Adjustment

			Amount in Dollars
Line 15	**Ability to Pay Reduction:**		$0.00
	Justification: Not Applicable. The Division does not have any documented information suggesting that the Wishing Well Motel has an inability to pay the assessed penalty amount.		

Part VIII – Final Adjusted Penalty

			Amount in Dollars
Line 16	**Total Administrative Penalty:** **(Line 14 - Line 15)**		**$270.00**

ADMINISTRATIVE PENALTY COMPUTATION WORKSHEET
VIOLATION NUMBER: 1 (Count 2-2008)

System Name: Wishing Well Motel	**PWSID Number: CO-0260975**
Date of Enforcement Order: August 25, 2009	**Number:** DT-090825-1
Regulation Violated: Failure to Monitor for Nitrate 5 CCR 1003-1, §§6.1.5(e), 6.1.5(e)(4) and 6.1.5(b)(1).	**Population Served:** 29

Part I – Base Penalty Calculation

	Violation Type	Population Range	Amount in Dollars
Line 1	Failure to Monitor for Nitrate– Calendar Year 2008	< 500 Served	**$200.00**

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		$0.00
	Justification: n/a		
Line 3	Factor B: Intentional, Reckless, or Negligent Actions		$0.00
	Justification: n/a		
Line 4	Factor C: Recalcitrance or Recidivism	+25%	$50.00
	Justification: James Barber failed to monitor for nitrate in 2008 even after the Division provided specific notice of its 2007 failure to monitor violation. In addition, the Division provided specific information on the Division's ongoing expectations on multiple occasions which Mr. Barber disregarded.		
Line 5	Factor D: Voluntary and Complete Disclosure of Violations		$0.00
	Justification: n/a		
Line 6	Factor E: Full and Prompt Cooperation		$0.00
	Justification: n/a		
Line 7	Factor F: Environmental Compliance Program		$0.00
	Justification: n/a		
Line 8	Factor G: Other Aggravating or Mitigating Circumstances		$0.00
	Justification: n/a		
Line 9	Sum of Lines 2 through Line 8		$0.00
Line 10	**Adjusted Base Penalty** (Sum of Line 1 + Line 9)		**$250.00**

Part III – Determination of Days of Violation

			Days of Violation
Line 11	Total Days of Violation		1
	Justification: The Division has chosen to consider the 2008 failure to monitor for Nitrate violation as a single day violation.		

Part IV – Determination of Multi-Day Penalty Amount

			Amount in Dollars
Line 12	Multi-Day Penalty Amount		**$250.00**
	Calculations: ***Day 1*** ***($200.00)*** ***= $200.00***		

Part V – Economic Benefit Consideration

			Amount in Dollars
Line 13	Economic Benefit:		**$70.00**
	Justification: The Division believes that the System realized an economic benefit by failing to monitor since it has avoided its cost for the tests itself as well as the cost of the labor involved in obtaining sample bottles, conducting the testing, and transporting the samples to a lab.		

Part VI – Violation Penalty Total

			Amount in Dollars
Line 14	Total Administrative Penalty: (Line 12 + Line 13)		**$320.00**

Part VII – Ability to Pay Adjustment

			Amount in Dollars
Line 15	**Ability to Pay Reduction:**		$0.00
	Justification: Not Applicable. The Division does not have any documented information suggesting that the Wishing Well Motel has an inability to pay the assessed penalty amount.		

Part VIII – Final Adjusted Penalty

			Amount in Dollars
Line 16	**Total Administrative Penalty:** **(Line 14 - Line 15)**		**$320.00**