

# STATE OF COLORADO

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Executive Director and Chief Medical Officer

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

March 1, 2011

**Certified Mail Number: 7009 1680 0000 2094 5098**

PWSID# CO-0144035  
Mike Bates, Mayor  
Town of Wiggins  
304 Central Ave.  
Wiggins, CO 80654

**RE: Service of Drinking Water Enforcement Order, Number: DC-110301-1**

Dear Mr. Bates:

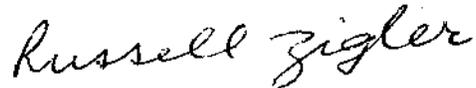
The Town of Wiggins is hereby issued the enclosed Enforcement Order (the "Order"). This Order is issued by the Colorado Department of Public Health and Environment, Water Quality Control Division (the "Department") pursuant to the authority given to the Department by §25-1.5-203 of the Colorado Revised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

As a recipient of an Order the Town of Wiggins 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 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 the Town of Wiggins desire to informally discuss this matter with the Department or if you have any questions regarding the Order, please don't hesitate to contact Lauren Worley at (303) 692-3547 or by electronic mail at [lauren.worley@state.co.us](mailto:lauren.worley@state.co.us).

Sincerely,



Russell Zigler, Legal Assistant  
Enforcement Unit  
Compliance Assurance Section  
WATER QUALITY CONTROL DIVISION

Enclosure

- cc: Northeast Colorado Health Department  
John Richardson, ORC, 304 Central Ave., Wiggins, CO 80654  
Drinking Water Enforcement File
- cc: Dennis Pontius, Engineering Section, CDPHE  
Dick Parachini, Watershed Program, CDPHE  
Lori Billeisen, Facility Operators Program, CDPHE  
Shawn McCaffrey, EPA Region VIII  
Lauren Worley, Case Person, CDPHE



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

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**ENFORCEMENT ORDER**

**NUMBER: DC-110301-1**

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**IN THE MATTER OF: TOWN OF WIGGINS**  
**PUBLIC WATER SYSTEM IDENTIFICATION NUMBER: CO-0144035**  
**MORGAN COUNTY, COLORADO**

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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. The Town of Wiggins owns and/or operates a drinking water system located at 304 Central Avenue, Wiggins, Colorado, in Morgan County, Colorado (the "System").
2. The Town of Wiggins is a person as defined by 5 CCR 1003-1, §1.5.2(98).
3. The Town of Wiggins 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 Division is PWSID #: CO-0144035.
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. The Town of Wiggins provides piped water for human consumption from the System to at least fifteen (15) service connections used by year-round residents of the area served by the System and/or regularly serves at least twenty-five (25) year-round residents. The System is therefore classified as a "community water system" as defined by 5 CCR 1003-1, §1.5.2(15).

8. The System's source of water is groundwater as defined by 5 CCR 1003-1, §1.5.2(63).
9. On March 19, 2010, a Division representative conducted a compliance inspection of the System, pursuant to the Division's authority under §25-1.5-204, C.R.S. and 5 CCR 1003-1, §1.7, to determine the System's compliance with the Regulations.

**First Violation**  
**(Exceedance of the Maximum Contaminant Level for Nitrate)**

10. Pursuant to 5 CCR 1003-1, §2.2, Table 2-3(11), all public water systems are subject to the Nitrate maximum contaminant level of 10 mg/L (as Nitrogen).
11. Pursuant to 5 CCR 1003-1, §6.1.3(a), compliance with the Nitrate maximum contaminant level shall be determined by evaluating the analytical results of the System's distributed water for Nitrate.
12. Pursuant to 5 CCR 1003-1, §6.1.5(b)(1), groundwater systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each groundwater source after treatment (hereafter called a sampling point). Sampling shall be done at the same sampling point unless conditions make another sampling point more representative.
13. Pursuant to 5 CCR 1003-1, §6.1.5(e)(2), repeat monitoring frequency for Nitrate for groundwater systems shall be quarterly for at least one year following any one sample in which the concentration is greater than or equal to one-half of the Nitrate maximum contaminant level. Division records establish for calendar year 2009, the result of the System's annual Nitrate sample was 10.47 mg/L (as nitrogen), a value greater than or equal to one-half of the Nitrate maximum contaminant level. Therefore, in November 2009 the System was placed on quarterly repeat monitoring.
14. Pursuant to 5 CCR 1003-1, §§1.6.4 and 6.1.2, the supplier of water shall report to the Department the results of its Nitrate monitoring within (a) the first ten days following the month in which the result is received, or (b) the first ten days following the end of the required monitoring period as stipulated by the Department, whichever of these is shorter.
15. From calendar year 2009 to present, Division records establish that the System has reported the following Nitrate monitoring data to the Division:

Sample Date	Sample Location	Nitrate Sampling Results in mg/L (as nitrogen)
8/28/2009	001	10.47
9/23/2009	001	9.06
11/16/2009	001	8.41
1/5/2010	001	9.06
5/12/2010	001	13.98
6/3/2010	001	12.77

Sample Date	Sample Location	Nitrate Sampling Results in mg/L (as nitrogen)
7/8/2010	001	13.85
8/11/2010	001	11.90
12/9/2010	001	9.60

16. According to 5 CCR 1003-1, §6.1.3(a)(3), compliance with the maximum contaminant levels for Nitrate and Nitrite is determined based on one sample if the levels of these contaminants are below the maximum contaminant levels. If the levels of Nitrate and/or Nitrite exceed the maximum contaminant levels in the initial sample, a confirmation sample is required in accordance with 5 CCR 1003-1, §6.1.5(g)(2), and compliance shall be determined based on the average of the initial and confirmation samples.
17. The Division records establish that the Town of Wiggins' Nitrate samples taken at Sample Point 001 exceed the 10 mg/L (as nitrogen) Nitrate and total Nitrate + Nitrite maximum contaminant levels. The Town of Wiggins' failure to comply with the Nitrate and maximum contaminant level constitutes violation(s) of 5 CCR 1003-1, §2.2, Table 2-3(11).

**Second Violation**  
**(Failure to Develop/Submit a Monitoring Plan)**

18. Pursuant to 5 CCR 1003-1, §1.12, each public water system shall develop and implement a monitoring plan. The public water system shall maintain the plan and make it available for inspection by the Department.
19. Pursuant to 5 CCR 1003-1, §1.12.2(a)(3), the System was required to submit a monitoring plan to the Department by April 10, 2005.
20. During the March 19, 2010 Division inspection of the System, the Division Representative requested to review a copy of the System's monitoring plan. At the time of inspection, the Town of Wiggins did not have a monitoring plan. In a letter dated May 3, 2010, the Division Representative requested that the Town of Wiggins provide a written response addressing the inspection identified deficiencies by June 18, 2010.
21. As of the issued date of this Order, Division records establish that the Town of Wiggins has neither developed nor submitted the required monitoring plan to the Division.
22. The Town of Wiggins' failure to develop a monitoring plan for the System constitutes a violation of 5 CCR 1003-1, §1.12. If the Town of Wiggins subsequently developed its monitoring plan, but failed to submit a copy of the monitoring plan for the System to the Division, such failure constitutes a violation of 5 CCR 1003-1, §1.12.2(a)(3).

**Third Violation**  
**(Failure to Implement a Cross-Connection Control Program)**

23. Pursuant to 5 CCR 1003-1, §§12.1(a-b), a public water system shall control hazardous cross-connections and protect the public water system from contamination by implementing a cross-connection control program in the following manner:
- a. Identifying potentially uncontrolled hazardous service cross-connections.
  - b. Requiring system users to install and maintain containment devices on any uncontrolled hazardous service cross connections, provided the Department has determined that the device is consistent with the degree of hazard posed by the uncontrolled cross connection.
  - c. Installation of containment devices shall be approved by the public water system upon installation.
  - d. All containment devices shall be tested and maintained as necessary on installation and at least annually thereafter, by a Certified Cross-Connection Control Technician.

In addition, pursuant to 5 CCR 1003-1, §12.1(c), each public water system shall retain maintenance records for three years for all containment devices and these records shall be available for Department inspection.

24. During the March 19, 2010 inspection, the Division Representative noted that there was no evidence available to demonstrate that the System was implementing a cross-connection control program.
25. In a letter reporting the results of the compliance inspection, dated May 3, 2010, addressed to the Town of Wiggins, the Division Representative advised the Town of Wiggins of the requirement for the System to implement a cross-connection control program. The Division Representative requested the Town of Wiggins to respond in writing to the Division Representative by June 18, 2010, and to provide an updated cross connection control plan to the Division. In addition, the Division Representative provided an internet link to a guidance document to assist the System in complying with this requirement.
26. As of the issued date of this Order, Division records establish that the System has failed to provide the Department with any information demonstrating that the System has implemented a cross-connection control program.
27. The Town of Wiggins' failure to implement a cross-connection control program for the System constitutes violation(s) of 5 CCR 1003-1, §12.1.

### **COMPLIANCE REQUIREMENTS**

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

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

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

29. In order to ensure long-term compliance with the nitrate and the total nitrate + nitrite maximum contaminant levels, the Town of Wiggins shall evaluate and upgrade, as needed, the System's water source and/or treatment processes in accordance with the following schedule:
- a. Within forty-five (45) calendar days from the date of this order, retain a qualified engineer (experienced in drinking water systems) to evaluate and recommend alternatives or improvements to the System's water source or treatment processes to ensure ongoing compliance with the nitrate and the total nitrate + nitrite maximum contaminant levels.
  - b. Within sixty (60) calendar days from the date of this order, submit final plans and specifications for Department review and approval to either initiate the use of a new source or for the construction/installation of treatment system improvements. *(Please note: A Professional Engineer registered in the State of Colorado must design all treatment systems serving a community water supply.)*
  - c. Within one hundred eighty (180) calendar days from the date of Division approval of design plans and specifications, complete construction, installation and/or implementation of the Department approved system improvements to ensure long-term compliance with the nitrate and the total nitrate + nitrite maximum contaminant levels.
30. Submit "System Improvement Project - Progress Reports" to the Department every calendar quarter. The reports shall be submitted to the Department on the first day of each calendar quarter, the first report shall be submitted by April 1, 2011. At a minimum, each report shall clearly indicate the status of the system improvement project at the time the report is filed and outline activities to be undertaken within the next ninety (90) calendar days.
31. Within thirty (30) calendar days after receipt of this Order, if it has not already done so, the Town of Wiggins 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, the Town of Wiggins 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](http://www.cdphe.state.co.us/wq/drinkingwater/pdf/PublicNotice/PN_Guidance_Mar2003.pdf)*
32. Within forty-five (45) calendar days from the date of this order, the Town of Wiggins shall develop, implement and submit a monitoring plan pursuant to 5 CCR 1003-1, §1.12, to reflect the System's current configuration, treatment and operation. Pursuant to 5 CCR 1003-1, §1.12.1(e), each monitoring plan prepared by the System must contain Individual Rule Sampling Plans. Each sampling plan shall meet all requirements of the respective provision, including:

- a. Frequency and approximate time of collection;
- b. Sample site location identification and associated identification number;
- c. If appropriate, justification for the site selection;
- d. Sample preservation, quality assurance, and quality control procedures, including procedures for equipment calibration;
- e. Analysis procedure (certified laboratory or on-site by a party approved by the Department);
- f. Monitoring results presentation format;
- g. Procedures to assess and report compliance status for MCLs, ALs, MRDLs, TTs and, if applicable, disinfection byproduct precursor removal efficiency;
- h. The rationale used by the system to identify the sampling locations selected to represent the distribution system, and
- i. A process to review and update the selected distribution system sampling locations to account for changes due to growth or other significant changes to the distribution system.

*A guidance document on how to prepare a monitoring plan can be viewed at the following internet location:*

<http://www.cdphe.state.co.us/wq/drinkingwater/pdf/MonitoringPlanTemplate.pdf>

*A guidance document on how to prepare a small system microbiological rule sampling plan can be viewed at the following internet location:*

[http://www.cdphe.state.co.us/wq/drinkingwater/pdf/Bulletin02\\_01BactSamplingPlanguidanceDoc.pdf](http://www.cdphe.state.co.us/wq/drinkingwater/pdf/Bulletin02_01BactSamplingPlanguidanceDoc.pdf)

33. Within thirty (30) calendar days after receipt of this Order, the Town of Wiggins shall submit to the Division a written plan for a Cross-Connection Control Program which includes a description of how it is being implemented.

*A Sample Cross-Connection Control Program for Small Systems guidance document can be viewed at the following internet location:*

[http://www.cdphe.state.co.us/wq/drinkingwater/pdf/cross\\_connection\\_control.pdf](http://www.cdphe.state.co.us/wq/drinkingwater/pdf/cross_connection_control.pdf)

### **NOTICES AND SUBMITTALS**

34. For all documents, plans, records, reports and replies required to be submitted by this order, the Town of Wiggins 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-B2-CAS  
Compliance Assurance Section  
Attention: Lauren Worley  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

Email: lauren.worley@state.co.us  
Fax: (303) 782-0390

*(For any facsimile transmittals, please include a cover sheet addressed to Ms. Worley).*

35. All reports, notices, summaries, and certifications required to be submitted to the Division by the public water system must bear the original signature of the owner or the owner's authorized representative.

### **NOTICE OF COMPLETION**

36. The Town of Wiggins 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 the Town of Wiggins 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**

37. 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. A Professional Engineer registered in the State of Colorado shall design all treatment systems serving a community water supply. 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**

38. You are also advised, pursuant to §25-1-114.1, C.R.S., that violators of the Regulations or final Enforcement Orders issued by the Department are subject to civil or administrative penalties of up to one thousand dollars (\$1,000) per violation per day, to be imposed by the Department or a State District Court. Further, 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. By virtue of issuing this Enforcement Order, the Department has not waived its right to bring an action for administrative, civil or criminal penalties and may bring such action in the future.

### **REQUEST FOR HEARING OR APPEAL**

39. 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 5 CCR 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.

### **ADDITIONAL ACTION**

40. 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.
41. 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 1<sup>st</sup> day of March, 2011.

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

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