STATE OF COLORADO

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Colorado Department
of Public Health
and Environment

March 25, 2011

Certified Mail Number: 7005 1820 0000 3213 7375

PWSID# CO-0145210
Mr. Patrick Christensen, Mayor
Town of Fowler
200 Main
Fowler, CO 81039-0207

RE: Service of Drinking Water Enforcement Order, Number: DC-110325-1

Dear Mayor Christensen:

The Town of Fowler 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 Fowler 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 Fowler 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 Fowler 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.

Sincerely,

Russell Zigler

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

Enclosure

cc: Otero County Health Department
Ron Rein, ORC, 200 Main St., Fowler, CO 81039

ec: Dave Knope, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Lori Billeisen, Facility Operators Program, CDPHE
Shawn McCaffrey, EPA Region VIII
Michael Beck, OPA
Lauren Worley, Case Lead, CDPHE

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

WATER QUALITY CONTROL DIVISION

ENFORCEMENT ORDER **NUMBER: DC-110325-1**

IN THE MATTER OF: TOWN OF FOWLER
PUBLIC WATER SYSTEM IDENTIFICATION NUMBER: CO-0145210
OTERO 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. The Town of Fowler owns and/or operates a drinking water system located in Otero County, Colorado (the "System").

2. The Town of Fowler is a person as defined by 5 CCR 1003-1, §1.5.2(98).

3. The Town of Fowler 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-0145210.

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 Fowler 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 August 10, 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 Levels 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 5 CCR 1003-1, §2.2, maximum contaminant levels and maximum contaminant level goals for Inorganic Chemical Contaminants, shall be determined based on the analytical result(s) obtained at each sampling point.

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)(1), beginning in the initial compliance period, community groundwater systems shall monitor annually for Nitrate.

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 their 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. The Division records establish that the System has reported the following Nitrate monitoring data at entry point 002 to the Division:

Sample Date	Sample Type	Sample Location	Nitrate Sampling Results in mg/L *(as nitrogen)*
4/22/2010	Routine	002	11.5
5/20/2010	Confirmation	002	9.9
01/25/2011	Routine	002	8.9

16. Pursuant 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 MCLs. If the levels of Nitrate and/or Nitrite exceed the MCLs in the initial sample, a confirmation sample is required in accordance with §6.1.5(g)(2), and compliance shall be determined based on the average of the initial and confirmation samples.

17. Division records establish that the average of the results of the System's April 22, 2010, annual Nitrate sample and the May 20, 2010, Nitrate confirmation sample equaled 10.7 mg/L (as nitrogen), a value in exceedance of the 10 mg/L (as nitrogen) Nitrate maximum contaminant level.

18. The Town of Fowler's failure to comply with the Nitrate maximum contaminant level constitutes violation(s) of 5 CCR 1003-1, §2.2, Table 2-3(11).

Second Violation
(Exceedance of the Maximum Contaminant Level for Selenium)

19. Pursuant to 5 CCR 1003-1, §2.2, Table 2-3(14), all community public water systems are subject to the selenium maximum contaminant level of 0.05 mg/L.

20. Pursuant to 5 CCR 1003-1, §6.1.5(d)(1), the System must monitor for selenium by taking one sample at each sampling point, as defined in 5 CCR 1003, §6.1.5(b)(1), during each compliance period.

21. Pursuant to 5 CCR 1003-1, §6.1.5(d)(8), systems that exceed the maximum contaminant level for selenium, as calculated in accordance with 5 CCR 1003-1, §6.1.3(a), shall monitor quarterly beginning in the next quarter after the violation occurred.

22. The Division's 2006 Monitoring Schedule notified the System of its quarterly monitoring schedule for selenium at entry point 001 beginning January 1, 2006.

23. Pursuant to 5 CCR 1003-1, §6.1.2 and §1.6.4(a), the System shall report to the state the results of any test measurement or analysis required by the Regulations 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.

24. Data submitted to the Division from the System establish the following selenium running annual averages for the System:

Selenium (in mg/L) Entry Point 001				Running Annual Average (in mg/l)
3rd Q 2009 0.055	**4th Q 2009** 0.045	**1st Q 2010** 0.051	**2nd Q 2010** 0.085	**0.06**
4th Q 2009 0.045	**1st Q 2010** 0.051	**2nd Q 2010** 0.085	**3rd Q 2010** 0.043	**0.06**
1st Q 2010 0.051	**2nd Q 2010** 0.085	**3rd Q 2010** 0.043	**4th Q 2010** 0.037	**0.05**
2nd Q 2010 0.085	**3rd Q 2010** 0.043	**4th Q 2010** 0.037	**1st Q 2011** 0.045	**0.05**

25. Pursuant to 5 CCR 1003-1, §6.1.3(a)(1), for systems which are conducting monitoring at a frequency greater than annual, compliance with the maximum contaminant level for selenium is determined by a running annual average based on data from the most recent four consecutive quarters at any sampling point. If the running annual average at any sampling point is greater than the maximum contaminant level, then the system is out of compliance.

26. The Town of Fowler's failure to comply with the maximum contaminant level for selenium in the second and third quarters of calendar year 2010 constitutes violations of 5 CCR 1003-1, §§6.1.3(a)(1) and 2.2, Table 2-3(14).

COMPLIANCE REQUIREMENTS

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

27. 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 Fowler to comply with the following specific terms and conditions of this Enforcement Order.

28. In order to ensure long-term compliance with the *Colorado Primary Drinking Water Regulations*, specifically including the Nitrate and Selenium maximum contaminant levels (Article 2 and 6) for public water supplies, the Town of Fowler shall evaluate and upgrade, as needed, the System's water sources 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 Professional Engineer (licensed in Colorado and experienced in drinking water systems) to evaluate and recommend inorganic chemical treatment technologies or alternate water sources to the Town of Fowler to ensure compliance with the maximum contaminant levels for Nitrate and Selenium.

    b. Within sixty (60) calendar days from the date of this order, submit Final Design Plans and Specifications for the System improvements for Department review and approval in accordance with the *State of Colorado Design Criteria for Potable Water Systems*.

    c. Within one hundred eighty (180) calendar days from the date of Division approval of design plans and specifications, complete construction/implementation of the Department approved System improvements to ensure long-term compliance with the maximum contaminant levels for Nitrate and Selenium.

    d. Within fourteen (14) calendar days of completion/implementation of the System improvements, submit a Professional Engineer's Certification that the System improvements to comply with the maximum contaminant levels for Nitrate and Selenium were constructed/installed as approved by the Department.

29. Within thirty (30) calendar days after receipt of this Order, if it has not already done so, the Town of Fowler 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 Fowler 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

30. The Town of Fowler shall submit "System Improvement Project - Progress Reports" to the Division every calendar quarter. The first report shall be submitted to the Division by June 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 calendar quarter. Each report shall also detail any public notification provided during that period. These reports shall be required until the System has demonstrated reliable and consistent compliance with the Nitrate and Selenium maximum contaminant levels outlined in 5 CCR 1003-1, §2.2, Table 2-3(11) and (14).

31. All documents submitted under this Order shall use the same titles as stated in the Order and shall reference both the Order number and the paragraph number pursuant to which the document is required.

NOTICES AND SUBMITTALS

32. For all documents, plans, records, reports and replies required to be submitted by this order, the Town of Fowler 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).

33. 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

34. The Town of Fowler 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 Fowler 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

35. 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

36. 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

37. 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

38. 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.

39. 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 March 2011.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Lori M Gerzina

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