

STATE OF COLORADO

John W. Hickenlooper, Governor
Christopher E. Urbina, MD, MPH
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

September 11, 2012

Certified Mail Number: 7012 1010 0002 1774 3385

PWSID# CO-0260975
James A. Barber, Owner
Wishing Well Motel
3780 E. Boulder St.
Colorado Springs, CO 80909

RE: Service of Operator Certification Notice of Violation, Number: OD-120911-4

Dear Mr. Barber:

You are hereby served with the enclosed Operator Certification Notice of Violation (the "NOV"). This NOV is issued by the Colorado Department of Public Health and Environment's (the "Department") Water Quality Control Division (the "Division") pursuant to the authority given to the Division by § 25-9-110(3) of the Colorado Revised Statutes ("C.R.S."). The Division bases this NOV upon findings that you have violated the 5 CCR 1003-2, § 100 ("Regulation 100") *Water and Wastewater Facility Operators Certification Requirements* as described in the enclosed NOV.

Pursuant to § 25-9-110(3), C.R.S., you are required, within thirty (30) calendar days of receipt of this NOV, to submit to the Division an answer to each alleged violation.

As a recipient of an NOV, you may request a formal hearing to contest the NOV in accordance with § 25-9-110(4), C.R.S., and 5 CCR 1003-2, § 100.24.2. Requests for such a hearing shall be filed in writing with the Division no later than thirty (30) days after service of the NOV. Such requests, at a minimum, shall contain the information specified in 5 CCR 1003-2, § 100.24.2(a-c). Hearings on NOV's shall be conducted before the Colorado Water and Wastewater Facility Operators Certification Board in accordance with § 24-4-105, C.R.S. The filing of an answer does not constitute a request for hearing.

This violation could result in the imposition of civil penalties. The Department is authorized pursuant to § 25-9-110(5), C.R.S., to impose a penalty of up to \$300 per day for each day during which such violation occurs. Please be advised that the Division is continuing its investigation into this matter and the Division may identify supplementary violations that warrant amendments to this NOV 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 Regulation 100 or the violations contained in this NOV, please don't hesitate to contact Lori Moore at (303) 692-3510 or by electronic mail at lori.moore@state.co.us.

Sincerely,



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

Enclosure

- cc: Enforcement File
James A. Barber, P.O. Box 9251, Colorado Springs, CO 80932-0251
- ec: Kurt Dahl, Teller County Environmental Health Department (dahlk@co.teller.co.us)
Monique Morey, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Jackie Whelan, Facility Operators Program, CDPHE
Olive Hofstader, EPA Region VIII
Nicole Grisham, Division of Environmental Health and Sustainability, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Erica Kannely, Case Lead, CDPHE



COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
WATER QUALITY CONTROL DIVISION

OPERATOR CERTIFICATION NOTICE OF VIOLATION

NUMBER: OD-120911-4

IN THE MATTER OF: JAMES A. BARBER

d/b/a 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's Water Quality Control Division (the "Division") by § 25-9-110(3) of the Colorado Revised Statutes ("C.R.S."), the Division hereby makes the following findings and issues this Operator Certification Notice of Violation:

GENERAL FINDINGS

1. James A. Barber owns a drinking water system, known as Wishing Well Motel, located in the vicinity of 425 County Road 21, City of Woodland Park, Teller County, Colorado (the "System").
2. The System is a public water system as defined by Colorado's drinking water statute, § 25-1.5-201(1), C.R.S., and its implementing regulation, 5 CCR 1003-1, § 1.5.2(107).
3. The Public Water System Identification Number ("PWSID") assigned to the System by the Division is PWSID #: CO-0260975.
4. The System's source of water is groundwater, as defined by 5 CCR 1003-1, § 1.5.2(63).
5. The System includes a water treatment facility as defined by the Colorado Water and Wastewater Treatment Facility Operators Act (the "Act") at § 25-9-102(7), C.R.S., and its implementing regulation, 5 CCR 1003-2, § 100.2(32).
6. The System includes a water distribution system as defined by the Act at § 25-9-102(6), C.R.S., and its implementing regulation, 5 CCR 1003-2, § 100.2(31).
7. Division records establish that the System serves fewer than 3,300 persons.
8. Pursuant to 5 CCR 1003-2, § 100.4.2, the System's water treatment facility is classified as "D."

9. Pursuant to 5 CCR 1003-2, § 100.7.2, the System's distribution system is classified as "1."

Failure to Have a Certified Operator in Responsible Charge

10. Pursuant to the Act at § 25-9-110(2)(a), C.R.S., and 5 CCR 1003-2, § 100.18.1(a), no owner of a water treatment facility or a water distribution system shall allow the facility to be operated without the direct supervision of an operator-in-responsible-charge certified in a classification equivalent to or higher than the classification of the facility as specified in 5 CCR 1003-2.
11. In accordance with 5 CCR 1003-2, § 100.18.5, the System shall have an operator-in-responsible-charge certified at or above the Class S Water classification, or the Class D Water Treatment and Class 1 Water Distribution certifications.
12. Pursuant to 5 CCR 1003-2, § 100.18.4(a), each owner of a water or wastewater facility shall submit in writing to the Division, no later than thirty (30) days following the date the facility is initially placed on-line and thereafter, no later than thirty (30) days after changes to any of the following information:
 - a. Name, mailing address, phone number, and email address (if available) of the facility representative providing the information;
 - b. Name, mailing address, phone number, email address (if available) and the classification and expiration of certification of all operator(s)-in-responsible-charge employed by the owner;
 - c. Identification of the facility or facilities for which each operator-in-responsible-charge employed or contracted by the owner has responsibility;
 - d. The Public Water System Identification (PWSID) number and the Colorado Discharge Permit system (CDPHS) permit or certification number for all facilities listed.
13. In a letter dated March 20, 2002, the Division notified James A. Barber that, as of February 21, 2002, the System was not under the supervision of a certified operator-in-responsible-charge. The Division further requested that James A. Barber retain a certified operator-in-responsible-charge for the System and provide a completed operator-in-responsible-charge reporting form to the Division by May 15, 2002.
14. In a letter dated January 27, 2003, the Division notified a representative of the System that the System must have an operator-in-responsible-charge, either on staff or under contract, who is certified at the small water system level, or higher, by June 30, 2003.
15. In a letter dated September 1, 2009, the Division notified James A. Barber that – according to Division records – the System is not under the responsible charge of a certified operator and requested that James A. Barber respond by September 30, 2009.

16. On March 1, 2011, a Division representative conducted a sanitary survey of the System, pursuant to the Division's authority under § 25-1.5-204, C.R.S. and 5 CCR 1003-1, § 1.7 and Article 11, to determine the System's compliance with the *Colorado Primary Drinking Water Regulations* (5 CCR 1003-1) and with the *Water and Wastewater Facility Operators Certification Requirements* (5 CCR 1003-2).
17. In a letter reporting the results of the sanitary survey, dated March 31, 2011 and addressed to James A. Barber, the Division representative notified James A. Barber that the System did not have a certified operator-in-responsible-charge at the time of the sanitary survey. The Division representative requested that James A. Barber provide a written response by May 15, 2011, outlining the course of action that has or will be taken and the date by which the System proposes to correct the significant deficiencies and/or violations identified during the sanitary survey, including the certified operator requirement.
18. Division records to-date establish that James A. Barber has failed to provide the Division with information or documents demonstrating that the System is operated under the direct supervision of an operator-in-responsible-charge, certified in a classification equivalent to or higher than a Class S Water classification, or the Class D Water Treatment and Class 1 Water Distribution certifications.
19. James A. Barber's failure to operate his water treatment facility under the supervision of a certified operator with the proper classification constitutes violation(s) of § 25-9-110(2)(a), C.R.S., and 5 CCR 1003-2, § 100.18.1(a) and § 100.18.5.
20. James A. Barber's failure to operate his water distribution system under the supervision of a certified operator with the proper classification constitutes violation(s) of § 25-9-110(2)(a), C.R.S., and 5 CCR 1003-2, § 100.18.1(a) and § 100.18.5.

REQUIRED ACTION

The Division hereby orders James A. Barber to comply with the following specific terms and conditions of this Operator Certification Notice of Violation.

21. Within twenty (20) calendar days from the date of this notice of violation, James A. Barber shall retain an operator-in-responsible-charge certified in a classification equivalent to or higher than the classification of the System as specified in the *Water and Wastewater Facility Operators Certification Requirements*, 5 CCR 1003-2.
22. Within forty-five (45) calendar days from the date of this notice of violation, James A. Barber shall submit to the Division the information specified in 5 CCR 1003-2, § 100.18.4(a), documenting that the System is being operated under the supervision of an operator with the proper certification(s). The attached Contact Information form may be used to report the required information. (*Please note that the System's classification may change upon completion of System improvements.*)

NOTICES AND SUBMITTALS

23. For all documents, plans, records, reports and replies required to be submitted by this Operator Certification Notice of Violation, James A. 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-B2-CAS
Compliance Assurance Section / DW Enforcement Unit
Attention: Erica Kannely
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Email: erica.kannely@state.co.us
Fax: (303) 758-1398

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

24. For any person submitting documents, pursuant to this Operator Certification Notice of Violation, that person shall make the following certification with each submittal:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

POTENTIAL CIVIL PENALTIES

25. You are also advised that any owner of a water treatment facility, a domestic or industrial wastewater treatment facility, a wastewater collection system, or a water distribution system in the state of Colorado who violates the Act at § 25-9-110(2), C.R.S., shall be subject to a civil penalty of not more than three hundred dollars (\$300) per day for each day during which such violation occurs. By virtue of issuing this Operator Certification Notice of Violation, the Department has not waived its right to bring an action for civil penalties under the Act at § 25-9-110(5), C.R.S., and may bring such action in the future.

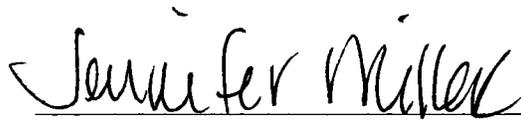
OBLIGATION TO ANSWER AND REQUEST FOR HEARING

26. Pursuant to the Act at § 25-9-110(3), C.R.S., you are required to submit to the Division an answer to each alleged violation. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

27. Pursuant to the Act at § 25-9-110(4), C.R.S., and 5 CCR 1003-2, § 100.21.1, an alleged violator of the Act at § 25-9-110(2)(a), C.R.S., may request a public hearing to contest the contents of this Notice of Violation. Such request shall be filed in writing with the Division no later than thirty (30) days after service of this action, and shall contain, at a minimum, the information specified in 5 CCR 1003-2, § 100.21.1(a-c). Hearings held pursuant to the Act at § 25-9-110(4), C.R.S., shall be conducted before the Colorado Water and Wastewater Facility Operators Certification Board in accordance with § 24-4-105, C.R.S. The filing of an answer does not constitute a request for hearing.

Issued at Denver, Colorado, this 11 day of September, 2012.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Jennifer Miller, Section Manager
Compliance Assurance Section
Water Quality Control Division

Contact Information

Revision? Actual date of changes described in this revision: _____

Signature: _____ Date: _____

System Physical Address: _____

City: _____ County: _____ State: _____ Zip: _____

System Phone: _____ Ext: _____ Fax: _____

E-mail: _____

Administrative Contact Name: _____

(The administrative contact is the primary contact person for all Department mail or other communications regarding drinking water compliance.)

Mailing Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Ext: _____ Fax: _____

E-mail: _____

Legally Responsible Water System Owner Name: _____

(The legal owner is an individual, corporation, partnership, association, state or political subdivision thereof, municipality, or other legal entity.)

Mailing Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Ext: _____ Fax: _____

E-mail: _____

Emergency Contact Name: _____

(The emergency contact should be someone that the Department can contact in an emergency if the administrative contact is unavailable.)

Mailing Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Ext: _____ Fax: _____

E-mail: _____

Operator in Responsible Charge Name: _____

(a certified operator designated by the owner to have ultimate responsibility for decisions regarding operational activities)

Operator ID#: _____ (not the certificate number)

Certification Type: Treatment Level: _____ Expiration Date: _____

Distribution Level: _____ Expiration Date: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Ext: _____ Fax: _____

E-mail: _____

Operator signature (if changing ORC): _____