

SPONSORED BY: COUNCIL MEMBER MARTIN

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-16  
Series of 2007

\_\_\_\_\_  
Series of 2007

A RESOLUTION APPROVING THE COMPLIANCE ORDER ON CONSENT BETWEEN THE CITY OF NORTHGLENN AND THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT THROUGH THE WATER QUALITY CONTROL DIVISION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Compliance Order on Consent marked as **Exhibit A**, and attached hereto, between the City of Northglenn and the Colorado Department of Public Health and Environment through the Water Quality Control Division, is hereby approved, and the Mayor is authorized to execute the Compliance Order on Consent on behalf of the City Council of the City of Northglenn.

DATED at Northglenn, Colorado, this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
KATHLEEN M. NOVAK  
Mayor

ATTEST:

\_\_\_\_\_  
DIANA L. LENTZ, CMC  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
COREY Y. HOFFMANN  
City Attorney



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

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**COMPLIANCE ORDER ON CONSENT**

**NUMBER: MC-07XXXX-1**

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**IN THE MATTER OF:     CITY OF NORTHGLENN  
                                  WELD COUNTY, COLORADO**

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The Colorado Department of Public Health and Environment (“Department”), through the Water Quality Control Division (“Division”), issues this Compliance Order on Consent (“Consent Order”), pursuant to the Division’s authority under §25-8-605, C.R.S. of the Colorado Water Quality Control Act (“the Act”) §§ 25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of the City of Northglenn (“Northglenn”). The Division and Northglenn may be referred to collectively as “the Parties.”

**STATEMENT OF PURPOSE**

1. The mutual objectives of the Parties in entering into this Consent Order are:
2. To resolve the violation of the Act cited herein by the Division and all violations of the Act associated with construction of the interceptor subject of Site Application Approval No. 4853.

**DIVISION’S FINDINGS OF FACT AND DETERMINATION OF VIOLATION**

3. Based upon the Division’s investigation into and review of the compliance issues identified herein, and in accordance with §25-8-605, C.R.S., the Division has made the following determinations regarding Northglenn, the Facility and Northglenn’s compliance with the Act and its implementing control regulations.
4. At all times relevant to the violation cited herein, Northglenn was a municipality as defined by §31-1-101(6), C.R.S.
5. Northglenn is a “person” as defined by §25-8-103(13), C.R.S.

6. Northglenn owns and operates a “domestic wastewater treatment works” as defined by §25-8-103(5), C.R.S. The domestic wastewater treatment works is located in the West ½, Section 36, Township 1 North, Range 68 West, in Weld County, Colorado.
7. Via letter dated August 25, 2005, the Division issued Site Application Approval No. 4806 for expansion of the treatment aspects of the domestic wastewater treatment works owned by Northglenn. The August 25, 2005 letter notified Northglenn that the Big Dry Creek Pipeline (the “Pipeline”) was not part of Site Application Approval No. 4806 and that a site application for the Pipeline must be submitted to and approved by the Division prior to construction of the Pipeline.
8. On April 13, 2006, a representative of the Division observed that construction of the Pipeline was in progress at Baseline Road between York Street and Colorado Boulevard, in Northglenn, Colorado.
9. Division records establish that, as of April 24, 2006, Northglenn did not have Site Application Approval from the Division for construction of the Pipeline.
10. Northglenn’s failure to obtain Site Application Approval from the Division prior to initiating construction of the Pipeline is a violation of Section 25-8-702(1), C.R.S., which states in part “No person shall commence the construction of any domestic wastewater treatment works or the enlargement of the capacity of an existing domestic wastewater treatment works, unless the site location and the design for the construction or expansion have been approved by the division.” In §25-8-103(5), C.R.S. the term “domestic wastewater treatment works” also includes appurtenances to such system or facility such as outfall sewers and pumping stations, and to equipment related to such appurtenances.

### **ORDER AND AGREEMENT**

11. Based on the foregoing factual and legal determinations, pursuant to its authority under §25-8-605, C.R.S., and in satisfaction of the civil penalties associated with the violation cited herein, the Division orders Northglenn to comply with all provisions of this Consent Order, including all requirements set forth below.
12. Northglenn agrees to the terms and conditions of this Consent Order. Northglenn agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§ 25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. Northglenn also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Northglenn against the Division:
  - a. The issuance of this Consent Order;
  - b. The factual and legal determinations made by the Division herein; and
  - c. The Division’s authority to bring, or the court’s jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.
13. Notwithstanding the above, Northglenn does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Northglenn pursuant to this Consent Order shall not constitute evidence of fault by Northglenn with respect to the conditions of the Facility.

### **CIVIL PENALTY**

14. Based upon the application of the Division's Civil Penalty Policy (May 1, 1993), and consistent with Departmental policies for violations of the Act, Northglenn shall pay Four Thousand Five Hundred and Ten Dollars (\$4,510.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the Four Thousand Five Hundred and Ten Dollar (\$4,510.00) civil penalty for the above violation and Northglenn agrees to make the payment within thirty (30) calendar days of the issuance of a Penalty Order by the Executive Director or his designee. 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:

Ginny Torrez  
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

### **SCOPE AND EFFECT OF CONSENT ORDER**

15. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the violation cited herein.
16. This Consent Order is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy", which includes a thirty-day public comment period. The Division and Northglenn each reserve the right to withdraw consent to this Consent Order if comments received during the thirty-day period result in any proposed modification to the Consent Order.
17. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or his designee imposes the civil penalty. Any violation of the provisions of this Consent Order by Northglenn, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.
18. Notwithstanding paragraph 12 above, the violation described in this Consent Order will constitute part of Northglenn's compliance history for purposes where such history is relevant. This includes considering the violation described above in assessing a penalty for any subsequent violations against Northglenn. Northglenn agrees not to challenge the use of the cited violation for any such purpose.

### **LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY**

19. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to the specific instance of violation cited herein.

The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties and/or injunctive relief.

20. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
21. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.
22. Upon the effective date of this Consent Order, Northglenn releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the violation of the Act specifically addressed herein.
23. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

### NOTICES

24. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Colorado Department of Public Health and Environment  
Water Quality Control Division / WQCD-CADM-B2  
Attention: Ginny Torrez  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530  
Telephone: 303.692.3612  
E-mail: [ginny.torrez@state.co.us](mailto:ginny.torrez@state.co.us)

For Northglenn:

David Allen, Director of Water and Environmental Services  
City of Northglenn  
P.O. Box 330061  
Northglenn, CO 80233

Copy to:

A. J. Krieger, City Manager  
City of Northglenn  
P.O. Box 330061  
Northglenn, CO 80233

**MODIFICATIONS**

25. This Consent Order may be modified only upon mutual written agreement of the Parties.

**NOTICE OF EFFECTIVE DATE**

26. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or his designee imposes the civil penalty. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

**BINDING EFFECT AND AUTHORIZATION TO SIGN**

27. This Consent Order is binding upon Northglenn and its officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. Northglenn agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, WATER QUALITY CONTROL DIVISION:**

\_\_\_\_\_ Date: \_\_\_\_\_  
Lori M. Gerzina, Section Manager  
Compliance Assurance and Data Management Section  
WATER QUALITY CONTROL DIVISION

**FOR CITY OF NORTHGLENN:**

\_\_\_\_\_ Date: \_\_\_\_\_  
Kathleen Novak, Mayor