

<p>DISTRICT COURT, EL PASO COUNTY, COLORADO</p> <p>270 S TEJON ST COLORADO SPRINGS, CO 80903</p> <hr/> <p>COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, WATER QUALITY CONTROL DIVISION</p> <p>Plaintiff,</p> <p>v.</p> <p>Kim L. Oliver, individually and d/b/a Elephant Rock Mobile Home Park, and Jenny L. Oliver, individually and d/b/a Elephant Rock Mobile Home Park</p> <p>Defendant(s).</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>JOHN W. SUTHERS, Attorney General TRISHA L. CULP, Assistant Attorney General* 1525 Sherman Street, 5th Floor Denver, CO 80203 (303) 866-6107 Registration Number: 35833 *Counsel of Record</p>	<p>Case No.:</p>
<p>COMPLAINT FOR INJUNCTION AND PENALTIES</p>	

Plaintiff, the State of Colorado, Department of Public Health and Environment, Water Quality Control Division ("the Department"), by Colorado Attorney General John Suthers and undersigned counsel, makes the following complaint:

JURISDICTION AND VENUE

1. Jurisdiction in the District Court for the El Paso County is proper pursuant to § 25-1-114.1(1) and (4), C.R.S. (2007).
2. Venue is proper in the District Court for El Paso County.

PARTIES

3. Plaintiff is an agency of the State of Colorado created by statute and authorized and responsible for administering and enforcing the laws of the State of Colorado pertaining to the protection of drinking water. § 25-1-102, 109(h), C.R.S. (2007).

4. The Department's principal place of business is 4300 Cherry Creek Drive South, Denver, Colorado.

5. Defendant Kim L. Oliver, individually and d/b/a Elephant Rock Mobile Home Park owns and/or operates a drinking water system, known as Elephant Rock Mobile Home Park, located at or near 720 Westward Lane #1, in or near the Town of Palmer Lake, El Paso County, Colorado, with his principal office located at 720 Westward Lane, Palmer Lake, Colorado 80133.

6. Defendant Jenny L. Oliver, individually and d/b/a Elephant Rock Mobile Home Park owns and/or operates a drinking water system, known as Elephant Rock Mobile Home Park, located at or near 720 Westward Lane #1, in or near the Town of Palmer Lake, El Paso County, Colorado, with her principal office located at 720 Westward Lane, Palmer Lake, Colorado 80133.

GENERAL ALLEGATIONS

7. Defendants are persons as defined by the State of Colorado's Primary Drinking Water Regulations, 5 CCR 1003-1, § 1.5.2(98).

8. Defendants provide drinking water to residents and/or tenants of Elephant Rock Mobile Home Park. The source of water is ground water as defined by 5 CCR 1003-1, §1.5.2(63).

9. Defendants are "suppliers of water" as defined by § 25-1.5-201(2), C.R.S. 2007 and 5 CCR 1003-1, §1.5.2 (128).

10. Defendants provide 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 serve at least twenty-five (25) year-round residents.

11. Defendants own and/or operate a "public water system" as defined by § 25-1.5-201(1) and 5 CCR 1003-1, §1.5.2(107).

12. Defendants own and/or operate a “community water system” as defined by 5 CCR 1003-1, §1.5.2(15).

13. Defendants’ public water system has been assigned Public Water System Identification Number (“PWSID”) #CO-0121200 by the Department (“the System”).

14. Defendants are subject to the State of Colorado’s laws and regulations pertaining to drinking water, including the Primary Drinking Water Regulations, 5 CCR 1003-1, which were adopted pursuant to § 25-1.5-202.

15. The Primary Drinking Water Regulations require the Defendants to prepare, certify, and deliver annual Consumer Confidence Reports and to conduct monitoring of the System.

16. On February 8, 2006, the Department issued Enforcement Order No. DC-060208-2 to Tina and Kim Oliver d/b/a Elephant Rock Mobile Home Park for failure to prepare, certify, and/or deliver the calendar year 2004 Consumer Confidence Report. Enforcement Order No. DC-060208-2 is attached hereto and incorporated herein by reference as Exhibit 1.

17. Defendants failed to comply with the February 8, 2006 Enforcement Order.

18. On April 11, 2007, the Department issued Enforcement Order No. DC-070410-1 to Tina and Kim Oliver d/b/a Elephant Rock Mobile Home Park for failure to prepare, certify, and/or deliver the calendar year 2005 Consumer Confidence Report and assessed an administrative penalty in the amount of \$375.00. Enforcement Order No. DC-070410-1 is attached hereto and incorporated herein by reference as Exhibit 2.

19. Defendants failed to comply with the April 11, 2007 Enforcement Order.

20. On September 5, 2007, the Department issued Enforcement Order No. DC-070831-7 to Tina and Kim Oliver d/b/a Elephant Rock Mobile Home Park for failure to monitor for Total Trihalomethanes and Haloacetic Acids (five) and Nitrate, failure to monitor and/or report for Reduced Tap Water Lead and Copper, and for failure to report Residual Disinfection Concentration, and assessed an administrative penalty in the amount of \$1,135.00. Enforcement Order No. DC-070831-7 is attached hereto and incorporated herein by reference as Exhibit 3.

21. Defendants failed to comply with the September 5, 2007 Enforcement Order.

22. Defendants are subject to the State of Colorado’s laws and regulations pertaining to water treatment plant operators, including the Water and Wastewater Facility Operators

Certification Requirements, 5 CCR 1003-2, Regulation 100, which were adopted pursuant to COLO. REV. STAT. § 25-9-101 et seq.

23. On July 13, 2007, the Department issued a Compliance Advisory and Violation Notice No. OP-VN W-07-0307 to the Defendants for failure to place the System under the direct supervision of an operator certified at or above the classification level of the facility.

24. Defendants failed to comply with the July 13, 2007 Compliance Advisory and Violation Notice.

25. COLO. REV. STAT. § 25-1-114.1 authorizes the Department to request that the attorney general “bring a suit for a temporary restraining order or a preliminary or permanent injunction to prevent or abate any violation of a minimum general sanitary standard or regulation adopted pursuant to section 25-1.5-202.” This statutory section further provides that “[a]ny person who violates any minimum general sanitary standard and regulation...or any final enforcement order issued by the department, shall be subject to an administrative penalty as follows...[f]or 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. COLO. REV. STAT. § 25-1-114.1(2.5)(a)”.

26. The Department need not meet the common law criteria for an injunction, because this action is authorized by special statute. *Lloyd A. Fry Roofing Co. v. Dep’t of Health*, 553 P.2d 800, 808 (Colo. 1976). Any violation of a regulatory scheme constitutes sufficient injury for injunctive relief. *Id.*

FIRST CLAIM FOR RELIEF

(For Injunction to Comply with Requirements of the Enforcement Order Nos. DC-060208-2, DC-070410-1, and DC-070831-7)

27. The allegations in paragraphs 1 through 26 above are re-alleged and incorporated herein by reference.

28. The Department’s issuance of the February 8, 2006 Enforcement Order No. DC-060208-2 was final agency action.

29. The Department’s issuance of the April 11, 2007 Enforcement Order No. DC-070410-1 was final agency action.

30. The Department’s issuance of the September 5, 2007 Enforcement Order No. DC-070831-7 was final agency action.

31. Final agency action is subject to judicial review under COLO. REV. STAT. § 24-4-106.

32. Defendants did not appeal the February 8, 2006, April 11, 2007, nor the September 5, 2007 Enforcement Orders.

33. Because Defendants did not appeal the Enforcement Orders, Defendants failed to exhaust their administrative remedies. *Colo. Dep't of Public Health and Env't v. Bethell*, 60 P.3d 779, 784-85 (Colo. Ct. App. 2002).

34. If the court finds no clear error by the Department, it shall affirm the agency action and issue the injunction. COLO. REV. STAT. § 24-4-106(2) and (7).

35. The Department seeks a mandatory injunction requiring compliance with all terms of Enforcement Order Nos. DC-060208-2, DC-070410-1, and DC-070831-7 within thirty days, unless otherwise specified, of the injunction issuance.

SECOND CLAIM FOR RELIEF

(For Injunction to Place Public Water System Under Supervision of Certified Operator)

36. The allegations in paragraphs 1 through 35 above are re-alleged and incorporated herein by reference.

37. Pursuant to § 25-9-110(2)(a), C.R.S. (2007) and 5 CCR 1003-2, §§ 100.1 and 100.21.1, every water treatment facility and water distribution facility must be under the supervision of an operator certified at or above the classification level of the facility/system.

38. Defendants' public water system has been classified by the Department as a "Small Water System" under 5 CCR 1003-2, §§ 100.2(21) and 100.19.1.

39. Defendants failed to place the public water system under the supervision of a certified operator at or above the "Small Water System" level.

40. Defendants' failure to place the public water system under the supervision of a certified operator at or above the "Small Water System" level constitutes a continuing violation of § 25-9-110(2)(a), C.R.S. (2007) and 5 CCR 1003-2, § 100.21.1.

41. On July 13, 2007, the Department issued a Compliance Advisory and Violation Notice No. OP-VN W-07-0307 to Kim and Jenny Oliver d/b/a Elephant Rock Mobile Home for failure to place the System under the direct supervision of a certified operator in violation of Colo. Rev. Stat. § 25-9-110 and 5 CCR 1003-2, §100.2(29).

42. Pursuant to Colo. Rev. Stat. § 25-9-110(4), an alleged violator of the certified operator statute may request a public hearing.

43. Defendants did not request a public hearing regarding the allegations contained in Compliance Advisory and Violation Notice No. OP-VN W-07-0307.

44. Final agency action is subject to judicial review under COLO. REV. STAT. § 24-4-106.

45. Because Defendants did not request a public hearing, Defendants failed to exhaust their administrative remedies. *Colo. Dep't of Public Health and Env't v. Bethell*, 60 P.3d 779, 784-85 (Colo. Ct. App. 2002).

46. If the court finds no clear error by the Department, it shall affirm the agency action and issue the injunction. COLO. REV. STAT. § 24-4-106(2) and (7).

47. The Department seeks a mandatory injunction requiring Defendants to place the System under the direct supervision of an operator certified at or above the "Small Water System" level.

THIRD CLAIM FOR RELIEF

(Inadequate Disinfectant Residual Analytical Method)

48. The allegations in paragraphs 1 through 47 above are re-alleged and incorporated herein by reference.

49. Pursuant to 5 CCR 1003-1, 10.7.3, every public water system shall measure residual disinfectant concentrations for free chlorine, combined chlorine (chloramines), and chlorine dioxide by an approved method (a chlorine test kit) in accordance with 5 CCR 1003-1, Table 10-26 for disinfectant residual compliance monitoring.

50. At the time of an October 10, 2008 inspection by the Department, Defendants had no chlorine test kit and failed to measure residual disinfectant concentrations.

51. Defendants failure to have an approved chlorine test kit and failure to measure residual disinfectant concentrations constitutes violation(s) of 5 CCR 1003-1, §10.7.3.

FOURTH CLAIM FOR RELIEF

(Failure to Develop, Implement, and Submit a Monitoring Plan and Bacteriological Sampling-Siting Plan)

52. The allegations in paragraphs 1 through 51 above are re-alleged and incorporated herein by reference.

53. Pursuant to 5 CCR 1003-1, § 1.12, every public water system shall develop and implement a monitoring plan, and shall submit two copies of the monitoring plan to the Department.

54. The monitoring plan must include the information specified in 5 CCR 1003-1, § 1.12.1, including a bacteriological sampling-siting plan.

55. Defendants failed to develop, implement and/or submit a monitoring plan.

56. Defendants' failure to develop, implement, and/or submit a monitoring plan, including a bacteriological sampling-siting plan, constitutes a violation of 5 CCR 1003-1, § 1.12.

FIFTH CLAIM FOR RELIEF

(Failure to Maintain Records)

57. The allegations in paragraphs 1 through 56 above are re-alleged and incorporated herein by reference.

58. Pursuant to 5 CCR 1003-1, §1.6.3(a), public water systems are required to retain microbiological analyses for not less than five (5) years and records of chemical analyses for not less than ten (10) years.

59. Defendants failed to retain microbiological analyses for at least five (5) years and chemical analyses for at least ten (10) years.

60. Pursuant to 5 CCR 1003-1, §1.6.3(b), for each violation of the Primary Drinking Water Regulations, the records of action taken by the public water system to correct the violation shall be kept for not less than three (3) years after the date on which the last action was taken with respect to the particular violation involved.

61. Defendants failed to retain records of corrective actions for each violation of the Primary Drinking Water Regulations that the system incurred for at least three (3) years.

62. Pursuant to 5 CCR 1003-1, §1.6.3(c), copies of any written reports, summaries, or communications relating to sanitary surveys of the system must be retained for not less than ten (10) years after completion of the sanitary survey.

63. Defendants failed to retain copies of any written reports, summaries, or communications relating to sanitary surveys for at least ten (10) years.

64. Pursuant to 5 CCR 1003-1, §1.6.3(e), copies of public notices and Consumer Confidence Reports issued pursuant to Article 9 and certifications made to the Department must be kept for not less than three (3) years after issuance.

65. Defendants failed to retain copies of any public notices and Consumer confidence Reports for at least three (3) years after issuance.

66. Defendants' failure to retain microbiological analyses for at least five (5) years and chemical analyses for at least ten (10) years constitutes a violation of 5 CCR 1003-1, §1.6.3(a), failure to retain sanitary survey summaries, reports, or communications for at least ten (10) years constitutes a violation of 5 CCR 1003-1, §1.6.3(c), failure to retain records of corrective actions for Primary Drinking Water Regulations violations for at least three (3) years constitutes a violation of 5 CCR 1003-1, §1.6.3(b), and failure to retain copies of public notices and Consumer Confidence Reports for at least three (3) years after issuance constitutes a violation of 5 CCR 1003-1, §1.6.3(e).

SIXTH CLAIM FOR RELIEF

(Failure to Prepare, Certify, and/or Deliver a Consumer Confidence Report)

67. The allegations in paragraphs 1 through 66 above are re-alleged and incorporated herein by reference.

68. Section 9.1, 5 CCR 1003-1 establishes the minimum requirements for the content of the Consumer Confidence Report, annual reports that community water systems must deliver to their customers. These reports must contain information on the quality of the water delivered by the systems and characterize the risks (if any) from exposure to contaminants detected in the drinking water in an accurate and understandable manner.

69. Pursuant to Sections 9.1.2(a) and 9.1.5(a), 5 CCR 1003-1, each community water system must mail or otherwise directly deliver one copy of the system's Consumer Confidence Report to each customer served by the System by July 1 of each calendar year. Each Consumer Confidence Report must contain system information, sampling results, and violation data collected during, or prior to, the previous calendar year.

70. Pursuant to Sections 9.1.2(d) and 9.1.5(c), 5 CCR 1003-1, each community water system must mail a copy of the System's Consumer Confidence Report to the Department and a certification that the Consumer Confidence Report has been distributed to customers and that

the information is correct and consistent with the compliance monitoring data previously submitted to the Department by July 1 of each calendar year.

71. Defendants failed to prepare, certify, and/or deliver the System's Consumer Confidence Report containing compliance data from calendar years 2004 and 2005, which violations were addressed in Enforcement Order Nos. DC-060208-2 and DC-070410-1 and which therefore is incorporated into the Department's First Claim for Relief.

72. Defendant failed to provide the Department with a copy of the System's Consumer Confidence Report containing compliance data from calendar years 2006 and 2007, due by July 1, 2007 and 2008, respectively, and has failed to provide the Department with the required certification that this report was distributed.

73. Defendant's failure to provide the Department with a copy of the System's Consumer Confidence Report containing compliance data from calendar years 2006 and 2007, and Defendant's failure to provide the Department with the required certification constitute ongoing violations of 5 CCR 1003-1, §§ 9.1.2(d) and 9.1.5(c).

74. Defendant failed to provide each customer served by the System with a copy of the System's Consumer Confidence Report for 2006 and 2007.

75. Defendant's failure to provide each customer served by the System with a copy of the System's Consumer Confidence Report for 2006 and 2007 constitutes an ongoing violation of 5 CCR 1003-1, §§ 9.1.2(a) and 9.1.5(a).

SEVENTH CLAIM FOR RELIEF

(Failure to Monitor and/or Report for Reduced Tap Water Monitoring for Lead and Copper Contaminants)

76. The allegations in paragraphs 1 through 75 above are re-alleged and incorporated herein by reference.

77. Pursuant to 5 CCR 1003-1, § 8.7(d)(4)(i), a system serving a population of less than or equal to 50,000 that meets the lead and copper action levels during each of two consecutive six-month monitoring periods may reduce the number of samples in accordance with 5 CCR 1003-1, § 8.7(c) and reduce the frequency of sampling to once per calendar year.

78. Defendants' System was subject to "Reduced Tap Water Monitoring" (annual monitoring).

79. Defendants failed to conduct required lead and copper tap water monitoring in 2004, 2005, and 2006, which violations were addressed in Enforcement Order No. DC-070831-7 and which therefore is incorporated into the Department's First Claim for Relief.

80. The *Official 2007 Drinking Water Monitoring Schedule* provided to the System by the Department outlines that the System was required to conduct lead and copper tap water monitoring between June 1, 2007 and September 30, 2007.

81. The *Official 2008 Drinking Water Monitoring Schedule* provided to the System by the Department outlines that the System was required to conduct lead and copper tap water monitoring between June 1, 2008 and September 30, 2008.

82. Pursuant to 5 CCR 1003-1, § 8.10(a)(1), the System is required to report the results of all lead and copper tap water samples within the first ten (10) days following the end of each applicable monitoring period.

83. The Defendants failed to provide the Department with the results of its reduced (annual) lead and copper tap water monitoring and analyses for calendar years 2007 and 2008.

84. Defendants' failure to submit the results of the System's lead and copper tap water monitoring to the Department constitutes violation(s) of 5 CCR 1003-1, § 8.10(a)(1).

85. Defendants failed to perform the lead and copper tap water monitoring for calendar years 2007 and 2008.

86. Defendants' failure to perform the lead and copper tap water monitoring during the identified period(s) constitutes violation(s) of 5 CCR 1003-1, § 8.7(d)(4)(i).

EIGHTH CLAIM FOR RELIEF

(Failure to Monitor and/or Report for Total Trihalomethanes and Haloacetic Acids (five))

87. The allegations in paragraphs 1 through 86 above are re-alleged and incorporated herein by reference.

88. Pursuant to 5 CCR 1003-1, §7.6.1(b)(1), all community water systems and non-transient, non-community water systems, unless otherwise noted, must comply with the total trihalomethanes ("TTHM") and haloacetic acids (five) ("HAA5") monitoring requirements of §7.6.

89. Pursuant to 5 CCR 1003-1, §7.6.3(b)(1), the System must monitor for TTHM and HAA5 at the following frequency and locations:

Type of System	Minimum Monitoring Frequency	Sample Location in the Distribution System
System using only groundwater not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons.	One sample per year per treatment plant during month of warmest water temperature.	Locations representing maximum residence time. If the sample (or average of annual samples, if more than one sample is taken) exceeds the MCL, the system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until the system meets criteria in paragraph (b)(1)(iv) of this section.

90. Defendants failed to conduct required monitoring for total trihalomethanes and haloacetic acids (five) in 2006, which violation was addressed in Enforcement Order No. DC-070831-7 and which therefore is incorporated into the Department’s First Claim for Relief.

91. The *Official 2007 Drinking Water Monitoring Schedule* provided to the System by the Department outlines that the System was required to monitor for TTHM and HAA5 during the month of August in calendar year 2007.

92. The *Official 2008 Drinking Water Monitoring Schedule* provided to the System by the Department outlines that the System was required to monitor for TTHM and HAA5 during the month of August in calendar year 2008.

93. Pursuant to 5 CCR 1003-1, §7.6.5(a), systems required to sample quarterly or more frequently must report to the Department within ten (10) days after the end of each quarter in which samples were collected, notwithstanding the provisions of 5 CCR 1003-1, §1.6.4. Systems required to sample less frequently than quarterly must report to the Department within ten (10) days after the end of each monitoring period in which samples were collected.

94. The System failed to monitor and/or submit results to the Department of its annual TTHM and HAA5 monitoring for calendar years 2007 and 2008.

95. Defendant’s failure to submit the results of the annual TTHM and HAA5 analysis to the Department constitutes violation(s) of 5 CCR 1003-1, §7.6.5(a).

96. Defendant’s failure to perform its annual TTHM and HAA5 analyses during the identified period constitutes violations of 5 CCR 1003-1, §§7.6.1(b)(1) and 7.6.3(b)(1).

NINTH CLAIM FOR RELIEF

(Failure to Monitor and/or Report for Volatile and Synthetic Organic Chemicals)

97. The allegations in paragraphs 1 through 96 above are re-alleged and incorporated herein by reference.

98. Pursuant to 5 CCR 1003-1, §§ 6.2.5(a) and 6.2.6(a), an owner and/or operator of a system must take a minimum of one volatile and synthetic organic chemical sample at every entry point to the distribution system after any application of treatment or in the distribution system at a point which is representative of each source after treatment.

99. Pursuant to 5 CCR 1003-1, § 6.2.3(e), the owner and/or operator of the system must monitor for volatile and synthetic organic chemicals at the time designated by the Department during each compliance period. Defendants' compliance period was January 1, 2005 through December 31, 2007.

100. Pursuant to 5 CCR 1003-1, § 1.6.4(a), the supplier of water shall report to the Department the results of their volatile and synthetic organic chemical monitoring within (a) the first ten (10) days following the month in which the result is received, or (b) the first ten (10) days following the end of the required monitoring period as stipulated by the Department, whichever of these is the soonest.

101. Defendants failed to provide the Department with the results of volatile and synthetic organic chemical monitoring during the compliance period of January 1, 2005 through December 31, 2007.

102. Defendants' failure to submit the results of the System's volatile and synthetic organic chemical monitoring to the Department constitutes violation(s) of 5 CCR 1003-1, § 1.6.4(a).

103. Defendants failed to conduct the volatile and synthetic organic chemical monitoring required for the compliance period of January 1, 2005 through December 31, 2007, which failure constitutes violation(s) of 5 CCR 1003-1, §§ 6.2.5(a) and 6.2.6(a).

TENTH CLAIM FOR RELIEF

(Failure to Monitor and/or Report for Inorganic Chemicals, Including Fluoride)

104. The allegations in paragraphs 1 through 103 above are re-alleged and incorporated herein by reference.

105. Pursuant to 5 CCR 1003-1, §6.1.5(a), community water systems shall conduct monitoring to determine compliance with the inorganic chemical maximum contaminant levels specified in 5 CCR 1003-1, §2.2.

106. Pursuant to 5 CCR 1003-1, §6.1.5(b)(1), the System must take a minimum of one inorganic chemical sample at every entry point to the distribution system, which is representative of each groundwater source after treatment.

107. Pursuant to 5 CCR 1003-1, §6.1.5(d)(1), the System must take one inorganic chemical sample at each sampling point during each compliance period. Defendant's compliance period was January 1, 2005 through December 31, 2007.

108. Pursuant to 5 CCR 1003-1, §6.1.5(j), the System must monitor for inorganic chemicals at the time designated by the Department during each compliance period.

109. The System failed to conduct inorganic chemical monitoring, including fluoride, during the compliance period of January 1, 2005 through December 31, 2007 and failed to provide the Department with the results of inorganic chemical monitoring during this compliance period.

110. Defendants' failure to submit the results of the System's routine inorganic chemical monitoring, including fluoride, to the Department constitutes violation(s) of 5 CCR 1003-1, §1.6.4(a).

111. Defendants' failure to perform the routine inorganic monitoring, including fluoride, during the identified period constitutes violation(s) of 5 CCR 1003-1, §6.1.5(a), §6.1.5(b)(1), §6.1.5(d)(1) and §6.1.5(j).

ELEVENTH CLAIM FOR RELIEF

(Failure to Monitor and/or Report for Radionuclides)

112. The allegations in paragraphs 1 through 111 above are re-alleged and incorporated herein by reference.

113. Pursuant to 5 CCR 1003-1, §6.3.2(a), all community water systems were required to conduct initial monitoring for gross alpha particle activity, radium-226, radium-228, and uranium to determine compliance with the radionuclide maximum contaminant

levels and maximum contaminant level goals specified in 5 CCR 1003-1, Table 2-7(1), (2), and (4) by December 31, 2007.

114. Pursuant to 5 CCR 1003-1, § 6.3.2(b), Systems were required to either submit sufficient historical monitoring data as specified in § 6.3.2(b)(2) or collect four consecutive quarterly samples at all sampling points before December 31, 2007.

115. Pursuant to 5 CCR 1003-1, §6.3.2(a)(1), the System must sample at every entry point to the distribution system, which is representative of all sources being used under normal operating conditions.

116. The System failed to submit sufficient historical monitoring data or collect four consecutive quarterly samples for radium-228 by December 31, 2007.

117. Defendants' failure to conduct initial monitoring or submit acceptable historical data for radium-228 to the Department by December 31, 2007 constitutes a violation(s) of 5 CCR 1003-1, §6.3.2.

118. In an effort to bring the System into compliance with the radionuclide monitoring requirements, and pursuant to 5 CCR 1003-1, § 6.3.4, the System was rescheduled to complete the initial monitoring for combined radium-226+228 during each quarter of 2008.

119. The System failed to monitor and/or report for combined radium-226+228 for each of the four quarters of 2008.

120. Defendants' failure to conduct monitoring for combined radium-226+228 during each quarter of 2008 constitutes violations of 5 CCR 1003-1, § 6.3.4.

TWELFTH CLAIM FOR RELIEF

(Failure to Develop, and Implement a Cross Connection Control Program)

121. The allegations in paragraphs 1 through 120 above are re-alleged and incorporated herein by reference.

122. Pursuant to 5 CCR 1003-1, § 12.1, every public water system shall have no uncontrolled cross-connections and shall protect the system from contamination by developing and implementing a cross connection control program.

123. The cross connection program must address the information specified in 5 CCR 1003-1, § 12.1(b) and (d).

124. Pursuant to 5 CCR 1003-1, § 12.1(c) and §1.6.3, every public water system shall retain cross connection program maintenance records to be available for inspection by Department personnel for a minimum of three years.

125. Defendants failed to develop, implement and/or maintain a cross connection program.

126. Defendants' failure to develop, implement, and/or maintain a cross connection program constitutes a violation of 5 CCR 1003-1, § 12.1 and §1.6.3.

THIRTEENTH CLAIM FOR RELIEF

(Penalties)

127. The allegations in paragraphs 1 through 126 above are re-alleged and incorporated herein by reference.

128. Defendants are liable to pay a penalty in an amount not to exceed \$1,000.00 per violation per day for each day during which these violations occur in accordance with C.R.S. § 25-1-114.1(2)(a).

RELIEF REQUESTED

WHEREFORE, for the foregoing reasons plaintiff prays that this court:

1. Enter an order for a permanent mandatory injunction requiring Defendant to immediately comply with the Colorado Primary Drinking Water Regulations, 5 CCR 1003-1, Articles 1 through 13.

2. Enter an order for a permanent mandatory injunction requiring Defendants to comply, within thirty days of issuance of the injunction unless otherwise specified, with the terms of Enforcement Order Nos. DC-060208-2, DC-070410-1, and DC-070831-7¹, including but not limited to:

¹ The dates in subsections a, d, e and h, below are adjusted from the dates in Enforcement Order Nos. DC-060208-2, DC-070410-1, and DC-070831-7 due to the timing of this Complaint. The reporting requirements and sampling tests that are the subject of those

a. Within fourteen (14) calendar days after issuance of the injunction, Defendants shall prepare, mail or otherwise directly deliver one copy of the 2007 Consumer Confidence Report that includes violations that occurred from 2004 through 2007 to each customer served by the System and provide the Department with a copy of the reports along with the required delivery certification within thirty (30) calendar days of the issuance of the injunction. At a minimum, the reports shall contain the information specified in 5 CCR 1003-1, § 9.1.

b. Defendants shall provide a written statement describing those actions that have been or will be taken to ensure that future Consumer Confidence Reports are prepared, certified and distributed as required by 5 CCR 1003-1, §9.1.

c. Within fourteen (14) calendar days after entry of the Court's Order, Defendants shall submit the results of any TTHM and HAA5 monitoring performed for calendar year 2006.

d. Defendants shall perform TTHM and HAA5 monitoring between July 1, 2009 and July 31, 2009. The TTHM and HAA5 sample(s) must be collected properly and analyzed by a Department certified laboratory in accordance with approved methods. Defendant shall provide the Department with the results of the TTHM and HAA5 monitoring within ten (10) calendar days of receipt of the results from the laboratory.

e. Because the Department collected a Nitrate sample from the system on October 10, 2008, Defendants shall perform Nitrate monitoring at each entry point to the distribution system (after treatment) in accordance with 5 CCR 1003-1, § 6.1.5 on or before July 1, 2009. Within ten (10) calendar days of receipt of the analytical results from a Department certified laboratory Defendants shall report the results of the monitoring to the Department in accordance with 5 CCR 1003-1, § 1.6.4(a).

f. Immediately initiate proper residual disinfection concentration reporting in accordance with 5 CCR 1003-1, §7.5, including, but not limited to, the following specific requirements: reporting on MRDL Form 2. The running annual average must be recalculated each quarter using the most recent twelve (12) months of data.

sections are time-sensitive, and in some cases were already completed by the Department or must be performed during certain months of the year. If the relief requested contained the same dates as in the Enforcement Orders, it would be impossible for the Defendants to comply. In those cases, the relief requested has been modified to ensure compliance with the subsequent compliance period.

g. Within fourteen (14) calendar days after entry of the Court's Order, Defendants shall submit the results of any lead and copper annual monitoring performed for calendar years 2004, 2005, and 2006.

h. Defendants shall collect and analyze lead and copper samples, from the appropriate number of locations (*5 for a system that serves less than 100 people*), between June 1, 2009 and September 30, 2009. Within ten (10) calendar days of receipt of the analytical results from a Department certified laboratory, Defendants shall report the results of the monitoring to the Department in accordance with 5 CCR 1003-1, §8.10(a)(1).

3. Enter an order for a permanent mandatory injunction requiring Defendants to place the System under the direct supervision of an operator certified at or above the "Small Water System" level.

4. Enter an order for a permanent mandatory injunction requiring Defendants to complete the following activities designed to ensure long-term compliance with the Department's drinking water laws, standards, regulations, and terms, within thirty (30) days of issuance of the injunction unless otherwise specified:

a. Defendants shall purchase and retain adequate test equipment to perform required process control testing, including but not limited to a chlorine test kit, which is required to monitor and maintain proper disinfection practices. Defendants shall submit to the Department, within thirty (30) days of the Court's order, verification of receipt of new monitoring equipment.

b. Within thirty (30) calendar days after entry of the Court's Order, Defendants shall measure and analyze residual disinfectant concentrations at the appropriate locations in accordance with 5 CCR 1003-1, §10.7.3. Defendants shall provide the Department with the results of the residual disinfectant concentrations monitoring within ten (10) calendar days of obtaining the results.

c. Within sixty (60) calendar days after entry of the Court's Order, Defendants shall develop, implement, and submit a Monitoring Plan to the Department, which Monitoring Plan shall include a Bacteriological Sampling-Siting Plan.

d. Defendants shall develop and implement a record-keeping system in compliance with the requirements of 5 CCR 1003-1, §1.6.3, which shall include but not be limited to the retention of microbiological analyses for at least five (5) years, chemical analyses and sanitary survey summaries, reports, or communications for at least ten (10) years, records of corrective actions for each violation of the Primary Drinking Water Regulations the system incurred for at least three (3) years and copies of public notices and

Consumer Confidence Reports and certifications made to the Department for at least three (3) years after issuance. Within thirty (30) calendar days after entry of the Court's Order, Defendants shall provide to the Department a description of and a written certification that they have developed and implemented a record-keeping system in compliance with the requirements of 5 CCR 1003-1, § 1.6.3.

e. Defendants shall initiate efforts to comply with the Consumer Confidence Report requirements in the future, beginning in but not limited to the Consumer Confidence Report requirements for calendar year 2007. The System shall submit their calendar year 2007 CCR that includes violations from 2004 through 2007 to the Department within thirty (30) days after entry of the Court's Order. At a minimum, the 2007 CCR and all future reports shall contain the information specified in 5 CCR 1003-1, §9.1.

f. Lead and Copper annual monitoring:

1. Within fourteen (14) calendar days after entry of the Court's Order, Defendants shall submit the results of any lead and copper monitoring performed for calendar years 2007 and 2008.
2. Defendants shall collect and analyze lead and copper samples, from the appropriate number of locations (*5 for a system that serves less than 100 people*), between June 1, 2009 and September 30, 2009.

g. Total Trihalomethanes and Haloacetic Acids (five)

1. Within fourteen (14) calendar days after entry of the Court's Order, Defendants shall submit the results of any TTHM and HAA5 monitoring performed for calendar years 2007 and 2008.
2. Defendants shall perform TTHM and HAA5 monitoring between July 1, 2009 and July 31, 2009. The TTHM and HAA5 sample(s) must be collected properly and analyzed by a Department certified laboratory in accordance with approved methods. Defendants shall provide the Department with the results of the TTHM and HAA5 monitoring within ten (10) calendar days of receipt of the results from the laboratory.

h. Volatile and synthetic organic chemicals monitoring:

1. Within fourteen (14) calendar days after entry of the Court's Order, Defendants shall submit the results of any volatile and synthetic

organic chemicals monitoring performed during the compliance period of calendar years 2005 through 2007.

2. If the System has not performed the volatile and synthetic organic chemicals monitoring for the compliance period of calendar years 2008 through 2010, Defendants shall conduct volatile and synthetic organic chemicals analyses on a representative water sample within thirty (30) calendar days after entry of the Court's Order. The volatile and synthetic organic chemicals samples must be properly collected and analyzed by a Department certified laboratory in accordance with approved methods. Defendant shall provide the Department with the results of the volatile and synthetic organic chemicals analyses within ten (10) calendar days of receipt of the results from the laboratory.

i. Inorganic chemicals monitoring:

1. Within fourteen (14) calendar days after entry of the Court's Order, Defendants shall submit the results of any inorganic chemicals monitoring performed on the system's distributed water for the compliance period of January 1, 2005 to December 31, 2007.
2. If the System has not performed the inorganic chemicals monitoring for the compliance period of January 1, 2008 to December 31, 2010, Defendants shall conduct an inorganic chemicals analysis on a representative water sample(s), taken from each entry point to the distribution system and that is representative of each groundwater source after treatment, within thirty (30) calendar days after entry of the Court's Order. The inorganic chemical sample(s) must be properly collected and analyzed by a Department certified laboratory in accordance with approved methods and cited detection limits. Defendants shall provide the Department with the results of the inorganic chemical analysis within ten (10) calendar days of receipt of the results from the laboratory.

j. Defendants shall collect four consecutive quarterly samples of combined radium-226+228 at all sampling points specified in 5 CCR 1003-1, § 6.3.2 by December 31, 2009, or as soon thereafter as reasonable considering the timing of the Court's order.

k. Within sixty (60) calendar days after entry of the Court's Order, Defendants shall develop, implement and maintain a cross connection control program. A copy of the cross connection control program's records must be available for inspection by

the Department upon request for a minimum of three years. The System shall submit to the Department within the aforementioned time period above a written description of how the System's Cross-Connection Control Program is being implemented.

5. Assess penalties against Defendant in an amount to be determined.
6. Grant such other relief as the Court deems just and proper.

DATED this 15th day of January, 2009.

JOHN W. SUTHERS
Attorney General

/s/Trisha L. Culp
TRISHA L. CULP, 35833*
Assistant Attorney General
Natural Resources and Environment Section

Attorneys for Plaintiff

1525 Sherman Street, 5th Floor
Denver, Colorado 80203
Telephone: (303) 866-6107
FAX: (303) 866-3558
*Counsel of Record

PLAINTIFF'S ADDRESS:
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive So.
Denver, Colo. 80222-1530