STATE OF COLORADO

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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

January 20, 2009

Certified Mail Number: 7007 0220 0001 0160 0035

PWSID# CO-0144032
Attention: Mr. Michael J. Schroeder, RA
Wayward Wind MHP LLC
4700 S. Syracuse Street, Suite 1000
Denver, CO 80237

RE: Service of Drinking Water Enforcement Order, Number: DC-090120-4

Dear Mr. Michael J. Schroeder:

Wayward Wind MHP LLC 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 you have violated the *Colorado Primary Drinking Water Regulations* (the "Regulations") as described in the enclosed Order.

As a recipient of an enforcement order Wayward Wind MHP LLC 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 must be filed in writing with the Department within thirty (30) calendar days after service of the Order. Hearings on enforcement orders shall be held in accordance with applicable provisions of the State Administrative Procedure Act, §§24-4-101 through 24-4-108, C.R.S.

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 Wayward Wind MHP LLC desire to informally discuss this matter with the Department or if Wayward Wind MHP LLC has any questions regarding the Order, please don't hesitate to contact Jackie Whelan at (303) 692-3617 or by electronic mail at jackie.whelan@state.co.us.

Sincerely,

Kristi-Raye Beaudin

Kristi-Raye Beaudin, Legal Assistant
Compliance Assurance and Data Management Section
WATER QUALITY CONTROL DIVISION

Enclosure

cc: Northeast Colorado Health Department
Compliance Monitor / Drinking Water File

ec: Dennis Pontius, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Betsy Beaver, Facility Operators Program, CDPHE
Shawn McCaffrey, EPA Region VIII
Jeff Lawerence, Director Consumer Protection Division, CDPHE
Carolyn Schachterle, OPA

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

WATER QUALITY CONTROL DIVISION

ENFORCEMENT ORDER **NUMBER: DC-090120-4**

IN THE MATTER OF: WAYWARD WIND MHP LLC
PUBLIC WATER SYSTEM IDENTIFICATION NUMBER: CO-0144032
MORGAN 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 has been delegated to 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. Wayward Wind MHP LLC owns and/or operates a drinking water system located at or near the intersection of US Highway 34 and Interstate 76 approximately five (5) miles east of the City of Fort Morgan, Morgan County, Colorado (the "System").

2. Wayward Wind MHP LLC is a person as defined by 5 CCR 1003-1, §1.5.2(98).

3. Wayward Wind MHP LLC 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-0144032.

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. Wayward Wind MHP LLC 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).

First Violation
(Failure to Comply with the Maximum Contaminant Level for Uranium)

9. Pursuant to 5 CCR 1003-1, §2.6, Table 2-7(2), the maximum contaminant level for uranium is 30 micrograms per liter (µg/L).

10. Pursuant to 5 CCR 1003-1, §6.3.5, compliance with the maximum contaminant level is determined by a running annual average at each sampling point. If a system does not collect all required samples, compliance is based on the running average of the samples collected. If the average of any sampling point is greater than the maximum contaminant level, then the system is out of compliance with the maximum contaminant level.

11. In a letter dated December 8, 2003, the Division advised the System that it would be required to conduct the initial four (4) quarters sampling between January 1, 2004, and December 31, 2007, for uranium under the 2000 changes to the Radionuclide Rule.

12. A review of the radiological monitoring data from March 31, 2006, to present, provided to the Department by the System, establishes that the running annual average of samples obtained by the System at quarterly intervals exceeds the maximum contaminant level for uranium:

Uranium (in micrograms per liter (µg/L)) at Sample Point 002				
Quarter 1	**Quarter 2**	**Quarter 3**	**Quarter 4**	**Running Annual Average**
3/31/06 35	4/3/06 35	Did not Sample	10/20/06 39	**36**
4/3/06 35	Did not Sample	10/20/06 39	3/31/07 40	**38**
Did not Sample	10/20/06 39	3/31/07 40	4/2/07 40	**40**
10/20/06 39	3/31/07 40	4/2/07 40	9/30/07 52	**43**
3/31/07 40	4/2/07 40	9/30/07 52	10/1/07 52 10/24/07 49	**46**
4/2/07 40	9/30/07 52	10/1/07 52 10/24/07 49	3/31/08 39	**45**

Uranium (in micrograms per liter (µg/L)) at Sample Point 002				
Quarter 1	**Quarter 2**	**Quarter 3**	**Quarter 4**	**Running Annual Average**
9/30/07 52	10/1/07 52 10/24/07 49	3/31/08 39	4/1/08 39	**45**
10/1/07 52 10/24/07 49	3/31/08 39	4/1/08 39	9/30/08 50	**45**
3/31/08 39	4/1/08 39	9/30/08 50	101/08 50	**45**

13. Wayward Wind MHP LLC's failure to comply with the maximum contaminant level for uranium constitutes violation(s) of 5 CCR 1003-1, §2.6, Table 2-7(2).

COMPLIANCE ORDER

Based upon the foregoing factual and legal determinations and pursuant to 5 CCR 1003-1, §1.6.7, Wayward Wind MHP LLC is hereby ordered to:

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

Further, the Division hereby orders Wayward Wind MHP LLC to comply with the following specific terms and conditions of this Order.

15. In order to ensure long-term compliance with the maximum contaminant levels for radionuclides, specifically including uranium, Wayward Wind MHP LLC shall evaluate and upgrade, as needed, the System's water sources and/or treatment process(es) in accordance with the following schedule:
    a. By April 30, 2009, retain a qualified Professional Engineer (licensed in Colorado and experienced in drinking water systems) to evaluate and recommend radiological treatment technologies or alternate water sources to Wayward Wind MHP LLC to ensure compliance with the maximum contaminant level for uranium.
    b. By October 31, 2009, submit for Department review and comment a finalized Preliminary Engineering Report for system improvements to comply with the maximum contaminant levels for radionuclides specifically including uranium.
        i. If an alternate water source is proposed, submit for Department review and comment a detailed description of the alternate water source along with a copy of the laboratory analyses supporting that the alternate water source is suitable.

ii. The Preliminary Engineering Report (if applicable) submittal package must be developed consistent with the *Colorado Drinking Water Preliminary Engineering Report Guidance & Review Checklist Form.* (see http://www.cdphe.state.co.us/wq/opa/pdf/19_CPERGuideChecklistDW.pdf)

iii. The Preliminary Engineering Report (if applicable) must clearly identify the specific treatment technology Wayward Wind MHP LLC will use to ensure compliance with the maximum contaminant levels for radionuclides, specifically including uranium.

iv. The Preliminary Engineering Report (if applicable) must include a process flow schematic of the distribution system from wellheads to points of use, including flow rates, treatment facilities, storage tanks and all service connections supplied by the wells. Alternative treatment locations for the selected treatment process or processes must be evaluated with a recommended location selection. The process flow schematic information and evaluation must be included to ensure all water from the System is treated.

v. The Preliminary Engineering Report (if applicable) must include a proposal for management of residuals from the treatment technology selected.

vi. The Preliminary Engineering Report submittal package must include design calculations showing the proposed treatment system is properly sized and chlorine contact times can be met for expected flow rates.

{Please note that, prior to construction, the Department must give final approval to any modifications to the System's water source or treatment process. The Department will not perform a detailed review and final approval of any proposed modifications until the final design plans and specifications have been received pursuant to paragraph 15(d) below.}

c. By February 28, 2010, submit for Department review and comment the final Design Report for Wayward Wind MHP LLC System improvements to comply with the maximum contaminant levels for radionuclides, specifically including uranium.

d. By August 1, 2010, 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.*

e. The Final Design Plans and Specifications submittal package must include specifications for treatment equipment and/or chemical additives that come in contact with the water that indicate ANSI standards 60 and 61 are met (NSF certification).

f. By October 15, 2011, complete construction/implementation of the Department approved System improvements to ensure long-term compliance with the maximum contaminant levels for radionuclides, specifically including uranium.

g. By December 1, 2011, submit the Professional Engineer's Certification that the System improvements to comply with the maximum contaminant levels for radionuclides specifically including uranium were constructed/installed as approved by the Department.

16. By no later than March 31, 2009, Wayward Wind MHP LLC shall complete an evaluation to determine appropriate interim measures to ensure that the System is providing the best possible quality of water available until the System implements improvements to ensure long-term compliance with the radiological maximum contaminant levels. Wayward Wind MHP LLC shall submit a written report of the results of this evaluation to the Division for review and comment. Implementation of the interim

measures identified by Wayward Wind MHP LLC shall become a condition of this Enforcement Order unless notified by the Division, in writing, that alternate or additional interim measures are appropriate. If the Division imposes alternate or additional interim measures, they shall also become a condition of this Enforcement Order.

17. Beginning January 1, 2009, Wayward Wind MHP LLC is authorized to cease performing quarterly uranium monitoring. In the alternative, Wayward Wind MHP LLC shall perform annual uranium monitoring consisting of collection of a single sample from each entry point to the distribution system one time per calendar year. The radiological samples must be properly collected and analyzed by a Department certified laboratory in accordance with approved methods. Wayward Wind MHP LLC shall provide the Department with the results of the radiological analyses within ten (10) calendar days of the end of the monitoring period.

18. By no later than March 31, 2009, and every three (3) months thereafter, Wayward Wind MHP LLC shall issue a public notice in accordance with 5 CCR 1003-1, Article 9.2 for each radiological maximum contaminant level violation identified in this Enforcement Order until Wayward Wind MHP LLC has effectively addressed and returned to compliance with the radiological maximum contaminant levels outlined in 5 CCR 1003-1, §2.6, Table 2-7. Within ten (10) calendar days of completion of each required public notification, Wayward Wind MHP LLC shall submit to the Department, along with the mandatory Public Notification certification of delivery, a representative copy of notices distributed, published, posted, and/or made available to the persons served by the system and/or to the media. *(Attached are copies of procedures and forms to assist you with the public notification requirements.)*

19. Wayward Wind MHP LLC shall submit "System Improvement Project - Progress Reports" to the Division every three (3) months. The first report shall be submitted to the Division by March 31, 2009. 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. Each report shall also detail any public notification provided during that period. These reports shall be required until the System has effectively addressed and returned to compliance with the radiological maximum contaminant levels outlined in 5 CCR 1003-1, §2.6, Table 2-7.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this order, Wayward Wind MHP LLC 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-WQP-B2
Compliance Assurance/ Enforcement Unit
Attention: Jackie Whelan
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Email: jackie.whelan@state.co.us

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

Pursuant to 5 CCR 1003-1, §1.6.4(e), all reports, notices, summaries, and certifications required to be submitted to the Department by the public water system must bear the original signature of the owner or the owner's authorized representative.

NOTICE OF COMPLETION

Wayward Wind MHP LLC 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 Wayward Wind MHP LLC 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

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

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

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 shall state the grounds upon which the order is contested and state the amount of time the recipient estimates will be required for the hearing. 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.

ADDITIONAL ACTION

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.

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 20th day of January, 2009.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Lori M. Gerzina

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