

# STATE OF COLORADO

Bill Ritter, Jr., Governor  
James B. Martin, Executive Director

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

February 9, 2009

Certified Mail Number: 7007 0220 0001 0160 5887

PWSID# CO-0210001

Climax Molybdenum Company

(A Subsidiary of Freeport-McMoran Copper & Gold Inc.)

System Name: Climax Henderson Mine

Corporation Service Company, RA

1560 Broadway, Suite 2090

Denver, CO 80202

**RE: Service of Drinking Water Enforcement Order, Number: DN-090209-1**

Dear Sir or Madam:

Climax Molybdenum Company (A Subsidiary of Freeport-McMoran Copper & Gold Inc.) 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 Climax Molybdenum Company (A Subsidiary of Freeport-McMoran Copper & Gold Inc.) 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 Climax Molybdenum Company (A Subsidiary of Freeport-McMoran Copper & Gold Inc.) desire to informally discuss this matter with the Department or if Climax Molybdenum Company (A Subsidiary of Freeport-McMoran Copper & Gold Inc.) has any questions regarding the Order, please don't hesitate to contact Scott Klarich at (303) 692-3564 or by electronic mail at [scott.klarich@state.co.us](mailto:scott.klarich@state.co.us).

Sincerely,



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

Enclosure

- cc: Clear Creek County Environmental Health Department  
Compliance Monitor / Drinking Water File
- ec: Doug Camrud, Engineering Section, CDPHE  
Dick Parachini, Watershed Program, CDPHE  
Betsy Beaver, Facility Operators Program, CDPHE  
Shawn McCaffrey, EPA Region VIII  
Jeff Lawrence, Director Consumer Protection Division, CDPHE  
Carolyn Schachterle, OPA



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

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**ENFORCEMENT ORDER**

**NUMBER: DN-090209-1**

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**IN THE MATTER OF: CLIMAX MOLYBDENUM COMPANY**  
**(A SUBSIDIARY OF FREEPORT-MCMORAN COPPER & GOLD INC.)**  
**SYSTEM NAME: CLIMAX HENDERSON MINE**  
**PUBLIC WATER SYSTEM IDENTIFICATION NUMBER: CO-0210001**  
**CLEAR CREEK COUNTY, COLORADO**

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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. Climax Molybdenum Company (A Subsidiary of Freeport-McMoRan Copper & Gold Inc.) ("Climax Henderson Mine") owns and/or operates a drinking water system, known as, Climax Henderson Mine located on the east side of the Continental Divide, fifty miles west of Denver in Clear Creek County, Colorado (the "System").
2. Climax Henderson Mine is a person(s) as defined by 5 CCR 1003-1, §1.5.2(98).
3. Climax Henderson Mine 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-0210001.
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. Climax Henderson Mine provides piped water for human consumption from the System to at least twenty-five (25) of the same persons over six (6) months per year. The System is therefore classified as a “non-transient, non-community water system” as defined by 5 CCR 1003-1, §1.5.2(94).
8. The System’s source of water is surface water as defined by 5 CCR 1003-1, §1.5.2(129).

**First Violation**

**(Failure to Sample During Month of Warmest Temperature for Total Trihalomethanes and Haloacetic Acids (five))**

9. 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 5 CCR 1003-1, §7.6.
10. Pursuant to 5 CCR 1003-1, §7.6.3(b)(1), the System must monitor for TTHM and HAA5 at the following frequency, time and location(s):

Surface water or groundwater under the direct influence of surface water system serving fewer than 500 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.
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11. The *Official 2008 Drinking Water Monitoring Schedule* provided to the System by the Department outlined that the System was required to monitor for TTHM and HAA5 in the distribution system (monitoring point DS001) for the compliance period in calendar year 2008.
12. Pursuant to 5 CCR 1003-1, §7.6.5(a), 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.
13. Department records to-date establish that the System took the sample on October 29, 2008, and failed to take the sample during month of warmest temperature (July – August) of its annual TTHM and HAA5 monitoring for calendar year 2008.
14. Climax Henderson Mine’s failure to perform the 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)

## **COMPLIANCE ORDER**

Based upon the foregoing factual and legal determinations and pursuant to 5 CCR 1003-1, §1.6.7, Climax Henderson Mine is hereby ordered to:

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

Further, the Division hereby orders Climax Henderson Mine to comply with the following specific terms and conditions of this Order.

16. Immediately initiate efforts to comply with the TTHM and HAA5 monitoring/reporting obligations as required by 5 CCR 1003-1, §7.6.
17. Climax Henderson Mine shall perform TTHM and HAA5 monitoring in the distribution system between July and August for calendar year 2009. The TTHM and HAA5 samples must be collected properly and analyzed by a Department certified laboratory in accordance with approved methods. Climax Henderson Mine 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.
18. Within thirty (30) calendar days after receipt of this Order, if Climax Henderson Mine has not already done so, Climax Henderson Mine 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, Climax Henderson Mine shall submit to the Department, 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.

*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](http://www.cdphe.state.co.us/wq/drinkingwater/pdf/PublicNotice/PN_Guidance_Mar2003.pdf)*

## **NOTICES AND SUBMITTALS**

For all documents, plans, records, reports and replies required to be submitted by this order, Climax Henderson Mine 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 and Data Management Section / Enforcement Team  
Attention: Scott Klarich  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530  
Email: [scott.klarich@state.co.us](mailto:scott.klarich@state.co.us)  
Fax: (303) 782-0390

*(For any facsimile transmittals, please include a cover sheet addressed to Mr. Klarich)*

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**

Climax Henderson Mine 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 Climax Henderson Mine 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.

### **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.

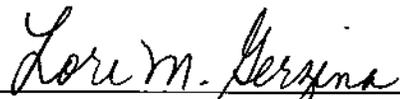
### **ADDITIONAL ACTION**

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 9<sup>th</sup> day of February 2009.

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**



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