



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

**VARIANCE – DRINKING WATER MAXIMUM CONTAMINANT LEVEL
FINAL ADMINISTRATIVE ORDER**

**IN THE MATTER OF: CLIMAX MOLYBDENUM COMPANY
HENDERSON MILL
PUBLIC WATER SYSTEM IDENTIFICATION NUMBER: CO0225116
GRAND 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(1)(b)(II)(D), of the Colorado Revised Statutes (“C.R.S.”), which authority has been delegated to the Department’s Water Quality Control Division, the Department hereby makes the following findings and grants a variance to Climax Molybdenum Company of the Maximum Contaminant Levels for Drinking Water for trihalomethanes, subject to the compliance schedule and other requirements identified below, as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Climax Molybdenum Company (“Climax”) owns and/or operates a drinking water system at its Henderson Mill located in Grand County, Colorado (the “System”).
2. Climax is a person as defined by 5 CCR 1003-1, §1.5.2(98).
3. Climax 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 Department is PWSID #: CO-0225116.
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 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).
9. Climax is subject to the disinfection byproducts requirements of 5 CCR 1003-1, §7.6.1, specifically including the requirement to meet the total trihalomethanes (“TTHM”) maximum contaminant level (“MCL”) established in 5 CCR 1003-1, §2.4, Table 2-5.
10. 5 CCR 1003-1, §2.4, Table 2-5 establishes a TTHM MCL of 0.080 mg/L.
11. On December 29, 2006, Climax applied for a variance from the MCL for TTHMs established in 5 CCR 1003-1, §2.4.
12. Climax’s application for variance complied with the requirements of 5 CCR 1003-1, §4.5 and included the following:
 - a. A completed and signed application.
 - b. An identification of the nature and duration of the variance requested.
 - c. Relevant analytical results of water quality samples taken from the system, including results of relevant tests conducted in compliance with the regulations.
 - d. An explanation of the compelling factors justifying a variance under 5 CCR 1003-1, §4.2.
 - e. A continuous alternate drinking water supply (bottled water) to all its employees and others who might use the System and clearly marking all drinking water fountains, sinks, and other sources as “Non-Potable” water.
 - f. Climax has applied a Stage 1 Disinfection Byproducts Rule best available technology for treatment techniques, including installation of a Granulated Activated Carbon treatment system (“GAC”) and installation of an automated chlorinated system, as required under 5 CCR 1003-1, §4.2 (a) and as identified in 5 CCR 1003-1, §7.6.1(e), Table 7-17.
13. Pursuant to 5 CCR 1003-1, §4.2, the Department has determined that, because of characteristics of the raw water sources available to the Climax System, it cannot meet the requirements for the MCL for trihalomethanes, and Climax has no other reasonably available source(s) of water, based on the information submitted by Climax in its Variance Request and Study.
14. As part of its Variance Request, Climax committed to a schedule for bringing its system into compliance within two (2) years from the effective date of the variance.
15. The Department provided public notice and an opportunity for a public meeting on April 24, 2007, as provided in 5 CCR 1003-1, §4.2(d).

16. Climax made a request for a public hearing on May 22, 2007.
17. The Department conducted a public hearing on June 26, 2007, at the Climax Henderson Mill, in accordance with 5 CCR 1003-1, §4.6(c)(2)(i) and 4.7.
18. No adverse public comments were received at the hearing or by written comment before, during, or after the hearing.
19. In July 2007, the Department initially granted the variance, effective 90 days thereafter, as established under 5 CCR 1003-1, §4.8(e). The variance is effective from October 1, 2007, through September 20, 2009.
20. Climax has met all the interim dates scheduled to bring its system into compliance with the MCL for TTHMs, but has not been able to consistently comply with the TTHM MCL even after modifications to the treatment processes.
21. On April 19, 2009, Climax submitted a request to extend the variance to at least December 2009, to bring its system into compliance with the MCL for TTHMs, which the Department has approved.
22. The Department has determined that Climax has met the requirements of 5 CCR 1003-1, §4.2 and 4.5.
23. Based on all the above, and as provided in 5 CCR 1003-1, §4.2 the Department finds that granting a variance to Climax for its non-transient, non-community public water system for the MCL for TTHMs will not result in an unreasonable risk to public health.

ORDER

24. Based on the above Findings of Fact and Conclusions of Law, and subject to the compliance schedule below, applicable monitoring and other requirements, and as provided in §25-1.5-203(1)(b)(II)(D), C.R.S., and 5 CCR 1003-1, §§4.2, 4.5, and 4.8, the Department hereby Orders that Climax is granted a variance from the drinking water MCL for TTHMs for its non-transient, non-community drinking water system until June 30, 2010.

Compliance Schedule

25. In order to ensure long-term compliance with the *Colorado Primary Drinking Water Regulations*, specifically including the MCL for TTHMs for public water supplies, Climax shall evaluate and upgrade, as needed, the System's water sources and/or treatment processes in accordance with the following schedule:
 - a. By October 1, 2009, submit for Department review the findings of an evaluation of the current TTHM treatment system and any potential improvements that includes the results

from source water monitoring, results of pilot testing including a disinfection byproducts formation potential evaluation using a simulated distribution system with the proposed treatment, distribution system monitoring, bench scale testing, or other data collected during the evaluation process.

- b. By November 1, 2009, submit a report clearly identifying the specific treatment options Climax has selected to ensure compliance with the TTHM MCL (if applicable).
- c. By April 1, 2010, complete construction/implementation of applicable treatment options.
- d. By June 30, 2010, submit a Final Report to the Department certifying completion of the project.

Additional Control Measures and Requirements

- 26. As provided in 5 CCR 1003-1, §4.2(b)(2), Climax shall continue to provide bottled water to its employees and others who might otherwise use the System.
- 27. As provided in 5 CCR 1003-1, §9.2.4(b)(1), Climax shall continuously post a public notification at all drinking water fountains, sinks, and other potential drinking water sources that meets all requirements of 5 CCR 1003-1, §9.2.5(b), and that states “Do Not Drink the Water” during the entire time this variance is in effect.
- 28. As provided in 5 CCR 1003-1, §1.6.4(d), Climax shall submit to the Department a certification that it has fully complied with the public notification regulations within ten (10) calendar days following the end of each calendar year the variance is in effect. Climax must include with this certification a representative copy of each notice posted as required in paragraph 27 above.
- 29. Climax shall submit “System Improvement Project - Progress Reports” to the Department every ninety (90) calendar days. The first report shall be submitted to the Department by September 30, 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. These reports shall be required as long as the variance is in effect.

EFFECTIVE DATE

- 30. In compliance with 5 CCR 1003-1, §4.8(e), this variance shall take effect 90 days from the execution of this Order.
- 31. A compliance schedule for a variance is subject to the public notification requirements of 5 CCR 1003-1, §4.2(d) which includes a thirty-day public comment period. The Department reserves the right to withdraw this variance if comments received during the thirty-day period result in any proposed modification to the variance or the associated compliance schedule.

ENFORCEMENT

32. Any schedule or other requirement identified in paragraphs 25-29 above is enforceable as if such schedule or other requirement was part of the *Colorado Primary Drinking Water Regulations*. Additionally, if Climax fails to comply with any of the dates or activities identified in paragraphs 25-29 above, the Department may summarily revoke this variance as provided in §24-4-104, C.R.S., and shall conduct a hearing regarding such revocation in accordance with §24-4-105, C.R.S.

APPEAL RIGHTS

Any person adversely affected or aggrieved by the Department's final order may request an adjudicatory hearing in writing within 60 days after the effective date of this Order. Such hearing shall be conducted in accordance with the requirements of §24-4-105, C.R.S. and 5 CCR 1003-1, §4.8(e). If a request is made for an adjudicatory hearing on this Order, the variance shall remain in effect until a determination has been made at or after such hearing.

Issued at Denver, Colorado, this 14th day of August, 2009.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Ron Falco, P.E., Manager
Drinking Water Program
Water Quality Control Division