

STATE OF COLORADO

Bill Ritter, Jr., Governor
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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

February 24, 2010

Certified Mail Number: 7007 0220 0001 0163 5235

PWSID# CO0254185
Steve Dunn, Drinking Water System Operator
Xcel Energy Inc. (Hayden Station)
13125 US Highway 40
Hayden, CO 81639-9510

SERVICE OF DRINKING WATER ENFORCEMENT ORDER, NUMBER: DN-100224-1

Dear Mr. Dunn:

You are 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 you 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 shall be filed in writing with the Department within thirty (30) calendar days after service of the Order. Such requests, at a minimum shall contain the information specified in 5 CCR 1003-1, §1.6.7(g), and 5CCR 1002-21, §21.4(B)(2). Hearings on Orders shall be held in accordance with applicable provisions of the State Administrative Procedure Act, Article 4 of Title 24, C.R.S. and the procedural rules promulgated in 5 CCR 1002-21.

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 you desire to informally discuss this matter with the Department or if you have any questions regarding the Order, please don't hesitate to contact me at (303) 692-3617 or by electronic mail at jackie.whelan@state.co.us.

Sincerely,

A handwritten signature in black ink that reads "Jacalyn Whelan". The signature is written in a cursive, flowing style.

Jacalyn M. Whelan, EPS II
Enforcement Unit
Compliance Assurance Section
WATER QUALITY CONTROL DIVISION

Enclosure

- cc: Routt County Environmental Health Department
Corporation Service Company, 1560 Broadway, Ste. 2090, Denver, CO 80202
Drinking Water Enforcement File
- ec: Andy Poirot, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Betsy Beaver, Facility Operators Program, CDPHE
Shawn McCaffrey, EPA Region VIII
Carolyn Schachterle, Financial Solutions Unit, CDPHE



COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
WATER QUALITY CONTROL DIVISION

ENFORCEMENT ORDER

NUMBER: DN-100224-1

IN THE MATTER OF: XCEL ENERGY INC.
HAYDEN STATION
PUBLIC WATER SYSTEM IDENTIFICATION NUMBER: CO-0254185
ROUTT 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. Xcel Energy Inc. (“Xcel”) owns and/or operates a drinking water system, known as Hayden Station, located at 13125 Highway 40, near the Town of Hayden, Routt County, Colorado (the “System”).
2. Xcel is a person as defined by 5 CCR 1003-1, §1.5.2(98).
3. Xcel 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-0254185.
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. Xcel provides piped water for human consumption from the System to at least fifteen (15) service connections and/or regularly serves at least twenty-five (25) of the same persons over six 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 Comply with the Maximum Contaminant Levels for Total Trihalomethanes)

9. Pursuant to 5 CCR 1003-1, §2.4, Table 2-5(1), the maximum contaminant level of 0.080 mg/L for total trihalomethanes (“TTHM”) is applicable to all non-transient, non-community water systems.
10. Pursuant to 5 CCR 1003-1, §7.6.3(b)(1)(i), the System must monitor for TTHM at the following frequency and locations:

Type of System	Minimum Monitoring Frequency	Sample Location in the Distribution System
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 the 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.

11. Pursuant to 5 CCR 1003-1, §7.6.4(b)(1)(ii), for systems monitoring less frequently than quarterly, systems demonstrate maximum contaminant level compliance if the average of samples taken that year under the provisions of 5 CCR 1003-1, §7.6.3(b)(1) do not exceed the maximum contaminant level in 5 CCR 1003-1, §2.4, Table 2-5. If the average of these samples exceeds the maximum contaminant level, the system must increase monitoring to once per quarter per treatment plant and such a system is not in violation of the maximum contaminant level until it has completed one year of quarterly monitoring, unless the result of fewer than four quarters of monitoring will cause the running annual average (“RAA”) to exceed the maximum contaminant level, in which case the system is in violation at the end of that quarter. Systems required to increase monitoring frequency to quarterly monitoring must calculate compliance by including the sample which triggered the increased monitoring plus the following three quarters of monitoring.
12. In a letter dated December 2, 2004, the Division increased Xcel’s monitoring to quarterly as a result of its September 1, 2004, TTHM maximum contaminant level exceedance.
13. Pursuant to 5 CCR 1003-1, §7.6.4(b)(1)(i), for systems monitoring quarterly, compliance with MCLs in 5 CCR 1003-1, §2.4, Table 2-5 must be based on a running annual arithmetic average, computed quarterly, of quarterly arithmetic averages of all samples collected by the system as prescribed in 5 CCR 1003-1, §7.6.3(b)(1).
14. 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.
15. From the fourth quarter of calendar year 2006 to present, Division records establish that the System has reported to the Division the following TTHM monitoring data showing the System has not been reliably nor consistently below the MCL:

Total Trihalomethanes (in mg/L)				Running Annual Average (in mg/l)
4th Q 2006 0.064	1st Q 2007 0.053	2nd Q 2007 0.092	3rd Q 2007 0.169	0.095
1st Q 2007 0.053	2nd Q 2007 0.092	3rd Q 2007 0.169	4th Q 2007 0.129	0.111
2nd Q 2007 0.092	3rd Q 2007 0.169	4th Q 2007 0.129	1st Q 2008 0.050	0.110
3rd Q 2007 0.169	4th Q 2007 0.129	1st Q 2008 0.050	2nd Q 2008 0.076	0.106
4th Q 2007 0.129	1st Q 2008 0.050	2nd Q 2008 0.076	3rd Q 2008 0.132 0.132 Qtr Average = 0.132	0.097
1st Q 2008 0.050	2nd Q 2008 0.076	3rd Q 2008 0.132 0.132 Qtr Average = 0.132	4th Q 2008 0.061	0.080
2nd Q 2008 0.076	3rd Q 2008 0.132 0.132 Qtr Average = 0.132	4th Q 2008 0.061	1st Q 2009 0.050 0.076 0.040 Qtr Average = 0.055	0.081
3rd Q 2008 0.132 0.132 Qtr Average = 0.132	4th Q 2008 0.061	1st Q 2009 0.050 0.076 0.040 Qtr Average = 0.055	2nd Q 2009 0.078 0.077 0.079 Qtr Average = 0.078	0.082
4th Q 2008 0.061	1st Q 2009 0.050 0.076 0.040 Qtr Average = 0.055	2nd Q 2009 0.078 0.077 0.079 Qtr Average = 0.078	3rd Q 2009 0.111	0.076
1st Q 2009 0.050 0.076 0.040 Qtr Average = 0.055	2nd Q 2009 0.078 0.077 0.079 Qtr Average = 0.078	3rd Q 2009 0.111	4th Q 2009 0.087 0.099 0.077 Qtr Average = 0.088	0.083

16. Pursuant to 5 CCR 1003-1, §7.6.4(b)(1)(iii), if the running annual arithmetic average of quarterly averages covering any consecutive four-quarter period exceeds the maximum contaminant level, the

system is in violation of the maximum contaminant level and must notify the public pursuant to 5 CCR 1003-1, §9.2, in addition to reporting to the Department pursuant to 5 CCR 1003-1, §7.6.5.

17. Xcel's failure to comply with the maximum contaminant level for total trihalomethanes constitutes violations of 5 CCR 1003-1, §2.4.

COMPLIANCE ORDER

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

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

Further, the Division hereby orders Xcel to comply with the following specific terms and conditions of this Enforcement Order.

19. In order to ensure long-term compliance with the total trihalomethanes maximum contaminant level outlined in 5 CCR 1003-1, §2.4, Table 2-5 for public water supplies, Xcel shall evaluate and upgrade, as needed, the System's water sources, collection systems and/or treatment processes in accordance with the following schedule:
 - a. Within thirty (30) calendar days of the receipt of this Enforcement Order, Xcel shall retain a qualified entity (such as professional engineer experienced in drinking water systems) to evaluate and recommend disinfection byproduct reduction techniques or alternate water sources to achieve compliance with the total trihalomethanes maximum contaminant level.
 - b. Within ninety (90) calendar days of the receipt of this Enforcement Order, Xcel shall submit a written report outlining the findings of the evaluation and including an implementation schedule for any identified improvements to achieve compliance with the total trihalomethanes maximum contaminant level. The identified improvements and implementation schedule submitted shall become a condition of this Enforcement Order and Xcel shall implement the identified improvements as submitted unless notified by the Division, in writing, that alternate activities or improvements and/or time schedule(s) are appropriate. If the Division imposes alternate activities or improvements and/or time schedule(s), they shall also become a condition of this Enforcement Order.

The evaluation and submitted report shall include, at a minimum, the following elements:

- i. Specific schedule for disinfection profiling, if applicable.
- ii. Schedule to submit Final Design Plans and Specifications for System improvements, as applicable, for Department review and approval.

- iii. Commitment to a submittal of a written certification that the System has implemented all specified operational or treatment system improvements and the System has returned to compliance with the total trihalomethanes maximum contaminant level outlined in 5 CCR 1003-1, §2.4, Table 2-5.
20. Xcel shall submit “System Evaluation/Improvement Project - Progress Reports” to the Division every ninety (90) calendar days. The first report shall be submitted to the Division within thirty (30) calendar days after receipt of this Enforcement Order. 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 until the System has demonstrated reliable and consistent compliance with the total trihalomethanes maximum contaminant level outlined in 5 CCR 1003-1, §2.4, Table 2-5.
 21. Within thirty (30) calendar days after receipt of this Enforcement Order, if it has not already done so, Xcel shall issue a public notice in accordance with 5 CCR 1003-1, §9.2 for each violation identified in this Enforcement Order. Within ten (10) calendar days of completion of each required public notification, Xcel 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 found at the following Internet location:

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 Enforcement Order, Xcel shall submit an original and one (1) copy to the Division at the following address:

Colorado Department of Public Health and Environment
Water Quality Control Division
Compliance Assurance Section / Enforcement Unit
Attention: Jackie Whelan
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

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

Xcel 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 Xcel wishes to dispute the Division's rejection of its Notice of Completion, it shall, within fifteen (15) 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. 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

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 24th day of February, 2010.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



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