



COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
WATER QUALITY CONTROL DIVISION

ENFORCEMENT ORDER ON CONSENT

NUMBER: DE-100301-1

IN THE MATTER OF: COLORADO UNIVERSITY MOUNTAIN RESEARCH STATION
PUBLIC WATER SYSTEM IDENTIFICATION NUMBER: CO-0207785
BOULDER COUNTY, COLORADO

The Colorado Department of Public Health and Environment (“Department”), through the Water Quality Control Division (“Division”), issues this Enforcement Order on Consent (“Consent Order”), pursuant to CDPHE’s authority under §25-1.5-203, C.R.S., and its implementing regulations, with the express consent of Colorado University Mountain Research Station (“CU Mountain Research Station”). The Department and CU Mountain Research Station may be referred to collectively as “the Parties.”

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order is to establish compliance requirements and schedules so as to return CU Mountain Research Station’s public water system to compliance with the *Colorado Primary Drinking Water Regulations*, 5 CCR 1003-1, Articles 1 through 13 (the “Regulations”), specifically including the requirement to provide filtration and disinfection treatment of groundwater under the direct influence of surface water.

DEPARTMENT’S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

Based upon the Department’s investigation into and review of the compliance issues identified herein, and in accordance with §25-1.5-203, C.R.S., the Department has made the following determinations regarding CU Mountain Research Station’s compliance with the Regulations:

2. CU Mountain Research Station 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(87).
3. The Public Water System Identification Number (“PWSID”), assigned to the System by the Division is PWSID # CO-0207785.
4. CU Mountain Research Station is a public water system located at or near Latitude 40.032530, Longitude -105.537750, between Nederland and Ward Colorado, approximately 1.8 miles west of the intersection of Highway 72 and CO Road 116, in Boulder County, Colorado (the “System”).

5. 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.
6. CU Mountain Research Station provides piped water for human consumption from the System to at least twenty-five (25) people, but the System does not serve twenty-five (25) or more of the same people, for sixty (60) or more days per year. The System is therefore classified as a "transient, non-community water system" as defined by 5 CCR 1003-1, §1.5.2(137).
7. The source of the water served by the System is ground water under the direct influence of surface water as defined by 5CCR 1003-1, §1.5.2(65). Pursuant to 5 CCR 1003-1, §1.5.2(129), ground waters found to be under the direct influence of surface water will be classified as surface water.

FIRST VIOLATION
FAILURE TO PROVIDE TREATMENT OF A PUBLIC WATER SUPPLY

8. Pursuant to 5 CCR 1003-1, §7.1.3(b), a public water system that uses a surface water source or a groundwater source under the direct influence of surface water and serves fewer than 10,000 people must provide treatment consisting of both disinfection, as specified in 5 CCR 1003-1, §7.1.2, and filtration treatment which complies with the requirements of 5 CCR 1003-1, §7.1.3(f) or (g) or §7.3.4(a), (b) or (c).
9. Pursuant to 5 CCR 1003-1, §7.1.3(d), once a groundwater source has been determined, through the results of a microscopic particulate analysis, visual well inspection or correlation of source water parameters with surface conditions, to be under the direct influence of surface water, the system must install filtration treatment designed to meet the turbidity requirements specified in 5 CCR 1003-1, §7.1.3(e), (f), (g) or (h), 5 CCR 1003-1, §7.2.3(a), (b) or (c), or 5 CCR 1003-1, §7.3.4(a), (b), or (c) within 18 months of written notice from the Department.
10. In a letter dated July 12, 2007, the Division notified the System that the source water identified as Columbine Spring (SP001) was being reclassified as groundwater under the direct influence of surface water. In addition, the letter advised the System to notify the Division in writing by August 31, 2007 of its choice to either discontinue use of the source or install Division approved surface water treatment. The letter also required the System to implement the selected choice by January 31, 2009 (18 month deadline).
11. On January 28, 2009, the System submitted plans and specifications for proposed System improvements for the treatment of their source water pursuant to 5 CCR 1003-1, §1.11.2(b). Upon Division review, the submitted plans and specifications were deemed incomplete and therefore could not be approved. The Division notified the System of the deficiencies in a letter dated May 18, 2009.
12. In a letter dated June 30, 2009, the Division notified CU Mountain Research Station that it was in violation of the Regulation at 5 CCR 1003-1, §7.1.3(d).
13. On July 6, 2009, the System re-submitted plans and specifications addressing the deficiencies noted in the Division's May 18, 2009 letter. The Division reviewed the second submittal and found the plans and specifications to be incomplete and therefore could not be approved. The Division notified the System of the deficiencies in a letter dated July 31, 2009.

14. On August 7, 2009, the System re-submitted plans and specifications addressing the deficiencies noted in the Division's July 31, 2009 letter. The Division reviewed the revised plans and specifications for a 2009 Home Springs Filtration Addition and found the plans and specifications to be complete and approved. The Division notified the System of the plan review approval in a letter dated September 2, 2009.
15. On October 3, 2009, the System submitted a letter to the Division requesting that the final construction phase of the 2009 Home Springs Filtration system be completed by May 1, 2010. The extension was requested because installation of the back-flush water line to the waste water plant was prohibited due to severe weather conditions at the site.
16. On January 14, 2010, the System notified the Division that if the design plan approved on September 2, 2009 for the back-flush water line was installed, the water line would invade a wetland area. The System requested to amend the design plan to avoid disrupting the wetland area.
17. The Division records to date establish that the System has not completed the installation of Department approved filtration treatment to rectify the groundwater under the direct influence of surface water classification of the System's water sources.
18. CU Mountain Research Station's ongoing failure to provide approved filtration treatment on the System's groundwater under the direct influence of surface water source constitutes ongoing violation(s) of 5 CCR 1003-1, §7.1.3(b).

ORDER AND AGREEMENT

19. Based on the foregoing factual and legal determinations, pursuant to its authority under §25-1.5-203, C.R.S. and its implementing regulations, and in satisfaction of the alleged violations cited herein, the Department orders CU Mountain Research Station to comply with all provisions of this Consent Order, including all requirements set forth below.
20. CU Mountain Research Station agrees to the terms and conditions of this Consent Order as set forth below. CU Mountain Research Station agrees that this Consent Order constitutes an Enforcement Order issued pursuant to 5 CCR 1003-1, §1.6.7. CU Mountain Research Station further agrees that this Consent Order is an enforceable requirement of the Regulations. Except in the event of any claimed violation of this Consent Order by the Department, CU Mountain Research Station also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Department or by CU Mountain Research Station against the Department:
 - a. The issuance of this Consent Order;
 - b. The factual and legal determination made by the Department herein, and
 - c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Regulations.
21. Notwithstanding the above, CU Mountain Research Station does not admit to any of the factual or legal determinations made by the Department herein, and any action undertaken by CU Mountain Research Station pursuant to this Consent Order shall not constitute evidence of fault by CU Mountain Research

Station with respect to the conditions of the System or the violations of the Regulations asserted by the Division herein.

COMPLIANCE REQUIREMENTS

22. CU Mountain Research Station shall immediately implement measures to maintain compliance with the Colorado Primary Drinking Water Regulations.
23. In order to ensure long-term compliance with the requirements of 5 CCR 1003-1, Article 7, filtration and disinfection for surface water, CU Mountain Research Station shall evaluate and upgrade, as needed, the System's water sources and/or treatment processes in accordance with the following schedule:
 - a. Within thirty (30) calendar days of the effective date of this Consent Order, CU Mountain Research Station shall submit for Division review an Addendum to the Final Plans and Specifications approved by the Division on September 2, 2009, for the completion of the 2009 Homespring Filtration addition.
 - b. Within sixty (60) calendar days, but no later than July 30, 2010, from the date of the Department's approval of the System's proposed Addendum to Final Plans and Specifications, CU Mountain Research Station shall install and properly operate the system in accordance with the Department's approved Final Plans and Specifications and the Regulations.
 - c. No later than ten days after the completion of the construction/implementation of the Department-approved system improvements, CU Mountain Research Station shall submit written documentation certifying that construction is complete pursuant to the Department-approved Final Plans and Specifications.
24. CU Mountain Research Station shall submit monthly progress reports to the Department outlining efforts taken to achieve compliance with this Consent Order. The first report shall be submitted to the Division on March 1, 2010 and thereafter on the first day of each month. At a minimum, each report shall outline activities undertaken in the current reporting period and planned activities for the next thirty (30) calendar days to remain in compliance with this Consent Order.
25. CU Mountain Research Station shall continue to provide an alternate source of safe drinking water until CU Mountain Research Station has completed construction/implementation of the Department approved system improvements to ensure long-term compliance with the disinfection and filtration treatment requirements of 5 CCR 1003-1, Article 7.
26. CU Mountain Research Station shall maintain a continuous posting of its public notice until the System is in compliance with the disinfection and filtration treatment requirements of 5 CCR 1003-1, Article 7. In addition, CU Mountain Research shall submit quarterly to the Division, the mandatory certification of delivery of public notice and a representative copy of each type of notice distributed, published, posted, and/or made available to the persons served by the system until the System has completed construction/implementation of the Department approved system improvements for the disinfection and filtration treatment requirements of 5 CCR 1003-1, Article 7. Public notice certifications can be

submitted to the Division along with the progress reports outlined in paragraph 24 of this Consent Order.

*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*

27. All documents submitted under this Consent Order shall use the same titles as stated in this Consent Order, and shall reference both the number of this Consent Order and the number of the paragraph pursuant to which the document is required. No plan submitted for Department approval under this Consent Order may be implemented unless and until written approval is received from the Department which shall not be unreasonably delayed. Any approval by the Department of a plan submitted under this Consent Order is effective upon receipt by CU Mountain Research Station. All approved plans, including all procedures and schedules contained in the plans when approved in writing by the Department, are hereby incorporated into this Consent Order, and shall constitute enforceable requirements under the Regulations.

SCOPE AND EFFECT OF CONSENT ORDER

28. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the alleged violations cited herein.
29. This Consent Order constitutes a final agency order or action upon execution by CU Mountain Research Station and the Department. Any violation of the provisions of this Consent Order by CU Mountain Research Station, including any false certifications, shall be a violation of a final order or action of the Department for the purpose of §25-1-114.1, C.R.S., and may result in the assessment of administrative or civil penalties of up to one thousand dollars per day for each day during which such violation occurs.
30. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All written submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order as of the date of written approval by the Department.
31. The Department's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any subsequent violation of any requirement of this Consent Order or the Regulations.
32. Notwithstanding paragraph 21 above, this Consent Order will constitute part of CU Mountain Research Station's compliance history for purposes where such history is relevant. This includes considering the alleged violations described above in assessing a penalty for any subsequent violations against CU Mountain Research Station. CU Mountain Research Station agrees not to challenge the use of the cited violations for any such purpose.
33. This Consent Order does not relieve CU Mountain Research Station from complying with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Department makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

34. Nothing herein shall be construed as prohibiting altering, or in any way limiting the ability of the Department to seek any further remedies or sanctions available by virtue of CU Mountain Research Station's violation of this agreement or, except with respect to those violations identified herein, of the statutes and regulations upon which this agreement is based or any other applicable provision of law.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

35. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Department with respect to the specific instances of violations cited herein. The Department reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.
36. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
37. Nothing in this Consent Order shall preclude the Department from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.
38. Upon the effective date of this Consent Order, CU Mountain Research Station releases and covenants not to sue the Colorado Department of Public Health and Environment or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Regulations specifically addressed herein.
39. CU Mountain Research Station shall not seek to hold the Colorado Department of Public Health and Environment or its employees, agents or representatives liable for any injuries or damages to persons or property resulting from acts or omissions of CU Mountain Research Station, or those acting for or on behalf of CU Mountain Research Station, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. CU Mountain Research Station shall not hold out the Colorado Department of Public Health and Environment or its employees, agents or representatives as a party to any contract entered into by CU Mountain Research Station in carrying out activities pursuant to this Consent Order. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the Colorado Department of Public Health and Environment, its employees, agents or representatives.

SITE ACCESS AND SAMPLING

40. The Department shall be permitted to inspect and observe any and all work being performed under this Consent Order. The Department shall be permitted access to the Facility property at any time work is being conducted pursuant to this Consent Order, and during reasonable business hours during any period work is not being conducted, for the purposes of determining CU Mountain Research Station's compliance with the Regulations and this Consent Order. The Department shall be permitted to inspect work sites, operating and field logs, contracts, purchasing/shipping records, and other relevant records and documents relating to this Consent Order or any requirement under this Consent Order and to interview CU Mountain Research

Station personnel and contractors performing work required by this Consent Order. Nothing in this paragraph limits or impairs the Department's statutory authorities to enter and inspect the Facility.

41. The Department may conduct any tests necessary to ensure compliance with this Consent Order and to verify the data submitted by CU Mountain Research Station. CU Mountain Research Station shall notify the Division in writing of any sampling activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of seventy-two (72) hours prior to the sampling being conducted, and shall provide split samples to the Division upon request.

FORCE MAJEURE

42. CU Mountain Research Station shall perform the requirements of this Consent Order within the schedules and time limits set forth herein and in any approved plan unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of CU Mountain Research Station, and which cannot be overcome by due diligence.
43. Within seventy-two (72) hours of the time that CU Mountain Research Station knows or has reason to know of the occurrence of any event which CU Mountain Research Station has reason to believe may prevent CU Mountain Research Station from timely compliance with any requirement under this Consent Order, CU Mountain Research Station shall provide verbal notification to the Department. Within seven (7) calendar days of the time that CU Mountain Research Station knows or has reason to know of the occurrence of such event, CU Mountain Research Station shall submit to the Department a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.
44. The burden of proving that any delay was caused by a force majeure shall at all time rest with CU Mountain Research Station. If the Department agrees that a force majeure has occurred, the Department will so notify CU Mountain Research Station. The Department will also approve or disapprove of CU Mountain Research Station's proposed actions for mitigating the delay. If the Department does not agree that a force majeure has occurred, or if the Department disapproves of CU Mountain Research Station's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to CU Mountain Research Station. Within fifteen (15) calendar days of receipt of the explanation, CU Mountain Research Station may file an objection.
45. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Consent Order is found to have been delayed by a force majeure, CU Mountain Research Station shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

NOTICES

46. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Department:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-CADM-B2
Attention: Lauren Worley
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303.692.3254
E-mail: lauren.worley@state.co.us

For CU Mountain Research Station:

John P. Morris, Director of Facilities Operations
c/o CU Mountain Research Station
Stadium 1B15
053 UCB
Boulder CO 80309-0053
Telephone: 303.735-0716
E-mail: John.Morris@colorado.edu

OBLIGATIONS UNAFFECTED BY BANKRUPTCY

47. The obligations set forth herein are based on the Department's policies and regulatory authority. These obligations require specific performance by CU Mountain Research Station of corrective actions carefully designed to prevent on-going or future harm to public health or the environment, or both. Enforcement of these obligations is not stayed by a petition in bankruptcy. CU Mountain Research Station agrees that the penalties set forth in this Consent Order are not in compensation of actual pecuniary loss. Further, the obligations imposed by this Consent Order are necessary for CU Mountain Research Station to achieve and maintain compliance with State law.

MODIFICATIONS

48. This Consent Order may be modified only upon mutual written agreement of the Parties.

COMPLETION OF REQUIRED ACTIONS

49. CU Mountain Research Station shall submit a Notice of Completion to the Department upon satisfactory completion of all requirements of this Consent Order. The Department shall either accept or reject CU Mountain Research Station's Notice of Completion in writing within thirty (30) calendar days of receipt. If the Department rejects CU Mountain Research Station's Notice of Completion, it shall include in its notice a statement identifying the requirements that the Department considers incomplete or not satisfactorily performed and a schedule for completion. CU Mountain Research Station shall, within fifteen (15) calendar days of receipt of the Department's rejection, either:
- a. Submit a notice of acceptance of the determination; or
 - b. Submit a notice of dispute.

If CU Mountain Research Station fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Department's determination.

50. If CU Mountain Research Station files any notice of dispute pursuant to paragraph 49, the notice shall specify the particular matters in the Department's determination that CU Mountain Research Station seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by CU Mountain Research Station. The Department and CU Mountain Research Station shall have thirty (30) calendar days from the receipt by the Department of the notification of dispute to reach an agreement in writing. If agreement cannot be reached on all issues within this thirty (30) calendar day period, the Department shall confirm or modify its decision in writing within an additional fourteen (14) calendar days, and the confirmed or modified decision shall be deemed effective upon its receipt by CU Mountain Research Station and subject to appeal in accordance with the Regulations and the Colorado State Administrative Procedures Act §24-4-101

NOTICE OF EFFECTIVE DATE

51. This Consent Order shall be fully effective, enforceable and constitute a final agency action on the date signed by the authorized representative of the last party.

BINDING EFFECT AND AUTHORIZATION TO SIGN

52. This Consent Order is binding upon CU Mountain Research Station and its elected officials, employees, agents, representatives, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. CU Mountain Research Station agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, WATER
QUALITY CONTROL DIVISION:**

Lori M Gerzina

Date: 3/1/10

Lori Gerzina, Section Manager
Drinking Water Compliance Assurance Section
WATER QUALITY CONTROL DIVISION

FOR CU MOUNTAIN RESEARCH STATION:

Frank W. Bruno

Date: 2/26/2010

John P. Morris, Director of Facilities Operations
University of Colorado at Boulder

Frank W. Bruno
Vice Chancellor for Administration