

<p>DISTRICT COURT, EL PASO COUNTY, COLORADO</p> <p>270 SOUTH TEJON COLORADO SPRINGS, CO 80901</p> <hr/> <p>COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, WATER QUALITY CONTROL DIVISION</p> <p>Plaintiff,</p> <p>v.</p> <p>PAR PROPERTIES, LLC</p> <p>Defendant.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>JOHN W. SUTHERS, Attorney General JERRY W. GOAD, Senior Assistant Attorney General* 1525 Sherman Street, 5<sup>th</sup> Floor Denver, CO 80203 (303) 866-5117 Registration Number: 11284 *Counsel of Record</p>	<p>Case No.:</p>
<p><b>COMPLAINT FOR INJUNCTIVE RELIEF AND PENALTIES</b></p>	

Plaintiff, the State of Colorado, Department of Public Health and Environment, Water Quality Control Division ("the Department"), by Colorado Attorney General John Suthers and undersigned counsel, makes the following complaint:

**JURISDICTION AND VENUE**

1. Jurisdiction in the District Court for El Paso County is proper pursuant to § 25-1-114.1(1) and (4), C.R.S. (2010).
2. Venue is proper in the District Court for El Paso County.

## PARTIES

3. Plaintiff is an agency of the State of Colorado created by statute and authorized and responsible for administering and enforcing the laws of the State of Colorado pertaining to water quality and the protection of drinking water. § 25-1.5-203, C.R.S. (2010).

4. The Department's principal place of business is 4300 Cherry Creek Drive South, Glendale, Arapahoe County, Colorado.

5. Defendant Par Properties, LLC, ("Par Properties") owns and/or operates a drinking water system, formerly known as Ellicott Acres Water Company, near the intersection of Handle and Biggs Roads, approximately 20 miles east of the City of Colorado Springs, El Paso County, Colorado, with its principal office located at 5115 Pony Soldier Drive, Colorado Springs, Colorado 80917.

## GENERAL ALLEGATIONS

6. Par Properties is a person as defined by the State of Colorado's Primary Drinking Water Regulations, 5 CCR 1003-1, § 1.5.2 (98).

7. Par Properties owns and/or operates a "public water system" as that term is defined by C.R.S. §25-1.5-201(1) (2010) and 5 CCR 1003-1, §1.5.2(107).

8. Par Properties owns and/or operates a "community water system" as that term is defined by 5 CCR 1003-1, §1.5.2(15).

9. Par Properties provides drinking water to residents and/or tenants of a mobile home park near the intersection of Handle and Biggs Roads in or near the City of Colorado Springs. The source of water is ground water as defined by 5 CCR 1003-1, §1.5.2(63).

10. Par Properties is a "supplier of water" as defined by § 25-1.5-201(2), C.R.S. (2010) and 5 CCR 1003-1, §1.5.2 (128).

11. Par Properties 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.

12. Defendant's public water system has been assigned Public Water System Identification Number ("PWSID") #CO-0121220 by the Department ("the System").

13. Defendant is subject to the State of Colorado's laws and regulations pertaining to drinking water, including the Primary Drinking Water Regulations, 5 CCR 1003-1, which were adopted pursuant to § 25-1.5-203, C.R.S. (2010).

14. COLO. REV. STAT. § 25-1-114.1(2) (2010) authorizes the Department to request that the attorney general "bring a suit for a temporary restraining order or a preliminary or permanent injunction to prevent or abate any violation of a minimum general sanitary standard or regulation adopted pursuant to section 25-1.5-202."

15. The Department need not meet the common law criteria for an injunction because this action is authorized by special statute. *Lloyd A. Fry Roofing Co. v. Dep't of Health*, 553 P.2d 800, 808 (Colo. 1976). Any violation of a regulatory scheme constitutes sufficient injury for injunctive relief. *Id.*

16. State law also authorizes the Department to institute a civil action seeking the imposition of civil penalties for violations of final enforcement orders and for violations of the State of Colorado's drinking water regulations. C.R.S. §25-1-114.1 (2010).

#### **FIRST CLAIM FOR RELIEF**

*(Injunction Requiring Compliance with Enforcement Order No. DC-090227-3)*

17. The allegations in paragraphs 1 through 16 above are re-alleged and incorporated herein by reference.

18. On February 27, 2009, the Department issued Enforcement Order No. DC-070227-3 ("2009 Enforcement Order") to Par Properties for numerous violations of the Drinking Water Regulations. The 2009 Enforcement Order is attached hereto.

19. The Department's issuance of the 2009 Enforcement Order was final agency action.

20. Final agency action is subject to judicial review under COLO. REV. STAT. § 24-4-106 (2010).

21. Defendant failed to comply with the 2009 Enforcement Order.

22. Defendant did not seek judicial review of the 2009 Enforcement Order. The 2009 Enforcement Order thus became a final enforcement order.

23. The Department seeks a mandatory injunction requiring compliance with all terms of the 2009 Enforcement Order within thirty days of the issuance of the injunction, unless otherwise specified.

24. If the court finds no clear error by the Department, it shall affirm the agency action and issue the injunction. COLO. REV. STAT. § 24-4-106(2) and (7) (2010).

**SECOND CLAIM FOR RELIEF**

*(Injunction Requiring Abatement of Continuing Violations of the Drinking Water Regulations)*

25. The allegations in paragraphs 1 through 24 above are re-alleged and incorporated herein by reference.

26. Defendant continues to violate water quality and drinking water regulations as follows:

a. Defendant has failed to submit a Consumer Confidence Report for 2008 and 2009 (5 CCR 1003-1, §9.1);

b. Defendant has failed to monitor for radium 228 for all four quarters for 2009 and for the first and second quarters of 2010 (5 CCR 1003-1, §6.3);

c. Defendant has failed to monitor for microbial contaminants during January, February, May, June, July, September, October, November, and December, 2009 and February 2010 (5 CCR 1003-1, §5.1);

d. Defendant has failed to monitor for residual disinfectants during May, June, July, September, October, November, and December, 2009 and February 2010 (5 CCR 1003-1, §13.2);

e. Defendant failed to monitor for nitrate in 2009 (5 CCR 1003-1, §6.1.5);

f. Defendant has failed to develop and implement a monitoring plan (5 CCR 1003-1, §1.12.1).

g. Defendant has failed to develop and implement a cross-connection control program (5 CCR 1003-1, §12.1).

h. Defendant has failed to develop and implement a record keeping system (5 CCR 1003-1, §1.6.3).

i. Defendant has failed to provide water that is disinfected by a mean or method which has been approved by the Department (5 CCR 1003-1, §13.2(b)).

27. The Department seeks a permanent mandatory injunction requiring abatement of Defendant's continuing violations of water quality and drinking water laws and regulations.

**THIRD CLAIM FOR RELIEF**

*(Injunction Requiring Defendant to Have a Certified Operator)*

28. The allegations in paragraphs 1 through 27 above are re-alleged and incorporated herein by reference.

29. Defendant has failed to have a certified operator for the facility in violation of C.R.S. §25-9-110(2)(a) (2010) and 5 CCR 1003-2, §§100.1 and 100.21.1.

30. The Department seeks a permanent mandatory injunction requiring Defendant to comply with the requirement to have a certified operator for the facility.

**FORTH CLAIM FOR RELIEF**

*(Penalties for Failure to Comply With Enforcement Order No. DC-090227-3)*

31. The allegations in paragraphs 1 through 30 above are re-alleged and incorporated herein by reference.

32. Defendant has failed to comply with the final enforcement order No. DC-090227-3.

33. Defendant is liable for penalties in an amount not to exceed \$1,000.00 per violation per day for each day during which these violations occur in accordance with C.R.S. § 25-1-114.1 (2010).

**FIFTH CLAIM FOR RELIEF**

*(Penalties for Continuing Violations of Drinking Water Regulations)*

34. The allegations in paragraphs 1 through 33 above are re-alleged and incorporated herein by reference.

35. Defendant is continuing to violate the Drinking Water regulations.

36. Defendant is liable for penalties in an amount not to exceed \$1,000.00 per violation per day for each day during which these violations occur in accordance with C.R.S. § 25-1-114.1 (2010).

**RELIEF REQUESTED**

WHEREFORE, for the foregoing reasons plaintiff prays that this court:

1. Enter an order for a permanent mandatory injunction requiring Defendant to immediately comply with the Colorado Primary Drinking Water Regulations, 5 CCR 1003-1, Articles 1 through 12.

2. Enter an order for a permanent mandatory injunction requiring Defendant to comply, within thirty days of issuance of the injunction unless otherwise specified, with the terms of Enforcement Order No. DC-090227-3.

3. Enter an order for permanent mandatory injunction requiring Defendant to place the system under the direct supervision of a certified operator in compliance with C.R.S. §25-9-110(2)(a) (2010) and 5 CCR 1003-2, §§100.1 and 100.21.1 at or above the “small water system” level within 20 days of the Court’s order.

4. Enter an order for permanent mandatory injunction requiring Defendant to submit plans and specifications to correct the raw water by-pass on the system within 30 days of the Court’s order.

5. Enter an order for permanent mandatory injunction requiring Defendant to comply with Consumer Confidence Report requirements specified in 5 CCR 1003-1, Article 9 beginning with calendar year 2008 within 30 days of the Court’s order.

6. Enter an order for permanent mandatory injunction requiring Defendant to comply with monitoring and reporting requirements for radionuclides in compliance with 5 CCR 1003-1, Article 6 within 30 days of the Court’s order.

7. Enter an order for permanent mandatory injunction requiring Defendant to comply with monitoring and reporting requirements for microbiological contaminants in compliance with 5 CCR 1003-1, Article 5 microbial contamination within 30 days of the Court’s order.

8. Enter an order for permanent mandatory injunction requiring Defendant to comply with monitoring and reporting requirements in compliance with 5 CCR 1003-1, Article 7 for residual disinfection within 30 days of the Court's order.

9. Enter an order for permanent mandatory injunction requiring Defendant to comply with monitoring and reporting requirements for nitrates in compliance with 5 CCR 1003-1, Article 6 within 30 days of the Court's order.

10. Enter an order for permanent mandatory injunction requiring Defendant to submit to the Department and implement a monitoring plan in compliance with 5 CCR 1003-1, §1.12 within 60 days of the Court's order.

11. Enter an order for permanent mandatory injunction requiring Defendant to submit to the Department and implement and maintain a cross-connection control program in compliance with 5 CCR 1003-1, §12.1 within 60 days of the Court's order.

12. Enter an order for permanent mandatory injunction requiring Defendant to develop and implement a record keeping system in compliance with 5 CCR 1003-1, §1.6.3 within 60 days of the Court's order.

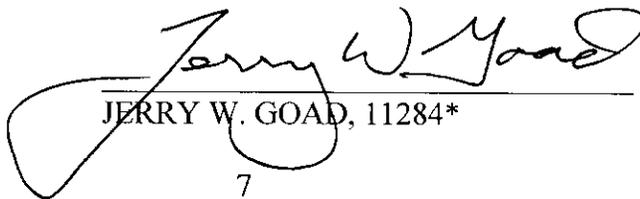
13. Enter an order assessing penalties against Defendant in an amount not to exceed \$1,000 per violation per day for Defendants' failure to comply with Enforcement Order No. DC-090227-3.

14. Enter an order assessing penalties against Defendant in an amount not to exceed \$1,000 per violation per day for Defendants' continuing violations of the drinking water regulations, 5 CCR 1003-1, Articles 1 through 13.

15. Grant such other relief as the Court deems just and proper.

DATED this 23<sup>d</sup> day of September, 2010.

JOHN W. SUTHERS  
Attorney General

  
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JERRY W. GOAD, 11284\*  
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Senior Assistant Attorney General  
Natural Resources and Environment Section

Attorneys for Plaintiff

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Denver, Colorado 80203  
Telephone: (303) 866-5117  
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\*Counsel of Record

**PLAINTIFF'S ADDRESS:**

Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive So.  
Denver, Colo. 80222-1530

# 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 27, 2009

Certified Mail Number: 7007 0220 0001 0160 6020

PWSID# CO-0121220

Par Properties LLC

Daniel R. Mahoney

5115 Pony Soldier Dr.

Colorado Springs, CO 80917

**RE: Service of Drinking Water Enforcement Order, Number: DC-090227-3**

Dear Mr. Mahoney:

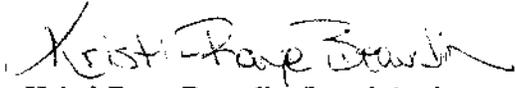
Par Properties LLC is hereby issued the enclosed Enforcement Order and Administrative Penalty Assessment (the "Order"). This Order is issued by the Colorado Department of Public Health and Environment, Water Quality Control Division (the "Department") pursuant to the authority given to the Department by §25-1.5-203 and §25-1-114.1 of the Colorado Revised Statutes ("C.R.S."). The Department bases this Order upon findings that Par Properties LLC has violated the Colorado Primary Drinking Water Regulations (the "Regulations") as described in the enclosed Order.

As a recipient of an enforcement order and administrative penalty assessment Par Properties LLC may request a formal hearing to contest the action in accordance with 5 CCR 1003-1, §1.6.7(g) and/or §25-1-114.1(2.5)(b) C.R.S. Requests for such a hearing must be filed in writing with the Department and/or the Water Quality Control Commission within thirty (30) calendar days after service of the Order. Hearings on enforcement orders and penalty assessments shall be held in accordance with applicable provisions of the State Administrative Procedure Act, §§24-4-101 through 24-4-108, C.R.S.

Should Par Properties LLC desire to informally discuss this matter with the Department or if you have 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).

Par Properties LLC  
Drinking Water - Enforcement Order  
Page 2 of 2

Sincerely,



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

Enclosure

- cc: El Paso County Department of Health and Environment  
Compliance Monitor / Drinking Water File
- ec: Dave Knope, Engineering Section, CDPHE  
Tim Vrudny, 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 &  
ADMINISTRATIVE PENALTY ASSESSMENT**

**NUMBER: DC-090227-3**

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**IN THE MATTER OF: PAR PROPERTIES LLC  
SYSTEM NAME: ELLICOTT WATER INC.  
PUBLIC WATER SYSTEM IDENTIFICATION NUMBER: CO-0121220  
EL PASO 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. Par Properties LLC owns and/or operates a drinking water system, known as Ellicott Water Inc., located at or near the intersection of Handle Road and Biggs Road, in or near the City of Colorado Springs, El Paso County, Colorado (the "System").
2. Par Properties LLC is a person as defined by 5 CCR 1003-1, §1.5.2(98).
3. Par Properties 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-0121220.
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. Par Properties 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 Monitor 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. Division records establish that the System utilizes sodium hypochlorite to achieve chemical disinfection.
11. Pursuant to 5 CCR 1003-1, §7.6.3(b)(1), the System must monitor for TTHM and HAA5 at the following frequency and locations:

System using only groundwater not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 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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12. 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) during the monitoring period of July 1<sup>st</sup> through July 31<sup>st</sup> in calendar year 2008.
13. 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.
14. Department records to-date establish that the System failed to submit results to the Department of its annual TTHM and HAA5 monitoring for calendar year 2008.
15. Par Properties LLC’s failure to submit the results of its annual TTHM and HAA5 analyses to the Department constitutes violation(s) of 5 CCR 1003-1, §7.6.5(a). Additionally, if Par Properties LLC failed to perform the annual TTHM and HAA5 analyses during the identified period, such failure to perform the monitoring constitutes violations of 5 CCR 1003-1, §§7.6.1(b)(1) and 7.6.3(b)(1)

**Second Violation**  
**(Failure to Monitor and/or Report for Nitrate)**

16. Pursuant to 5 CCR 1003-1, §6.1.5(e), all public water systems shall monitor to determine compliance with the maximum contaminant level for Nitrate.
17. Pursuant to 5 CCR 1003-1, §6.1.5(e)(1), systems served by groundwater, shall monitor for Nitrate annually.
18. Pursuant to 5 CCR 1003-1, §6.1.5(b)(1), the System is required to collect a minimum of one Nitrate sample at every entry point to the distribution system which is representative of each groundwater source after treatment.
19. Pursuant to 5 CCR 1003-1, §6.1.5(j), the System must monitor for Nitrate at the time designated by the Department during each compliance period.
20. The *Official 2008 Drinking Water Monitoring Schedule* provided to the System by the Department outlines that the System was required to monitor for Nitrate at entry point 001T in compliance period 01/01/2008 – 12/31/2008.
21. Pursuant to 5 CCR 1003-1, §1.6.4(a), the System is required to report to the Department the results of the System's annual Nitrate analysis within (1) the first ten calendar days following the month in which a result is received, or (2) the first ten calendar days following the end of the required monitoring period, as stipulated by Department, whichever of these is shorter.
22. Department records to date establish that the System failed to submit results to the Department of its annual Nitrate monitoring for calendar year 2008.
23. Par Properties LLC's failure to submit the results of its annual Nitrate analysis to the Department constitutes violation(s) of 5 CCR 1003-1, §1.6.4(a). Additionally, if Par Properties LLC failed to perform its annual Nitrate analysis during the compliance period 01/01/2008 – 12/31/2008, such failure to perform the monitoring constitutes violations of 5 CCR 1003-1, §§6.1.5(e), 6.1.5(e)(1), 6.1.5(b)(1) and 6.1.5(j).

**Third Violation**  
**(Failure to Monitor and/or Report for Microbiological Contaminants)**

24. Pursuant to 5 CCR 1003-1, §5.1.1(a), the System must collect total coliform samples at sites, which are representative of water throughout the distribution system according to a written sample-siting plan.
25. Pursuant to 5 CCR 1003-1, §5.1.1(d), the System must monitor for total coliform at a frequency based on the population served by the System. The System, which serves less than 1,000 persons, is therefore required to collect one total coliform sample per month.

26. Pursuant to 5 CCR 1003-1, §§1.6.4(a) and 5.1.1(b), the System is required to submit the results of all routine total coliform sampling and analyses to the Department for review within (a) the first ten (10) days following the month in which the result is received, or (b) the first ten (10) days following the end of the required monitoring period as stipulated by the Department, whichever of these is soonest.
27. Division records establish that the System has failed to provide the Department with the results of its routine total coliform analyses for the following monitoring periods:

Month	Year	Number of Samples Required	Number of Samples Received
May	2008	1	0
June	2008	1	0
September	2008	1	0
December	2008	1	0

28. Par Properties LLC's failure to submit the results of the System's routine total coliform analyses to the Department constitutes violation(s) of 5 CCR 1003-1, §§1.6.4(a) and 5.1.1(b). Additionally, if Par Properties LLC failed to perform routine total coliform monitoring during the identified periods, such failure to perform the monitoring further constitutes violation(s) of 5 CCR 1003-1, §5.1.1(d).

**Fourth Violation**  
**(Failure to Report for Residual Disinfectant)**

29. Pursuant to 5 CCR 1003-1, §7.9.1(b), the System is required to provide Department approved disinfection that is effective in the killing or removal of pathogenic organisms.
30. Division records establish that the System utilizes chlorination methods to achieve disinfection.
31. Pursuant to 5 CCR 1003-1, §§7.1.4(a)(3)(i) and 7.6.3(c)(1)(i), the System must measure the residual disinfectant concentration in the distribution system at least at the same points in the distribution system and at the same time as total coliforms are sampled as specified in 5 CCR 1003-1, Article 5.
32. Pursuant to 5 CCR 1003-1, §7.6.2, analyses conducted to determine compliance with 5 CCR 1003-1, §7.6 shall be made by methods as specified in 5 CCR 1003-1, §10.7.
33. Pursuant to 5 CCR 1003-1, §7.6.5(c)(1), the System is required to report the following:
  - i. The number of samples taken during each month of the last quarter;
  - ii. The month arithmetic average of all samples taken in each month for the last 12 months;
  - iii. The arithmetic average of the monthly averages for the last 12 months; and
  - iv. Whether, based on §7.6.4(c)(1), the maximum residual disinfection level ("MRDL") was violated.

34. 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. 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.
35. Division records establish that the System has not reported its residual chlorine monitoring results for the following reporting periods: 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Quarters of 2008.
36. Par Properties LLC's failure to report residual disinfectant concentrations in the distribution system for the above identified reporting periods constitutes violations of 5 CCR 1003-1, §7.6.5(c)(1). Further, if Par Properties LLC's failed to measure the residual disinfectant concentration in the distribution system, such failure constitutes violations of 5 CCR 1003-1, §§7.1.4(a)(3)(i) and 7.6.3(c)(1)(i).

**Fifth Violation**  
**(Failure to Monitor and/or Report for**  
**Radium 228)**

37. Pursuant to 5 CCR 1003-1, §6.3.2(a)(1), all existing community water systems using groundwater, surface water or both ground and surface water must sample at every point to the distribution system that is representative of all sources being used under normal operating conditions. The system must take each sample at the same sampling point unless conditions make another sampling point more representative of each source.
38. The *Official 2008 Drinking Water Monitoring Schedule* provided to the System by the Department outlines that the System was required to monitor for radium 228 at the entry point 001T for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Quarters in calendar year 2008.
39. Division records show that the System has not provided the Department with the results of any radium 228 monitoring.
40. Par Properties LLC's failure to conduct radium 228 monitoring of the System's supplied water constitutes violation(s) of 5 CCR 1003-1, §§6.3.2(a)(1) and 6.3.2(b)(1).

**COMPLIANCE ORDER**

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

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

Further, the Division hereby orders Par Properties LLC to comply with the following specific terms and conditions of this Order.

42. Immediately initiate efforts to comply with the TTHM and HAA5 monitoring/reporting obligations as required by 5 CCR 1003-1, §7.6.
43. Within fourteen (14) calendar days after receipt of this Order, Par Properties LLC shall submit the results of any TTHM and HAA5 monitoring performed for calendar year 2008.
44. Par Properties LLC shall properly perform annual TTHM and HAA5 monitoring in the distribution system between July 1, 2009 and July 31, 2009. The TTHM and HAA5 samples must be collected properly and analyzed by a Department certified laboratory in accordance with approved methods. Par Properties LLC 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.
45. Immediately initiate efforts to comply with the Nitrate monitoring/reporting obligations as required by 5 CCR 1003-1, Article 6.
46. Within fourteen (14) calendar days after receipt of this Order, Par Properties LLC shall submit the results of any Nitrate monitoring performed for calendar year 2008. If the monitoring has not been performed, the Par Properties LLC shall provide a written explanation indicating the reason(s) why the System did not perform the required monitoring.
47. If the annual Nitrate analysis has not been conducted for calendar year 2009, Par Properties LLC shall perform a Nitrate analysis on a representative water sample, taken from each entry point to the distribution system, within thirty (30) calendar days of receipt of this Order. The Nitrate sample(s) must be collected properly and analyzed by a Department certified laboratory in accordance with approved methods and cited detection limits. Par Properties LLC shall provide the Department with the results of the Nitrate analysis within ten (10) calendar days of receipt of the results from the laboratory.
48. Immediately take steps to comply with the routine and repeat microbiological contaminant monitoring/reporting obligations as required by 5 CCR 1003-1, Article 5.
49. Within thirty (30) calendar days after receipt of this Order, Par Properties LLC shall submit the results of any microbiological contaminant (total coliform) monitoring performed for the following monitoring periods:

<b>Month</b>	<b>Year</b>	<b>Number of Samples Required</b>	<b>Number of Samples Received</b>
May	2008	1	0
June	2008	1	0
September	2008	1	0
December	2008	1	0

50. Par Properties LLC shall immediately begin monitoring and/or reporting residual disinfection concentrations in accordance with 5 CCR 1003-1, Article 7 by measuring and reporting chlorine residual disinfection concentrations along with each total coliform sample result. If results are not able to be reported along with each total coliform result or if supplemental monitoring is performed, Par Properties LLC shall report the results to the Division on a MRDL Form 2.

*MRDL Form 2 is available on the Division's website at:*

<http://www.cdphe.state.co.us/wq/drinkingwater/PublicWaterSystemReportingForms.html>

51. Immediately initiate efforts to comply with the gross alpha particle activity, uranium, and radium 226 monitoring/reporting obligations as required by 5 CCR 1003-1, §6.3.2.
52. Within fourteen (14) calendar days after receipt of this Order, the Par Properties LLC submit the results of any radium 228 monitoring performed on the system's source water during calendar year 2008.
53. If the radium 228 monitoring of the System's source water has not been conducted, Par Properties LLC shall initiate radium 228 monitoring in conformance with 5 CCR 1003-1, §6.3.2 within thirty (30) calendar days of receipt of this Order.
54. Within thirty (30) calendar days after receipt of this Order, if Par Properties LLC has not already done so, Par Properties LLC 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, Par Properties LLC 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)

### **ORDER FOR ADMINISTRATIVE PENALTY**

55. Pursuant to §25-1-114.1(2.5)(a), C.R.S. any person who violates the *Colorado Primary Drinking Water Regulations* or any final Enforcement Order issued by the Division, shall be subject to an administrative penalty as follows:
  - a. For systems that serve a population of more than ten thousand people, an amount not to exceed one thousand dollars per violation per day; or
  - b. For systems that serve a population of ten thousand people or less, an amount not to exceed one thousand dollars per violation per day, but only in an amount, as determined by the Division, that is necessary to ensure compliance.

56. Based upon the facts described in this action the Department has determined that an administrative penalty is appropriate in this matter and therefore assesses an administrative penalty of two thousand three hundred twenty seven dollars (\$2,327.00) for the specific violations identified in this action. The reasoning behind this penalty amount is detailed in the administrative penalty methodology/calculation worksheet, which is incorporated herein by reference and enclosed as Exhibit A.

**Terms of Administrative Penalty Payment**

57. If Par Properties LLC does not contest the findings and penalty assessment set out above, payment of the administrative penalty for the violations shall be forwarded to the Colorado Department of Public Health and Environment within sixty (60) calendar days of the date of issue of this action. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

Mr. Scott Klarich, Unit Manager  
Enforcement and Clean Water Compliance Assurance Unit  
Colorado Department of Public Health and Environment  
Water Quality Control Division  
Mail Code: WQCD-CADM-B2  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

*(To facilitate payment processing, please ensure that Mr. Klarich's name is on the outside of the envelope.)*

Payment or appeal of the administrative penalty in this manner does not relieve Par Properties LLC of its obligation to perform the activities required by this enforcement action.

**NOTICES AND SUBMITTALS**

For all documents, plans, records, reports and replies required to be submitted by this order, Par Properties 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 and Data Management Section  
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**

Par Properties 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 Par Properties 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(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. In the event that Par Properties LLC does not achieve complete and timely compliance with all of the terms and conditions outlined herein, including full and timely payment of administrative penalties, the Department reserves, in addition to any other remedies allowed by law, its right under §25-1-114(4), C.R.S., to pursue an action for additional penalties.

**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.

Pursuant to §25-1-114.1(2.5)(b) C.R.S. an Administrative Penalty Assessment may be appealed to the Water Quality Control Commission. Requests for such an appeal should be filed in writing with the Water Quality Control Commission within thirty (30) calendar days after service of the penalty assessment.

**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 27<sup>th</sup> day of February, 2009.

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

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