



June 25, 2019

Ms. Sharon Stone  
AFCEC / CZOM  
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Dear Ms. Stone, Ms. Frehse, and Mr. Simpleman,

It is our understanding that, pursuant to section 121(e)(1) of CERCLA, the U.S. Air Force, the Army Corps of Engineers, and Army Corps of Engineers contractors (hereinafter, USACE) do not intend to obtain any permits under the Colorado's Water Quality Control Act for activities related to the U.S. Air Force's non-time critical removal action in the Security Water District, the City of Fountain, and the Widefield Water and Sanitation District (hereinafter, removal action). However, as you know, USACE is required to comply with all substantive requirements of Colorado's water quality and drinking water laws and regulations when conducting this removal action. See 40 C.F.R. section 300.5.

This letter details the actions USACE must take in order to ensure substantive compliance with Colorado's water quality and drinking water laws and regulations.

#### **I. Colorado Water Quality Control Act and Implementing Regulations**

In order to ensure substantive compliance with Colorado's Water Quality Control Act, 25-8-101 *et seq.*, C.R.S., and its implementing Colorado Water Quality Control Commission regulations, including preventing any exceedances of Colorado's water quality standards, the Water Quality Control Division, Colorado Department of Public Health and the Environment (CDPHE) requires that USACE do the following when conducting this removal action:

##### **1. Compliance With State Construction Stormwater Requirements**

Colorado Water Quality Control Commission regulations regulate construction activities that disturb one acre of land or more or are part of a larger common plan of development which disturbs one acre of land or more over a period of time in order to meet the substantive compliance requirements of the Colorado water quality standards. CDPHE determined that

the most feasible way for construction activities to obtain such compliance with Colorado water quality standards is through required practices, described in the COG400000 general permit. In order to comply with these requirements, USACE must do the following:

- USACE must provide the application information that identifies the regulated activities (5 CCR 1002-61, 61.4). This can be done by supplying unsigned application forms with the relevant attachments. Because construction dewatering and stormwater applications are online, copies of the previously used forms will be provided.
- USACE must meet all of the substantive requirements in COG400000, which includes requirements for control measures, developing and maintaining a stormwater management plan, and conducting and documenting self inspections. These are necessary substantive practices in order to prevent exceedances of water quality standards and are in place of numeric effluent limits. (5 CCR 1002-61, 61.8(3)).
- USACE must allow the applicable municipal separate storm sewer systems (MS4) permittee (City of Fountain or El Paso County) and CDPHE to inspect the construction site for compliance with the above requirements, with the permission of the site operator. The MS4 permittee and CDPHE will identify noncompliance to USACE. USACE must address and resolve the noncompliance as quickly as possible.
- Any circumstances leading to any noncompliance that may endanger health or the environment, including failure of stormwater controls resulting in discharges of sediment to state waters, must be reported to the division within 24-hours of USACE or its contractors being aware of the occurrence. This notification requirement is a substantive requirement of the Colorado regulations (5 CCR 1002-61.8(5)(d)).

**2. Compliance with MS4 Permittee's Illicit Discharge Requirements (5 CCR 1002-61, 61.8(11))**

USACE must comply with the applicable MS4 permittee's prohibitions of certain discharges to the stormwater collection system.

**3. Compliance with MS4 Permittee's Post-Construction Requirements (5 CCR 1002-61, 61.8(11))**

Post construction requirements for permanent water quality associated with runoff from buildings, roads, and other impervious areas are not covered by the CERCLA exemption in section 121(e)(1). The owner of the completed structures must meet the requirement to build post-construction control measures, as required by the Fountain and El Paso County to meet their MS4 permit requirements. This includes the following:

- USACE must submit plans to MS4 permittees, including any required engineering certifications.
- USACE must obtain necessary permits and approvals.
- USACE must meet required design standards.



#### 4. Compliance with Water Quality Standards During Construction Dewatering

In order to ensure that any discharges to a state water from dewatering does not cause or contribute to an exceedance of any water quality standards for that state water, prior to any discharge USACE must provide the division the information contained in our application for coverage under one of Colorado's general permits for construction dewatering. The division is not requesting a permit be applied for, but the information in the application is necessary for the division to provide the information needed to meet the substantive requirements. The easiest way to provide this information is to complete an application form and submit a source water sample to the Water Quality Control Division, without signing the application. Contact Margo Griffin at [margo.griffin@state.co.us](mailto:margo.griffin@state.co.us) to obtain a form and for additional information). The division will then notify USACE of the effluent limits and monitoring frequency required in order to not cause or contribute to an exceedance of a stream standard or violate any other Water Quality Control Act or regulatory requirements. At that time, USACE can begin discharging to state waters, but USACE must comply with those limits and monitoring frequency, and document this compliance. Any exceedance of these effluent limits should be reported to the division within 24-hours of USACE or its contractors being aware of the occurrence. This notification requirement is a substantive requirement of the Colorado regulations (5 CCR 1002-61.8(5)(d)). Please note that state waters includes, without limitation, ditches, isolated wetlands, and groundwater.

#### 5. Compliance with Pretreatment Requirements (5 CCR 1002-63)

If discharging to any sanitary sewers, USACE must comply with that sewage treatment plant's restrictions upon discharges to those sanitary sewers, including those in its pretreatment program.

#### 6. Compliance with All Other Water Quality Control Act Provisions

If USACE intends to or does undertake any other activity that is regulated by the Water Quality Control Act, including any other activity that will result in discharges to state waters, USACE must notify the Water Quality Control Division immediately and the Water Quality Control Division will tell USACE how to comply with the substantive requirements of that section of the Water Quality Control Act.

## II. Colorado Drinking Water Authorities

USACE must comply with the Drinking Water Quality Act, §§ 25-1.5-201 to 25-1.5-209, C.R.S.; and the Colorado Primary Drinking Water Regulations, 5 CCR 1002-11 ("Regulation 11"). Compliance with these authorities does not involve permitting and thus these authorities are not covered by the CERCLA exemption in section 121(e)(1). The requirements of these authorities include the following:



- USACE must submit to the division all plans and specifications regarding any improvements to or modifications of existing Public Water System (PWS) waterworks for division review (Regulation 11.4(1));
- USACE must meet required design standards, as described in Colorado Policy DW-005, State of Colorado Design Criteria for Potable Water Systems (Regulation 11.4(1));
- USACE must meet all siting standards, as described in Regulation 11.4(2); and
- USACE must meet all other applicable requirements of Regulation 11.

Thank you for your attention to this matter.

Sincerely,

**Nathan T. Moore** Digitally signed by Nathan T. Moore  
Date: 2019.06.25 08:57:02 -06'00'

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File Copies: COR090008, City of Fountain MS4  
COR090011, El Paso County MS4

