

STATE OF COLORADO

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Executive Director and Chief Medical Officer

WATER QUALITY CONTROL COMMISSION

<http://www.cdphe.state.co.us/op/wqcc/index.html>

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**Colorado
Department
of Public Health
and Environment**

NOTICE OF PUBLIC RULEMAKING HEARING BEFORE THE COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

For consideration of the adoption of revisions to the Regulations for Effluent Limitations, Regulation #62 (5 CCR 1002-62). The revisions to Regulation #62 proposed by the Water Quality Control Division, along with a proposed Statement of Basis, Specific Statutory Authority, and Purpose, are attached to this notice as Exhibit 1. Proposed new language is shown with double-underlining and proposed deletions are shown with ~~strikeouts~~. Any alternative proposals related to the revisions proposed in Exhibit 1, and developed in response to those proposed revisions, will also be considered.

HEARING SCHEDULE:

DATE: Monday, June 11, 2012
TIME: 9:00 a.m.
PLACE: Florence Sabin Conference Room
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246

PUBLIC PARTICIPATION ENCOURAGED:

The Commission encourages all interested persons to provide their opinions or recommendations regarding the matters to be addressed in this rulemaking hearing, either orally at the hearing or in writing prior to or at the hearing. Although oral testimony from those with party status (see below) and other interested persons will be received at the hearing, the time available for such oral testimony may be limited. Written submissions prior to the hearing are encouraged, so that they can be distributed to the Commission for review prior to the hearing. Oral testimony at the hearing should primarily summarize written material previously submitted. The hearing will emphasize Commission questioning of parties and other interested persons about their written prehearing submittals. Introduction of written material at the hearing by those with party status or mailing list status (see below) generally will not be permitted. The Commission requests that all interested persons submit to the Commission Office any available information that may be relevant in considering the noticed proposals.

PARTY STATUS/MAILING LIST STATUS:

Participation as a "party" to this hearing or acquisition of "mailing list status," will require compliance with section 21.3(D) of the Procedural Rules, Regulation #21 (5 CCR 1002-21). Mailing list status will allow receipt of all party documents (except individual exhibits more than five pages in length).

It is not necessary to acquire party status or mailing list status in order to testify or comment. **For each request for party status or mailing list status, please provide the organization's name, a contact person, mailing address, phone number, fax number and email address if available.** Written party status or mailing list status requests are due in the Commission Office on or before:

DATE: Wednesday, March 28, 2012
TIME: 5:00 p.m.

A single copy of the party status or mailing list status request may be transmitted as an email attachment to cdphe.wgcc@state.co.us, submitted by fax to 303-691-7702, mailed or otherwise conveyed so as to be received in the Commission Office no later than this deadline. PLEASE NOTE that, as indicated below, parties will have the option of distributing materials to other parties electronically, except in instances where a party has requested receiving hard copies of documents. Therefore, **anyone requesting party or mailing list status that wishes to receive hard copies of documents instead of emailed copies should so indicate in the party status/ mailing list status request so that this information can be included on the list distributed by the Commission Office.**

PREHEARING STATEMENTS:

PLEASE NOTE that for this hearing two separate deadlines for prehearing statements are established: (1) An original and 13 copies of an initial **Prehearing Statement from the Water Quality Control Division, as proponent of the revisions proposed in Exhibit 1 attached to this notice**, including written testimony and exhibits providing the basis for the proposals, must be received in the Commission Office no later than **April 4, 2012**; and (2) an original and 13 copies of a **Responsive Prehearing Statement**, including any exhibits, written testimony, and alternative proposals of **anyone seeking party status and intending to respond to the proponent's proposals** must be received in the Commission Office no later than **April 25, 2012**.

For each deadline, the required number of hard copies of documents must be received in the Commission office by the specified deadline. These requirements are not satisfied by electronic transmission of a facsimile copy or copies. However, **parties are also strongly encouraged to email a copy of their written documents to the Commission Office**, so that materials received can be posted on the Commission's web site. (Please email to cdphe.wgcc@state.co.us.) In addition, copies of these documents must be mailed or hand-delivered by the specified dates to all persons requesting party status or mailing list status, and to the Attorney General's Office representatives for the Commission and the Department's Environmental Agriculture Program, in accordance with a list provided by the Commission Office following the party status/ mailing list status deadline. **Alternatively, parties may email documents to those with party status or mailing list status by the**

specified dates, except to those that the list distributed by the Commission Office identifies as requesting hard copies.

Also **note** that the Commission has prepared a document entitled **Information for Parties to Water Quality Control Commission Rulemaking Hearings**. A copy of this document will be mailed or emailed to all persons requesting party status or mailing list status. It is also posted on the Commission's web site at <http://www.cdphe.state.co.us/op/wgcc/PubPart/hbappc.pdf>. Following the suggestions set forth in this document will enhance the effectiveness of parties' input for this proceeding. **Please note the request that all parties submit two-sided copies of all hearing documents on three-hole punch paper.**

MAILING LIST STATUS COMMENTS:

Those requesting mailing list status shall provide written testimony, if any testimony is to be offered for the hearing, by the above deadline for responsive prehearing statements – i.e., **April 25, 2012**. Copies shall be submitted and distributed in the same manner as noted above for prehearing statements.

PREHEARING CONFERENCE:

DATE: Wednesday, May 8, 2012
TIME: 1:30 p.m.
PLACE: Carson Room, Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado

Attendance at the prehearing conference is mandatory for all persons requesting party status. An opportunity may be available to participate in this prehearing conference by telephone. Persons wishing to participate by telephone should notify the Commission Office as early as possible.

REBUTTAL STATEMENTS:

Written rebuttal statements responding to the prehearing statements due on April 25, 2012 may be submitted by the Water Quality Control Division and anyone seeking party status or mailing list status. Any such rebuttal statements must be received in the Commission Office by **May 30, 2012**. An original and 13 copies of written rebuttal statements must be received in the Commission Office by this deadline, and submission of an emailed copy as noted above is strongly encouraged. In addition, copies of these documents must be mailed or hand-delivered by that date to all those requesting party status or mailing list status, and to the Attorney General's Office representatives for the Commission and Division. **Alternatively, parties may email documents to those with party status or mailing list status by this deadline**, except to those that the list distributed by the Commission Office identifies as requesting hard copies. No other written materials will be accepted following this deadline except for good cause shown.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202, 25-8-205, 25-8-401 and 25-8-402 C.R.S. provide the specific statutory authority for consideration of the regulatory amendments proposed by this

notice. Should the Commission adopt the regulatory language as proposed in this notice or alternative amendments, it will also adopt, in compliance with section 24-4-103(4) C.R.S., an appropriate Statement of Basis, Specific Statutory Authority, and Purpose.

NOTIFICATION OF POTENTIAL MATERIAL INJURY TO WATER RIGHTS:

In accordance with section 25-8-104(2)(d), C.R.S., any person who believes that the actions proposed in this notice have the potential to cause material injury to his or her water rights is requested to so indicate in the party status request submitted. In order for this potential to be considered fully by the Commission and the other agencies listed in the statute, persons must fully explain the basis for their claim in their prehearing statement which is due in the Commission Office on the date specified above. This explanation should identify and describe the water right(s), and explain how and to what degree the material injury will be incurred.

Dated this 14th day of February 2012 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Paul D. Frohardt, Administrator

EXHIBIT 1
WATER QUALITY CONTROL DIVISION

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
WATER QUALITY CONTROL COMMISSION

5 CCR 1002-62

REGULATION #62

REGULATIONS FOR EFFLUENT LIMITATIONS

62.1 AUTHORITY

The Water Quality Control Commission ("Commission") is directed by section 25-8-205, C.R.S., to promulgate control regulations to describe prohibitions, standards, concentrations, and effluent limitations on the extent of specifically identified pollutants that any person may discharge into any specific class of state waters.

Materials incorporated by reference are available for public inspection during normal business hours, or copies may be obtained at a reasonable cost, from the Administrator, Water Quality Control Commission, 4300 Cherry Creek Drive South, Denver, Colorado 80222. All material incorporated by reference may be examined at any state publications depository library. Copies of incorporated materials are also available at the U.S. Environmental Protection Agency's Region 8 Technical Library located at 1595 Wynkoop Street (16th Street Mall and Wynkoop) Denver, Colorado 80202-1129.

Unless expressly stated otherwise, materials incorporated by reference are those editions in existence as of the date this regulation is promulgated or revised by the ~~Water Quality Control Commission~~, and references do not include later amendments to or editions of the incorporated. ~~All material incorporated by reference may be examined at any state publications depository library.~~

62.2 APPLICABILITY

The provisions of this regulation apply where the limitations and/or other conditions required hereunder are incorporated into a permit issued pursuant to ~~Water Quality Control Commission Regulation No. 61~~ (Colorado Discharge Permit System Regulations), 5 CCR 1002-61, except that this regulation does not apply to permits for stormwater discharges.

62.3 DEFINITIONS

See the Colorado Water Quality Control Act and the ~~Water Quality Control Commission's~~ codified regulations for additional definitions.

- (1) "STATE WATERS" - means any and all surface or subsurface waters which are contained in or flow in or through this state, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

62.4 REGULATIONS

- (1) The effluent limitations for identified pollutants shall be applied in permits in accordance with the following requirements.-
- (2) At such time as effluent limitation guidelines are promulgated by the eCommission for any industry pursuant to section 25-8-205(2)(d)2 C.R.S., such industry shall be subject to those guidelines and shall not be subject to effluent limitations set forth below in paragraph 62.5. If the Commission has not so promulgated effluent limitation guidelines for any particular industry, but that industry is subject to numeric effluent limitation guidelines promulgated by the United States Environmental Protection Agency ("EPA") pursuant to the Federal Water Pollution Control Act of 1972, the effluent from these industries shall be subject to the corresponding numeric effluent limitations in the applicable EPA guidelines and shall not be subject to the effluent limitations of paragraph 62.5 below.
- (3) The effluent limitation set forth below, or promulgated according to subparagraph (2) above, are also subject to being superseded if ~~augmented~~ when it is found that stricter limitations are required in order to insure that water quality standards are maintained.

62.5 SPECIFIC LIMITATIONS FOR THE DISCHARGE OF POLLUTANTS

The following numeric limits shall apply where the Water Quality Control Division ("Division") identifies the pollutant as one that may, without treatment, be present in the discharge at a level approaching the relevant limit. Except as required under federal law, where the Division determines that a numeric limit is infeasible, the Division shall require implementation of best management practices as a condition of the permit as necessary to control or abate the discharge of pollutants to state waters. In no case will a discharge be held to be in compliance with any of the limitations set forth below where the discharge is diluted with other waters, unless such compliance would exist without such dilution.

(1) Numeric Limitations

PARAMETER	PARAMETER LIMITATIONS		
	7-Day Average ¹	30-Day Average ²	Instantaneous Maximum ³
(a) BOD ₅	45 mg/l	30 mg/l	N/A
(b) Total Suspended Solids (TSS)	45 mg/l	30 mg/l	N/A
(c) CBOD ₅	40 mg/l	25 mg/l	N/A
(d) Residual Chlorine			0.5 mg/l ^{3, 5}
(e) pH			6.0 - 9.0 s.u. ^{3, 4}
(f) Oil and Grease			10 mg/l ^{3, 6}

1 7-Day Average: The arithmetic mean of all samples taken in a 7-day period.

2 30 Day-Average: The arithmetic mean of all samples taken in a 30-day period.

- 3 As determined by the results of any single grab sample.
- 4 The pH shall remain at or between these values.
- 5 This limitation shall not apply to discharges to irrigation ditches or to ground water
- 6 .A numeric effluent limit will be assigned in permits for discharges to surface waters, however, monitoring for a "visual sheen" will generally be required. Where a visual sheen is detected, the discharger will be required to collect a grab sample and have it analyzed for oil and grease. Monitoring for oil and grease may be required where there is a reasonable potential that oil and grease will be present in the effluent at concentrations at or above 10 mg/l.

These numeric limits and sampling requirements have been set with the inherent variability of the analytical procedures taken into consideration.

- (2) In addition to the above effluent limitations, the arithmetic mean of the values for effluent samples for CBOD₅, BOD₅ and TSS collected in a period of 30 consecutive days shall not exceed 15 percent of the arithmetic mean of the values for influent samples collected at approximately the same time during the same period (85 percent removal).

(a) For domestic sources, where the permittee has demonstrated that the treatment facility is unable to meet the 85 percent removal requirement for a parameter and the inability to meet the requirement is not caused by excessive infiltration, as defined in 40 CFR 35.2005(b)(16), a lower percent removal requirement or a mass loading limit may be substituted provided that the permittee can demonstrate that the provisions of 40 CFR 133.103(d) can be met.

(b) For industrial sources, the Division may, as it finds appropriate on a case by case basis, substitute a lower percentage removal requirement or a mass loading limit for the 85 percent removal requirements of this subsection (2). The Division may also determine, on a case by case basis, that the numeric limitations for CBOD₅, BOD₅, and TSS as listed in subsection (1), are sufficiently protective of the applicable designated uses, and in such case, the Division may exempt such industrial source(s) from the percentage removal requirements of this subsection (2).

- (3) The numeric limitations for TSS in section 62.5(1)(b), above, may be adjusted for waste stabilization ponds which treat domestic waste provided that (1) the waste stabilization ponds are the principal process used for secondary treatment; and (2) the facility is designed to achieve the solids removal possible with best waste stabilization pond technology. Best waste stabilization pond technology is defined as that design criteria for ponds currently in effect as adopted by the ~~Water Quality Control Commission or the Water Quality Control Division~~. Since these criteria will be upgraded periodically, any ~~permittee municipality~~ not in conformance with the approved design criteria will be given an opportunity to establish a reasonable implementation schedule given due consideration to design, construction, and financial capability of the ~~permittee municipality~~. The adjusted limitations shall be as described below:

<u>Treatment Type</u>	<u>7-Day Average</u> ¹	<u>30-Day Average</u> ²
Non-aerated Waste Stabilization Ponds	160 mg/l	105 mg/l
Aerated Waste Stabilization Ponds	110 mg/l	75 mg/l

¹ 7-Day Average: The arithmetic mean of all samples taken in a 7-day period.

2 30-Day Average: The arithmetic mean of all samples taken in a 30-day period.

In addition, where adjusted TSS limitations are given, the 85 percent removal requirement for TSS shall be waived.

- (4) The numeric limits for pH for domestic wastewater treatment facilities may be adjusted to values outside of the limits in section 62.5(1)(e), above, subject to limitations necessary to protect applicable water quality standards, where inorganic chemicals are not added to the waste stream as part of the treatment process and where industrial contributions do not cause the pH to be less than 6.0 s.u. or greater than 9.0 s.u.
- (5) Sampling of discharges, for the purpose of the effluent limitations for pollutants set forth in section 62.4(1) above, shall be made prior to any admixture of the discharge with state waters. All new discharges, except for individual sewage disposal (onsite) systems, shall be constructed so that a sample of the effluent can be obtained at a point after the final treatment process and before discharge to state waters.

If samples for BOD₅, CBOD₅ or TSS are taken at the outfall of a final quiescent pond, with a detention time of at least 48 hours, the sample may be a grab sample. In all other plants which cannot meet this requirement, effluent samples shall be a composite sample, comprised of a minimum of four grab samples taken approximately two hours apart.

- (6) Normally the numeric limits for BOD₅ will be applied, however, they may be replaced with the numeric limits for CBOD₅ in section 62.5(1)(c) at the request of the permittee.
- (7) The permittee must be able to show proof at the request of the ~~Water Quality Control Division, Colorado Department of Public Health and Environment,~~ of the accuracy of any flow-measuring device used in obtaining data submitted in the discharge monitoring report. The flow-measuring device must indicate values within ten percent of the actual flow being measured.
- (8) If wastewater is returned to the source from which it was obtained, the numeric limitations specified in section 62.5(1) above, may be in addition to the measured values of the same parameter(s) in the incoming water except where an exceedance of a water quality standard would take place.
- (9) Any person subject to the numeric limits for BOD₅, or CBOD₅ shall have the option of establishing, to the continuing satisfaction of the eddivision, a relationship between BOD₅ or CBOD₅ and COD (chemical oxygen demand), TOC (total organic carbon), or TOD (total oxygen demand) with respect to such effluent, and the COD, TOC, or TOD values so established shall be substituted for the BOD₅, or CBOD₅, values required under section 62.5(1), above.

62.6 Reserved.

62.7 Reserved.

62.8 Reserved.

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PROPOSED **WATER QUALITY CONTROL DIVISION**

62.19 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE; JUNE 11, 2012 RULEMAKING

The provisions of sections 25-8-202(1) and 25-8-501(3), C.R.S., provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4), C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

The Commission revised section 62.1 to state that in addition to the Commission office and the state publications depository library, copies of materials incorporated by reference also can be viewed at the U.S. Environmental Protection Agency's ("EPA") Technical Library in Denver. This revision was made for consistency with new rulemaking requirements in the Colorado Administrative Procedure Act, section 24-4-103, C.R.S.

The Commission revised section 62.4(2) to address situations where a particular industry sector is subject to the numeric limitations in Regulation 62, and EPA subsequently promulgates an effluent limitation guideline ("ELG") that does not include numeric effluent limitations (but rather practice-based effluent limits) for one or more of the applicable parameters. These revisions provide that where the federal ELG sets forth numeric limits for parameters that are also included in Regulation 62, the sector must adhere to the numeric limit specified in the ELG. Where, however, the federal ELG does not specify a numeric limitation for a certain parameter and Regulation 62 does, the regulation allows flexibility for the numeric limitation in Regulation 62 to remain applicable to that sector.

The Commission also revised section 62.5(2) to make a clearer distinction between CBOD₅, BOD₅, and TSS removal requirements for domestic sources and industrial sources. For industrial sources, the Commission found it appropriate to grant the Division discretion to substitute, in certain cases, lower percent removal requirements or mass loading limits for the 85 percent removal requirements found in that subsection. The Commission also gave the Division discretion to exempt certain industrial sources from the further removal requirements of that subsection where the Division determines that the numeric limitations for CBOD₅, BOD₅, and TSS are sufficient.

The Commission also took this opportunity to make minor stylistic edits to the Regulation, such as deleting unnecessary wording in section 62.4(3), changing the term "municipality" to "permittee" in section 62.5(3) to include industrial dischargers, and abbreviating references to the Water Quality Control Commission and Division.