



# COLORADO

Water Quality  
Control Commission

Department of Public Health & Environment

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

### SUBJECT:

For consideration of the adoption of revisions to to correct errors in the Classifications and Numeric Standards for South Platte River Basin, Laramie River Basin, Republican River Basin, Smoky Hill River Basin, Regulation #38 (5 CCR 1002-38). Revisions to Clear Creek Segments 14a and 14b, Big Thompson Segment 2 and Upper South Platte Segment 16i of Regulation #38 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.

In these attachments, proposed new language is shown with double-underlining and proposed deletions are shown with ~~strikeouts~~. Any alternative proposals related to the subject of this hearing will also be considered.

During the commission’s consideration of whether to approve this notice of rulemaking, the commission determined that there is not a likelihood of significant controversy during the rulemaking process. Therefore, the commission has chosen to pursue an alternative rulemaking process consistent with section 24-4-103(4)(a) C.R.S.; and section 21.3(C)(5) of the Procedural Rules. It is the goal of the commission to complete this rulemaking without oral testimony.

### SCHEDULE OF IMPORTANT DATES

Initial comments due	02/01/2017 5 pm	Additional information below.
Responsive comments from the WQCD due	03/22/2017 5 pm	Additional information below.
<b>Rulemaking Deliberations</b>	04/10/2017 9:15 am	Florence Sabin Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246

### HEARING SUBMITTALS:

For this hearing, the commission will receive all submittals electronically. Submittals must be provided as PDF documents, except for raw data exhibits which may be provided as Excel workbooks. Sumbittals may be emailed to [cdphe.wqcc@state.co.us](mailto:cdphe.wqcc@state.co.us), provided via an FTP site, CD or flash drive, or otherwise conveyed to the commission office so as to be received no later than the specified date.

PARTY STATUS:

Pursuant to section 21.3(D) of the commission's Procedural Rules, there shall be no party status for this rulemaking proceeding.

WRITTEN COMMENTS:

The commission encourages input from interested members of the public. Written comments should be emailed to [cdphe.wqcc@state.co.us](mailto:cdphe.wqcc@state.co.us) by 03/22/2017.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202(1)(b); 25-8-204; 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.

Dated this 12<sup>th</sup> day of December, 2016 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

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Trisha Oeth, Administrator

**EXHIBIT 1**  
**WATER QUALITY CONTROL DIVISION**

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

REGULATION NO. 38 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR SOUTH PLATTE RIVER BASIN, LARAMIE RIVER BASIN, REPUBLICAN RIVER BASIN, SMOKY HILL RIVER BASIN

5 CCR 1002-38

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**38.6 TABLES**

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(6) Discharger Specific Variances

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(c) Upper South Platte River Segments 15 and 16i:

Discharger Specific Variance, Suncor Energy (U.S.A.) Inc., Commerce City Refinery (CO0001147): Adopted 10/11/2016.

Selenium (acute) = TVS: no limit; Selenium (chronic) = ~~TVS~~9: 24 µg/L. Expiration date: 12/31/2023.

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**38.95 STATEMENT OF BASIS SPECIFIC STATUTORY AUTHORITY AND PURPOSE APRIL 10, 2017 RULEMAKING; FINAL ACTION APRIL 10, 2017; EFFECTIVE DATE JUNE 30, 2017**

The provisions of C.R.S. 25-8-202(1)(a), (b) and (2); 25-8-203; 25-8-204; and 25-8-402; provide the specific statutory authority for adoption of these regulatory amendments. The commission also adopted in compliance with 24-4-103(4) C.R.S. the following statement of basis and purpose.

**BASIS AND PURPOSE**

In this hearing, the commission made several corrections to Regulation 38. Several errors have been identified which do not reflect the commission's intended decisions from recent hearings.

**A. South Platte Segment 16i**

The commission made a correction to the discharger specific variance for selenium on Upper South Platte Segment 16i that was originally adopted on October 11, 2016. The variance is expressed as a hybrid standard, with the first number as the underlying standard previously adopted by the commission for the segment. The underlying chronic selenium standard for this portion of Segment 16i is 9.0 µg/L

(see 38.6(4)(f) for site-specific standards and assessment locations). Therefore, the first number in the variance should be 9.0 µg/L.

**B. Clear Creek Segments 14a and 14b**

The commission deleted the arsenic temporary modification from Clear Creek Segment 14a and adopted an arsenic temporary modification on Clear Creek Segment 14b. When the commission took preliminary final action on changes from the June 2015 Regulation 38 rulemaking hearing, the commission decided not to adopt the proposed arsenic temporary modification on Clear Creek Segment 14a. During the formation of final action documents, the arsenic temporary modification was inadvertently removed from Clear Creek Segment 14b instead of Clear Creek 14a.

**C. Big Thompson Segment 2**

The commission corrected the antidegradation designation for Big Thompson River Segment 2. During the June 2015 Regulation 38 rulemaking hearing, the antidegradation designation was inadvertently changed from reviewable to use protected. Because this change was in error and data are available to show waters in this segment are high quality, the commission has removed the used protected designation and reapplied the reviewable designation to Big Thompson River Segment 2.

**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT  
WATER QUALITY CONTROL COMMISSION**

**5 CCR 1002-38**

**REGULATION NO. 38  
CLASSIFICATIONS AND NUMERIC STANDARDS  
FOR  
SOUTH PLATTE RIVER BASIN, LARAMIE RIVER BASIN  
REPUBLICAN RIVER BASIN, SMOKY HILL RIVER BASIN**

**APPENDIX 38-1  
Stream Classifications and Water Quality Standards Tables**

Effective ~~03/01/2017~~06/30/2017

# REGULATION #38 STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

## Upper South Platte River Basin

16i. Mainstem of Sand Creek from the confluence with Toll Gate Creek to the confluence with the South Platte River.						
COSPUS16I	Classifications	Physical and Biological			Metals (ug/L)	
Designation	Agriculture	DM	MWAT	acute	chronic	
Reviewable	Aq Life Warm 2 Recreation E	Temperature °C	WS-II	WS-II	Aluminum	---
			acute	chronic	Arsenic	340
<b>Qualifiers:</b>		D.O. (mg/L)	---	5.0	Beryllium	---
<b>Fish Ingestion Standards</b>		pH	6.5 - 9.0	---	Cadmium	TVS
<b>Other:</b>		chlorophyll a (mg/m <sup>2</sup> )	---	150*	Cadmium	5.0(T)
		E. Coli (per 100 mL)	---	126	Chromium III	50(T)
		<b>Inorganic (mg/L)</b>			Chromium VI	TVS
			acute	chronic	Copper	TVS
		Ammonia	TVS	TVS	Iron	---
		Boron	---	0.75	Lead	TVS
		Chloride	---	---	Lead	50(T)
		Chlorine	0.019	0.011	Manganese	TVS
		Cyanide	0.005	---	Mercury	---
		Nitrate	10	---	Mercury	0.026(t)*
		Nitrite	---	0.5	Molybdenum	---
		Phosphorus	---	0.17*	Nickel	TVS
		Sulfate	---	---	Nickel	---
		Sulfide	---	0.002	Selenium	---
					Selenium	varies*
					Silver	TVS
					Uranium	---
					Zinc	TVS

\*chlorophyll a (mg/m<sup>2</sup>)(chronic) = applies only above the facilities listed at 38.5(4).  
 \*Phosphorus(chronic) = applies only above the facilities listed at 38.5(4).  
 \*Mercury(chronic) = 0.026 below Brighton Blvd, see section 38.6(4)(f) for mercury assessment locations  
 \*Selenium(acute) = See section 38.6(4)(f) for selenium standards and assessment locations.  
 \*Selenium(chronic) = See section 38.6(4)(f) for selenium standards and assessment locations.

Discharger Specific Variance(s):  
 Selenium (acute) = TVS: no limit  
 Selenium (chronic) = ~~TVS~~ 24 µg/L  
 Expiration Date of 12/31/2023  
 Variance: Selenium = see 38.6(6) for details.



## REGULATION #38 STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS Big Thompson River Basin

2. Mainstem of the Big Thompson River, including all tributaries and wetlands from the boundary of Rocky Mountain National Park to the Home Supply Canal diversion, except for the specific listing in Segment 7; mainstem of Black Canyon Creek and Glacier Creek below Estes Park water treatment plant.

COSPBT02	Classifications	Physical and Biological			Metals (ug/L)		
		DM	MWAT	acute	chronic		
UP	Agriculture						
	Aq Life Cold 1	Temperature °C	CS-II	CS-II	Aluminum	---	---
	Recreation E		acute	chronic	Arsenic	340	0.02(T)
	Water Supply	D.O. (mg/L)	---	6.0	Beryllium	---	---
<b>Qualifiers:</b>		D.O. (spawning)	---	7.0	Cadmium	TVS(tr)	TVS
<b>Other:</b>		pH	6.5 - 9.0	---	Cadmium	5.0(T)	---
Temporary Modification(s):		chlorophyll a (mg/m <sup>2</sup> )	---	150*	Chromium III	50(T)	TVS
Arsenic(chronic) = hybrid		E. Coli (per 100 mL)	---	126	Chromium VI	TVS	TVS
Expiration Date of 12/31/2021					Copper	---	7.5*
*chlorophyll a (mg/m <sup>2</sup> )(chronic) = applies only above the facilities listed at 38.5(4). *Phosphorus(chronic) = applies only above the facilities listed at 38.5(4). *Copper(acute) = 11 ug/L from immediately above the Upper Thompson Sanitation District's wastewater treatment plant outfall to the Home Supply Canal Diversion. *Copper(chronic) = 7.5 ug/L from immediately above the Upper Thompson Sanitation District's wastewater treatment plant outfall to the Home Supply Canal Diversion.		<b>Inorganic (mg/L)</b>			Copper	11*	TVS
			acute	chronic	Copper	TVS	---
		Ammonia	TVS	TVS	Iron	---	WS
		Boron	---	0.75	Iron	---	1000(T)
		Chloride	---	250	Lead	TVS	TVS
		Chlorine	0.019	0.011	Lead	50(T)	---
		Cyanide	0.005	---	Manganese	TVS	TVS
		Nitrate	10	---	Manganese	---	WS
		Nitrite	---	0.05	Mercury	---	0.01(t)
		Phosphorus	---	0.11*	Molybdenum	---	150(T)
		Sulfate	---	WS	Nickel	TVS	TVS
		Sulfide	---	0.002	Nickel	---	100(T)
					Selenium	TVS	TVS
					Silver	TVS	TVS(tr)
					Uranium	---	---
					Zinc	TVS	TVS