

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

REGULATION NO. 65 - REGULATION CONTROLLING DISCHARGES TO STORM SEWERS

5 CCR 1002-65

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

65.1 AUTHORITY

Sections 25-8-202(1)(c), 25-8-205 and 25-8-401, C.R.S.

65.2 REGULATIONS

- (1) No person shall discharge any pollutant from a point source that flows directly into a storm sewer pipe or inlet to such pipe.
- (2) The prohibition in section 65.2(1), above, does not apply where the discharger has obtained a permit for such discharge from the Division pursuant to section 25-8-501, C.R.S.
- (3) The prohibition in section 65.2(1), above, does not apply to pollutants that are incidentally deposited and are mobilized by waters that only flow as a result of a storm event.
- (4) Where the responsible party for a discharge can demonstrate to the Division that a discharge to a storm sewer system is contained within and removed from the storm sewer system without reaching state waters, as defined at section 25-8-103(19), C.R.S., no violation will be found to exist.

65.3 - 65.9 RESERVED

65.10 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE (1990 REVISIONS)

The provisions of Section 25-8-205, C.R.S. provide the specific statutory authority for adoption of the above amendment.

Based on the Division's recommendation the title of this regulation was amended to simplify and to avoid confusion with pending regulations regarding discharges from storm sewers

65.11 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE (1996 REVISIONS)

The provisions of Section 25-8-205, C.R.S. provide the specific statutory authority for adoption of the above amendment.

Based on the Division's recommendation the regulation has been modified to clarify that a CDPS permit is necessary for any non-stormwater discharge of pollutants from any industrial, commercial or sanitary system into the storm sewer. The Division also tried to clarify that stormwater discharges are not impacted by this regulation.

**65.12 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; JULY, 1997
RULEMAKING**

The provisions of sections 25-8-202 and 25-8-401, 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 has adopted a revised numbering system for this regulation, as a part of an overall renumbering of all Water Quality Control Commission rules and regulations. The goals of the renumbering are: (1) to achieve a more logical organization and numbering of the regulations, with a system that provides flexibility for future modifications, and (2) to make the Commission's internal numbering system and that of the Colorado Code of Regulations (CCR) consistent. The CCR references for the regulations will also be revised as a result of this hearing.

**65.13 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; JULY 11, 2005
RULEMAKING, EFFECTIVE OCTOBER 2, 2005**

The provisions of sections 25-8-205 and 25-8-401, 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 modified section 65.2(1) of the regulation to clarify that the discharge of pollutants from any point source to a storm sewer without a discharge permit is prohibited. The Commission found this change to be appropriate to clarify that "point sources" are not limited to certain types of facilities. The Commission deleted previous section 65.2(2) as it was redundant of section 65.2(1) and also revised section 65.2(3), now 65.2(2), for consistency with those of section 65.2(1).

**65.14 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; APRIL 14,
2008 RULEMAKING, EFFECTIVE MAY 30, 2008**

The provisions of sections 25-8-205 and 25-8-401, 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 affirms that the intent of Regulation 65 is to allow the Division to make a finding of violation where a discharge enters a storm sewer inlet or pipe based on the premise that such discharge will reach state waters, either directly or as a result of a subsequent storm or other unrelated flow event. The Commission finds that this authority is necessary above and beyond that provided to the Division under the Colorado Discharge Permit System Regulations, which would otherwise require the Division to demonstrate that the discharge reached state waters. The Commission does not intend that this action will alter the interpretation of the term "state waters." The Commission finds that it is appropriate to apply a more proactive regulatory approach due to the risk that such discharges could pose to the beneficial uses of state waters. In addition, the Commission finds that it is not appropriate to require the Division to expend what could be significant resources to monitor the outlet for potentially long periods before a subsequent storm or other flow event flushed the pollutants in the discharge into state waters. The Commission also states that this regulation does not authorize any storm water discharge that is otherwise required to obtain a permit pursuant to Regulation No. 61.

The Commission modified section 65.2(1) to delete the requirement for a discharger to have obtained a permit prior to discharge to a storm sewer and modified section 65.2(2) to provide that prohibition for discharge to a storm sewer does not apply where a permit has been obtained pursuant to section 25-8-501 C.R.S. This change was made to clarify that Regulation 65 does not require a permit for discharges to storm sewers but that the prohibition of such discharges does not apply where a permit has been obtained. The Commission adopted this change to avoid any potential conflict with the findings of a federal concentrated animal feeding operation permitting case (*Waterkeeper Alliance v. EPA*, 2nd Cir. 2005) which addressed a proposed provision in EPA's then-CAFO rule to require a permit of those who had the "potential" to discharge.

Section 65.2(1) was also modified to clarify that the regulation applies to discharges to infrastructure (storm sewer inlets and pipes).

The Commission established a new section 65.2(3) of the regulation to further address the provision regarding "pollutants in naturally occurring stormwater" that was previously in section 65.2(1). The Commission clarified that the exception in section 65.2(3) applies only to pollutants that are incidentally deposited to the ground due to the use of that ground (e.g. fertilizer applied to landscape in accordance with package instructions, oil deposited by vehicles on a parking lot, magnesium chloride or other deicing agents properly applied to roads and other surfaces, etc.).

At the same time, the Commission also established a new section 65.2(4) to provide an opportunity for a person responsible for a discharge to demonstrate that the discharge did not reach state waters and that the pollutants were removed from the storm sewer such that there would be no risk of a subsequent flow event flushing them into state waters. This could be accomplished by cleaning of the storm sewer system to prevent later transmission of the spilled materials to waters of the state. The Commission finds this is appropriate, particularly for spills which may be of relatively short duration and of small volume. Colorado has a semi-arid climate, in which stormwater channels may be dry for significant portions of the year and stormwater systems are composed of impervious pipes and basins and present numerous opportunities to capture and detain spills, including curbside catch basins, detention basins, and flow diversion structures.

PARTIES TO THE RULEMAKING

1. Parker Water and Sanitation District
2. City and County of Denver

Editor's Notes

History

Entire rule eff. 05/30/2008.