

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

REGULATION NO. 33 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR UPPER COLORADO RIVER BASIN AND NORTH PLATTE RIVER (PLANNING REGION 12)

5 CCR 1002-33

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

33.68 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; JUNE 13-14, 2022 RULEMAKING; FINAL ACTION AUGUST 8, 2022; EFFECTIVE DATE SEPTEMBER 30, 2022

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

A. Temporary Modifications

Pursuant to the requirements in the Basic Standards (at 31.7(3)), the commission reviewed the status of all temporary modifications to determine whether the temporary modifications should be modified, eliminated, or extended.

1. Temporary Modifications for Standards Other than Arsenic

Where evidence indicated the requirements to qualify for a temporary modification were not met, temporary modifications were deleted. Temporary modifications were deleted from the following segments:

Yampa River: 13d (COUCYA13d; iron; expires 6/30/2023), 13i (COUCYA13i; iron; expires 6/30/2023)

The commission's intent is that adequate division, commission, and stakeholder resources are available to maintain focus on work and hearings prioritized by the 10-year Water Quality Roadmap, including a rulemaking hearing to consider revisions to Regulation No. 85, Policy 17-1, and lakes nutrients criteria in November 2022. To accommodate this rulemaking hearing in November 2022, the 2022 biennial temporary modifications rulemaking hearing, which is typically held in December, was consolidated into the June 2022 rulemaking hearing. In some cases, proposals to resolve the temporary modifications could not be prepared on this accelerated timeline and additional time was needed. To allow these temporary modifications to be addressed as soon as possible, the division proposed to include these temporary modifications in the June 2023 rulemaking hearing. To facilitate this delay, temporary modifications expiring on or before June 30, 2023 needed to be extended; an expiration date of December 31, 2023 aligns with the anticipated effective date of the June 2023 rulemaking hearing. Accordingly, the commission considered the expiration dates of temporary modifications expiring on or before June 30, 2023 and extended the following temporary modifications:

The commission extended by six months the following temporary modifications:

Blue River: 14 (COUCBL14; molybdenum; expires 12/31/2023)

The commission extended by one year the following temporary modifications:

Yampa River: 13e (COUCYA13e; selenium; expires 12/31/2023), 13g (COUCYA13g; selenium; expires 12/31/2023), 13i (COUCYA13i; selenium; expires 12/31/2023), and 13j (COUCYA13j; selenium; expires 12/31/2023)

For the temporary modifications set to expire after June 30, 2023, the commission reviewed progress toward resolving the uncertainty in the underlying standard and/or the extent to which conditions are a result of natural or anthropogenic conditions, and evaluated whether the temporary modifications were still justified. The commission took no action on the following temporary modifications:

Yampa River Segment 2b (COUCYA02b): temporary modification of the chronic temperature standard (7/1-9/30, 11/1-11/30; expires 12/31/2024). The City of Steamboat Springs continues to make progress to resolve the uncertainty in the feasibility of treatment options for controlling temperature and in the temperature standards. The commission made no change to the expiration date, as the original time allotment was deemed adequate to resolve the uncertainty.

2. Temporary Modifications for Arsenic

To remain consistent with the commission's decisions regarding arsenic in section 33.63, all existing temporary modifications for arsenic of "As(ch)=hybrid" (expiration date of 12/31/24) were retained. The division submitted a plan to resolve uncertainty in the 2019 Temporary Modifications rulemaking. The division plans to propose revised standards for arsenic as soon as possible following updated toxicological information from EPA's Integrated Risk Information System (IRIS) and completion of ongoing studies to better understand arsenic conditions in Colorado. Furthermore, per the conditions of the revised and extended temporary modification at 33.6(2)(c) (effective 6/30/2020 and expires 12/31/2024), and based on the widespread need to make progress to understand sources of arsenic and set forth processes for lowering arsenic in discharges, additional permit Terms and Conditions (T&Cs) are being implemented for facilities benefitting from the "current condition" temporary modification. These T&Cs may include requirements for additional monitoring, source identification, and characterization of source control and treatment options for reducing arsenic concentrations in effluent. The commission recognizes the need to resolve the uncertainty in the arsenic standards and ensure that human health is adequately protected.