

STATE OF COLORADO

John W. Hickenlooper, Governor
Larry Wolk, MD, MSPH
Executive Director and Chief Medical Officer

WATER QUALITY CONTROL COMMISSION

<http://www.colorado.gov/cdphe/wqcc>

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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 Animas/Florida Segment 13b in the Classifications and Numeric Standards for San Juan River and Dolores River Basins, Regulation #34 (5 CCR 1002-34).

The revisions to Regulation #34 proposed by Durango West Metropolitan District, 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, August 11, 2014
TIME: 1:00 p.m.
PLACE: Florence Sabin Conference Room
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 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.

Interested members of the public that do not have party status are encouraged to submit written submissions prior to the hearing. In order to be distributed to the Commission for review prior to the hearing, such submissions need to be received in the Commission Office or the Colorado Department of Public Health and Environment's (Department's) mail room by July 30, 2014. Written submissions received after this date will be distributed to the Commissioners at the hearing. However, for logistical reasons, the Commission office cannot guarantee that **electronic submissions** received after 1:00 p.m. Friday, August 8, 2014 will be provided to Commissioners. Interested persons wishing to submit comments or other documents after that date and time should bring paper copies 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 generally will not be permitted. The Commission requests that all interested persons submit to the Commission any available information that may be relevant in considering the noticed proposals.

PARTY STATUS:

Participation as a "party" to this hearing will require compliance with section 21.3(D) of the Procedural Rules, Regulation #21 (5 CCR 1002-21). It is not necessary to acquire party status in order to testify or comment. **For each request for party status, please provide the organization's name, a contact person, mailing address, phone number, and email address.** Written party status requests are due in the Commission Office on or before:

DATE: Tuesday, May 27, 2014
TIME: 5:00 p.m.

A single copy of the party status request may be transmitted as an email attachment to cdphe.wqcc@state.co.us, submitted by fax to 303-691-7702, mailed or otherwise conveyed so as to be received in the mail room of the Colorado Department of Public Health and Environment (Department) no later than this deadline.

ELIMINATION OF MAILING LIST STATUS:

On June 10, 2013, the Water Quality Control Commission approved revisions to the Procedural Rules, Regulation #21 (5 CCR 1002-21), which eliminate mailing list status.

PREHEARING STATEMENTS:

PLEASE NOTE that for this hearing two separate deadlines for prehearing statements are established:

- (1) A PDF version of a **Proponent's Prehearing Statement** from the Durango West Metropolitan District as the proponent of revisions proposed in Exhibit 1 attached to this notice, **including** written testimony and exhibits providing the basis for the proposals, must be emailed to cdphe.wqcc@state.co.us **AND** 14 paper copies of the Proponent's Prehearing Statement **without** written testimony and exhibits must be received in the Department's mail room no later than **June 4, 2014**; and
- (2) A PDF version of a **Responsive Prehearing Statement**, including any exhibits, written testimony, and alternative proposals of the Water Quality Control Division or **anyone seeking party status and intending to respond to the proponent's proposal** must be emailed to cdphe.wqcc@state.co.us **AND** 14 paper copies of the Responsive Prehearing Statement **without** exhibits and written testimony must be received in the Department's mail room no later than **June 25, 2014**.

As soon as prehearing statements are posted on the Commission's web site, the Commission office will email a link to the page containing the prehearing statements to proponents, parties and the Attorney General's Office representatives for the Commission and the Division.

Also **note** that the Commission has prepared an **updated version** of a document entitled "Information for Parties to Water Quality Control Commission Rulemaking Hearings". A copy of this document will be emailed to all persons requesting party status. It is also posted on the Commission's web site as Appendix C to the [Public Participation Handbook](#). 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.**

REBUTTAL STATEMENTS:

Written rebuttal statements responding to the prehearing statements due on June 25, 2014 may be submitted by Durango West Metropolitan District, the Division or anyone seeking party status.

Any such rebuttal statements must be received in the Commission Office by **July 30, 2014**. A PDF version of written rebuttal statements including exhibits must be emailed to cdphe.wqcc@state.co.us **AND** 14 paper copies without exhibits must be received in the Department's mail room by this deadline. No other written materials will be accepted following this deadline except for good cause shown.

PREHEARING CONFERENCE:

DATE: Wednesday, July 23, 2014
TIME: 1:00 p.m.
PLACE: Carson Conference Room
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246

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.

Any motions regarding the conduct of this rulemaking shall be submitted by Thursday, July 17, 2014, so that they can be considered at the prehearing conference. No motions will be accepted after July 17, 2014, except for good cause shown.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202, 25-8-203, 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.

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 15th day of April 2014 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Trisha Oeth, Administrator

EXHIBIT 1

DURANGO WEST METROPOLITAN DISTRICT

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

WATER QUALITY CONTROL COMMISSION

5 CCR 1002-34

REGULATION NO. 34

CLASSIFICATIONS AND NUMERIC STANDARDS

FOR

SAN JUAN AND DOLORES RIVER BASINS

34.6 TABLES

STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION: 9 BASIN: ANIMAS AND FLORIDA RIVER	Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
			PHYSICAL and BIOLOGICAL	INORGANIC		METALS			
				mg/l		ug/l			
Stream Segment Description									
13b. All tributaries to the Animas River from a point immediately below the confluence with Hermosa Creek to the Southern Ute Indian Reservation boundary except for the specific listings in Segments 12d, 13a, 14a and 14b; all tributaries to the Florida River, from a point immediately below the confluence with Mud Creek to the Southern Ute Indian Reservation boundary, except for specific listings in Segment 12d.		Aq Life Cold 2 Recreation E Water Supply Agriculture	T=TVS(CS-I) °C D.O.= 6.0 mg/l D.O.(sp)=7.0 mg/l pH = 6.5-9.0 E.Coli=126/100ml	NH ₃ (ac/ch)=TVS Cl ₂ (ac)=0.019 Cl ₂ (ch)=0.011 CN=0.005	S=0.002 B=0.75 NO ₂ =0.05 NO ₃ =10 Cl=250 SO ₄ =WS	As(ac)=340 As(ch)=0.02(Trec) Cd(ac)=TVS(tr) Cd(ch)=TVS CrIII(ac)=50(Trec) CrIII(ch)=TVS CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=1000(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Mn(ch)=WS(dis) Hg(ch)=0.01(tot) Mo(ch)=160(Trec)	Ni(ac/ch)=TVS Se(ac/ch)=TVS Ag(ac)=TVS Ag(ch)=TVS(tr) Zn(ac/ch)=TVS	Water + Fish Standards Temporary Modification for Coal Gulch, including all tributaries: NH₃=current condition. Type-A Expiration date 6/30/2015 <u>Discharger Specific Variance⁽²⁾</u> <u>NH₃(ch)=TVS:15 mg/l</u> <u>Expiration date 12/31/2019</u> <u>NH₃(ch)=TVS:10 mg/l</u> <u>Chlorine (ac)=0.019: 0.5 mg/l</u> <u>Chlorine (ch)=0.011: 0.5 mg/l</u> <u>Expiration date 12/31/2024</u> Temporary modification: As(ch)=hybrid Expiration date of 12/31/21.

(2) Discharger Specific Variance, Durango West Metro Dist.#2 (CDPS # CQG589115): The first number is the underlying standard previously adopted by the Commission for the segment and represents the long-term goal for the waterbody. The first number will be used for assessing attainment for the waterbody and for the development of effluent limitations. The second number is the Commission's determination of the effluent concentration with the highest degree of protection of the classified use that is feasible for Durango West Metro District. Control requirements, such as discharge permit effluent limitations, shall be established using the first number as the ambient water quality target, provided that no effluent limitation shall require an "end-of-pipe" discharge level more restrictive than the second number during the term of the DSV for the named dischargers.

DURANGO WEST METROPOLITAN DISTRICT PROPOSED

34.43 STATEMENT OF BASIS SPECIFIC STATUTORY AUTHORITY AND PURPOSE AUGUST 11, 2014 RULEMAKING HEARING; FINAL ACTION OCTOBER 13, 2014; EFFECTIVE DATE APRIL 30, 2015

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 2010, the Commission adopted the discharger specific variance provisions at Regulation 31.7(4), which allow a temporary water quality standard to be adopted in cases where water quality based effluent limits are not feasible to achieve. A DSV is a hybrid standard that maintains the long-term water quality goal of fully protecting all designated uses, while temporarily authorizing an alternative effluent limit (AEL) to be developed for a specific pollutant and specific point source discharge where compliance with the water quality based effluent limit (WQBEL) is not feasible.

The Commission adopted a phased DSV for Animas and Florida Segment 13b for ammonia and chlorine that represent the highest degree of protection of the classified use that is feasible for Durango West Metro District (DWMD). For ammonia, the monthly chronic total ammonia effluent limits for DWMD shall not be more restrictive than 15 mg/L prior to 12/31/2019 and, after that date, shall not be more restrictive than 10 mg/L prior to 12/31/2024. For chlorine, the chlorine effluent limit for DWMD shall not be more restrictive than 0.5 mg/L prior to 12/31/2024.