



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 Lower Arkansas Segment 1a in the Classifications and Numeric Standards for Arkansas River Basin, Regulation #32 (5 CCR 1002-32).

The revisions to Regulation #32 proposed by the City of Pueblo, 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, April 13, 2015
TIME: 1:30 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. The commission requests that all interested persons submit to the commission any available information that may be relevant in considering the noticed proposals.

Written submissions prior to the hearing by interested members of the public that do not have party status are encouraged. 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 April 1, 2015. 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, April 10, 2015 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: Thursday, January 22, 2015
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.

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 City of Pueblo 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 submitted to the commission office no later than **February 4, 2015**. **In addition**, one complete paper copy, including written testimony and exhibits providing the basis for the proposed revisions, **AND** 13 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 **February 4, 2015**; and
- (2) A PDF version of a **Responsive Prehearing Statement**, including any exhibits, written testimony, and alternative proposals of the Water Quality Control Division (division) or **anyone seeking party status and intending to respond to the proponent's proposal** must be submitted to the commission office no later than **March 4, 2015**. **In addition**, one complete paper copy, including written testimony and exhibits providing the basis for the proposals **AND** 13 paper copies of the Responsive Prehearing Statement **without** written testimony and exhibits must be received in the department's mail room no later than **March 4, 2015**.

The PDF versions of all hearing submittals may be emailed to cdphe.wqcc@state.co.us, provided via an FTP site or submitted on a CD or flash drive so as to be received no later than the specified due date.

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 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 March 4, 2015 may be submitted by the City of Pueblo, the division or anyone seeking party status. Any such rebuttal statements must be received in the commission office by **April 1, 2015**. A complete PDF version

(emailed to cdphe.wqcc@state.co.us, provided via an FTP site or submitted on a CD or flash drive) must be submitted to the commission office by this deadline. **In addition**, one complete paper copy of written rebuttal statements, including any exhibits, **AND** 13 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: Monday, March 23, 2015
TIME: 2:00 p.m.
PLACE: Sabin 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 Wednesday, March 18, 2015, so that they can be considered at the prehearing conference. No motions will be accepted after March 18, 2015, 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 8th day of December, 2014 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Trisha Oeth, Administrator

EXHIBIT 1
CITY OF PUEBLO

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
WATER QUALITY CONTROL COMMISSION

5 CCR 1002-32

REGULATION NO. 32

STREAM CLASSIFICATIONS AND WATER QUALITY STANDARDS
FOR ARKANSAS RIVER BASIN

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32.6(5) Discharger-Specific Variances

The following Discharger-Specific Variances have been adopted by the Water Quality Control Commission. For each Discharger-Specific Variance, 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 the named dischargers. 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.

(a) Lower Arkansas Segment 1a, Mainstem of the Arkansas River from a point immediately above the confluence with Fountain Creek to immediately above the Colorado Canal headgate near Avondale, City of Pueblo, [Permit No.] Expiration date: 12/31/2030.

(i) Effluent conditions.

Se(ac/ch)=19.1/14.1:40% annual average total selenium removal

So₄=329:871.2 mg/L annual average concentration

(ii) Exception for wet weather conditions.

The limitations for selenium and sulfate shall not apply when annual precipitation in the Fountain Creek watershed is equal to or greater than the 90th percentile annual precipitation for the most recent twenty years of record.

(iii) Additional conditions.

Pueblo shall implement Best Management Practices (BMPs) to ensure that contributions to Pueblo's wastewater treatment plant of non-domestic waste water other than sources comprised only of ground water, that commenced on or after August 1, 2002, do not contribute to an exceedance of a 30-day average selenium concentration of 17 µg/l.

and/or a 30-day average sulfate concentration of 310 mg/l. BMPs shall include prohibitions of practices, treatment requirements, or other limitations on the sources of the contributions as necessary to meet the above requirements. This practice based condition shall be taken into consideration in the required evaluation and revisions for local limits.

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32.6 TABLES

STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS

REGION: 13 BASIN: Lower Arkansas River Stream Segment Description	Desig	Classifications	NUMERIC STANDARDS						TEMPORARY MODIFICATIONS AND QUALIFIERS
			PHYSICAL and BIOLOGICAL	INORGANIC mg/l		METALS µg/l			
1a. Mainstem of the Arkansas River from a point immediately above the confluence with Fountain Creek to immediately above the Colorado Canal headgate near Avondale.	UP	Aq Life Warm 2 Recreation E Water Supply Agriculture	D.O. = 5.0 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 =0.5 NO ₃ =10 Cl=250 SO ₄ =329	As(ac)=340 As(ch)=0.02-10(Trec) Cd(ac/ch)=TVS CrIII(ac)=50(Trec) CrVI(ac/ch)=TVS Cu(ac/ch)=TVS	Fe(ch)=WS(dis) Fe(ch)=2765(Trec) Pb(ac/ch)=TVS Mn(ac/ch)=TVS Mn(ch)=WS(dis) Hg(ch)=0.01(tot)	Ni(ac/ch)=TVS Se(ac)=19.1 Se(ch)=14.1 Ag(ac/ch)=TVS Zn(ac/ch)=TVS	Temporary modifications: type (-) Se(ac/ch) = existing quality; SO ₄ = existing quality. Expiration date of 6/30/2016. <u>Discharger specific variance:</u> <u>Section 32.6(5)(a).</u> <u>Expiration date: 12/31/2030</u>

CITY OF PUEBLO PROPOSED

32.55 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; APRIL 13, 2015 RULEMAKING; FINAL ACTION MAY 11, 2015; EFFECTIVE DATE NOVEMBER 1, 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 DSV for Lower Arkansas River Segment 1a for selenium and sulfate that represents the highest degree of protection of the classified uses that is feasible for the City of Pueblo. The Commission determined that the current level of treatment achieved at the Pueblo wastewater treatment plant for selenium, and the current concentrations of sulfate, represent the highest degree of protection of the uses. For selenium, the acute and chronic effluent limits for Pueblo shall not be more restrictive than a requirement to achieve an annual average of 40% removal of total selenium at the Pueblo Waste Water Treatment Facility. For sulfate, the effluent limits for Pueblo shall not be more restrictive than an annual average concentration of 871.2 mg/L. The Commission chose annual averages because of the variability of treatment performance and influent concentration caused by wet weather effects. For the same reasons, for both sulfate and selenium, in years with high precipitation in the Fountain Creek watershed greater than the 90th percentile of the precipitation over the previous 20 years, the alternative limitations will not apply. Finally, the Commission adopted additional conditions to the DSV to maintain the status quo and prevent new contributions of selenium or sulfate to Pueblo's wastewater treatment facility from contributing to elevated selenium or sulfate concentrations.

The Commission reaffirmed its previous findings about the sources of selenium and sulfate to the Pueblo sewer system and Lower Arkansas River Segment 1a. Shallow ground water in the University Park and Fairmount areas of Pueblo has very high concentrations of selenium and sulfate. These two constituents are naturally occurring in the Pierre Shale formation that underlies this portion of Pueblo. While urbanization of the City is an irreversible human-caused condition that may result in increased water infiltration into and dissolution of selenium and sulfate in the shale, high natural ground water levels may also contribute to the problem. Much of this ground water flow is intercepted by basements in the University Park and Fairmount subdivisions and then in turn it is discharged to the sanitary sewer. The contribution of selenium and sulfates from industrial or other sources to the sewer system is virtually nil compared to the basement source. The Commission has determined that prohibiting this discharge to the sewer system would probably increase the amounts of selenium reaching Fountain Creek and subsequently Arkansas River segment 1a through naturally occurring ground water flow and would have a substantial and widespread economic and social impact. Approximately 40 to 50 percent of the selenium load to the Arkansas River is removed through the serendipitous interception and removal of selenium by the Pueblo Wastewater Treatment Plant. No adverse impacts on beneficial uses from the discharges of selenium or sulfates have been documented.

The Commission selected an expiration date of December 31, 2030, because the evidence demonstrated that the level of the highest degree of protection of the classified uses is unlikely to change before that date.