



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 section 61.15 of the Colorado Discharge Permit System Regulations, Regulation #61. Revisions to Regulation #61 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.

SCHEDULE OF IMPORTANT DATES

Party status requests due	07/19/2016 5 pm	Additional information below.
Proponent's prehearing statement due	08/9/2016 5 pm	Additional information below.
Responsive prehearing statements due	08/30/2016 5 pm	Additional information below.
Rebuttal statements due	09/20/2016 5 pm	Additional information below.
Last date for submittal of motions	09/23/2016 5 pm	Additional information below.
Notify commission office if participating in prehearing conference by phone	09/23/2016 by noon	Send email to cdphe.wqcc@state.co.us with participant(s) name(s)
Prehearing Conference (mandatory for parties)	09/26/2016 1:00 pm	Board Room (Bldg A, 5 th Floor) Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246
Rulemaking Hearing	10/11/2016 3:30 pm	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. Submittals may be emailed to 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:

Party status requests must be in writing and must provide:

- the organization's name,
- one contact person,
- a mailing address,
- a phone number, and
- email addresses of all individuals associated with the party who wish to be notified when new submittals are available on the commission's website for review.

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, along with an explanation of the alleged harm, in their party status request.

PREHEARING AND REBUTTAL STATEMENTS:

Each party must submit a prehearing statement: parties that have proposed revisions attached as exhibits to the notice must submit a proponent's prehearing statement; all other parties must submit a responsive prehearing statement. Proponents may also submit responsive prehearing statements when there are multiple proposals attached to the notice.

Each prehearing and rebuttal statement must be provided as a separate PDF document from any accompanying written testimony or exhibits.

Following the rebuttal statement due date, no other written materials will be accepted from parties except for good cause shown.

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 will not be permitted unless authorized by the commission.

PREHEARING CONFERENCE:

Attendance at the prehearing conference is mandatory for all persons requesting party status. Parties needing to participate by telephone can call 1-857-216-6700 and enter the conference code 425132.

Following the cut-off date for motions, no motions will be accepted, except for good cause shown.

PUBLIC PARTICIPATION ENCOURAGED:

The commission encourages input from non-parties, either orally at the hearing or in writing prior to the hearing. Written submissions should be emailed to cdphe.wgcc@state.co.us by September 28, 2016.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202(1)(a), (b) and (2); 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.

Dated this 16th day of June, 2016 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Trisha Oeth, Administrator

EXHIBIT 1
WATER QUALITY CONTROL DIVISION PROPOSAL

DEPARTMENT OF HEALTH AND ENVIRONMENT

Water Quality Control Commission

5 CCR 1002-61

COLORADO DISCHARGE PERMIT SYSTEM

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61.15 PERMIT FEES - GENERAL PROVISIONS

- (a) Permit fees shall be paid in accordance with the schedule set forth in section 25-8-502(1)(b), C.R.S.
- (b) As provided in 25-8-502(1)(b)(II), the Division may establish an interim fee in any case where the facility to be permitted does not fit into the existing categories and subcategories. The interim fee shall be consistent and equitable with the fee schedule contained in the law and regulations. The interim fee shall apply until the date of adjournment sine die of the next regular session of the General Assembly following the imposition of the interim fee.
- (c) The annual permit fee or interim fee must be paid within the thirty (30) days of receipt of the Division's billing statement. All fees assessed shall be made payable to the Department of Public Health and Environment - Water Quality Control Division. ~~(All fees collected by the Division shall be credited to the Water Quality Control Fund as provided in 25-8-502(1)(c) C.R.S. as amended.~~
appropriate sector funds:
 - (i) Water Quality Certification Sector Fund as provided in 25-8-502(1.2)(a)
 - (ii) Commerce and Industry Sector Fund as provided in 25-8-502(1.5)(a)(I)
 - (iii) Construction Sector Fund as provided in 25-8-502(1.5)(a)(II)
 - (iv) Pesticides Sector Fund as provided in 25-8-502(1.5)(a)(III)
 - (v) Municipal Separate Storm Sewer System Sector Fund as provided in 25-8-502(1.5)(a)(IV)
 - (vi) Public and Private Utilities Sector Fund as provided in 25-8-502(1.5)(a)(V)

The annual fee is to be used to support the expenses of the ~~discharge permit system.~~ clean water program activities of the Division. ~~The expenses covered include those associated with permit processing and issuance and monitoring for permit compliance.~~

It is the intent of the General Assembly as stated in section 25-8-502(1)(c) C.R.S. as amended that a portion of the expenses of the discharge permit system be funded from the general fund, reflecting the benefit derived by the general public.

(d) Failure of the applicant or permittee to pay the annual or interim fee as required by section 25-8-502(1)(b) C.R.S. is a violation of the permit and shall result in the suspension of said permit and initiation of enforcement action by the Division, which could include revocation of the permit. Reinstatement of such revoked permit will require payment of the delinquent fee and any penalties levied but will not require a permit application or review pursuant to 5 CCR 1002-61, 61.4 or 1002-61, 61.5 et seq. Enforcement action pertaining to delinquent permit fees shall be taken in accordance with 25-8-601 C.R.S. et seq. and section 61.8 of the discharge permit regulations.

~~(e) The annual or interim permit fee shall be prorated upon the issuance in the following instances:~~

~~(i) Issuance of a new permit, except for non-fixed facilities or for short-term or intermittent discharges;~~

~~(ii) Termination of a permit at the permittee's request with Division approval, except for non-fixed facilities or for short-term or intermittent discharges;~~

~~The prorated fee for issuance of a new permit shall be based on the period of time the permit will be in effect for the fiscal year, except that prorated fees less than \$75 will be set at \$75. The prorated fee for terminations shall be based on the period of time the permit is in effect for the fiscal year during which the termination is effective, except that prorated amounts less than \$75 will not be refunded and the period of time shall not exceed ninety (90) days from the date the permit termination request is received by the Division.~~

~~(f)~~(e) The annual permit fee shall be applicable to all permittees of record as of July 1, 1983 and new permittees thereafter. Fees assessed under the Water Quality Control Act prior to the 1983 amendments are applicable to prior fiscal years up to June 3, 1983, regardless of the date upon which a permit action was taken by the Division.

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61.68 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE – OCTOBER 11, 2016 RULEMAKING HEARING; EFFECTIVE DATE DECEMBER 30, 2016

The provisions of 25-8-202(1)(d) and (2), 25-8-401, 25-8-501, 25-8-501.1, and 25-8-502, C.R.S., provide the specific statutory authority for the amendments to this regulation adopted by the Water Quality Control Commission (Commission). The Commission has also adopted, in compliance with 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

The Commission decided to modify Section 61.15(e) to reflect current changes in the Water Quality Control Act regarding fee sectors and to delete provisions referencing fee proration. The statute does not require fee proration and recent changes to the statute require a permit application fee which in effect prorates a portion of the fee to allow the Division to begin work on a permit action. The Commission decided to remove the proration portion of the regulation with the understanding the Division has the discretion to waive fees where appropriate.